

## SCOTLAND.

## COURTS OF ADMIRALTY AND SESSION.

JAMES HUNTER & Co. . . . . *Appellants* ;  
 ARCHIBALD M'GOWN and others *Respondents*.

The statute 26 Geo. III. c. 86. relates only to ships usually occupied in sea voyages, and not to small craft lighters and boats concerned in inland navigation.

A gabbert (Anglicè a lighter,) is not "a *ship or vessel*" within the meaning of the statute 26 Geo. III. c. 86. s. 2.—If goods on freight are shipped on board such a vessel and destroyed by fire accidentally, or through the negligence of the master, &c. the owners, &c. are not protected by that statute, but are responsible as at common law.

As to the general liability of carriers by the law of Scotland, *Quære*.

THE respondents were owners of the gabbert Janet, a species of lighter navigated between Glasgow and the ports in the Clyde, and having a register in terms of the navigation act.

1819.  
 HUNTER & CO.  
 v.  
 M'GOWN  
 and others.

Upon the 7th day of January 1807, the appellants shipped, at Greenock, cotton wool on board the gabbert Janet, to the value of 1,345 *l.* 16 *s.* 8 *d.* for which they took the master's receipt, acknowledging the delivery in good condition, and obliging himself to deliver the same in *Glasgow*, "in like good order, danger of navigation excepted, on being paid customary freight."

By the regulations of the harbour of Greenock, the kindling of fire on board any vessel, while in the harbour, is prohibited under a penalty. Notwithstanding this regulation, the master of the Janet

1819.  
 HUNTER & CO.  
 v.  
 M'GOWN  
 and others.  
 Jan. 1, 1808.

(as it was alleged by the appellants,) kindled\* a fire on board of her while in the harbour, which communicated to the vessel and her cargo. Part of the cotton wool was consumed, the remainder damaged; and a loss sustained of 572*l.* 17*s.* 2*d.*

For this sum, with interest and expenses, the appellants brought an action against the respondents, as owners of the gabbert, before the High Court of Admiralty. The Judge Admiral, pronounced the following interlocutor: "Having advised, &c. finds, "that the pursuers have condescended on no law, "bye-law, fact, or circumstance which can have the "effect of subjecting the owners of the gabbert or "lighter in question, in any part of the damages "pursued for: therefore in respect of the statute "26th of his present Majesty, cap. 86 †. assoilzies the "said owners, finds them entitled to their expenses, "and decerns." "Note.—This interlocutor has "nothing to do with M'Gibbon, the master."

This judgment having been brought under the review of the Court of Session, the Lord Armadale, Ordinary, pronounced the following interlocutor: "Having considered the mutual memorials, and "whole proceedings in the reduction, repels the "reasons thereof; and in the suspension finds the "letters orderly proceeded, and decerns: Finds "expenses due, and appoints an account thereof to "be given in." To this interlocutor his Lordship afterwards adhered. The Appellants having presented a petition, reclaiming against these several

22 Jan. 1811.  
 14 Feb. and  
 7 Mar. 1811.

\* It does not appear that this fact was proved; it became immaterial, according to the view taken in the judgment delivered by the House of Lords.

† See the terms of the act, *post.* p. 576.

interlocutors to the First Division of the Court, on the 16th May 1811 the following interlocutor was pronounced: "The Lords having heard this petition, refuse the prayer thereof, and adhere to the interlocutors of the Lord Ordinary."

1819.

HUNTER &amp; CO.

v.

M'GOWN

and others.

Against these interlocutors of the Judge Admiral on the 1st of January, 1808, of the Lord Ordinary on the 22d January, 14th February, and 7th March 1811, and against the interlocutor of the First Division of the Court of Session of the 16th May 1811, this appeal was presented to the House of Lords.

16 May, 1811.

For the Appellants:—*Mr. Wetherell*, and *Mr. Adam*.

Carriers of goods by sea or land are bound to make good all loss or damage sustained on goods entrusted to them, unless such loss or damage is produced by the act of God, or the King's enemies.

13th Feb.  
1818.

It is argued that the loss claimed was occasioned by fire; and by the 26th of the King, cap. 86, owners of ships or vessels were exempted from loss arising from fire on board such ships or vessels. But it is plain, as well from the preamble as from the enacting clauses in the statute, that it is applicable to ships and vessels employed in general commerce, and not to craft employed in transporting goods upon canals and navigable rivers.

