

1798. May 18. JOHN SCUGAL *against* ROBERT YOUNG, and Others.

GEORGE SCUGAL, at St Petersburg, on the 30th October, 1792, wrote by post to his brother John, merchant at Leith, directing him to insure a cargo about to be sent from St Petersburg to Leith, which belonged partly to John Scougal, and partly to a Russian merchant.

The letter was received by John Scougal on the 29th November, and he immediately effected the insurance.

On the 2d of November, part of the cargo was damaged. This was known at St Petersburg, before the departure of the mail of that evening, which was the next after that of the 30th October; but George Scougal did not write by it, although it was afterwards hardly disputed that he then knew of the accident.

It was established by Lloyd's List, that the mails of the 30th October and 2d November arrived in Britain at the same time; and letters of the 2d November reached Edinburgh on the 29th; so that, if George Scougal had written by the mail of that day, his letter would have been received at the same time with the order for insurance.

John Scougal afterwards claimed the loss from the underwriters; and 21 of them, out of 26, having acquiesced in his demand, he brought an action against the other five before the Judge Admiral, who assoilzied the defenders.

John Scougal then brought a reduction, in which the defenders, *inter alia*, *Pleaded*, Underwriters are entitled to every information known to the insured, at the date of the policy. Every concealment, whether it arise from design or neglect, is fatal to it; and, when the insured live at a distance from the underwriters, they are bound to communicate not only what they know at the date of the order, but every subsequent information, which there is any chance of the underwriters receiving before the policy be executed; 1782, Grieve against Young, and Others, No 9. p. 7086. ; Fitzherbert against Mather, Park, p. 210. The insured are even held to have known every thing, which, from its date, might have reached them; and, in some countries, positive calculations have been introduced, as to the rapidity with which news shall be presumed to have been communicated; Magens, vol. ii. p. 2. 32. 66. 75. 88. 132. 174.; Beaw's *Lex Mercatoria*, p. 329.

From George Scougal's not writing, the defenders were entitled to believe, that no circumstance, affecting the policy, had occurred on the 2d of November. The pursuer is liable for the omission of his brother, who could not be ignorant of the frequent irregularities in the arrival of the mails; and, if the subsequent accounts had been such as to diminish the premium, would no doubt have written, on the chance of their being received in time to alter the terms of the policy.

The pursuer

*Answered*, A person, ordering an insurance, is bound to communicate the latest information at the departure of the post by which the order is transmitted. If, therefore, the order be written in the morning, when the mail goes

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A merchant in Leith, in consequence of advice from his correspondent at St Petersburg, insured a cargo of goods thence to this country. Three days after the departure of the mail, conveying the order for insurance, it was known at St Petersburg, that part of the cargo was lost, but the correspondent did not by next mail give information of the loss; and, if he had, owing to the former mail not arriving in course, his second letter would have been received at the same time with the order for insurance. His neglect was found to vacate the policy.

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off in the evening, it may sometimes be necessary for him to write a second time. Underwriters would frequently be defrauded, if this were not incumbent upon him. Indeed, it is the risk, as known at the departure of the post, which is undertaken by them; and, for this reason, there can be no obligation on the party desiring the insurance to communicate subsequent information. He certainly would not be bound to do so by express; and as little is he bound to act upon the chance of one mail overtaking another.

If the policy were to be vacated, wherever it was possible to give subsequent information, it would introduce much uncertainty in questions of this sort, which ought to be regulated by simple and definite rules.

The proportion of underwriters, who have acquiesced in the pursuer's demand, shews the general understanding on the subject.

The Lord Ordinary reported the cause, on informations.

The Court were, in general, of opinion, that George Scougal ought to have written on the 2d of November; and, on that ground,

THE LORDS assolizied the defenders.

Reporter, *Lord Craig.*

Act. *Moodie.*

Alt. *D. Cathcart.*

Clerk, *Home.*

*D. D.*

*Fac. Coll. No. 73. p. 166.*

1803. *June 24.*

ALLAN, and Others, *against* YOUNG, ROSS, RICHARDSON, and Company.

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What concealment sufficient to vacate the policy.

ON the morning of the 5th March, 1801, the ship *Lady Stormonth* sailed from the roads of Dundee for London. Two days afterwards, the ship *Duchess of Athole* likewise sailed on the same voyage, and reached London on the 14th, without having been able to hear any intelligence of the other vessel. This circumstance was communicated to Mess. Young, Ross, Richardson, and Company, merchants in Perth, the owners of both vessels, in the following letter from the wharfinger, (14th March, 1801.) 'I wrote you by last post, to which I refer. I am exceedingly sorry to hear that the *Lady Stormonth* has not yet appeared, nor any tidings of her. *Her fate is now almost certain.* The *Duchess of Athole* arrived this day at noon, and Captain Gilbert neither saw nor heard any thing of the *Stormonth*, which is almost complete confirmation of her capture; but I sincerely hope my decision may prove premature. Should any thing favourable happen to-morrow, I will be happy to hand you the intelligence,' &c.

This letter was not sent to the insurance brokers; but, immediately on receipt of it, the following was written to them: 'We have some printed goods on board the *Lady Stormonth*, George Tod Master, which left Dundee for London on the 5th; and not having heard of her arrival, we incline to have part covered; and request you will get us insured L. 700, if you can obtain it at two to five guineas *per cent.* At all events, cover for us L. 400 or L. 500, though the premium should be high.' The insurance was effected at 20 *per cent.*; and the policy underwritten by Alexander Allan, and others.