

On the 23d January 1777, "The Lords assoilyed Williamson, the defender;" altering Lord Covington's interlocutor.

*Act.* Allan M'Connochie. *Alt.* Alexander Murray.

1777. January 29. CAPTAIN JOHN DALRYMPLE *against* JAMES JOHNSTON and OTHERS.

#### INSURANCE.

When a Ship is short insured, the Owner is to be held as insuring himself to the extent of the Deficiency.

[*Fac. Coll. VII. 477 ; Dict. App. I. Insurance, No. II.*]

GARDENSTON. The premium of insurance cannot be brought *in computo*, for it would not be affected by the loss either of vessel or cargo. I should think that the freight ought to pay, because the freight was interested in the fate of the ship. But here there comes under our consideration, What is the practice of London? for the Glasgow policy refers to that practice. Unless evidence is produced to get the better of what is already produced, I am for holding that, by the London practice, freight does not come *in computo*.

MONBODDO. On abstract reasoning, premium ought to come *in computo*; and, as to freight, it is part of the value of the voyage. It is true that, if the voyage is not accomplished, there would be no value; but this is the very reason why the freight should be insured.

BRAXFIELD. The proprietor, in the case of short insurance, must be presumed to stand insurer for himself to that extent, and so to bear his share in the loss. No person is entitled to insure beyond his real interest. The question is, Whether are you entitled to insure or cover both freight and premium? If you are, then, if you fail, you must be understood in so far to insure short.

JUSTICE-CLERK. If we go back to the original of the implied contract, according to the custom of the Rhodians, we shall find nothing unless as to cargo and ship. There is a gambling spirit among merchants, and hence insurance was wont to be made, value or no value; but the Legislature interposed, and prohibited such gambling. Practice indeed has indulged the owners of goods with liberty to insure the premium and freight. The question is, What will be the consequence when premium and freight are not insured? There is a distinction between the *ipsa corpora* and the premium and freight. The value of the goods is a thing absolute in its nature; for the presumption in reason is, that goods, on being resold, will yield at least the price at which they were purchased. The other things do not add to the value *absolutely*; for, until the goods come to the port of destination, you cannot say that they are worth the addition of the premium. I apply the same prin-

ciple to the freight. The freight is not an existing subject at the time of insurance.

KAIMES inclined to Lord Braxfield's opinion, but was doubtful. [Lord Braxfield afterwards departed from his opinion.]

KENNET. So far as there is really a short insurance, so far must the proprietor stand his share in the loss. The only question is, How far is there a short insurance? I do not think that there is a short insurance by not insuring the premium: and the freight is a *non ens* until the voyage is completed.

HAILES. The insuring premium and freight is not a thing directly authorised by law; and, were it not for general practice, I would doubt whether it did not fall under the prohibition as to value or no value. If the proprietor must be held to have short insured, because he has not insured premium and freight, the consequence will be, that all proprietors will be obliged, in self-defence, to insure both; and thus a practice which is barely tolerated, without the authority of law, will of necessity be made universal. The opinion of the London insurers does not bind us, but it is of great weight, for it is founded on long experience; whereas the people of Glasgow are novices in the trade of insurance, and, on that account, cannot be supposed to have the same liberality of sentiments that the London insurers have.

ELLIOCK. It is not every interest that a man may have, but only what can be liquidated, that is the subject of insurance. I may have a great interest in employing an express aboard a ship, for giving intelligence, but I cannot insure that interest. It is only from the practice of merchants, not from the law, that insurance on premium and freight is allowed.

COVINGTON. The authorities quoted relate to a partial loss, where a ship arrives, although damaged, and a freight is due. *There* the freight may properly have a share in the loss; but the case of a total loss is different, where the freight is only *in spe*. As to insurance on premium, *that* is tolerated in practice, but it is not a proper subject of insurance.

On the 29th January 1777, "The Lords found, That Captain Dalrymple does not stand insurer for premium and freight;" and remitted to the Ordinary to proceed accordingly.

*Act.* A. Crosbie. *Alt.* Ilay Campbell.

*Reporter,* Covington.

*Diss.* Monboddo; *non liquet,* Kaimes.

*N.B.* In this cause there is another question, as to the method of proportioning the loss, and accounting for the proceeds of ship and cargo, which will fall to be stated at large hereafter.

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