

* * * P. Falconer reports the same case :

No 63.

1682. *January 4.*—CERTAIN seamen having, for their wages, pursued Robert Miln, who bought the ship from Ludquhairn at a roup, upon this ground, that they being violently put out of the ship, without payment of their wages, and having complained to the Council, Robert Miln, in obedience to the council's order, gave bond, wherein he obliged himself to make payment to the seamen of what the ship should be found liable for. It having been alleged for Robert Miln, That he had bought the ship upon a roup, and the seamen having no hypothec nor real right to the ship for their wages, he was not liable upon his bond to make payment; the LORDS found, that the seamen had *jus retinendi et insistendi* for their wages; and having been violently put out of the ship, they were in the case as if they were in possession; wherefore the LORDS decerned Robert Miln, upon his bond foresaid, to make payment to the seamen of their wages.

P. Falconer, No 15. p. 7.

* * * This case is also reported by Sir P. Home :

1682. *March.*

ROBERT MILNE having bought a ship at a roup, who having taken possession of her and put out the seamen, and they having complained to the Lords of Council that they were violently put out of the ship without payment of their wages; and the Privy Council having ordained Robert Milne to give bond to pay the seamen, for that the ship should be found liable; which bond was accordingly granted; and the seamen having thereafter pursued Robert Milne for payment of their wages,—*Alleged* for the defender, that the seamen having no interest or tacit hypothecation on the ship for their wages, he was neither liable upon his bond, nor as having intromitted with the ship, for payment of the seamen. THE LORDS found, that the seamen had *jus retinendi* of the ship for their wages, and that, being violently put out, they were in the case as if they had been in full possession of the ship; and therefore decerned the defender to make payment to them of their wages.

Sir P. Home, MS. v. I. No 246.

No 64.

There is a hypothec upon the cargo of a ship for freight and other duties, similar to *invocta et illata* in urban tenements.

1683. *December.* MUIRE against The LORD LYON.

M'LEOD of Ashint having freighted William Muire's ship from Lochinvar to Hamburgh, with a loading of beef, tallow, &c. and to return with a loading of other goods, which Ashint should put on board in Hamburgh; and Ashint was obliged to pay L. 3 Sterling for each last of outward loading, and did give bond for L. 1004, payable at the city of Hamburgh, and another bond for re-

lieving him of the excise of 200 bolls of French salt, and the ship, by distress of weather, being driven into the harbour of Burntisland, and the deceast Lord Lyon having seized upon the goods for payment of a debt due to him by the Laird of Ashint, and the skipper having pursued a declarator against the Lord Lyon, as representing his father, that the loading intromitted with by his father might be declared liable to the pursuer for his freight, and for the bond of L. 1004 that was granted for the price of the lasts, and the other bond for the excise of the salt, which was employed for curing and salting the beef, as being tacitly hypothecated for the same; *alleged* for the defender, That he could not be liable for the freight, nor for the other bonds, upon the account of any tacit hypothecation, because his father had lawfully pointed the goods for a debt due by Ashint, to whom they belonged; and it does not appear that the bond for L. 1004 was granted for the price of the lasts, or that the salt was employed for curing of the beef. *Replied*, That the pursuer had a tacit hypothecation of all the goods put on board the ship, for his freight, custom, excise, and all other duties, charges, and expenses, that he gives out upon the account of the loading, in the same manner that the plenishing of a house, and the corns and other goods of a tenement are hypothecated to the master for a year's rent. THE LORDS found, That the pursuer had an hypothec for the freight, custom, and excise, and likewise for the *lucrum* and damage sustained by him; and found the defender liable for the same; but appointed the Lord Lyon to be heard upon that point, how far abatement ought to be granted of the freight, because the full voyage was not plyed.

Fol. Dic. v. 1. p. 419. Sir P. Home, MS. v. 1. No 507.

1708. Jan. 6.

ALEXANDER SANDS and other Seamen in Prestonpans, *against* WALTER SCOTT, Merchant in Dalkeith.

ALEXANDER SANDS and others, having obtained decret before the Admiral, against Walter Scot, as owner of the cargo of a ship navigated by them, and not having paid the freight; he raised suspension and reduction thereof, upon this ground, That the judge committed iniquity in finding him liable for the seamen's wages, because our law knows no hypothecation that seamen have for their wages, on goods aboard belonging to other persons than the skipper and owners of the ship, with whom they contract; and *esto*, they had such a hypothec, yet the suspender having received and disposed of the goods brought home, unaffected by diligence, the seamen can have no interest therein; otherwise merchants and traders might be ruined by processes at the instance of such seamen for their wages, out of cargoes thirty-nine years back.

Answered for the chargers; by the law of all nations, goods imported in ships upon charter-party, are liable for payment of the freight, and such as are

No 64.

No 65.
Seamens wages not a debt affecting the ship or the cargo, but affect the freight.