
F. K. WARREN & R. P. AND W. F. }
 STARR, LIMITED } PLAINTIFFS;
 AGAINST
 THE SHIP *PERENE* DEFENDANT.

1924
 May 21.

Shipping and seamen—Loss of ship and cargo—Value of same—Method of estimating damage—Elements of damage.

Held, the damages to be allowed to owners of cargo for the loss thereof by collision is the market value thereof to the owners at the time and place of delivery, if there is one, and if not, the value is to be calculated, taking into account among other things the cost price, the expenses of transit and importer's profit.

2. That a schooner cannot be dealt with like an ordinary commodity sold every day, and in the absence of any market value, the question of damages for the loss of such vessel, resolves itself into what shall be deemed its proper value to the owners as a going concern, which in order to determine, many matters have to be considered such as:

(1) [1908] A.C. 458 at p. 466.

1924
 WARREN,
 STARR, LTD.
 v.
 THE SHIP
 Perene.

- original price, cost of repairs, amount of insurance, etc. (*The Harmonides* (1903) 72 L.J. Adm. 9; *The Philadelphia*, 86 L.J. Adm. 112, and *The Ironmaster* (1859) 166 Eng. Rep. 1206 referred to and discussed.)
3. That in such a case the best evidence of value is the testimony of competent persons who knew her shortly before her loss, and next the opinion of persons well conversant with shipping generally.
 4. Plaintiffs' ship was chartered from St. John, N.B., to Las Palmas when lost by collision, which trip it was proved would have netted her \$2,000 profit.

Held, that such a loss of profit was a proper element of damage to be allowed against the defendant.

REHEARING before the court to determine the amount of damages due to the plaintiffs respectively under judgment of the 30th April (1) in the said cases finding the defendant responsible for the collision.

May 13, 1924.

Matter now heard before the Honourable Sir Douglas Hazen, Deputy Local Judge in Admiralty, at St. John, N.B.

F. R. Taylor, K.C. for plaintiffs;

A. N. Carter, for defendant.

The facts are stated in the reasons for judgment.

HAZEN L.J.A. now this 21st day of May, 1924, delivered judgment.

* * * * *

In the case in which R. P. & W. F. Starr, Limited, is plaintiff, the amount which the plaintiff claims is \$10,640.78, with interest at 5 per cent, from the first of February, and the claim is made up as follows:—

Amount paid for coal	\$9,215 48
Ten per cent which Mr. Starr gives as the amount to cover commission, brokerages and overhead.....	921 54
Advance made on freight	58 20
Premium actually paid for U.S. funds.....	288 03
Marine insurance premium.....	156 93
	<hr/>
	\$10,640 78

together with interest from the time of the loss at 5 per cent.

Of these items the only one to which objection is taken by counsel for the defendant is the second item, viz., \$921.54 and it is submitted that so far as that covers profits and

commissions it is not competent to the plaintiff to claim it, and he is not entitled to it. In support of this proposition two cases were cited—*Ewbank v. Nutting* (1); and *British Columbia, etc., Company, Ltd. v. Nettleship* (2), both of which are common law cases, the facts being entirely different from those in the present case, and it is admitted by the defendant's counsel that they are not directly in point.

1924
 WARREN,
 STARR, LTD.
 v.
 THE SHIP
 Perene.
 —
 Hazen L.J.A.
 —

The rule regarding the loss of cargo owners seems to be laid down with clearness in Halsbury, Vol. 26, p. 541, par. 803, as follows: * * * *

No evidence was given before me to show what the market price of the goods was at the city of St. John, the place at which the coal ought to have been delivered to the plaintiffs. Such value must therefore be calculated, and among other matters to be taken into account as laid down in the paragraph which I have quoted from Halsbury are the cost price, the expenses of transit and the importer's profit.

* * * * *

Coming now to the other case, *Warren v. SS. Perene*, the plaintiff claims damages for the loss of the *Maid of Scotland* of \$40,000, and the following additional amounts:—

Value of stores and ship chandlery.....	\$1,300 00
Cost of removing spars.....	1,000 00
Insurance premiums unexpired	1,634 00
Freight on coal for Starr payable in U.S. funds.....	750 00
Earnings of voyage to Canary Islands payable in U.S. funds	2,000 00
Premium on freight on coal and lumber to the Canary Islands for U.S. funds.....	81 00
	<hr/>
	\$46,765 00

Of these items those for the unexpired insurance premium, the freight on the Starr coal, the earnings of the voyage to the Canary Islands and the premium for United States funds are not disputed. The plaintiff also claims interest from the first day of April last, the date on which under the charter party the vessel after discharging its cargo at St. John and loading there with lumber would have delivered the same at the Canary Islands. That charter

(1) [1849] 7 C.B. 797.

(2) [1863] 37 L.J.C.P. 235.

1924
 WARREN,
 STARR, LTD.
 v.
 THE SHIP
 Perene.
 Hazen L.J.A.

party was given in evidence. It was dated on the 17th January, 1924, and under it the vessel was chartered from St. John to Las Palmas, Grand Canary to carry a cargo of pine or spruce lumber not exceeding 450,000 s.f. The amount to be paid under the charter party at \$10 s.f. amounted to \$4,500 and the evidence was that the disbursements and expenses in connection with this would amount to \$2,500 leaving a balance of profit of \$2,000. Under the authorities it is quite clear that the plaintiff is entitled to this amount.

