

was sent to Douniol and accepted by him; and it appears in proof that the novel was set up as a whole. Two parts were published in the *Correspondant*, that is to say, in the number of the tenth of December, 1851, and of the twenty-fifth of January following.

In view of these facts, Douniol is not in a position to allege as a justification of his refusal to go on with the publication of the novel, that he has received from readers and subscribers, observations and criticisms of a nature to make its further continuance injurious to him. He cannot, therefore, justly prevent the appearance for the future of the *Intendant* in the numbers of the *Revue du Correspondant*.

With regard to the demand of 300 francs for injuries received, Saint Julian has not proved any notice to Douniol to comply with the contract. His claim for damages, however, on failure to insert the novel in future numbers, may be allowed, but only to the extent of 50 francs a number.

For these reasons the Tribunal DECLARES that Douniol must continue the publication of the *Intendant*, in his periodical, the *Correspondant*: DECLARES that there is no reason for allowing the demand of satisfaction for past injuries: ORDERS and DECREES that the novel in question be inserted in the succeeding number of the *Correspondant*, according to the relative importance of the parts already published, and in default thereof, CONDEMNS Douniol to pay to the plaintiff 50 francs in damages, for each number which shall not contain the publication: and CONDEMNS him in costs.¹

NOTES OF RECENT CASES IN ADMIRALTY.

Advances to master where there is an agent ready to supply funds—Fraudulent collusion.—A claim for advances made to the master of a foreign ship, under the stat. 3 & 4 Vict. c. 65, pronounced against with costs, upon the ground of fraudulent collusion between the master and the party making the pretended advances.

¹ See *Planche v. Coburn*, 5 C. & P. 58.

Seemle, an action under the statute is not maintainable in the Court of Admiralty, where there is an agent of the owners on the spot ready to supply the necessary funds. *The Helena Sophia*, 3 Rob. Adm. Cas. 265.

Bondholder—Costs—Prima facie a bondholder establishing his bond is entitled to his costs. Where however the general validity of the bond is established, and upon reference to the registrar and merchants a large deduction is made from the amount of the bond, and is confirmed by the court, the bondholder will not be entitled to his costs in the original suit. The party opposing the bond in the original suit, having made various charges against the bondholder which are not established, is equally disentitled to his costs in the original suit. *The Gauntlett*, 3 Rob. Adm. Cas. 167.

Bottomry bond—Advances of freight.—Although by the general policy of the law freight is not due until the voyage is accomplished, it is competent to parties, by charter party or otherwise, to covenant in such a manner as to control the general policy of the law. Where advances of the freight have been bona fide made under such charter party anterior to the time when a bottomry bond is given, the bond does not attach upon the freight so advanced. *The John*, 3 Rob. Adm. Cas. 170.

Bottomry bond—Agent.—A bottomry bond granted in New York by the master of a vessel whose owner was residing at St. John's, New Brunswick, (a communication by electric telegraph existing between the two cities,) held to be valid, although the bondholder had previously acted as agent in the concerns of the ship, and no intimation had been made to the owners of the ship of the bottomry transaction until after the bond had been executed. *The Oriental*, 3 Rob. Adm. Cas. 243.

Bottomry bond given by master—Debts of owner—Local laws.—A bond of bottomry given by the master releases his vessel from an arrest on account of debts owing by the owner to his agent at Malta, upon the balance of accounts current between them, such accounts being incurred anterior to the voyage in which the vessel was engaged at the time, not sustained. The general principle,

that bonds of bottomry can alone be given for the furtherance of the voyage in which the vessel is actually engaged, not affected by the circumstance that by the law of the country where she is seized the vessel may be arrested and sold for any debt owing by the owner to a creditor residing in that country. *The Osmanli*, 3 Rob. Adm. Cas. 198.

Bottomry bond—No communication to the owners.—A bond of bottomry upon the ship, cargo and freight, granted by the master, with the consent of the owners of the ship, in the country where those owners resided, upheld, although no previous communication was made to the owners of the cargo of the necessities of the ship, and the intention to take up money on bottomry, the bond being given in Sweden, and the owners of the cargo being resident at Hull. *The Bonaparte*, 3 Rob. Adm. Cas. 298.

Bottomry bond.—A British ship, whose master and officers had been murdered in a mutiny, came into a foreign port, where the British Consul took possession of her, appointed a master, and gave a bottomry bond on the ship. Bond pronounced for. *The Cynthia*, 16 Jur. 748.

Charter-party—Freight on goods stowed in cabin.—The charterer of a vessel is entitled to stow as many goods as the vessel can reasonably carry in her hold and other parts usually appropriated to cargo; and if a larger quantity is shipped so as to occupy the cabin, the shipowner is entitled to share freight for the excess at the current freight of the day at the place of shipment. *Micheson v. Nicoll*, 19 L. T. 229. (Exch.)

