

1785. November 24. HUGH DUNLOP against RICHARD ALLAN.

HUGH DUNLOP obtained from Richard Allan insurance of goods, on a voyage from the river Clyde, in Scotland, to the Island of St Christopher's, in the West Indies.

Before his arrival at St Christopher's, the shipmaster was informed that the island was in the possession of the enemy. He was also informed, that though, by the terms of the capitulation, Mr Dunlop's property was liable to no risk, yet that the greater part of the cargo, consisting of articles of a different kind, would, as well as the ship itself, on his proceeding to St Christopher's, be exposed to immediate seizure.

He therefore put the insured goods on shore at Antigua, intending to send them from thence to St Christopher's; but before an opportunity of doing this occurred, the warehouse in which they had been deposited was set on fire, and every thing in it consumed.

An action having been afterwards brought against the underwriter for the insured values, he

Pleaded in defence; The deviation which here occurred, as it was nowise necessary for the safety of the goods insured, must relieve the underwriter from the loss. It would indeed be contrary to reason, that a circumstance peculiar to other articles, should make him responsible for a hazard of which he was ignorant, and for which no corresponding premium could be stipulated. *Wesket, voce DEVIATION, p. 149.; Strange's Reports, p. 1173, Stamma versus Brown.*

Answered; In the case of an unnecessary deviation, the insurance contract is understood to be vacated. But this cannot be urged in the present case, where the measures pursued by the shipmaster in following out the voyage, were equally unavoidable as if they had been occasioned by the violence of a storm, or by any other unforeseen accident. In circumstances such as these, it is by an action against the owners of the goods saved in consequence of the deviation, and not by with-holding the insured values, that the underwriter must provide for his indemnification.

The determination of the Judge-Admiral, afterwards affirmed by the COURT of SESSION, was in these words:

'Repels the defences, finds the defender liable in the sums sued for; re-serving to him his recourse against the persons by whose conduct he has been made liable.'

Lord Ordinary, *Braxfield.* Act. *Wight.* Alt. *A. Campbell.* Clerk, *Hume.*
C. *Fol. Dic. v. 3. p. 328. Fac. Col. No 241. p. 371.*

No 18.

Deviation on account of circumstances not connected with the subjects insured, found not to vacate the policy.