

2d and 3d November 1743; Mor. p. 4396. Lord Strathnaver v. Douglas, 2d February 1728; Mor. p. 15373; House of Lords affirmed, (*vide ante*, vol. i. p. 32). Urie v. Earl of Crawford, 17th July 1756; Fac. Coll. Lockhart v. Gilmour, 25th November 1755; Mor. p. 15404. Henderson v. Henderson, 20th January 1790; Fac. Coll. vol. ii. p. 185, *et* Mor. p. 4215. Elphinstone v. Elphinstone, 3d March 1803; Fac. Coll. vol. 18 (This reference doubtful). Gordon v. Maitland, 1st December 1757; Fac. Coll. vol. ii. p. 101, *et* Mor. p. 11161. Affirmed on appeal, (*vide* Paton's Appeal Cases, vol. ii. p. 43). Lord Cathcart v. Shaw, 31st January 1755; Mor. p. 15558. Deeds executed not effectual to alter destination. Marquis of Clydesdale v. The Earl of Dundonald, 26th January 1726; Mor. p. 1262-75. House of Lords, Robertson's Appeal Cases, p. Skene v. Skene, 31st July 1725; Mor. p. 11354. Weir v. Steel, 7th February 1745; Mor. p. 11359. Burnett v. Burnett, 28th July 1765; Mor. p. 14939. Douglas v. Duke of Hamilton, 9th December 1762; Mor. p. 4358. Affirmed on appeal with variation, (Paton's Appeal Cases, vol. ii. p. 449). Rose v. Rose, 20th March 1784; Mor. 14955, *et* M. 5229. Reversed in the House of Lords; (Paton's Appeal Cases, vol. iii. p. 66). Blane v. Earl of Cassillis, 16th December 1802; Mor. p. 14447; (Paton's Appeal Cases, vol. v. p. 1. *et* p. 307). Parole inadmissible to affect writing. Wilson, 30th November 1744; Elchies, Fraud, No. 14. Moses v. Craig M'Lintock, 4th February 1773; Mor. 12352. Duke of Hamilton, &c., v. Douglas; House of Lords, March 1779; (Paton's Appeal Cases, vol. ii. p. 449).

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Respondent's Authorities.—Liferent or fee. Maclellan v. Meek, 2d and 30th November 1742; Mor. 4396. Newlands v. Newlands, Creditors, 26th April 1798; (Paton's Appeals, vol. iv. p. 43). Lillie v. Riddle, 24th February 1741; Elchies, "Fiar," No. 7, *et* M. 4267.

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ARCHIBALD DOUGLAS, JAMES BLACK, LAURENCE CRAIGIE, and Others, Underwriters of the ship North Star,

Appellants ;

DOUGLAS, &C.
v.
SCOUGALL, &C.

RICHARD SCOUGALL and Co., Merchants, Leith,

Respondents.

House of Lords, 17th May 1816.

INSURANCE—UNSEAWORTHINESS.—In effecting an insurance on a ship and freight, Held in the Court of Session that it was proved that the ship, on sailing on the voyage assured, was seaworthy. Reversed in the House of Lords.

An action was raised by the respondents, owners of the

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ship North Star, an old Dutch prize, under a policy of insurance on the ship and freight for £2100, from Leith to Pictou, in North America.

She had undergone a repair to the extent only of £280 before commencing her voyage, but at this time she was neither stript nor opened up in order to ascertain her internal condition, the repair being confined to her outward sheathing; but a certificate was granted certifying her staunch and strong for the voyage. Soon after she sailed she encountered a severe gale of wind; she made so much water that the crew could not keep her free with both pumps, and, in consequence, the master bore away for port, and brought her to Greenock.

Soon after her arrival the vessel was surveyed, and the surveyors reported her decayed in beams, breastwork, hooks, and knees; and that her iron work was, in general, decayed and gone.

Repairs were then made upon her to the extent of £1426, 9s. 3d., for payment of which sum the present action was brought against the appellants, the underwriters. Their defence was, that the ship was not seaworthy at the commencement of the voyage insured. Upon this a proof was allowed. The respondents adduced a certificate of the ship's sufficiency, signed by Messrs Strachan and Gavin, ship-builders in Leith, who had repaired the vessel before setting out on her voyage.

Mar. 10, 1807.

Lord Hermand, Ordinary, pronounced an interlocutor, finding "the certificate of the ship-carpenters sufficient evidence that the North Star was seaworthy when she sailed "on her voyage for Pictou, in North America," and therefore decerned. Thereafter, on reclaiming petition, a proof was allowed to both parties. This being reported with me-

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memorials, the Court adhered.

On appeal to the House of Lords.

It was ordered and adjudged that the interlocutors complained of be reversed, and that the defenders (appellants) be assoilzied, and decern.

For the Appellants, *Sir Saml. Romilly, J. A. Park, James Moncreiff.*

For the Respondents, *Geo. Cranstoun, Robt. Thomson.*