The principal controversy was over the amount that should be allowed as damages for the total loss of the *Maid of Scotland*, and it will be necessary to consider the principles that should be applied in arriving at such damages.

In the case of the *Harmonides* (1) it was held that where a ship has been sunk by collision and there is no market from which she can be replaced, the value of the ship to her owners as a going concern is the proper test of their loss. * * * *

In the case of the *Ironmaster* (2) the rule is laid down that in estimating the value of a vessel at the time of a collision whereby she was lost the best evidence is the opinion of competent persons who knew the vessel shortly before the time of loss; the next best is the opinion of persons well conversant with shipping generally. The original price of the vessel, the cost of repairs done and the amount at which she was insured, etc., these are evidence of value, but evidence of inferior weight. * * * *

In the case of *The Philadelphia* (3), Sir Samuel Evans in his judgment said that the right rule for arriving at the damages in the case of a total loss of a vessel under charter is to value the ship at the time of its destruction or loss and to add to this the proper sum for freight or profits at the end of the voyages fixed by her existing charters subject to proper deductions for contingencies and wear and tear. In the case of the *Kate* (4), which was referred to in the course of the argument before me, the question is declared to be simply whether the value of the lost vessel was to be

(1) [1903] 72 L.J. Adm. 9.

(2) [1859] 166 Eng. Rep. 1206;

Swabey 441 at pp. 442, 443.

(3) [1917] 86 L.J. Adm. 112;

[1917] P. 101.

(4) [1899] 68 L.J. Adm. 41.

fixed at the time of the collision as if she were a free vessel without reference to the benefit which might accrue under her then existing contractual obligations, or whether the profits which might be the result of the performance of her existing charter were to be taken into account as an element in her value, and the decision was that the latter was the correct rule of assessment, while the case of the *Racine* (1) it was declared did not differ in principle and only extended the application of the rule to a succession of charter parties.

In the case of the *Heather Belle* (2) Sullivan C.J. laid down the rule to be

that if a ship is totally lost the owner is entitled to recover her market value at the time of the collision.

While in Marsden, 8th ed., p. 116, citing the *Philadelphia, supra*, in support of the proposition, it is laid down by the editor that if a ship is totally lost the owner is entitled to recover her market value at the time of the collision. The defendant claims that he has established the market value of such a vessel as the *Maid of Scotland* to be about \$32 a ton, net register. It will be seen from the citations that I have made, and the cases to which I have referred, that there is some apparent difference of opinion with regard to the principles on which damages should be assessed, but I think that after all in the language of Dr. Lushington, the question resolves itself into what shall be deemed the proper value of the vessel, and in order to determine this, many matters have to be considered.

[His Lordship here discussed the facts in evidence.]

Having regard to all the evidence I must say in the language of Gorrell Barnes J., that the schooner cannot be dealt with like an ordinary commodity which is sold every day, and I do not think that anything that can be fairly described as a market value at the time of the collision has been established. Having regard, however, to the fact that the best evidence of what shall be the proper value of the vessel is that of the opinion of competent persons who knew the ship shortly previous to the time it was lost, weight must be attached to the evidence of the managing owner, who said that he could probably buy a similar ves-

1924
 WARREN,
 STARR, LTD.
 v.
 THE SHIP
Perene.
 —
 Hazen L.J.A.
 —

(1) [1906] 75 L.J. Adm. 83; (2) [1892] 3 Ex. C.R. 40 at p. 55.
 [1906] P. 273.

1924
 WARREN,
 STARR, LTD.
 v.
 THE SHIP
 Perene.
 Hazen L.J.A.

sel for from \$20,000 to \$25,000. Also to the evidence of Mr. Pugsley, which in the opinion of Dr. Lushington would be regarded as the second best evidence, as he was a person conversant with shipping and transfers thereof, who valued his schooners of a similar character that he owned at the sum of at least \$50 a ton. Also taking into consideration the amount of insurance and the valuation placed upon the vessel at the time the insurance was effected and the several circumstances which were detailed in evidence, I am of opinion that the proper value of the *Maid of Scotland* at the time of the collision on the first of February would be fairly represented by a sum of \$20,000 which is slightly in excess of \$50 net registered tonnage.

* * * * *

I will allow \$1,000 as damages for the loss of the ship's stores and supplies. The amount of damages to which the plaintiff is entitled will be therefore made up as follows:—

Loss of vessel	\$20,000
Stores and ship chandlery.....	1,000
Insurance premium unexpired	1,634
Freight on Starr coal	750
Earnings on voyage to Canary Islands.....	2,000
Exchange	81
Cost of removing spars	1,000
	\$26,465

with interest at 5 per cent on this amount from April 1 next the date at which the charter for carrying lumber to the Canary Islands would have expired.

In the above amount I have allowed \$1,000 the cost of removing the spars of the *Maid of Scotland*. The owners were notified to do this by the Department of Marine and Fisheries, and under the law if they do not do so they can be removed by the Government and the amount charged to the owners of the schooner. I therefore think it is a proper charge to be allowed to the plaintiffs.

Judgment accordingly.