

No 8.

The ship was taken on the very day it sailed from Gibraltar; and intelligence of the capture was received on the very morning after the policy was underwritten.

Action for payment of the insurance-money was brought before the Court of Admiralty: And the chief defence pleaded by the insurers was, that the policy was vacated by the concealment of the letter of advice from Gibraltar. The Judge of the Admiralty repelled the defence; but the cause being carried to the Court of Session by suspension,

THE LORDS 'suspended the letters, sustained the defences, and assoilzied.'

The same general arguments on both sides were pleaded in this case, as in the case, Stewart *contra* Morison, decided 19th January 1779; No 6. p. 7080. (collected by Mr Ogilvie) and the Court considered the rule laid down in that decision as established law, viz. 'That the person who applies for insurance of a ship or cargo in foreign parts, is not bound to produce all his letters of intelligence concerning the voyage or adventure; yet he is bound, fully and fairly, to communicate every material circumstance of his intelligence, from which any probability of hazard may arise.'

Reporter, *Lord Justice Clerk.* Act. II. *Campbell.* Alt. *Jo. M<sup>c</sup>Laurin.* Clerk, *M<sup>c</sup>Kenzie.*  
D. *Fol. Dic. v. 3. p. 327. Fac. Col. No 61. p. 99.*

\* \* \* This case was appealed.

THE HOUSE OF LORDS (13th March 1782) ORDERED and ADJUDGED, That the interlocutors complained of be reversed, and that the decret of the Judge-Admiral in Scotland be affirmed.

1782. —

GRIEVE *against* YOUNG.

No 9.

Grieve merchant in Eyemouth, wrote on 10th December 1779, to Muat and Aitken of Edinburgh, desiring them to insure L. 160 on the Jean of Dunbar, which sailed that afternoon for Alloa. The letter was sent to the Press the same evening, to be taken up by the London post, which passed there next morning about ten o'clock, on its way to Edinburgh. It arrived at six o'clock afternoon of the 11th at Edinburgh, and the insurance was made the same evening at eight. The ship on the evening of the 10th was driven back by a storm to Coldingham, and went to the bottom in the sight of Mr Grieve himself, about eight in the morning of the 11th. In an action against the underwriters, the Judge-Admiral found it was incumbent on Mr Grieve to have informed his correspondent *by express* of the disaster, in order that the insurance might have been stopped, which could have been done in good time. THE LORDS on an advocacy were of opinion that it was not incumbent on Grieve to send an express to Edinburgh; but as there appeared sufficient time to countermand the insurance, by the ordinary course

of post, and it was Grieve's duty to have done so, they therefore assoilzied the underwriters.

No 9.

*Fol. Dic. v. 3. p. 327. Millar on Insurance.*

1783. November 20.

BAIN against KIPPEN.

KIPPEN made insurance for Bain upon a vessel 'at and from Rothsay, in the frith of Clyde, to the Isle of Man, and from thence to the Broomielaw of Glasgow.' There afterwards occurred reason to apprehend that her destination really was to fish off the Isle of Man; an adventure attended with more hazard, and entitling the pursuer to a higher premium.

The ship proceeded from Rothsay in the island of Bute, on her voyage towards the Isle of Man; and having been, by stress of weather, driven back to the former island, she was there stranded and wrecked.

Bain having sued Kippen for the insured value before the High Admiral Court, the cause was thence, at the defender's instance, removed into the Court of Session.

*Pleaded* for the defender; The voyage for which the vessel was destined being different from that specified in the insurance, no action can lie on the policy. *Consensus in idem placitum*, is essential to every contract; but whatever may have been the object of the pursuer, a fishing voyage, so different from that described, was not in the view of the defender, who therefore could not contract, nor incur any obligation with respect to it. Yet this perhaps is not the strongest aspect of the cause. By concealing his purpose of setting out his vessel on a fishing adventure, under the false description of another voyage, accompanied with much less risk, the pursuer was committing a fraudulent act; and, *dolus dans causam contractui, reddit contractum nullum*. If then no obligation could thence arise against the defender, it is of no consequence to enquire in what manner the loss in question occurred, or whether it happened while the course of the voyage described coincided with, or deviated from that intended, and concealed. On this principle the Court decided in the case of Buchanans *contra* Hunter-Blair, No 7. p. 7083.

*Answered*, It is not denied by the defender, that the vessel was wrecked in the course of that very voyage which he acknowledges himself to have covered by his insurance. 'The risk then actually run was precisely that understood by him to be run,' and that on account of which he received his premium: Nor can any thing be more idle than to talk of a mere unexecuted design of running a different risk. Nay, of an actual deviation the effect could not have been to hurt the defender, since it would instantly have relieved him from his obligation, whilst it left him in possession of his premium.

THE LORDS assoilzied the defender, by suspending the letters *simpliciter*.

No 10.

Concealment of the destination of a ship voids the insurance, though the loss should happen prior to actual deviation from the voyage specified to the insurer.