

Barnard Vs. Adams

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Appellant : Barnard

Respondent : Adams

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Barnard v. Adams

51 U.S. (10 How.) 270

ERROR TO THE CIRCUIT COURT OF THE UNITED

STATES FOR THE SOUTHERN DISTRICT OF NEW YORK

SYLLABUS

It was a proper case for contribution in general average for the loss of a vessel where there was an imminent peril of being driven on a rocky and dangerous part of the coast when the vessel would have been inevitably wrecked, with loss of

ship, cargo, and crew, and this immediate peril was avoided by voluntarily stranding the vessel on a less rocky and dangerous part of the coast, whereby the cargo and crew were saved uninjured.

The cases upon this subject examined.

Where the cargo was taken out of the stranded vessel, placed in another one, and the voyage thus continued to the home port, the contribution should be assessed on the value of the cargo at the home port.

The crew were entitled to wages after the ship was stranded, while they were employed in the saving of the cargo.

A commission of two and one-half percent was properly allowed for collecting the general average. It rests upon the usage and custom of merchants and average brokers.

The defendants in error brought an action in the court below to recover contribution in general average, on account of the alleged voluntary stranding of the ship *Brutus* owned by them, from the plaintiffs in error, as owners of twenty bales of nutria skins, which formed a part of her cargo at the time of the stranding.

The facts are minutely stated in the opinion of the Court.

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MR. JUSTICE GRIER delivered the opinion of the Court.

The plaintiffs below, Joseph Adams and others, brought this

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action against Charles Barnard and others, in the circuit court of New York, to recover contribution in general average for the loss of their vessel called the *Brutus*, on board of which certain goods were shipped, and consigned to the plaintiffs in error, and delivered to them on their promise to pay, provided

contribution were justly due.

On the trial, the circuit court gave certain instructions to the jury, which were the subjects of exceptions, on the correctness of which this Court is now called upon to decide.

As the facts of the case were not disputed, it will be proper to state them, in connection with the instructions given by the court, in order to avoid any mistake or misconception which might arise in construing the terms of mere abstract propositions without relation to the facts on which they were based.

On 8 October, 1843, the ship *Brutus* was lying at anchor, at the usual place of mooring vessels in the outer roads at Buenos Ayres, about seven miles from the shore. The width of the river at that place, between Buenos Ayres and Colonia on the opposite shore, is about fifteen miles. The *Brutus* had taken her cargo on board for New York, consisting of nutria skins, dry hides, horns, and jerked beef. The master was on shore, and she was in charge of the first mate, with a crew consisting of twelve persons in all. On the 7th, a gale had commenced, which on the 8th had become dangerous. About four o'clock next morning the ship began to drag her anchors, and the small bower anchor was let go. About nine o'clock in the evening, the gale increasing, the best bower anchor parted with a loud report. About ten o'clock, the small bower parted, and the ship commenced drifting broadside with the wind and waves. Endeavors were then made to get the ship before the wind, which failed, on account of the chains keeping her broadside to the sea, which was making a breach over her fore and aft. The chains were then slipped, and the vessel got before the wind, two men were put to the wheel, and one to the lead, and it was determined "to run the ship ashore for the preservation of the cargo and the lives of the crew." It was now about eleven o'clock at night when the ship was got before the wind and under command of the helm. The shore next to Buenos Ayres, towards which the ship had been drifting, had banks and shallows extending out some three or four miles. If the vessel had been driven on these by the tempest, she would have been wrecked and lost, together with the cargo and crew. On the Colonia side of the river were sunken rocks several miles from the shore. "For the purpose of saving the cargo and crew anyhow, and

possibly the ship," she was steered up the river, inclining a little towards

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the Buenos Ayres side, with the intention of running her on shore at a convenient place. After they had proceeded up the river about ten miles, the mate discovered from the flashes of lightning that the vessel was approaching a point called St. Isidro, off which he perceived something black which he supposed to be rocks, and "being afraid," or "thinking it impossible to get by" this point without being wrecked and lost, he directed the course of the vessel to be changed towards the shore, where he had seen what he supposed to be a house, but which turned out to be a large tree. About midnight the vessel struck the beach and the rudder was knocked away. The foresail was then hauled up, but the staysail was let remain to keep her head straight, and she continued to work herself up until daylight. The place where she was stranded was a level beach about two hundred yards above ordinary low water mark. The ship was not wrecked, or broken up, though somewhat damaged, and the cargo was not injured. The master chartered the bark *Serene*, and transferred the cargo to her. But it was found that, with the means to be obtained in that vicinity, it would have cost more than the ship was worth to get her off the beach. She was therefore sold. The *Serene* afterwards arrived safely at New York, under command of Captain Adams, former master of the *Brutus*. In transshipping the jerked beef from the *Brutus* to the *Serene*, a portion of it got wet, and when it arrived at the port of New York it was all found to be worthless.

