

PEDRICK v. FISHER.

[1 Spr. 565.]¹

District Court, D. Massachusetts.

May, 1859.

MARINE INSURANCE—INSURABLE
INTEREST—PRIMAGE ON FREIGHT—LOSS OF
VESSEL—INSURANCE ON FREIGHT.

1. The right of a master of a vessel to primage on freight, is an insurable interest.
2. The owners are not hound to insure such interest.
3. Where the owners had promised the master five per cent primage on freight as collected, and they had made insurance on the freight, and the vessel was lost and no freight earned, but the owners collected their insurance, *held*, that the master could not maintain a suit for primage.

In this case, the respondents, owners of the ship *Troubadour*, appointed Pedrick the master, and in their letter of appointment and instructions, they say that “the ship and freight are insured by the year,—ship valued at \$70,000, and freight valued at \$25,000, on board or not;” and also, “for your services you are to have \$25 a month, and five per cent primage on the freight as collected.” The vessel sailed from Newburyport, on March 12th, 1854, with no cargo on board, and was wrecked on the 24th of the same month, and was a total loss, and the owners collected their insurance on the freight Pedrick, the master, did not insure his primage, and in this libel seeks to recover from Fisher & Co. five per cent of the amount of insurance received by them, on two grounds: (1) That if Pedrick had an insurable interest, the relation of owners and master made the owners agents of the master, so far as to make it their duty to insure the master’s primage, without special request, and liable to him in damages for their neglect, if they did not so insure; and (2) that as they had agreed to give the master five per cent, primage on the freight as

collected, and had collected \$25,000 insurance on freight, this was equivalent to collecting \$25,000 ⁹³ on freight, and entitled the master to recover five per cent of it, as his primage.

B. F. Hallett, for libellant.

S. W. Bates, for respondents.

SPRAGUE, District Judge, held that Pedrick had an insurable interest, either under the name, of primage, or wages, or commissions, but that the owners were not bound to insure it for him, without request; and that the letter of instructions contained no promise, express or implied, on the part of the owners so to insure; and that if they had insured without the masters authority, he would not have been liable to them for the premium paid; and, on the second point, that no freight having been earned, and none collected, no primage was to be paid; that money received from insurance, as indemnity, was not to be deemed freight collected; that the amount, in fact, obtained from the insurance companies, was by virtue of a distinct contract between the owners and the companies, to which the master was not a party, for which the owners alone paid the consideration, and of which they alone were entitled to the benefit. Libel dismissed.

¹ [Reported by F. E. Parker, Esq., assisted by Charles Francis Adams, Jr., Esq., and here reprinted by permission.]

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