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affecting any rights of the appellant. And it is declared that the interlocutor of the 1st of March 1782, is not to be considered as final and conclusive against the respondent, with respect to the leases in question. And, therefore, as to so much of the appellant's action of reduction and declarator, as seeks a declaration of the rights of the appellant to such leases, it is further ordered and adjudged, that the said interlocutor of the 2d December 1817, be affirmed, but without prejudice as to any question between the parties, in any other action touching any property comprised in the deeds of tailzies in the pleadings mentioned.

For the Appellant, *Alexr. Macconochie, Geo. Cranstoun,*
Wm. Erskine.

For the Respondent, *John Clerk, Jas. Moncreiff, H.*
Brougham, John A. Murray.

 [Fac. Coll., Vol. xvi., p. 242.]

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 HUNTER, & C.
 v.
 M'GOWN, & C.

JAMES HUNTER & Co., Merchants in Greenock,	<i>Appellants ;</i>
ARCHIBALD M'GOWN, Merchant in Greenock, and Others, Owners, and JOHN M'GIBBON, Master of the Gab- bart "Janet" of Greenock,	} <i>Respondents.</i>

House of Lords, 12th July 1819.

LIABILITY OF CARRIERS BY WATER—DAMAGES FOR LOSS BY FIRE.

—Goods were lost by fire while on board a lighter at Greenock, to be carried to Glasgow. In an action for the value of the goods destroyed, against the owners of the lighter. Held that they were protected by the Act 26 Geo. III. c. 86, exempting shipowners from loss or damage to goods by fire. In the House of Lords, remitted, with a declaration that the Act did not apply to owners of gabbarts or lighters engaged in inland or river navigation.

The produce of *foreign markets* arriving in the Clyde, was (at the time of this appeal) discharged at Greenock and the Port of Glasgow, from the large vessels in which it was imported, and it was afterwards carried from these places to Glasgow and elsewhere, in small craft called gabbarts or lighters, which ply upon the river Clyde, and Forth and Clyde Canal.

Upon the 7th January 1807, the appellants shipped at Greenock, cotton wool on board the gabbert "Janet" of Greenock, to the value of £1345, 16s. 8d., for which they took the master's receipt, acknowledging to have received the same in good condition, and obliging himself to deliver the same in Glasgow, "in like good order, danger of navigation" excepted, on being paid customary freight."

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By the regulations of the harbour of Greenock, made under the express authority, and in strict observance of an Act of Parliament (26 Geo. III. c. 86), the kindling of fire on board any vessel, while in the harbour, is strictly prohibited; but notwithstanding this regulation, the master of the "Janet" kindled a fire on board of her while in the harbour, which communicated to the vessel and her cargo, and part of the appellant's cotton wool was thereby consumed, and remainder greatly damaged, whereby a loss was sustained of £572, 17s. 2d.

In these circumstances, the appellants brought an action against the respondents, as owners of the gabbert, before the High Court of Admiralty, for the value of the cotton wool, in which, after various steps of procedure, the Judge-Admiral was pleased, of this date, to pronounce the following interlocutor:—

Jan. 1, 1808.

"Having advised this additional condescendence and former proceedings, finds that the pursuers have condescended on no law, bye-law, fact, or circumstance, which can have the effect of subjecting the owners of the gabbert or lighter in question, in any part of the damages pursued for; therefore, in respect of the statute, 26 of his present Majesty Geo. III. c. 86, assoilzies the said owners, finds them entitled to their expenses, and decerns."*

This judgment having been brought under the review of the Court of Session, the Lord Ordinary (Armadale), was pleased, of this date, to pronounce this interlocutor:—"Having considered the mutual memorials, and whole proceedings in the reduction, repels the reasons thereof; and, in the suspension, finds the letters orderly proceeded, and decerns: Finds expenses due, and appoints an account thereof to be given in." On representation, his Lordship adhered. On reclaiming petition to the First Division of the Court, the Court also adhered.

Jan. 22, 1811.

Mar. 17, 1811.

May 10, 1811.

* Note by the Judge Admiral:—

"This interlocutor has nothing to do with M'Gibbon, the master."

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Against these interlocutors, the present appeal was brought to the House of Lords.

