Statement of the case.

REED v. UNITED STATES.

1. An order by the United States to the owners of a vessel, during the rebellion, to get her ready, under pain of impressment, to transport a cargo to a particular place and back, under which order, though the owners protested against going, they got ready the vessel, and sailed with their own officers and crew. *Held*, not to make the government owners for the voyage; but to leave the possession with the general owners under a contract for per diem compensation from the commencement of the voyage until the same was broken up, including also so many days in addition as would have been spent, if no disaster had occurred, in completing the return trip.
2. A voyage was held to have been "completely broken up" by a vessel's being blown aground on the Missouri, in July, 1865 (the owners having then made their protest to *cover* insurance), she having been swept off and totally destroyed by an ice freshet in the river nine months afterwards. And this so held, although her engineer, a mate, and three watchmen were left to take care of her, and a military guard sent to protect her, until a rise should occur in the river; and though just before the boat was destroyed by the flood and ice, her owners, and the government, in whose employ she was, dispatched a pilot and crew to where the boat was aground, to get the boat afloat upon the rise of the river, and to bring her to her home port.
3. The government not having been owner for the voyage, the expenses of the pilot and crew just named were not chargeable against the United States, though both were sent by the owners of the vessel, after consultation with the quartermaster of the United States at the port, and for the purpose of protecting the interests of the government as well as the interests of themselves.

APPEAL and cross appeal from the Court of Claims, in the claim of Reed and others; the case, as found by the said court, being this:

"The claimants were, on the 1st of June, 1865, owners of the steamer Belle Peoria. She was then lying at her wharf in St. Louis. The said owners were applied to by the United States quartermaster, at St. Louis, to take a cargo of military supplies to Fort Berthold, on the Missouri River, about 1700 miles from St. Louis. They declined on account of the lateness of the season. They were then ordered by the quartermaster to prepare for the trip, and informed that in case

of refusal the boat would be impressed. They protested, but, under the orders, got the boat in readiness, put on the cargo, and left St. Louis on the 3d of June, 1865. The boat arrived at Fort Berthold on the 22d of July, 1865, discharged her cargo, and started on her return trip on the 24th of the same month. She proceeded until the 26th, when a high wind sprung up, and she, in attempting to land, was blown aground. All efforts to get her off proved unavailing. After making all the effort that was deemed advisable, and finding it impossible to get her off *until a rise should occur in the river*, the officers and crew left her, leaving several persons in charge. The crew left her on the 31st of July, 1865, leaving on board one engineer, one mate, and three watchmen, who were *to take care of the boat.* These remained until the 30th September. The officer in command at Fort Rice also detailed and sent a military guard *to protect the boat.* The facts being communicated to the owners at St. Louis, *they made their protest in order to cover the insurance.* The boat remained aground until about the 15th of April, 1866, when *by an ice freshet* in the Missouri River *she was swept off and totally destroyed.*

The quartermaster at St. Louis, when he seized the boat, fixed her per diem compensation at $272. She was paid at this rate until the 10th day of August, 1865, being the time when information arrived at St. Louis that she was aground, and the captain and part of the crew returned. She was also paid, from the 10th of August to the 30th of September, at the rate of $101 per day. This was while the engineer, mate, and watchmen remained on board. From the 30th of September until the 30th of November, 1865, vouchers were issued to the claimants at the rate of $80 per day, which have not been paid. No vouchers were issued after that date. On the 3d of April, 1866, the claimants dispatched a pilot and crew up the Missouri River from St. Louis to where the boat was aground, *to get her afloat upon the rise of the river, and to bring her down to St. Louis.* These persons arrived at where the boat had been aground, about the 18th day of April, 1866, and after the boat had been de-

stroyed by the flood and ice. These persons were sent, after consultation with the quartermaster at St. Louis, and for the purpose of protecting the interests of the United States, as well as those of the claimants. The just and necessary expense incurred in these efforts to save the boat amounted to $2500.

After the destruction of the boat, the claimants applied to the third auditor, under the provisions of the act of 1849, and its supplements, for the payment of her value. These acts provide:*

"That any person . . who shall lose . . or have destroyed by unavoidable accident any . . steamboat . . *while such property was in the service* (of the United States), shall be allowed and paid the value thereof, at the time he entered the service. *Provided*, it shall appear that such destruction was without any fault or negligence on the part of the owner of the property, and while it *was actually employed in the service of the United States.*"

The claim was allowed and her value, as of the time of her taking, June 1st, 1865, fixed at $30,000, and which amount was paid to the claimants. The accounting officers rejected the claim for the per diem compensation from September 30th, 1865, until April 15th, 1866, when the boat perished, including the vouchers until November 30th, 1865. The accounting officers also rejected a claim for $5401.41, alleged to have been expended in efforts to save the steamboat.

