A MANUAL OF MARINE INSURANCE

BY MANLEY HOPKINS

AUTHOR OF "A HANDBOOK OF AVERAGE," ETC ETC

LONDON
JOHN MURRAY, ALBEMARLE STREET, W.
1867

LONDON
PRINTED BY SPOTTISWOODE AND CO.
NEW STREET SQUARE

PREFACE.

In my 'Handbook of Average' I treated of a subject intimately connected with Marine Insurance. It cannot, indeed, be properly termed a branch of the Insurance system, because average contribution has an independent and earlier existence of its own; but it touches the matter about which I am now concerned with a multitude of points of contact.

In the present volume my object is to give as comprehensive and lucid an account as my own information permits me, of that important adjunct to commerce which has done as much to enlarge its sphere and strengthen its wings as even the energy and intelligence of mankind directed to mercantile adventures have effected. While the great correlatives of demand and supply have taught men their mutual dependence, and the intervention of commerce has induced more wants and greater production, and has drawn nations together that before stood apart, the triumphs which trade has won could never have attained an approach to their present dimensions,

had it not been for the ingenious invention of Insurance, which in dividing loss took away fear, and raised the merchant from being a half gambler, half mariner, to conduct his aims with the certainty given by science, and with a magnificence which entitles him to seat himself among princes.

There is no department of my subject more intricate and less certain than that of Freight and Advances, in connection with Insurance. In occupying some space with these combinations, I shall have done good service if I succeed in somewhat clearing and disentangling them, and assist in preventing so many obstinate questions in relation to them, for the future.

To the apparent conflict which for the present seems to have established itself between law and custom, I venture to devote a chapter.

As a complement to my synopsis of Stamp-duties and legislation affecting marine insurances, I reproduce, in an appendix, a valuable document, long out of print and now difficult to meet with, being the Rules and Regulations respecting Allowances for Spoiled or Misused Policies of Insurance, issued by the Stamp Office, London, in the year 1816; the provisions of which have not been superseded.

My book is not intended to be a history of Insurance; but any treatment of the subject would be incomplete and unsatisfactory which did not set itself to trace, in some

degree, the rise and progress of the system. In the slight endeavours here made to discover the origin and birthplace of Marine Insurance, I have avoided going over the ground already so well traversed by Park and others, and have rather sought information in paths hitherto, as far as I am aware, untrodden by writers on the subject. I offer such historical notices as I have gleaned, as my contribution towards a more complete view of the *origines* of this valuable ally of commerce.

And here I take the opportunity of expressing the great obligations I am under to Mr. Rawdon Brown; not only, in common with others, for the Calendars he has published, under direction of the Master of the Rolls, of Venetian State Papers relating to trade with England; but, more personally, for the generous assistance Mr. Brown has given me, in searching the libraries of Venice, and in communicating to me several interesting documents, some of them unedited, bearing on the subject of Insurance. To avoid too great an interruption in my text, I have given in an appendix a sketch, principally collected from his printed Calendars, of the early commercial relations by sea between Venice and Britain and Northern Europe.

Many of us remember the advertisement of a person who required a small house, containing good-sized rooms, and plenty of them. In the limited compass of the present volume a complete *résumé* must not be looked for of

all the cases decided which bear on each portion of my subject. Indeed to attempt it would not have fallen in with the design of this manual. The cases which I cite are selected either because they illustrate well the points under consideration, or because, being the most recent decisions, they embody in themselves the latest and fullest pronouncement of the law on the question discussed. And I have always kept the fact in view that a work of this kind, to be valuable, must not only be 'full of wise saws,' but must support them with 'modern instances.'

Three classes of readers will probably peruse this volume. First, and sparingly, those who have no special concern with Marine Insurance. To them the subject may seem—like the black egg of the emeu—to offer no great promise from its incubation. Yet, as they proceed, they may find interest or amusement in the historical fragments here presented, and still more in the analogies afforded to other branches of custom and legislation.

The second class will comprise those experienced and enlightened persons, whether merchants, underwriters, insurance brokers, or eminent practitioners in commercial law—with whom it has been my privilege for so many years to mingle, and from whom I have learned so much—who have long been conversant with the doctrine and practice of Marine Insurance. To these my book may be useful as a compendium of the principles and maxims on

which they have been accustomed to act; though, indeed, it will probably advance little that is new or unknown to them. To such I say, with Mark Antony,

> I only speak right on;
> I tell you that which you yourselves do know.

The third and widest circle of readers will necessarily be composed of those who, either entering on the pursuit of insurance business, desire to make themselves at once acquainted with the system as a whole, and seek that amount of information and compression which is implied by the name of a Manual; or who, already familiar with the general outlines and many details of the subject, feel the need of a reference at hand for special points of its doctrine or practice. To this large body I especially dedicate my labour: and even these, I think, will perceive in the perusal of my volume, that whilst speaking in the character of a teacher, I admit room for differences of view and opinion, and frequently prefer to impart my instruction in the suggestive rather than in a dogmatic manner.

At the last moment I have to add, that the proposition of the Chancellor of the Exchequer to reduce the stamp-duty on marine policies to a uniform rate of threepence per cent. will, if carried out, greatly modify what has been said in my chapter on Stamp-duties—it will, in fact, leave to that chapter scarcely more than an historic interest.

The Bill brought into Parliament this Session for facilitating transfers and assignments of policies, entitled 'The Policy of Insurance Act of 1867,' just allowed me time to mention its introduction in a foot-note at the proper place.

4 Royal Exchange Buildings, London:
May, 1867

CONTENTS.

CHAPTER I.

PAGE

THE NATURE, RISE, AND SCOPE OF MARINE INSURANCE . . 1

CHAPTER II.

THINGS WHICH PRECEDE AN INSURANCE—THE SLIP—REPRESENTATIONS 61

CHAPTER III.

THINGS NECESSARY TO AN INSURANCE—EXECUTION OF THE POLICY—STAMP-DUTIES 80

CHAPTER IV.

THE POLICY OF INSURANCE—GENERAL DESCRIPTION—CHARACTERISTICS 108

CHAPTER V.

THE POLICY—WARRANTIES 158

CHAPTER VI.

THE PREMIUM OF INSURANCE 199

CHAPTER VII.

