

argued, so that forty-nine out of fifty were brought for delay. Delay was one of the greatest mischiefs in the administration of justice; and as far as that could be checked by giving exemplary costs, their Lordships would be disposed so to check it. But let it not be thought that, in a case where there were merits, he wished to prevent its being considered and reconsidered again and again, that they might be sure they were right; what he meant to say was this, that that House must not be employed as an instrument in doing what was gross injustice.

Nov. 30, 1814.

ERROR.—
FORM OF
JUDGT. ON
DEMR. UNDER
STAT. 8, 9
GUL. 3. S. 8.

Judgment affirmed with (including interest) 350*l.* costs.

Dec. 1, 1814.

Agent for Plt. in error, _____
Agent for Deft. in error, GREY.

SCOTLAND.

APPEAL FROM THE COURT OF SESSION, (2D DIV.)

PARKER AND OTHERS—*Appellants.*
POTTS AND OTHERS—*Respondents.*

WHEN a ship, soon after her sailing on a voyage insured, is found to be unfit for sea, the question whether or not she was sea-worthy at the commencement of the risk, or the voyage, (when not otherwise ascertained,) must be decided by rational inference from the circumstances.

Feb. 15, 1815.

INSURANCE.—
SEA-WORTHINESS.

A ship is *prima facie* to be deemed sea-worthy. But if it is found soon after her sailing that she is not so sound, without adequate cause by stress of weather, or otherwise, to

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INSURANCE.
—SEA-WORTHINESS.

account for it, the rational inference is that, notwithstanding appearances, she was not sea-worthy.

If a ship is sea-worthy at the time of her sailing, however soon after she may become otherwise, the warranty is complied with. (*Watson v. Clark*, 344, ante.)

INSURANCE, valued policy, on freight of ship *La Gloire*, French-built, sharp and deep between decks, standing A. 1. in Lloyd's Book, "beginning the adventure at Honduras, until the said ship with her goods and merchandises should be arrived in London." The vessel had sailed in ballast from Bristol to Honduras, where she remained about five months, taking in a cargo of mahogany and logwood, during which period she two or three times grounded, but was got off without any material apparent damage. She sailed from Honduras on 19th October, 1804, and the next day was found to be leaky, the leak increasing till on the 27th she was making $3\frac{1}{2}$ feet water per hour. On the 30th some of the crew remonstrated, and on the 31st the master bore away in distress for Montego Bay, Jamaica. From thence, on the 7th November; he wrote to the owners, stating, "The night after we left the quay, we fell in with a gale from the north-west, which strained the ship so much that she made $10\frac{1}{2}$ inches water in the hour, but which I considered to be occasioned by the ship plunging in a head sea, and was in hopes that, as the gale subsided, the leak would take up, but was unfortunately deceived. However I still persevered in keeping the sea, but another

Master's letters.

“ gale coming on, on the 27th the vessel strained
 “ to that degree that I was dubious, of being able
 “ to keep her afloat.” On the 3d of December, he
 again wrote, stating that he had discharged his
 cargo, and was preparing for a survey. “ In closely
 “ examining the ship I find her in a very bad state;
 “ several of her beams are gone in two or three
 “ places; her fore and aft ceilings are mostly sprung;
 “ and the beams in general sunk four or five
 “ inches. She continues to make 18 inches of water
 “ an hour from a leak not yet discovered, and her
 “ copper has suffered considerably from the ship’s
 “ working. I shall not attempt to anticipate the
 “ opinion of the gentlemen that may form the survey,
 “ but shall take special care that they are of the
 “ greatest respectability that can be procured.”
 The ship was accordingly surveyed, and the sur-
 veyors reported, “ we find her to be copper-sheathed
 “ and iron fastened; that those fastenings are de-
 “ cayed; that three of her beams are broken, the
 “ main beam in three places; that she is making at
 “ the rate of 18 inches of water per hour, which
 “ we consider does not proceed from a single leak,
 “ but from the loose state of the ship throughout;
 “ she has evidently spread; and that she has not
 “ to support her lower deck any knees, either fore
 “ or aft or otherwise; and we are of opinion that
 “ her upper works have alone kept her together.
 “ We are therefore unanimously of opinion that
 “ the said ship is unfit for sea.” The ship-master
 and agent, without any farther proceeding, then
 sold the vessel for 642*l.* as a wreck; and the pur-
 chaser, having repaired her, upon another survey

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INSURANCE.
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THINESS.

Surveyors' re-
port.

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INSURANCE.
SEA-WORTHINESS.

procured a more favourable report, "that the ship
"was perfectly tight and secure, and capable of
"carrying a cargo of West India produce to any
"port of Europe." A cargo of sugar was accordingly put on board, and the vessel having put to sea it was found, on the same day on which she sailed, that there were three feet water in the hold, and the next day the leak increasing to four feet, the crew made for St. Lucia, the nearest harbour, where the vessel was hove down, and surveyed two or three times, and finally condemned as unfit for sea. In the report on the last survey it was said, "we are of opinion that the defective and injured condition of the ship has been occasioned by a great strain of heaving down, and not in any degree of decay or rottenness of her materials."