This suit was brought to recover the amount of these vouchers, and the per diem compensation of the boat from November 30th, 1865, to April 15th, 1866, and also the expenditure made in efforts to save the boat, making together the sum of $21,161.41.

The court decided that the claimants were not entitled to recover the amount of the vouchers up to the 30th of No-

* Acts of March 3, 1849, and March 3, 1863; 9 Stat. at Large, 415; 12 Id. 743, § 5.

vember, 1865, nor for the per diem compensation of the boat from November 30th, 1865, till the 15th of April, 1866, but were entitled to recover the $2500, in efforts expended to save the boat.

From this decision both parties appealed. The claimants, because they did not have compensation for the use and detention of the boat from the 30th September, 1865, when engineer, mate, and watchmen left the boat, until the 15th of April, when she was "swept off and totally destroyed." The United States appealed, because they were charged with this $2500 expenses.

Mr. William Lawrence, of Ohio, for the claimants:

I. *As to the appeal by the claimants:* The facts as found show that the implied contract was, to pay for a round trip, which means all the time necessary to make it, or *until it became impossible.*

From September 30th, 1865, when the engineer, mate, and watchman left the boat, until she was destroyed by an ice freshet, April 15th, 1866, she was guarded by a government military guard detailed by the officer in command at Fort Rice. The object of this was, to return the boat to St. Louis the next spring. The boat was blown aground July 26th, 1865. Such officers and crew as were not necessary to guard the boat, left her, because there was no hope of getting the boat off until the next spring, and it was desirable to save expense. Up to this time, from June 1st, the government paid the full per diem compensation of $272, fixed by the quartermaster. Why pay for this *part* of the return voyage if it was not agreed that all should be paid for and no matter how long it might require, as long as any voyage was possible?

From August 10th to September 30th, during which time one engineer, one mate, and three watchmen of the crew remained aboard, and the boat aground, payment was made at the rate of $101 per day. Here was a reduction in the per diem—a modification of the original contract—because more of the crew were discharged. Why was a reduced per

diem paid? Still, because the agreement, to pay until the boat returned to St. Louis in the spring, or the voyage was abandoned as impracticable, continued.

From September 30th to November 30th, 1865, quartermaster's vouchers were issued to the plaintiffs, at the rate of $80 per day. The quartermaster was the officer charged with the duty of providing transportation, and his vouchers prove that his contract was a continuing one till the return of the boat; a matter then contemplated as certain to take place in the spring. That arrangement could not be terminated except by mutual consent, and it never was terminated until the boat was destroyed.

The boat was destroyed and the voyage rendered impossible April 15th, 1866, and not before. The right of the owners to recover the value of the boat from the government, depended by the statutes applicable to the case (those of March 3d, 1849, and March 3d, 1863), on the fact that it was then "actually employed in the service of the United States." Under these acts the third auditor allowed the claim of $30,000 for the value of the boat as of the time of her taking, June 1st, 1865, and the claim was paid by the government. This allowance and payment necessarily found the fact that the boat was actually employed in the service of the United States on the 15th April, 1866, and the government is now estopped from controverting that fact. If the boat was in the actual service that day it had been in like service during all the previous time, and the facts show it was in such service under contract for pay.

When the captain and most of the crew, abandoning all hope of bringing the steamer to St. Louis during the current season, left her to lie aground till the next spring, there was no purpose to abandon the return voyage, but the purpose was to resume it as soon as the rise of the river made it practicable. All this was with the sanction of the government, and the boat left in charge of government officers and soldiers, to the end that the return trip might be completed next spring. The facts determined by the Court of

Claims show that it "was impossible to get her (the boat) off until a rise should occur in the river."

