

principal sum of money, contained in the disposition, where the buyer possessing the lands was liable for annualrent, albeit the disposition, or contract of sale, did not bear any.

The Lords did find, that the annualrents of the bonds assigned, being but a part of the principal sum contained in the wadset, that the wadsetter enjoying the full back-tack duty or the rents for the lands wadset, he was liable for the annualrent of these sums which were due, and which the granter of the wadset was deprived of by the wadsetter's deed; and that there was no difference betwixt dispositions of wadsets and absolute irredeemable rights, as to this case.

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1676. *November 14.* THOMAS LAWRIE, Merchant in Edinburgh, *against* ROBERT ANGUS, Skipper.

THERE being a decret recovered before the bailie of Leith, at the instance of Thomas Lawrie, for payment of the sum of five hundred merks, for damage and interest he had sustained by Robert Angus, skipper, upon that ground, that he had embarked a parcel of goods in his ship, which was spoiled through a default in his pump, which was not sufficient;—there being a bill of suspension presented, and both parties ordained to be heard upon the reasons libelled:

It was ALLEGED for the skipper, That it being in his power only to dispose of the goods and loading, and accordingly he having placed that small parcel in the upper room, where they could never receive damage from the pump, notwithstanding the merchant, at his own hand, and without consent of the skipper, had, upon fear that the privateers might come aboard and take away the said goods, did take away the same from that place, and put them in the lowest room of the said ship, and placed them at the foot of the pump; whereby he was the cause of the damage himself; it being ordinary, by stress of weather, to sufficient pumps, when water is drawing, that some thereof will burst out and prejudice goods that lie nearest them, if they be such that, by a small quantity of water, will receive damage: which allegiance was once found relevant, and admitted to probation, as an instrument taken upon the minutes of process bears; but the bailie did take up or abstract the same, and, notwithstanding, gave out this new decret for damage.

It was ANSWERED for the merchant, That the bill ought to be refused; because all skippers are, in law, answerable for all the places of their ship, and for the sufficiency of their pumps; and thereby the whole loading would be free from all damage, unless, by running on banks or rocks by stress of weather, there be a leak stricken in the ship. Likeas, it was offered to be proven, that the said pump was insufficient when she came out of the harbour.

The Lords did find, That the skipper was obliged to prove that the pump was sufficient when she came out of the harbour, and that the merchant's making use of any part of the ship did not free the skipper; and, therefore, they ordained that the skipper prove the sufficiency of the pump at that time.

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