

3 West. Law M. 521; *The John T. Moore*, 3 Woods, 61; *The Heinrich Bjorn*, 8 Prob. Div. 151; *The Dolphin*, 1 Flippen, 580, and the reporter's note; *The Guiding Star*, 9 FED. REP. 521; *The Riga*, L. R. 3 Adm. & Ecc. 516.

The strongest argument made by the libelants is that the premiums may be regarded like interest, as a charge for delay of payment. In some bottomry bonds such a charge is made by agreement; but whether the courts will uphold it, is doubtful. See *The Boddingtons*, 2 Hagg. 422; *The Robert L. Lane*, 1 Lowell, 388; where the question was not decided, but only referred to. If it were proved that by a general, long-established, and well-known custom, premiums of insurance are to be added to the account by way of consideration for the forbearance, they might possibly be allowed, on the theory that the charge for interest was proportionally diminished, or that the arrangement was an entire one, from which no one item was to be separated. No such evidence was offered.

It must be remembered that the schooner was sailed on shares under a parol charter, which required the master to supply the vessel for her voyage, though not to repair her. The schooner is liable for necessaries by virtue of a fiction of the admiralty courts, known to all the parties, and admitted in this case. But the insurance did not benefit the owners, for they were not personally responsible for this debt. The case appears somewhat stronger against the charge than if it were made in bottomry, inasmuch as the exigency was less. In bottomry, the owner is communicated with, in most cases, and if he cannot advance the money, the master must raise it on the best terms he can get. Here the libelants supposed, though they did not inquire, that the master was sailing the vessel on shares, and they therefore supposed it to be important for them to insure, because they had no resort to the owners. They protected their own interest, as a mortgagee might do, and can no more charge the premium against the ship than a mortgagee could charge it against the estate in the absence of a positive stipulation to that effect. I reject the items for premiums of insurance.

Decree for the libelants.

THE COLINA.

(District Court, D. Maryland. January 15, 1884.)

SHIPMENT OF CATTLE—UNFIT DRINKING WATER—LIABILITY OF VESSEL.

The owners of the steam-ship having contracted to supply ample condensed water for a cargo of 340 live cattle from Baltimore to Glasgow, and the court finding on all the testimony that the water furnished was unfit for cattle, and caused the death of 41 and deterioration in the value of all the remainder, held, that the ship was liable to the owner of the cattle for the losses suffered.

In Admiralty.

Sebastian Brown and Henry M. Rogers, for libelant.

Thomas & Thomas, for respondent.

MORRIS, J. This is a libel against the steam-ship *Colina*, of Glasgow, for the value of 41 cattle which died on the voyage from Baltimore to Glasgow, and for damages for the deterioration of the remaining 299. The ship sailed from Baltimore, April 18, 1882, with 340 of libelant's cattle on board, and on May 5th arrived at Glasgow. The voyage lasted 17 days. On the twenty-ninth and thirtieth of April quite heavy weather was experienced, during part of which the hatches were put down and the ship rolled considerably, but on the whole the voyage was a favorable one, and not beyond average duration. The libelant alleges that the death and deterioration of his cattle was solely in consequence of the unfit drinking water supplied them by the ship. The contract of shipment provides that an ample supply of condensed water is to be supplied by the ship, and the controversy turns upon the single issue of fact, did the ship supply suitable condensed water for the cattle? and if not, was that the cause of the loss? The testimony is quite contradictory, but every witness, apparently, who could have any knowledge of the matter in issue has been examined by one side or the other, and the court has been greatly aided by the very thorough manner in which the evidence has been presented, and by the able arguments of counsel. A careful consideration of all the testimony has satisfied me that the libelant is entitled to recover. I am led to this conclusion by the combined weight of very many different items of proof, some of which I will mention. In the first place, there is nothing whatever to indicate that the cattle were not good, healthy cattle when shipped. The testimony in behalf of the libelant shows them to have been in fine condition, fat, and suitable for exportation, and there is no testimony to the contrary. Starting on the voyage in this good condition, it is an uncontroverted fact that 41 died from time to time during the voyage, and that all the rest became more or less deteriorated, and that all were still rapidly losing flesh and strength from day to day up to the moment of arrival at Glasgow. This steady deterioration is proved, not only by all the cattle men who had them in charge, but is admitted by Capt. Maxwell, the master of the steam-ship. He says:

"They were thin when landed; not nearly in so good condition as when put on board. They were all more or less skinny looking, and in as poor condition as I have ever seen cattle after a voyage. They showed no signs of the bruises and knocking about of a rough voyage, and had a great craving for drink after they got ashore, unlike ordinary shipments on landing."

