petition is opposed on that ground. Whether that result shall follow or not, (which need not be here determined,) it is clear, I think, that the supreme court have declared the maritime rule of our courts to be in accordance with this statute, as well when adverse to, as when for the benefit of, foreign ships or foreign owners, and any limitation upon the rule thus broadly announced must be sought in that court and not here.

The other exception to the jurisdiction on the ground that none of the petitioners reside in this district, and that neither the schooner, nor any part of it, or of the cargo, are within this jurisdiction, should also be overruled; not only because the statute expressly authorizes the proceedings to be instituted "in any district," (*The Alpena*, 8 FED. REP. 280,) but because there are special reasons why this district is the appropriate one in this case.

The persons chiefly, if not solely, interested in opposition to the petition are the owners of the lost cargo, and the owners of the Aragon. The latter, by the interlocutory decree of this court, have already been adjudged to pay one-half of the entire damages arising from the collision, and a reference to ascertain the amount is still pending. One avowed purpose of the petitioners in these proceedings is to be exempted from liability to pay for their half part of the cargo lost, which, by the interlocutory decree, they have been adjudged to pay, while retaining to their own use the one-half part of the value of the schooner, which they expect to recover from the owners of the Aragon through the final judgment of this court. If this can be legally done through the proceedings now instituted, then the owners of the Aragon, after paying for one-half of the cargo under that decree, will still remain liable to the owners for the other half of the cargo, (*The Atlas*, 93 U. S. 302;) and the intention of the interlocutory decree of this court, that the owners of each vessel sustain and pay one-half of the damages, (10 Ben. 658,) will be evaded, to the manifest injury and loss of the owners of the Aragon. The latter have, therefore, a plain equity that the final decree in that suit shall be framed in reference to any proceedings that may be had to limit the liability of the owners of the schooner, so that the intent of that decision shall not be thwarted. The money to be paid by the owners of the Aragon for the loss of the schooner, *i. e.*, one-half of its value, equitably represents so much of the schooner. That fund is, or will be, in this court, where the security for it is now on file; there is no other fund, or proceeds, representing the schooner in any other district; and the question, what shall be done with that fund, whether

paid over to the trustee to be appointed in the limited-liability proceedings, or, on the contrary, allowed to be retained to their own use by the petitioners as claimed, or secured to the owners of the cargo through provisions in the final judgment in the suit *in personam*, so far as necessary to indemnify them and save the owners of the Aragon from a liability to pay for the other half of the cargo, contrary to the judgment already rendered, are questions which ought to be, and can be, most conveniently and appropriately determined in this court, where the fund substantially is, and where the litigation instituted by the petitioners to obtain it is now pending. *Norwich Co.* v. *Wright*, 13 Wall. 104, 124, 126. The owners of the cargo lost, as well as the owners of the Aragon, are directly interested in the determination of that question.

The question of the effect of the appointment of a trustee under these proceedings, and of the application of the statute, or of these proceedings, to foreign ships, *in invitum*, does not necessarily arise upon these exceptions. It is enough that there appear to be claims, like that for the loss of the cargo in this case, to which the proceedings may undoubtedly apply. The exceptions above stated are therefore overruled.

No point was made on the argument as regards the alleged privity or personal fault of Crowley, the master and a part owner, in the negligence which caused the collision. If that is insisted on, it must be determined like any other disputed question of fact. If determined against him, that would not prevent the proceedings going on for the benefit of the other innocent owners. *The Obey*, L. R. 1 Adm. 102; *The Spirit of the Ocean*, Brow. & L. 336; *Wilson* v. *Dickson*, 2 Barn. & Ald. 2.

WALLACE *v.* PROVIDENCE & STONINGTON STEAM-SHIP CO.

(*Circuit Court, D. Massachusetts.* October 21, 1882.)

1. ADMIRALTY—REV. ST. § 4283, (ACT OF CONG. MARCH 3, 1851.)

Plaintiff claimed damages for personal injuries and loss of baggage by reason of a collision in Long Island sound between two of defendant's steamers, and defendant answered that under the act of March 3, 1851, it had surrendered its vessel in the southern district of New York, and that plaintiff had filed no claim. *Held*, on demurrer by plaintiff, that the act of congress of March 3, 1851, does not except from its operation owners of vessels whose routes are partly by land and partly by water, nor those whose vessels are not registered, nor, in the meaning of section 7 of said act, is the navigation of Long Island sound

inland navigation; and that the surrender of its vessel in the district in which it had been sued was according to law, and plaintiff was precluded from making any claim for loss of baggage, but as to his *personal* injury he *might be allowed* to prove his case.