Collision—Both vessels equally in fault.—Where there is a probability of a collision, a vessel on the larboard tack, and close-hauled, is not justified in persevering to keep her luff, although the vessel she is meeting is on the starboard tack with the wind free; but, where practicable, she is bound to take the necessary precautions for avoiding the collision, although the other vessel is acting wrongfully in not bearing away. A close-hauled vessel on the larboard tack, and a starboard tacked vessel with the wind free, meeting each other, and neither vessel giving way in time, both

vessels held to be equally in fault. *The Commerce*, 3 Rob. Adm. Cas. 287.

Collision—Duties of licensed pilot and master of vessel—Joint negligence of pilot and master—Liability of owner for damages.—The onus probandi lies on the owner of a ship, claiming exemption for liability for damages, under the Pilot Act, 6 Geo. 4, c. 125, s. 55, by reason of having a licensed pilot on board, to prove that the damage was occasioned by the fault of the pilot. The 6 Geo. 4, c. 125, only relieves owners of vessels from liability for damages done by their ship where the damage is occasioned by the fault, negligence, or misconduct of the pilot alone. A ship having a licensed pilot on board, whilst at anchor in the Downs, the weather being bad, was run into by another vessel, and made to start from her anchorage, and was driven into a vessel at anchor: Held, that she was to blame, and liable to damages, because, first, the ship, notwithstanding the bad weather, and a large number of vessels lying wind-bound in the Downs, had neglected to send down her top-gallant and main royal yards, and also her short fore and mizen top-gallant masts; and, secondly, that she did not set her stay-sail and jib, and so drag her anchor off shore. In such circumstances, held (affirming the decree of the Admiralty Court,) that the neglect to set the stay sail and jib after she was driven from her anchorage was the fault of the pilot alone; but that the neglect in not sending down the top-gallant masts, &c., the cause of damage, was the joint fault of the pilot and master, and that the owners were not exonerated by the Pilot Act, 6 Geo. IV., c. 125, s. 55. When the vessel came to anchor in the Downs, the duty of the pilot ended, but as he did not quit the ship she continued under his charge. *Edward Hammond and others, app., John Rogers and another, resp. (The Christiana)*, 7 Moore's Rep. P. C. 160.

A vessel with a duly licensed pilot on board, condemned in a case of collision, the fault equally imputable to the pilot and the crew on board. *The Lochlibo*, 3 Rob. Adm. Cas. 310.

Collision—Lights burning.—Where steam vessels are navigating under the rules laid down by the Board of Admiralty with

respect to the number and colour of the lights to be carried, it is essential that the master of each vessel should have his lights properly trimmed and burning. The green light of the plaintiff's vessel having gone out previous to the collision, the plea of the defendant that the master of his vessel, upon the supposition that the approaching vessel was a sailing vessel, had acted in conformity with the general rules of navigation by porting his helm, sustained. *The Rob Roy*, 3 Rob. Adm. Cas. 190.

Collision—Maritime lien—Proceedings in rem—Foreign attachment—Lis alibi pendens.—A Scotch steamer ran down an English barque lying in the Humber, and kept out of the jurisdiction of the Court of Admiralty. The owners of the steamer were then sued in Scotland, and the steamer was arrested there, but released on bail, and then sold without notice of this unsatisfied claim. The Scotch suit still pending, she reappeared in England, when she was immediately arrested under an Admiralty warrant, and an action for damage entered in the Admiralty Court here, the cause of action being the same, though instructions were immediately sent to abandon the Scotch suit. The owner of the steamer appeared under protest to this Admiralty action, pleading *lis alibi pendens*, and purchase without notice: Held, 1. The plea of *lis alibi pendens* was bad, as the suit in Scotland was substantially a proceeding in *personam*, while the present was in *rem*; 2. The ship was liable, into whose hands soever she had come. When a vessel at sea causes damage, an inchoate lien emerges, and when the amount of the damage is judiciously ascertained by a proceeding in *rem*, the lien relates back to the period when it first attached, and takes priority, to the extent of the then value of the vessel, of all other liens, and travels with the vessel wherever she goes, or into whose hands soever she passes; but this lien arising out of damage is not indelible, but may be lost by negligence or delay, where the rights of third parties are compromised. A foreign attachment, like that which prevails in London, Scotland, &c., is intended solely to compel an appearance; whereas a proceeding in *rem* in the Admiralty Court for wages, salvage, collision, or bottomry, goes against the

ship in the first instance. A maritime lien and a proceeding in *rem* are correlative: wherever a proceeding in *rem* is competent, a lien exists, and *vice versa*. *Hamer v. Bell and others* (The Bold Buccleugh), 19 L. T. 235. (Privy council.) Affirming S. C. 3 Rob. Adm. 220.