The testimony of the cattle men is that at first the cattle refused to drink the water, and that, to induce them to drink, they gave it to them mixed with bran; that when they did come to drink it, it did not quench thirst, and they craved drink all the time; that one after

another they became feverish and weak, their eyes bloodshot, their hair rough and staring, their bowels loose and very offensive, and those which died appeared to become delirious, and died in great agony. These various symptoms of distress, as detailed by the cattle men who observed them, are said by men of long experience in handling cattle, and by surgeons, to be such as would result from some sort of irritant salt, or other poisonous substance, taken into the stomach. There is no proof to show that such symptoms appear in any disease to which cattle are subject. Then it is testified that those of the cattle, which, in an almost dying condition, were butchered soon after arrival at Gasgow, appeared different from ordinary cattle, their bladders being greatly distended and dark in color, the urine dark, the kidneys fat and soft, and their eyes bloodshot. There are numbers of witnesses to all these facts, many of them persons of independent positions, long established and well known in Glasgow, and it is fair to presume that their testimony, if biased at all, would more likely be colored by a bias in favor of the owners of the steamship, who are their fellow-townsmen, than in favor of the libellant, an unknown American, residing in Chicago.

As to the difference in its effects between the ordinary drinking water of the ship and the condensed water supplied the cattle there is the testimony with respect to a certain bullock, which, for their amusement, some of the engineers made a pet of and supplied with drinking water because he refused the other. All the cattle men testify that his condition at the end of the voyage was exceptional, and that he alone showed no signs of the sickness which prevailed among the others, and was the only beast which went off the ship in as good condition as when shipped, and that he was lively and active, while the others were dull and sluggish, and difficult to get ashore.

There is, too, the chemical analysis of the bottle of water taken ashore by the head cattle man, and which he swears was a fair sample of the condensed water furnished. If it be true, as he swears, that the sample was a fair and honest one, then the chemical analysis and the testimony of the veterinary surgeon prove that it was unfit for cattle, and that its use would produce the symptoms in the cattle and the injuries complained of. It is true that the fact that the bottle of water taken ashore was a fair sample, rests only on the evidence of the dead cattle man, and, although not in any way impeached the court might hesitate to rest so vital and disputed a fact on the testimony of one man; but, as one of a great many corroborating items of proof, it has its weight. Certainly it is proof that the complaint about the water was not an after-thought, but was present in the minds of these cattle men during the voyage, and seriously considered by them. When complaint was made to the captain during the voyage, the cattle men testify that he admitted on tasting the water that it was salty. He says that he found it only brack-

ish or flat, but I think his offer to supply the water from the smaller condenser is proof that he did not then think the objection frivolous. The offer of water from the smaller condenser was declined by the cattle men, and, I think, from necessity, as the testimony of the officers of the ship shows that the cattle men would have been unable to have performed the labor of pumping and carrying the water from this small condenser to the casks in which it was to be cooled.

On behalf of the respondents there are several explanations suggested to account for the unusual, increasing, and fatal sickness among the cattle throughout the voyage; and, *first*, it is suggested that as the cattle were brought from Chicago to Baltimore in cars and were put directly from the cars on board the steam-ship, they may have been neglected and abused on that journey, and their subsequent ailments be attributable to that. But that journey on the railroad was about the middle of April, a season when they could not be exposed to any extremes of weather, and their appearance when shipped indicated no abuse or privation of food or water, or failing health from any cause; and if they had been injured on the railroad they would have got better as the effects of it passed off. The contrary was the case: the cattle during the voyage grew weaker and more distressed, and died more rapidly the longer they were on board. And, indeed, the cattle men swear that in their opinion, judging from the increasing severity of the sickness, if the voyage had lasted much longer all would have died.

Another explanation offered, and one which is supported by the testimony of the officers of the ship, is that the cattle men neglected the cattle on the voyage; that they did not feed and water them regularly, and allowed them when they got down to lie without assisting them to get up, so that the lying down prevented their passing urine, and that this caused the disorders of the bladder and kidneys, which resulted in their death. While I do not question that such retention of the urine would have caused most of the symptoms of distress and disease they exhibited, I am disposed to think that this complaint about the neglect of the cattle men is an after-thought. The captain could not have thought it to be a fact at the end of the voyage, for he gave a written certificate to the head cattle man that he "had been most attentive to his duties in tending the cattle during the whole passage, and that he was a most competent person for taking charge of cattle on board ship." The cattle men generally were men of experience in their duties, and had made frequent Atlantic voyages in charge of cattle. Another answer to this theory, that it was neglect that brought on the injuries, is that all the cattle suffered in the same way, although not to the same extent,—some resisting the disorder better than others, but all being appreciably affected. It can hardly be supposed that on a favorable voyage, with little rough weather, all the cattle got down. They are placed in narrow stalls to keep them

on their feet, and do not get down unless they are sick and too weak to stand, or are thrown down by the violent rolling of the ship and the breaking of the stalls.

