set up against it, by way of compensation or off-set, the damage caused to the ship, when that damage was caused in a manner for which the shipowner was not responsible under the Act. The court was of opinion that the cargo owner should not be allowed to recover from the shipowner in general average, under the circumstances, without such off-set, because, by changing the form of action in this respect, he could recover for losses for which the vessel owner was not responsible under the Act. The court said: "When the cargo owner seeks to recover in general average, in such case the shipowner is also entitled to contribution as though innocent of fault; otherwise the cargo owner would recover by selecting his form of procedure for losses for which the shipowner was not responsible."

In *The Jason*,[65] the court held that the cargo owners were entitled to recover, but that the amount paid to the salvors by the vessel owner must be taken into consideration. The court allowed the cargo owners to recover in general average because this was a right existing since the earliest maritime usages had been established, and was, in no way, connected with the rights under the bill of lading, and hence not affected by the Harter Act.

These two cases agree in allowing the vessel owner to set up his loss, occasioned by the negligence of his servants, without his privity or knowledge, against claims for average contribution; but they raise and disagree as to the question whether or not the cargo owner can recover in general average for his losses from a shipowner, who has himself suffered no damage.

Under our law, the liability of the shipowner to the cargo owner in general average would hardly be questioned.

The new Canadian Act specifically states that the shipowner shall not be liable, or held responsible, for loss in the instances and under the conditions stated. Would an action, therefore, in general average, by the cargo owner against the shipowner, be maintained, either in Canada or in England, under circu

65. *The Jason* (1908), 162 Fed. 56.