

SECT. XI.

Owners of a Ship, how liable?

1669. July 20. LEARMONTH *against* GUTHRIE and PATERSON.

THERE being a decret of Admiralty given against Paterson, assignee, and Guthrie and others, as his owners, for the value of a great quantity of wheat, which the skipper should have transported from the Pow of Errol to Leith, upon this ground, that he diverted and went into Dundee, notwithstanding he had a fair wind, and that the wheat was damnified, by a bruise or hurt, for the which they were condemned in the whole value, and decerned to make payment conjunctly and severally; parties being heard, upon a bill of suspension given in, the Lords did find, That the decret was, as to the owners, who, at most, could not be liable, but in so far as extended to the value of their proportions of the vessel. Thereafter, they restricting the decret against the skipper, it was alleged, That the decret was null, in so far as this defence was proponed, and instantly repelled, viz. that the skipper was forced into Dundee by stress of weather, as was likewise another vessel, in her company, and that the damage was received from an accidental bruise from another ship. The Lords, notwithstanding, did sustain the decret in preferring the pursuer to prove his libel, that the wind was fair; which was hard, seeing, in such cases, the Lords, for the most part, allow a conjunct probation; at least the defenders being as strong and pregnant in their allegiance as the pursuer, and contrary thereto.

Fol. Dic. v. 2. p. 380. Gosford MS. p. 73.

* * Stair's report of this case is No. 3. p. 3148. *voce* DAMAGE AND INTEREST.

1672. December 11. & 12. CARNEGIE *against* NAPIER.

MERCHANTS having received damage by the skipper's fault, each owner was found liable *in solidum* for the damage done by the skipper's fault, without regard whether each man's interest in the ship did extend so far; but, as the damage claimed was within the value of the ship itself, there was no occasion to determine whether the owners could be reached beyond the value of the ship.

Fol. Dic. v. 2. p. 381. Gosford. Stair.

* * This case is No. 2. p. 9349. *voce* OATH.

No. 47.

Found not liable *in solidum*.—But see the two next cases.

No. 48.