INSURABLE AND NOT INSURABLE INTERESTS 234

CHAPTER VIII.

PAGE
FREIGHT AND ADVANCES, IN CONNECTION WITH INSURANCE . . 286

CHAPTER IX.

THE THREEFOLD RELATION—ASSURED, INSURER, AND BROKER . 344

CHAPTER X.

NATURE AND CONSTITUTION OF MUTUAL INSURANCE ASSOCIATIONS 391

CHAPTER XI.

ON THE CONFLICT BETWEEN LAW AND CUSTOM 428

APPENDICES.

I. NOTE ON EUROPEAN COMMERCE IN THE FOURTEENTH AND FIFTEENTH CENTURIES—THE FLANDERS GALLEYS . . 165

II. ON THE VALUE OF SHIPS FOR INSURANCE 479

III. REGULATIONS ISSUED BY THE STAMP OFFICE FOR THE RECOVERY OF SPOILED AND MISUSED STAMPS . . . 487

IV. THE FRENCH POLICY OF INSURANCE 499

CASES CITED OR REFERRED TO.

Baillie *v* Moudigliani, 290
Bate *v.* Hewitt, 68, *note*
Behn *v.* Burness, 179, 181
Bombay's case, The. *See* Great Indian Peninsular *v.* Saunders
Booth *v.* Gair, 139, 449, 456
Bouillon *v.* Lupton, 166, 168
Bousfield *v.* Barnes, 248
Brown *v.* Burn, 454
Brown *v.* Hare, 272
Butjadingen, The. *See* Russell *v.* Thornton

Cahill *v.* Dawson, 385
Carr *v.* Alliance Insurance Company, 226, 233
Carr *v.* Royal Exchange Assurance, 226
Carr *v.* Montefiore, 75, 182, 226, 257, 359, 442
Christie *v.* Secretan, 168
Churchward *v.* The Queen, 313

Dame Ursula, La, 185
Delcomyn, Badart, and Brook, *in re* arbitration between, 455
Dimech *v.* Corlett, 179
Dixon *v.* Sadler, 165
Dos Hermanos, The. *See* Carr *v* Montefiore

Edie *v.* East India Company, 450
Elkin *v.* Janson, 77

Fawcus *v.* Sarsfield, 169

Gabay *v.* Lloyd, 454
Glaholm *v.* Hayes, 180
Gledstanes *v.* Royal Exchange Assurance, 128, 234, 260
Gray *v.* Gibson, 460
Great Indian Peninsular Railway *v.* Saunders, 448, 456

Harrison *v.* Universal Insurance Company, 444
Haughton *v* Empire Marine Insurance Company, 127
Hutchinson *v.* Wright, 423

Irving *v.* Richardson, 249

Jones *v.* Page, 164
Joyce *v.* Swann, 271

Kensington, The. *See* Harrison *v.* Universal Company
Kidstone *v.* Empire Marine Insurance Company, 139, 451, 456
Koebel *v.* Saunders, 161, 172

Lyon *v.* Mells, 168

Mallough *v.* Barber, 359
Marsden *v.* Reid, 65
Mead *v.* Davison, 63
Mercantile Marine Insurance Company *v.* Titherington, 128

Ollive *v.* Booker, 179

Paine *v.* Mellor, 63
Park *v.* Hammond, 359
Parker *v.* Carter, 385
Parry *v* Great Ship Company, 64
Paterson *v.* Harris, 278
Power *v.* Butcher, 352

Regina del Mare, The, 241
Routh *v.* McMillan, 178
Russell *v.* Thornton, 70, 353, 360

Spagrave *v.* The Union Marine Insurance Company, 269
Sill *v.* Swann, 252
Small *v.* Gibson, 164, 169
Sweeting *v.* Pearce, 375, 454

Thompson *v.* Hopper, 167, 169, 170, 187
Tobin *v.* Harford, 255
Turnbull *v.* Woolfe, 430, 458, 460

Uzielli *v.* Commercial Insurance Company, 73

Westwood *v.* Bell, 385
Whitehead *v.* Vaughan, 385
Wilson *v.* Nelson, 134, 254

Xenos *v.* Wickham, 64, 85, 166, 220, 355, 372

STATUTES.

19 Geo. II. 236, 437
54 Geo. III. 63, 97, 102
35 Geo. III. 63
7 Vict. 63

27, 28 Vict. 102
28, 29 Vict. 102
30 Vict. (Bill) 380

A MANUAL

OF

MARINE INSURANCE.

CHAPTER I.

THE NATURE, RISE, AND SCOPE OF INSURANCE.

THE SYSTEM OF INSURANCE is essentially a modern growth in the social history of the world. So few and so indistinct are the traces of it even which the most diligent investigators have found in antiquity, that it is scarcely useful, in a treatise as limited in extent as the present, to occupy much of the reader's time in recapitulating them. That the subject of Probabilities would attract attention among the ancient civilisations we can hardly doubt, and it appears almost of necessity that the great mathematicians should receive it into consideration among their speculative researches. But it does not seem to have occurred to the men of those distant ages to give a practical value to the science, to apply it to commerce, or make it useful in ways by which we ourselves have utilised it.[a] We must be content to let Greek

[a] Whilst I write, I observe that Mr. Charles Dodgson, Mathematical Lecturer at Christchurch, Oxford, has formulated the

geometricians invent methods in which Probabilities find their place, and allow Romans to make bets and use their dice (true or cogged) for their pastime, whilst we leave Chance or Fortune to the generations of antiquity, a worshipped but a barren deity.

It has been a common supposition that the great law-giver of the Lower Empire provided some legislation for Marine Insurance. Laws relating to Usury are found in lib. xxii., tit. i. & ii. of the Pandects, and lib. iv., tit. xxxii. & xxxiii. of the Code, and elsewhere.[b] Under the head

---

processes of betting on the turf; and he shows by an example that, given the true differential value or odds on each of the running horses, by the application of his proposed formula, a properly-constructed book must, in every event that is possible in the race, be in equilibrio, and give out as the equation of profit and loss—*Nil*. And the same result would take place in Marine Insurance if premiums corresponded with the mathematical risk, and were not loaded for profit and expenses. One cannot help recalling, also, the prolonged investigations on the chances at *roulette* by the religious and ascetic Pascal.

