

No 1.

Norway and Indian voyages, is reputed merchandize, as well as other fungibles; and the most part of cargoes carried from Europe to the Indies consist of dollars; and the *Lex Rhodia* brings money as well as other goods in contribution upon gross average. Again, the skipper's receipt was truly a bill of lading, *mutatis mutandis secundum subjectam materiam*; though it bear not, 'that the stock purse was shipped in good order, and well conditioned, and to be delivered in the like good order,' which had been incongruous: And though the receipt obliges only the granter to be countable for the money at meeting, that did not free him of his duty of *vectura* as a skipper; and not to find the suspender liable in this case, would have an evil consequence upon commerce.

*Replied* for the suspenders; The Roman edict of *Nautæ Caupones Stabularii, &c.* cannot take place here, in respect the skipper was not *tali negotio præpositus* by the exercitors: And the chargers who followed his faith as to the money given him to buy goods, must pursue him not as *nauta*, but *tanquam quilibet*, as accords. 'Tis but trifling to extend a sum of money for which the granter was countable, to a bill of lading by which the *individuum corpus* is to be delivered *in specie*: It might with the like reason be contended, that a person might alienate his heritage by testament as well as by disposition, there being little difference but *mutatis mutandis*. The suspending of the letters will not discourage commerce; but only be a rule to merchants how to freight ships fairly hereafter, by not exporting money contrary to law, Act 11, Session 3, Parliament 1. Charles II.; or endeavouring to ruin owners of ships by private pactions with the skippers.

THE LORDS sustained this reason of suspension and reduction, that the skipper was not *huic negotio præpositus*, and that the receipt for the money was not granted by him as skipper, but as one whom the charger trusted with so much money, which could not oblige the owners.

*Forbes, p. 209.*

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1732. July 25.

No 2.

WILLIAM ROGERS Merchant in Virginia *against* CATHCART and KER.

CONSTITUENTS found liable to pay money borrowed by their supercargo, though neither did his commission bear any express power to borrow money, nor was it applied to their behoof, *See APPENDIX.*

*Fol. Dic. v. 1. p. 280.*

3.

1750. January 3. SIMPSON *against* M'TIRIE and ROBERTSON.

WHERE a master is empowered to let out the ship, he is entitled to demand payment of, and to discharge the freight; but the owners are not obliged to al-

low payments made to an input master. And in this case, the payments made by the freighters to the input master were allowed ~~only~~ upon account of the owners having homologated the payments.

*Fol. Dic. v. 2. p. 193. Kilkerran, (MARITIME LAW.) No 1. p. 343.*

No 3.

1769. March 2.

JAMES SCRIMGEOUR and SON *against* MESSRS WILLIAM ALEXANDER and SONS.

WILLIAM ALEXANDER and Sons having freighted a vessel from James Scrimgeour and Son merchants in Borrowstounness, for Grenada in the West Indies, it happened, that, by the time of her arrival there, the whole sugars in the island had already been put on board other ships, and that none was to be had for her loading. In this emergency, by the advice of Messrs Alexanders' correspondent, the master sailed for Cape Fear, in North Carolina, in order take in a cargo of tar; but was for some time detained by the disturbances which had happened upon occasion of the stamp-act.

In a reduction of a decree of the Judge of the High Court of Admiralty, finding the freighters not liable in demurrage, on account of that detention, it was *pleaded* for the owners, That, whatever powers of administration the master might have in the course of a voyage, authorised by them, he was not entitled to alter the destination of the ship, more than he would be to navigate her all over the globe, without their knowledge or consent. That, by presuming to change the voyage fixed by charter-party, he brought upon himself the risk of every damage, how accidental soever, the ship might sustain in the course of that deviation; but that he had taken care to avoid this obligation, and thrown it upon the defenders, by taking their correspondent bound 'to come between him and all damages whatever, in consequence of going to Carolina.'

*Answered* for the defenders; The powers of masters of ships are ascertained, not by statute, but by the common law of merchants. They are entitled to freight the ship in foreign parts without orders; to borrow money for her use; nay, even to impignorate her for payment of it: *Laws of Oleron*, art. 1. *Laws of Wisby*, art. 35. By the civil law, the master was considered as coming in place of the owners, who were bound by his contract. And, by the practice of modern nations, the powers of the master are still more extensive; *Voet, de exercit act. num. 3.*

As, therefore, the deviation in the present case exceeded not the master's power, so it was a well judged measure; and unforeseen accidents cannot alter

No 4.

The freighters of a ship, at whose desire the master had undertaken a voyage to a different country from that at first agreed on, were found liable to the owners in damages.