

THE MANGALORE.

District Court, D. California.

June 12, 1883.

SHIPPING—INJURY TO CARGO—MEASURE OF DAMAGES—REBATE AT CUSTOMHOUSE.

Where a cargo has been injured by the negligence of the vessel, the measure of the damages is the difference between the market value of the damaged goods at the time and place of delivery and what their value would have been if uninjured, less any rebate allowed at the custom—house.

In Admiralty.

William Barber, for libelants.

Milton Andros and *Charles Page*, for claimants.

HOFFMAN, J. The only question raised by the exceptions which, as it appears to me, admits of doubt, is whether the damage to the shipment was confined to 164 bales, or extended to the whole consignment. Mr. Gallego wishes it to be understood that the damage estimated by him at one and three—quarters to two cents per bag pervaded the entire lot of 300 bales, containing 1,000 bags each. But his testimony is quite obscure, and his memory by no means distinct. His examination of the shipment was made in conjunction with the customs officers, who took, as their duty required, notes of the results of their inspections in order to determine the rebate of duty to be allowed 464 on the damaged appraisement. There does not appear to have been at the time any difference of opinion between them and Mr. Gallego as to the results of the survey. There was allowed at the custom—house a rebate of \$1,016 on the duties otherwise leviable on 164 bales. The remainder were charged the full duty as on sound, dutiable value. No objection or protest appears to have been made by the shippers, and the duties were adjusted and paid on this basis. The prices subsequently obtained

(though not until the next season, and after certain expenditures made by the shipper for repacking, repairing, etc., were incurred) tend to strengthen the impression that the damage was subsequently confined to the 164 bales. Accepting, then, Mr. Gallego's estimate of damage per bag to 164 bales, or 164,000 bags, as one and three-quarters, we have total damage of \$2,870. The payment of this sum would have placed the owner in the same condition as if his goods had arrived sound; but by reason of their damaged condition he was able to obtain them by the payment of duties less by \$1,016 than he would otherwise have paid. Deducting this sum from \$2,870, we have \$1,854, which, with interest, is the damage sustained. The commissioner has reached substantially the same conclusion by computing the difference between the sound market value of the goods (eight and seven-eighths cents per bag) and the market value of the 164 injured bales, (seven and four-tenths cents per bag.) This amounts to \$1,049, and to this he has very reasonably added \$200 as an allowance for bales damaged to so small an extent as under custom-house rules is not considered. This allowance would amount to nearly 2 per cent, on the sound, duty-paid market value of the remaining 136 bales constituting the balance of the shipment.

I think the sum of \$1,854, with interest from August 8, 1881, allowed by the commissioner, is as just and reasonable an estimate of the damages as can be arrived at.

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