[b] The Justinian Code was completed and published A.D. 529, the Pandects or Digest in 533. The Institutes had appeared a month previous to the Pandects. The second edition of the Code was promulgated in 534. The date of the Novels is 565.

It will be remembered, that of these great labours of Tribonian and his coadjutors, set on foot by Justinian, the first consisted of a revision and expurgation of the three principal codes of laws then in existence. It was, in fact, a codification of laws innumerable. The second work was 'to extract the spirit of jurisprudence from the decisions and conjectures, the questions and disputes, of the Roman civilians;' the word Pandects being equivalent to 'General Receivers,' or, as we should probably say, a collection, or miscellany. The English reader will consult Gibbon on this subject at large, in vol. viii. of the

of Usury or Interest, as described by Gibbon, these laws, whilst regulating the various rates to be given for the use of money, granted 12 per cent. to Nautical Insurance, 'which the wiser ancients had not attempted to define. But, except in this perilous adventure, the practice of exorbitant interest was severely restrained.'[c]

I believe that this passage militates only in appearance with the opinion I have advanced. It is pretty plain from the context that the rate settled by Justinian refers to Maritime Interest—the consideration given in a Bond of Bottomry or Hypothecation—and not to premium of insurance.[d] Whilst Greeks and Romans missed apprehending the Insurance system, they had on many

---

'Decline and Fall.' Blackstone summarises Justinian's work thus:—

1. The Institutes, which contain the elements or first principles of the Roman Law, in four books. 2. The Digests or Pandects, in fifty books, containing the opinions and writings of eminent lawyers, digested in a systematical method. 3. A new code or collection of Imperial Constitutions, in twelve books—the lapse of a whole century having rendered the former Code of Theodosius imperfect. 4. The Novels, or New Constitutions, posterior in time to the other books, and amounting to a Supplement to the Code, containing new decrees of successive emperors, as new questions happened to arise.

[c] Decline and Fall, vol. viii. p. 87, and note. Edit. 1813.

[d] It is no discredit to the great historian that he should mistake these two kinds of payment, or be ignorant of their distinctness. It is, in any case, interesting to learn from the same writer, following Brenckman, that the one existing original copy of the Pandects (made in Constantinople early in the sixth century) was in possession of the Republic of AMALFI, in the course of its wanderings towards its place of final rest—Florence.

occasions regulated those loans, made for the furtherance of commerce by sea, which, under the name of *impignoration*, embraced the obligations which we know by the several names of Bottomry, Hypothecation, and Respondentia. The foundation of all these was a loan and a pledge (the *pignora*), either personal or on property. And since Suetonius is always made answerable, on very insufficient grounds, for the existence of a Roman system of Insurance, a line of his may be quoted from the 'Life of Vitellius,' which, speaking of a loan made under emphatic circumstances, embodies the elements of Hypothecation:

Ut ex aure matris detractum unionem pignerauerit ad iteris expensas:—

where for the expenses of his journey he pledged a pearl, taken from his mother's ear. Here are necessity, a journey, a loan, and a pledge. The Greeks had had their δάνειον ἑτερόπλουν, or loan for a single voyage, and their δάνειον ἀμφοτερόπλουν, or loan for a voyage to a foreign port and back to the port of departure.[a] And the Romans, beside the Bond of Bottomry, and the more personal liability called Respondentia, acknowledged another form of obligation connected with marine adventure, which they termed the *fœnus nauticum*, and which may be thought to bear a nearer resemblance to Insurance. This, we learn from Blackstone, was a

[a] See the subject of Bottomry in Greek and Roman times more at length in the small but learned dissertation of Dr. C. H. H. Franck, *De Bodmeria*, 1862.

payment for the use of money advanced to a merchant engaged in maritime commerce, the refunding of which principal was dependent on the safe performance of the voyage. The titles cvi. & cx. of Justinian's *Novellæ* concern themselves with marine loans, under the rubric *De usuris nauticis*; and the same, or analogous advances bearing interest, are mentioned in the Roman laws under the various headings of *fœnus nauticum*, *fœnus maritimum*, *trajectitia pecunia*, *usura maritima*, &c. How far the *fœnus* was identical with the *usura maritima* is difficult to determine. If the former word was specific, and denoted only that particular loan mentioned above, the latter term may have been more general, and have embraced all classes of advances relating to sea-adventure,—on which interest or usury was payable.

It is to be carefully observed that all these regulations —whether as to the δάνειον of the Greeks, or to the *pecunia trajectitia* of the Romans—refer to the *use* of money lent for mercantile purposes. The merchants of those days, as of ours, discovered that an extended commerce could only be carried on by borrowing the unemployed capital of others; and they were willing to pay for this accommodation, not merely the price of occupation of funds, as they would have paid rent for a hired house, but something in addition, for the risk which the lender incurred of the money not returning into his possession, which risk was enhanced by the commerce being carried on by sea. Therefore these cases submit themselves to the conditions laid down by Bacon in his 41st Essay, who distinguishes

'a payment for occupation of money, and a payment for the risk of non-restitution, in proportion to the uncertainty attending the transaction.'[f]

It is in the introduction of risk as an element in the *pretium*, or rate of interest, that any similarity to Insurance consists; but the likeness ceases there, and has less resemblance to Marine Insurance in another respect, because Bacon's principle applies to loans personal, and on property on land quite as much as, and far more frequently than, by sea. We are not, therefore, to be led to the conclusion that Insurance was practised because we find laws regulating the interest and security of money advanced on ships and on sea-borne merchandise, bearing 'usury,' or even on the personal loan to a merchant engaged in such commerce. From all these loans Insurance is clearly distinguished by the fact of the insurer making no present advance, but only undertaking to pay a stipulated sum on the happening of certain contingencies.

As the Code and the Pandects contained all that was valuable and important in the former Roman law, and the flower of the *responsa prudentium*, those private legal decisions, or counsel's opinions, which existed in overpowering numbers; and as the Novels, or recent laws, formed a supplement to that body of jurisprudence, it must be supposed that these treasuries would contain whatever notices were to be found of Insurance in the

[f] With a judgment almost prophetic, Bacon estimates the equivalent for the *use* of money at 3 per cent. per annum, and the minimum rate for the *risk* of nonpayment at 2 per cent. more, making in the aggregate 5 per cent.

legislation of Rome, and in her case-law. Since they do not yield evidence of that concrete system, we must, I think, accept the negative proof thus afforded, and decide that it was unknown.