Pleaded for the Appellants.—1st, The carriers of goods by sea or land are bound to make good all loss or damage sustained on goods entrusted to them, unless such loss or damage is produced by the act of God or the king's enemies.

It is plain, from the preamble of the Act 26 Geo. III. c. 86 (which, the appellants plead, exempts from loss occasioned by fire), that it is applicable to ships and vessels employed in general commerce, and not to craft employed in transporting goods upon canals and navigable rivers.

It requires a large capital to fit out a ship of considerable size for sea, and it was a great discouragement to invest money in this way, that when owners were, by accidental fire, deprived of their own property, they were liable to others for the value of such property as might, at the time, be on board their vessels. To remove this discouragement, which was supposed to operate against the increase of our shipping, was the declared object of the legislature in passing the statute in question, and similar motives have induced the legislature to pass several Acts for the relief of shipowners. But, had it been the intention of the legislature to extend this statute to common carriers by water, the same policy must have induced them to extend it to carriers by land also; in so far as the fitting out a waggon of the first class, with a suitable team of horses, requires the investment of a larger sum of money, than fitting out a gabbert of the first class; and the same observation applies to waggons and gabberts of smaller dimensions. When, however, it is considered how many millions worth of property is annually transported by means of inland navigation, and how very much the safety of that property depends upon the judicious selection of servants to conduct it, owing to the continual opportunities such men have of neglecting their duty, it can never be for a moment supposed, that if the legislature had intended to release to so very great extent, the responsibility of common carriers, it would have been left to the courts of law to have made this out by implication. But, if there was, at any time, room to doubt the meaning and intention of the legislature in passing the aforesaid Act, it now no longer exists, for, in an Act passed in the 53 of Geo. III. c. 159, for the relief of shipowners, it is expressly provided, "That nothing herein contained, shall extend, or be construed to extend, to the owner or owners of any lighter, barge, boat, or vessel of

“ any burden or description whatsoever, used solely in rivers
 “ or in inland navigation.”

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2d, This leaves the question free of the Act, and to rest at common law on the principles applicable to common carriers; and under such, the respondents are liable to make good the loss occasioned by their fault or the fault of their servants.

Pleaded for the Respondents.—1st, The Act of Parliament founded on by the respondents, expressly enacts, that no owner or owners of any ship or vessel shall be subject or liable to answer for, or make good any loss or damage by fire which may happen after the time therein specified, to any goods or merchandise put on board such ship or vessel.

2d, There is no ground stated why the vessel or gabbert in question did not fall within words of the statute, and, therefore, the respondents are entitled to the benefit and protection thereof.

After hearing counsel,

THE LORD CHANCELLOR (ELDON) said,

“ My Lords,*

“ There was a cause which was heard sometime ago before your Lordships, in which James Hunter & Co., merchants in Greenock, are appellants, and Archibald M'Gown, merchant in Greenock, and others, owners, and John M'Gibbon, master of a certain craft, on a navigable river, called a gabbert, in Scotland, which I take to be of the nature of a lighter, are respondents. The case states, that on the 7th day of January 1807, the appellants shipped, at Greenock, cotton wool on board the gabbert “Janet” of Greenock, to the value of £1345, 16s. 8d., for which they took the master's receipt, acknowledging to have received the same in good condition, and obliging himself to deliver the same in Glasgow, in like good order, danger of navigation excepted, on being paid customary freight; the appellants further suggested that, by the regulations of the harbour of Greenock made under the express authority, and in strict observance of an Act of Parliament, the kindling of fire on board any vessel while in the harbour, is strictly prohibited, but, notwithstanding this regulation, the master of the “Janet” kindled a fire on board of her while in the harbour, which communicated to the vessel and her cargo, and part of the appellants' cotton wool was thereby consumed, and the remainder greatly damaged, whereby a loss was sustained of £572, 17s. 2d.

The appellants, in consequence, brought an action against the

* Taken from Mr Gurney's Short-hand Notes.

