

RECENT ENGLISH DECISIONS.

judges of the Court of Appeal, however, upheld the judgment of Lindley, J. Brett, L.J., dissented. He says:—"The cost of repairs is the matter to be indemnified . . . The defect of the judgment under review seems to me, with deference, to be that it has misapplied the doctrine that a contract of insurance is only a contract of indemnity. It is true that it must not more than indemnify against the loss which it covers; but it is also true that it has nothing to do with gains or losses which are outside the contract, by which it undertakes to indemnify against the losses which it does cover." The view of Lindley, J., below, and of the majority of the judges of appeal, seems concisely indicated in the following passage from the judgment of Cotton, L.J.:—"To hold that in the present case the insured is entitled to recover two-thirds of the estimated cost of repairs would be contrary to what is one of the principles applicable to all insurance cases, that the policy is a contract of indemnity; or to adopt the words of Willes, J., in *Lidgett v. Secretan*, L.R. 6 C.P. at p. 626, the insured is not entitled to recover more than he lost by the injury sustained by the vessel through the perils covered by the policy." And after a review of the authorities, he says:—"In this state of the authorities I am of opinion that the estimated cost of repairs, less the usual allowance of one-third new for old, is not, *under all circumstances*, the sum which the insured is to recover. Where, as in the present case, there is not a constructive total loss, he is not, as against the insurers, entitled to sell so as to bind them by the loss resulting therefrom; but when he elects to take this course, as in the present case, he, as against himself, fixes his loss, that is, he cannot as against the underwriters say that the depreciation of the vessel exceeds that which is ascertained by the result of the sale. Probably the most accurate way of stating the measure of what, under such circumstances, he is to recover, is that it will be the estimated cost of repairs, less the usual deduction, not exceeding the

depreciation in value of the vessel as ascertained by the sale." In conclusion it may be worth while to quote a *dictum* from Brett's, L.J., dissenting judgment, where he says:—"One is naturally startled at the facts of the present case; but they are wholly abnormal, and it is in my opinion most dangerous to mercantile business to tamper with a settled rule of adjustment of liability and claim in order to meet a case which will in all probability never happen again." It will be seen that where the Court of Appeal differs from him is as to what is the settled rule of adjustment of liability in such matters.

PRINCIPAL AND AGENT—MEASURE OF DAMAGES.

The next case, *Cassaboglow v. Gibbs*, p. 220, is a decision of the Q. B. Divisional Court as to the measure of damages where commission agents of the plaintiff abroad have intentionally sent home to him goods of an inferior quality to that which he ordered. The plaintiff sought to treat the agents as vendors of the goods to him, so as to make them responsible as for a breach of warranty of the kind and quality of the goods, in which case the measure of damages would be not merely the difference between the cost to him of the goods and their real value, but the difference between the value of goods of the description sold and of the goods actually sent. The Court, however, held the plaintiff was not entitled to recover from the defendants anything beyond his actual loss.

CONTRACT WITH AN ILLEGAL ASSOCIATION.

The next case is *Jennings v. Hammond*, p. 225. In it the Divisional Court, having decided that a certain society called the "Ipswich Mutual Benefit Society" was illegal, by reason that it did not conform to the requirements of Imp. 25-26 Vict. c. 89, s. 4, as to the registration of such a society, proceeded to hold that, therefore, a promissory note given by a member to the trustee of the society to secure a sum of money advanced to such member under the rules of the society was invalid, and no action could be maintained