Returning to the Western Empire, and to an earlier age, there was a class of documentary evidence existing there which has been of singular value to the student of later times by throwing light on several subjects, but which seemed unlikely to afford much information in the direction we require. Yet it has been left to the diligent explorer of Latin inscriptions to discover traces of a system which, though still differing from Insurance, approaches one step nearer to that invention, and may be called one of its allies. The valuable remains I am about to call attention to partake greatly of the form of the modern Benefit Society; and I am indebted to the paper on Government Life Annuities, read by Mr. M. N. Adler before the Institute of Actuaries, on April 25, 1864, for an introduction to this interesting inscription, and for his comment thereon. It dates during the reign of Hadrian (A. D. 117–138).

I quote Mr. Adler's words :—

'A recent discovery' (he says) 'places us in a position to date the idea of providing for a sum payable at death, as far back as the time of the Emperor Hadrian. Mr. Kenrick, in his work on Roman Sepulchres, gives us a translation of an inscription on a marble slab found at Lanuvium, an ancient town in Latium, distant about nine miles from Rome. It contains the regulations of a club, which had for its ostensible object the worship of Diana and Antinous; but, in reality, it was instituted in order to provide by monthly payments of three *asses* (about 2*d.*) a

sum of 300 sesterces (about 2*l.* 5*s.*) at death, to cover the expenses of burial. It may interest the advocates of convivial gatherings among Friendly Societies to know, that the entrance-fee of the new members consisted, besides the payment of 100 sesterces (about 15*s.*), in presenting the society with an amphora of wine, about six gallons of our own measure. Here we have the features of a regular Friendly Society placed before us in a very marked manner.'

I have thought the inscription sufficiently interesting to insert in a footnote all those portions of it which Mr. Kenrick has transcribed from Henzen, but of which he can scarcely be said to have given a translation. It is apposite to my subject, in being, probably, the nearest approximation on record to the Insurance system during the Roman period, and as containing the feature of a present payment for a larger deferred sum. But, as I have already said, it differs from Insurance in some important respects.[g]

---

[g] Excerpts from an inscription on marble found at Lanuvium, which had probably been erected in a temple dedicated to Diana and Antinous. Extracted from Kenrick's 'Roman Sepulchral Inscriptions':—

COLLEGIUM SALUTARE DIANÆ ET ANTINOI CONSTITUTUM EX SENATUS POPULIQUE ROMANI DECRETO QUIBUS COIRE CONVENIRE COLLEGIUMQUE HABERE LICEAT.

QUI STIPEM MENSTRUAM CONFERRE VOLEAT IN FUNERA, IN ID COLLEGIUM COEANT, NEQUE SUB SPECIE EJUS COLLEGII NISI SEMEL IN MENSE COEANT, CONFERENDI CAUSA UNDE DEFUNCTI SEPELIANTUR.

TU QUI NOVOS [NOVUS] IN HOC COLLEGIO INTRARE VOLES, PRIUS LEGEM PERLEGE ET SIC INTRA, NE POSTMODUM QUERARIS, AUT HEREDI TUO CONTROVERSIAM RELINQUAS.

LEX COLLEGI PLACUIT UNIVERSIS, UT QUISQUIS IN HOC COLLEGIUM INTRARE VOLUERIT, DABIT KAPITULARI NOMINE H.S. [SESTERTIOS] C NUMMOS, ET VINI BONI AMPHORAM, ITEM IN MENSES SING. ASSES V.

Unquestionably, within the compass of the Roman law, and in the details of Roman history, may be found

---

ITEM PLACUIT UT QUISQUIS MENSIBUS CONTINUIS [ ] NON PARIAVERIT, ET EI HUMANITUS ACCIDERIT, EJUS RATIO FUNERIS NON HABEBITUR, ETIAM SI TESTAMENTUM FACTUM HABUERIT.

ITEM PLACUIT UT QUISQUIS EX HOC CORPORE NUMMOS PARIATUS DECESSERIT EUM SEQUENTUR EX ARCA H.S. CCC NUMMI, EX QUA SUMMA DECEDENT EXEQUIARI NOMINE H.S. L NUMMI, QUI AD ROGUS [ROGOS] DIVIDENTUR, EXEQUIÆ AUTEM PEDIBUS FUNGENTUR.

ITEM PLACUIT QUISQUIS A MUNICIPIO ULTRA MILLIARIA XX DECESSERIT, ET NUNTIATUM FUERIT, EO EXIRE DEBEBUNT ELECTI EX CORPORE NOSTRO HOMINES TRES, QUI FUNERIS EJUS CURAM AGANT ET RATIONEM POPULO REDDERE DEBEBUNT SINE DOLO MALO, ET SI QUIT [QUID] IN EIS FRAUDIS CAUSA INVENTUM FUERIT EIS MULTA ESTO QUADRUPLUM QUIBUS [FUNERATICIUM] EJUS DABITUR. HOC APLIUS VIATICI NOMINE, ULTRO CITRO, SINGULIS H.S. XX NUMMI.

QUOD SI LONGIUS A MUNICIPIO SUPRA MILLIARIA XX DECESSERIT ET NUNTIARI NON POTUERIT, TUM IS QUI EUM FUNERAVERIT TESTATOR REM TABULIS SIGNATIS SIGILLIS CIVIUM ROMANORUM VII ET PROBATA CAUSA FUNERATICIUM EJUS SATISDATO.

NEQUE PATRONO NEQUE PATRONÆ NEQUE DOMINO NEQUE DOMINÆ NEQUE CREDITORI EX HOC COLLEGIO ULLA PETITIO ESTO NISI SI QUIS TESTAMENTO HERES NOMINATUS ERIT. SI QUIS INTESTATUS DECESSERIT IS ARBITRIO QUINQUENNALIUM ET POPULI FUNERABITUR.

