

No 1.

Norway and Indian voyages, is reputed merchandize, as well as other fungibles; and the most part of cargoes carried from Europe to the Indies consist of dollars; and the *Lex Rhodia* brings money as well as other goods in contribution upon gross average. Again, the skipper's receipt was truly a bill of lading, *mutatis mutandis secundum subjectam materiam*; though it bear not, 'that the stock purse was shipped in good order, and well conditioned, and to be delivered in the like good order,' which had been incongruous: And though the receipt obliges only the granter to be countable for the money at meeting, that did not free him of his duty of *vectura* as a skipper; and not to find the suspender liable in this case, would have an evil consequence upon commerce.

*Replied* for the suspenders; The Roman edict of *Nautæ Caupones Stabularii, &c.* cannot take place here, in respect the skipper was not *tali negotio præpositus* by the exercitors: And the chargers who followed his faith as to the money given him to buy goods, must pursue him not as *nauta*, but *tanquam quilibet*, as accords. 'Tis but trifling to extend a sum of money for which the granter was countable, to a bill of lading by which the *individuum corpus* is to be delivered *in specie*: It might with the like reason be contended, that a person might alienate his heritage by testament as well as by disposition, there being little difference but *mutatis mutandis*. The suspending of the letters will not discourage commerce; but only be a rule to merchants how to freight ships fairly hereafter, by not exporting money contrary to law, Act 11, Session 3, Parliament 1. Charles II.; or endeavouring to ruin owners of ships by private pactions with the skippers.

THE LORDS sustained this reason of suspension and reduction, that the skipper was not *huic negotio præpositus*, and that the receipt for the money was not granted by him as skipper, but as one whom the charger trusted with so much money, which could not oblige the owners.

*Forbes, p. 209.*

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1732. July 25.

No 2.

WILLIAM ROGERS Merchant in Virginia *against* CATHCART and KER.

CONSTITUENTS found liable to pay money borrowed by their supercargo, though neither did his commission bear any express power to borrow money, nor was it applied to their behoof, See APPENDIX.

*Fol. Dic. v. 1. p. 280.*

3.

1750. January 3. SIMPSON *against* M'TIRIE and ROBERTSON.

WHERE a master is empowered to let out the ship, he is entitled to demand payment of, and to discharge the freight; but the owners are not obliged to al-