The Beatrice Havener.

Crowell *et al.* v. The Beatrice Havener.

(District Court, E. D. New York. March 24, 1892.)

Collision—Vessel Carrying Owner's Goods — Loss of Voyage — Damages — How Ascertained—Freight.

A vessel carrying her owner's goods only is not earning any freight as a separate interest; hence when she is lost at sea by collision her owner cannot recover, as for loss of freight, the estimated amount that such a vessel could have been chartered for to carry a similar cargo on a similar voyage. The proper rule of damages, *restitutio in integrum*, is satisfied by taking the market value of the vessel at her sailing port at the time she was devoted to the voyage, with interest thereon, together with her stores, wages, and any other items of expense reasonably incurred for the voyage up to the time of loss, with interest.

In Admiralty. On exceptions to commissioner's report.
Carter & Ledyard, for libelants.
Owen, Gray & Sturgis, for claimant.

Brown, District Judge. Upon the reference to the commissioner to take proof of the libelants' damage from the collision in the above cause, it appeared that at the time of collision the libelants' vessel, the Ethel A. Merritt, was bound upon a voyage from Philadelphia to St. Andrews, carrying the libelants' own goods exclusively. Besides the value of the vessel and cargo, the libelants have been allowed, as for loss of freight, the amount for which it was estimated that such a vessel could have been chartered to carry a similar cargo, less the estimated expenses of completing the voyage from the time of collision. If the vessel had been under charter, the loss of freight would have been computed and allowed for in that way. Exception has been taken, however, to that mode of estimating the damage in the present case, because there was no charter in fact, and hence no basis for applying that mode of ascertaining the libelants' damage.

The exception, I think, must be sustained. When freight has been allowed as an item of damage, it is because the owner had a distinct interest separate from the vessel, known as "freight," arising out of some contract or employment under which freight as such was being earned; and the allowance was for the loss of that distinct interest. Such a distinct interest may accrue either under a charter that covers the whole ship, or under bills of lading, which are in effect charters of portions of the ship's carrying capacity. Such contracts create a definite, valuable interest; and when they are destroyed by the defendant's fault, the libelant is entitled to indemnity for that specific loss.

But it is inadmissible, as it seems to me, to resort to the fiction of an imagined charter, when the libelants are transporting their own cargo. Under the liberal construction of policies of insurance, where the parties insure "freight" and pay a premium on "freight," a "reasonable freight" has sometimes been deemed covered in favor of owners

carrying their own cargo; because otherwise the intent of the insurance would be lost, and the common object be defeated. *Flint* v. *Flemyng*, 1 Barn. & Adol. 45. But in cases of tort, there is no contractual relation; no question of the construction and intent of a contract arises, but only the question of indemnity to the injured party. While the general rule is that the indemnity shall be as complete as the nature of the case admits of, yet it is well settled that mere anticipated profits are excluded. *The Scotland*, 105 U. S. 24–35; *The City of Alexandria*, 40 Fed. Rep. 697; *The City of New York*, 23 Fed. Rep. 619. In collision causes the price of goods at the place of destination is on that ground excluded as incompetent, and only the price at the port of departure is allowed, with interest and any incidental expenses.

In the absence of any charter or bill of lading, and of any contract which might furnish a basis for any independent employment of the ship, or earning of "freight" as such, I do not feel at liberty to adopt any different rule, or to depart from the well-established law in the case of goods. The compensation for which the ship-owners look in the employment of their vessel to carry their own goods is solely in the expectation of the enhanced value of the goods at the place of discharge; and if that expectation of enhanced value cannot be considered in determining the owner's loss on the goods, I do not see how it can be any the more considered as regards the loss of the ship, either directly or indirectly. Nor is that necessary, nor is the supposition of a fictitious charter necessary, in order to satisfy the rule of *restitutio in integrum.* That rule will be fully satisfied by allowing to the libelants, as in the case of goods wholly lost at sea, the market value of their vessel at the port of sailing at the time she was devoted to the voyage, with interest from that date; and in addition thereto, whatever stores or special equipment of any kind may have been provided for the voyage, including the wages of officers and men from the time they were engaged, as well as any other items of expense, if any, reasonably incurred for the prosecution of the voyage up to the time of loss, with interest on such sums from the time they were supplied or paid. This rule will fully idemnify the libelants for their actual loss of the voyage, while excluding, as is necessary, all merely anticipated profits.

Upon the widely divergent testimony concerning the value of the steamer, I am not satisfied that I could arrive at any better judgment than that of the commissioner; and I shall not, therefore, disturb his finding in that respect.

If the parties do not agree upon a modified sum in lieu of that allowed for freight, the matter will be referred back to the commissioner for readjustment in accordance herewith.

THE LEPANTO.

THE CASSIE F. BRONSON.

THE LEPANTO v. BENNETT *et al.*

WISE v. THE CASSIE F. BRONSON.

(Circuit Court of Appeals, Fourth Circuit. April 12, 1892.)

1. COLLISION—STEAM AND SAIL—LIGHTS.
A steamer moving at midnight in the open sea, on a course S. W. ¼ W., and, approaching a schooner moving on a course N. E. by E., passes the point of intersection of courses just before the schooner reaches it, and, seeing the schooner's green light, puts her helm hard a-port, thereby producing a collision with the schooner, *held*, that the steamer was in fault.

2. SAME—INTERNATIONAL RULES.
Section 4234, Rev. St. U. S., requiring sail-vessels to show torch-lights on the approach of steamers at night, does not apply, since the adoption of the international rules of navigation of 1885, to vessels upon the high seas or coast-waters.

3. SAME—PARALLEL AND OBLIQUE COURSES.
A maneuver which would have been a proper one as to vessels approaching each other on parallel courses may be a fatal one if the vessels are moving on courses obliquely intersecting.

(Syllabus by the Court.)

Appeal from the Circuit Court of the United States for the District of Maryland.

In Admiralty.

Foster & Thomson, (*James Thomson*, of counsel,) for appellant.

Robert H. Smith, for appellees.

Before FULLER, Chief Justice, and HUGHES, District Judge.

OPINION BY JUDGE HUGHES.

A collision occurred between the steamer Lepanto and the schooner C. F. Bronson, 25 miles south of Long island, in the Atlantic ocean, shortly after half-past 12 o'clock on the night of the 22d–23d April, 1890, from which the schooner sustained damages assessed at about $10,000, and the steamer damages claimed to the same amount. Libel was filed in behalf of the schooner, which was answered, and a cross-libel filed. The district court of Maryland decreed for the libelant, the circuit court affirmed that decree, and the case has been appealed to this court.

The collision occurred on a clear night; the deck officer of the steamer Lepanto described it as a "fine, very fine, starlight" night. Witnesses severally say that objects could be seen at 2, 3, 4, 5, and 6 miles distant. The Lepanto was running, half-laden, 10 to 11 miles an hour, on a course S. W. ¼ W., and was first seen by the schooner when at a distance of 5 or 6 miles. She registers 1,489 and carries 3,000 tons. Her dimensions are not given. The Bronson is a four-masted schooner of 183 feet keel, 40 feet beam, and 2,000 registered tonnage. She was laden with 1,789 tons of coal. She was on a course N. E. by E., with