

1784. December 22.

RICHARDSON and COMPANY *against* JAMES STODART and Others.

No 4.

In barratry of
the ship-
master *mala*
fides is sup-
posed.

STODART, and others, underwrote a policy of insurance, which was opened by Richardson and Company, on a cargo of salmon, to be shipped for Venice, where it was intended to arrive during the season of Lent. Having met with unfavourable and tempestuous weather, which obliged him to throw overboard a part of the cargo, the shipmaster, after a tedious navigation, put into the port of St Lucar, on the coast of Spain, in order to refit the vessel. At that place he was persuaded, by certain merchants, that it would be more for the interest of all concerned, to dispose of the cargo there, even at an undervalue, than to proceed to the place of his destination, which he would not probably reach before Lent would have been over, and the salmon spoiled besides, by too long keeping. The cargo being sold accordingly, he received his full freight out of the price, which was considerably under that expected from the market of Venice.

Richardson and Company, who sued those merchants and the shipmaster for damages,* brought an action likewise on the policy, which commenced before the High Admiral Court. In a process of reduction of the Admiral's sentence, the insured

Pleaded, The obligation of the policy is to secure the insured against 'perils of the sea, arrests, restraints, and detainments of all kings, princes, or people, of what nation, condition, or quality soever, barratry of the master or mariners, and all the other perils, losses, or misfortunes that have or shall come to the hurt, detriment, or damage of said goods, or any part thereof, during this adventure,—until the said ship with said goods shall arrive in the port or harbour of Venice, and the same be there safely landed.'

Now, in fact, 'a loss and misfortune have come' to this cargo. It is a loss, ultimately at least, resulting from 'perils of the sea.' And it has proceeded more immediately from 'arrest, restraint, or detainment,' if not of kings and princes, yet of people whose 'nation, condition, or quality' is not excepted. Nor is the particular motive or manner of detainment of any consequence, *Pond versus King*; *King's Bench*, Hilary, 21st Geo. II. In fine, the loss has been occasioned too by the 'barratry of the master.' 'Barratry, in a marine sense, is when the master of a ship defrauds the owners or insurers, whether by carrying the ship a different course to their orders, or by sinking her, deserting her, or embezzling the cargo;' *Postlethwaite Dict.* Or in the words of Lord Hardwicke, 'a breach of the contract as master of the ship is barratry.' *Hil.* 16th Geo. II.; *Strange Rep.* See also *Raymond's Reports*, v. 2. p. 1350.; *Strange*, v. 1. p. 581.; *Molloy*. *Cases in Chan. Mich.* 29th Car. II. In the present case, by a total departure from the line of his instructions, the ship-

* See No 5. p. 3956. *voce* EXERCITOR.

master has violated his contract as such, and defrauded the owners, who are thus subjected to great loss ; while he himself, though he accomplished but the half of his voyage, has been rewarded with the whole of his freight.

No 4.

Answered, The only loss which arose here from perils of the sea, that of part of the salmon thrown overboard, the insurers are willing to repair ; for the going into the harbour of St Lucar was of itself no loss ; nor did any other consequence follow from it than a scheme of trade concerted for the benefit of the owners, which is so strangely compared to detention by kings, princes, or people. As to barratry, it is a criminal act, and cannot exist without a fraudulent design. *Stamma versus Brown* ; *Strange's Reports*, p. 1173 ; whereas here nothing in the conduct of the shipmaster betrays the want of *bona fides*.

An argument was likewise stated relative to the common exception in policies, ' of corn, fish, fruit, &c. from all but general average,' which however the Court seemed not to think material in the cause.

THE LORDS found, ' That the underwriters were not liable for any loss that may have arisen from the sale of the salmon at St Lucar.'

Lord Ordinary, *Elliock*. Act. *M'Intosh, Wight*. Alt. Lord Advocate. Clerk, *Home*.
S. *Fol. Dic. v. 3. p. 330. Fac. Col. No 190. p. 299.*

1793. *March 1.*

CHARLES ADDISON and SONS *against* WILLIAM DUGUID and Others.

THE ship *Leviathan*, belonging to Charles Addison and Sons, sailed from Borrowstounness on the 21st February 1793, fitted out for the whale fishing trade.

In May 1791, Messrs Addisons opened a policy, on which Mr Duguid and other underwriters insured that the ship should return to Borrowstounness with ninety butts of blubber, and obliged themselves to pay for the deficiency at the rate of L. 7 Sterling *per* butt.

The *Leviathan* returned with only five butts of blubber.

Addison and Sons having brought an action against the underwriters, for payment of the loss, in defence, it was

Pleaded ; The statute 19 Geo. II. c. 37. enacts, that no assurance or assurances shall ' be made by any person or persons, bodies corporate or politic, on any ship or ships belonging to his Majesty, or any of his subjects, or on any goods, merchandises or effects, laden or to be laden on board of any such ship or ships, interest or no interest, or without further proof of interest than the policy, or *by way of gaming or wagering*, or without benefit of salvage to the assurer, and that every such insurance shall be null and void to all intents and purposes.'

The present assurance falls under this statute, being just a wager, that a particular ship will get ninety butts of blubber. It is not a contract of indemnity,

No 5.

An insurance that a whale ship would return with a certain quantity of blubber, found not to be a gaming policy.