examine the adverse party himself; and that that was a circumstance which operated upon the minds of the Court, to direct, in this second instance, the ordinary mode of taking proof in the Courts of Scotland, instead of sending it to a jury. However, whether that may have been the operating motive in the mind of the Court of Session, it is not necessary for us to inquire. The question to be decided by your Lordships is, Whether they had the power in this case of so doing? My Lords, I must confess that it appears to me, from these Acts of Parliament, no reasonable doubt can be entertained that they had the power on the case being brought back to them; and that therefore these interlocutors must be affirmed. When I say these interlocutors must be affirmed, they have certainly been wrong in the words which they introduced into the first interlocutor, of recalling the remit. It appears to me very questionable whether they had the power of so doing; and in the second interlocutor they have found those words unnecessary; but as to the rest of the interlocutor, they adhere to it. The judgment I should propose, therefore, to your Lordships is, to affirm the last interlocutor, and so much of the first interlocutor appealed against as is adhered to in the last interlocutor: I would therefore move your Lordships, that this be the judgment of your Lordships.

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Appellants' Authorities.—55. Geo. III. ch. 42. § 4.; 59. Geo. III. ch. 35. §§ 2, 3. 12. 15.

Respondents' Authorities.—1. Ersk. 2. 7.; Buchanan, March 1754, (7347.); Countess of Loudon, May 28. 1793, (7398.); 59. Geo. III. ch. 35.; Tenant and Company, Jan. 15. 1822, (1. Shaw & Ball. No. 275).

J. RICHARDSON—SPOTTISWOODE and ROBERTSON,—Solicitors.

(Ap. Ca. No. 63.)

JOHN HAY and Others, Appellants.—*Lushington—Shadwell.* No. 49.

AUGUSTUS W. H. LE NEVE and Others, Respondents.—*Solicitor-General Wetherell.*

Reparation—Collision of Ships.—One ship having run down another, and this having been occasioned equally by the fault of both;—Held, (reversing the judgment of the Court of Session), That the owners of the ship which ran down the other were liable only for the one-half of her value, provided that did not exceed the value of their own ship.

THE brig Wells, belonging to the respondents, Le Neve and others, sailed from London on the 18th February 1814, having on board a cargo of logwood, bound for Leith; and on the 28th of that month she arrived in the Firth of Forth; and in conse-

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Lord Gillies.

June 15. 1824. quence of the wind and tide preventing her going farther up, she came to an anchor about three miles to the eastward of the island of Inch-Keith. This island stretches from north to south betwixt the coasts of Mid-Lothian and Fife, and is nearly equidistant from both. Leith Roads are to the south-west of the southermost point of Inch-Keith; and in making for that road-stead vessels almost always bear up along the north or Fife coast, double the north point of Inch-Keith, and then, if the wind be fair, stretch directly to the south into Leith Roads. At the place where the Wells brought up the Firth is from eight to ten miles broad, and is in what is called the *fair-way*.

On the 24th of the same month, the smack Sprightly, belonging to the London and Edinburgh Shipping Company, (of which the appellants were the trustees), sailed from London with a general cargo for Leith. She entered the Firth of Forth about midnight of the 28th, at which time the wind was blowing strongly from the south-west, almost directly against her; a heavy sea was running; and the night was dark and rainy. The captain and the whole crew, with several passengers, were on deck during the night. In proceeding up the Firth, it appeared that the top-mast was struck, the mainsail double-reefed, and that in attempting to stay the vessel she missed stays. With the exception of one man, the crew were occupied in attending to the management of the vessel, and this man was placed towards the bow, (over which the sea broke), to keep a look-out; but he occasionally gave his assistance to the rest of the crew. In beating up against the wind the Sprightly stretched towards the north, and, with a view of tacking, came towards the south, being directly towards the point where the Wells was lying. This was at four o'clock in the morning. No light was aboard of the Wells, and being heavily laden she lay deep in the water, and had all her sails taken in. The only person on deck was the mate, who having perceived the approach of the Sprightly hailed her more than once, but no answer was returned; and when the vessels were within a short distance of each other, he heard an order given on board the Sprightly, 'Head a-weather, bear up, there's a ship 'riding;' and immediately the helm was put hard up. The Sprightly thereupon ran with her starboard bow against the starboard quarter of the Wells, carried away her main-boom and gaff, knocked away the companion, and stove in her starboard quarter. One of the hands jumped on board the Sprightly. The rest took to the boat, and the vessel almost immediately went to the bottom. The Sprightly continued to hover about in

search of those in the boat, who for some time, from the darkness, were unable to discover her, but at last they were taken aboard. June 15. 1824.

