

should have been communicated; and that the information which it contained was material; and, therefore,

No 14.

They remitted to the Lord Ordinary to alter his interlocutor, and to pass the bill.

Lord Ordinary, *Metwren.* Act. *Hay.* Agent, *H. Fotheringham.*

Alt. *Moodie.* Agent, *Jo. Tawse.*

F.

Fac. Coll. No. 113. p. 248.

1803. June 24.

GILLESPIE & COMPANY against DOUGLAS.

WILLIAM GILLESPIE and Company, merchants in Glasgow, received the following letter from their correspondents at New York, (13th May, 1797.)

No 15.
What concealment sufficient to vacate the policy.

' You have inclosed bill for L. 1000. Also have shipped in the Fanny one thousand dollars, which we hope will safely come to hand. We have also shipped in the *Ohio* ninety-seven bales of cotton, the amount of which we will send by the same ship. *She will sail about twelve hours after the Fanny.* P. S. Insure, if she does not come soon to hand.'

This letter arrived by the Fanny; and, a few days afterwards, (24th June, 1797.) Gillespie and Company addressed the following order to their brokers: ' Insure in our favour L. 1000, on goods *per* the *Ohio*, at and from New York to Clyde, for eight guineas *per cent.*'

The policy was accordingly filled up on these terms; and Gilbert Douglas, merchant in Glasgow, was one of the underwriters.

The *Ohio* was taken by the enemy on her passage home, was carried into a French port, and condemned.

Douglas declined paying his share of this loss, on the principle that there had been a concealment of a material circumstance, which affected the risk, by not disclosing the information received by the letter of 13th May, relative to the time when the *Ohio* was to sail.

Gillespie and Company brought an action upon the policy against him; and the LORD ORDINARY sustained the defences, (29th November, 1800.)

To which judgment the Court adhered, on advising a petition, with answers.

They considered the information, relative to the time of the *Ohio* sailing, as material, and affecting very much the risk to be insured against. If the insurance had been effected immediately on receipt of the letter by the Fanny, the case might have been different, and the risk would just have been a common risk; but, after waiting for several days, during which the vessel, which was to sail only twelve hours after the letter of advice, did not arrive, the risk became that of a missing ship.

Lord Ordinary, *Craig.* Act. *A. Campbell, Junior.* Agent, *R. Marshall, W. S.*

Alt. *Semple.* Agent, *G. Dunlop.* Clerk, *Pringle.*

F.

Fac. Coll. No. 114. p. 251.