

Afterwards, on advising a representation for the pursuer, with answers for the defender, his Lordship recalled that judgment, and found the defender liable in the insured values, "in respect there was no fraudulent concealment of any circumstance of hazard, in order to deceive the underwriter."

The defender reclaimed; and the petition being followed with answers, the LORDS altered the Lord Ordinary's interlocutor; thus returning to the judgment first given.

Lord Ordinary, *Ellick.* Act. *Rolland.* Alt. *Blair.* Clerk, *Robertson.*

*Fol. Dic. v. 3. p. 326. Fac. Coll. No 124. p. 196.*

C.

1797. July 4.

JOHN NICOL against ANN BROWN.

JOHN NICOL at Lossiemouth, the port of Elgin, James Bates, and others, were owners of a ship, which they employed in trading voyages between the Moray Frith and Holland. Bates sailed as master of her.

In January 1790, the ship was lying at Findhorn, the port of Forres, ready to sail. Nicol, after having concerted with the owners at Elgin, on Tuesday, the 26th January, that he should get the vessel insured at Edinburgh, came that evening to Findhorn, to give Bates his final instructions for the voyage. It was then agreed, that Bates's share of the vessel should be included in the insurance. Indeed Bates had, on the 20th January, written to Nicol, requesting him to get his share insured. But this letter Nicol (as he afterwards alleged) had not received, at their meeting on the 26th, owing to his having been from home for some days.

Next morning, (*i. e.* Wednesday the 27th,) Nicol, accompanied by Bates for a small part of the road, set out for Lossiemouth, (which is about 18 miles from Findhorn,) where, after breakfasting with one friend, and dining with another, he arrived in the evening, but too late to dispatch a letter to Edinburgh, by the post from Elgin, which is six miles from Lossiemouth. The post at this time left Elgin on Monday, Wednesday, and Friday, at 5 o'clock in the evening.

On Thursday, the 28th, the vessel was seen passing Lossiemouth, with a fair wind. On the same day, Nicol wrote a letter for Edinburgh, ordering the insurance, which, early on Friday morning, he carried to Elgin, and put into the Post Office. The vessel was insured accordingly.

There had been a storm in the night between Thursday and Friday; and, soon after Nicol left home, a vessel was discovered from Lossiemouth in great distress, which, after labouring for some hours, overset, and all on board perished. A friend of Nicol immediately informed him, by express to Elgin, what had happened; that it was not known what ship it was; but that some suspected, (what afterwards turned out to be the fact,) that it was the one in which he was concerned.

Nicol did not communicate this information to the insurance-broker.

No 11.

No 12.

Strict diligence is required in the execution of a mandate to insure a ship.

No 12.

An action was afterwards raised against the underwriters, in which Ann Brown, Bates's widow, concurred; but the defenders were assoilzied.

Mrs Bates, on this, brought an action before the Court of Admiralty against Nicol, for her husband's share of the vessel, alleging, that he had been guilty of undue delay in ordering the insurance, and was, therefore, liable for the consequences, as if he himself had been the insurer; 7th January, 1752, Garden against Drummond, *voce* MANDATE.

The Judge Admiral, "in respect it is not denied, that the last mandate for the insurance libelled on was given, and accepted on the 26th January, 1790, and the vessel was not lost till the morning of the 29th of the said month, found the defender, *propter moram*, must hold himself the insurer."

A reduction was brought by Nicol, in which it appeared, that he had, on several former occasions, been employed to get the vessel insured; and Mrs Bates affirmed, and he denied, that he had been accustomed to charge commission for his trouble.

Nicol admitted the principle of the decision in the case of Garden; but he stated, that he did not receive Bates's letter of the 20th, till his return home on the 27th; that, in the circumstances of the case, all that was incumbent on him, was to do for Bates what he did for himself; and that it was understood, that he was not to go directly to Elgin, (which is only 12 miles from Findhorn,) but to go home first, and to write thence to Edinburgh by Elgin, neither foreseeing that any prejudice could arise from the delay which would thereby be occasioned.

Mrs Bates affirmed, that Nicol had received the letter of the 20th, before he met her husband at Findhorn; that, at any rate, he ought to have gone directly to Elgin, or, at least, have taken care that the order for insurance was dispatched from it by the post of the 27th; or he might have written a letter for that purpose, and dispatched it to Forres, which was within four miles from Findhorn, before he set out from thence on Wednesday, or sent it to Elgin from the place where he dined, which was on the road to that burgh.

The Lord Ordinary gave judgment in her favour.

Upon advising a petition, with answers, it was observed, that strict diligence is required in the execution of a mandate to insure a ship; and the Court were, in general, of opinion, that there was sufficient evidence of *mora* on the part of Nicol, to make him liable for the consequences.

THE LORDS adhered.

And a reclaiming petition having been followed with answers, the same judgment was repeated.

Lord Ordinary, *Eskgrove*.

Alt. *Ar. Campbell, Ja. Gordon*.

For Nicol, *Tait, Monypenny*.

Clerk, *Gordon*.

*D. D.*

*Fac. Coll. No. 42. p. 99.*