

Culross, and a special grant to Lord Kincardine. A grant of the sea-shore will convey wreck and ware. By the Roman law the shore was *res nullius*; but this is not modern law. We follow the constitution of the Emperor Frederic I. The only difficulty is from the prior grant. If Lord Kincardine had been in possession, and the town not, I would have preferred him: but the grant to the town may comprehend what is within the sea-mark, and the town has been in possession.

PITFOUR. The town of Culross needs no prescription: its right is preferable, and carries the sea-ware. As to the question of nuisance, that depends upon the distance.

JUSTICE-CLERK. The use of the sea-ware, by burning kelp, is new. What is a trifling addition to the revenue may do great damage to the inhabitants. I doubt whether the right and possession will authorise an inverting of the mode of possession. The house of Culross is within the royalty, and so the proprietor may here argue for his own behoof as an inhabitant.

On the 14th June 1769, "The Lords decerned and declared, with exception as to the shore opposite to Pretty Common and St Mungo."

*Act. G. Haldane. Alt. J. Boswel. Reporter, Justice-Clerk.*

— N.B. As there was no proof of the nuisance, the question concerning it was not understood to be before the Court.

1769. June 15. JAMES SCRIMGEOUR *against* MESSRS ALEXANDER and SONS.

(*Faculty Collection, IV. 172; Dictionary, 3955.*)

#### EXERCITOR.—AFFREIGHTMENT.

##### Powers of a Ship-Master.

GARDENSTON. This is a mercantile case, and I would wish light from merchants of eminence unconnected with either party. The owners of the ship undertake a voyage, under an option between one port and another. The option was made, and the ship sailed without objection as to the late day; so that is out of the question. The purpose of the voyage was afterwards disappointed, without any blame on either party. In such an emergency, the discretionary powers devolve on the master, and his act binds the owners. It was judicious in him to make the new contract: in it he was assisted by the assurances of Mr John Alexander: events and accidents he could not foresee. The ship was first distressed by bad weather, and afterwards detained, in consequence of popular commotions in Carolina. Neither party is answerable for this, according to any liberal ideas of merchant law.

KAIMES. If the ship had been unexpectedly detained at the original place of

destination, the owners would have suffered the damages. I cannot think that the master of a ship may alter the voyage at pleasure. There is a good deal of equity here as to the master. The navigation of the new voyage was not more hazardous. The master might alter, upon taking proper precautions; and so he did, by obliging Mr John Alexander to warrant all damages. The question is, Whether the damages here incurred be within the obligation?—And I think that they are.

KENNET. Messrs Alexander were in fault by not having the sugars ready. This occasioned the deviation; and Mr John Alexander, Grenadas, became bound for the damages.

BARJARG. The letter from Mr John Alexander relates to all damages.

JUSTICE-CLERK. The principles of the petition are solid, if they will apply to the present case. After the option of the voyage was once made, the affreighters had nothing to do but to perform the voyage, and, after waiting the stipulated time, to take a protest and return home. This would have entitled them to the freight covenanted. It was not discretionary to the master to undertake a voyage quite different. The master seems to have been sensible of the loss which might accrue to Messrs Alexander from paying freight for an empty ship; and, therefore, in order to accommodate them, he enters into another contract, but, at the same time, takes an obligation to indemnify, which will answer as to every loss.

AUCHINLECK. There was no obligation on the master to go to Carolina. Had he gone thither without an obligation to indemnify, he would have been liable for the accidental disasters arising on the voyage.

ELLIOCK. I think that the Messrs Alexander came in the place of insurers; and that insurers would not have been liable for the unforeseen detention at Carolina.

On the 2d March 1769, The Lords found Messrs Alexander liable for the damage arising from the ship being detained at Carolina.

*Act.* A. Lockhart. *Att.* W. Craig. *Reporter,* Pitfour. *Diss.* Elliock, Gardenston.

1769. June 21. MRS MARGARET LAURIE of Redcastle *against* ALEXANDER SPALDING of Holm.

#### BONA FIDE CONSUMPTION.

From what period a *bona fide* possessor is accountable?

[*Faculty Collection, VI. 347; Dictionary, 1764.*]

MONBODDO. The case of this purchaser exceedingly favourable; for he in effect purchased upon an interlocutor of the Court. I must, however, find the