The justice of this claim is clear. The court takes judicial notice of climate and rivers. The court know that the plaintiff's boat could have navigated the rivers south of St. Louis, and it is presumed would have earned freight from September 30th, 1865, to April 15th, 1866. The plaintiffs, when applied to by the quartermaster, on June 1st, to go from St. Louis, 1700 miles up the Missouri River, to Fort Berthold, "declined on account of the lateness of the season." They knew that the treacherous sands of the Missouri, and hazardous gales and receding waters, would probably, as they did, leave them aground for the winter, and deprive them of safer trade, and pay which required no quartermaster's vouchers, no auditor's adjustment, no Court of Claims, no lawyer's fees, and none of this almost endless delay. And having been deprived of the winter's trade in milder waters, and of speedier pay, why should they not now be paid, as the Constitution requires, "just compensation" for all the time their boat was detained by reason of what the government officers did? They only ask that compensation which they could have earned elsewhere, for compensation for time during which the government has admitted their boat was "actually employed in the service of the United States." Why should they not have it?

The grounding was not the proximate, nor even remote cause which destroyed her. The facts found by the Court of Claims are that the boat, on her return trip, was blown aground July 26th, 1865, and that—

"The boat remained aground *until about the 15th of April*, 1866, *when, by an ice freshet* in the Missouri River, *she was swept off* and totally destroyed."

The ice freshet, then, was the proximate, and really the only cause of the loss. The grounding was a peril, but it did not continue, for the boat was "swept off" from her grounding peril, and a totally different peril finally, and after

the termination of the grounding, destroyed her. They may have been successive or cumulative perils, but the grounding was in no sense a continuing peril, which finally destroyed the boat. If the claimants had sued the United States and averred a destruction of the boat only by the grounding, the evidence would not have sustained the allegation. The government has already decided that the boat was in the actual service of the United States on the 15th April, 1866, and there could be no constructive actual loss before that.

It is text in the law of insurance that grounding is not a constructive total loss. Parsons says:

"So stranding, which means the being cast on shore, may or may not be an actual total loss. The mere fact that she (the boat) rests on land or rock, and at low tide is high and dry there, does not, of itself, constitute this total loss; for the next high tide may lift her from the bottom, and if it cannot do this without assistance, it may be practically possible to use means to draw her off."*

In *Patrick* v. *Commercial Insurance Company*,† Kent, C. J., says:

"It is well understood that stranding is not *ipso facto* a total loss."

So in *Peele* v. *Suffolk Insurance Company*,‡ Parker, C. J., said:

"The mere stranding, however perilous, is not of itself a total loss, for the vessel may be relieved, and the damages may be small."

The finding does not show the destruction of the boat by the grounding; nor any facts which would justify an abandonment as for total loss. The date and fact of the liability of the United States is only fixed by the proximate cause of the loss—the ice freshet of April 15th, 1866. This is the

* 2 Marine Insurance, 72. † 11 Johnston, 9. ‡ 7 Pickering, 254.

reasonable rule as against insurers on a policy, and is certainly so as to the United States, under the act of March 3d, 1849.*

Suppose, in this case, the contract had provided that in no event should the boat be continued in service longer than April 1st, 1866, by the very terms of the law the United States could not have been held liable for the destruction of the boat on the 15th of April, because the boat was not then destroyed. There was then no liability for the boat fixed until April 15th, and if not the liability for services continued to that time.

Although there was a protest made to *cover* the insurance, there was no abandonment of the voyage when the vessel ran aground, nor till the boat was finally lost. *When* the protest was made does not definitely appear, but it was made "in order to cover the insurance," not against the United States, but under a supposed or real policy of insurance. The boat was blown aground July 26th. Then, as the facts show—

"All efforts to get her off proved unavailing, and finding it impossible to get her off *until a rise should occur in the river*, the crew left her on the 31st July, 1865, leaving on board one engineer, one mate, and three watchmen *to take care of the boat.*"

The engineer, watchmen, and mate remained on board until September 30th. The United States officer in command at Fort Rice detailed and sent a military guard to protect the boat, and they remained until her destruction. The officers left her with the *assent of the government*, as an economic measure to save the useless expense of a crew. Then the case shows that—

"On the 3d of April, 1866, the claimants dispatched a crew up the Missouri River, from St. Louis, to where the boat was aground, to get her afloat upon the rise of the river, and *to bring her down to St. Louis.*"

* 2 Parsons, Marine Insurance, 108 n.; De Blois *v.* Ocean Insurance Co., 16 Pickering, 303.

