

posing there was no culpable negligence on the part of the respondent; and, therefore, and inasmuch as no other relief is sought by the said petition, the Lords find that it is not necessary for them to consider whether there was or was not evidence of culpable negligence on the part of the respondent, sufficient to subject him in the expense of re-building the said house; and it is therefore ordered and adjudged that the several interlocutors of the sheriff-depute of Fife, and the several other interlocutors complained of in the said appeal be, and the same are hereby reversed; and that the defender be assoilzied in the process before the sheriff, without prejudice to the question, whether there was culpable negligence in the respondent; and without prejudice to any question whether the respondent is entitled to any other relief than the relief prayed in his said petition to the sheriff-depute of Fifeshire.

1816.

BAYNE
v.
WALKER.

For the Appellant, *William Adam, John Macfarlane.*

For the Respondent, *David Cathcart, Robt. Bell.*

NOTE.—The case, as thus disposed of, was expressly meant to decide the general question of law as to the landlord's non-liability to rebuild the house for his tenant, when burned down by accidental fire.

1816.

ALEXANDER CAMPBELL, JAMES CAMPBELL, JOHN MACMURRICK, WILLIAM ALSTON, and DAVID M'CULLOCK, all Merchants and Underwriters in Glasgow, } *Appellants;*

CAMPBELL, &C.
v.
HAMILTON, &C.

JAMES HAMILTON, Senior, and COMPANY, Merchants in Glasgow, . . . Respondents.

House of Lords 29th June 1816.

INSURANCE—UNSEAWORTHYNESS—An insurance on the cargo of a vessel from Greenock to New York was held to be good—the objection, that the vessel was lost, owing to her unseaworthiness prior to her commencing the voyage insured, not having been proved in evidence.

An insurance was effected on a cargo of goods shipped at

1816.

CAMPBELL, & C.

v.

HAMILTON, & C.

Greenock on board the "Sarah" of New York bound on her return voyage from Greenock to New York. There was a total loss of the vessel and cargo; and the question came to be, in an action raised by the respondents against the appellants, for the sum insured (£1000), Whether the vessel was seaworthy, when she proceeded on her voyage?

It was alleged by the appellants, that when she arrived at Greenock from Alexandria, in America, with a cargo, her cargo was damaged by water, and so sensible was the master of the insufficiency of his vessel to carry out a cargo without a thorough repair, that he repeatedly expressed his resolution to have her docked in Greenock for that purpose; but which was never done, owing, it was alleged, to the want of funds, and the vessel being arrested in the meantime.

May 9, 1809.

It was also stated, that when she sailed on the voyage insured, which was on the 9th May 1809, she was exceedingly leaky, so much so, that in ordinary weather, it was necessary to pump once every hour, and when it came to blow the leak increased to such a degree, that she made ten or twelve inches of water in half an hour, and it afterwards appeared, that part of the sheathing had come off her bottom. The crew were at last obliged to abandon her, and betake themselves to the long boats, in order to escape to land.

The Admiralty Court before which the action was brought, allowed a proof; and upon consideration of it, the Judge Admiral was of opinion, that the vessel was not tight, staunch, and strong, or seaworthy.

In a reduction brought of this decree by the respondents, Lord Balgray, as Ordinary, pronounced this special interlocutor, to which reference is made for the facts of the case, and the circumstances established in evidence:—"The Lord
 " Ordinary having considered the memorial of James Hamil-
 " ton and Company, merchants in Glasgow, pursuers, and
 " the additional memorial for Alexander Campbell, James
 " Campbell, William Alston, and David M'Culloch, all mer-
 " chants or underwriters in Glasgow, defenders, proof ad-
 " duced and whole process: Finds it instructed by the deposi-
 " tion of James Hague, formerly two-thirds owner and master
 " of the 'Sarah,' and to whose evidence there can be no ob-
 " jection from interest or otherwise, That in Spring 1807,
 " previous to the 'Sarah' making her voyage from Alexandria,
 " in America, to Greenock, the said ship was in a complete
 " state to perform the voyage to Britain and back again: Finds,
 " that the facts and circumstances which are proved to have

June 2, 1812.

