

p. 621. Park, p. 125. p. 52. p. 54. Robertson against Euer, 10 Termly 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. Call. No. 193. p. 433.*

1805. December 10. *YOUNG against ALLAN.*

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,

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.

No. 9. That the policy was null and void in consequence of the alteration. The Judge-Admiral repelled the defence. The cause having been afterward brought to the Court of Session, by a suspension and reduction at the instance of Young, the Lord Ordinary sustained the reasons of reduction, and suspended the letters *simpliciter*.

Upon advising a petition against the Lord Ordinary's interlocutor, with answers, the Court ordered memorials: The pursuer of the reduction

Pleadèd: Every interpolation in a policy of insurance, without the consent of the underwriter, by which the risk insured is in the slightest degree altered, is held an error *in substantialibus*, and vitiates the policy; Wesket, Mag. Essays, No. 1404. Miller, p. 392. Park Inst. p. 1. Marshall, p. 245. By the policy, as it stood originally, the underwriter incurred only one risk; a voyage from Jamaica to Belfast. But by the subsequent alteration, the risk was divided into three, which is inconsistent with the nature of a policy of insurance, where, if there be distinct and divisible risks, these are always explicitly specified, with the premium corresponding to each; and if the risk be considered as integral, it is unquestionably not the risk which the pursuer undertook, but involved a greater degree of risk, for which there ought to have been an increase of premium. The voyage insured in the intended policy, was from Jamaica to Clyde; the pursuer, therefore, cannot be held to insure a different voyage from Jamaica to Belfast. He is not bound by the policy to insure the risk, and the policy is the only rule by which the extent of the risk insured is to be determined. It makes no difference that the capture of the vessel took place while she was within the course of her original destination; Marshall, p. 230. Birman against Woodbridge; Douglas's Reports, p. 781; Stevens against Douglas, 20th December 1774, No. 16. p. 7096; Buchanan against Hunter Blair, 15th July 1779, No. 7. p. 7083; Bain against Kippen, 20th November 1783, No. 10. p. 7087; Robertson against Laird, November 16th, 1790, and June 25th, 1793, No. 20. p. 7099. If this rule were to be relaxed, the broker would have so much in his power, that he might be able effectually to connive with the assured, to over-reach the underwriter; and the useful practice of underwriting would be greatly discouraged.

Answered: The course of the voyage described in the original policy is the same as that described in the altered policy, until the arrival of the vessel at Belfast. The vessel was taken in the direct track from Jamaica to Belfast. No part of the increased risk was therefore ever begun, so that the insurer suffered nothing from the alteration in the policy; and an intended deviation is not sufficient to liberate the underwriter; Park, p. 314. Had the alteration been made in the form of an indorsement, signed by the other underwriters, but which the pursuer refused to sign, he would nevertheless have remained bound by the terms of the original policy; and if the capture had taken place in the course of the voyage to Belfast, would have been liable to the owner. There is nothing in the nature of a policy to make an alteration in it attended

with penal consequences. On the contrary, alterations are explicitly recognized; Marshall, p. 225. And as there was no fraudulent vitiation, but a trifling addition, for which none of the underwriters who consented to it, thought of requiring an additional premium, there is no reasonable ground for holding the insurance as vacated.

The Lords, upon advising the mutual memorials, "alter the interlocutor of the Lord Ordinary; find the letters orderly proceeded in the suspension, "repel the reasons of reduction, and assolzie." This interlocutor was pronounced by the casting vote of the Lord President.

A reclaiming petition against this interlocutor was, after having been advised, with answers, refused.

Observed on the Bench: It is material, in this case, that the vessel was cleared out from Jamaica to Belfast. The master knew nothing of the subsequent alteration of his destination. Though the policy was therefore altered, there was no alteration in the voyage. It is clear, that the smallest alteration in the voyage vacates the policy; but there is a wide difference between an alteration in the voyage and an alteration in the policy. In the one case, the risk is changed, but, in the other, it may remain the same; and it is the difference in risk which vacates the policy. The case of Laird against Robertson was reversed in the House of Lords; because, *de facto*, the voyage was altered.

But while this was the opinion of the majority of the Judges, several of their Lordships, nevertheless, held, that there was here an alteration of the policy, by which the risk was extended without the consent of the underwriter, which was sufficient to vacate the insurance.

Lord Ordinary, *Hermann*.  
Ait. *Gillies*.

Act. *Maxwell Morison*.  
Agents, *J. and T. Peat*.

Agent, *D. Thomson, W. S.*  
Clerk, *Pringle*

J.

*Fac. Coll. No. 230. p. 52Q.*

1808. June 14.

CHARLES SELKRIG, Trustee on the Sequestrated Estate of HAY SMITH,  
against PITCAIRN and SCOTT, and other Insurance Brokers.

HAY SMITH was an underwriter at the offices of Pitcairn and Scott, &c. He accordingly had underwritten, at these offices, policies to a large amount, of which the risks were undetermined. In this situation he became bankrupt. No part of the premiums on these policies had at that time been paid. The brokers, on his bankruptcy, conceiving these contracts of insurance with him to be no longer binding, and wishing to secure the insured, made second insurances on the subjects of all these policies. In settling accounts with Mr. Selkrig, who was appointed trustee on the estate of Hay Smith, these brokers

No. 9.

No. 10.

The bankruptcy of the insurer, while the risk is undetermined, does not give the insured a right to retain the premium, or em-