An action was then brought by the respondents against the appellants, concluding for damages, in which, after giving their own statement of the facts, they alleged, 'that had those on 'board the said smack Sprightly kept a proper look-out for ships 'at anchor, or had they used the proper means, after the said 'man on board of the Sprightly called out as aforesaid, they might 'have avoided the Wells, and said mischief would not have hap-'pened; and therefore the loss of the said ship and cargo, and 'all the damages thus occasioned to the owners of the Wells and 'her said cargo, is entirely imputable to negligence or improper 'conduct on the part of the master and crew of the said smack 'Sprightly.' This having been denied by the appellants, who alleged that the accident was imputable entirely to the Wells having anchored in the *fair-way* without hanging out a light; and that besides she was so insufficiently anchored that she was actually drifting when the vessels came in contact; and therefore they could not be liable in damages.

The Judge-Admiral (Murray) ordered each party to lodge a condescendence, and thereafter allowed a proof, requiring the appellants 'to bring a correct proof of the precise hour 'when the collision happened, the state of the light at the 'time, and the distance which intervened between the Sprightly 'and the Wells when the latter was first discovered.' And thereafter he found 'it admitted by the pursuers, that they 'had no light in the binnacle of the Wells, the reason of which 'is accounted for; but allowed the defenders to prove, if they can, 'that it was the duty of those on board that vessel, and that it is 'customary so to do, viz. to shew a light when they see a vessel 'in danger of running foul of them through scarcity of light to 'observe her; and allowed the defenders to prove the state and 'condition of the Wells at the time she was run down.' A proof was accordingly taken, on advising which the Judge-Admiral found, 'that the collision of the Sprightly with the Wells, by 'which the latter was sunk, arose from the carelessness in the 'master and ship's company of the Sprightly, and the want of 'that due attention and precaution which was necessary for their 'own preservation and that of other vessels; and therefore found 'the defenders, jointly and severally, liable to the respective pur-'suers for damages and expenses.' Thereafter having resumed consideration of the cause, he held, 'of consent of all parties, that 'the value of the Sprightly was L. 1800 sterling, and the amount

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'of her freight was L.227. 18s. 10d. making together L.2027. '18s. 10d.; found it not denied, and therefore held the respon-'dents as having confessed the value of the Wells to be L.1133. '4s. and that the value of her cargo was L.1983. 8s.; and there-'fore, as the former of these sums, viz. the value of the Sprightly 'and freight, is much less than the latter, the value of the Wells 'and cargo, decerned against the whole defenders, other than 'Captain Sutherland against whom a decree has been already 'given, jointly and severally, for the sum of L.2027. 18s. 10d. 'sterling, and found them jointly and severally liable in ex-'penses; but assoilzied them quoad ultra.' Against these judgments the appellants brought a suspension, and the respondents raised an action of reduction, in so far as they had not been allowed interest on the sums awarded; and both cases having come before Lord Gillies, his Lordship, after allowing an additional proof, reported the case to the Court. On advising informations, their Lordships, on the 14th June 1821, repelled the reasons of suspension, decerned in terms of the reduction, and found the appellants liable in expenses. The appellants then reclaimed, and their Lordships, on advising their petition with answers, found, 'that the decision of the present question between 'the parties depends upon the various degrees of precaution 'which, according to maritime custom, ought to be taken by 'vessels in the relative situation which the Sprightly and Wells 'bore to each other when the accident happened; and with a 'view to obtain authentic information on that subject, the Lords 'direct the agents to furnish the clerk to the process with a 'complete set of the printed papers, and direct the clerk to 'transmit them to Rear-Admiral Sir John Beresford, command-'ing on this station, with a letter requesting him, on the part of 'the Court, to report, in writing, the opinion which the perusal 'of the printed papers so transmitted shall enable him to form 'on the merits of the cause.' In consequence of this remit, Sir John Beresford made a report, addressed to the clerk of Court, which was in these terms:—'I have received your letter of the '2d instant, together with the printed pleadings, and evidence 'adduced by both parties in an action at the instance of the 'proprietors of the late brig Wells against the owners of the 'Sprightly, she having run the former vessel down whilst lying 'at anchor between the north shore of the Firth and the island 'of Inch-Keith; and I have also to acknowledge the receipt of a 'copy of their Lordships' interlocutor, directing the said printed 'pleadings and evidence to be transmitted to me, and requesting