18th Feb.

It requires a large capital to fit out a ship of considerable size for sea, and it was a great discouragement to invest money in this way, that when owners were, by accidental fire, deprived of their own property, they were liable to others for the value of such property as might at the time be on board their vessels. To remove this discouragement, which was

1819.  
 HUNTER & CO.  
 v.  
 M'GOWN  
 and others.

supposed to operate against the increase of our shipping, was the declared object of the Legislature in passing the statute in question, and similar motives have induced the Legislature to pass several other acts for the relief of ship owners. But had it been the intention of the Legislature to extend this statute to common carriers by water, the same policy must have induced them to extend it to carriers by land also; in so far as the fitting out a waggon of the first class, with a suitable team of horses, requires the investment of a larger sum of money, than fitting out a gabbert, flat, or lighter, of the first class; and the same observation applies to waggons and gabberts of smaller dimensions. When, however, it is considered how many millions worth of property is annually transported by means of inland navigation, and how very much the safety of that property depends upon the judicious selection of servants to conduct it, owing to the continual opportunities such men have of neglecting their duty, it can never be supposed, that if the legislature had intended to release, to so very great an extent, the responsibility of common carriers, it would have been left to courts of law to have made this out by implication.

If there was at any time room to doubt the intention of the legislature in passing the act, it is now removed; for in an act passed in the 53d Geo. III. cap. 159, for the farther relief of ship owners, and for amending the act of the 26th Geo. III. *and in which the same precise terms are used to describe the persons for whose benefit the act is passed, it is expressly provided by "sec. 5th, that nothing herein " contained shall extend, or be construed to extend,*

“ to the owner or owners of any lighter, barge, boat,  
 “ *or vessel of any burden or description whatsoever,*  
 “ used solely in rivers or inland navigations, or any  
 “ ship or vessel not duly registered according to law.”

1819.  
 HUNTER & CO.  
 v.  
 M'GOWN  
 and others.

Although the act of the 26th Geo. III. had extended to the owners of gabberts or lighters, it would have been altogether inapplicable to the present case. For, as by the regulations of the harbour of Greenock, made under the authority of an act of parliament, the kindling of fire on board of vessels in the harbour is prohibited, there is therefore an implied contract between the owners and masters of all vessels, and the shippers of goods on board of such vessels, that fire shall not be unlawfully kindled, while such vessels remain in the harbour; and as the loss in the present case can be directly traced to the breach of this contract, the respondents would not be entitled to shelter themselves under an act of parliament, intended only to protect innocent sufferers from extraordinary loss by accidental fire.

For the Respondents:—*Sir Samuel Romilly*, and  
*Mr. ———*

The defence is founded in this case entirely on the clause in the act of parliament of the 26th Geo. III. cap. 86, s. 2. which is an effectual bar to the appellants claim. This clause is in the following terms:  
 “ And be it further enacted by the authority afore-  
 “ said, that no owner or owners of any *ship or*  
 “ *vessel shall* be subject or liable to answer for, or  
 “ make good to any one or more person or persons,  
 “ any loss or damage which may happen to any  
 “ goods or merchandize whatsoever, which from and

1819.  
 HUNTER & CO.  
 v.  
 M'GOWN  
 and others.

“ after the 1st day of September 1786, shall be  
 “ shipped, taken in, or put on board of any such ship  
 “ or vessel, by reason or means of any fire happen-  
 “ ing to or on board the said ship or vessel.”

When the words of an act of parliament are ambiguous or equivocal, an inquiry may be made into the objects of the legislature in passing the act; for the purpose of ascertaining its meaning. But when the language of a statute is clear and intelligible, it is altogether incompetent to refuse effect to the enactment by reference to any supposed views of the legislature in making the law. In this instance it cannot be said that there is any ambiguity in the clause, unless the appellants can make out that a gabbert is NOT a *ship* or *vessel*.

The express object of the statute as set forth in the *preamble*, is, “ to promote the increase of the  
 “ number of ships and vessels, and to prevent any  
 “ discouragement to merchants and others from being  
 “ interested and concerned therein, which is likely to  
 “ happen from the responsibility to which they are  
 “ now exposed.” It is clearly within the policy of the act, that the provision should extend to gabberts. It is certainly an object of policy to increase the number of such vessels. Seamen may be both trained and employed in such vessels. In truth, the men who navigate them, might be, and frequently have been, of the most essential service on the coast of the Clyde. Besides, an establishment of lighters is necessary to support the trade and business of larger vessels. And therefore it would be peculiarly inexpedient to impose such a responsibility on the owners of gabberts as would discourage them from

entering into this species of trade, and throw the transport of goods from place to place into the hands of *land carriers*.

