close every circumstance, consistent with his knowledge, which is material, of which there are none more so than the time of the vessel's sailing. Thus, in the present case, if the Concordia had sailed on the 15th, having ten days to reach the place of rendezvous, there could be little doubt of her arriving there in time to sail with the July fleet. If she was so far from being ready as not to be able to join the convoy till the 22d, then there was a great probability of her being disappointed of that fleet, and her voyage would necessarily be delayed till a time of the year the very worst for shipping. Though an express assurance is given of the time expected for her clearing out, the doubt as to this being the case is concealed; and it is even directly asserted, that the letter contained an expectation, which from the whole context, is not warranted by it. No. 7.

But, on the other hand, it was answered, and the Court held satisfactorily, that by virtue of the established law in such cases, it is not the concealment of any fact, which is material in the estimation of the risk, or which should be known to the underwriters themselves, which will vary the risk so as to vacate the policy; that no undue expectation was here held out as to the time of the vessel's sailing, as the terms of the policy expressly declare, that it was uncertain whether she would sail with or without convoy, and whether before or after 1st August. The intention of clearing out by a certain day might be conceived, but many things might render it abortive; and the order to insure was in such terms as to meet every event.

The bill was (26th January 1804) refused.

The Court adhered, (22d May), on advising a petition, with answers.

Lord Ordinary, *Glenlee.* Act. *Irving.* Agent, *Alex. Kidd.* Alt. *Campbell.*
Agent, *Jo. Dillon.* Clerk, *Ferrier.*

F. *Fac. Coll. No.* 161. *p.* 363.

1804 *December* 21. RHAND *against* ROBB and Others.

No. 8.
In a valued policy of insurance on freight, the whole is due, although the vessel has been wrecked when a part only of the cargo had been put on board.

ON the ship Commerce, lying in the road of Basseterre, in the Island of St. Christopher's, an insurance was made, by which "the said ship, &c. goods "and merchandise, &c. for so much as concerns the assureds, by agreement "between the assureds and assurers in this policy, are and shall be valued at, "ship £2000 Sterling, freight £2000 Sterling."

The ship began to load on 20th September 1802. On 8th November, when only about one-seventh of the cargo was put on board, the ship was driven on shore from her moorings, and wrecked.

The value of what was saved only amounted to £259. 18*s*. 10½*d*. for which, after deducting £170. 3*s*. 11*d*. for seamen's wages from 20th September to

No. 8. 8th November, the insured offered to account, in his claim against the underwriters, for the full amount of their subscriptions in this valued policy. The underwriters, on the other hand, insisted, that they were entitled to deduct the whole proceeds of the wreck from their insurance on the ship; and that, with regard to the freight, they were only liable so far as the assured had interest, that is, for one-seventh; from which also ought to be deducted a proportion of seamen's wages, and the price of stores, which were saved by the vessel never having proceeded on her voyage.

John Young Rhand, the owner and commander of the vessel, brought an action against George Robb and others upon the policy; and the Judge-Admiral (3d February 1804) pronounced the following interlocutor: "In respect the policy upon which this action proceeds is a valued policy, both as to ship and freight, and that the value of each is estimated at an equal sum, finds the defenders liable to the extent of £50 *per cent.* of their respective subscriptions, as the amount of their responsibility on account of the total loss of the freight; and also finds the defenders each liable in the further sum of £50 *per cent.* of their respective subscriptions, with and under the deduction of their respective proportions of the free proceeds of the sale of the wreck and materials, as the amount of their responsibility on account of the total loss of the vessel; and, further, finds the foresaid deduction amounts to £1. 1*s.* 1½*d.* on each £100, or 10*s.* 6¾*d.* on each sum of £50: Therefore decerns against the defenders to the extent of £99. 9*s.* 5¾*d. per cent.* of their respective subscriptions, with interest as libelled; repels the defences *quoad ultra*, and finds expenses due."

This interlocutor having been brought under review by suspension, the question was reported to the Court upon memorials.

The suspenders

Pleaded: A valued policy does not exclude every inquiry as to the true amount of the interest insured, otherwise it would just be a wager policy, which the law decidedly prohibits. But it is only in the case of a total loss, that there is any material difference between an open and a valued policy. In the former, the value must be proved; in the latter, it is admitted. But in the case of a partial loss, the same inquiry into the true amount of the loss is to be made, whether the policy be of the one sort or of the other; otherwise the consequence would be, that, in a valued policy, either every partial loss must be considered as a total one, or else nothing can be reckoned a loss at all, unless it be a total loss; Marshall on Insurance, vol. 1. p. 202. In the present case, the loss was not total.

But the deduction from the loss must be greater than has been allowed; for the wages due to the seamen cannot possibly be charged against the proceeds of the wreck. Such wages being due while the vessel is loading, and before she sets sail, are not covered by an insurance on the ship. They do not fall within any of the risks mentioned in a policy; Marshall, p. 484,

p. 621. Park, p. 125. p. 52. p. 54. Robertson against Euer, 1. Tenmly Reports, p. 127. No. 8.

With regard to the freight, it cannot be due upon the principle of its being a valued policy; because the interest was not nearly sufficient to cover it. It amounted only to about one-seventh; beyond which it is similar to a wager policy. Insurance is merely a contract of indemnity, and is not to be converted into a source of profit.

Answered: In a valued policy, the distinction between which and an open policy is firmly established, the value is of the nature of liquidated damages; and the effect of it is, to specify the amount of the loss, as if it had been proved or admitted after it took place. The underwriter of a valued policy is liable for the whole freight, although only a part of the cargo has been shipped: It is enough that the risk which is covered has commenced; Bacon's Abr. vol. 4. p. 635. Marshall, p. 76. Park, p. 36. Montgomery *versus* Egginton, 3. Term. Rep. p. 362. Thomson *versus* Taylor, 6. Term. Rep. p. 478. The insurance in this case was fairly meant as an indemnity to cover the freight upon the voyage; and in no one particular can it be said to partake of the nature of a wager policy.

Lord Ordinary, *Woodhouselee.* Act. *W. Erskine.* Agent, *J. Horne*, W. S.
Alt. *Wolfe-Murray.* Agents, *Robinson & Ainslie, W. S.* Clerk, *Walker.*

F. *Fac. Coll. No.* 193. *p.* 433.

1805. *December* 10. YOUNG *against* ALLAN.

No. 9.
Though the risk in a policy of insurance be extended, by an addition made to the policy, without the consent of the underwriter, he is nevertheless liable, if, in fact, the voyage be not altered.

ROBERT ALLAN, banker in Edinburgh, being employed as a broker, to effect an insurance on the Betsey, then at Jamaica, applied to Robert Young, merchant in Edinburgh, to underwrite the policy, which he did to the extent of £100. The risk, as expressed in the policy, when subscribed by Young, was a voyage, "from Jamaica to Belfast." But the policy was afterward altered, so far as to subjoin to the word *Belfast*, in a blank left in the policy, "Plymouth or Liverpool, with liberty to call at the first mentioned port, (Belfast) *per* orders." There was no proof that this alteration was communicated to Young.

The vessel was taken by a French privateer, while she was proceeding to Cape Mole St. Nicholas, in the island St. Domingo, for the purpose of joining convoy for England.

Upon being applied to, to settle the loss, Young granted a bill for the sum he had insured. But being afterward informed, that the policy had been altered after his subscription, he arrested the bill in the hands of the broker; and, in an action raised against him before the Judge-Admiral, contended,