'I would report to the Court, in writing, the opinion which the 'perusal of them might enable me to form respecting the degree 'of precaution which ought to have been taken by both these 'vessels, under the circumstances in which they were respectively 'placed. Having looked over the said pleadings and evidence 'accordingly, and considered the relative situation which the 'Sprightly and Wells bore to each other on the morning of the '1st of March 1814, I am of opinion that blame is attachable to 'both these vessels:—To the Wells, for not having a light in her 'binnacle, or one in a lanthorn in readiness to be shewn to the 'vessels passing near her, particularly as she was lying in a fair-'way. But I think that much more blame is imputable to the 'Sprightly, for not having kept a better look-out when beating 'to windward in such a fair-way, where vessels frequently anchor 'to stop tide: also for not having put the helm hard down in-'stead of hard up, when she saw the Wells; for if she had put 'in stays, she would either have avoided her altogether, or would 'have so much deadened or lost her way, that if they had come 'in contact the concussion could not have been of serious con-'sequence; but by putting her helm hard a-weather, she thereby 'neared the Wells, and her velocity at the same time increasing '(by the act of bearing away), the concussion, therefore, became 'much greater and more dangerous. This negligence and sub-'sequent misconduct of the Sprightly was, in my opinion, the 'great cause of the accident.' On advising this report, the Court, on the 21st of February 1822, 'recalled the interlo-'cutor reclaimed against, and found the petitioners liable in 'two-third parts of the damage, and of the expenses incurred, 'and remitted to the Lord Ordinary to proceed accordingly.' June 15. 1824.

The respondents then lodged a petition, praying for explanation in regard to the interest; and the Court, on the 7th March 1822, 'found the claim for interest applies, in so far as the same 'shall not exceed the value of the Sprightly.'*

Against these judgments the appellants having entered an appeal, the House of Lords found, 'That both ships in this case 'were in fault, and that the whole of the damage sustained by 'the owners of the ship Wells, and of the cargo, which were 'sunk and lost, should be borne equally by the parties; and find, 'therefore, that the appellants are liable to the respondents in 'the sum of L.1535. 16s. one-half of the value of the Wells 'and of her cargo, such half not exceeding the value of the

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* I. Shaw and Ballantine, No. 152.

June 15. 1824. 'Sprightly and her freight. And the Lords further find, that 'the appellants are not liable to pay interest on the said sum of 'L. 1535. 16s.; and that they and the respondents, respectively, 'ought to bear and pay their own expenses of the proceedings: 'And it is therefore ordered and adjudged, that the parts of the 'interlocutors complained of, which are inconsistent with the 'above findings, be reversed: And it is further ordered, that the 'cause be remitted back to the Court of Session, to do in the 'conjoined processes as shall be consistent with this judgment, 'and as shall be just.'

LORD GIFFORD.—My Lords, This is undoubtedly a case of very considerable importance. It is an appeal which arose out of proceedings originally in the Admiralty Court of Scotland, and afterwards in the Court of Session, instituted by the owners of a vessel called the Wells, against the owners of a vessel called the Sprightly, for the damage which the owners of the Wells had sustained, in consequence of that vessel having been run down and sunk, and the property destroyed, by the ships striking. My Lords, the accident happened so long ago as the 1st of March in the year 1814. It appears that the Wells had been endeavouring to make her way into the Firth of Forth, and that she had come to an anchor, in consequence of the state of the weather, in what is termed the fair-way, that is, in that part of the Firth which is constantly navigated by vessels, at some distance from the island of Inch-Keith. It appears that she was there during the night of the last day of February and the 1st day of March, which appears to have been a very blowing night; and whilst she was in this position the Sprightly, which was also making her way up the Firth of Forth, came suddenly upon the Wells, and the Wells was run down and sunk. Fortunately no lives were lost—all the persons were able to make their escape; but the vessel and cargo were lost.

My Lords,—In consequence of this accident a proceeding was instituted by the owners of the ship Wells against the owners of the ship Sprightly, before the Judge-Admiral, and interlocutors pronounced by him, the result of which was making the owners of the ship Sprightly liable to the full extent of the value of the Wells, and of her cargo—limited, however, as that responsibility is by Act of Parliament, to the amount of the value of the ship occasioning the loss, and her freight. The result of that judgment is, that but for that Act of Parliament the owners of the ship Sprightly would have been liable to the whole injury sustained by the ship Wells, the Judge-Admiral being of opinion that the fault rested entirely with the Sprightly.

