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-

head to permit the water to pass to the pumps. With the aid of salvors, the vessel was finally floated on November 20th, after a jettison of a considerable quantity of cargo. She then completed her voyage and made delivery of the rest of the cargo to the consignees in New York, on their executing an average bond for the payment of all losses and expenses which should appear to be due from them, provided they were stated and apportioned by the adjusters "in accordance with the established usages and laws in similar cases."

An adjustment was afterwards made in New York which allowed in the general average account, (1) the salvor's compensation, (2) the value of the jettisoned cargo, and (3) to the ship owner, the gross freight on the cargo jettisoned, and (4) the damages to the ship by sanding and by the flow of water into the engine room. The respondents thereupon paid $4,483.64, their full assessment, except the sum of $508.29, charged against them for the last two items above named, which they refused to pay, on the ground that as the stranding was caused by negligence in navigation, the ship owners were debarred from any recovery of general average from the cargo; they also claim that if any freight is recoverable for the goods jettisoned, it is only the net freight, i. e., the gross freight less the stevedore's and other charges which would have been incurred by the ship owners on the actual delivery of the goods had they not been jettisoned. The difference, it is agreed, would in this case be $13.65.

The above libel was filed upon the general average bond, for the recovery of the last two items in the general average adjustment above named, on the ground that as the ship owners are not responsible to the cargo owners for the negligent navigation of the ship under the provisions of the Harter act of 1893 (2 Supp. Rev. St. p. 81), such negligence does not now debar them from general average claims; and that gross freight is recoverable, because such is the established law and usage of this country and of this port. All the facts are admitted, except as to the custom in regard to charging gross freight, upon which point witnesses have been examined upon both sides.

The questions presented are important, because they enter largely into every case of a general average adjustment growing out of faults or errors of navigation; and it is essential that the rule which is to be followed in average adjustments in cases falling within the Harter act, should be finally determined.

There is no doubt of the ordinary rule, in the absence of statute or contract to modify it, that where the peril has been brought about by the fault of the ship owner or his servants in the navigation of the ship, the ship owner cannot recover from the cargo reimbursement by means of a general average for his expenses in rescuing the ship or cargo. The codes of the principal maritime countries so provide in express terms; and our law is the same. Gourl. Gen. Av. 15; Lown. Gen. Av. (4th Ed.) 34; The Ontario, 37 Fed. 222; Ralli v. Troop, Id. 888, 890; Van den Toorn v. Leeming, 70 Fed. 251. This rule is not enforced against the ship owner alone; it applies equally to the cargo owner, and to any other claimant of contribution by whose fault the necessity for the sacrifice or expense was caused. Several of the maritime codes expressly so state. Germany, § 704; Sweden, § 191;