

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

‘ you of our account with John Glen Johnston, we inclose all the bills of lading per Trewe in our possession. We credit his account L. 10,000 for goods per Condrillon received, for L. 1000 expected to be the balance of loss per Palmbalm; added to which, we acknowledge having this day received L. 13,000, say thirteen thousand pounds sterling, toward the settlement of our account. We are, &c. Feb. 18. 1830.

‘ If the balance of Mr Glen Johnston’s account ultimately be less than L. 13,000 now paid us, we hold ourselves responsible to you for the difference.’

Anderson and the others interested wrote in answer :—

‘ *Gentlemen,*

12th Nov. 1812.

‘ We acknowledge receipt of your letter of this date, inclosing the bills of lading per Trewe, and resigning to us all your interest therein. We hereby agree to assume Mr John Glen Johnston’s debt, holding ourselves responsible for the amount, and for the consequences of any possible action that may lay against you by the said Mr J. G. Johnston, his heirs or assignees.’

The cargo of the Condrillon, and the balance expected by the Palmbalm, fell short of the sum stated; and in an accounting between Chalmers and Guthrie, and Anderson and others, the question arose, whether the L. 10,000 and the L. 1000, were a fixed and absolute credit, or only an approximation to what might possibly be the proceeds of the cargo of the Condrillon and per the Palmbalm. It was agreed upon by the parties, that if the first view were taken, the appellants were due to the respondents L. 2653. 4s.; but if the latter view, only L. 1738. 8s. 7d. The Lord Ordinary and the Court of Session, (22d May 1827), adopted the first view, and decerned accordingly.*

Guthrie and Chalmers appealed.

Appellants.—The account with Johnston was not fixed and settled. Guthrie and Chalmers merely struck an estimate from the data in their power at the moment; but Anderson and others were to be responsible for the real balance. Had not this been the view entertained by Guthrie and Chalmers, they would not

* 5. Shaw and Dunlop, No. 318. p. 694.

Feb. 18. 1830. have parted with the ample security which the bills of lading of the Trewe afforded them.

Respondents.—The transaction was explicitly detailed in the letters. Johnston was to be absolutely credited in L. 10,000 and L. 1000, and Anderson and others gave their bills for L. 13,000, not in any circumstances to pay more, but to receive back if the balance proved less.

The House of Lords considered the construction adopted by the Court of Session as the most fair and probable, and therefore ordered and adjudged, that the appeal be dismissed and the interlocutors affirmed.

A. GORDON—RICHARDSON and CONNELL,—Solicitors.

No. 5. ALEXANDER MEIN, (Trustee of JAMES TAYLOR), Appellant.
Brougham—Wilson.

TAYLORS, and Others, Respondents.—*Lushington—
James Campbell.*

Fec or Liferent.—Clause of a deed held (affirming the judgment of the Court of Session) to create a trust, so as to carry the fee to children, and a liferent to the father.

Feb. 23. 1830.

1ST DIVISION.
Lord Corehouse.

JOHN TAYLOR of Spring-Bank executed a general disposition and deed of settlement, by which, ‘under the burdens, provisions and declarations, and for the purpose of being divided and held in manner underwritten,’ he ‘disponed his whole estate, heritable and moveable, to and in favour of James Taylor, baker and farmer in Whitburn, Thomas Taylor, farmer in Bankhead near Falkirk, Robert Taylor, baker in Glasgow, and William Taylor, grocer there, my brothers, heritably and irredeemably,’ &c. surrogating and substituting the said James Taylor, Thomas Taylor, and William Taylor, in his full right, title, and place of the whole premises, with power to do every thing thereanent which he could have done if in life. For carrying the deed into effect, he bound and obliged himself, his heirs and successors, to infest and seize the said James Taylor, Thomas Taylor, and William Taylor, their heirs and assignees, in the whole lands and other heritages above disponed, requiring infestment; but declaring always, that the said disposition was granted, and to be accepted by his said