On these facts the court instructed the jury as follows:

"1. The evidence on the subject of the stranding consists in the uncontradicted and unimpeached testimony of a single witness. He was the acting master of the vessel at the time of the loss in question. He states that when the vessel was without any means of resisting the storm, and her going ashore upon a rocky and more dangerous part of the shore was, in his opinion, inevitable, he did intentionally and for the better security of the property and persons engaged in the adventure, give her a direction to what he supposed to be, and what proved to be,

a part of the shore where she could lie more safely. These facts, if credited by you, constitute in judgment of law a voluntary sacrifice of the vessel, and for such sacrifice the plaintiffs are entitled to recover in general average."

This instruction forms the subject of the first exception, and raises the most important question in the case.

The apparent contradiction in the terms of this instruction has evidently arisen from a desire of the court to give the plaintiffs in error, on the argument here, the benefit of the negation of their own proposition, viz., that if the loss of the vessel

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by the storm was inevitable, the stranding could not be a voluntary "sacrifice entitling the plaintiffs to contribution." It is because the form in which this proposition is stated is equivocal and vague, when applied to the case before us, that the negation of it appears to be contradictory in its terms. The court should, therefore, not be understood as saying that, if the jury believed the peril which was avoided was "inevitable," or that if the jury believed that the imminent peril was not avoided, they should find for the plaintiffs. But rather that if they believed there was an imminent peril of being driven "on a rocky and dangerous part of the coast," when the vessel would have been inevitably wrecked, with loss of ship, cargo, and crew, and that this immediate peril was avoided by voluntarily stranding the vessel on a less rocky and dangerous part of the coast, whereby the cargo and crew were saved uninjured, then they should find for the plaintiffs. Looking at the admitted facts of this case in connection with the instruction given, it is plain that the jury could not have understood the court to mean anything else. And we may add, moreover, that, in the argument here, the learned counsel have not relied upon any verbal criticism of the instruction, but have encountered fairly the proposition which we now consider as maintained by the court below.

It cannot be denied by anyone who will carefully compare this case with that of [*The Hope*](#), 13 Pet. 331, unanimously decided by this Court, and the cases of *Caze v. Reilly*, 3 Wash.C.C. 298, *Sims v. Gurney*, 4 Binn. 513, and *Gray v.*

Wain, 2 Serg. & R. 229, which have received the "unqualified assent" of this Court, that whatever distinctions may be taken as to the accidents and circumstances of these cases, they do not materially or substantially differ from the present, so far as the point now under consideration is concerned, and that we are now called upon to reconsider and overrule the doctrine established by those cases. But however they may appear to be contrary to certain abstract propositions stated by some text writers on this subject in England, and a case or two in this country, the policy and propriety of overruling our own and the three other decisions which have received our "unanimous approval," even if we were not now satisfied with their correctness, may well be doubted. There are few cases to be found in the books which have been more thoroughly, laboriously, and ably investigated by the most learned counsel and eminent judges. In questions involving so much doubt and difficulty, it is of more importance to the mercantile community that the law be settled, and litigation ended, than how it is settled. No decision of a question depending on such nice and subtle

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reasoning will meet the approbation of every mind, and if the cases we have mentioned have failed of this effect, it may well be doubted if any reasons which could be given for overruling them would prove more successful.

It is not necessary in the examination of this case again to repeat the history of this doctrine of general average, from the early date of the "*Lex Rhodia de jactu*" through the civil or Roman law, and the various ordinances and maritime codes of European states and cities, down to the present day. The learned opinions delivered in the cases to which we have alluded leave nothing further to be said on that portion of the subject. We shall therefore content ourselves with stating the leading and established principles of law bearing on the point in question, in order that we may have some precise data with which to compare the facts of the present case, and test the value of the arguments with which the instructions of the circuit court have been assailed.

