No 2. allowed to insure the premium of insurance, yet that is a privilege which he is at liberty to use or not as he pleases; and as, in this case, the premiums were not included in the sum insured, the charger does not stand insurer for those premiums; and found, that as the freight had no existence, either at the time when the goods were shipped, or when the shipwreck happened, but was then only *in spe*, and in fact never took place, the same cannot come *in computo* as a sum liable to any contribution, in making good the damages, nor is the charger to be held insurer as to that freight; and found, that what was recovered of the wreck of the ship remained the property of the several owners; and that the sum of L. 447 : 2 : 10, expended by the charger in endeavouring to save the ship and cargo, must be made good by the underwriters, conform to their respective interests, the charger contributing his proportion to the extent of the short-insurance.

Fol. Dic. v. 3. *p.* 332.

No 3.
A ship, whose name had been lately changed, having been insured under the former one, such insurance was found ineffectual

1782. *January* 23. HUGH WATT *against* HENRY RITCHIE.

RITCHIE underwrote an insurance on a ship, by the name of the Martha of Saltcoats, which belonged to Watt, for a voyage from Christiana in Norway to the Frith of Clyde. Though this name was mentioned to the insurance-broker by the person commissioned to make the insurance, and had been formerly borne by the vessel, yet another appellation was given to her prior to the insurance, that of the Elizabeth and Peggy of Saltcoats; under which new and proper denomination, it may be noticed, the owners of the cargo a few days after made an insurance of this from the said Mr Ritchie. The vessel having been captured by a French privateer, Watt sued Ritchie in an action for the insured value.

Pleaded for the defender, The law requires the utmost degree of precision and accuracy in the transactions, and the strictest interpretation of the contracts of parties, relative to insurance. Even the smallest deviation from the terms prescribed in their stipulations, though producing no apparent influence on the objects in view, will prove fatal to the insurance; 15th July 1779, Buchanan *contra* Hunter-Blair, No 7. p. 7083.

Although, then, it were to appear that the erroneous insurance of the Elizabeth and Peggy under the name of Martha, had not any tendency to injure the defender, the contract would nevertheless be void, as its terms really respected a non-entity, and ought not to be extended by interpretation to any adventitious meaning. In fact, however, it had such a tendency, as it led him, contrarily to a maxim founded in the experience of all those who are versant in the business of insurance, to accumulate different risks on the same bottom. Besides, such a proceeding might often become an engine of fraud: For, suppose another vessel, the true name of which was the Martha, to have sailed along

with the Elizabeth and Peggy; in that case the pursuer, if the principle above stated were not to be received, might have claimed his insurance on either of the two vessels upon which the loss should have happened, though the premium had been paid for one only. No 3.

Answered, Fair and accurate representations of facts by the insured to the insurer are no doubt proper and requisite; but to trivial circumstances it is unnecessary to pay much attention; and no concealment or inaccuracy is regarded as of importance in this contract, unless either 'fraudulent, or materially 'varying the object of the policy, or changing the risk understood to be run.' This is the opinion of an eminent judge in the southern part of the island; Burrow's Reports, v. 3. p. 1911. Nor is an error merely as to the name of a ship, which is otherwise sufficiently distinguished, of that important kind. Accordingly, in all policies of insurance respecting ships, not only in this but in every other country, after the description of the vessel, these words are to be found, 'or by whatsoever name or names the same ship *is* or shall be called;' Wesket's Digest of the Theory of the Laws and Practice of Insurance, p. 403.; Magen's Essay on Insurance, v. 2. p. 4. In particular, this clause occurs in the policy in question, and seems directly to preclude the defender's plea.

No precedent, exactly similar to the present case, is to be found among the decisions of the judges of this or of the neighbouring kingdom. But, in the *Quæstiones juris privati* of Bynkershoek, lib. 4. cap. 11. p. 610, 611, 612, a judgment is recorded, which was given in 1722, by the Supreme Court of Amsterdam, on a case precisely of the same kind; in which insurance had been made on a vessel under the name of Thomas, but whose true name was the Dauphin Galley. In that case, as in the present, the error in the name was not fraudulent; and therefore the Senators determined, 'damnandum assecuratorem 'in eam summam pro qua se obligaverat.'

THE LORDS were of opinion, That a sacred strictness ought to be preserved in the interpretation of contracts relative to insurance; and therefore adhered to the judgment of the Lord Ordinary, which was the following: 'In respect it is acknowledged by the pursuers, that their ship was registered by the name of the Elizabeth and Peggy of Saltcoats, finds they have no claim against the defender upon the insurance made by him on the ship Martha of Saltcoats, there being no such ship, at least the true name being concealed or misrepresented, by which the underwriter might have been deceived; therefore sustains the defences, and assoilzies the defender; and decerns.'

Lord Ordinary, *Westhall.* Act. *Cullen.* Alt. *Ilay Campbell.* Clerk, *Home.*

S. *Fol. Dic. v. 3. p. 326. Fac. Col. No 23. p. 43.*