ITEM PLACUIT QUISQUIS EX HOC COLLEGIO SERVUS DEFUNCTUS FUERIT, ET CORPUS EJUS A DOMINO DOMINAVE INIQUITATE SEPULTURÆ DATUM NON FUERIT, NEQUE TABELLAS FECERIT, EI FUNUS IMAGINARIUM FIET.

ITEM PLACUIT QUISQUIS EX QUACUMQUE CAUSA MORTEM SIBI ADSCIVERIT EJUS RATIO FUNERIS NON HABEBITUR.

ITEM PLACUIT UT QUISQUIS SERVUS EX HOC COLLEGIO LIBER FACTUS FUERIT, IS DARE DEBEBIT VINI BONI AMPHORAM.

I subjoin to this a translation:—

'A College (=Club or corporate association), constituted under the provisions of a decree of the Roman Senate and People, to the honour of Diana and Antinous, by which decree the privilege is granted of meeting, assembling, and acting collectively.'

scattered the several constituents which, when built together, form the system of Marine Insurance. The Empire

---

'Anyone desiring to pay a monthly subscription for funeral rites may attend the meetings of the association; but persons are not allowed, under colour of this College, to meet more than once a month, and that only for the purpose of contributing for the sepulture of the dead.

'Ye who are desirous of becoming new members of this College, first read through its laws carefully, and so enter it as not afterwards to complain, or to leave a subject of dispute to your heirs.

'It is universally resolved by the College, that anyone wishing to enter, shall pay as an entrance-fee one hundred sesterces, give an amphora of good wine, and make a monthly contribution of five *asses*.

'Item: It is resolved, that whoever shall have omitted his payment for ( ) consecutive months, should the fate of humanity befal him, there shall be no claim on the society for his funeral rites, although he shall have made a will.

'Item: It is resolved that, on any member of this body dying who has paid his subscriptions, three hundred sesterces shall be appropriated out of the chest for him: of which sum fifty sesterces shall be distributed at the burning of the corpse. The funeral procession shall be on foot.

'Item: It is resolved, that any member dying at more than twenty miles distance from the town, on such death being made known, three persons selected from our body shall proceed thither and take charge of the funeral, and render an account thereof, without fraud, to the people. Should any peculation have been practised by them, a fine of fourfold the amount of the funeral expenses shall be paid by those to whom the rites were confided. To each of the persons deputed, twenty sesterces shall be given in money for their travelling expenses there and back.

'But if the death shall have taken place at a distance beyond twenty miles from the town, and notice of it cannot be given,

possessed ships and commerce. Under the head of the *Mutuum* are acknowledged the duties entailed by a money-payment on an obligor; and the inscription given from the Lanuvian marble indicates, in some measure, a scheme for aggregating, by small payments, a deferred and partly uncertain benefit. The often-quoted Claudian repayment for losses suffered by an individual citizen, shadows also the idea of restitution. But the synthesis was wanting which is necessary for constructing these separated elements into a distinct and valuable system.

The idea of Insurance is not a very occult one; yet I cannot concur with Park in the absolute necessity of a large commerce producing the invention of an Insurance system. 'One truth, however, is clear,' says that learned writer, 'that wherever foreign commerce was introduced,

---

let the person who has performed the funeral rites have the fact attested by a document signed with the seals of seven Roman citizens, and his claim for the funeral expenses so certified shall be paid (by the Club).

'Let no claim be allowed by this College to patron or patroness, master, mistress, or creditor, except he shall have been named heir in the will. Any person dying intestate shall have his funeral performed according to the direction of the District Magistrate and the people.

'Item: It is resolved, that any member of this College dying a slave, and his body being improperly withheld by his master or mistress from interment, and not having left written instructions, shall have a funeral performed for him in effigy.

'Item: It is resolved, that no funeral rites shall be had by him who, from whatever cause, has inflicted death on himself.

'Item: It is resolved, that upon any member of this College who is a slave being made free, he shall present an amphora of good wine.'

Insurance must soon have followed as a necessary attendant, it being impossible to carry on any very extensive trade without it, especially in time of war;'[h]—because an argument from convenience might equally serve to prove that Fire Insurance must have been invented whenever cities became large, and Life Insurance when the citizens of a country greatly increased in number—nay, that Steam and Railways should have grown into use with Romans, with Genoese and Hanseatic traders, since in our day we know that we could not carry on our extensive commerce without their aid.

I incline to the belief that Insurance is an invention due to Modern Europe, by which I mean Europe since the rise of the Italian Republics at the close of the ninth century; for its provisions are not found, as we have seen, in the Roman laws, nor are they in those reflections of the Code, the Consolato del Mare, the Laws of Oleron and of Wisby, the Rutter of the Sea,[i] &c. So that no proof of the existence of the system is afforded even in the earlier period of the Middle Ages. Yet in the Codes which remain from the time of the Crusades the laws are sufficiently minute and decisive. Thus, in a charter granted by Richard I. to the commanders of the fleet in his great expedition to the East, given whilst the King was at Chinon in Anjou, one clause is 'that a thief-convict shall have his head shaved, then be tarred and feathered,

---

[h] System of Law of Mar. Ins., Introd.

[i] Rutter is an old form of the French word *routier*, meaning directions for the road—a way-book.

and set ashore upon the first landing-place.[k] And in the Laws of Oleron, so often and so wrongly ascribed to the same King on his return from Palestine,[l] the 23rd Judgment authorises the master and mariners to punish the wilful neglect of a pilot, by cutting off his head on the spot.[m] In law-making of this minute and decisive character, we might well expect some titles on so important a subject as insurance of the ships forming the expedition, were even an inchoate system of insurance in use at the time, especially as these laws provide for Bottomry and Respondentia loans.[n] It may be here remarked that the laws called the Roll or Laws of Oleron reappear, in part or in whole, in after-publications, under varying titles, or with none. In the *Us et Coutoumes de la Mer*, they are called the *Roole d'Oléron*, and the *Roole des Jugements d'Oléron*. In the Black Book of the Admiralty they stand without name. In the Coutumier of Normandy they are called *Les Jugements de la Mer*, &c.[o]

---

[k] Hoveden, Luder's Tracts, p. 443.

