

and if it did, Mr Ross has acknowledged his subscription, which would, at any rate, take the case out of the statute. [This part of his opinion was reprobated in general by the Court, as inconsistent with the principles of the noted decision, *M'Kenzie* against *Park*.]

PRESIDENT. Goodlet's case, in 1739, is just like this. A thousand letters are written every day in mercantile transactions, of a form similar to that of the letter in controversy : and there is no doubt of their being obligatory.

On the 19th January 1779, "The Lords found that the letter was obligatory on Mr Ross ;" adhering to Lord Covington's interlocutor.

*Act.* W. Stewart. *Alt.* W. Law.

1779. January 19. JAMES and ANDREW MORRISON *against* JAMES STEWART and OTHERS.

#### INSURANCE.

Case of a concealment on the part of the insured.

[*Fac. Coll. VIII.* 102 ; *Dict.* 7080.]

HAILES. There may be a difference in considering the two policies : the one does not conceal the state of the ship ; the other, from the very same intelligence, does.

BRAXFIELD. There is a difference ; and the one case is not so clear as the other. But we ought to consider that the insured may easily practise frauds against the insurer which the insurer cannot against the insured ; therefore, the real state of the ship ought always to be intimated, and every material circumstance capable of varying the risk. Here the insured, in both policies, intentionally concealed material circumstances.

JUSTICE-CLERK. The one policy *concealed*, and the other *misrepresented* circumstances. *Both* intended to deceive : the ship was a *missing* ship, before any insurance was made.

COVINGTON. It matters not whether the concealment was unintentional or purposely made. But *here* the fraud is gross.

PRESIDENT. There was much concealment and strong circumstances of fraud in this case.

On the 19th January 1779, "The Lords assoilyied the insurers ;" adhering to Lord Gardenston's interlocutor.

*Act.* A. Crosbie. *Alt.* Ilay Campbell.