

May 10, 1813. ship was sea-worthy. I am of opinion she was not sea-worthy.

INSURANCE.

Decision of the Court below reversed.

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FROM SCOTLAND.

BRUCE—*Appellant*.

OGILVY—*Respondent*.

May 28, 1813.

IT was stated in the last case that the vessel called the Jenny and Peggy had been wrecked on the Shetland coast. The inhabitants of these islands had a peculiar notion of law in regard to wreck, whether derived from Norwegian tradition, or from whatever other source, *Mr. Horner*, who opened the case, did not know. They conceived that one-third belonged to the Admiral, one-third to the proprietor of the estate where the cargo was cast ashore, and the remaining one-third to those who could get it.

Certain persons who had acquired this last kind of right to a quantity of tallow which had formed part of the cargo of the Jenny and Peggy, sold it to Bruce and Ogilvy, the parties in this cause, who carried on trade in partnership, in some place in one of the Shetland islands, for 57*l.* which was alleged to be far below its value.

Watt, the owner of the cargo, having discovered how it had been disposed of, brought his action for the spoliation, in the Admiral's Court, against ten defenders, of whom Bruce was one. The matter

was compromised by Watt assigning his interest in the cargo to the defenders for 3000*l.* of which Bruce paid 333*l.* May 28, 1813.

The partnership of Bruce and Ogilvy having been dissolved, the latter brought his action against the former for two sums, amounting together to about 100*l.* Bruce alleged that the compromise with Watt was on the partnership account, and that Ogilvy was liable to him for a third of the above sum, which he had paid to Watt, and which more than covered his debt to Ogilvy: he therefore pleaded compensation.—The Court of Session decided in favour of Ogilvy, the Pursuer, and Bruce appealed.

Ogilvy had alleged in the Court below, that he was no party to the compromise, and that it was not entered into on the partnership account. Bruce offered to prove that it was, and gave in a printed condescendance of the facts, which the Court must of course have thought not sufficient to make out his case, as they rejected the proof. A question had been raised whether the spoliation did not vitiate the whole transaction, but from the manner in which the action in the Admiral's Court terminated, nothing appeared to have turned upon that.

*Lord Eldon* (Chancellor). The Court below appears to have taken it for granted that the Respondent could prove every thing he said, and that the Appellant could prove nothing. The interlocutors must be reversed, and a conjunct probation ordered to be allowed, unless the parties can settle the matter in some other way. Judgment.