The law of general average has its foundation in equity. The principle, that "what is given for the general benefit of all shall be made good by the contribution of all," is recommended not only by its equity, but also by its policy, because it encourages the owner to throw away his property without hesitation in time of need.

In order to constitute a case for general average, three things must concur:

1st. A common danger; a danger in which ship, cargo, and crew all participate; a danger imminent and apparently "inevitable," except by voluntarily incurring the loss of a portion of the whole to save the remainder.

2d. There must be a voluntary jettison, *jactus*, or casting away, of some portion of the joint concern for the purpose of avoiding this imminent peril, *pericula imminentis evitandi causa*, or, in other words, a transfer of the peril from the whole to a particular portion of the whole.

3d. This attempt to avoid the imminent common peril must be successful.

It is evident from these propositions, that the assertion so much relied on in the argument, namely, "that if the peril be inevitable there can be no contribution," is a mere truism, as the hypothesis of the case requires that the common peril, though imminent, shall be successfully avoided. Those who urge it must therefore mean something else. And it seems, when more carefully stated, to be this,

"that if the common peril was of such a nature, that the '*jactus*,' or thing cast away to save the rest, would have perished anyhow, or perished 'inevitably,' even if it had not been selected to suffer

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in place of the whole, there can be no contribution."

If this be the meaning of this proposition, and we can discover no other, it is a denial of the whole doctrine upon which the claim for general average has its foundation. For the master of the ship would not be justified in casting a part of the cargo into the sea, or slipping his anchor, or cutting away his masts, or stranding

his vessel, unless compelled to it by the necessity of the case, in order to save both ship and cargo, or one of them, from an imminent peril which threatened their common destruction. The necessity of the case must compel him to choose between the loss of the whole and part; but, however metaphysicians may stumble at the assertion, it is this forced choice which is necessary to justify the master in making a sacrifice as it is called of any part for the whole. Hence the answer of every master of a vessel, when examined, will be, "I considered the destruction of both ship and cargo "inevitable," unless I had thrown away what I did." "The goods thrown away would have gone to the bottom anyhow." If the case does not show that the jettison was "indispensable" in order to escape the common peril, the master would himself be liable for the loss consequent therefrom. It is for this reason that the ordinances of Marseilles require that the master should have a consultation with the supercargo and crew as to the absolute necessity of the measure, and as evidence that it was not done through the vain fears, cowardice, or imprudence of the master. But the right to contribution is not made to depend on any real or presumed intention to destroy the thing cast away, but on the fact that it had been selected to suffer the peril in place of the whole, that the remainder may be saved. The anchor lost by voluntarily slipping the cable may be recovered, the goods jettisoned may float to the shore and be saved, and yet, if the anchor or goods had not been cast away, they would have been "inevitably" lost and there would have been a total loss of both ship and cargo.

Take the case of *Caze v. Reilly*. A vessel is completely surrounded by the enemy's cruisers. It is impossible to save both ship and cargo from capture and a total loss. A part or the whole of the cargo is thrown overboard, and thus the vessel escapes. This is an admitted case for contribution. And it is no answer to the claim of the owners to say,

"Your cargo was 'inevitably' lost; as it was situated it was worthless, and consequently you sacrificed nothing for the common benefit. Besides, a portion of it floated on shore and was saved from capture, or was fished from the bottom without sustaining much injury; the throwing it overboard was the best thing that could be done for it under the circumstances, as without that it would have been

'inevitably' lost."

But suppose, as in the case referred to, the ship cannot be saved by casting the cargo into the sea, but the cargo, which is of far greater value, can be saved by casting the vessel on the land, or stranding her. Is it any answer to her claim for contribution to say that

"her loss was 'inevitable,' she was in a better situation on the beach than in the hands of the enemy, or at the bottom of the sea, or wrecked upon rocks, and therefore there was no such sacrifice as would entitle her to contribution?"

We cannot comprehend why this argument should have no weight in the first case which is an admitted case of contribution in all the books, and yet that it should be held as a conclusive obstacle to the recovery in the latter. The replication to this objection in the first instance, and the conclusive one, is

"the vessel and cargo were in a common peril, where both or all could not be saved; the vessel alone, or the vessel and part of the cargo, have been saved, by casting the loss upon the cargo, and this constitutes the very hypothesis on which the doctrine of general average rests."