It is said by the ship's officers that the two men who had charge of the cattle on the forward part of the upper deck were the only ones properly attentive to their duties, and that this explains why only one beast died in that part of the ship. These two men themselves, however, testify that all the cattle men helped each other to get cattle up when they were down, and that they gave only the same attention to their cattle that others did, and that they tasted the water repeatedly and found it very salty; that their cattle refused to drink it at first, as did the others; and, while as many cattle did not die in that part of the ship, they did all show more or less of the same symptoms, the same distress and thirst, and were deteriorated in the same way.

Another suggestion is that, by the carelessness of the cattle men, the casks containing the condensed water were left uncovered, and spray and sea-water was washed into them in the rolling of the ship. As there was a large number of these casks in different parts of the ship, and many of them below in the between-decks, this theory is too improbable to be accepted, and if true must have happened, more or less, on every voyage, and certainly should have been remedied by the ship-owners by differently placing the casks.

A consideration of the testimony, as a whole, has brought me to the conclusion that the water was unsuitable for cattle, and that it caused the deaths and deterioration by which the libellant has suffered the losses complained of; and I adhere to this finding of fact, notwithstanding the positive testimony that the same apparatus on other voyages, both before and after the one in question, supplied condensed water for quite as large cargoes of cattle which were carried by the same steam-ship without their suffering any injury. The fact that the water was bad, and that the cattle suffered from it on this voyage, is, in my judgment, established, and the libellant is not to lose his remedy because he cannot explain why it was bad.

As to the amount of the pecuniary loss which resulted from the deterioration of the cattle there is decided conflict of testimony. I have not found this question free from difficulty, and have been obliged to deal with it in some spirit of compromise. The cattle were not injured all to the same extent, and they would seem to have improved in appearance and strength after landing, and before the sale, and the sale seems to have been well managed in the interest of the libellant. Comparing the sales with the reported market prices, the cattle which survived seem to have sold better than was expected, and the loss to have been not so great as was estimated by those who judged by the appearance of the cattle as they came off the ship. I allow 30 shillings a head for the deterioration on all that were sold. For those that died I allow the average price brought by those that were sold. I have not allowed the additional sum for de-

terioration on those that died, because in all probability these were not the best beasts; and as to these, all further risks of the voyage, and all further expense of attending their keep and sale, ended with their death, and was saved the libelant.

The amount of the decree will therefore be:

STATEMENT.	
Cattle consigned to A. & T. Tierman, and stowed between-decks, total	179
For 25 died, at £24 each,	£600
For depreciation on 154 arrived, at 30 shillings each,	231
	<u>£831</u>
Cattle consigned to Young & McQuade, carried on main deck, total,	161
For 16 died, £23 each,	£368
Less one carcass,	16
	352
For depreciation on 145 arrived, at 30 shillings each,	217.10
	<u>£569.10</u>
Tiernan's,	831
Young & McQuade,	569.10
	<u>£1,400.10</u>

At current rate of exchange, say \$4.89.
(No interest.)

HOUGE v. WOODRUFF and others.

(District Court, S. D. New York. January 8, 1884.)

1. SHIPPING—DEMURRAGE—REASONABLE TIME—CARGO OF SALT.

A merchant who buys cargo on board ship after her arrival, taking no transfer of the bill of lading or charter-party, and having no knowledge of either, is bound only to the use of reasonable diligence in discharging in conformity with the custom of the port.

2. SAME—CHANGE OF BERTH.

Where a vessel has obtained a berth at the place assigned by the merchant, and is ready to discharge, and she proceeds at his request to another berth, where a further delay arises, the vessel is entitled to be paid for the expense and delay caused by such removal, in the absence of any special usage of the port or trade authorizing such a change at the vessel's expense.

3. SAME—CUSTOM.

By usage in the salt trade, rainy weather is deducted, salt not being removable without damage during such weather.

The bark Elliseff, of which the libelant was master, brought in ballast about 257 tons of salt from Lisbon to New York, where she arrived on the twenty-sixth of December, 1880. The salt came under a charter-party and bill of lading consigned to Hagemeyer &