

I N S U R A N C E.

D I V I S I O N I.

Fault of the Insurer and Shipmaster.

S E C T. I.

Barratry.—Short Insurance.—Ship Insured under a wrong
Name—Wager-Policy.

1763. *June 17.*

JOHN MELVILL, Owner of the Ship Michael and Polly, *against* Messrs STEWART
and WALLACE, and Others, Underwriters on the said Ship.

IN the month of October 1757, Messrs Stewart and Wallace, and others, insured the ship the Michael and Polly, belonging to John Melvill, the policy being in these terms: 'Beginning the adventure upon the said ship at and following her departure from Carron-water, and to continue and endure until the said ship shall arrive in safety in the port and harbour of Montrose, and during her abode there, and from thenceforth, until she arrive in safety in any port or harbour of the Frith of Eorth.'

The ship sailed from Carron-water, under the command of James Logan, upon the 8th of October; but was, upon the 10th, put in by contrary winds to the port of Dundee, where her cargo was disposed of.

During her abode in this port, the master, with consent of the owner, entered into an agreement to go from thence to Burntisland, provided the winds were favourable, in order to bring back a loading of lime to Dundee; and, in case the vessel should not get conveniently to Burntisland, the master had orders from the owners to call at Lime-kilns, and load lime-stone for Quarrel-shore.

No 1.

A policy vacated where the damage happened while both master and crew were ashore, and might probably have been prevented, had any hands been aboard.

No 1.

On the 2d of November she sailed in ballast from Dundee, and the very next day was drove in by stress of weather to the port of Anstruther, situated within the Frith of Forth; and, after remaining for two or three days, proceeded up the Frith, without either touching at Burntisland or Lime-kilns, the wind being contrary for both of these ports, and came to an anchor at Higgin's nook, upon a Sunday, it being then impossible to go directly for Quarrel-shore, as it was low-water when she came to the mouth of the Carron.

The master and crew came immediately ashore, and the owner was informed that very evening of the vessel's arrival at Higgin's-nook; but this notwithstanding, she remained there, without any person on board, till the Thursday morning thereafter, when she was found sunk under water; and, during this period, the owner paid the crew their wages, and engaged them upon a new adventure to proceed immediately from Higgin's-nook to Burntisland, there to take in a cargo of lime-stone for the river Tay.

The ship having been weighed up, by the help of other vessels, and the assistance of the country-people, the owner brought an action against the underwriters for the charges thereof, and for the damages she had sustained.

Pleaded for the defenders, *1mo*, The adventure was at an end when the ship arrived safe at Anstruther, a port lying within the Frith of Forth. *2do*, At any rate, the voyage was determined upon her arrival at Higgin's-nook, by the confession of the owner himself, who paid off the crew, and engaged them anew to proceed directly from thence upon another adventure. *3tio*, The ship was sunk by the negligence of the owner, who, as he was immediately informed of her arrival, and of the crew's having come ashore, ought either to have sent the same hands on board, or to have got others to take care of her.

Answered for the pursuer, *1mo*, As Anstruther was not the port into which it was intended to carry the ship, and as she was forced in there by stress of weather, it cannot be maintained that the voyage was then determined, although that port lay locally within the limits described in the policy.

2do, It can make no difference, whether it was intended to carry the ship directly from Higgin's-nook to Burntisland, or first to have brought her up Carron-water. Higgin's-nook is only a road stead, and cannot be considered either as a port or a harbour within the Frith; if the intention had been to bring her to Quarrel-shore, and she had been carried there, the voyage would no doubt have been at an end. And, in like manner, it would have been at an end upon her arrival at Burntisland; but her anchoring in the open Frith, because she could not reach the intended port, whether on account of a storm or low-water, could not, in terms of the policy, put an end to the voyage. And it can make no difference, that she was to take in goods at Burntisland for a second voyage; she remained upon the pursuer's risk till she should arrive with safety within a destined port or harbour in the Frith.

3tio, Although it might perhaps have been the pursuer's duty, as a member of society, to do what was in his power to prevent the loss of the ship, yet his

neglect in this will not be sufficient to lay that loss upon him, unless it can be said that he was active in bringing it about. But there is no occasion to resort to this argument; for, in fact, he did every thing in his power to get the crew on board, and, upon the Monday forenoon, ordered the master to hire a pilot to bring her up to Quarrel-shore.

THE LORDS sustained the defence, assoilzied the underwriters, and found expenses due.

A. W.

Fac. Col. No 109. p. 254.

No 1.

1777. December 2. DALRYMPLE against JOHNSTON.

DALRYMPLE, owner of the ship Neptune, sailed her from Fraserburgh to Dantzic; and having there disposed of his outward cargo, shipped a valuable cargo of goods homeward; on which he made several insurances, viz. L. 300 on the cargo, and L. 750 on ship and goods at London, and L. 250 on the goods only at Glasgow. The ship being driven ashore on the coast of Sweden, Dalrymple wrote home to the underwriters, informing them of the misfortune, and desiring their instructions for his conduct; and he received answers both from those of London and Glasgow, authorising him to act in the best manner he could for the behoof of all concerned. He did so; but, after all, the expenses considerably exceeded the value of what was saved. Having claimed the amount of the loss, and his expenses, from the underwriters, those of London paid without scruple their proportion of the former, amounting to L. 850, and 15 per cent. of that sum as the amount of the expenses. But the Glasgow underwriters refused, upon the ground, that the ship and cargo were short insured; and therefore, to the extent of that short insurance, the insured must be considered as his own underwriter, and must bear his share of the expense incurred in endeavouring to save the subjects. The ship itself was short insured by L. 100, the freight not at all insured, and the goods short insured also; the whole short insurance amounting to L. 275, which Dalrymple must have lost altogether on abandoning the ship, or in case of a total loss; so that, if he chose to try to save something for himself, and the other parties concerned, he must be liable for his share of the expense thereby incurred. The COURT found, that as Dalrymple was sole owner of ship and cargo, in so far as there was a short insurance, he must be held as insurer himself to the extent of the deficiency; and found, that as the ship, though valued in the policy at L. 800, was insured only at L. 700, and that, though the invoice price of the goods aboard was L. 623, they were insured only at L. 600, the charger stood insurer for both these deficiencies, and is bound to contribute with the other insurers *pro rata*, in making good the damages sustained by the wreck of ship and cargo, and the expenses incurred in endeavouring to save the same; and found, that though, by mercantile law and practice, the owner of ship and goods is

No 2.

When a ship is short insured, the owner is to be held as insuring himself to the extent of the deficiency.