Why, then, should there be a difference in principle where the cargo is damaged or lost by being cast into the sea, and the ship saved, and the case where the ship is damaged or lost by a voluntary stranding, or by being cast on the land and the cargo saved, is a question which has never yet been satisfactorily answered. In fact, we do not understand the counsel to contend for the doctrine of *salva navi*, or that the *Brutus* was not entitled to contribution because she could not be got afloat at a less cost than her value. The principle on which the counsel relied is that enunciated in the opinion of the court in *Walker v. United States Ins. Co.*, 11 Serg. & R. 61. "It is not enough," says the learned judge,

"that there be a deliberate intent to do an act which may or may not lead to a loss; there must be a deliberate purpose to sacrifice the thing at all events, or at the

very least to put it in a situation in which the danger of eventual destruction would be increased."

But, as we have already seen, the intention to destroy the *jactus*, or thing exposed to loss or damage for the benefit of the whole, makes no part of the hypothesis upon which the right of contribution is founded. Indeed, the speciousness of this assertion seems to have its force from the use of the word "sacrifice" in its popular and tropical, instead of its strict or technical meaning. The offering of sacrifices was founded on the idea of vicarious suffering. And when it is said of the *jactus*, that it is sacrificed for the benefit of the whole, it means no more than that it is selected to undergo the peril, in place of the whole, and for the benefit of the whole. It is made (if we may use another theological phrase) the "scapegoat" for

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the remainder of the joint property exposed to common destruction. The "*jactus*" is said to be sacrificed not because its chance of escape was separate, but because of its selection to suffer, be it more or less, instead of the whole, whose chances of safety, as a whole, had become desperate. The imminent destruction of the whole has been evaded as a whole, and part saved, by transferring the whole peril to another part.

If a cargo of cotton, about to be captured or sunk, be thrown overboard in part or in whole and the ship thus saved, the fact that the cotton floated to the shore and was saved, and therefore was in a better condition by being cast away than if it had remained to be captured or sunk, cannot affect its right to contribution, though it may diminish its amount. The loss or damage arising from its assuming the peril, that the ship may escape, may be truly said to be the real "sacrifice," in the popular use of the phrase. Its value is not measured by its hopes of safety, for by the hypothesis it had none; but its right to contribution is founded on its voluntary assumption to run all the risk, or bear the brunt, that the remainder may be saved from the common peril. The fact that goods thrown overboard are in no worse, or even in a better, condition as to chances of safety, than if they had remained on

board, or that the stranded vessel is in a better condition than if she had been wrecked or sunk, cannot affect the right to contribution of that part which was selected to suffer in place of the whole.

Having made these remarks, by way of vindicating the cases referred to, and noticing the arguments by which they have been assailed, let us briefly compare the facts of this case with the principles we have stated, and inquire, first, what was the common peril? and second, was any portion of the joint adventure saved from it by the transfer of the risk or loss to another?

The common peril, which in this case was sought to be avoided, was shipwreck, or the destruction of vessel, cargo, and crew. The ship lay at anchor; she was assailed by a violent tempest, her cables broken, her anchors gone, and she was being driven by the force of the gale broadside upon the shallows extending three miles out from the shore at Buenos Ayres. In order to save the cargo and crew, it is determined to put on sail, and run up the river to find a safe place to strand the vessel. They proceed ten miles up the river, when they encounter another peril at Point St. Isidro. To avoid being wrecked on the rocks, the course of the vessel is immediately changed, and she is steered directly for the shore, and run upon a sandy beach, where she is left high and dry by the tide. The cargo is saved without injury, but the ship is on the land, where she

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is comparatively valueless, on account of the expense which must be incurred to replace her in her element. By the will and directions of the master, she has become the victim, and borne the loss, that the cargo might escape from the common peril. It is true she has not been wrecked or lost, as she inevitably would, had she been driven on the flats at Buenos Ayres by the tempest, or been foundered on the rocks off Point St. Isidro, but she has voluntarily gone on shore, which was death to her, while it brought safety to the cargo. And we are of opinion she has the same right to demand contribution that the owners of the cargo would have had against her, had it been cast into the sea to insure her safety.

There is therefore no error in the instruction given by the court below on this point.

2. The second and third instructions excepted to have reference to the place at which the goods are to be valued for the purpose of adjusting the general average.