My Lords,—The cause was removed to the Court of Session; and the Court of Session, after a great deal of inquiry, referred the evidence to Sir John Beresford, the Port Admiral at Leith. Sir John Beresford made a report upon the evidence, and his judgment was,

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that although fault was imputable to both vessels, he thought the greater blame rested on the ship Sprightly. In consequence of this report of Sir John Beresford, and in consequence of certain cases, or rather the dicta in cases, in the Court of Admiralty in this country, the Court of Session came to a decision, altering the decision of the Judge-Admiral, (who had decided that the whole damage should be borne by the ship Sprightly), and in as much as Sir John Beresford had decided that both ships were to blame, though the greater share of blame rested on the Sprightly, they found that the owners of the Sprightly were liable in two-thirds of the damage, under the limitations provided by the Act of Parliament.

My Lords,—This gives rise to a question undoubtedly of very great importance,—I mean the law of the Admiralty. In the Court below two cases were cited, decided by one of the most eminent Judges of this or any period, I mean my Lord Stowell, whose learning and whose accuracy are too well known to need any panegyric—indeed panegyric would be impossible. The first was the case of the Woodrop, Sims, which came before him in 1815, which was of the nature I will now state. 'It was a case of damage at the 'instance of Thomas Potts and George Taylor, the owners of the 'brig Industry, against the above ship the Woodrop, Sims, her tackle,' &c.;—it was by an accident which had happened by collision. In this case the Court called in the assistance of two of the elder brethren of the Trinity-House, acting as assessors to the Court, feeling it to be desirable, as in this case, to obtain the opinion of persons conversant with the nature of the subject. Lord Stowell, then Sir William Scott, states the law thus:—'This is one of those important cases, in which 'the entire loss of a ship and cargo has been occasioned by two vessels 'running foul of each other. There are four possibilities under which 'an accident of this sort may occur. In the first place, It may happen 'without blame being imputable to either party, as where the loss is 'occasioned by a storm, or any other vis major. In that case the mis-'fortune must be borne by the party on whom it happens to light, the 'other not being responsible to him in any degree. Secondly, A mis-'fortune of this kind may arise where both parties are to blame, where 'there has been a want of due diligence or of skill on both sides. In 'such a case the rule of law is, that the loss must be apportioned be-'tween them, as having been occasioned by the fault of both of them. 'Thirdly,' he says, 'It may happen by the misconduct of the suffering 'party only; and then the rule is, that the sufferer must bear his own 'burden. Lastly, It may have been the fault of the ship which ran 'the other down; and in this case the injured party would be entitled 'to an entire compensation from the other.' Now, your Lordships perceive in this case, Sir William Scott lays it down to be the law of the Court of Admiralty, that where a misfortune happens from the want of due diligence or skill on both sides, the loss must be apportioned between them, as having been occasioned by the fault of both.

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My Lords,—The subsequent case, which is reported by Dr Dodson, was a case in which the parties below have been enabled to obtain a very full note (I believe a short-hand note) of the judgment of Lord Stowell. It was the case of the Lord Melville in the year 1816. Sir William Scott pronounced his judgment as follows:—'The Counsel 'having declined to make any further observations, the Court has now 'to decide upon this very melancholy case, for such it is certainly to 'be described, being attended not only with the loss of a valuable 'cargo, but with the destruction, infinitely more precious, of lives, 'produced by the accident, if it may be so described, of one ship 'running foul of another and sinking her. I have had occasion to 'observe, that accidents of this kind may happen in several very dif-'ferent ways. They may happen in a way which amounts to mere 'misfortune, and to nothing else, as where it is produced by the irre-'sistible force of the elements, which human skill and human efforts 'are not able to controul; that is a case of mere misfortune. It may 'happen, secondly, by the misconduct of both parties; there may be 'negligence, or there may be want of skill, as well on the one side as 'the other. And in the former case, where it was the effect of acci-'dent uncontrollable by human skill and industry, then the misfortune 'rests with the party on whom it happens to light; but when it hap-'pened by the common fault of both parties, the ancient rule of the 'Admiralty was, that it should be considered a common loss to which 'they were justly liable. A third way in which it may happen is by 'the default of the crew of the vessel to whom the misfortune has 'occurred: it may be the consequence of their own negligence, of 'their own obstinacy, of their own want of attention,—in which case 'she is to suffer the consequences: or it may happen by the fault alone 'of the vessel which strikes the other,—in which case, however slight 'the misconduct may be that is imputable to this vessel, she is un-'doubtedly answerable for the whole of the consequences.' Your Lordships will perceive, that, according to the note of this case, Lord Stowell there uses this expression,—'The ancient rule of the Admi-'ralty was, that it should be considered a common loss.'

