

On the 13th June 1781, "The Lords repelled the defence of triennial prescription."

Act. J. Ramsay. *Alt.* W. Nairne.
Reporter, President for Justice-Clerk.

1781. *June* 20. JOHN THOMPSON *against* GEORGE BUCHANAN and OTHERS.

INSURANCE.

What concealment of risk vacates the Policy.

[*Faculty Collection, VIII. 99; Dictionary, 7085.*]

HAILES. Had the letter been communicated to the underwriters, they would have seen that the shipmaster apprehended the danger to be very great; but the extent of the danger was not seen in the application made for insurance.

ALVA. The insurer is not bound to tell what the underwriter might have known.

WESTHALL. Suppose that Paul Jones were in the Frith of Forth,—a shipmaster at Leith runs an express to Glasgow for insuring,—the policy is signed before the immediate danger is known; Would it be good to recover insurance? I think not; although the underwriter had it in his power, by means of attentive correspondents, to have known as much of Paul Jones's arrival as the insurer did.

GARDENSTON. Here there was concealment of intelligence material contained in the shipmaster's letter, viz. That ships actually chartered would not go out of port by reason of the danger.

KAIMES. The underwriters are the proper people to consider whether intelligence is material or not. It is they, and not the insurers, who must judge of that. The shipmaster was alarmed, and his alarm ought to have been told to the underwriters.

PRESIDENT. A contract of insurance is, from the nature of the thing, *optima fidei*. All the information, as to the risk of the voyage, is given in one letter: it was not right to communicate part and conceal the rest.

Act. J. M'Laurin. *Alt.* Ilay Campbell.
Reporter, President for Justice-Clerk. *Diss.* Alva.
