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and claims, either by adding proper parties to the present summons and suit, or by raising and commencing a new summons or suit, for bringing all proper parties before the Court of Session, and thereupon to proceed as they shall be advised.

For Appellant, *Henry Dundas, Ar. Macdonald.*

For Respondents, *Al. Wedderburn, Alex. Murray.*

NOTE.—In the report of this case in the Court of Session, it is stated that after the interlocutor of the Court, 5th July 1777, the case was settled by Mr. Shaw Stewart accepting the offer of the new kirk-session ; but this appears erroneous, from the subsequent interlocutors of the Court and appeal to the House of Lords. The reversal of the judgment is not noticed, M. 8019, “ Kirk-yard and App. 1, No. 1. *Vide* Dunlop, p. 80. The reversal in the House of Lords on point of form, leaves the principle as fixed in the decision unaffected, although the judgment cannot be founded on as an authoritative determination. Mr. Dunlop, (*Parochial Law*, p. 82,) says, “ that there are certainly strong grounds on which to support that judgment, although, at the same time, the strict interpretation the Court have lately put on the obligations of heritors, in regard to churches, may justly lead to doubt how far they would impose on them a burden nowhere laid on them by Act of Parliament.”

JOHN ALSTON, ALEXANDER ELLIOT, WILLIAM COLQUHOUN, and Others,	} <i>Appellants ;</i>
MESSRS. COLIN CAMPBELL & Co., Merchants in Greenock, and JOHN M'ALLISTER,	
	} <i>Respondents.</i>

House of Lords, 3d March 1779.

SALE ABSOLUTE OR QUALIFIED—INSURANCE—INSURABLE INTEREST.

—A party sold a vessel to his creditor, under a vendition *ex facie* absolute, but, as shewn by the correspondence, was intended as a security for his debt. He thereafter insured the vessel. Held, on her loss, that he had still an insurable interest,—the sale being merely in security.

Richard Caldwell was owner of the ship Frederick, then on a foreign voyage, and being pressed for money by the respondent M'Allister, who was his creditor to a large amount, Caldwell, in order to satisfy him as far as possible, wrote him with certain securities. He says, “ The securities I now enclose you are, 1st, A bill of sale of the Snow Fred-

“erick, for which I paid at the outset of her present voyage,
“£700.”

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There was also an assignment of her freight home, and of goods sent out with her.

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The bill of sale was an absolute transfer of the ship to M'Allister. The advice from the Captain of the vessel at the time was, that she was then at St. Christopher's, and intended to proceed from thence next day to Jamaica; and M'Allister soon after the sale, procured an insurance of the vessel, on the voyage from Jamaica to her port of delivery in Great Britain or Ireland; but did not succeed, on the terms of premium offered, to procure an insurance for the voyage from St. Christopher's to Jamaica.

The other respondents, Colin Campbell and Company, being also creditors of Caldwell, advised Caldwell to insure the vessel on her voyage from St. Christopher's to Jamaica, and, as a security for debt due them, to open the policy in their name. This was done accordingly some weeks after the sale of the vessel to M'Allister.

The vessel was lost on her voyage from St. Christopher's to Jamaica in August, previously to this policy,—intelligence of which being only received on 17th January 1774.

Dec. 28, 1773.
Date of Policy.

The present action was brought against the underwriters, for the sum insured on the vessel in Colin Campbell and Company's names. To which the defence stated was, that the vessel having been previously sold by Caldwell to M'Allister, Caldwell had no insurable interest in the ship at the time of effecting the insurance, and therefore could not recover. To this defence, it was answered, that the sale of the ship to M'Allister was merely as a security for the debt due to him by Caldwell, a fact proved by the correspondence between both at the time of entering into the transaction, and adduced in process. M'Allister also put in his claim.

Nov. 1733.

July 9, 1777.

The Lord Ordinary found, “after considering the correspondence between Caldwell and M'Allister produced, finds that it is now unnecessary to resort to the opinion of merchants, as the case must be determined on a rational and legal construction of said correspondence, as relative to the bill of sale or vendition of the ship. Finds, that though the bill of sale is, by its tenor and *ex facie* an absolute vendition, yet the same is qualified by the relative correspondence of the parties, which imports only a conveyance in security of the ship, and other particulars mentioned in the said correspondence. Finds, notwithstanding this

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“ conveyance in security, Caldwell continued to have such
 “ legal property and interest in the ship, as entitled him to
 “ make insurance upon her ; therefore alters the former in-
 “ terlocutor, finds the pursuer entitled to recover the insur-
 “ ance money, and decerns.”

On reclaiming petition, the Court adhered. And an inter-
 Nov. 19, 1777. locutor was afterwards pronounced, preferring Campbell and
 Aug. 5, 1778. Company and M'Allister, *pari passu* to the sum of £800,
 Aug. 8, — which, on representation, was adhered to.

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

Pleaded for the Appellants.—The policy was void for want of interest, Caldwell having previously sold the vessel to M'Allister, by a vendition *ex facie* absolute and unqualified. His insurance in name of Colin Campbell and Co. was therefore invalid, and was not recoverable. Nor was the evidence offered to qualify this deed of vendition admissible, because, although the letters were properly authenticated, it was clear they rather confirm the nature of the deed than qualify its import.

Pleaded for the Respondents. The real transaction, as shown from the whole circumstances and evidence adduced, was no more than a security lodged with M'Allister, the value whereof would of course be allowed to Caldwell when made effectual ; but till then his demand against Caldwell remained the same. As, therefore, the loss of the ship must have been sustained by Caldwell, an interest subsisted in him sufficient to support the insurance effected. And this even though the benefit should accrue to M'Allister, as involved in the pledge.

After hearing counsel, Lord Mansfield moved to affirm. It was therefore

Ordered and adjudged that the interlocutors be affirmed, with £80 costs.

For Appellants, *J. Dunning, Gilb. Elliot.*

For Respondents, *Al. Wedderburn, Ar. Macdonald.*

Unreported in Court of Session.