## SCOTLAND.

### APPEAL FROM THE COURT OF SESSION.

SIBBALD and others—*Appellants.*
HILL and others—*Respondents.*

May 2, 1814.

INSURANCE.—MISREPRESENTATION.

A LONDON merchant, insuring at Leith, represents (contrary to the fact) that he had done some insurance at Lloyd's, upon the same voyage, at the same premium given to the Leith underwriters, who (not being well acquainted with the nature of the risk themselves) subscribe the policy, from their confidence in the skill and judgment of the London underwriters. Held by the House of Lords, (reversing the judgment of the Court of Session,) that this was a fraud which vitiated the policy, though the misrepresentation was not such as affected the nature of the risk.

Facts stated.

HILL, a London merchant, (April 8, 1802,) wrote to his brother to get some insurance done at Leith on two South Sea Whalers, *Redbridge* and *Britannia*, at and from the Southern Fishery to London. The letter had these words:—"I have two "ships in the Southern Fishery, on which I have "done as much as my underwriters here are in- "clined to take, and I wish to do something at an "out-port, &c. I have no objection to give eight "guineas per cent. on these ships, which is the "highest premium I have given." The broker wrote accordingly to *Robb*, a Leith merchant, one of the Appellants, stating, *inter alia*, as follows:—

"Mr. Hill has done as much insurance upon the "two ships as the underwriters here are inclined to "take at eight guineas per cent." Some difficulty

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occurred in getting the insurance effected, owing to the ignorance of the Leith underwriters as to the nature of the risk. But the Appellants, trusting to the skill and information of the Lloyd's underwriters, underwrote the policy of the *Redbridge to* the amount of 1750*l.* at eight guineas per cent. The vessel, on Dec. 30, 1801, was captured on the coast of Chili; but the underwriters having discovered that the premiums at Lloyd's on this ship had been 15, 18, and 25 guineas, refused to pay, and an action was brought by Hill in the Scotch Admiralty Court. The Judge-Admiral decided for the underwriters, on the ground of the misrepresentation; but his decree was reduced by the Lord Ordinary and Court of Session, from whose judgment the cause was appealed.

*Vide* the Judge-Admiral's interlocutor, *post*.

Interlocutors of Lord Ordinary, Dec. 18, 1807, June 28, 1808.—Interlocutors of Court, Dec. 20, 1808, June 10, 1809.

The interlocutor of the Lord Ordinary, adopted in substance by the Court, found, "that the state-
"ment given by the Pursuer, as to the amount of
"the premium he had given on former policies,
"was not a misrepresentation as to any of the cir-
"cumstances attending the situation or condition
"of the ship, or nature of the voyage, which could
"affect the nature of the risk, but partakes rather
"of the nature of these *verba jactantia*, not very
"moral perhaps, but very common, and not illegal,
"which are used at the cheapening of goods, and
"other bargains, the seller alleging that such goods
"cannot be bought so cheap elsewhere, &c. and
"which representations or misrepresentations will
"not avail to set aside a sale, as concealments or
"misrepresentations may do as to the defects or
"qualities of the goods," &c.

There was another point as to the concealment of a material fact, but it seems unnecessary to state it, as the judgment of the Lords turned on the question of misrepresentation.

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*Park* and *Nolan* for Appellants; *Adam* and *Romilly* for Respondents.

*Lord Eldon* (Chancellor.) It appeared to him that the judgment of the Lord Ordinary and Court of Session ought to be reversed, and that of the Judge-Admiral affirmed. But whatever might be their Lordships' opinion, it would be necessary to attend to these interlocutors, and alter the terms, so that the ground of their judgment might not be misunderstood. The Judge-Admiral's interlocutor found, "that in this case the rate of premium was "fixed and accepted in consequence of false in- "formation, &c. holding out the same premium of "eight guineas per cent. as the highest premium "exacted by the underwriters in London; whereas "it appeared, and was now acknowledged by the "Pursuer, that the very lowest premium paid by "him on the same vessel at London amounted to "15 guineas per cent." He had not been able to find that any such acknowledgment was made by the Respondent, or that the circumstance was apparent; and therefore, if it should be their Lordships' opinion that the Lord Ordinary was wrong, still the principle of their judgment might be misunderstood, if that judgment should state a fact which did not appear in the cause.

May 4, 1814. Observations in judgment.

Judge-Admiral's interlocutor.

As to the judgment of the Lord Ordinary, and

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that of the Court, which was in substance the same, they (the Judges) did not say that this was not such a misrepresentation as would affect the premium, but that it was not such a misrepresentation as could affect the nature of the risk,—" that it par- " took rather of the nature of these *verba jactantia*, " not very moral perhaps, but very common, and " not illegal, which were used at the cheapening " of goods," &c.—he should suppose that at least the word *perhaps* ought to be left out, for there could be no doubt but that such misrepresentations were grossly immoral—" and which representations " or misrepresentations would not avail to set aside " a sale," &c. Taking that as a general proposition, he could not admit the truth of it; for even in chaffering about goods, there might be such misrepresentations as would set aside the contract. When the misrepresentations were made under such circumstances and in such a way that they took the confidence of the purchaser, and induced him to act when otherwise he would not, this was a fraud which would affect the sale.

Misrepresentation, even in chaffering about goods, if it takes the confidence of the purchaser, and induces him to act when otherwise he would not, vitiates the sale.

Whittingham v. Thornburgh, 2 Verm. 206. Pre. Ch. 20 —Wilson v. Ducket, 3 Bur. 1361.

It appeared to him settled here, that if a person, meaning to effect an insurance, exhibited a policy underwritten by a person of skill and judgment, knowing that this would weigh with the other party and disarm the ordinary prudence exercised in the common transactions of life, and it turned out that this person had not in fact underwritten the policy, or had done so upon such terms as that he came under no obligation to pay, it appeared to him to be settled here, that this would vitiate the policy. The Courts in this country would say that this was a fraud, not on

the ground that the misrepresentation affected the nature of the risk, but because it induced a confidence, without which the party would not have acted. If one, then, sent down a policy to Leith, with the names of two or three underwriters at Lloyd's, were the Leith underwriters to send to Lloyd's to ascertain whether these were fair and *bonâ fide* subscriptions?—No. And where was the difference between sending policies and letters? But then another question had been raised,—Whether the real meaning of the letters was, that insurance had been effected on the same voyage at Lloyd's at eight guineas per cent.? He took the letters, in fair and obvious construction, as representing that insurance had been effected at Lloyd's on the very same voyage at eight guineas per cent., and an attempt by nice criticisms to show that they were susceptible of a different meaning would not do. Such being his opinion on the first point, he thought it needless, unless their Lordships disagreed with him, to address himself to the rest.

Redesdale *assentiente.*

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A misrepresentation in effecting a policy, which induces the underwriter to act when otherwise he would not, is a fraud, and vitiates the policy, though the misrepresentation is not such as affects the nature of the risk.

Interlocutors of Lord Ordinary and Court *reversed,* and Judge-Admiral's decree *affirmed,* with an alteration as above. Judgment.

Agent for Appellants, MUNDELL.
Agent for Respondents, CAMPBELL.