"Down to St. Louis" for whom? Of course for these plaintiffs. Here is the highest evidence that there never was any intention to abandon the boat. Neither the United States nor any insurance company ever took or held the boat as theirs; never accepted any abandonment, and never were asked to do so. No protest or notice was ever served on the United States, nor in fact on any insurance company; nor was any demand made on the United States for pay for the value of the boat until after she was destroyed. But the protest, as affecting rights under a policy of insurance, against an insurance company, was at most only precautionary; and a mere precautionary measure, never perfected or pursued, cannot establish any right under a policy, much less under another contract.

The boat was in the service of the government, under a contract for a return trip. If the ice freshet had not destroyed the boat, it would have been completed. The crew was sent up the Missouri River in the spring of 1866, for the purpose of completing it. All parties treated the contract as subsisting up to that time. If it had been completed no question would have been raised against the right to pay for the use of the boat during the whole time.

II. *As to the cross-appeal by the United States;* the claim for time, services, and expenses of the crew sent to recover and return the boat in April, 1866.

The boat was in the custody and under the control of the government when she went aground, July 26, 1865.

On the 31st July, 1865, the crew left the boat in care of a military guard, with the approval of the military officers, to save expense, intending, however, "to get her off" when "a rise should occur in the river," in the spring.

The crew was sent out in April, 1866, "after consultation with the quartermaster at St. Louis, and for the purpose of protecting the interests of the United States as well as those of the claimants;" that is, the crew was sent up to return with the boat to St. Louis.

The boat was "actually employed in the service of the

United States," April 15, 1866, and the destruction of the boat "was without any fault or negligence on the part of the owners." The case so comes within the statute.

As to the services and expenses of the crew, here are all the elements of an implied if not an express contract by the government to pay for them. They were rendered and incurred at the instance and request of the proper military officer, or with his sanction, and this was in pursuance of the pre-existing arrangement made when the crew left the boat, July 31, 1865, and the original purpose of the voyage. If the crew had succeeded in returning the boat to plaintiffs at St. Louis, could any question have been made as to the liability of the United States to pay? The services of the crew were only suspended during the winter; they had not abandoned the service.

Mr. Akerman, Attorney-General, and Mr. Talbot, Assistant Attorney-General, contra.

Mr. Justice CLIFFORD delivered the opinion of the court, both in the appeal by Reed and the cross appeal by the United States.

I. IN THE APPEAL.

Affreightment contracts are of two kinds, and they differ from each other very widely in their nature as well as in their terms and legal effect.

Charterers or freighters may become the owners for the voyage without any sale or purchase of the ship, as in cases where they hire the ship and have by the terms of the contract, and assume in fact, the exclusive possession, command, and navigation of the vessel for the stipulated voyage. But where the general owner retains the possession, command, and navigation of the ship and contracts for a specified voyage, as, for example, to carry a cargo from one port to another, the arrangement in contemplation of law is a mere affreightment sounding in contract and not a demise of the

vessel, and the charterer or freighter is not clothed with the character or legal responsibility of ownership.*

Unless the ship herself is let to hire, and the owner parts with the possession, command, and navigation of the same, the charterer or freighter is not to be regarded as the owner for the voyage, as the master, while the owner retains the possession, command, and navigation of the ship, is the agent of the general owner and the mariners are regarded as in his employment and he is responsible for their conduct.†

Courts of justice are not inclined to regard the contract as a demise of the ship if the end in view can conveniently be accomplished without the transfer of the vessel to the charterer, but where the vessel herself is demised or let to hire, and the general owner parts with the possession, command, and navigation of the ship, the hirer becomes the owner during the term of the contract, and if need be he may appoint the master and ship the mariners, and he becomes responsible for their acts.‡

On the first day of June, 1865, the assistant quartermaster of the United States, stationed at St. Louis, applied to the plaintiffs, as the owners of the steamboat Belle Peoria, to transport a cargo of military supplies from that port to Fort Berthold, but the owners of the steamboat declined on account of the lateness of the season. He then ordered them to prepare for the trip, and informed them that in case of refusal the steamboat would be impressed. They protested, but under the orders given got the boat in readiness, put the cargo on board, and on the 3d of June, 1865, left St. Louis for the place of destination where the steamboat ar-

* Donahoe *v.* Kettell, 1 Clifford, 137; The Volunteer, 1 Sumner, 551; The Spartan, Ware, 153; Gracie *v.* Palmer, 8 Wheaton, 605; Clarkson *v.* Edes, 4 Cowan, 470; Taggard *v.* Loring, 16 Massachusetts, 336; Christie *v.* Lewis, 2 Broderip & Bingham, 410.