“ occurred during the said voyage, are not sufficient to infer that
 “ the ship was not seaworthy: Finds, that after delivering the
 “ cargo at Greenock, the ship was detained there for a period
 “ of three months; and that, during the said time, the crew
 “ consisted of seventeen men at least, and were kept con-
 “ stantly employed in repairing the vessel; and that it is
 “ proved, that the carpenter belonging to her, was an attentive
 “ and very careful man: Finds, that in consequence of some
 “ inaccuracy in the ship’s papers, she was detained by order
 “ from the commissioners of the customs, which led to an
 “ examination and valuation of the said vessel, which was
 “ accordingly done by Messrs Scott, Steel, and Ramsay of
 “ Greenock, persons every way qualified to judge of her
 “ sufficiency, who concur in the opinion, that there was no
 “ appearance of the ship being strained in her former voyage,
 “ and that they were satisfied of her being staunch: Finds,
 “ that the said opinion is fully corroborated by the deposition
 “ of Mr James Denniston, junior, of Greenock, the ship-agent,
 “ and of James Anderson, the second mate: Finds it in-
 “ structed that the Captain, Mathew Dunnet, with the whole
 “ crew, except two, returned to America in the said vessel:
 “ Finds it proved, and admitted on all hands, that the vessel
 “ had a most tedious passage outwards; and in the words of
 “ Adam Butler, a witness referred to by the defenders, as
 “ deserving of credit, that the weather was very bad during
 “ the greater part of the passage, in the course of which,
 “ the vessel encountered many hard gales and heavy seas;
 “ that the prevailing winds were from the westward, and the
 “ passage, upon the whole, a very rough one, so rough, that,
 “ in the deponent’s opinion, he might go the same voyage
 “ fifty times more without once meeting the same weather:
 “ Finds, that after the crew deserted the ship, and arrived at
 “ New York, a claim was made by the owners, upon the un-
 “ derwriters, for the value of the said ship, which had been
 “ insured by them for £2250, and that the same was paid
 “ accordingly; and as the said underwriters had then on the
 “ spot, every opportunity of investigating the whole facts,
 “ it is to be presumed that they were satisfied with the justice
 “ of the said demand: Finds, that the evidence of Nicholas
 “ Netterville and Adam Butler, two of the common seamen,
 “ is not sufficient to counter-balance the other evidence ad-
 “ duced; and that the evidence of other respectable persons
 “ referred to by the defenders, is either too vague or general,
 “ or founded upon transient observations at the time: Finds,

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“ that the defence of the ship ‘Sarah’ not being seaworthy
 “ when she sailed from Greenock on her voyage to America,
 “ in September 1807, is not established in a satisfactory man-
 “ ner; on the contrary, that the pursuers have shown, that
 “ the ship was in a condition to encounter the ordinary perils
 “ of the intended voyage, and that the loss of the said ship
 “ is reasonably to be attributed to the extraordinary unforeseen
 “ perils of the sea: Therefore, reduces the decree of the
 “ Judge Admiral, and decerns, and declares accordingly:
 “ And further, decerns against the defenders for payment of
 “ the sums underwritten by them, severally and respectively
 “ with interest, all in terms of the conclusions of the libel:
 “ Finds expenses due, including those incurred in the High
 “ Court of Admiralty; allows an account thereof to be given
 “ in, and remits to the auditor to tax the same, and to report.
 “ Lastly, in respect that the case is of considerable impor-
 “ tance in itself, is attended with difficulty from the con-
 “ trariety of evidence, from which diversity of opinion may
 “ arise, and is fully discussed in the memorials for the parties,
 “ recommends to them, if dissatisfied with the interlocutor to
 “ apply to the whole Court.” On representation, his Lord-
 ship adhered.

June 24, 1812.

Nov. 28, 1812.
 Feb. 17, 1813.
 May 18, 1813.
 June 29, 1813.

The Court, after four reclaiming petitions having been lodged against the above interlocutor in which the case of *Watt v. Morris* was relied on (*ante* vol. v., p. 697), adhered.

Against these interlocutors the appellants (defenders), brought the present appeal to the House of Lords.

After hearing counsel,

It was ordered and adjudged that the interlocutors complained of, be, and the same are hereby affirmed.

For the Appellants, *Wm. Adam, John Clerk, Wm. Buchanan.*

For the Respondents, *J. A. Park, Robt. Forsyth.*

NOTE.—Unreported in the Court of Session.

1816.
 WILSON
 v.
 LAIDLAW.

JOHN PETTIGREW WILSON, residing at
 Shettlestone, near Glasgow, . . . *Appellant;*
 WM. LAIDLAW, Writer in Dumfries, solvent
 partner of James Milligan and Company, } *Respondent.*
 formerly Merchants in Glasgow, . . . }