

Case No. 4,966.
[7 Leg. Int. 203.]

FOSTER V. THE BRITISH OAK.

District Court, E. D. New York.

Dec. 20, 1850.

CARRIERS—DAMAGE TO CARGO—MEASURE OF DAMAGES.

[The measure of damages for negligence causing injury to cargo is the difference between the cost of the damaged goods and the proceeds received from the sale thereof.]

[This was a libel by Foster against the bark British Oak for damage to cargo.]

Plaintiff shipped on board the Sligo, in June, 1849, 8,075 empty corn bags, to be delivered at New York. He charges gross waste on the part of the master, both in the storage and transportation, and that in being discharged in New York the bags were wet, filthy and rotten, requiring immediate sale at auction. The owners of the vessel take issue only as to the extent of damages, and say they tendered \$250, together with costs. The libellants being dissatisfied, went on with the suit

It is clear, THE COURT said, that the master has been grossly negligent, and not only that, but the violation of contract was accompanied by indecent and aggravated misconduct, which can receive no countenance from the court; and there is no special claim to any abatement from actual damage. The cost was \$706.55, from which deduct the proceeds at auction, \$344.98; the amount tendered, \$250,—leaving \$111.57; for which, with interest after date of sale, decree ordered.