† Putnam *v.* Wood, 3 Massachusetts, 481.

‡ Sherman *v.* Fream, 30 Barbour, 478; Reeve *v.* Davis, 1 Adolphus & Ellis, 312; Frazer *v.* Marsh, 13 East, 238; Marcardier *v.* Chesapeake Insurance Co., 8 Cranch, 39; 1 Parsons on Shipping, 278; Campbell *v.* Perkins, 4 Selden, 430.

rived on the 22d of July following, when she discharged her cargo and on the 24th of the same month started down the river on her return trip. She proceeded for two days in safety, when a high wind "sprung up," and in attempting to land she was blown ashore and grounded. All efforts to get her off proved unavailing, and believing it impossible to do so until a rise should occur in the river, the master, most of the other officers, and crew decided to return, leaving on board the mate, one engineer, and three watchmen to take care of the boat, aided by a military guard detailed and sent from Fort Rice by the officer in command at that post. Information that the steamboat was aground reached the owners at St. Louis on the 10th of August, 1865, but she remained aground until the 15th of April of the next year, when she was swept off by an ice-freshet in the river and totally destroyed. When the assistant quartermaster ordered the owners to prepare for the trip he fixed the per diem compensation of the boat at $272, which appears to have been satisfactory to the owners, as they were paid at that rate to the time they received information of the disaster, and they have presented no claim for any greater allowance for that period of time. They were also paid at the rate of $101 per day from the said 10th of August to the 30th of September in the same year, covering the period, as stated in the finding, that the mate, engineer, and the three watchmen remained on board after the master and the rest of the officers and crew returned. Vouchers were also issued to the plaintiffs at the rate of $80 per day from the 30th of September of the same year to the 30th of November following, but those vouchers have never been paid or recognized, and the plaintiffs sued the United States for the amount of those vouchers and for compensation for the use of the steamboat at the same rate from the time the last voucher was issued to the time when the steamboat was swept off from the place where she was grounded by the ice-freshet in the river and totally destroyed.

Although the plaintiffs objected to the order of the quartermaster at the time it was given, still it is quite evident

that they ultimately consented to perform the service as matter of contract, and that they were content to receive the per diem compensation fixed by the assistant quartermaster at the time he gave the order. Abundant confirmation of that view is found, if any be needed, in the fact that they voluntarily accepted the prescribed per diem compensation from the commencement of the trip to the 10th of August following, when they received information of the disaster, which was at the time when the master and all the steamboat's company, except the mate, one engineer, and three watchmen, returned to the port of departure, and that the plaintiffs make no claim for any additional compensation during that period. Compulsion is not set up by the plaintiffs, and, if it was, the theory could not be supported, as the jurisdiction of the Court of Claims does not extend to torts. They have also been paid for the value of the steamboat, and also a per diem compensation of $101 per day from the 10th of August to the 30th of September, which is the date when the mate, engineer, and the three watchmen also left the steamboat and returned to St. Louis. No additional compensation is claimed for that period, but they claim for the amount of the vouchers issued at the rate of $80 per day for the two months next succeeding that period, and at the same rate from the end of that period to the 15th of April in the following year, when the steamboat was swept off by the ice-freshet and was totally destroyed.

Judgment was rendered for the claimants for certain moneys, not involved in this appeal, which were expended by them in efforts to save the steamboat, but the petition, so far as respects the per diem compensation, was dismissed, and the claimants appealed to this court.

Throughout the litigation the plaintiffs have prosecuted their claim as a matter of contract, and it is quite clear that it could have no other foundation in the court where the suit was brought, and of course it must depend upon the proper application of the principles of commercial law to the facts of the case as found by the Court of Claims.

