

homeward passage, however safely she may have carried the outward cargo to its destined port; 2d. Where a ship was freighted to carry goods first to one port and then to another, no wages were due unless she reached the second port; 3d. That even in a trading voyage, no wages whatever were due in the event of the ship's being lost or taken in the homeward passage. The practice of London or Liverpool could be of no avail in construing an agreement that had been entered into elsewhere, and which had in contemplation the practice of another place. The certificates produced were not evidence, and had been obtained, not upon a mutual application, but upon an *ex parte* statement of the case by the other party.

THE LORDS were of opinion, That the first interlocutor, pronounced by the Lord Ordinary on the 2d March 1765, was a proper judgment. They thought that the cases referred to, of Lutwich *contra* Gray, Burrow, v. 2. p. 885. and that of Jenifer *contra* the East India Company, Vernon, v. 2. p. 727. should be followed; and that neither of these were so strong as the present. The practice of Glasgow, if such a practice existed, was highly disapproved of: That it was fraught with inhumanity, destructive to trade, and high time that it should be corrected.

They therefore, 22d February 1771, 'found the letter orderly proceeded; and farther found the chargers entitled to expenses of process, and to damages for lying out of their wages.'

Lord Ordinary, *Kames*. For Ross, and Others, *Craig*. For Glassford and Co. *Wight*.
Clerk, *Tait*.

R. H. *Fol. Dic. v. 4. p. 14. Fac. Col. No 82. p. 239.*

* * A similar decision was pronounced in the case of a wreck, 10th February 1778, Morison, &c. against Hamilton, &c. No 53. p. 304. *voce* CONDITION.

1777. February 20. HOG and Others against TRUSTEES of INGLIS.

INGLIS entered into a contract, binding himself to carry Hog, and his family and servants, together with about 200 emigrants, on board his ship Bachelor, to North Carolina; Hog, on the other hand, becoming bound to pay him a certain sum in name of freight, of which one half was paid before the ship left Leith Roads, and the other half on taking the passengers on board in Thurso Bay. The reason of this per advance payment of the freight was the peculiar nature of the outfits, and the large quantity of provisions necessary to be laid in. After sailing from Thurso Bay, the ship was forced into Stromness by stress of weather; and on sailing thence, she was driven by a storm into Voila Sound in Shetland, in the utmost distress. Inglis, on intelligence of what had happened, sent out a sloop from Leith, with materials for refitting the vessel; but

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Freight had been paid before hand, by some emigrants to America. The vessel not having proceeded on the voyage, not totally disabled, but only put back to repair;—the freight was ordered to be returned.

No 37.

these being insufficient, it was necessary to bring her back to Leith for a thorough repair. Several of the emigrants now quitted the ship, and returned home. Hog with his family, in the mean time wintering in Shetland, and having remained there near a twelvemonth, wrote to Inglis to know his purpose as to proceeding; and having received from him an answer which he considered as a refusal, he and the remaining emigrants brought action against Inglis, before the Judge-Admiral, for restitution of the freight, and damages. The Judge-Admiral decerned for the freight, with interest; and for damages, which he modified to L. 10 Sterling.—*Pleaded* for the defender in a suspension, That although in ordinary cases no freight is due when the ship is disabled from performing her voyage, the present case was totally different, the first being paid before hand for necessary outfits, and being all *bona fide* expended and consumed for the benefit of the parties who paid it.—It was *urged* moreover for the defender, That the pursuer had misinterpreted his letter; that he never refused to accomplish the voyage, but had, on the contrary, got the vessel at last (though after a long time) completely refitted, and had intimated to the pursuer his readiness to proceed; and *lastly*, That the greatest part of the emigrants having changed their resolution of going abroad, no freight could be redemanded for them.—THE COURT, at first, found, That in respect the vessel was not totally disabled, and that Inglis had declined to perform the his contract after his return from Shetland to Leith, his representatives (he being dead) are bound to repeat the whole freight, without deduction of any of the price of the provisions consumed.—THE COURT thereafter ordered a condescendence of the alleged facts relative to the requisitions made by Hog on Inglis to proceed, and relative to the disposition of the emigrants and their families before Mr Inglis's offer; and on advising this condescendence, they adhered to their former judgment. See APPENDIX.

Fol. Dic. v. 4. p. 14.

1779. July 14. MARGARET BAIRD *against* LADY DON.

No 38.

When a servant is hired from one term to another, warning is required previous to the term, otherwise tacit relocation will take place; and in this case, where warn-

MARGARET BAIRD was hired as house-keeper by Lady Don for half a year, from Whitsunday to Martinmas 1777. At that term, she received her wages, and, without any previous warning, was dismissed; on which she brought an action against Lady Don, for payment of wages and board-wages for half a year from the term of her dismissal. In support of this claim,

Pleaded for the pursuer, When a servant is hired to a term, and no precise warning given, tacit relocation takes place, agreeably to the principles of common law, and the general practice of the country. The pursuer having received no warning, understood that she was to continue in the defender's service for the next half year after the term to which she was hired, and, on that ac-