

v. Johnston, 13 Ch. Div. 434; Sawyer v. Horn, 4 Hughes, 239, 1 Fed. 24. One cannot be permitted to practice deception in the sale of his goods as those of another, "nor to use the means which contribute to that end." Perry v. Truefitt, 6 Beav. 66. Irrespective of the question of trade-mark, inasmuch as Walton & Co. appear to have been the first to put up their paper with the distinguishing mark "Columbia," and as their goods were the first to become known to purchasers as "Columbia paper," no other person should be permitted to use that name as the sole distinguishing mark of a like article, whether expressed in letters or by figure, and in that manner mislead the general public into buying his goods as those of his competitor. If the word could not be used as a trade-mark, it is to be treated as a descriptive term, to the benefit of which they are entitled. Wilson v. T. H. Garrett & Co., 47 U. S. App. 250, 24 C. C. A. 173, and 78 Fed. 472.

The complainants charge in their bill that by reason of their symbol of Columbia their article has become known and asked for as "Columbia paper." The evidence discloses the fact that by that name alone the defendants' paper has previously been known and called for. The confusion which their bill was filed to abate was of complainants' own creation, and they were themselves the cause of the unfair competition in trade against which they ask relief. The prayer of the complainants' bill will be denied, and an injunction granted to the defendants on their cross bill, as prayed for.

---

BOTANY WORSTED MILLS v. KNOTT.

WINTER et al. v. SAME.

(Circuit Court of Appeals, Second Circuit. July 21, 1897.)

1. SHIPPING—DAMAGE TO CARGO.

Negligence in loading and stowing at a port of call, whereby the ship gets down by the head, so that sugar stowed next to wool, with a temporary bulkhead between, drains forward, and damages the wool, is not negligence "in the management of the vessel," within the meaning of the Harter act, so as to relieve the owners from liability. 76 Fed. 582, affirmed.

2. SAME—BILLS OF LADING—EXCEPTIONS—LAW OF THE FLAG.

A provision in a bill of lading, containing an exception of damage from negligent stowage, that the contract should be governed by the law of the flag (English), is not enforceable in our courts, being against the public policy of this country. 76 Fed. 582, affirmed.

Appeal from the District Court of the United States for the Southern District of New York.

These were libels filed respectively by the Botany Worsted Mills and by Henry P. Winter and others against James Knott, owner of the Portuguese Prince, to recover for damage to a cargo of wool shipped from Pernambuco to New York, such damage having occurred by the drainage forward of wet sugar stowed next aft of the wool, and separated therefrom by a temporary bulkhead. The district court entered a decree for the libelants (76 Fed. 582), and the respondent has appealed.

J. Parker Kirlin, for appellant.

Lawrence Kneeland, for Botany Worsted Mills.

Wilhelmus Mynderse, for Winter et al.

Before WALLACE, LACOMBE, and SHIPMAN, Circuit Judges.

**PER CURIAM.** We agree in this case with the court below that the damage to the wool of the libelant was due, not to "fault or error in the management or navigation of the vessel," but to negligence in the loading or stowage of the cargo; and deem it unnecessary to add anything to the observations of Judge Brown upon the point. A majority of the court also concur in the conclusions of the court below that the exception in the bill of lading for liability for "damage by stowage, \* \* \* though caused by the negligence of the master," notwithstanding the provision that the contract should be governed by the law of the flag (English), did not relieve the owner of the steamship, such a stipulation being against the public policy of this country, and therefore not enforceable by its courts; and approve the decisions in *The Trinacria*, 42 Fed. 863; *The Glenmavis*, 69 Fed. 472; *The Iowa*, 50 Fed. 561. In this view of the case it is unnecessary to decide whether the prohibitions of the Harter act apply to a bill of lading issued at a foreign port. The decree is affirmed, with interest and costs.

LACOMBE, Circuit Judge, concurs in result.

---

CHRYSTAL et al. v. FLINT et al.

(District Court, S. D. New York. September 9, 1897.)

1. GENERAL AVERAGE—NEGLIGENT STRANDING—HARTER ACT.

Under section 3 of the Harter act of February 13, 1893, providing that if the ship owner shall exercise due diligence to make the vessel seaworthy, neither the vessel nor her owner shall be responsible for faults or errors in her navigation or management, the ship owner has a right to contribution in general average for sacrifices made to save vessel and cargo stranded, although the stranding occurred through the negligence of the officers of the vessel.

2. SAME—ALLOWANCE OF GROSS FREIGHT ON JETTISONED GOODS.

In a general average adjustment to be stated "according to the established usages and laws" of the port of New York, the allowance of freight upon jettisoned goods is the full freight as per bill of lading. The recent practice of the English adjusters to allow only net freight in such cases has not been adopted in New York.

This was a libel by George Chrystal and others against Flint, Eddy & Co., to recover upon a general average bond.

Cowen, Wing, Putnam & Burlingham, for libelants.

Butler, Notman, Joline & Mynderse, for respondents.

**BROWN**, District Judge. In November, 1895, the British steamship *Irrawaddy*, upon a voyage from Trinidad to New York, stranded on the coast of New Jersey, through negligence in navigation. Up to the time of stranding it is admitted that she was properly manned and equipped, and seaworthy. In endeavoring to get her off the beach by working her propeller with reversed engines, her machinery was damaged by sanding and by water from leaks, which was allowed to flow into the engine room in order that it might be pumped out; and, on the sluices becoming choked, holes were bored in the bulk-