[l] Cleirac probably expresses the truth on this much-controverted point, when he says simply, 'La Reine Éléanore, Duchesse de Guienne, fit dresser le premier projet des jugements intitulés les Rôles d'Oleron du nom de son île bien aimée pour servir de loi sur la mer du Ponens.' Richard I. has the credit of afterwards promulgating his mother's important work, and consecrating it as English law, adding some valuable matter to it—but not from the Isle of Oleron.

[m] Luders, p. 448.

[n] Rôle de Jugements d'Oleron, cap. i.

[o] I cannot leave the subject of the Laws of Oleron and Richard I. without giving, verbatim, a note on the subject

Emérigon, who, from the importance of his researches, always claims respect, is of a different opinion as to

---

communicated to me by a friend, a merchant, who brings to the study of commerce the enlightenment and diligence which some, wrongly, would confine to the learned professions. If my friend's labour may seem greater than a circumscribed question demanded, let us remember that the gratification of demolishing a fallacy is next to that of establishing a fact; and the process is sometimes quite as important. I would add, that the writer of the following note has personally examined all the existing copies of 'the Roll' preserved in the libraries of Europe, and has also been at the pains of accounting for each day of the absence of King Cœur-de-Lion from England. My friend writes:—

'For nearly two centuries, writer after writer has repeated the erroneous statement of one of England's most able lawyers and antiquaries of the time of Charles I., that the *Rooles d'Oleron* were written by order of King Richard, while the English fleet lay at anchor near the island of Oleron, off the coast of Guienne, on his return-voyage from the Holy Land. It is strange that not only John Selden (*Mare Clausum*, lib. ii. cap. 24), but also Sir Edward Coke (*Institutes of the Laws of England*, part iv. § 142) should have erred so palpably. Prynne, Godolphin, Exton, and other writers of a past age followed Selden; while Park (*Marine Insurance*), a century and a half later, with less excuse, has done so likewise. Our modern historians have generally avoided the subject. Hallam (*Middle Ages*, cap. ix. p. 2) sees the error of his predecessors, and so does Macpherson (*Annals of Commerce*, vol. i. p. 358). The above is the version of the origin of the Code, for which posterity is indebted in the main to John Selden, from whom, as Keeper of the Records of the Tower and one of the Commissioners of the Admiralty, greater accuracy might well have been expected in a matter connected with the laws maritime of his country. But his *Mare Clausum* was dictated by a spirit of rivalry in reply to the *Mare Liberum* of Grotius, and doubtless the learned writer sought rather to perform the part

the antiquity of Insurance. He says he finds many traces of the system in the Roman laws, and collects facts to show that it goes back as far as to the Second Punic War. But he admits that it was rudimentary. 'Assurance in the Roman law,' he says, 'was a wild stock, not as yet cultivated, to which the spirit of commerce has given the development and consistency which it now possesses.'

The commentator on the French *Code de Commerce* cites Emérigon, and himself considers that Marine Insurance was not only known, but practised, among the

---

of an able disputant than to fulfil the duties of an accurate and truthful historian. The days of this popular romance are gone by, and the story is universally discredited; nor is the fiction now to be met with beyond the pages of mere elementary works of conventional history, or the pretentious compilations of an Encyclopædia.[1] With all his learning, John Selden can never have read the Itinerary of Richard Cœur-de-Lion; had he done so, he would have known that the English King went to Palestine and returned thence by land, and approached not within hundreds of miles of the island of Oleron. Geoffrey de Vinsauf gives some brief particulars of Richard's journey through Burgundy to Marseille (lib. vi. cap. 37), but it is Roger of Hoveden who affords abundant details, and likewise of the King's return from his German dungeon, through Worms and Antwerp, to England. The origin of the story is attributable to the circumstance of the oldest copy of the Code, the one from which most of the others have probably been transcribed, being dated from Oleron, in the year 1266[2]—a proof, certainly, that *the copy in question was made at Oleron, but not that the Code was originally compiled in that island.*'

---

[1] *Encyc. Brittan.* (8th edit. 1858), voc. *Oleron.*

[2] This applies to the manuscript at Guildhall, to the one at Rennes, and to the No. 254 at Paris.

Romans; and then he, curiously enough, gives reasons why no indications of its existence should be found in written records of those early days:—

> It is true that the law is silent as to Marine Insurance, properly so called, which silence is explained by the fact that the contract itself, and the method of explaining the covenants it contains, belong rather to the usage of mercantile places than to rules of law. Besides, it is known that the Romans left commerce, both on land and sea, to slaves and freedmen. It is not wonderful, therefore, that the legislator, being a stranger to the practice, should omit to make statutes on a subject about which he was ignorant.[p]

Thus this diligent writer admits the silence of written laws relating to Insurance; and I presume that its supposititious invention by the Emperor Claudius, as gathered from the passage in Suetonius, may be finally dismissed as a mistake; and that the '*foule de textes*' which the scholiast of the French Code finds in the Roman law, '*permettant de décharger sur autrui de l'incertitude des événements*,' taken collectively, do not amount to that concrete idea to which we apply the name of Insurance.

I repeat, therefore, that we must pass downwards, in our search, to that period of the history of Modern Europe in which commerce began to revive.

The fierce nation which, under the leadership of Alboin, poured down upon the plains of Italy, and to so large a portion of her soil left the inheritance of an Iron Crown and the name of Lombardy, became conspicuous a few centuries later as traffickers and negotiators, and adepts in the science of money; and a people

---

[p] Bédarride, *Com. de Code de Commerce*, § 1004.

who had at first been celebrated for the length of their beards and the sharpness of their swords, were afterwards equally distinguished for the depth of their purse and the stringency of their usances. These Longobards (or Lombards) were in all respects a remarkable people. If India, or the slopes of the Hindu Coosh, were the retort in which they and their cognate tribes were first sublimated, the worm of the alembic was cooled in the snows of Arctic Europe ere the valuable drops distilled with such transforming influence on the south side of the Alps. They are thus described by a contemporary poet:—

> Gens astuta, sagax, prudens, industria, solers;
> Provida consilio, legum jurisque perita.[q]

The trans-Alpine bankers and merchants who settled in London, whether arriving from Florence and the cities of Lombardy proper, or from the great neighbour republic of Venice, went by the general name of LOMBARDS. To these acute men of business, with great probability, the Insurance system is to be referred: though whether they were absolutely the originators is a question never perhaps to be solved. It has been suggested that the design came to them from the Jews, and the idea need not be rejected; for the subject of money in its various relations was one familiar to that nation, and

---

[q] A nation clever, sagacious, prudent, active, adroit; far-seeing in council, learned in the science of laws and right.

