Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of the Beacon Life and Fire Assurance Company v. *Gibb and others, from the Court of Queen's Bench of Lower Canada; delivered 3rd December*, 1862.

Present:

LORD CHELMSFORD.
LORD KINGSDOWN.
SIR JOHN T. COLERIDGE.

THIS is an action upon a renewable time policy of insurance against fire, made by the Appellants the Beacon Life and Fire Insurance Company, of Lower Canada, upon the Respondent's steam-vessel "Tinto," described in the policy as "lying at Sorrel, to ply between Quebec and the Upper Lakes;" and the only question which arises in the case is whether part of one of the conditions indorsed upon the policy enters into the contract between the parties.

Now the whole difficulty in this case—if really there is any difficulty—has arisen from the Company taking a form of policy for insurance upon houses and buildings, and not striking out those conditions indorsed on the policy which were inapplicable to the subject matter insured; but leaving the question of the application of the conditions to the proviso in the body of the policy to this effect "that this policy and the insurance hereby made shall be subject to the several conditions and regulations herein and hereon expressed, so far as the same are or shall be applicable."

During the continuance of the policy the steamer was entirely destroyed by fire, and the present action was brought against the Company to recover the amount of the insurance. The declaration, it

has been observed, negatives the fire having been brought within any of the exceptions which are contained in part of the seventh condition, thereby admitting that part, at least, of the condition enters into the insurance. The Company pleaded, amongst other pleas, that the policy of insurance in the declaration mentioned was made by the Defendants under and subject to certain conditions and regulations therein and thereon expressed; and, among other things, that if more than 20 lbs. weight of gunpowder should be on the premises at the time when any loss happened, such loss would not be made good. And the plea averred that at the time the "Tinto" was destroyed by fire there was on board the vessel a larger quantity of gunpowder than 20 lbs. weight.

The parties being at issue by the provisions of a provincial statute, the questions to be submitted to the jury were determined by the Court, and one of those questions—the only one necessary to be considered—is the third, viz., at the time the said steamer "Tinto" was so consumed by fire was there any quantity of gunpowder on board the said steamer; and, if so, what weight or quantity?

Upon the trial that question, with the others, was submitted to the jury, and they returned for answer: "Yes, we find that a package containing about 100 lbs. of powder was on board as freight, and which the owners of the said steamer were not precluded by their policy from carrying."

It is quite clear—it is admitted, indeed, by all the Judges, and there can be no question about it—that the latter words of this finding, "and which the owners of the steamer were not precluded by their policy from carrying," were beyond the province of the jury. It was taking upon them to decide upon the construction of the contract. I suppose that the course in the province in these cases, where the jury are required by the provincial statute to find a special verdict—that is, not a special verdict as the term is understood in this country, but to answer distinctly to the different questions which are settled by the Court to be proper to be submitted to them—is, that an application is afterwards made to the Court to apply the verdict. Accordingly, such an application was made by the Defendants in the action; and, in addition, there was a motion to

strike out the words to which I have referred in the finding of the jury. There was, perhaps, no necessity for this motion, as the latter part of the finding of the jury might have been treated as mere surplusage; but the Superior Court took it into consideration, and decided that the words ought to be struck out from the answer of the jury; and then gave Judgment for the Defendants.

From this Judgment there was an appeal to the Court of Queen's Bench, and after argument the Court was divided, three Judges being in favour of the Respondents, and two in favour of the Appellants. The Judgment of the Superior Court being also in favour of the Appellants, there has been an equality of opinion amongst the Judges who have had to decide the question in the Courts of the province.

Two of the Judges, the Chief Justice and Judge Mondelet, who were in favour of the Respondents, were of opinion that the word "premises" was applicable in the seventh condition to the case of a steamer, but their decision proceeded on the ground that a policy of insurance was a *contrat aléatoire*, which must be carried out in good faith, and that the Company could not be relieved from their responsibility to answer for the loss without proof of deception and fraud, and a further proof that the fire had extended by reason of more than the limited quantity of gunpowder being on board. There was not the slightest ground for suggesting any deception or fraud on the part of the Company, and as to its being necessary to give proof that the fire had extended by reason of a breach of the condition, this seems to introduce into the contract an entirely new term. It is important to observe that in this very seventh condition there are instances in which the Company have expressly stipulated that they shall not be liable for any loss or damage which has been occasioned by or through certain circumstances, as explosion in one case, and the use of camphine in another, thereby distinguishing in terms between those cases where the loss must be brought home to the specified cause, or to the use of the prohibited article, and the case in question of their not being answerable where there are more than 20 lbs. weight of gunpowder on board, whether it has occasioned the loss or not.

