

By this time the vessel was sailed; but instead of calling at Leith, by direction of her owners, she called at Morison's Haven, without the knowledge of the insurer or insured, or the broker; and after staying four or five days, and taking in a cargo of victual, she sailed for Hull, and was next day, after regaining the line of course from Carron to Hull, lost in a storm of snow, near to Holy-island.

In three several pursuits before the Judge-Admiral, at the instance of Wilson and Company against the Underwriters, the Broker, and the Carron Company, owners of the vessel; the proceedings against the two last having been staid, Wilson and Company went on against the underwriters. But the Judge found, That, in all cases of insurance of goods on shipboard, belonging to others than the owners and master of the ship, it is a general rule in law and practice, that the insurance is effectual, although the loss may have happened in a deviation from the voyage upon which the insurance is made, the insured not knowing of nor consenting to such deviation; therefore, he found the underwriters liable, and decerned accordingly. And in a suspension, the Lords, 23d January 1776, though they did not adopt his *ratio decidendi*, yet having considered the policy of insurance, and whole circumstances of the case, they found the letters orderly proceeded, and decerned.

Had the loss happened in the act of deviation, it is probable the Lords would have followed the precedent, in the case *Steven and Company* against *Douglas*. But in this case the ship had regained the course from Carron to Hull, and was lost in that course. The difference between calling at Leith and calling at Morison's Haven appeared minute and inconsiderable: the ship was no longer detained at the one place than she would have been at the other; and if every trifling alteration of a voyage was to be considered as a deviation, all insurance at sea would be at an end.

Cases and opinions of lawyers and Judges in England were quoted on both sides. The question was not without difficulty.

The Lords, upon advising a reclaiming petition and answers, adhered.

This cause was appealed; and the decree was reversed by the House of Lords, 25th November 1776. The Underwriters were found not liable for the sums insured, but only to repeat the premium.

Lord Mansfield, it is said, considered it as a clear deviation,—and that the question came simply to this, was Leith Morison's Haven? An allowance was given to call at Leith, but none to call at Morison's Haven. He instanced a policy on a ship to sail from the Downs with convoy, but the convoy having sailed, she followed and came up with it at Portsmouth, the underwriters were liberated. The terms of policies of insurance must be strictly adhered to, otherways all insurances would be at an end.

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1765. August 7. M'NAIR against GRAHAM, &c.

ROBERT M'Nair, merchant in Glasgow, had a ship at Virginia, loading with lumber for Barbadoes, under the care of his son James, who wrote to his father, of the 7th and 22d May 1750, that he was loading the ship for Barbadoes, with

an intent to purchase sugars there, and then to return to Glasgow ; as to which last voyage he might make insurance to the extent of £1000 ; but, in going to Barbadoes, there was little occasion for insurance. Before receipt, however, of these letters, Robert M'Nair insured with Messrs Graham and others, £1000 on the voyage from Virginia to Barbadoes ; and the policy bore, that the ship and cargo are, and should be valued at £1000, without any further account to be given by the assured to the insurers. The ship, having sailed from Virginia on the 25th of June 1750, was wrecked on a rock near to the Islands of Bermudas, on the morning of the 2d of July : some time after which, Robert M'Nair received a letter from his son, dated 27th June 1750, as from Virginia, stating, that he was lying there for a fair wind, stating the particulars of his cargo, &c. and pressing his father very much to insure, on account of the dangers of the Islands of Bermudas, which lay betwixt Virginia and Barbadoes. The father, suspecting no evil of his son, made an additional insurance of £350 ; but, it afterwards appearing that this letter was antedated, and was wrote after the shipwreck, Mr M'Nair never made any demand upon it. Upon James's returning home, James was tried, at the instance of the underwriters, before the Admiral, for his life, as having wilfully destroyed the ship and cargo. The jury, 1761, found, " That he had endeavoured to defraud the insurers, by giving orders to insure a greater quantity of goods than the ship could hold, and putting a value on ship and cargo much higher than their real worth : but found it not proved that he wilfully cast away the ship and cargo, or was art and part in so doing."

The underwriters, having failed in this attempt, refused payment of the policy. The Judge-Admiral having, however, decerned for it, 24th December 1764 ; the underwriters suspended, founding their reasons of suspension on the 19th Geo. II. c. , and on an alleged wilful deviation from the voyage from Virginia to Barbadoes, whereby the ship was run upon the Bermudas. Lord Auchinleck, Ordinary, 8th February 1765, repelled the first, and found the second not proven. To the first part, the Lords, 22d June 1765, adhered ; but, as to the second, they found the deviation proven, and that no action lay upon the policy : but they altered, 7th August 1765, and found no wilful deviation. And, on an appeal, these interlocutors were affirmed, 29th March 1770.

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MESSRS BUCHANANS *against* HUNTER BLAIR, &c.

A CARGO, in the ship *Jeanie*, belonging to Messrs Buchanans at Glasgow, having been insured for a voyage from the Bay of Honduras to London, instead of a voyage from the Bay of Honduras to Bristol, the voyage truly intended, but, by some mistake on the part of the insured, made out in the policy as above ; the Judge-Admiral, in the first instance, and the Lords in a reduction, in the second instance, held the insurance as void ; although it was contended, that this description of the voyage in the policy happened by mere mistake of the insured ; and that the ship was lost on the Northern Triangles, not many hours sailing from the port in the Bay of Honduras ; so that she was lost in