

# JOURNAL

DE

## JURISPRUDENCE COMMERCIALE ET MARITIME

RÉDIGÉ PAR

**MM. GIROD ET CLARIOND,**

AVOCATS A MARSEILLE.

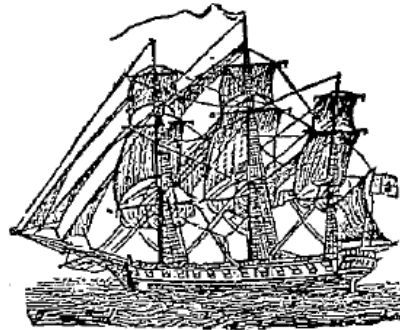


**TOME XI.-1850.**

PREMIÈRE PARTIE.

DÉCISIONS NOTABLES DU TRIBUNAL DE COMMERCE DE MARSEILLE  
ET DE LA COUR ROYALE D'AIX.

.....  
*AD UTILITATEM COLLIGIMUS.*  
.....



**MARSEILLE.**

MARIUS OLIVE, IMPRIMEUR DE LA VILLE.

(p.217)

Captain. - Anchoring. - Fault. - Damage. - Interests.

The captain of a ship to which the bill of lading grants the faculty of putting in at indicated places, and who permits himself, without being forced there by any event of navigation, to anchor in another place, is he at fault? (Abstr. aff.)

However, is this fault due for damage and interest towards the loaders or trustees, if the anchoring is made in places not indicated, with the goal of supplementing the cargo, without exceeding the time scale which had been employed to make the indicated places? (Abstr. nég. )

(Imbert and Chataud against Jarlier. )

Captain Jarlier, in charge of the bomb vessel *Our-Lady-of-Mount-Carmel*, loads with twenty-two bales of senna in Tripoli of Barbary, to transport them and deliver to Marseilles to MM. Imbert and Chataud.

It is stipulated, in the bill of lading relative to these goods, that it will be permitted for the captain to put in at Gerbès (1) and Sfakès (2).

The captain anchors first of all in Gerbès, where he unloads a cargo of barley; then he [218] goes to Tunis, where he remains for the time necessary to take a full load.

After his arrival in Marseilles, and on March 18, 1830, MM. Imbert and Chataud summon captain Jarlier in front of the commercial court.

They demand that he is condemned to pay them damages with interest in compensation for the damage he has caused them, in permitting himself to anchor and remain in Tunis, contrary to the stipulations contained in the bill of lading.

They consider the damage resulting from the infringement with which they reproach the captain:

1° in the loss on the goods, which is in the difference between the market in December 1829, the time at which the goods should have been returned to Marseilles, and the market at the time of arrival;

2° in the legal interest of the money;

3° in the material damage to the goods in consequence of its long stay on board and of the displacement that it suffered.

Captain Jarlier opposes since he caused MM. Imbert and Chataud no damage, because in stopping in Tunis he did not employ more time than he would have put in had he remained in Gerbes or Sfakès, designated places scheduled; that it was to necessarily supplement his cargo, and that not having been able to find this complement in Gerbes or Sfakès, he was obliged to take it in Tunis.

## JUDGEMENT.

“Whereas, according to his contract, captain Jarlier had only the right to touch in Gerbès and Sfakès [219] that anchoring that he made in Tunis, not having been required by any event of navigation, was thus out of the terms of the bill of lading and would constitute him, consequently, in fault; but, considering that the anchoring caused no damage to MM. Imbert and Chataud, since the captain could have passed on to Gerbes or Sfakès, to take a load there, time that he employed for this object in Tunis, it is necessary to dismiss MM. Imbert and Chataud from their claim for damages;

“So that this decision is as equitable as possible, in coin, that the proprietors Donnadiou and Co. of Tripoli, loaders of the goods come to the consignment of MM. Imbert and Chataud, are not unaware that, when they gave their goods to this captain, that he had a loading of barley that he was to unload in Gerbes and to replace by other goods; that their intention thus was not that the captain made the voyage from Tripoli to Marseilles with only the goods that they had given to him, and which were even insufficient to allow him to accomplish this voyage in safety;

“The COURT rejects the claim for damages by MM. Imbert and Chataud, with costs.”

On March 24, 1830. - *Pres.*, M. Chas. SÉJOURNÉ. - *Plaid.*, MM LECOURT for Imbert and Chataud, PAUL for Jarlier.

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PART ONE

NOTABLE DECISIONS OF THE TRIBUNAL OF COMMERCE AT MARSEILLE  
AND THE ROYAL COURT OF AIX