

neglect in this will not be sufficient to lay that loss upon him, unless it can be said that he was active in bringing it about. But there is no occasion to resort to this argument; for, in fact, he did every thing in his power to get the crew on board, and, upon the Monday forenoon, ordered the master to hire a pilot to bring her up to Quarrel-shore.

THE LORDS sustained the defence, assoilzied the underwriters, and found expenses due.

*A. W.*

*Fac. Col. No 109. p. 254.*

1777. December 2. DALRYMPLE against JOHNSTON.

DALRYMPLE, owner of the ship Neptune, sailed her from Fraserburgh to Dantzic; and having there disposed of his outward cargo, shipped a valuable cargo of goods homeward; on which he made several insurances, viz. L. 300 on the cargo, and L. 750 on ship and goods at London, and L. 250 on the goods only at Glasgow. The ship being driven ashore on the coast of Sweden, Dalrymple wrote home to the underwriters, informing them of the misfortune, and desiring their instructions for his conduct; and he received answers both from those of London and Glasgow, authorising him to act in the best manner he could for the behoof of all concerned. He did so; but, after all, the expenses considerably exceeded the value of what was saved. Having claimed the amount of the loss, and his expenses, from the underwriters, those of London paid without scruple their proportion of the former, amounting to L. 850, and 15 per cent. of that sum as the amount of the expenses. But the Glasgow underwriters refused, upon the ground, that the ship and cargo were short insured; and therefore, to the extent of that short insurance, the insured must be considered as his own underwriter, and must bear his share of the expense incurred in endeavouring to save the subjects. The ship itself was short insured by L. 100, the freight not at all insured, and the goods short insured also; the whole short insurance amounting to L. 275, which Dalrymple must have lost altogether on abandoning the ship, or in case of a total loss; so that, if he chose to try to save something for himself, and the other parties concerned, he must be liable for his share of the expense thereby incurred. The COURT found, that as Dalrymple was sole owner of ship and cargo, in so far as there was a short insurance, he must be held as insurer himself to the extent of the deficiency; and found, that as the ship, though valued in the policy at L. 800, was insured only at L. 700, and that, though the invoice price of the goods aboard was L. 623, they were insured only at L. 600, the charger stood insurer for both these deficiencies, and is bound to contribute with the other insurers *pro rata*, in making good the damages sustained by the wreck of ship and cargo, and the expenses incurred in endeavouring to save the same; and found, that though, by mercantile law and practice, the owner of ship and goods is

No 1.

No 2.

When a ship is short insured, the owner is to be held as insuring himself to the extent of the deficiency.

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