

The same doctrine was held by Lord Thurlow (11 *Ves. Jr.* 625) and by the present master of the Rolls, Sir Wm. Grant (11 *Ves. Jr.* 642).

It has been said, that this was a case of great hardship upon the Respondent. If this were true it might be answered that "the doctrine of hardship is not a favorable subject in a Court of law, in any case; still less so when Judges are called upon to judge according to the words and spirit of an act of Parliament. The words of the Statute are so plain and so decisive that it is impossible to get over them."—*Buller, J. 3. T. R. p. 414.* But in truth this is not one of those "cases that have arisen upon the construction of this act of Parliament that are calculated to distress the feelings of the Court."

For, II. The claim of the Respondent is as unfounded in equity as in law.

1. The Respondent, aware of the invalidity of the sale, kept the vessel for some time and attempted to sell her, thereby to speculate at the Appellant's risque. It was only after he had failed in his attempts to effect an advantageous sale that he began to consider how he could get rid of the bargain altogether. The first idea that struck him is a curious one and exhibits the honor and probity of the Respondent in a very respectable view.—It is mentioned in the testimony of Mr. Aylwin, when an action is instituted against him he denies the existence of the contract; under cover of the registry Acts he effects his retreat: And he now unblushingly asks damages for the non-performance of that contract, the nullity of which he in the former suit averred, and the very existence of which he denied.

2. The Respondent asks the reimbursement of expences incurred in repairs, and a remuneration for his care and trouble, when by his own neglect and want of care the vessel was depreciated from £215 to £100 whilst she remained in his possession.

Is it not obvious that so far from having an action for the recovery of these expences he was and still is liable to an action of damages for his misconduct?

The reasons of Appeal assigned by the Appellant are,

1. The general reason.

2. That the Court below overruled the Appellant's demurrer, whereas the same ought to have been maintained.

3. That the 34th of the King requires agreements of transfers of Ships to be in writing and because the pretended agreement of transfer on which the Respondent's action is founded was by parol.

4. That the pretended contract or agreement for the alledged non-performance of which the Court below hath awarded damages against the said Appellant was by the law of the land utterly null and void to all intents and purposes—and that by law damages cannot be awarded for the non-performance of a contract or agreement which is utterly null and void to all intents and purposes.

5. That the said Respondent so negligently kept the said Vessel whilst she was in his possession, that when the said vessel was returned to the said Appellant she was of less value than at the time the said Respondent entered into possession of her; and that the said Appellant could under no circumstances be by law compelled to pay the said Respondent for repairs which the negligence of the said Respondent had made of no value to the said Appellant.

6. That the action of the said Respondent is unfounded in law and in equity.

Quebec, 18th July, 1812.