The reasons given by the learned judge in these instructions are amply sufficient to show their propriety. The adventure was continued, notwithstanding the disaster, and terminated at New York. The goods were not returned to the shippers, and consequently no contribution could be collected at Buenos Ayres. The fact that the *Brutus* was left on the strand, and the adventure continued till the cargo reached its destination in another vessel, cannot affect the case. The place where average shall be stated is always dependent, more or less, on accidental circumstances, affecting not the technical termination of the voyage, but the actual and practical closing of the adventure. We see nothing in the circumstances to take this case out of the general rule, that contribution should be assessed on the value at the home port.

3. The third exception relates to the allowance of the wages of the crew after the ship was stranded.

But as they were employed as mariners and *quasi* -saviors of the cargo, laboring for the joint benefit of the adventure, we think the exception is not supported. Their services were essential to the entire saving of the cargo. Their duties did not cease with the stranding, and they were entitled to wages while their services were required for that purpose. If the same services had been rendered by strangers, the expense would have been properly charged as a result of the disaster, in stating the average. That the same services were rendered by the crew after the *Brutus* was stranded, and the voyage as to them technically broken up, cannot affect the case. Even if their obligation to the ship had ceased, still their services to vessel and cargo entitled them to their wages and support as a general charge.

4. The two and a half percent allowed for collecting the general average rests upon the usage and custom of merchants and average brokers. It is a duty arising out of the unforeseen disaster, and resulting directly from it. Usually there are contributions to be paid out, as well as received, by the ship-owner. It is a troublesome duty, not embraced in their obligation as mere carriers. The usage is therefore not unreasonable. The objection, that it is paying the owners for merely collecting their own debt, is founded on the accidents or peculiar circumstances of this case, and does not affect the general principle on which this usage is based.

The judgment of the circuit court is therefore

Affirmed.

MR. JUSTICE DANIEL dissenting.

The decision just pronounced, so far as it goes, must of course be regarded as settling the law of this Court upon the subject of general average, that decision being in complete accordance with the decision of [Columbian Assurance Co. v. Ashby and Stribling](#), 4 Pet. 139; the single case from this Court previously maintaining the doctrine announced by the court in the case before us. But, however the decision now made may control the question of general average in the courts of the United States, as it must do, being the revised and reaffirmed doctrine of this tribunal, still, with the sincerest respect entertained for the opinions of my brethren, and with unaffected diffidence as to the conclusions of my own mind, I have been unable to yield to this doctrine my assent. I cannot but regard the doctrine here affirmed as opposed to the course of opinion the settled and undisputed opinion in the greatest maritime and commercial nation in the world, and as subversive of the fundamental principle in which the law of average has its origin. That principle, which is traced by all writers and courts to the Rhodian law, is thus propounded by Lord Tenterden, in his work on Shipping p. 342: "Namely, the general contribution that is to be made by all parties towards a loss sustained by some for the benefit of all." The same writer p. 344 says that goods must be thrown overboard; the mind and agency of man must be employed. If the goods are forced out of the ship by the violence of the waves, or are destroyed in the ship

by lightning or tempest, the merchant alone must bear the loss. The goods must be thrown overboard for the sake of all. The same writer remarks p. 348, that, though the rule mentions goods only, its principle extends also to the ship and its furniture.

Mr. Benecke, in his Treatise on Average p. 96, tells us that general average has been described in the English courts to

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comprise "all loss which arises in consequence of extraordinary sacrifices or expenses incurred for the preservation of the ship and cargo." After speaking of the enumeration of instances of general average in some of the Continental nations of Europe, he continues:

"Although these laws and the corresponding ones of other states do not make use of the term 'sacrifice,' yet their definitions imply that nothing short of a sacrifice shall be deemed a general average. All these laws may therefore be said to establish the same general principle -- namely, that a sacrifice made for the preservation of the ship and cargo is general average."

Again he says p. 97:

"As to the term sacrifice, it is clear and generally admitted, that a damage, to deserve the appellation of a sacrifice, must have been purposely undergone, and by the agency of man, for the benefit of the whole, and that every damage not purposely undergone, although the ship and cargo may be benefited by it, gives no claim to restitution."

