

It so happened that Charles, having gone abroad, in returning from Carolina predeceased John Mill, the testator, by a few days. The question therefore came to be, whether his legacy, on the general principle, had fallen, or if, in consequence of the defunct's codicil, and intention appearing therefrom, compensation took place in settling the legacy against the bond,—or if, in other words, the bond was exigible?

The Lords, 10th July 1777, found it was not exigible. It was allowed to be a *questio voluntatis*; and they were of opinion that John Mill had done no more than pay the legacy before it was due; and, although he took a bond for it, never intended to exact payment of that bond, but only meant to keep the legatee in decent dependance upon him, lest he should alter.

LEX MERCATORIA.

1776. *November 26.* The ASSIGNEES of JAMES HOGG *against* The TRUSTEES of JAMES INGLIS.

In a process, the Assignees of James Hogg against the Trustees of the Children of James Inglis, merchant in Edinburgh; the Judge-Admiral, 24th June 1774, “found it proven that the ship Batchelor libelled, was, at the commencement of the voyage libelled, so disabled, by stress of weather, as not to be fit to proceed in the destined voyage to North Carolina; and that, in all such cases, where a ship is so disabled as not to be fit to perform the voyage, no freight is due to the master or owner.”

In a suspension of this decree, the Lords, 26th November 1776, found, That, in respect the vessel was not totally disabled, and that James Inglis declined to perform his contract after his return from Zetland to Leith, the representatives of James Inglis are bound to repeat the freight.

Upon considering these interlocutors, it is evident that, although both of them terminated in one conclusion finding Mr Inglis's representatives liable in repetition of the freight; yet the reasons assigned for this conclusion are different. Recourse was had therefore to the opinion of merchants, and the query was put: “If a vessel is stranded, or any misfortune happens during the voyage, whether the shippers of the goods and passengers are entitled to the repetition of freight from the owners or master of the vessel?” The answer was, “If the vessel is stranded and not repairable, or condemned as unfit to proceed on the voyage, the proprietors of the goods and passengers must convey them to the place of their destination at their own expense, and they are

not entitled to receive back from the owner or master the freight which they paid. Had they insured, they might have recovered the loss from their insurers; but in case of the ship being disabled, and requiring only some repairs to enable her to perform the remainder of the voyage, the owner or master is obliged either to repair, and proceed with her cargo, or to find another ship to convey it to its place of destination." And if he do not, he is entitled *pro rata* of the voyage performed.—*Molloy, lib. 2, c. 4, § 4; Voet. ad. tit. Loc. Cond., § 27.*

1777. *January 25.* MACLAREN *against* BARCLAY.

WHEN a merchant commissions goods from another at a distant port, all that is incumbent on the seller is,—to put them on board of a ship bound to the place where the buyer resides, or to any place where he has directed them to be carried. When that is done, the property is understood to be transferred; and every hazard of sea, enemy, theft by the master, or crew, &c., falls upon the buyer. See 1 *New Coll., No. 113.* These principles were adopted in the decision by Lord Monboddo, *M'Laren against Barclay*; to which the Lords adhered, January 1777.

CAPTAIN DALRYMPLE *against* MESSRS JOHNSTON and OTHERS, Underwriters in Glasgow.

RIGHT to freight commences so soon as goods are put on board. This right is not altogether dependant upon the arrival of a ship at her port of destination. Neither is it dissolved by shipwreck, unless the goods are totally lost; for then no freight is due; and it is to insure against this event that it is usual to insure a freight. But, if any of the goods are saved, freight is due *pro rata*.

See *Arat Hamilton, &c. against Morison and Company, merchants in Greenock*, determined 10th *February* 1778, below.

Freight is the consideration paid to the owner of a ship for carrying goods from one port to another. It is, therefore, only on delivery of the goods at the destined port that freight can, strictly speaking, be due. And if, during the voyage, the vessel is wrecked, and the goods lost, or so much damaged as to be totally abandoned by the owner, no freight will be due.

1778. *February 10.* HAMILTON, &c. *against* MORISON and COMPANY.

How far seamen's wages are due where shipwreck happens, and many im-