

lieving him of the excise of 200 bolls of French salt, and the ship, by distress of weather, being driven into the harbour of Burntisland, and the deceast Lord Lyon having seized upon the goods for payment of a debt due to him by the Laird of Ashint, and the skipper having pursued a declarator against the Lord Lyon, as representing his father, that the loading intromitted with by his father might be declared liable to the pursuer for his freight, and for the bond of L. 1004 that was granted for the price of the lasts, and the other bond for the excise of the salt, which was employed for curing and salting the beef, as being tacitly hypothecated for the same; *alleged* for the defender, That he could not be liable for the freight, nor for the other bonds, upon the account of any tacit hypothecation, because his father had lawfully pointed the goods for a debt due by Ashint, to whom they belonged; and it does not appear that the bond for L. 1004 was granted for the price of the lasts, or that the salt was employed for curing of the beef. *Replied*, That the pursuer had a tacit hypothecation of all the goods put on board the ship, for his freight, custom, excise, and all other duties, charges, and expenses, that he gives out upon the account of the loading, in the same manner that the plenishing of a house, and the corns and other goods of a tenement are hypothecated to the master for a year's rent. THE LORDS found, That the pursuer had an hypothec for the freight, custom, and excise, and likewise for the *lucrum* and damage sustained by him; and found the defender liable for the same; but appointed the Lord Lyon to be heard upon that point, how far abatement ought to be granted of the freight, because the full voyage was not plyed.

Fol. Dic. v. 1. p. 419. Sir P. Home, MS. v. 1. No 507.

1708. Jan. 6.

ALEXANDER SANDS and other Seamen in Prestonpans, *against* WALTER SCOTT, Merchant in Dalkeith.

ALEXANDER SANDS and others, having obtained decret before the Admiral, against Walter Scot, as owner of the cargo of a ship navigated by them, and not having paid the freight; he raised suspension and reduction thereof, upon this ground, That the judge committed iniquity in finding him liable for the seamen's wages, because our law knows no hypothecation that seamen have for their wages, on goods aboard belonging to other persons than the skipper and owners of the ship, with whom they contract; and *esto*, they had such a hypothec, yet the suspender having received and disposed of the goods brought home, unaffected by diligence, the seamen can have no interest therein; otherwise merchants and traders might be ruined by processes at the instance of such seamen for their wages, out of cargoes thirty-nine years back.

Answered for the chargers; by the law of all nations, goods imported in ships upon charter-party, are liable for payment of the freight, and such as are

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imported without a charter-party (as in this case) are still liable for the seamen's wages; which is founded on material equity, in regard the seamen take the goods aboard, place them where they may be safest, and are liable for any damage arising to them in the ship, without extraordinary stress of weather; they navigate the ship, bring her to the designed port, and deliver out the goods safe. The seamen did indeed suffer the goods to be unloaded before they craved their wages, because they thought they were dealing with an honest man, who would not defraud them; and they could not claim wages till after delivery of the goods. But after all, though the cargo were not affectable for the seamen's wages, the suspender *qua* merchant cannot refuse to pay them, seeing he still owes the freight to the skipper.

THE LORDS were clear that the seamen's wages were no debt of bottomry affecting either the keel of the ship or the cargo; but found the freight liable for the said wages, and therefore repelled the reason of suspension.

Fol. Dic. v. 1. p. 420. Forbes, p. 219.

1711. Nov. 16.

ALEXANDER WATSON carpenter, JOHN GAY and Others, *against* WILLIAM ARBUCKLE, Merchant in Glasgow.

No 66.

A right of hypothec found competent to the repairer of a ship for his expenses in refitting her. The owner here found liable also personally for the repairs, because he had loosed the repairer's arrestment of the ship on caution, and carried her off to prosecute a voyage after the loosing.

WILLIAM ARBUCKLE, who purchased the ship *The Caledonia* at a public roup, did, in pursuance of a contract betwixt him and Captain Breholt, order, by a commission under his hand, the apparrelling and pertinents of the ship to be delivered to Breholt, for caulking and refitting her for an intended voyage; and thereafter went with him and communed with Alexander Watson, a carpenter, about repairing the ship; in prosecution of which communing, Alexander Watson and others, having expended in workmanship and furnishing to the value of one hundred and eighty-four pounds four shillings and three pence Sterling, pursued Arbuckle for payment, before the High Court of Admiralty; and, upon the dependence of the process, arrested the ship. Arbuckle loosed the arrestment upon caution, and sent off the ship to prosecute some voyage. The Judge found the pursuers had a right of hypothec upon the ship, for payment of their expenses in refitting her, and that the defender was liable to them as he who loosed the arrestment, and intromitted with, and carried off the ship after the loosing, and decerned.

Arbuckle raised suspension and reduction of the Admiral's decret, upon iniquity; in so far as, 1st, There is no foundation in our law for a tacit hypothec in favour of repairers of ships; and the civil law allows them only a personal privilege, *inter creditores Cbyrographarios* L. 26. § 34. *D. De Rebus Aut. Jud. Possid.* The Title *D. In quibus Causis Pignus vel Hypotheca tacite contrahitur* (where all the tacit hypothecs are fully enumerated) mentions no hypothec in