made at any time before the change of flags between this government and that of Spain. Still, had that officer failed to make the surveys, the grant would not be binding on this government. We followed the case of Sibbald in that of *Clarke* v. *Atkinson*, at the last term, 16 Pet., 231. This construction was given to the 8th article of the treaty, in a spirit of liberality to this description of claimants, who could not be held justly responsible for the delays of the surveyor-general; and because the incipient claim, by the governor's decree, was not cut off by the treaty. The surveyor-general having executed the governor's decree, we are of opinion that the surveys made after the 24th of January, 1818, as well as those made before that date, are valid. That there are several surveys is no objection to their validity; the decree in this case obviously so contemplated.

4. It is objected, that no sufficient evidence is furnished by the record that the surveys were made. The cause was first submitted to the court below, in 1834; then the two surveys last made were objected to and admitted by the court. The judge continued the cause on his own motion for further proof, and it stood over on continuances until 1840, when the four surveys were read without objection. We think the proofs authorized the decree, and order that it be affirmed.

ORDER.

This cause came on to be heard on the transcript of the record from the Superior Court for the District of East Florida, and was argued by counsel. On consideration whereof, it is now here ordered, adjudged, and decreed by this court, that the decree of the said Superior Court in this cause be and the same is hereby affirmed, in all respects.

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*Joseph W. Walsh, Administrator of William Rector, deceased, *v.* The United States. [*28

This case came up, by writ of error, from the Circuit Court of the United States, for the District of Missouri.

On the motion of the attorney-general, of counsel for the defendant in error in this cause, the plaintiff in error having been three times solemnly called by the marshal to come into court and prosecute this writ of error and failing to do so: It

is thereupon now here considered, ordered, and adjudged, by this court, that this writ of error to the Circuit Court of the United States, for the district of Missouri, be and the same is hereby dismissed.

WALTER SMITH, JOHN CARTER, WILLIAM S. NICHOLS AND OTHERS, SURVIVORS OF CLEMENT SMITH, DECEASED, PLAINTIFFS IN ERROR, *v.* DENNIS CONDRY.

When a collision of vessels occurs in an English port, the rights of the parties depend upon the provisions of the British statutes then in force; and if doubts exist as to their true construction, this court will adopt that which is sanctioned by their own courts.[1]

By the English statutes as interpreted in their courts, the master or owner of a vessel, trading to or from the port of Liverpool, is not answerable for damages occasioned by the fault of the pilot.[2]

The actual damage sustained by the party at the time and place of injury, and not probable profits at the port of destination, ought to be the measure of value in damages, in cases of collision as well as in cases of insurance.[3]

By whose fault the accident happened, is a question of fact for the jury, to be decided by them upon the whole of the evidence.

THIS case came up, by writ of error, from the circuit court of the United States, for the District of Columbia, and was argued at January term, 1842. The court held it under a *curia advisare vult*, and pronounced their decision at the present term.

The facts in the case were these:

The plaintiffs in error, who were also plaintiffs in the court below, were the owners of a vessel called the Francis Depau, *which was lying in the port of Liverpool, on the 15th day of February, 1838, loaded and ready for sea. The

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[1] APPLIED. *The John Bramall*, 10 Ben., 503. FOLLOWED. *The China*, 7 Wall., 64; *The Halley*, L. R., 2 Ad. & E., 3. LIMITED. *The Avon*, Brown Adm., 181.

[2] For a further discussion of the Liverpool Pilot Act, see *The China*, 7 Wall., 53, where the rule under the New York statute is held to be that while the master is compelled by force of the act to take a pilot, that fact does not exonerate the vessel from liability to respond for torts done by it, though the result wholly of the pilot's negligence. See also *Bussy* v. *Donaldson*, 4 Dall., 206, and the cases cited in the note; also note on page 207.

[3] CONSIDERED OVERRULED. *The Morning Star*, 4 Biss., 72. RELIED ON *in dissenting opinion*, *Williamson* v. *Barrett*, 13 How., 113. CITED. *Waring* v. *Clark*, 5 How., 503; *The Scotland*, 15 Otto, 36. See *The Amiable Nancy*, 3 Wheat, 560; *The Ocean Queen*, 5 Blatchf., 493.

But the market value of the use of the vessel during the time necessary to make repairs may be recovered, *Williamson* v. *Barrett*, 13 How., 101. S. P. *The Narragansett*, 1 Blatchf., 211, Olc., 388; *The Rhode Island*, 2 Blatchf. 113; Olc., 505; *The Mayflower*, Brown Adm., 376; *Swift* v. *Brownell*, 1 Holmes, 467; 1 Pars. Maritime Law, 204 *n* (2).