

7. Geo. II. c. 8.; for here the respondent sold stock of which she was actually possessed, and over which she had the sole and absolute controul. Feb. 17. 1830.

LORD CHANCELLOR.—The difficulty of this case arises from the conditions in the bond being so complicated. But before we can reach a sound judgment, we must be sure that we thoroughly comprehend every part of its bearing. I was looking to the letters for the contract; but I perceive that the contract itself materially differs from them, and we must take the bond as the contract between the parties. If this be a perpetual annuity, this lady would receive less than five per cent on the value of the stock; and in one event it is a perpetual annuity.

LORD WYNFORD.—It appears to me that there is only L.1000 which this lady was ever sure of getting back again, and that struck me a long while ago as very far deciding this case.

LORD CHANCELLOR.—We think, under these circumstances, that this cannot be considered an usurious transaction, and that, consequently, the judgment must be affirmed.

LORD WYNFORD.—I am of opinion, that there ought to be costs given in this case; though I do not agree that the party could not take the objection, yet, in my opinion, it is a most unrighteous objection.

The House of Lords therefore ordered and adjudged, that the interlocutors be affirmed, with L.50 costs.

*Appellant's Authorities.*—Comyn on Usury, 156. and cases cited. Colville, Jan. 25. 1709, (6825.)

*Respondent's Authorities.*—3. Wilson's Reports, 390.; Atkinson, 340.; Comyn on Usury, 22.; Cro. Eliz. 741.; Atk. 301.; Ambl. 371.; 5. Espinasse, 164.; Robertson's Ap. Cases, 471.

RICHARDSON and CONNELL—A. MUNDELL,—Solicitors.

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SEA INSURANCE COMPANY of SCOTLAND, Appellants.  
*Campbell—Spankie.*

No. 3.

JOHN GAVIN and Others, Respondents.—*Lushington—Brougham.*

*Insurance.*—Found, (affirming the judgment of the Court of Session), That a policy of insurance 'to Barcelona, and at and from thence, and two other ports in Spain,' &c. covered a total loss, which happened while the ship insured lay in the roadstead of Saloe, although there were no artificial works or other usual protections for loading and unloading, but the place was resorted to by vessels for trade, and it was treated as a port by the Spanish and British Governments.

Feb. 18. 1830.

2<sup>D</sup> DIVISION.  
(ADMIRALTY.)

THE Sea Insurance Company underwrote a policy of insurance on the brigantine Sarah of Leith, belonging to Gavin and others, 'at and from Leith to Shetland, and from thence to Barcelona, and at and from thence, and two other ports in Spain, to a port in Great Britain.' The Sarah, after loading with fish in Shetland, sailed for and arrived at Barcelona; but a contagious fever raging there, she proceeded to Tarragona, where she discharged her cargo. She then, in order to take in her home cargo, removed to the roadstead of Saloe, a port or place ten miles from Tarragona, and lying in the hollow of an open and exposed bay. While loading a storm arose, which drove her ashore, along with almost all the vessels lying there at the time. The Sarah was totally wrecked. Of sixty vessels in the port of Tarragona, only one was saved.

The owners claimed against the Insurance Company for a total loss; but were resisted, on the ground that the insurance covered the vessel to 'two other ports in Spain;' whereas the Sarah was lost, not in a 'port,' but in an open roadstead or 'place,'—a risk of a very different nature from the one insured, and for which a higher premium was uniformly paid.

The Judge-Admiral, (before whom the case was brought), allowed a proof; and it was established that Saloe Bay, above fifteen miles in length, is protected by Cape Saloe and the land at the north of the bay, from all winds but those from the east, round by south to west. It is not well, but as much protected as any of the ports in that part of the Mediterranean, from winds blowing up and down that sea: and although there are very few dwelling-houses, yet there are several warehouses, and a jetty commanding a depth of water suitable for feluccas, but not for large vessels. A heavy surf occasionally breaks on the shore, but there is a good roadstead and anchorage where all vessels lie trading to Saloe, and there is a port captain. The British consul, who resides at Rous, (where the merchants live),—a town about eight miles inland, and of which Saloe is generally considered as the port,—describes himself 'vice consul for the port of Saloe and its district.' There is a custom-house, (a branch of the one at Rous), with custom-house officers; but this is usual in all the accessible bays of Spain. Vessels trading to Saloe chiefly export and take their cargo on board in small craft. The situation of the Sarah was fixed by the port captain and custom-house officer. She rode in the usual anchorage, and could not without their permission have changed her position. On the other hand, at Tarragona and Barcelona there are regular moles and artificial works