Mr. Justice Badgley in part of his Judgment

seems to think that the condition is not applicable at all to the case of a steamer; but at the close of it he takes a different view, and says the contract may be fairly read as follows: "We will insure your freight steamer; we know that gunpowder is an article of freight and transportation in steamers; but if you keep on board for use more than 20 lbs., and the vessel take fire, we shall not be responsible for the loss." Here, again, the contract is construed against the Company by the introduction of words which entirely change its meaning and effect, and an absolute prohibition against having more than a certain quantity of gunpowder on board is rendered inapplicable by inserting the words "for use" into the condition.

In the argument before their Lordships it has been contended on the part of the Respondents that from the use of the word "premises" the parties could not have intended that the part of the seventh condition in question should apply to the steamer insured; and that there were extrinsic circumstances to show that it could not have been in the contemplation of the parties that the word "premises" should be so understood. In order to construe a term in a written instrument where it is used in a peculiar sense differing from its ordinary meaning, evidence is admissible to prove the peculiar sense in which the parties understood the word, but it is not admissible to contradict or vary what is plain.

Now the word "premises," although in popular language it is applied to buildings, in legal language means "the subject or thing previously expressed," and the question here is, in what sense this word is used, which must be gathered from the contract itself, and not from any external evidence. As Lord Denman says in a case of Rickman *v.* Carstairs, in 5 Barnwell and Adolphus, 663:—"The question, in this and other cases of construction of written instruments, is not what was the intention of the parties, but what is the meaning of the words they have used." Supposing, however, that evidence was admissible in this case for the purpose of proving that by the use of the word "premises," the parties did not intend to include the steamer, the subject matter of the insurance, what is relied upon appears to be entirely insufficient to render the condition inappli-

cable. It is said that this insurance was upon a trading steamer; that it was the usage of steamers of this description to carry gunpowder on freight; that this was known to the Company, and, therefore, it must be taken that they did not mean to include this portion of the seventh condition in the insurance.

But assume that it was notorious to the Company that it was the usage of a steamer of this description to carry gunpowder upon freight, why should they not, for that very reason, desire to limit their risk by preventing more than 20 lbs. of such a hazardous article being carried at any one time? If the condition is not to be considered part of the contract, this strange consequence will follow: that it being clear to the parties insured that the Company desired to guard themselves in the case of houses and buildings from the hazard of there being upon the premises at any one time more than a limited quantity of gunpowder, and having excluded gunpowder altogether from those hazardous risks for which an additional premium is to be paid, the conditions stating that gunpowder under no circumstances is to be insured, this steamer might, during the whole continuance of the policy, carry backwards and forwards cargoes of gunpowder, the Company receiving no premium for the additional risk incurred; and in case of the vessel taking fire and being burnt, though not originally by an explosion, but of course the gunpowder contributing materially to extend the fire, the Company would be answerable for the loss.

The question then is, whether, assuming under these circumstances that it was more probable that the prohibition with regard to the amount of gunpowder should be included in the contract between the parties than not, whether the word "premises" must not receive a reasonable construction, which would make it apply to this particular contract.

Now it is quite clear that the popular sense of the word is excluded, because there are no buildings to be insured. Then it only remains to give it that meaning which the reasonable construction of the contract requires.

Judge Mondelet says, that "the form of the policy is one which should not have been made use of relative to a steamer. But inasmuch as this

policy, though improper, has been accepted by the insured, and they must be taken to have read it, since they have signed it, it is right and just that the word 'premises' should be interpreted against them, and adjudged to refer between the parties to the steamer, which was the object, the sole object, insured." If, then, this condition is applicable to the subject insured, the only question which arises upon it is, whether the facts bring the case within the condition upon which the finding of the jury, that there were at the time of the fire more than 20 lbs. weight of gunpowder on board, is conclusive.

Under these circumstances it is quite immaterial whether the fire was or was not occasioned by more than the specified quantity of gunpowder being on board. The parties have agreed to this as a condition in the policy, and the cases which have been adverted to, of the effect of deviations upon marine insurances, are good illustrations of the way in which parties are bound by contracts of this description. It is familiar law that a wilful deviation, although the loss is not occasioned by nor attributable to it, exonerates the underwriters from liability. So, again, take a life policy. We know that in England these policies invariably contain a stipulation that the assured is not to go beyond the limits of Europe. Now if the party insured goes, even for an instant, out of Europe, though without the least injury to his health, this condition of the policy attaches, and the policy becomes void.

This being so, all that remains for their Lordships to say on the present occasion is, that it being admitted that this condition is applicable to the case of the steamer, the subject insured, and it having been found that the condition has been broken, the Judgment of the Superior Court was a correct Judgment, and the Judgment of the Court of Queen's Bench, reversing that Judgment, cannot be supported. They will, therefore, recommend to Her Majesty that the Judgment of the Court of Queen's Bench be reversed, and the Judgment of the Superior Court be affirmed; and that the Respondents should pay the costs in the Queen's Bench, and also the costs of this Appeal.