

No 28. THE COURT laid out of view the events preceding the ship's departure from New York ; and found, ' That in this case the insured was not entitled to abandon the ship on account of the second capture ; and that the insurer was only liable for a partial loss ; and therefore assoilzied from the reasons of reduction.'

Lord Ordinary, *Gardenston.*

Act. *Ilay Campbell.*

Alt. *Blair.*

C.

Fol. Dic. v. 3. p. 334. Fac. Col. No 103. p. 195.

1786. *June 16.*

GAVIN KEMPT and COMPANY *against* WILLIAM GLEN, and Others.

No 29.
Whether an
abandon may
not be made
by the insured,
when
only a part of
the goods is
proved to
have suffered
damage.

CERTAIN goods belonging to Gavin Kempt and Company, were insured by William Glen and others, on a voyage from the river Clyde to Antigua. The ship which was to carry them sailed from Greenock on 18th November 1782.

On 7th December, the ship was overset in a gale of wind ; but soon was brought to rights, and proceeded on the voyage.

On 24th January following, the ship was captured by the enemy ; she was retaken on 26th ; and on 29th arrived at the place of destination in Antigua.

Afterwards, in consequence of an application in behalf of the owners, the goods were sold by authority of the Admiral. No regular appreciation was made ; and from the account of sales, a very few articles appeared to have been damaged. But the prices fell more than 50 per cent. below the insured values.

The owners brought their action against the underwriters, as if the loss had been a total one ; and

Pleaded ; The object of insurance on any adventure, is to protect the party insured from every disadvantage to which his property would otherwise have been exposed. Whenever, therefore, the loss has been such as renders the adventure no longer worth his attention, he is permitted to abandon his property to the underwriters, and to betake himself to the indemnification provided in his favour by the policy. This, then, the pursuers were here warranted to do ; their goods having been so depreciated, either by the damage occasioned by the storm, or in consequence of the capture by the enemy, as to be sold at less than a half of their original value.

Answered for the defenders ; Such a surrender can only take place when the goods insured have never reached their destined port, or when so material a delay has intervened, as entirely disappointed the purpose of the voyage. In those cases, the adventure covered by the policy having essentially failed, the loss may be justly deemed a total one ; and a general abandonment has been allowed, as the most expeditious, as well as the most accurate method of adjusting matters between the parties.

But where only a small part of the cargo has suffered damage, whether from a temporary capture, or from any other cause, a very different practice does and ought to prevail. The particular articles damaged alone, after being regularly valued by the Judge-Admiral of the place, are to be exposed to sale, and the insurers are obliged so far to make up the loss.

No 29.

There cannot be the least pretence, in such a case, for abandoning those parts of the cargo which, according to the condition of the policy, have arrived in safety at their place of destination. Should the prices of these fall below the values specified in the insurance, this must proceed either from an over valuation, or from a fall in the markets; the former being a fraudulent act on the part of the insured, from which he could derive no advantage, while the loss occasioned by the latter would not fall within the agreement. *Fac. Col. 1st February 1780, Edmonston contra Jackson, No 28. p. 7112.*

The Court were unanimously of opinion, that matters were to be settled between the parties on the footing of a partial loss; the claim of the pursuers being to be restricted to the loss arising on the articles damaged, and the salvage due to the re-captors.

THE LORDS 'found no sufficient ground proved for a total abandonment; and remitted to the Lord Ordinary to proceed accordingly.'

Reporter, *Lord Eskgrove.* Act. *Solicitor-General.* Alt. *Rolland.* Clerk, *Menzies.*
C. *Fol. Dic. v. 3. p. 334.* *Fac. Col. No 272. p. 419.*

1798. February 6. ROBERT YOUNG and Others against ROBERT DEAS.

ROBERT YOUNG and others, in 1792, insured against loss to the extent of L. 300, on a ship belonging to Robert Deas, for a voyage from Wemyss to Dundee, and to return, by a policy in which the ship was valued at L. 400.

The vessel was stranded on a sand bank on her way to Dundee; but after she had lain on the sand for several days, and part of her cargo was unloaded, she got off and arrived at Dundee.

Deas immediately informed the underwriters of what had happened. A correspondence ensued; the vessel was surveyed; and it appeared that L. 300 would be required to put her in a state of complete repair.

The underwriters refused to pay any part of this sum, alleging, that the vessel was not sea-worthy when she sailed from Wemyss, or at least that her present state was owing, not to the stranding, but to her having been previously out of repair.

Upon this Deas brought an action before the Judge-Admiral, concluding, that the underwriters should pay L. 225, as three-fourths of the damage sustained by the vessel, with the same proportion of salvage and other charges.

No 30.
When a ship is insured as of a certain value, and a loss takes place, which entitles the owners to abandon her, they are entitled to recover the whole sum insured; and it is not competent for the underwriters to prove that the ship was overvalued in the policy, or that the loss arose from her being