1819. HUNTER, &C. v. M'GOWN, &C. respondents, as owners of the gabbert, before the High Court of Admiralty, for the value of the cotton wool, and the Judge-Admiral was pleased, by his interlocutor, to state that, in respect of the statute of the 26th of his present Majesty, cap. 86, he assoilzied the owners, found them entitled to their expenses, and decerned. My Lords, that statute enacted 'That no owner of ' any ship or vessel shall be liable to make good any loss which ' may happen to any goods or merchandize, &c., that shall be put ' on board any ships or vessels where damage is done, in conse- ' quence of any fire happening on board the said ship or vessel.' This was afterwards brought before the Lord Ordinary, and he, by an interlocutor of the 22d of January 1811, and several conse- cutive interlocutors, in substance affirmed the decree of the Judge-Admiral.

“ My Lords, there were several points in this case ; first, it was discussed, what was the law of Scotland with respect to the liability of carriers in general ; in the next place, that whatever might be the liability of carriers in general, the regulations with respect to the harbour of Greenock, which prohibited the kindling of any fire on board any vessel, would make the owner of any gabbert liable, whatever might be the liabilities, according to the general law of Scotland, and the decision proceeded expressly upon the supposition that the statute of the 26th of his present Majesty, had exempted the owners of this sort of craft, as falling under the denomination of a *vessel*, from damages in respect of the loss sustained. There was a great deal of argument at your Lordships' bar upon the meaning of that statute of the 26th Geo. III., and, after hearing that argument, it was conceived that it was a case in which it might be proper to have the assistance of his Majesty's Judges, and to have it argued before them—the case has therefore stood over a considerable time. It has been found utterly impossible, such is the pressure of business on the judges in the Courts below, to procure their attendance upon this cause ; I have, however, looked very anxiously into the Acts of Parliament on this subject, and I have had the assistance (though not of all the judges) of the Chief Justice of the King's Bench, who happens, in the course of his practice and experience, to be particularly well master of the meaning of this Act of Parliament, relating to ships and vessels, and I have no hesitation in saying, that I am of opinion, that that Act of the 26th of His Majesty, cap. 86, relates only to ships and vessels usually occupied in sea voyages, and that it is not an Act of Parliament which gives protection in cases of small craft, lighters, and boats and so on, concerned in inland navigation ; the result of that is, if that is a right opinion, and I really do not entertain any doubt about it, that if this judgment has proceeded upon the supposition, that this statute protected the persons against whom the claim of damages

was made from being liable, that in *that* respect this judgment must be considered erroneous.

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“ There remains behind the question, what is the extent and nature of the liability of Scotch carriers? Our law, with respect to English carriers, cannot decide that, nor the point how far the regulations of this particular harbour of Greenock, would make the master or owner of a vessel liable. It appears to me that the right course will be to find that the gabbert or lighter called the “Janet,” mentioned in the pleadings in this cause, is not to be considered a ship or vessel within the extent and meaning of the statute of 26th Geo. III., c. 86, and with that finding, to refer the cause to the Court of Session to review the interlocutors complained of, and do what is just and right, consistent with this finding. That will enable the Court of Session to find, whether by the law of Scotland, independent of this statute, or any regulations relating to the harbour of Greenock, there is any such liability created, and it will certify to the Court of session, that the liability is not taken away with regard to vessels engaged in this species of navigation, by that statute, which they have considered as a statute applying to this case. I would now move the judgment in the terms I have submitted to your Lordships.”

Ordered accordingly.

The Lords find that the gabbert or lighter the “Janet,” is not to be considered as being a ship or vessel within the intent and meaning of the statute of the 26th of his present Majesty, c. 86. And it is ordered, that with this finding, the cause be remitted to the Court of Session to review the interlocutors, and do therein as may be just and consistent with this finding.

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

For the Respondents, *Sir Saml. Romilly, J. Cunningham.*

[Fac. Coll. et Hunter's Landlord and Tenant, vol. i., p. 81.]

[General Declarator joined with Harestanes.]

1819.

JAMES MONTGOMERY of Stanhope, Bart.;
THOMAS COUTTS, Esq. of the Strand,
London; WILLIAM MURRAY, Esq. of
Henderland; and EDWARD BULLOCK
DOUGLAS, Esq. of the Inner Temple,
Trustees of the late Duke of Queensberry,
and ALEXANDER WELSH, Tenant in
Easter Harestanes,

MONTGOMERY,
&C.
v.
THE EARL OF
WEMYSS.

Appellants;

The EARL OF WEMYSS, *Respondent.*