

ship sailed *with* convoy; it is not enough to say that she afterwards overtook it and joined it.

JUSTICE-CLERK. Insurers are only liable for the risk undertaken: It is nothing to say that the risk *run* was less than the risk *undertaken*. The question is, Was the condition of the policy fulfilled, or was it not? It was not; for the ship sailed *without* convoy, neither did she see the convoy for three weeks after sailing. There have been various cases decided in the King's Bench on the principles which I have laid down.

PRESIDENT. I once was of opinion that a contract of insurance was *bona fide*; and so I gave my judgment in the case of the ship that touched at Morrison's Haven, but the House of Lords corrected me, and found that it was a contract *stricti juris*. On reconsidering the case, I became satisfied of my mistake.

ESKSGROVE. Were it not for the judgment of the House of Lords, I should think, that, where the risk is not increased, the policy ought to be held subsisting. I see no evidence of the premium being demanded back and repaid, in a case where convoy was not joined, and yet the ship arrived safe: here is a rigorous advantage when there was no *mala fides* or evil intention on the part of the insured.

On the 27th June 1786, "The Lords suspended the letters;" adhering to the interlocutor of Lord Braxfield.

Act. Ilay Campbell. *Alt.* Wm. Craig.

1786. June 29. PURDIE, CRUM, and COMPANY *against* The MAGISTRATES and TOWN-COUNCIL of MONTROSE.

PRISONER.

Act of Sederunt, 11th February 1671. Magistrates of a Burgh found liable for the escape of a Prisoner.

[*Faculty Collection, IX. 440; Dict. 11,757.*]

JUSTICE-CLERK. The principle of the interlocutor is erroneous, for it supposes that, if a prison is not worse now than it was formerly, the Magistrates are not liable for the escape of a prisoner: *this* implies that the present Magistrates are permitted to be as careless as their predecessors were.

MONBODDO. The jailor omitted to secure the principal door: he was guilty of negligence, and the Magistrates are liable for it.

PRESIDENT. A man has not the choice of the prison to which he must convey his debtor, and therefore particular diligence is required from Magistrates.

On the 29th June 1786, "The Lords found the Magistrates and Town-Council liable, and found expenses due;" altering the interlocutor of Lord Henderland.

Act. W. Bailey. *Alt.* H. Erskine.