Feb. 18. 1830.

for the protection of large vessels, with deep water, and accommodation for loading and unloading, although not affording security against south-westerly gales; and when these blow with violence, the roadstead at Saloe, as possessing greater range, is preferable. Insurance brokers differed as to their opinions, whether Saloe was to be considered as a 'port,' in the meaning of the word in the policy; and it appeared that a higher premium was exacted for an insurance to 'ports and places,' than to 'ports' alone. Naval men also gave opposite opinions, whether Saloe was a 'port' or merely an 'anchorage.' The Judge-Admiral directed that the opinion of Mr Tindal of the English Bar \* should be taken.† His opinion being, that an English jury would, on the evidence, have held that Saloe Bay was a port within the meaning of the policy, the Judge-Admiral found it proved that Saloe, where the Sarah was wrecked, was a port within 'the meaning of the policy in question, and that the vessel was within the same at the time the loss took place,' and therefore decerned against the defenders.

The Insurance Company brought the case, by suspension, before the Court of Session, who (3d March 1827) repelled the reasons of suspension, found the letters orderly proceeded, and decerned with expenses.‡

The Insurance Company appealed.

*Appellants.*—The evidence shews, that Saloe Bay was not a port, 'locus conclusus,' calculated for the protection and safety of ships. There was no harbour, no mole, no security against the most dangerous and prevailing winds in the Mediterranean; no artificial works, without which the designation port is never given. Had the respondents insured to ports or places, or to ports or open roadsteads, the contract would have been different, and the premium higher. The very word 'other' shews the meaning of parties; but Saloe Bay has no resemblance to the ports of Tarragona and Barcelona.

*Respondents.*—Artificial works are not the essence of a port. It is enough that the place, basin, or anchorage, is held by

\* Now Lord Chief Justice of the Common Pleas.

† The appellants alleged that they took the opinion of Sir James Moncreiff of the Scottish Bar, (now Lord Moncreiff), whose opinion was directly to the contrary.

‡ 5. Shaw and Dunlop, No. 268. p. 525.

Feb. 18. 1830. general usage, by the practice of traders and merchants, to be, and has by the sanction of Government assumed the character of a port, and that it is resorted to as such. This is the case with Saloe. Besides, the appellants must be presumed to have known, that a great proportion of the Spanish ports in the Mediterranean are little more than natural bays, with anchorage grounds, and protected more or less by the headlands of the crescent.

LORD CHANCELLOR.—I have carefully read these papers; and I have made up my mind, that if I had been on the jury, I would have found that Saloe was a port within the meaning of the policy; and if your Lordships are of the same opinion, I would suggest the propriety of your Lordships pronouncing an affirmance, with costs; say L.50.

The House of Lords accordingly ordered, that the judgments be affirmed, with L.50 costs.

*Appellants' Authorities.*—2. Taunton, 403.; 1. Marshall, 248. 276.; 2. Barnwell and Alderson, 460.; 1. Taunton, 517.; 4. Taunton, 660.; 2. Campbell, 541.

*Respondents' Authorities.*—Molloy, de Jure Maritimo; 2. Postlethwaite's Dict. 500.; Galt's Mediterranean, 102.; Comyn's Digest, voce Merchant, Marine Insurance, 208.; 1. Marshall, 6. 5.

MONCREIFF, WEBSTER, and THOMPSON—SPOTTISWOODE and ROBERTSON,—Solicitors.

No. 4. DAVID CHARLES GUTHRIE, and Others, Appellants.  
*Spankie—Jones.*

WILLIAM ANDERSON, and Others, Respondents.  
*Campbell—Alderson.*

*Mutual Contract.*—Construction of letters constituting a mutual contract between merchants.

Feb. 18. 1830.  
2D DIVISION.  
Lord Mackenzie.

JOHN GLEN JOHNSTON was indebted to Chalmers and Guthrie, merchants in London. He indorsed to them the bills of lading of the ship Trewe, and they accepted bills drawn on them at his desire by a Russian merchant, for the price of the cargo. Johnston being in embarrassed circumstances, Anderson, and others interested in the cargo, entered into an arrangement with Chalmers and Guthrie for a surrender and transference of the bills of lading. On the one hand, Chalmers and Guthrie wrote as follows:—

‘ Messrs William Thomson and Alexander Anderson,  
‘ *Gentlemen,* *Dundee, 12th Nov. 1812.*  
‘ To fulfil on our part an arrangement for the resignation to