

REVIEWS : GENERAL AVERAGE.

the origin of our law on this subject the truth of this becomes manifest. And as to this we cannot do better than quote the language of the author in his introduction—

"For nearly two thousand years it was the practice for merchants to sail with their wares from place to place, in company with the master and owner of the ship. In modern Europe, the Crusades first gave a stimulus to sea-traffic, necessitating what would now be termed a transport and sutlery service on a large scale, and bringing the different nations of Europe into close communication with each other. The same fusion of nationality was engendered by the practice of frequenting, at stated seasons, certain seaports which were marts or emporiums of commerce. Thus there were brought together, at intervals, those who could arrange together, with some authority, as principals, the rules by which their sea-traffic should be regulated. What was settled at such gatherings was naturally regarded as of a wider than municipal authority. Tradition ascribes to the Crusades the sanction thus given to the Rolls or Judgments of Oleron, and, to an assemblage of merchants at the fair or roadstead of Wisby in the Baltic, the so-called Laws of Wisby; beyond doubt the most authoritative expositions of what has been termed the ancient 'common law of the sea.'

"The tenacity and universality of maritime customs are exemplified in a high degree by this rule of general average with which we are at present concerned. It is traced back to the Rhodians, that is to say, probably, to about seven hundred years before the Christian era. From the materials collected by M. Pardessus, we may conclude that the Rhodian rule concerning jettison had not only become general amongst the mariners and traders of the Mediterranean but had been adopted into the Roman law, and expanded by lawyers, in times earlier than the Code of Justinian; and that the law of Rome, in this matter, followed much the same course as our own common law has since taken; that is to say, first adopted, and then systematised and expanded into a science, that which it found existing in the form of maritime custom. Be this as it may, we find in the Digest of Justinian a body of law concerning general average which, when arranged, exhibits a complete and symmetrical system, scarcely if at all inferior to any of modern times. These rules were translated without alteration into the Basilicas, and constituted the law of the whole Roman Empire, west and east: that is to say of all the then civilized world.

"After the fall of the Roman Empire, its laws, in the deep barbarism which ensued, fell into absolute forgetfulness. The knowledge even of their existence was, at any rate for the greater part of Europe, lost for centuries. Maritime legislation had to make a fresh beginning."

"We find that, just as jettison is the only instance of general average which can be distinctly traced back to the Rhodians, so it was with jettison that the second growth of a law of general average began. The older sea-laws of modern Europe name only two cases of general average, jettison of cargo, and the cutting away of a mast. The Code which far surpassed all others in authority, the Rolls of Oleron, and which, in England, as in many other countries, was for some centuries regarded as an authoritative exposition of the 'common law of the sea,' mentions only these two. The ancient law of Wisby was limited in the same way. For four or five centuries at least we find the framers of sea-laws for the several countries of Europe content to transcribe, either verbally or in substance, the rules of one or the other of these codes, without addition. Afterwards, in later codes, other examples of general average were added, one by one, no doubt as the occasion arose, and thus, by degrees, in an unscientific manner, one country borrowing rules from another, and without any statement or definition of the general principle which underlay them, the modern law of general average grew up, for a certain time, entirely independently of the law of Rome, but on the same fundamental principle. In still later times, and particularly in the Guidon de la Mer, a fusion of the modern and ancient systems was effected. An important step in this fusion was made by the Ordinance of Louis XIV., in which the principle of general average was reduced, it may be said for the first time, to a clear and self-consistent definition. This definition was imported into the law of England by Mr. Justice Lawrence, in *Birkley v. Presgrave*, and is at the present day the basis and the test of general average."

His definition is in these words: "All loss which arises in consequence of extraordinary sacrifices made, or expenses incurred, for the preservation of the ship and cargo, comes within general average, and must be borne proportionally by all who are interested." This decision was the first in which the right to recover general average contributions in a Common Law Court was discussed, and formally recognized.

Mr. Lowndes has faithfully acted up to his suggestion of the necessities of the