Action.—Defence, want of sea-worthiness.

An action was raised in the Admiralty Court against the underwriters, who refused payment, and defended on the plea that the ship was not seaworthy when she sailed from Honduras. The Judge Admiral repelled the defences on the ground of the decisions of the Court of Session in the cases of the *Midsummer Blossom* and *Flora*; and upon suspension the Lord Ordinary and C. of S. also gave judgment against the underwriters, who thereupon appealed to the House of Lords. The cases of *Munro v. Vandam*, *Horncastle v. Stuart*, 7 East. 400. and *Concordia of Greenock*, Dom. Proc. 1809, were cited below.

Park and *Romilly* (for Appellants). The first report having stated that the fastenings were of iron and that these were decayed, the beams

broken, no knees to support the lower deck, (on which, from the construction of the ship, great part of the heavy cargo of mahogany and logwood was stowed,) the general loose condition of the ship, &c., one would have thought that the case was there closed. The question seemed to be whether the doctrine of sea-worthiness was any longer to stand. In the case of the *Mills frigate* the decay of the iron fastenings, and consequent loose state of the timbers, were held sufficient to establish the non-sea-worthiness of the ship at the time of sailing, though not discovered till long after; and in a late case, *Watt v. Morris*, 1 Dow, 32. where the only point was the want of knees, this House had decided that the vessel was not sea-worthy. The groundings at Honduras had not been mentioned in the master's letter to the owners, and the attributing the state of the vessel to this cause was an after-thought. It had long been established that, though the insurance was *at* and *from*, the vessel must be sea-worthy at the time of her sailing, which was supported by reasons of public policy, as this produced a greater attention to the state of the ship and the safety of the seamen. But it seemed to be admitted that the ship was not sea-worthy at the time of her sailing; and the decision in the Court below appeared to turn upon this, that if the vessel was sea-worthy while *at* Honduras it mattered not though she were otherwise when she sailed *from* &c. provided the want of sea-worthiness was unknown to the master.

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INSURANCE.
SEA-WORTHINESS.Fac. Coll. 5th
June, 1810.

Marshall and *Harrison* (for Respondents). This

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THINESS.

was a valued policy on the freight, and the whole risk commenced the moment any part of the cargo was put on board. It appeared that soon after she sailed she encountered a heavy sea and tempestuous weather, and that circumstance might be considered as the cause of her inability to perform the voyage. There was nothing in the objection stated in Appellant's case, that the ship had been sold without an order from the Vice-Admiralty Court. In that particular the parties were left to do as they could. (*Mr. Serjt. Marshall*. His book, 2d Ed. vol. i. p. 162, had stood in the way of the Appellants below, as he had there stated that the ultimate decision in the case of the *Mills frigate* had been against the underwriters; but upon subsequent inquiry he found he had been misled as to the judgment in the Exchequer Chamber, so that the case as now reported was the true case. *Lord Eldon* (C.) Sometimes the Court of K. B. misunderstood the Exchequer Chamber, as appeared from Willes' reports.) As to the want of knees, French vessels were held together by a different construction from ours, and many of them were good ships without any knees at all; and so this vessel had been considered, as appeared from the marks, A. 1. in Lloyd's Book, A. denoting the hull, and 1. the rigging, to be of the best description.

Fitzgerald v.
Pôle, Willes,
641.

Park (in reply). A decision of this House was better than a lecture on French naval architecture. The Lloyd's surveyor could only examine a vessel on the outside, and so the ship was put down in the Book, as he had occasion to know from an

examination of the surveyor a few weeks ago at Guildhall. They had no right to open up a ship so as to know her condition with certainty. In the case of the *Midsummer Blossom* one of their Lordships (Redesdale) now in the House had said that "*he had always understood it to be a clear and distinct rule of law that if a vessel in a short time after leaving the port where the voyage commenced was obliged to return, the presumption was that she had not been seaworthy when the voyage began, and that the ONUS PROBANDI was thrown on the assured,*" and another of their Lordships (Eldon C.) had said, "*though he did not pretend to much skill in nautical matters, he had been in a situation where he had an opportunity of hearing more of the conversation of seamen than perhaps any Judge on the Bench, and if he were on board a collier he should not be much afraid though he heard the seamen talking of fresh gales and squally weather:*" exactly the case here. That too was a policy *at and from Honduras*, and the judgment for the underwriters rested on the ground that the vessel was not sea-worthy at *the time of her sailing*. Lord Kenyon also, in the case of *Forbes v. Wilson*, and his successor, in *Hibbert v. Martin*, had held it to be the rule that the ship must be sea-worthy with reference to the commencement of the voyage insured.

