

Case No. 6,094.

THE HARRIET.

District Court, E. D. Pennsylvania.

July 28, 1848.

SHIPPING—AVERAGE—PORT OF NECESSITY—MEASURE OF DAMAGES—AUTHORITY OF MASTER OVER CARGO—FREIGHT.

1. The expenses and charges of going to a port of necessity are properly the subject of general average only where the voyage has been or might have been resumed; not where it has been abandoned, from necessity.

[See *Barnard v. Adams*, 10 How. (51 U. S.) 270; *Columbian Ins. Co. v. Ashby*, 13 Pet (38 U. S.) 331; *Scudder v. Bradford*, 14 Pick. 13; *Delano v. The Gallatin*, Case No. 3,751.]

2. The ordinary measure of damages for the breach of a contract of affreightment, where the goods have been unlawfully disposed of at an intermediate port, is their prime cost, with interest, and charges of shipment and transportation.

[See *Jackson v. The Julia Smith*, Case No. 7,136.]

3. The master has no authority to sell the cargo in order to make repairs, unless he be clearly unable to procure funds on the credit of the ship, or to hypothecate the cargo.

4. Where a vessel has been captured, on her voyage, and condemned at an intermediate port, and part of the cargo has been restored and sold at the same port, no freight is due therefor.

[See *Sampayo v. Salter*, Case No. 12,277; *The Nathaniel Hooper*, Id. 10,032.]

[Decided by Kane, District Judge. Cited in 1 *Brightly*, Dig. 69, 239. 787, and 792, to the points as stated above. Nowhere more fully reported; opinion not now accessible.]