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

in section 7 of the act, (section 4289.) Nor does the act except from its operation owners of vessels whose routes are partly by land and partly by water; nor those whose vessels are not registered. The surrender of the Narragansett and her freight was made in the district where the owners were sued for the injury caused by the collision, as required by the fifty-seventh admiralty rule. It is unnecessary, at this stage of the case, to decide whether the exemption of section 3 extends to personal injuries to passengers caused by collision. The answer must stand if the decree in the proceedings in the southern district of New York can, in any view of the case, be a defense to the action.

The plaintiff alleges that the defendants were engaged in the transportation of passengers and merchandise, and by the collision, through the fault of both vessels, his baggage, of the value of $500.90, was wholly lost. He therefore alleges a loss of property shipped on board the vessel and lost by the collision. The decree must, at least, have the effect to preclude him from recovering for the loss of his baggage through any fault on the part of the Narragansett. Whether it should have any further effect it is not necessary to decide now, and can better be passed upon at the trial, if the plaintiff then makes out a sufficient case to submit to the jury.

Demurrer overruled.

THE MARGARETHE BLANCA.*

(Circuit Court, E. D. Pennsylvania. October 23, 1882.)

ADMIRALTY—GENERAL AVERAGE—SPARS BLOWN OVERBOARD AND CUT ADRIFT.

A portion of a vessel's spars and sails were blown overboard by a gale and lay along-side the vessel, pounding against her side, but secured to her by the rigging. The gale continuing, the spars were cut adrift in order to prevent them from pounding a hole in the vessel's side. *Held*, (affirming the decree of the district court,) that the cargo must contribute to the loss sustained by their sacrifice.

Appeal from a Decree of the District Court. The facts and the opinion of the district court are fully reported in 12 FED. REP. 728.

Joseph Parrish, Edward Hopper, and *Treadwell Cleveland,* for appellant.

Charles Gibbons, Jr., for appellee.

*Reported by Frank P. Prichard, Esq., of the Philadelphia bar.

McKENNAN, C. J. The law of jettison and general average is so accurately and concisely stated, in the opinion of the learned judge of the district court, that it need not be restated here, and its decisive applicability to the present case in support of the libel requires no additional argument to demonstrate.

On a voyage of the Margarethe Blanca from Pillau to Philadelphia a violent storm occurred, by which the vessel's jib-boom and foremast head were snapped, and her maintop-gallant mast was carried away. All the spars, with their sails and yards, fell over the side of the vessel, to leeward, in the water, and were there held together by their rigging, and to the vessel by the running and standing rigging. The spars pounded heavily against the ship in the sea-way, and the jib-boom chafed and plunged into and against her bows. The vessel and her cargo were thus in imminent danger of shipwreck; and to avert it, and save the ship and cargo, the master cut away the disabled spars, sails, and rigging, and they were cast adrift and lost.

There was, then, the co-existence of the essential elements of a good claim to general average—imminent peril, involving alike the vessel, cargo, and crew; and a voluntary jettison of part of the spars, sails, and rigging, to avoid this peril. But it is earnestly urged that the jettisoned material was "wreck," and hence was not voluntarily sacrificed, and is not a legitimate subject of compensation by general average. In the sense of displacement, and hence of present unadaptedness to a serviceable use, it is properly so described. But it was not useless because it was irrecoverably lost. It remained attached to the vessel by rigging, which was new, strong, and unbroken. If the storm had abated it could certainly have been preserved. If the storm continued and the vessel survived, the weight of the proof is that the jettisoned spars, sails, and rigging would probably have been saved also. But the storm had rendered it, for the time being, useless, and it was a cause of additional and increasing peril to the vessel and cargo. With a probability of its eventual salvage in common with the ship, to avoid the danger impending over both it was cut away and sent adrift. Under these circumstances the property was not valueless; and although its subsequent loss may have been inevitable, this did not divest the casting away of it of its voluntary character.

As was said by Mr. Justice Grier in *Barnard* v. *Adams* 10 How. 305: