

title the insured to call at such ports on the English coast as lie in the track of the voyage, but not at a port which is so much out of the natural course of the voyage as Hull is; and therefore suspended the letters *simpliciter*."

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The pursuer preferred a reclaiming petition, which was refused. A second having been presented, answers were ordered, which were followed with replies and duplies.

At advising the cause, the Judges considered the voyage to be entirely altered, and therefore held the policy to be vacated. Upon that ground, they unanimously "adhered to the Lord Ordinary's interlocutor," suspending the letters.

Lord Ordinary, Justice-Clerk.
Alt. Rolland, John Millar.

Act. Sir W. Miller. John Clerk.
Clerk, Menzies.

R. D. Fol. Dic. v. 3. p. 329. Fac. Col. No 147. p. 295. & No 65. p. 142.

S E C T. IV.

Conditions of the Policy strictly interpreted.

1786. June 27.

ROBERT DUNMORE and COMPANY against RICHARD ALLAN and Others.

INSURANCE was made at Glasgow, in August 1782, on the cargo of the ship Commerce, bound from Jamaica to the river Clyde; the ship being warranted to sail with convoy, with liberty to join at the place of rendezvous.

The convoy sailed from Bluefields, which was the place of rendezvous, on 25th July. But the ship Commerce did not leave its port of loading till 27th; nor did it reach Bluefields till 29th. It came up with the convoy on 20th August, the master having then received sailing orders from the Admiral. After this it continued with the fleet till 17th September, when, after being separated in a gale of wind, it was taken by the enemy.

In an action for the insured values, Robert Dunmore and Company, the owners,

Pleaded; If the risk has been described by an insurance-contract in special terms, it admits undoubtedly of the most limited interpretation. And hence, where it has been stipulated, as is usual in the English policies, 'That the ship shall depart with convoy from the place of rendezvous,' it would seem necessary, in order to effectuate the insurance, that the voyage should be *commenced*,

No 21.

A ship warranted to sail with convoy, though she did not sail till several days after the convoy, overtook it, and a few weeks afterwards was separated from the fleet in a gale, and was finally taken by the enemy. The Court found the policy null.

No 21. as well as *performed* till the loss happens, under that protection. This is a particular warranty, and the obligation of the insurer is not extended to cases which do not fall precisely within its words.

But with regard to those warranties which are framed in more general terms, the same construction is not observed; *Wesket*, p. 102. *Hog and Kinloch versus Bogle and Scot*; *Strange's Reports*, p. 1265, *Gordon versus Moreley, Campbell versus Bordieu*. Though, therefore, ships insured in Scotland are permitted, by a special clause, to join convoy at the place of rendezvous, this circumstance is not, as in England, to be deemed essential to the bargain. It is the joining of the convoy, not the particular place at which this is effected, which is to be attended to. The moment the shipmaster has, in such a case, received sailing orders, the vessel comes into the situation described by the policy; and a delay in this respect, instead of hurting the insurer, has a quite contrary effect; the hazard undertaken by him being thereby proportionally diminished.

Answered for Richard Allan and the other underwriters; The condition of the policy was, that the ship should sail *with* convoy; and the clause dispensing with this until the ship's arrival at the place of rendezvous, instead of relaxing, added strength to the usual strictness of the contract. It therefore necessarily follows, that the agreement has here become ineffectual, because the ship did not sail *with* the convoy, but long *after* it.

And it would be of no importance, though the failure on this point should not appear to have been attended with any additional hazard. To validate an insurance, it is not enough that the risk run is even less than the risk intended to be run. If it be not the very same, the contract is at an end.

Nor do the decisions referred to support a contrary doctrine. In the case reported by *Wesket*, insurance had been made from the frith of Forth, without mentioning any certain port, to Campvere. It therefore might be justly held, though the ship had been freighted from Dundee, in the frith of Tay, that the condition of the policy had taken place; because she had only not fallen within the course generally taken by vessels from the frith of Forth, but had even been for some time in that portion of sea which is within the latter æstuary. In those cited from Sir John Strange, the ships, which were warranted with convoy, had been taken between the port of loading and the place of rendezvous. The loss, therefore, was properly found to fall on the underwriters; for, though the smallest deviation is fatal to a policy, it would be contrary to reason, to create, by implication, such conditions as never can be fulfilled.

The Court did not distinguish a warranty to 'sail with convoy,' from a warranty 'to depart with convoy,' where, the pursuers admitted, that, in the circumstances which here occurred, the agreement would have been vacated. And it was observed, That if the condition of policies similar to the present was not understood to exist till the receipt of sailing orders, the insurers claim to the premium would be entirely dependent on the masters of ships, who

would give effect to the insurance, or not, as they thought it most for the advantage of their employers.

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THE LORDS unanimously adhered to the judgment pronounced by the Lord Ordinary, who had sustained the defences pleaded for the underwriters.

Lord Ordinary, *Lord Brasfield.* Act. *Lord Advocate.* Alt. *Craig.* Clerk, *Home,*
C. *Fol. Dic. v. 3. p. 329.* Fac. *Col. No. 281. p. 432.*

1786. November 15.

MARSHALL, HAMILTON, and Company, against JOHN CRAWFORD and JOHN BARNES.

No 22.

A VESSEL belonging to Marshall and Company of Greenock, was destined to sail on a voyage from that port, according to the following plan, contained in the instructions given to the shipmaster; her lading consisting chiefly of coals: "To sail first for Newfoundland, there to receive on board 300 casks of fish; and with these, the coals, and other goods, to proceed to Barbadoes, where a correspondent was to direct to the best market: The great object of the voyage being to obtain a freight homeward, if possible one to be engaged there, or at the neighbouring islands; and if this could not be done, then to proceed to Morant Bay in Jamaica, where the master was to leave the ship, and wait on other correspondents at Kingston and Manchineal, in order to secure a freight."

A vessel being insured 'to a market,' is to proceed thither directly, and not to admit unnecessary delay from any other object.

Having received advice of the safe arrival of the ship at Newfoundland, Marshall and Company opened a policy at Greenock, 'on ship and freight, at and from Newfoundland, until she arrives at her port or ports of discharge in the West Indies, and is there twenty-four hours safely moored; and the risk on the freight to continue until the cargo is there safely discharged; after the rate of one guinea and a half per L. 100 Sterling, and one guinea per L. 100 additional, if the ship shall proceed to Jamaica.'

The clause in a policy, of 'a vessel being safely moored,' means according to usage of the place.

They likewise opened another policy at Glasgow, 'on the ship; also on fish per said ship, at and from Newfoundland, until the ship shall arrive at a market in the West Indies, with liberty to proceed to Jamaica, and there be safely moored, and said fish landed, at two guineas per cent. with one per cent. additional, if the vessel shall proceed to Jamaica.'

The ship arrived safe at Barbadoes, where, and at some neighbouring islands, her cargo of fish was disposed of. But no freight offering, the master, according to his instructions, immediately pursued his voyage to Morant Bay in Jamaica, without taking time to unload and sell the coals, which otherwise he could have done. Having reached Morant Bay, the vessel was there moored with three anchors. The master, as directed, left her, to go to Kingston and Manchineal for the requisite information; and two days afterwards he returned.