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.

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.

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 distination 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 commiting 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. In a reclaiming petition, the pursuer having offered to prove, that the destined voyage was not for the purpose of fishing, but truly such as was described to the defender, the Court allowed the proof to be adduced.

Lord Ordinary, *Braxfield.* Act. *Cha. Hay.* Alt. *Rolland.* Clerk, *Home*

S. *Fol. Dic. v. 3. p. 326. Fac. Coll. No 126. p. 200.*

1783. *November* 28. William Keay *against* Robert Young.

No 11.
Incomplete, though not fraudulent information, on the part of the insured, vacates the policy.

By a letter, dated at Elsineur on 9th August, 1780, William Keay directed his correspondent, at Borrowstounness, to make insurance of his ship and cargo from Elsineur to Leith, and mentioned his purpose of sailing that evening.

On 26th August, this letter, in course of post, reached the correspondent, who, on 27th, upon the insurance being made by Robert Young, mentioned to him the time when the letter was received, and that Keay's intention was to sail immediately, but omitted to inform him of the particular day specified in the letter.

The ship having been taken, and an action brought for the insured values, the underwriter

Pleaded in defence, It is the indispensable duty of the insured to communicate every circumstance which is material in estimating the risk, and at the same time cannot be known to the underwriter from other sources of intelligence; Fac. Coll. 19th January, 1779, Stewart against Morrison, No 6. p. 7080. Although the keeping back of such a circumstance should happen through mistake, without any fraudulent intention, yet still the underwriter is deceived, and the policy is void; because, the risk run is really different from the risk understood, and intended to be run, when the agreement was made; Burrow's Reports, p. 1909. Here, then, the policy in question was essentially defective. Had it been mentioned that the vessel was to sail on the 9th day of August, it must, on the 27th, have been reckoned a missing ship, which few underwriters would have ventured to insure.

Answered, The precise period of the ship's departure is not said to have been fraudulently concealed; nor was the intimation of that circumstance necessary. The insurer had no reason to imagine, that the orders to procure insurance had been conveyed in a manner more expeditious than usual. And, from the established intercourse by post between the towns on the Baltic and Scotland, he could not be ignorant, that a letter, received on the 26th day at Borrowstounness, could not have been written at Elsineur later than the beginning of the month. At all events, the defect in his information, which originated entirely from his own neglect in not making a further enquiry, is imputable to himself alone.

At first the Lord Ordinary assoilzied the defender, "in respect proper information was not given."