2. SAME—PERSONAL INJURIES.

Whether the exemption under section 3 of the act of March 3, 1851, extends to *personal injuries* is not decided.

J. P. Treadwell and *Geo. E. Filkins*, for complainant.

Russell & Putnam, for defendants.

Before LOWELL and NELSON, JJ.

NELSON, D. J. The plaintiff sues in tort for personal injuries, alleging in substance that the defendants are the owners of a line of steam-vessels engaged in the transportation of passengers and merchandise between the city of New York and Stonington, in the state of Connecticut, over the waters of Long Island sound; that on the eleventh of June, 1880, the defendants, for hire, received the plaintiff, with his baggage, on board the Narragansett, one of the defendants' line of steamers, at New York, as a passenger, and undertook to transport him, with his baggage, to Stonington, and thence by railroad to Boston; that while the plaintiff was being so transported in Long Island sound the Narragansett came in collision with the Stonington, another steam-vessel owned by the defendants, and belonging to the same line, by which collision he was cast into the water and suffered great personal injury, and his baggage, of the value of $500.90, was wholly lost; that the collision occurred within three miles of the Connecticut shore, and was caused by the negligence and omissions of the defendants, and their servants and agents, in the management of both vessels; and that he was in the exercise of due care.

The answer of the defendants, besides a general denial of the plaintiff's allegations, sets up in defense certain proceedings in the district court of the United States for the southern district of New York, under the limited-liability act of March 3, 1851, (Rev. St. § 4283 *et seq.*,) whereby the defendants claim that they were discharged from all further liability for damage to person and property arising out of the disaster to the Narragansett. By these proceedings, which are set forth *in extenso* in the answer, it appears that soon after the collision certain parties brought suits in the state courts of New York against the company for damages arising out of the disaster; that after these suits had been brought in New York, and before the date of plaintiff's writ, defendants filed their libel and petition in the district court of the United States for the southern district of New York, setting forth the facts of the said disaster, alleging that the collision happened, and the

damage and loss were occasioned, without their privity or knowledge; that the accident occurred solely from the dangerous and difficult navigation of the channel, and the dense fog; that the entire value of vessel and freight was not sufficient to make compensation to all the freighters and owners for their losses, and praying for the relief granted by the act of March 3, 1851; that the petitioners offered to transfer their interest in the steamer and freight, for the benefit of all persons claiming to have suffered any loss, destruction, damage, or injury done, occasioned, or incurred on said voyage, to a trustee, for the persons who might prove to be legally entitled thereto, and prayed said district court to appoint a trustee, and to issue a monition against all persons claiming damages for the loss, destruction, damages, and injury occasioned by said disaster on board said steam-ship Narragansett, citing them to appear and prove their claims; that such monition was issued, and a transfer was made to a trustee appointed by the court on the fifth day of October, 1880, the return-day of said monition, proclamation was made for all persons claiming damages for any loss, destruction, damage, or injury occasioned by the disaster to appear and present their claim; that plaintiff did not appear nor present any claims; and that a decree was afterwards made whereby all persons who had not presented claims were forever debarred from prosecuting them, and apportioning the proceeds of the vessel and freight among those who had presented their claims in pursuance of the order of the court, and ordering any balance that might remain after satisfying such claims to be paid to defendants.

To this portion of the defendants' answer the plaintiff has demurred, and has assigned the following causes of demurrer:

(1) Because the act of March 3, 1851, does not exempt from liability common carriers who are owners of vessels used in inland navigation. (2) Because the act does not exempt owners of vessels where the damage to passengers is involved. (3) Because the act does not exempt common carriers who are such both by land and water. (4) Because the act does not exempt owners of vessels not registered. (5) Because the act does not exempt owners who have not surrendered the whole subject of the disaster, namely, as in this case, both of their ships which were engaged in the collision. (6) Because the act does not exempt owners who do not surrender their vessels in the district of the United States in which the disaster occurred. (7) Because the act does not exempt owners of vessels when the surrender is not made in the jurisdiction where the corporate owner resides, or is created.

None of these grounds of demurrer can be sustained. Long Island sound is a part of the Atlantic ocean, and its nagivation is in no sense inland navigation within the meaning of that term as used