

not entitled to receive back from the owner or master the freight which they paid. Had they insured, they might have recovered the loss from their insurers; but in case of the ship being disabled, and requiring only some repairs to enable her to perform the remainder of the voyage, the owner or master is obliged either to repair, and proceed with her cargo, or to find another ship to convey it to its place of destination." And if he do not, he is entitled *pro rata* of the voyage performed.—*Molloy, lib. 2, c. 4, § 4; Voet. ad. tit. Loc. Cond., § 27.*

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1777. *January 25.* MACLAREN *against* BARCLAY.

WHEN a merchant commissions goods from another at a distant port, all that is incumbent on the seller is,—to put them on board of a ship bound to the place where the buyer resides, or to any place where he has directed them to be carried. When that is done, the property is understood to be transferred; and every hazard of sea, enemy, theft by the master, or crew, &c., falls upon the buyer. See 1 *New Coll., No. 113.* These principles were adopted in the decision by Lord Monboddo, *M'Laren against Barclay*; to which the Lords adhered, January 1777.

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CAPTAIN DALRYMPLE *against* MESSRS JOHNSTON and OTHERS, Underwriters in Glasgow.

RIGHT to freight commences so soon as goods are put on board. This right is not altogether dependant upon the arrival of a ship at her port of destination. Neither is it dissolved by shipwreck, unless the goods are totally lost; for then no freight is due; and it is to insure against this event that it is usual to insure a freight. But, if any of the goods are saved, freight is due *pro rata*.

See *Arat Hamilton, &c. against Morison and Company, merchants in Greenock*, determined 10th *February* 1778, below.

Freight is the consideration paid to the owner of a ship for carrying goods from one port to another. It is, therefore, only on delivery of the goods at the destined port that freight can, strictly speaking, be due. And if, during the voyage, the vessel is wrecked, and the goods lost, or so much damaged as to be totally abandoned by the owner, no freight will be due.

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1778. *February 10.* HAMILTON, &c. *against* MORISON and COMPANY.

How far seamen's wages are due where shipwreck happens, and many im-

portant observations on the general doctrine; see *Hamilton and other Mariners of the Rae Galley, pursuers for their wages, against Morrison and Company, merchants in Greenock, their owners*, determined 10th February 1778.

The interlocutor was:—"Adhere to the Lord Ordinary's interlocutor reclaimed against, and refuse the petition: find the petitioners liable in expense of process since the same was brought into the Court, reserving to the petitioners all action at their instance competent against the respondents, for the value of the long-boat, sails, sailcloth, &c., alleged to have been carried off by the respondents, as within mentioned; and to the respondents all defences against the said action, as accords."

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PITCAIRN *against* FOGGO.

IN this case it was found that the charge of commission is well-founded. The *quantum* may vary,—but the thing itself is reasonable.

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LIBERTY OF THE SUBJECT.

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1777. March 11. JOHN BLACKLAW, Petitioner.

JOHN Blacklaw, having been incarcerated in the tolbooth of Edinburgh, by warrant of the Lords, on a charge of fraudulent bankruptcy, applied to the Court for liberation on bail, in terms of the statute 1701. The Lords admitted him to bail accordingly, but fixed the bail to 1000 merks. They were of opinion that, in this case, they were not limited to the sums in the said statute. They were of the same opinion in the case of the *Forresters*, where they fixed the bail at £500 sterling. See *Kilk*, p. 525.

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