1819.  
HUNTER & CO.  
v.  
M'GOWN  
and others.

In the next place, the owners of gabberts stand in as much need of this protection from the statute as the proprietors of larger vessels. If the act was intended, as it unquestionably was, to protect the owners of vessels from a heavy responsibility on account of the inattention and negligence of their servants, the benefit of it must be given to every owner whose vessel is not actually under his own charge. The accident by which a vessel is set on fire must always happen in a moment. But an owner residing in Glasgow, while his gabbert is in Greenock, Dumbarton, or at many miles distance from him, has plainly as little control over the master or crew as if the ship were in the West Indies.

The regulation of the magistrates of Greenock could not (in whatever terms it had been conceived) alter the enactments of a public statute ; and, in the present case, merely imposed a small pecuniary penalty upon the master in case of non-observance.

The *Lord Chancellor*, after having stated the facts and the pleadings in this cause, as before set forth, proceeded thus :—

Several points were argued in this case ; first, what was the law of Scotland with respect to the liability of carriers in general ? In the next place, that whatever might be the liability of carriers in general, the regulations, with respect to the harbour of Greenock, which prohibited the kindling of any fire on board any vessel, would make the owner of

1819.  
 HUNTER & CO.  
 v.  
 M'GOWN  
 and others.

any gabbert liable, whatever might be the liabilities, according to the general law of Scotland. The decision proceeded expressly upon the supposition that the statute of the twenty-sixth of his present Majesty had exempted the owners of this sort of craft, as falling under the denomination of a vessel, from damages, in respect of the loss sustained. There was a great deal of argument at your Lordship's bar, upon the meaning of that statute of the 26th Geo. III. and after hearing that argument, it was conceived, that it was a case in which it might be proper to have the assistance of his Majesty's Judges, and to have it argued before them. The case has therefore stood over a considerable time ; but it has been found utterly impossible, such is the pressure of business on the Judges in the Courts below, to procure their attendance upon this cause. I have, however, looked very anxiously into the acts of parliament on this subject, and I have had the assistance (though not of all the Judges,) of the Chief Justice of the King's Bench, who happens, in the course of his practice, to be particularly conversant with the meaning of this act of parliament, relating to ships and vessels, and I have no hesitation in saying, that I am of opinion, that that act of the twenty-sixth of his Majesty, cap. 86, relates only to ships and vessels usually occupied in sea voyages, and that it is not an act of parliament which gives protection in case of small craft, lighters, and boats, and so on, concerned in inland navigation. The result is, (if that is a right opinion, and I really do not entertain any doubt about it), that if the judgment in the Court below has proceeded upon the supposition that this



statute protected the persons against whom the claim of damages was made, from being liable as owners of a gabbert, in that respect this judgment must be considered erroneous.

1819.  
HUNTER & CO.  
v.  
M'GOWN  
and others.

There remains behind, the question, what is the extent and nature of the liability of Scotch carriers? Our law, with respect to English carriers, cannot decide that, nor the point how far the regulations of this particular harbour of Greenock, would make the master or owner of a vessel liable. It appears to me that the right course will be, to find that the gabbert or lighter called the Janet, mentioned in the pleadings in this cause, is not to be considered a ship or vessel, within the intent and meaning of the statute of 26th Geo. III. cap. 86, and with that finding, to refer the cause to the Court of Session, to review the interlocutors complained of, and to do what is just and right, consistent with this finding; that will enable the Court of Session to find, whether, by the law of Scotland independent of this statute, or any regulation relating to the harbour of Greenock, it will come to a different result.

Die Lunæ, 12<sup>o</sup> Julii 1819.

The Lords find, that the gabbert or lighter, the Janet, mentioned in the pleadings in this cause, is not to be considered as being a ship or vessel, within the intent and meaning of the statute of the twenty-sixth of his present Majesty, cap. 86. And it is ordered, That with this finding, the cause be remitted back to the Court of Session in Scotland, to review the interlocutors complained of, and to do therein as may be just, and as is consistent with this finding.