My Lords,—These were the cases cited in the Court of Session, and on these dicta undoubtedly the Court of Session proceeded in the apportionment of the damages. It was argued at your Lordships' Bar, that though any dictum proceeding from that learned person, particularly in such a question, was entitled to the highest weight, yet that no case could be produced in which that law of the Admiralty, if it was the law of the Admiralty, had ever been acted upon,—that no case had been produced in which there had been such an application of it. It was therefore contended, that from the inconveniencies, particularly from its conflicting with another law which prevailed in all Courts, that a party had no right to complain of a loss sustained partly by his own fault, the dictum of my Lord Stowell adopted by the Court of Session could not now be considered as the law of the

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Court of Admiralty; and that in this case, therefore, this interlocutor ought to be reversed. My Lords, it is not my intention to carry your Lordships through the laws of the different European states upon this subject; but undoubtedly I might, with respect to many of them, state, that the law is the same as my Lord Stowell says was the ancient rule of the Admiralty here. The law of Holland, undoubtedly, as cited in Becher, a book of great authority, though the learned author does not concur with those decisions, is the same as laid down by my Lord Stowell to be the law of the Admiralty. In that book, the 4th chapter, nine cases are mentioned, in which the Court of Holland decided, that if both parties are in fault, the loss shall be divided. I observe, Becher himself seems to admit there is a doubt how far that ought to be the law. But, my Lords, we are here on the law of the Admiralty in England; and I must confess, that if no case could be found in which this principle had been applied, where I find a Judge of the authority of Sir William Scott, now Lord Stowell, laying down with great care and caution, (and no man is more careful and cautious in laying down principles than that learned person), I think your Lordships would pause considerably before you said that that which that noble and learned person had laid down as the law of the Admiralty of England was not the law. But, my Lords, I have by that very high authority in that Court been furnished with a note of a case in which he was Counsel, and of which I have been fortunately able to obtain the judgment entered up in the Court of Admiralty; that was the case of the Petersfield against the Judith Randolph, in 1789, decided before a very eminent Judge of that Court, Sir James Marriott, in which case the present Lord Stowell and Sir John Nichol were both Counsel. In that case, the Court had the assistance of two elder brethren of the Trinity-House; and it is very singular, they found that both ships were to blame, but that the Judith Randolph was most to blame; and though they found the Judith Randolph most to blame, they apportioned the loss equally between the two vessels. And, my Lords, in that case, a case was referred to, but which I have been unable to procure, as having been decided by Sir Charles also a very eminent Judge of the Admiralty in the time of Queen Anne, in which he had applied the rule of the Admiralty. I will, as it is very short, read to your Lordships the judgment entered up finally in that case: ‘ For further information and sentence, Captain Hector Rose, ‘ and Captain Henry Hinde Petty, two of the elder brethren of the ‘ Trinity-House, again attended as assessors to the Judge in this cause; ‘ and the Judge having heard the proofs read, and advocates and ‘ proctors on both sides, and likewise the opinion of the said Trinity ‘ brethren, by his interlocutory decree pronounced, that both ships ‘ were in fault, and that the Judith Randolph was most in fault; and ‘ decreed, that the whole damage sustained by the owners of the ship ‘ Petersfield, and her cargo, which was sunk and lost, as well as the ‘ L. 230 damages and expenses given against the ship Petersfield, and

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'the costs of suit here on both sides, be borne equally by the parties 'in this suit;'—(so that this case shews most clearly that my Lord Stowell was right, in one of the cases to which I have referred, in saying this was the ancient rule of the Admiralty);—'and assigned 'for hereon liquidation of damages, and taxation of expenses, the 'third session of next term; and referred the liquidation of the said 'damages and expenses to the Registrar, taking to his assistance two 'merchants; and assigned Heseltine to bring in a schedule of damages 'by the first day of next term, and both proctors to bring in their bill 'and costs of suit in this Court by the same time.—Present, Heseltine 'and Bush for Jenner.' I say, my Lords, you have here the authority of a decided case in the Court of Admiralty for the application of the principle which has been applied to this case.