Again, it is said with great force and propriety, that the special sacrifice must be something done and not suffered; there must be the will and agency of the party making it. That it should be for the purpose, and with the intent, *causa et mente*, of the preservation of the common concern. Although the examples of this sacrifice put are usually instances of *jactus*, the principle embraced applies equally to the ship as to the cargo; thus Benecke, p. 144, says:

"The case of voluntary stranding being implied in the general rules, most of the foreign ordinances omit to mention it expressly. The Prussian law is in this respect more explicit than the others. If the captain, say sections 1820 and 1821, in order to preserve the cargo, run the vessel intentionally ashore, the damage thereby occasioned to the ship and cargo as well as all incidental charges, belong to the general average. But if it appear clearly from the circumstances, that the stranding was resorted to merely for the purpose of saving the lives or liberty of the crew, the damage, even if the whole cargo be saved, is held to be particular average. The ancient laws, says Benecke, as well as the opinions of the English and foreign lawyers, are also in favor of this distinction. And it is, as far as I have been able to learn, the practice of all countries."

The same will, the same positive action, the same purpose, and, it may be added, the same predicament or position of the actors, must exist in each class of cases. There must be intent and act, prompted by, and tending to, a practicable, or at least a probable result, and not mere endurance or submission to uncontrollable necessity in either case.

Thus, says Benecke

"When a vessel is purposely run ashore (p. 143), and afterwards got off with damage; the question

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whether repairs of such damage belong to general or particular average depends entirely upon the circumstances of the case. If the situation of the vessel were such as to admit of no alternative; so that, without running her ashore she would have been unavoidably lost, and that measure were resorted to for the purpose of saving the lives or liberty of the crew, no contribution can take place, because nothing, in fact, was sacrificed. But if the vessel and cargo were in a perilous, but not a desperate situation, and the measure of running her ashore deliberately adopted, as best calculated to save the ship and cargo; in that case the damage sustained, according to the fundamental rules, constitutes a claim for restitution."

And Mr. Phillips, in his work on Insurance, Vol. I, 338, and in a note to Stevens on Average, p. 81, lays down the law both in England and in the United States to be this, that

"the voluntary stranding of the ship is general average, but not the mere steering her to a less dangerous place for stranding, when she is inevitably drifting to the shore."

I am wholly unable to perceive how, in conformity with the rules and principles above cited as constituting the foundation of general average, contribution could justly be claimed in this instance for the loss of the ship. For there is not a scintilla of proof in this cause tending to show a design to sacrifice the ship, or anything else, nor tending to prove that the course pursued was one which, under any circumstances, could possibly have been avoided. On the contrary, the testimony establishes, as far as it is possible to establish any facts, that the stranding was the effect of the *vis major*, of an inevitable necessity -- that every effort was made to avoid this necessity, and that the only act of the mind apparent in the case was the determination, to repeat the language of Mr. Phillips, already quoted, "merely to steer her to a less dangerous place for stranding, when she was inevitably drifting to the shore," a determination not less for the benefit of the ship than for that of the cargo, and one falling within the general scope of the duty and discretion of every master or seaman.

There is no contrariety in the testimony in this case. The single witness, the mate, who was examined, states most explicitly the hopeless and desperate condition of the vessel; she had lost all her anchors, was in the midst of a hurricane, and drifting to the shore under a force which the witness explicitly says nothing could resist. He therefore did not elect to run her ashore, or to make her a sacrifice for the general good; he only sought to save her as far as possible from danger or injury. It appears to me to be no slight paradox to assert, that a man is the positive and controlling agent in the

accomplishment of an effect which he merely suffers, and which is forced upon him by a power that he is wholly unable to resist or influence, and that it is equally paradoxical to declare, that we elect and seek a sacrifice or a peril from which we are most anxiously fleeing. The cases at *nisi prius* in the federal courts, and in the courts of the states referred to, leave this matter pretty much in equipoise, if indeed they do not incline to the side of the question here maintained. We have Story and Washington and Tilghman opposed to Kent and Gibson and Kennedy; with this consideration attending the decisions of the Supreme Court of Pennsylvania, that they are the most recent, and have been made upon an examination and review of the cases which they have overruled. Repeating the assurance of entire deference entertained for the opinion of my brethren, and of the sincerest diffidence of the conclusions of my own mind, yet being unable to concur in those opinions, I have no claim to share in their merits if they are right, and if they are incorrect, my position with respect to them should be equally understood.

ORDER

This cause came on to be heard on the transcript of the record from the Circuit Court of the United States for the Southern District of New York, and was argued by counsel. On consideration whereof, it is now here ordered and adjudged by this Court, that the judgment of the said circuit court in this cause be, and the same is hereby, affirmed, with costs and damages at the rate of six percentum per annum.