Demurrage—Collision—Repairs—Proof of positive loss.—Claim of a steam company for demurrage during the repairs of their vessel damaged by collision, at the rate of 21*l.* per diem. as being the amount at which the vessel might have been hired, not allowed by the registrar and merchants, on the ground that there was no sufficient proof that an actual loss to the extent claimed had been sustained by the successful plaintiff. A party claiming to be indemnified for consequential damage, by reason of the detention of his vessel whilst under repair, must prove that he has sustained a direct and positive loss thereby; it will not be sufficient to aver that the vessel might have earned certain probable freight. *The Clarence*, 3 Rob. Adm. Cas. 283.

Demurrage.—A charterer must prove undue delay in discharging the vessel, to relieve him from a claim of demurrage. *Crowe v. Hutchison*, 1 S. M. & P. 37; 18 L. T. 188. (Court of Session, Scotland.)

Derelict—Underwriters—Hirers of Vessels—Salving—Disposition of first set of Salvors.—A ship, abandoned at sea, was taken possession of by a small schooner, and after being towed some time by the schooner, was boarded by several men from the President steamer, who took possession of her, and towed her into Liverpool. The action on behalf of the President was entered in the names of certain persons, who being underwriters of the ship and cargo, hired the steamer for the purpose of salving the *Pickwick*: Held, that the schooner was entitled to salvage as first salvor; that the steamer, looking to the danger of the ship, and the small size of the schooner, was justified in taking possession of the ship: and the persons hiring the steamer were entitled to salvage as owners for the time. *The Pickwick*, 16 Jur. 669. (Adm. C.)

Examination of witnesses in Court of Admiralty.—Where witnesses are examined viva voce in the Court of Admiralty, under the stat. 3 & 4 Vict. c. 65, s. 17, the mode of conducting the examination is upon the same system as is adopted at Nisi Prius, viz: by an examination in chief by the counsel for the plaintiff, and a cross-examination by the counsel for the defence. *The Glory*, 3 Rob. Adm. Cas. 187.

Freight—Broker—Revocation of authority to receive freight.—The plaintiffs, merchants in London, shipped at New York a quantity of oil-cake on board a vessel chartered for London, of which the defendant was owner. The vessel was consigned to C. & Co., brokers in London, and the terms agreed on with the captain were, for a lump freight of 500 tons, 500*l.*; half to be paid in cash on delivery of the cargo, and the remainder by approved bills. Bills of lading were signed and given. The brokers, C. & Co., on the arrival of the vessel duly reported her, made out the freight notes, and received 133*l.* 13*s.* 6*d.* for freight from the plaintiffs. Whilst the vessel was delivering the goods into the plaintiff's barges, the captain, having learnt that the brokers were insolvent, refused to allow the barges to be removed with the goods until he had received an indemnity from the plaintiffs. At the trial it was contended that the shipowner had a lien on all the goods, whether shipped on bills of lading under the charter or otherwise. The learned judge directed the jury that the plaintiffs were authorized to pay freight to the brokers, C. & Co., unless they had previously received notice that the brokers' authority was revoked; Held, no misdirection. *Adams and another v. Avery*, 19 L. T. 63. (C. B.)

Salvage.—Agent at Lloyd's.—An agent at Lloyd's at an outport, who had undertaken to relieve a vessel from her difficulties in the character of agent, and had merely employed the necessary hands to perform the service, without having himself incurred any personal risk in the transaction, is not debarred from claiming as salvor in the Court of Admiralty. *The Purissima Concepcion*, 3 Rob. Adm. Cas. 181.

Salvors—Persons intruding illegally.—Where salvors are embarked in a salvage service, with the consent and sanction of the master, and are disturbed in their salvage operations, and ousted from the vessel by persons illegally intruding themselves into the service, no salvage benefit can accrue to the parties so intruding themselves for any portion of the ship or cargo which they may save, but the same will enure to the benefit of the original salvors. *The Fleece*, 3 Rob. Adm. Cas. 278.

Salvage—Seamen.—A ship was by order of her master, abandoned at sea, and on the next day her crew, who had been taken to Vego, were by order of the British Consul, put on board a steamer, which fell in with the abandoned ship. Part of the crew volunteered to return to their ship, but without the master; and were accordingly put on board by the steamer: and with the assistance of a smack, and other boats, the ship was subsequently brought to Corunna: *Held*, that the crew was entitled to be rewarded as salvors. *The Florence*, 16 Jur. 572, approving *Mason v. The Blaireau*, 2 Cranch, 240, and *Hobart v. Drogan*, 10 Peters, 108.

Second action in England pending proceedings in Scotland.—A second action entered against a vessel in the Court of Admiralty in England, during the pendency of proceedings in the Court of Session in Scotland in the same cause of damage, allowed to proceed, the party bringing the suit at the time of the second arrest of the vessel having sent instructions to his law agents in Scotland to discontinue the original action in the Court of Session. An appearance under protest to the jurisdiction of the Court by the defendant, upon the plea of a *lis alibi pendens*, overruled, and the party assigned to appear absolutely. *The Bold Buccleugh*, 3 Rob. Adm. Cas. 220. Affirmed 19 L. T. 235, see ante.