The Carron Park is the leading English case.[62] In that case Sir J. Hannen said: "The claim for contribution as general average cannot be maintained, where it arises out of any negligence for which the shipowner is responsible; but negligence for which he is not responsible is as foreign to him as to the person who has suffered it." Lord Justice Vaughan Williams, however, apparently held a contrary view, namely, that the exceptions in the contract of carriage do not affect liability to contribute in general average.[63] But a majority of the Court of Appeals, in that case, confirmed the principle laid down in *The Carron Park*.

Will the Canadian courts hold that, although the shipowner, under the new Act, is not responsible for the faults of his servants in the navigation and management of the ship, the negligence of his servants, nevertheless, defeats his recourse in general average against the cargo owner, following the United States jurisprudence; or will they hold that, as the shipowner is not responsible under the contract for such negligence, it is therefore non-existant for him, and cannot affect his recourse in general average, following the English jurisprudence?

In the United States, a motive for the *Irrawaddy* decision was that the Harter Act involved a change of law and could not be extended beyond its express terms. If the Canadian law, prior to the new Act, be held to have been the English law, it is possible the English rule will be followed.

2. *Cargo owner* v. *Shipowner*.—In two cases in the United States, subsequent to the decision of the Supreme Court in *The Irrawaddy*, the right of the cargo owner to sue the shipowner for general average contribution was considered.

In *The Strathdon*,[64] it was held, in effect, that the cargo owners possessed such recourse, but that the vessel owner could

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62 *The Carron Park* (1890) 59 L.J. Adm. 74; 15 P.D. 203.

63. See his dissenting judgment in *Milburn* v. *Jamaica* (1900) 2 Q.B. 540, pp. 548-553.

64. *The Strathdon* (1899) 101 Fed. 600.