

ON APPEALS AND WRITS OF ERROR.

directions in that decree, such as, the issuing the commission of perambulation, &c., and if so the Respondents ought to be protected against the expense which an earlier appeal would have prevented.

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AGREEMENT.  
—SPEC. PER.

*Decree of the Court of Exchequer accordingly REVERSED.—Appellants to pay Respondents their costs subsequent to the decree, and the bills dismissed without costs.*

Agent for Appellants, GIBBS.  
Agent for Respondents, PALMER.

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SCOTLAND.

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

WILKIE and others—*Appellants*.  
GEDDES—*Respondent*.

UNDER the implied warranty of the assured, as to sea-worthiness, it is necessary not only that the hull of the vessel be tight, staunch, and strong, but that the ship be furnished with ground tackling sufficient to encounter the ordinary perils of the sea; and therefore, where it appeared that the best bower anchor, and the cable of the small bower anchor, were defective, the vessel was held not to be sea-worthy.

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INSURANCE.  
—SEA-WORTHINESS.

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THE Appellants underwrote a policy of insurance on the ship *Mary*, of Stromness, for a voyage

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from Grangemouth, in the Frith of Forth, to Got-  
tenburgh, and thence back to her port of discharge  
in the Forth, with liberty to join convoy in Leith  
Roads. While the vessel, after sailing from Grange-  
mouth on her outward voyage, was at anchor in  
Leith Roads, a strong breeze sprang up, and the  
ship began to drive. She was then riding with her  
best bower anchor only, but soon after let go her  
small bower anchor, the cable of which appeared  
to have parted almost as soon as the anchor was  
dropped, and hung loose from the side of the ship.  
The master, under pretence of running into Leith  
Harbour, which it was impossible to do, as it was  
then not more than two hours after low water, cut  
both cables. The vessel took the ground near the  
beacon rock, at the entrance of Leith Harbour,  
and sustained considerable damage. A claim of  
978*l.* having been made for repairing her, the un-  
derwriters resisted, on the grounds that she was  
not sea-worthy when she sailed on the voyage  
insured:—1st, Because the cable of the small bower  
anchor was at that time so worn and decayed as to  
be unfit for service;—2d, Because the best bower  
anchor was not of a proper construction, nor of  
sufficient weight. The Respondent brought his  
action in the Admiralty Court, and the Judge-ad-  
miral allowed a proof. The result of the evidence  
appeared to be that the small bower anchor cable  
had been much rubbed and injured, and that pieces  
of it had been on different occasions cut off on that  
account, previous to the commencement of the  
voyage insured; and that the best bower anchor  
was too light and short in the shank for a vessel of

the *Mary's* tonnage. The Judge-admiral and the Court of Session however, having seen it in a different view, decided in favour of the assured, and the underwriters appealed.

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*Lord Eldon* (C.) This was an action on a policy of insurance, for the amount of repairs done to a ship, in consequence of damage sustained by her driving from her anchorage, and taking the ground after the commencement of the risk. And the defence was, that the ship was not sea-worthy; and he need not inform their Lordships that there was an implied warranty in every such contract, that the ship was sea-worthy at the commencement of the risk. There might be evidence as to this from circumstances, at or before her sailing, or circumstances occurring after she sailed disabling her to proceed, but which would not have had that effect, if the vessel had been sea-worthy at the commencement of the risk, that is, at the time of her sailing on the voyage insured. Every ship ought to be sufficiently provided in cables and anchors, and the only question here was, whether or not this vessel had been so furnished. On the general principle nothing was more clear than that the Courts required not only that the ship itself should be tight, staunch, and strong, but that it should be furnished with sufficient ground tackle to encounter the ordinary perils of the sea, and another principle was that the Courts would require the evidence to be clear in the affirmative, as the interests of commerce and a due regard to the lives of the seamen were so much concerned, that this

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Judgment.

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point should be strictly made out. Here they had only to decide upon the matter of fact, whether or no the vessel had been provided with sufficient tackle; and his belief was, that if the case had been submitted to a jury, they would have said that upon this evidence it did not appear that she had been so provided. That was his opinion, and he therefore thought that the judgment given below ought to be *reversed*.

*Lord Redesdale.* He agreed in that opinion. Unless the assured were bound to take care that the vessel was in every respect sea-worthy, the consequence would be most mischievous; for the effect of insurance would be to render those chiefly interested much more careless about the condition of the ship, and the lives of those engaged in navigating her. From the evidence in the present case it appeared not only that the best bower anchor was too light, but that the cable of the small bower anchor was wholly defective.

Judgment of the Court below *reversed*.

Agent for Appellants, BERRY.

Agent for Respondent, MUNDELL.