who stands his own insurer is entitled to every argument competent to an underwriter. No 46.

THE LORDS found the defenders liable, with expenses.

Observed from the Bench, There is a great difference in questions between merchants themselves and between the merchant and the underwriter. It is therefore very material that no insurance was effected in this case. The general nature and practice of the carrying trade between London and Leith seems to be in favour of the pursuers.

Lord Ordinary, *Polkemmet.* Act. *Erskine, Cathcart.* Agent, *Jo. Young.*
Alt. *Lord Advocate Hope, Boyle.* Agent, *J. Phillips*, W. S.

J. *Fac. Col. No 15. p. 30.*

1802. *July 9.* TAYLOR and COMPANY *against* HOGG.

No 47.
When a ship is taken on the homeward voyage, freight is not due.

HERCULES TAYLOR and Company, merchants in Montrose, freighted the ship Agnes, belonging to Alexander Hogg, to load coals in Scotland, to be delivered at Gottenburgh. The vessel was to be there loaded with iron and deals, and to return with these commodities to Montrose. The freight was to be L. 60, with two-thirds of port charges, and the agreement was completed by missives mutually subscribed by the parties. It was farther arranged verbally, that Hogg should receive from Taylor and Company, or their correspondent, such money as he might have occasion for, to account of the voyage.

Accordingly, Hogg sailed from Scotland with the coals, which were duly delivered at Gottenburgh. He there loaded his vessel with iron and deals, but during the course of his voyage homeward, was captured by the enemy. At the port in Scotland where he took the coals on board, he received one guinea to account of the loading, and he received L. 30 at Gottenburgh to account of the voyage.

Taylor and Company brought an action before the Admiral for repetition of the sums which had been advanced, and the Judge-Admiral assoilzied the defender (May 19th 1797). This decree was brought before the Court by reduction, and the pursuers

Pleaded; The voyage to Gottenburgh and back again was understood by the parties to be one voyage. The loss is total. No freight therefore is due; Malyne, p. 98, 100; Molloy, b. 2. ch. 4. § 7; Bankton, b. 1. tit. 18. § 22; Erskine, b. 3. tit. 3. § 17. It makes no difference, that coals were carried out; the value of such a cargo is in this case so trifling, that it may be considered little else than ballast. The object of the voyage was to bring iron and deals from Gottenburgh. Since no freight could be due till the whole voyage out and home was completed, the master *in petitorio* could not have claimed it; and the

No 47. pursuers are equally entitled to a restitution of the sums which they advanced to him on that account; L. 15. § 6. *D. Loc. Con.*; Voet, § 27. *h. t.*

Answered; This is not to be considered as one voyage; for there were two cargoes, and two ports of delivery. Neither is the loss total: The outward bound cargo of coals was safely delivered, and sold at Gottenburgh for the benefit of the pursuers. The defender is therefore entitled to freight *pro rata itineris*; Lutwidge against Gray, February 12th 1732, No 45. p. 10111; and this claim cannot be affected by the subsequent capture of the vessel without any fault of his; Kames's Principles of Equity, b. 1. part 1. c. 4. § 8; Burrow's Reports, vol. 2. p. 882. The comparative value of the cargoes, as it makes no difference in the trouble of the voyage, can make no difference with respect to the freight due to the master. He had, therefore, a good claim *in petitorio*; much more *in possessorio*, where payment has been received on equitable grounds.

THE COURT, by a great majority, sustained the reasons of reduction, and reduced, decerned, and declared accordingly.

It was *observed* on the Bench; The rule, that no freight shall be due, unless the whole voyage out and home be completed, though it may sometimes occasion hardship, is, on the whole, a salutary regulation, by tending to preserve useful lives. The loss was total; for the outward bound cargo, which in this case was of trifling value, is understood to be vested in the homeward bound cargo, and was accordingly lost along with it. The opinion of the Judge-Advocate of the High Court of Admiralty in England, which had been submitted to the Court, seemed to be in favour of this doctrine.

Lord Ordinary, *Balmuto*. Act. *Hodshon-Cay*. Agent, *Ro. Jameson, W. S.*
Alt. *Baird*. Agent, *J. O. Brown, W. S.* Clerk, *Menzies*.

J. *Fac. Col. No 57. p. 120.*

1803. *June* 15. SPROT *against* BROWN and OTHERS.

No 48.
A shipmaster who receives a mirror on board, and grants a receipt for it, without examining its condition, is liable in damages to the owner, if it shall be found on delivery to be broken.

UPON the 18th October 1800, a large wooden case, containing a glass mirror, was shipped at London on board the Ceres, Michael Brown master. The package had the word "Glass" marked upon it, and was addressed to Mr William Sprott, York Place, Edinburgh. A receipt was granted for it in these terms: 'Received on board the Ceres, Michael Brown master, for Leith, one case, 'marked as *per* margin, which I promise to deliver safe; fire, and all and every 'the dangers and accidents of the seas, and navigation of whatever nature or 'kind, excepted.' This receipt was granted, and the package was put on board, without any examination of the contents.

When the Ceres arrived at Leith, the wooden case was immediately dispatched upon men's shoulders to Mr Sprott's house in York place, Edinburgh, ac-