

with a fine powder,—*debris* of the ore. The adoption of the rule suggested by respondent prevents the vessel from asserting this. The master demanded 1,575 tons. He was assured that he had this number, both at the place of loading and at Villareal de San Antonio, a port of call provided in the charter-party. The bill of lading prepared by the agent of the charterer called for 1,575 tons. It is manifest, therefore, that this is the amount attributed to cargo by both parties at the port of lading. The freight was to be regulated by the number of tons intaken, and to be fixed at the port of lading. In effect, it fixed the amount of freight which the one party agreed to pay, and which the other party expected to receive, as the compliance with and the result of his demand. The manner in which the ship was loaded from a train of cars, partly at the quay and by lighters at sea, precluded the master from weighing it himself. The charterer was the purchaser of this cargo, and expected to sell it again. The ship could reasonably trust that he would not overstate the cargo he was getting from the mines. When he made his demand, the master calculated upon 1,575 tons, at 16 shillings per ton. By their assurances the agents of the charterer prevented him from securing his expectations. In my opinion, both parties agreed to assume that 1,575 tons was the weight of the cargo intaken, and adopted that as the number on which freight should be estimated. See *Spaight v. Farnworth*, 5 Q. B. Div. 119. Let a decree be entered in accordance with this opinion.

THE SANTA ANNA MARIA.

FORACE *v.* SALINAS.

(District Court, D. South Carolina. February 27, 1892.)

GENERAL AVERAGE—JETTISON—EVIDENCE OF EXAGGERATION—STRICT PROOF.

An Italian bark, through collision, sprung a leak and thereafter jettisoned some of her spare furniture, as well as part of the cargo. On an adjustment in general average a certain sum was charged against the cargo, and the owners thereof objected that the jettison was unnecessary. This suit was brought to recover the amount charged against the cargo in the adjustment. The evidence indicated that there was great exaggeration, both in the alleged condition of the bark after the accident, and in the number and value of the articles jettisoned. *Held*, that libellant must make out his case by a preponderance of credible evidence, and, in view of the impression of exaggeration given by the evidence, such articles as were not clearly proved to have been jettisoned should be excluded from the general average adjustment, the others being allowed.

In Admiralty. Suit to enforce adjustment of general average.

J. N. Nathan, for libellant.

J. P. K. Bryan and *D. B. Gilliland*, for respondent.

SIMONTON, District Judge. The *Santa Anna Maria*, an Italian bark, was on her voyage from Girgenti to the port of Charleston. She had a

full cargo of sulphur,—570 tons. When she reached this port the master filed his protest, reporting jettison of part of his cargo, 41.481 tons, and of a chain, cable, anchor, water-casks, sails, awnings, hawsers, lines, and cordage, property of the ship. An adjustment of general average was made by Mr. Johnson, a professional adjuster, based on the statements of the protest and of the log. The net sum charged against cargo under this adjustment is \$477.20. The cargo had been delivered under the general average agreement. The owner of the cargo makes no complaint as to the mode of the adjustment. He denies the facts upon which it was based.

The adjustment is not conclusive. The facts are open to inquiry. *The Alpin*, 23 Fed. Rep. 819; *The Niagara*, 21 How. 9. The libellant's testimony is this: The bark left Girgenti, 22d April, 1891. She met no severe weather, and no unusual incident, until the night of 26th of July, 1891. About 11:30 P. M., the night being dark and rainy and the wind fresh, she came into collision with some dark object, unknown, at a point upon her bow just about, perhaps a little below, the water-line. She disengaged herself immediately, and passed on. Her rate of speed was six knots. Very soon the sound of water was heard, entering the ship, but from the thickness of the frame at the bow the exact place of the leak could not be ascertained. It would have been a difficult and tedious task to cut into the frame in order to find the spot. The pumps were manned at once by four men. At 2 P. M., the water still gaining on her, sails were shortened. Two casks of water at the bow, holding three-quarters of a ton, were broken open. The starboard anchor chain, and more chain, with the kedge, were thrown overboard. The water still gaining, a consultation was held, and the conclusion reached to jettison cargo. The bark had four hatchways,—a small one near the bow, another just abaft the foremast, the main and mizzen hatch. They concluded to begin at this second hatch. In order to get at this hatch, it was necessary to remove certain articles—spare sails, awnings, rope, and hawsers—piled up on it. These were all removed, and for the purpose of speedy removal were thrown overboard. When the hatch was cleared, they got at cargo, and threw overboard 15 to 20 tons of sulphur. They then went to the main hatch and threw over the rest,—in all, 41.481 tons. This lightened the ship. The water was gotten under control, the leak ceased, and by 2 P. M. the next day the ship was dry. She came into this port on 31st July. No survey of the vessel for the purpose of ascertaining the nature and extent of the injury to her hull was ever had, nor was she repaired, except by a mate, who was a sort of carpenter; and at what cost does not appear. The hatchway was 4 feet square. In order to get at it, they had to remove, from on top of it, 1 foresail, measuring 220 yards; 2 stay-sails, 200 yards; 1 spanker, 110 yards; 4 awnings, 200 yards each; 1 top-gallant sail, 130 yards; 1 top-sail, 160 yards; 2 5-inch hemp hawsers, 120 fathoms each; 1 hemp tow-line, 7 inches, 100 fathoms. The sulphur lay on the skin of the ship, 1½ feet from the keel. When the pumps were sounded, at first, she had in her 2 feet of water above the skin, which continued to increase