

er, who, on his part, is not bound to make up any loss that happens upon the voyage performed.

No 7.

The argument of the pursuers, upon the effect of a deviation, is misapplied. The present question does not occur in the case of a deviation from a voyage on which the vessel had set out, but in a case where the destination of the vessel was altered from the first, and the insured voyage never begun. London was the only port to which the ship was destined; and she never went on a voyage for Bristol, the port to which she was insured.

This, therefore, is truly a question on the construction of the policy, whether a voyage to London was covered by the insurance of a voyage to Bristol, on no other account but that the course to both is the same for part of the way? Were it found to be so, the judgment would have very extensive consequences. It is obvious, that the course of voyages, to very different and distant parts of the world, is often the same for a considerable part of the way, and insurers would be left in total uncertainty what was the voyage actually undertaken.

The judgment of the court was, "Approve of the judge-admiral's proceedings and decreet, and assoilzie the defenders."

Lord Ordinary, *Auchinleck*. Act. *Alex. Murray*. Alt. *Ilay Campbell*. Clerk, *Tait*.

Fol. Dic. v. 3. p. 327. Fac. Col. No 86. p. 166.

1781. June 20. THOMSON *against* BUCHANAN, and Others.

No 8.

IN summer 1778, the pursuer had freighted a ship with a cargo to Gibraltar, from which it was to proceed to Malaga, and then with a new cargo to return home to Leith.

What concealment sufficient to vacate the policy.

The master of the ship, on his arrival at Gibraltar, wrote to his owner the following letter, dated 28th September 1778. 'Sir, This is to acquaint you of my arrival here yesterday, after a long hard passage; and to acquaint you there is as much danger going from here to Malaga, as coming from England here. I hear that the merchants at Malaga wont ship any goods on board English ships, before they hear of a convoy to take them from there. I am going to write Mr Ferry to-morrow by post, to hear what he thinks of it; for there is a great number of ships at Malaga that is chartered, and the merchants wont ship on board of them. They are shipping on board of Spanish ships for London.'

After receiving this letter, the pursuer got the ship insured by the defenders, to the extent of L. 600, at the rate of 25 guineas *per cent.* and subjoined to the policy was a note, in these words: 'The last advice from Gibraltar was, the 28th September 1778; and the vessel arrived only the day before, and had a cargo to discharge. If said ship sails with convoy from Malaga or Gibraltar, bound for England, and arrives safe, L. 5 *per cent.* shall be returned.' But the letter itself was neither communicated to the underwriters, nor put into the broker's hands.

No 8.

The ship was taken on the very day it sailed from Gibraltar; and intelligence of the capture was received on the very morning after the policy was underwritten.

Action for payment of the insurance-money was brought before the Court of Admiralty: And the chief defence pleaded by the insurers was, that the policy was vacated by the concealment of the letter of advice from Gibraltar. The Judge of the Admiralty repelled the defence; but the cause being carried to the Court of Session by suspension,

THE LORDS 'suspended the letters, sustained the defences, and assoilzied.'

The same general arguments on both sides were pleaded in this case, as in the case, Stewart *contra* Morison, decided 19th January 1779; No 6. p. 7080. (collected by Mr Ogilvie) and the Court considered the rule laid down in that decision as established law, viz. 'That the person who applies for insurance of a ship or cargo in foreign parts, is not bound to produce all his letters of intelligence concerning the voyage or adventure; yet he is bound, fully and fairly, to communicate every material circumstance of his intelligence, from which any probability of hazard may arise.'

Reporter, *Lord Justice Clerk.* Act. II. *Campbell.* Alt. *Jo. M'Laurin.* Clerk, *M'Kenzie.*
D. *Fol. Dic. v. 3. p. 327.* *Fac. Col. No 61. p. 99.*

* * * This case was appealed.

THE HOUSE OF LORDS (13th March 1782) ORDERED and ADJUDGED, That the interlocutors complained of be reversed, and that the decret of the Judge-Admiral in Scotland be affirmed.

1782. —

GRIEVE *against* YOUNG.

No 9.

Grieve merchant in Eyemouth, wrote on 10th December 1779, to Muat and Aitken of Edinburgh, desiring them to insure L. 160 on the Jean of Dunbar, which sailed that afternoon for Alloa. The letter was sent to the Press the same evening, to be taken up by the London post, which passed there next morning about ten o'clock, on its way to Edinburgh. It arrived at six o'clock afternoon of the 11th at Edinburgh, and the insurance was made the same evening at eight. The ship on the evening of the 10th was driven back by a storm to Coldingham, and went to the bottom in the sight of Mr Grieve himself, about eight in the morning of the 11th. In an action against the underwriters, the Judge-Admiral found it was incumbent on Mr Grieve to have informed his correspondent *by express* of the disaster, in order that the insurance might have been stopped, which could have been done in good time. THE LORDS on an advocacy were of opinion that it was not incumbent on Grieve to send an express to Edinburgh; but as there appeared sufficient time to countermand the insurance, by the ordinary course