

His father insured the ship at Glasgow, the policy bearing, 'the said goods, body, tackle, &c. valued at L. 1000 without further account.' The vessel was lost off Bermudas. It afterwards appeared, that the information of the value was false, the real value of the ship and cargo not being a half of the sum insured; but there was no evidence that the father was accessory to the fraud. The son was prosecuted for having wilfully sunk the ship; but acquitted of that charge, and found guilty only of having sent fraudulent advice with a view to the insurance. In an action for the insured sum against the underwriters, the LORDS found, that the policy did not oblige them to pay the sums at which the ship and cargo were insured, but only the real value, as it appeared on proof. But the House of Lords reversed the judgment, and decreed for payment of the sum in the policy.

No 24.

*Fol. Dic. v. 3. p. 331. Millar on Insurance.*

1783. December 2.

JAMES WILSON, and Others, *against* JOHN WORDIE, and Others.

WILSON, and other owners of a private ship of war, having got notice that she had captured a Spanish merchantman, made insurance upon the prize; which, in the policy opened by Wordie and others, the underwriters, was valued at L. 20,000, including 20,700 dollars in specie. The vessel was retaken by a French privateer, but not before the Scottish captors had sent ashore 4200 dollars, which indeed appear to have been nearly the amount of the specie found on board of the prize.

No 25.  
Insurers are liable for the estimated value, tho' beyond the true, if the estimate be made without fraud.

An action instituted in the Court of Admiralty, by the insured against the underwriters, having been brought by advocacy and reduction before the Court of Session, it was

*Pleaded* for the defenders; It is an established maxim respecting insurances, that the concealment or misrepresentation, even by mistake, of any such important fact or circumstance as may make 'the risk really run different from that understood and intended to be run at the time of the agreement,' renders the policy void. The over-valuation in this case, so undeniably, especially as to the dollars, evidently increased the disadvantage of the insurers situation, or the risk which they run, and ought therefore to prove fatal to the claim of the pursuers; *Weskett's Digest of Insurance-laws*, p. 28.

But though the policy were not thus to be annulled *in toto*, it ought at least, in consideration of its object, to be restricted to the loss truly sustained. Insurance is a contract of indemnity; and where no damage can possibly arise, or so far as no subject exists on which it may be incurred, there is no room for any obligation. Hence the defenders are liable according to the true extent only of the loss in question, notwithstanding the over-valuation in the policy.

No 25.

For 'no man should be allowed to avail himself of having over-valued;' Burrow's Reports, vol. 2. p. 1198, Hamilton *versus* Mendez; *ibid.* p. 1167, Lewis *versus* Rucker. See Ordinances of France, and Coningsberg ap. Weskett's Digest, p. 309.; and of Amsterdam, in Magen. vol. 2. p. 136. See also Resolutions on this subject, of a Committee of the House of Commons in 1747. If the error has arisen, not by misapprehension, but from fraudulent design, then is the contract totally vitiated in respect of the insured, whose crime falls under the cognisance of the law, while the insurer continues entitled to his full premium; Weskett *ut supra.* Even wager policies, as they are stiled, are expressly prohibited by act 19th of George II. The valuing of policies nevertheless is by no means useless, as it imports an admission on the part of the insurer, which supersedes the necessity of proof by the insured; though it is evident that the insurer is not thereby precluded from detecting an erroneous valuation by a proof to be adduced by himself.

*Answered*; The very purpose of valued policies is to remedy the uncertainty of real amount, which on many occasions is unavoidable, and almost always attends cases of prize like the present. It behoves the insured indeed, in specifying the value, to be free from any fraudulent design. But though an over-valuation should happen, if *bona fide* made, it will stand good. The statute of George II. was directed only against those insurances in which the insured has no true interest; but enacts nothing with respect to cases in which he holds a substantial property, though of less value than that rated in the policy; Burrow, vol. 2. p. 1171.

Some of the Judges were of opinion, That the sole effect of the valuation was to create a presumption, which however might be overcome by proof; but the majority adopted the argument of the pursuers.

THE LORD ORDINARY reported the cause, when

'THE LORDS found the underwriters liable in terms of the policy of insurance underwritten by them.'

In a reclaiming petition the underwriters argued thus: Suppose the full specified number of dollars, viz, 20,700, to have been on board, and all saved, then surely to that extent no claim could lie against the underwriters. Now in fact the whole specie really on board, viz. 4200 dollars, was saved; and what difference could it make, that an additional number, which never at all existed, had been stated by mistake? Did that create any loss?

On advising this petition, with answers, in which the former argument of *bona fides* supporting the valuation was again urged,

THE LORDS adhered to their foregoing judgment.

Lord Reporter, *Hailer.* Act. *I. Campbell, C. Boswell.* Alt. *Blair.* Clerk, *Horne.*  
S. *Fol. Dic. v. 3. p. 331. Fac. Col. No 130. p. 207.*