It affords me great satisfaction to have got possession of this case in the Court of Admiralty, because at the Bar it was undoubtedly stated, both by the learned civilian who argued for the appellants, and the learned civilian who argued for the respondent, that they were not aware of any case in which that rule had been laid down. But it was argued, that whether such authority was found or not, the authority of Lord Stowell ought to decide that question: but it is satisfactory to find, that in addition, if it were necessary to the authority of that noble and learned Lord, you are deciding upon a point which has already received the express decision of the Court of Admiralty, the rule having been already applied under circumstances similar to those which occur in the present case. My Lords, it also gives me great satisfaction to state to your Lordships, that I have had the advantage of a communication with that noble and very learned person upon the subject of this case, feeling it to be my duty, in consequence of the difficulty from its being a branch of the law with which I am not particularly conversant. My Lords, if I felt a hesitation on the dictum pronounced by that noble and learned person, I should still feel great difficulty in advising your Lordships to pronounce against it, after the communication with that noble and learned person, and the authority of the judgment in 1789, with which I have been furnished. I apprehend, that that laid down in the case of the Woodrop, Sims, is established to be the law of the Court of Admiralty, and has been acted upon by the Court: and, my Lords, I have the less difficulty in asking your Lordships to come to a decision of equally apportioning the loss in this case, for your Lordships must have seen, I think, that it would be extremely difficult in this case to balance the degree of negligence in the one and the other.—I think they were, perhaps, equally culpable; and I have no difficulty, therefore, in recommending to your Lordships to apply the judgment of Sir James Marriott in the case of the Judith Randolph. If your Lordships were to take any other rule, one cannot conceive any mode of properly apportioning the loss which the Court of Session have found to have occurred. It might be extremely difficult to regulate the quantum of neglect on the one side and the

other, and to apportion the damages by any other rule; but I have no difficulty in advising your Lordships to come to that decision, because, on a review of the evidence, I was strongly impressed with the negligence on the part of the Wells, in not shewing a light, as Sir John Beresford says she ought to have done, when she saw the Sprightly coming down upon her. At the same time I have no difficulty in saying, there was great negligence on the part of the Sprightly, in not having the look-out she ought to have had, considering the place in which she was. I should therefore take the liberty of moving your Lordships to find, that both ships in this case were in fault, in the language of the judgment in the case of the Judith Randolph; and that the whole damage sustained by the owners of the ship Wells and her cargo, which was sunk and lost, should be borne equally by the parties: that the appellants are therefore liable in the sum of L.1509. 16s. which is not disputed to be one-half of the value of the Wells and her cargo, such half not exceeding the value of the Sprightly and her freight. Your Lordships perceive by the statute to which I also adverted, and it is conceded at the Bar, that the liability of the owners of the Sprightly is limited to the value of the Sprightly and her freight; but inasmuch as it seems the value of one-half of the Wells is much less than the value of the Sprightly, she is liable to the half of the damage. Then I should propose to your Lordships to find, that the appellants are not to pay interest. I do not think, in such a case as this, they ought to be called upon to pay interest upon this sum; and that the respondents and appellants ought to bear respectively their own expenses in the suit. As respects Sir James Marriott's case, the expenses were brought together and divided; it would perhaps be more equitable to say they should each pay their own expenses. Then to reverse such parts of the interlocutor as are inconsistent with their findings, and that the cause should be remitted to the Court of Session, to do in the conjoined processes as shall be consistent with these findings, and shall be just. I will draw out the judgment in form, and will submit it to your Lordships to-morrow morning. June 15. 1824.

Appellants' Authorities.—Pardessus, p. 505.; 1. Emer. 416.; Valin, 170.; Sea Laws, p. 187.; Laws of Oleron, art. 14.; 2. Bynk. 467.; Welwood, ch. 120.; 2. Molloy, 6. 10.; Stypm. ch. 19. § 51.; Marshall, 493.; Case of the Lord Melville, Nov. 26. 1816, per Lord Stowell.

Respondents' Authorities.—2. Dods. 83.; Jeremy's Dig. 121. p. 2.

J. RICHARDSON—JOHN BUTT,—Solicitors.

(Ap. Ca. No. 64.)