

## COURT OF APPEAL.

LONDON, 4 March, 1896.

*Before* LORD ESHER, M. R., LOPES, L. J., RIGBY, L. J.HENDERSON BROTHERS *v.* SHANKLAND & Co. (31 L.J.)*Shipowner and cargo-owner—General and particular average—Contribution—Value of ship, how ascertained—‘New for old’ allowance.*

Appeal from a decision of MATHEW, J., sitting without a jury for the trial of commercial cases.

The plaintiffs were owners of cargo on board a sailing ship, the *Woodburn*, belonging to the defendants. While on a voyage from Chittagong to Dundee she encountered a hurricane and was considerably damaged. A general average sacrifice was necessary, and was so far successful that the ship was able to put into Calcutta; but it was there found that the cost of repairing her would exceed her value when repaired, and she was accordingly sold as a constructive total loss for 883*l.*

The question then arose how the general average contribution was to be adjusted.

The plaintiffs contended that the value of the ship for this purpose was her value at the time at which she suffered the general average damage, and they arrived at this by deducting from the value of the ship before the storm the estimated cost of repairing the particular average damage. From the sum so found they proposed to further deduct the sum of 883*l.*, which the vessel fetched, and the balance remaining would, they contended, be the amount to be contributed to in general average, it being agreed that of the total damage sustained 63 per cent. was attributable to general average loss.

The defendants, on the other hand, proposed to deduct from the value of the ship before she encountered the storm only the 883*l.* which she fetched, and they contended that 63 per cent. of the sum so found would be the sum to be contributed to in general average. They further contended that, if the cost of repairing the particular average damage was to be taken into account, as the plaintiffs suggested, they were entitled to the benefit of the one-third new for old allowance which is made to the shipowner where the value of a ship is increased by repairs.

Mathew, J., held that the plaintiffs' contention was correct,