

1781. *June 13.* Mrs JEAN BELL *against* MAGISTRATES of LOCHMABEN.

PRISONER.

Magistrates liable if they do not imprison debtors as soon as delivered to them.

[*Fac. Coll. VIII. 39; Dict. 11,756.*]

PRESIDENT. In England, our law is ridiculed, which allows six days of charge, as giving warning to the debtor, that he may escape or put away his goods; but the Magistrates of Lochmaben have given *three* days more to the debtor which the law has not given.

HAILES. The messenger, in his execution, used some words misapplied and misunderstood; but the Magistrates received the prisoners, and therefore must account for them.

KENNET. By this conduct of the Magistrates, full time and opportunity were given to the debtors for abstracting their effects.

KAIMES. If Magistrates do not yet understand the law, it is high time that they should be taught it.

On the 13th June 1781, "The Lords repelled the defences, and found expenses due."

Unanimous.

Act. R. Dalzell. Alt. G. Currie. Reporter, Westhall.

1781. *June 13.* JAMES BUTCHART and OTHERS *against* ALEXANDER MUDIE and JOHN RENNIE.

PRESCRIPTION.

Act 1597, cap. 83, does not apply to accounts between the master of a ship and its owners.

[*Fac. Coll. VIII. 94; Dict. 11,113.*]

BRAXFIELD. The triennial prescription has no concern in this case, which relates to a common subject, as to which one of the proprietors acted as administrator.

PRESIDENT. The current of decisions has been, in terms of the statute, not to extend the triennial prescription, unless to things of the like kind with those specified in the statute.

On the 13th June 1781, "The Lords repelled the defence of triennial prescription."

Act. J. Ramsay. Alt. W. Nairne.
Reporter, President for Justice-Clerk.

1781. *June 20.* JOHN THOMPSON *against* GEORGE BUCHANAN and OTHERS.

INSURANCE.

What concealment of risk vacates the Policy.

[*Faculty Collection, VIII. 99; Dictionary, 7085.*]

HAILES. Had the letter been communicated to the underwriters, they would have seen that the shipmaster apprehended the danger to be very great; but the extent of the danger was not seen in the application made for insurance.

ALVA. The insurer is not bound to tell what the underwriter might have known.

WESTHALL. Suppose that Paul Jones were in the Frith of Forth,—a shipmaster at Leith runs an express to Glasgow for insuring,—the policy is signed before the immediate danger is known; Would it be good to recover insurance? I think not; although the underwriter had it in his power, by means of attentive correspondents, to have known as much of Paul Jones's arrival as the insurer did.

GARDENSTON. Here there was concealment of intelligence material contained in the shipmaster's letter, viz. That ships actually chartered would not go out of port by reason of the danger.

KAIMES. The underwriters are the proper people to consider whether intelligence is material or not. It is they, and not the insurers, who must judge of that. The shipmaster was alarmed, and his alarm ought to have been told to the underwriters.

PRESIDENT. A contract of insurance is, from the nature of the thing, *optima fidei*. All the information, as to the risk of the voyage, is given in one letter: it was not right to communicate part and conceal the rest.

Act. J. M'Laurin. Alt. Ilay Campbell.
Reporter, President for Justice-Clerk. Diss. Alva.