This high character is given of the Lombards by a poet at the Court of the Emperor Frederic Barbarossa. Quoted by Saint-Marc Girardin, in the *Revue des Deux Mondes.*

the Levitical law itself familiarised them with the values of uncertain; or at least terminable, interests. By the law of the Jubile, in Lev. xxv., all possessions were to return into the hands of Hebrews who had sold or estranged them; and vv. 14–16 provide that the purchase-money shall be according to the unexpired time before the following Jubile. One step more, and the Jews would be led to the construction of a sinking fund to provide against the extinction of their terminable interest; and from that point of departure the notion of Insurance is not far distant.[r] Nevertheless, it is conjectural only. M. Bédarride repeats a hearsay when he remarks, '*Comme pour le contrat de change, l'invention de l'assurance a été attribuée tantôt aux Juifs, tantôt aux Florentins exilés de leur patrie.*' The truth which reconciles both these possibilities may be that the Florentines received the germ of the system from the Jews. We are, however, told that Insurance was in general use in Italy in A.D. 1194; *i.e.*, four years earlier than the date of the Florentine Republic; so that it need not have been the exclusive production of Florence, but have been growing into use among the Italian traders generally, though the Florentines may, in a greater degree than their contemporaries, have appreciated and expanded the idea.

---

[r] With usury and a banking system the Jews were certainly familiar: both are spoken of as things of course in our Lord's parable of the entrusted servants. The exchange of money was a necessary branch of knowledge to the nation; and the exchangers sat at their tables within the enclosures of the Temple.

The Insurance system must have remained for a considerable time that 'wilding stock' described in Emérigon's poetical phrase, and it seems to have been unknown or unnoticed by the law till a period comparatively near our own. 'It takes no place in legislature,' says M. Bédarride, 'till the fourteenth century. The Guidon de la Mer' (produced in the sixteenth century) 'is conspicuously occupied with the subject in an especial manner. The Ordonnance of 1681 consecrates the principles which a long practice and the experience of many ages would naturally inspire.'[s] We will now direct our attention to Venice, and trace there the indications of the existence of the Insurance system and its regulated life among the prince-merchants of the amphibious city. This investigation has been rendered possible by the fact that the Venetians were instinctively a minuting and recording nation, registering their own actions, and requiring 'reports' and descriptive letters from their agents in foreign countries. It is through this latter class of monuments that we gain incidentally an insight into the commercial and often the political and social condition of other nations at a very early period. I have already acknowledged the obligations I am under to Mr. Rawdon Brown, not only for his valuable publication of Venetian State Papers, but for his very interesting communications made to me in letters, and his laborious search in the libraries for instructive documents, and especially for an early policy of Marine Insurance.

---

[s] 'Comm. Code de Commerce.'

What we see, from the first gleam of light, is that there existed among the Venetians the Assurance system; secondly, that they conceived, in some measure, the advantages derivable from it to be a privilege; and, thirdly, that they were very jealous that other nationalities should not benefit by the protection given by Venetian underwriters, and were much afraid of the loss which such foreign participation would entail on their citizens. Thus, the earliest document of which I get notice, a MS. Act in Latin, dated May 15, 1411, refers to Insurance as an established practice, already abused by the dangerous innovation of assuring risks on foreign property. The preamble of this enactment, of four centuries and a half ago, sets out that 'a custom very injurious to our citizens had been introduced, dangerous to all, by which inhabitants and citizens of Venice make Insurances on foreign vessels; whereas they cannot possess information as to the condition of foreign ships, or of the merchandise laden in them; yet, in the hope of the smallest profit, they have made, and still make, such Insurances, redounding, or which may redound, with loss to the said citizens and our subjects.' Upon which considerations, 'a decree has been made, and is now publicly proclaimed, that any citizen, whether an inhabitant of Venice, or any other person, is not permitted, after the 1st day of June next, to make, or cause to be made, in Venice, or any other part of our territory, an Insurance on any vessel belonging to foreigners, under the penalty of forfeiting one-fourth the value of the matter insured: and the public providers are empowered to enquire into these

things, and they will receive one-half the penalty: the other moiety remains ours. If there be an accuser (informer), he is to receive a fourth of the penalty: and our public providers, above named, one-third; the remaining portion is ours in common. The broker shall forfeit 200*l.* and lose ten years. Furthermore, it is ordained that the judges and officials shall administer no law in respect of Insurances made in the above-named vessels, or the merchandise in them.'[t]

The Venetians certainly did not mince matters in making laws.

The next document, dated June 1424, also MS. and Latin, discloses against whom these sworn restrictions were principally levelled, and what great rivals were the objects of Venetian jealousy.

'There being, as is known, war between the Genoese and Catellans (Catalonians), and between the Florentines and Genoese, whose power extends far out to sea, it is proper to provide against any interference with the aforesaid (belligerents). And as the custom which has been introduced here of insuring foreign property may be the means of entangling us in the aforesaid wars, which is altogether to be avoided, a decree is hereby issued to the effect that no citizen, subject, or faithful ally in Venice or thereout shall dare or presume to insure, himself or by anyone else, or cause to be insured, any foreign vessel, under the penalty of 25 per centum of the entire value of the thing he has insured or caused to be insured.'

In which expressions we see the very language adopted in our English policy, 'doth make assurance, and cause himself to be insured.'

And then follows the mode in which the penalty is to

[t] From the 'Book of National Acts,' vol. liii. p. 135.

be divided, and an order that the decree should be affixed in the usual places, and reference to the volume and page of National Acts.

