

Mess. E. Greely & Son  
Portland July 29, 1826.

Gentlemen

I have considered the question proposed in Mr. Dodge's letter, viz "Whether he can recover a general average for 140 barrels of flour, which was thrown from the deck of the Schooner Charles on her voyage from Alexandria to Portland in April last."

All the elementary writers on the subject of Shipping & Insurance, except Phillips, assume it as a general principle that no contribution can be claimed for the jettison of articles laden on the deck of a vessel. The same principle has been adopted by the highest judicial tribunals in New York. The question does not appear to have been settled in this State or Massachusetts; but the common understanding among merchants has been that contribution cannot be claimed for a jettison of goods laden on deck. This principle appears to have been derived from the ancient marine laws & ordinances of Europe, & particularly from the ordinances of Louis 14<sup>th</sup>. That it should prevail in those countries where it is not usual to carry goods on deck.

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is to be expected, and particularly in France, where by the ordinances above mentioned the Master of a vessel is expressly prohibited from carrying goods on deck. But Valesi, in his Commentary on those Ordinances, says this rule, even in France, does not apply to boats & small vessels, passing from port to port where there is an usage to take goods on deck. And I think it does not apply in this country, where it is the common usage to take goods on deck; for those who put goods on board under such circumstances must be supposed to be acquainted with the usage, & to assent to it.

If in Mr Dodge's case such an usage can be clearly proved, and the deck load was no more than is usual, and such as not to endanger the other property on board, and the jettison was necessary & was the means of saving the other property (as it appears to have been by the Captain's protest) it is my opinion that he ought, in principle, to have a claim for contribution for his property thrown from the deck of the vessel. But as the question has never been settled in this

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In the decisions which have been made in  
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