

low payments made to an input master. And in this case, the payments made by the freighters to the input master were allowed ~~only~~ upon account of the owners having homologated the payments.

*Fol. Dic. v. 2. p. 193. Kilkerran, (MARITIME LAW.) No 1. p. 343.*

No 3.

1769. March 2.

JAMES SCRIMGEOUR and SON *against* MESSRS WILLIAM ALEXANDER and SONS.

WILLIAM ALEXANDER and Sons having freighted a vessel from James Scrimgeour and Son merchants in Borrowstounness, for Grenada in the West Indies, it happened, that, by the time of her arrival there, the whole sugars in the island had already been put on board other ships, and that none was to be had for her loading. In this emergency, by the advice of Messrs Alexanders' correspondent, the master sailed for Cape Fear, in North Carolina, in order take in a cargo of tar; but was for some time detained by the disturbances which had happened upon occasion of the stamp-act.

In a reduction of a decree of the Judge of the High Court of Admiralty, finding the freighters not liable in demurrage, on account of that detention, it was *pleaded* for the owners, That, whatever powers of administration the master might have in the course of a voyage, authorised by them, he was not entitled to alter the destination of the ship, more than he would be to navigate her all over the globe, without their knowledge or consent. That, by presuming to change the voyage fixed by charter-party, he brought upon himself the risk of every damage, how accidental soever, the ship might sustain in the course of that deviation; but that he had taken care to avoid this obligation, and thrown it upon the defenders, by taking their correspondent bound 'to come between him and all damages whatever, in consequence of going to Carolina.'

*Answered* for the defenders; The powers of masters of ships are ascertained, not by statute, but by the common law of merchants. They are entitled to freight the ship in foreign parts without orders; to borrow money for her use; nay, even to impignorate her for payment of it: *Laws of Oleron*, art. 1. *Laws of Wisby*, art. 35. By the civil law, the master was considered as coming in place of the owners, who were bound by his contract. And, by the practice of modern nations, the powers of the master are still more extensive; *Voet, de exercit act. num. 3.*

As, therefore, the deviation in the present case exceeded not the master's power, so it was a well judged measure; and unforeseen accidents cannot alter

No 4.

The freighters of a ship, at whose desire the master had undertaken a voyage to a different country from that at first agreed on, were found liable to the owners in damages.

No 4.

the established rule, that the ship must bear her own loss, and the proprietor of the cargo his : See *Ordonn. de Louis XIV. tit. Charter-parties, art. 8.*

Neither is the obligation granted by the defenders' correspondent in the Grenades sufficient to put this case out of the common rule. ' Arrests, restraints, and detentions of all kings, princes, and people,' are part of the dangers expressly provided against by a policy of insurance; but this obligation, being destitute of the necessary solemnities, cannot be equivalent to a policy. The only meaning of it was, to make the master easy by promising to indemnify him, in case the run to Cape Fear should be found to have been an irrational or improper step.

THE LORDS found, ' That the master had no power to alter the destination of the ship, or undertake a new voyage ; and, therefore, found the defenders liable for the delay which happened in consequence of the run to Carolina.'

*Act. Lockhart, Solicitor Dundas.*

*Alt. Maclaurin, W. Craig.*

G. F.

*Fol. Dic. v. 3. p. 194. Fac. Col. No 93. p. 172.*

1783. November 20.

RICHARDSON and Co. *against* STONER, HUNTER, and KER.

No 5.

A purchaser from a shipmaster, of a cargo which the purchaser knew had not arrived at the place of its destination, is liable to the owners in damages.

IN the end of the year 1776, Messrs Richardson and Company of Perth, freighted a ship to carry a cargo of salmon to the market of Venice. The vessel having met with unfavourable weather, had reached the coast of Spain only upon 19th Feb. 1777. On that day she was attacked by a violent storm, which rendered it necessary to throw over board a part of her cargo, and immediately to make for the nearest port, which was that of St Lucar. At that place, having at length refitted his vessel, the shipmaster, doubtful concerning his future conduct, sought the direction of Messrs Stoner and Company, a respectable mercantile house there, to whom he showed his instructions concerning the destination of the voyage. The advice of those gentlemen was, rather to dispose of the cargo in Cadiz, though at an under value, than by proceeding at so late a period to Venice, to run the hazard of losing the benefit of the season of Lent. They likewise offered to execute the sale on his commission in quality of factors, which they afterwards did ; and in their whole proceeding they seemed to have considered themselves as conferring a benefit on the Scottish merchants.

The price procured at Cadiz being greatly inferior to that which was expected to be obtained in the market of Venice, Richardson and Company, on account of that interference, instituted, in the High Court of Admiralty, an action of damages against Stoner and Company, in which the Judge-Admiral pronounced a decree in favour of the latter. That judgment having been brought