SECT. III.

What deviation sufficient to vacate the policy.—*Cui incumbit onus probandi.*

1774. *December* 20. STEVENS & COMPANY *against* DOUGLAS.

No 16.

DOUGLAS, merchant in Glasgow, insured Stevens and Company to the amount of L. 80 on goods by the Belfast trader from *Belfast, to Greenock or Port-Glasgow.* It was proved that the ship, instead of sailing directly to Clyde, took in goods to be first delivered at Stranraer in Lochryan; and on her way thither she was wrecked near Girvan, in Ayrshire, and totally lost. There was no evidence that the assured was privy to the deviation; and on that ground it was *argued* that the policy must be valid, and the underwriter must be liable, but he may have recourse against the owner or shipmaster. THE COURT moved chiefly by the London practice, found, that in order to vacate a policy, it was not necessary that the assured should be accessory to the deviation; it is enough that there was a deviation, or an intention to deviate, partly carried into execution, as was here proved to be the case; and they therefore sustained the defences of the underwriters.

Fol. Dic. v. 3. *p.* 328. *Miller on Insurance.*

1776. *March* 7. WILSON and COMPANY *against* ELLIOT.

No 17.

WILSON wanting to insure a cargo of tobacco from Carron to Hull, wrote to his broker, desiring him to insure on his account, p. the Kingston from Carron to Hull, *with liberty to call as usual*, fourteen hogsheads of tobacco, value L. 539. The broker presented this order to an underwriter, who refused to sign with the general clause *of calling as usual*; but on the clause being altered thus, 'with li-'berty to call at the Port of Leith,' he signed it. The ship did not call at Leith, but at Morison's haven, six miles distant, where she took in goods, returned to her direct course, and was totally wrecked off Holy Island. THE LORDS, on the ground that Morison's haven was so near, that it could scarcely be called a deviation, and that the vessel actually returned into her proper course, whence the underwriters had in reality suffered no detriment, found the latter liable for the assured sum. But this judgment was reversed, on appeal.

Fol. Dic. v. 3. *p.* 328. *Miller on Insurance.*