

1813.

BROWN, &c.

v.

SMITH, &c.

(Dow, i. p. 349.)

MESSRS. BROWN, HUSON, MACGAULEY, and Co., Liverpool Merchants,	}	<i>Appellants ;</i>
ALEX. SMITH and Others, Underwriters on the ship Friendship, and her Cargo,		

Respondents.

House of Lords, 2d June 1813.

INSURANCE—RIGHT TO ABANDON AS FOR TOTAL LOSS.

Action was raised on a policy of insurance upon the ship Friendship, insured “ to the port or ports of discharge, sale, “ and final destination in the British or Foreign West “ Indies and America,” which words, the appellants contended, in the case of a ship engaged in the slave trade, were customary, and understood to cover a voyage from port to port, in search of a market, till the object of the voyage is completed.

The vessel, in consequence of the mutiny of the crew who were guilty of piracy and murder, was taken possession of by them, and the object of the voyage was thereby defeated ; but the boatswain and two others, who remained honest, pretending to gratify the mutinous part of the crew by steering for Cayenne, while they made direct for Barbadoes, on arrival there handed the ship and crew over to the government authorities.

The master, with seven of the crew, had been put on shore in the whale boat, but the master procured passages, first to St. Thomas, and then to Barbadoes, where he found the Friendship, with nothing but the hull and rigging of the ship remaining. The cargo and stores were here sold by the King’s agent before his arrival ; and he saw at once that the intended trade to the coast of Africa was thus defeated. The appellants gave notice that they intended to abandon as for a total loss. The ship was then sold for the insurers.

In an action before the Judge Admiral, he found the appellants entitled to their demand. Of this decree a suspension was brought to the Court of Session, in which they pleaded, as to the ship, that as she sustained no injury whatever, however much the cargo may have been damaged, and the trading voyage therewith defeated on the coast of Africa, yet as the vessel arrived at Barbadoes in a better condition

than when she set out, there were no grounds upon which the appellants were entitled to abandon the ship as for a total loss. 2. In addition to the plea that the ship was not lost, and could not be abandoned as lost, it was further maintained that though the appellants had been in a situation to abandon, yet that they had not abandoned *tempes-tive*. Held in the Court of Session that the appellants were not entitled to abandon as for a total loss, and to recover accordingly. Reversed in the House of Lords, and ordered that the decree of the Court of Admiralty be affirmed, which decided that the appellants were entitled to abandon as for a total loss,—the object of the voyage being totally defeated.

1813.

 CRAIGDALLIE,
 &c.
 v.
 AIKMAN, &c.

For the Appellants, *V. Gibbs, J. A. Park.*

For the Respondents, *M. Nolan, Wm. Erskine.*

(Dow, vol. i. p. 1.)

JAMES CRAIGDALLIE and Others,
 The Rev. J. AIKMAN and Others,

Appellants ;
Respondents.

House of Lords, 16th June 1813.

PROPERTY OF CHURCH—SEPARATION IN RELIGIOUS BODY.

This question, as to the right to possession of the meeting house and session house belonging to the Society of Burgher Seceders of Perth, was raised on the occasion of a split in that body, in regard to the formula of their church as respected the power of the civil magistrate. The appellants were the body who separated themselves, but, contending that they adhered to the original doctrines and formula of the Seceders' body, which were identical with those of the established church, and were therefore entitled to possession, while the respondents were parties who had altered, or were inclined to modify the formula on this head. The Court of Session were of opinion that nothing had been done to alter the formula by the respondents, and confirmed them in possession of the meeting house, &c. On appeal to the House of Lords, the case was remitted for reconsideration. *Vide infra*, (second appeal.)

For Appellants, *Ar. Colquhoun, Wm. Adam.*

For Respondents, *Sir Samuel Romilly, James Stephen,*
Alex. Maconochie.