By the terms of the contract, they were to carry the cargo

of military supplies from the port of St. Louis up the Missouri River to Fort Berthold for $272 per day during the voyage, including the return trip as well as the trip to the place of destination, in full compensation for the entire services. By necessary implication the plaintiffs were to victual and man the steamboat and keep her in a seaworthy condition, and in contemplation of law they retained the possession, control, and navigation of the steamboat, as the master was one of their own selection and the crew were in their own employment, and they were responsible for their conduct. Steamers require fuel as a means of creating motive power, and it is quite obvious that it was the duty of the plaintiffs to supply the steamboat with fuel for that purpose as well as provisions for the officers and crew, and that the master was their agent and not the agent of the charterers. Well-founded doubts cannot be entertained upon that subject, and if those conclusions of fact are correct then it follows as a conclusion of law that the plaintiffs, as the general owners of the steamboat, were also the owners for the voyage, and that the true relation of the United States to the adventure was that of a charterer for hire and shipper of the cargo.*

Through the assistant quartermaster at St. Louis the United States put the cargo on board the steamboat, at a fixed per diem compensation during the round trip, for transporting the military supplies constituting the cargo to the place of destination, the steamboat having the right to take a return cargo from other shippers or to return in ballast, at the election of her owners. She performed the trip up the river and delivered the cargo in good condition and started on the return trip, the United States, as the charterers, having no further interest in the voyage except that the steamboat should return to the port of departure without delay. All sea risks were unquestionably upon the owners of the steamboat, as they were the owners for the voyage as well as the owners in fact, and the record shows that they must have so understood their own rights, as the statement

* Saville *v.* Campion, 2 Barnewall & Alderson, 510.

in the record is that when they received information of the disaster "they made their protest in order to cover the insurance."

Suggestion may be made that the act of the United States in paying for the value of the steamboat after she was swept off by the ice-freshet and destroyed is inconsistent with the theory that they were merely the charterers for hire, and that the plaintiffs were the owners for the voyage as well as the owners in fact, but the adjudication of the third auditor cannot change the rights of the parties in respect to any matters not within his jurisdiction.* Whether that adjudication was correct or incorrect is not a question in this case, and it is only referred to as showing that it cannot have any weight in the decision of the case before the court.

Freight, it is said, cannot be earned unless the voyage is performed and the cargo is delivered; but the voyage in this case, so far as respects the cargo, was performed and the cargo was duly delivered to the consignees, and to that extent the freight was earned; but the plaintiffs were entitled, under the contract, to the same per diem compensation during the return trip in case it was performed without unnecessary delay, and it may be that the United States could not have claimed any deduction from the agreed compensation if the interruption in the voyage had been only a temporary one, and the master, when the cause of interruption had been removed or overcome, had proceeded with the steamboat to the return port.

Whatever repairs became necessary in consequence of the disaster would have been a charge to the steamboat or her owners, but it may be that the plaintiffs would have been entitled to the agreed compensation for the days spent in executing the repairs as well as for the days actually spent in the return trip, but it is not necessary to decide those questions in this case, and the court does not express any decided opinion upon the subject.†

* 9 Stat. at Large, 415.

† Abbott on Shipping, 43; Hawkins v. Twizell, 5 Ellis & Blackburn, 883; Havelock v. Geddes, 10 East, 555.

But the interruption in the voyage was not merely a temporary one in any proper sense of the term. On the contrary the voyage was completely broken up, as fully appears from the fact that the master and all the crew ultimately abandoned the steamboat, leaving her where she was stranded, and that she remained there until the 15th of April of the next year, when she was swept off by the ice freshet and became a total loss. Broken up, as the voyage was, by the perils of navigation, no doubt is entertained that the plaintiffs were entitled to the agreed per diem compensation to that time, and to such further allowance at the same rate and for such additional time as it would have required for the steamboat to have completed the return trip. They had performed the whole of the stipulated service for the United States and had delivered the cargo to the assignees, and were proceeding on the return trip in good faith, when the voyage was broken up by causes beyond their control and without any fault on their part or on the part of the master or crew.

Unless a carrier assumes the risk of *all contingencies*, he is not liable because he fails to perform what is rendered impossible by the perils of the sea. Such events as are known as the accidents of major force, or fortuitous events, or the acts of God, always constitute an implied condition in every such engagement.* Neither party is at liberty to abandon the contract without the consent of the other, or *without legal cause*, and such cause must not be one procured or occasioned by the fault of the party who relies upon it.†

Different views have been expressed by different courts as to the effect of a temporary interruption of a voyage upon the rights of the owner of the ship and the shipper or charterer; but the rule seems to be well settled, that when the voyage is broken up by a sea peril, that neither the shipper nor the charterer is in general liable to the ship-owner beyond the time when the peril occurred; but that rule is more particularly applicable in cases where the transportation of

* The Eliza, Davies's Admiralty, 318.

