

the insured have either wilfully concealed, or inadvertently omitted very material circumstances of the hazard, in their information to the insurers. In one of the policies, dated 8th October, the ship is warranted safe on the 13th September, and no advice of her sailing. But these material circumstances of intelligence are suppressed or omitted, viz. that the ship had been completely loaded between the 6th and the 13th; that she was then ready to sail, and the bill of loading and invoices were transmitted; and the insured's information, on the other policy, dated 7th October, is still more exceptionable, as it intimates to the insurer, that the ship was only expected to be loaded betwixt the 13th and 20th September, though the insured had positive intelligence that she was actually loaded, as above, betwixt the 6th and 13th; and that the master, after delivering his bill of loading and invoices, was then ready to sail with the first fair wind, and, in fact, she did sail on that very day: Upon these grounds, the Lord Ordinary finds the insurance void; and decerns and declares accordingly." And to this interlocutor the Court adhered, upon advising a reclaiming petition and answers.

Lord Ordinary, *Gardenston.*

Act. *Ilay Campbell.*

Alt. *Crosbie.*

Clerk, *Tait.*

*Fol. Dic. v. 3. p. 327. Fac. Col. No 57. p. 102.*

1779. July 15.

GEORGE and JOHN BUCHANNAN *against* JAMES HUNTER-BLAIR, and Others.

IN spring 1772, George and John Buchannan, merchants in Glasgow, sent out two ships, the *Argyle* and the *Jeanie*, to the Bay of Honduras, consigned to the care of M'Aulay, their agent at St George's Key in that bay. M'Aulay was directed to load the ships with certain goods, and to send the *Argyle* to London, and the *Jeanie* to Bristol. But, on the 19th March, George Buchannan, with the knowledge of John Buchannan, wrote M'Aulay, desiring him to send *the ship Jeanie to London.*

Messrs Buchannan received letters from M'Aulay (September 1772), informing them of the arrival of these ships in the bay, and that they should *be sent agreeable to orders.* In November 1772, they got both cargo and freight of *the ship Jeanie* insured, to the extent of L. 1050, from the Bay of Honduras until she should arrive at *Bristol.* In the mean time M'Aulay had cleared out this ship from the Bay of Honduras for London. She sailed from the bay (4th September,) and in a few days was totally wrecked upon a rock about 18 leagues from St George's Key. The underwriters when called on, refused to pay their shares of the loss, on this ground, that an alteration had been made on the voyage insured, by clearing out the vessel to *London* instead of *Bristol.*

An action ensued before the admiral-court, at the instance of Messrs Buchannan, against the insurers, in which the judge-admiral, after some procedure, pronounced this judgment: "Having considered the whole circumstances of case, and, in particular, that the pursuers did not disclose and lay before the defenders, at the time of their underwriting the policy of insurance produced

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A vessel was insured from the Bay of Honduras to Bristol. The destination of the vessel was afterwards altered from Bristol to London, without the knowledge of the underwriters. The vessel being wrecked on the voyage, the policy was found null.

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and libelled on, their said directions to their said correspondent James M'Aulay, relative to the destination of the said ship for the port of London, and then set forth to them the embarrassment which might be occasioned by the contrary orders given by them relative to the destined port of delivery of the said ship in Britain, whereby the defenders might have had sufficient lights to determine themselves, whether or not, in these circumstances, they would have insured; therefore, upon the whole, finds, that the said defenders are not liable in payment to the pursuers of the sums underwrote by them respectively upon the policy of insurance produced and libelled on; and, therefore, assoilzie the said James Hunter defender, and the whole other defenders, from all the conclusions of the pursuer's libel." A reduction of this judgment was brought by the pursuers, who

*Pleaded*; That they entered into this policy *bona fide*, under the impression of their having ordered both vessels to Bristol, and, from the same mistake, corresponded with their agent there concerning both. The letters of correspondence were produced in evidence of this fact. As the error in the policy was not wilful, the insurance ought to remain good.

