

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. *b. 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-Gay.* Agent, *Ro. Jameson, W. S.*

Alt. *Baird.* Agent, *J. O. Brown, W. S.* Clerk, *Menzies.*

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Fac. Cal. 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...

ording to the direction; and a demand was made upod him for two guineas as the freight from London to Leith, and one guinea as the carriage from Leith to Edinburgh.

Upon examination of the package, it appeared that the plate of the mirror was shivered to pieces; but the workmanship and ornaments on the frame remained unhurt. Whereupon an action was raised before the Judge-Admiral, at the instance of Sprott, against Brown the master, and the owners of the *Ceres*, concluding that they should be ordained to replace the plate of the mirror by one of equal value and demensions, or to pay the value of the plate which had been broken.

The Judge-Admiral pronounced the following interlocutor: "In respect that the defender Brown, and the agent in Leith for the whole defenders, repeatedly declined or evaded calling at the pursuer's house to inspect the fragments of the broken glass, and the state of the package in which it was contained, holds them as confessed in these two points; *first*, That the counterplate of the looking-glass libelled on was broke; and, *secondly*, That the word *Glass* was written in large characters on sundry parts of the package case: Finds, That on receiving a package with the word *glass* written thereon, it was incumbent on the master, if he did not mean to abandon all recourse against the person shipping the goods, to refuse taking the package on board, till the shipper did satisfy that it was actually sound and entire: Finds, That by seeing the word *glass* written on such a package, he was certiorated of the extent of his risk, and had sufficient grounds to justify an extra charge on account of that risk: Therefore, finds it established, *præsuntione juris et de jure*, that the defenders must have had the extra risk in their contemplation, when they fixed the rate of freight they demanded for the carriage of the package libelled: Therefore, decerns in terms of the libelled precept, and finds expenses due."

The defenders brought a suspension and reduction of this decree of the Judge-Admiral, and

Pleaded, A shipmaster is merely reponsible for the delivery of the precise goods which he received, and in the precise state in which he received them; Erskine, b. 3. tit. 1. § 28. The obligation in this case is discharged, by delivering the wooden case unopened, and free from external injury. It is impossible that the shipmaster can be answerable for the state in which the commodity inclosed in this wooden case is found, as it may have been reduced to that state before it was placed on board the vessel. All for which the shipmaster is responsible, is any loss which happens on board, and which, by skill and vigilance he might have been able to forsee and prevent; Stair, b. 1. tit. 9. § 5.; Molloy, 1. 324. He can never, therefor, be answerable for any accident arising from the inherent defect, or the peculiar weakness of an article of such fragility, as to make it unfit to bear the motion of a vessel; if there be either the least imperfection in its original construction, or the smallest defect in the mode of packing.

No 48.

There is no evidence that the damage was actually done while the package was on board the vessel, The mirror might have been broken before it was put on board, which is the more probable, as the case had not suffered any damage, and the ornaments on the frame remained unhurt. The safety of the frame shews, that the misfortune which happened to the glass, arose from some defect in its construction, or from some negligence in the manner in which it was packed; for neither of which the shipmaster can be answerable. The loss, therefore, must be considered as a *damnum fatale*, which the shipmaster could not prevent, and for which he is not liable.

Answered, A shipmaster who receives goods on board his vessel without objection, is bound to deliver them in good order and condition. By not examining the state of the package before it was put on board, the presumption is, that the mirror was entire at the time of shipping, and the master and owners must be accountable accordingly. The obligation incumbent upon the shipmaster can only be elided by shewing, either that the damage was done before the article came into his possession, or that it arose from some accident which could not be prevented; "by the act of God, or the king's enemies."

There is an obvious necessity for this strict responsibility, as otherwise it might be in the power of masters and ship-owners to practice innumerable frauds upon the public. Accordingly, this doctrine is expressly laid down by all the legal authorities from the Roman edict, *Nautæ, cauponæ, stabularii*, to the latest writers upon the subject; *Digest. l. 4. t. 9. § 1.*; Stair, b. 1. tit. 9. § 5. and tit. 13. § 3.; Bankton, i. 435; Erskine, b. 3. tit. 1. § 28; Molloy, i. 324.; Beawe's *Lex Mercatoria Rediviva*, p. 83; Abbot, p. 176.

And the general doctrine of law is, in this case, expressly confirmed by the terms of the receipt, whereby the shipmaster acknowledges himself bound to deliver the goods "safe" at the place of their destination.

The Lord Ordinary found the letters orderly proceeded in the suspension, and assoilzied from the conclusions of the reduction, with expenses.

To which judgment the Court adhered unanimously, upon advising a petition, with answers.

Lord Ordinary, *Polkement* For the Suspender, *Gillies.* Agent, *Jo. Peat.*
 Alt, *Baird.* Agent, *Jo. O. Brown, W. S.* Clerk, *Home.*

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