† Clark *v.* Insurance Co., 2 Pickering, 108.

the cargo is not complete, and it cannot be applied at all to the case before the court without considerable qualification.*

Reasonably construed, the contract gives the plaintiffs the agreed per diem compensation from the commencement of the voyage until the same was broken up, including also so many days in addition as would have been spent, if no disaster had occurred, in completing the return trip. Apply that rule to the case, and it is clear that the judgment of the court below must be affirmed, as the United States, upon the most liberal computation, have paid more than the contract would entitle the plaintiffs to demand. Payment was made to the time when the mate, engineer, and three watchmen returned home, and the plaintiffs have no right to claim anything more.

JUDGMENT AFFIRMED.

II. IN THE CROSS APPEAL.

Supplies for the military service were transported by the appellees from St. Louis up the Missouri River to Fort Berthold, as more fully explained by the court in the case just decided. They were the owners of the steamboat Belle Peoria, and it appears by the findings in the court below that the assistant quartermaster at that station, on the 1st day of June, 1865, applied to them to take such a cargo and transport it to that place. Objections were made by the owners of the steamboat, as explained in the preceding case; but they put the cargo on board, and on the 3d of the same month started on the upward trip, and it appears that they made the trip in safety, delivered the cargo to the consignees, and without any unnecessary delay started on the return trip. Two days after they started on the return trip the steamboat encountered a high wind, and while those in charge of her were endeavoring to land she was blown aground and became fast. All efforts to get her off proving

* Palmer v. Lorillard, 16 Johnson, 352.

unavailing, the officers and crew, except the mate, one engineer, and three watchmen, left her and returned to the port of departure. By the findings, it appears that the mate, one engineer, and three watchmen remained on board to the 30th of September of the same year, when they also left the steamer and returned.

Claim was made by the present appellees, in the case just decided, for compensation for the service performed in addition to what they had received; but it is unnecessary to enter into any of those details, except to say that the boat remained aground until the 15th of April of the following year, when she was swept off by an ice freshet, and was totally destroyed. Before that occurred, however, the owners of the steamboat dispatched a pilot and crew up the river to the place where the steamboat was aground, to get her afloat and bring her down the river, but the steamboat had been swept off and destroyed three days before they arrived at the place of the disaster. Expenses of course were incurred for the wages of the pilot and crew, and for provisions and transportation, and the court below found that those expenses amounted to the sum of $2500, and for that sum the Court of Claims rendered judgment for the appellees, and the United States appealed to this court.

Apart from what appears in the opinion delivered in the other appeal, the only facts found by the court below in support of the claim are what is exhibited in the following statement: "These persons, meaning the pilot and crew, were sent, after consultation with the quartermaster at St. Louis, and for the purpose of protecting the interests of the United States as well as those of the claimants."

Unless the United States, in contemplation of law, were the owners of the steamboat for the voyage, they had no property interests in the stranded steamboat, as the cargo had, two days before the disaster occurred, been safely discharged at the place of destination and duly delivered to the consignees. They were not owners for the voyage, as the court has just decided, so that if the statement is founded

on that theory it is error, and entitled to no weight; and if not founded on that theory, it does not appear to rest on any substantial foundation, as the court has decided in the other appeal that the appellees, as the general owners and owners for the voyage, assumed all risks from sea perils for the entire trip.

Temporary delays, if any had occurred, might have increased the per diem compensation which the United States had agreed to pay; but the voyage had been broken up and frustrated more than six months before the pilot and crew were sent to the place of the disaster for the purpose of getting the steamboat afloat. Suppose, however, that it could be admitted that the United States had some property interests in the steamboat, still the admission would not benefit the appellees, as it is perfectly clear that the assistant quartermaster had no authority to bind the United States in any such arrangement. He did not attempt to make any contract, and nothing of the kind can be inferred from the finding of the court, even if it be competent for this court to make inferences to support the judgment, which is not admitted. All that is found is that the owners of the steamboat consulted with the quartermaster before they dispatched the pilot and crew to the scene of the disaster, which falls very far short of evidence to prove a contract, even if the quartermaster had been invested with authority for any such purpose. Viewed in any light, the record does not show any legal foundation for the judgment.

JUDGMENT REVERSED, AND THE CAUSE REMANDED WITH DIRECTIONS TO DISMISS THE PETITION.