The clearing out the vessel for London implied nothing more than an intention to deviate from the voyage. But an intention to deviate does not vacate the policy. When the vessel is lost before actual deviation, as in the present case, the insurer remains bound. It is of no consequence at what time the intention to deviate is taken up, whether before or after the voyage commences, if there is no actual deviation. This has been determined in the courts of England, and the insurers are held to be equally liable in the former case as in the latter; *Foster v. Wilmer*, Hilary-term, 19th Geo. II. Strange, p. 1249. Several instances of a like nature are stated by Bynker. *quest. jur. priv. lib.* 4. c. 3. p. 545. *Ibid.* c. 5. p. 562. c. 10. p. 603.

*Answered* for the defenders; The pursuers, before insuring, were acquainted with the alteration on the voyage. They had given order for it, and been informed by their agent, 'That the vessels were to be sent according to their orders.' Whether the subsequent insurance of the ship, for a voyage to Bristol, proceeded from improper motives or mistake, makes no difference. When a material circumstance is misrepresented by the insured, the policy is vacated in either case.

But it is enough for the present purpose, that, in point of fact, the ship was dispatched upon a voyage to London, and consequently not upon the voyage insured. Though the insurers had not been in the knowledge of the fact, the policy is thereby discharged. The insurance is undertaken on the footing of a particular adventure or voyage, with respect to which alone the insurer is presumed to have calculated a premium, or chosen to become bound. If the vessel sets out on any other voyage, no claim can be made against the insurer on the policy, as it does not apply to the voyage. For this reason, in practice, where a voyage insured is given up or altered, the insurance falls of course. The premium must be given back by the insurer.

er, who, on his part, is not bound to make up any loss that happens upon the voyage performed.

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The argument of the pursuers, upon the effect of a deviation, is misapplied. The present question does not occur in the case of a deviation from a voyage on which the vessel had set out, but in a case where the destination of the vessel was altered from the first, and the insured voyage never begun. London was the only port to which the ship was destined; and she never went on a voyage for Bristol, the port to which she was insured.

This, therefore, is truly a question on the construction of the policy, whether a voyage to London was covered by the insurance of a voyage to Bristol, on no other account but that the course to both is the same for part of the way? Were it found to be so, the judgment would have very extensive consequences. It is obvious, that the course of voyages, to very different and distant parts of the world, is often the same for a considerable part of the way, and insurers would be left in total uncertainty what was the voyage actually undertaken.

The judgment of the court was, "Approve of the judge-admiral's proceedings and decreet, and assoilzie the defenders."

Lord Ordinary, *Auchinleck*. Act. *Alex. Murray*. Alt. *Ilay Campbell*. Clerk, *Tait*.

*Fol. Dic. v. 3. p. 327. Fac. Col. No 86. p. 166.*

1781. June 20. THOMSON *against* BUCHANAN, and Others.

No 8.

IN summer 1778, the pursuer had freighted a ship with a cargo to Gibraltar, from which it was to proceed to Malaga, and then with a new cargo to return home to Leith.

What concealment sufficient to vacate the policy.

The master of the ship, on his arrival at Gibraltar, wrote to his owner the following letter, dated 28th September 1778. 'Sir, This is to acquaint you of my arrival here yesterday, after a long hard passage; and to acquaint you there is as much danger going from here to Malaga, as coming from England here. I hear that the merchants at Malaga wont ship any goods on board English ships, before they hear of a convoy to take them from there. I am going to write Mr Ferry to-morrow by post, to hear what he thinks of it; for there is a great number of ships at Malaga that is chartered, and the merchants wont ship on board of them. They are shipping on board of Spanish ships for London.'

After receiving this letter, the pursuer got the ship insured by the defenders, to the extent of L. 600, at the rate of 25 guineas *per cent.* and subjoined to the policy was a note, in these words: 'The last advice from Gibraltar was, the 28th September 1778; and the vessel arrived only the day before, and had a cargo to discharge. If said ship sails with convoy from Malaga or Gibraltar, bound for England, and arrives safe, L. 5 *per cent.* shall be returned.' But the letter itself was neither communicated to the underwriters, nor put into the broker's hands.