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INSURANCE.
—SEA-WORTHINESS.Watson v.
Clark, 1 Dow,
348.

Marshall prayed in aid the doctrine in the case of the *Midsummer Blossom*, where one of their Lordships (Eldon C.) "*held it to be clear*

Forbes v.
Wilson, Park.
Hibbert v.
Martin,
Camp. 538.Watson v.
Clark, 1 Dow,
344.

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THINESS.

“that if a ship was sea-worthy at the commence-
ment of the voyage, though she became otherwise
only one hour after, the warranty was complied
with.” The doctrine was sound and good, and
strictly applicable to the present case.

Judgment.

If a ship is sea-
worthy at the
time of her
sailing the
warranty is
complied
with, and it
matters not
how soon after
she becomes
otherwise.

Lord Eldon (C.) This was one of those cases which were always very distressing to the mind of the Judge here, as, in his view of it, it was merely a question of fact, was the ship sea-worthy or not? He repeated the doctrine supposed to have been laid down in the case of the *Midsummer Blossom*, that if a ship was sea-worthy at the time of her sailing, it mattered not how soon after she became otherwise. With respect to the French naval architecture, he could not admit that as an answer to the English doctrine of sea-worthiness. The ship sailed from Bristol, he believed in ballast, and it did not appear in what condition she was afterwards till her arrival at Honduras. While she lay at Honduras the Appellants subscribed a policy of insurance upon her freight, to the amount of 1000*l.*: “beginning the adventure at Honduras, until the said ship with her goods and merchandises should be arrived in London,” which was represented as an insurance *at and from* Honduras, until her arrival at London. It appeared that there had been some difference below, as to when the risk commenced in an insurance on the freight; but he only noticed that for the purpose of saying that he did not enter into it at all. Supposing, for the sake of the argument, that the risk commenced the moment any part of the cargo was put on board,

without admitting that or denying it, was the ship sea-worthy upon the state of the case so put? Whether she was or was not must in this case be deduced by rational inference from the circumstances. As to the condition of the ship while at Honduras they only knew that she wanted knees and that from her construction it was necessary to stow a considerable part of the cargo between decks, and that she began to make water at the rate of $2\frac{1}{2}$ inches in the hour. He admitted the doctrine, in the case of the *Midsummer Blossom*, that *prima facie* a ship was to be deemed sea-worthy, but if without adequate cause by stress of weather, or otherwise intervening it was found that she was not so sound, then the rational inference was that, notwithstanding the appearance, she had not been sea-worthy. Then while at Honduras she made no more than $2\frac{1}{2}$ inches water in the hour, which might proceed from causes not sufficient to frighten a landsman if they were explained to him. But having sailed on the 19th, she on the 21st began to make nearly eleven inches water in the hour, and at an early period $3\frac{1}{2}$ feet. The master then made for Montego Bay in distress, and very honestly represented the condition of the vessel, stating that he was preparing for a survey, and that he would take care that the surveyors should be persons of the first respectability that could be procured, and a survey so made he considered as evidence preferable to that of the subsequent surveys. Now what was the report upon that survey? "that the vessel was iron-fastened, and that these fastenings were decayed," to the full as respectable evidence with respect to the fastenings

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INSURANCE.
—SEA-WORTHINESS.

A vessel to be deemed *prima facie* sea-worthy; but if, without adequate cause intervening, she is soon after found to be otherwise, the rational inference is that she had not been sea-worthy.

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THINESS.

as that of the subsequent surveys, “ that three of
 “ the beams were broken, the main beam in three
 “ places; that she was making at the rate of eighteen
 “ inches of water per hour, which they considered
 “ as not proceeding from a single leak, but from
 “ the loose state of the ship throughout; that she
 “ had evidently spread; that she had not to sup-
 “ port her lower deck any knees, either fore or aft,
 “ or otherwise; and they were of opinion that her
 “ upper works had alone kept her together.” Now
 as to the question whether knees were necessary,
 it was at any rate proper to consider whether the
 cargo was of a description which peculiarly required
 knees. But they need not puzzle themselves about
 that, as they had only to consider whether they
 could account for the loose state of the ship with-
 out connecting with it the want of knees, as one
 of the causes, and whether after she left Honduras
 any thing happened which could account for the
 state in which she was afterwards found to be, if
 she had been in sense of law sea-worthy even
 when *at* Honduras Bay. Without going farther
 into the evidence unless any noble Lord differed
 from him, the conclusion he came to was that she
 was not sea-worthy. The first report was an an-
 swer to the question whether the vessel was sea-
 worthy when *at* Honduras. The only question is
 whether this ship was sea-worthy, and I think not.

Judgment of the Court below *reversed*.

Agent for Appellants, CAMPBELL.
 Agents for Respondents, WADESON, BARLOW, and
 GROSVENOR.