The Venetian authorities communicated to me, succeeding the above, are in Italian, more or less corrupt, and are not of sufficient importance to warrant my detaining the reader with them all. But an interesting feature presents itself in the place from which they are dated, in and after the year 1670, namely, the Insurance Street. Alluding to this fact, Mr. Rawdon Brown says: 'The Insurance offices here (Venice) were in a street which to this day tells the tale, being still called *Insurance Street*. It is situated at the back of the Edict Stone, on the Campo di S. Giacomo (where merchants most did congregate) at Rialto; and in that street all proclamations concerning policies of Insurance were habitually made. Those offices (he is now speaking of Venetian Insurance at the commencement of the fifteenth century) were, I suspect, at a later period, the root of LLOYD'S.' In dating from a street, we see another similarity with our own Insurance system; for our early assurers dwelt and dated from the street running parallel with Cornhill, called Lombard Street, now, as then, consecrated to banking; and the Lloyd's Policy to this day contains a reference to the original locality of the contract.—'And it is agreed by us, the Insurers, that this writing or Policy of Insurance shall be of as much force and effect as the sums and writing or Policy of Assurance heretofore made in *Lombard Street*,' &c.

Passing down in time to the year 1670, I have before

me a printed Proclamation of that date regulating Insurance, sufficiently interesting and instructive to cause me to give in a foot-note a translation of it.[u] It indicates the same feelings which characterise the earlier

---

[u] PROCLAMATION, published by order of the Illustrious Signors, the Consuls of the Merchants, 15th July, 1670, on the subject of the assurance of goods, ships, vessels, as well Venetian as foreign (property).

The Illustrious Signors Marco Minio, Zorzi Manolesso, Niccolò Venier, and Marco Querini, honourable Consuls of the Merchants. Whereas their Court is particularly, and by special commission from the Most Excellent Senate, charged with the care of the punctual execution of the decree of the Senate of the 26th of September 1586, confirmed by the same the 17th of September 1605, *on the subject* of Assurance, established for avoiding the inconveniences prejudicial to the public expressed in that Act: They, in order to the fulfilment of their commission, and for the good of the public service, do cause it to be publicly known, along with other decisions made by their Illustrious Magistrate, That it shall not be lawful for whomsoever it may be, Noble or Citizen, or whatever other sort of person, as well natives of this City as foreigners, to insure, or to cause to be insured, under whatsoever imaginable pretext—none excepted—any goods, ships, vessels, whether Venetian or foreign, which are *not* proceeding, with all the goods insured, to this City, or to other places belonging to this Most Serene Dominion, or which do not sail hence, or from other places subject as above said, destined for the Levant or for the West, under the penalties affixed by those Laws to the transgression of them, namely, as well the Merchants who shall make, or cause to be made, such Insurance, as the Brokers by whom such Insurance shall be effected. And in order that the Public decisions may apportion their indebtedness incurred with the greater facility, they empower both the co-participators in such Insurance, as well as any other person whatever, to give notice to their Illustrious Court, either by way of letters or secret

enactments given above. There is the same jealousy of foreign peoples taking advantage of their pet insti-

---

notices, at the house which shall be fixed on for that purpose, to denounce any person whatever for such transgression; and therefore, besides secrecy and impunity for their transgressions, they shall also receive a fourth part of the penalties levied on those who shall by their means be brought to justice. For this purpose, or in order that the public behest may be done, all Brokers concerned in Insurance business shall come and give notice on the first day of every month of all Insurances which shall from time to time be effected through or by them, with the name of the Insurers, and of the ship or ships upon which the Insurance is effected, the ship's port of sailing and her destination, for what length of time the Insurance is effected, with all other circumstances usually specified in similar cases. Of all which circumstances the Notary thereto appointed shall make a distinct and punctual registration in the book kept specially for this purpose, which shall be signed separately by the Illustrious Signors, the Consuls for the time being. And in order to prevent frauds upon the public decisions, all Brokers shall swear before the Illustrious Signors in solemn form, that they have not been the means of effecting any other Insurances save those of which they have given notice; which oath shall be in like manner registered, in order that in any case when any other Insurance made by them shall be discovered, they shall receive the punishment due for their transgressions of the law; in order to the discovery of the same, there shall be drawn up every year a process in the form of an inquisition or denunciation against all and by all, as is established by the aforesaid Act of the Most Excellent Senate of the 17th of September 1605; to the execution of which the said Illustrious Signors are solemnly pledged. Those who, heretofore or at the present time, have contravened the said laws, either by insuring or causing to be insured, contrary to the rules of the same, as also the brokers and agents, and shall before the end of the fifteenth day after the publication of this present Proclamation, appear before these Signors, acknowledging their transgressions, shall, upon payment of a

tution; the same suspicion of danger; the same clear, narrow view of their own interests, and the same sharp

---

small fine, be relieved from the consequences of acts committed in contempt of the supreme public decrees. But after the termination of these fifteen days the Illustrious Signors will give orders for the formation of processes, by way of secret informations, in which, for the benefit of the informers, besides impunity and pardon for their participation in such irregularities, a fourth part of the penalty either levied as above or by way of inquisition, shall be set aside for the discovery of the delinquents, who shall be proceeded against according to the law, and without any possible abatement.

And because, according to the form of the present decree, no penalty is established for the Insurance Brokers or Agents who, contrary to what is therein contained, shall neglect to give notice, on the first day of every month, of the Insurances by them effected as above ordered; The Illustrious Signors enact that those Brokers and Agents who omit this notice shall fall under the penalty of 100 ducats each, to be applied according to the decision of the Illustrious Signors, and for each time that they omit such notice; which penalty shall be levied by commission real and personal. This in order that such omission shall not nullify the present decision, and that the public mind may not be misled as to what has been decided in these Acts.

And this present Proclamation shall he printed in order to its punctual execution, and every year, for greater publicity, it shall be published at the *hour of the Rialto*, in the Street of Insurance, when the greatest concourse of the public shall be assembled, so that there may be no pretext for ignorance.

MARCO MINIO, Consul of the Merchants.
ZORZI MANOLESSO, „ „
NICCOLÒ VENIER, „ „
MARCO QUERINI, „ „

Then follow two chapters on the aforesaid subject.—

That all Brokers and Agents of Insurance who now have to do with Insurance, or who intend in future so to do, shall give

decision in enforcing authority. The English citizen who announced his conviction that 'all foreigners were fools,' was preceded in that amiable estimate by the Venetians' decision, that all foreigners were knaves.

Unfortunately, all researches which have been instituted by Mr. Rawdon Brown in the libraries of Venice, to discover for me an early policy of Insurance, have hitherto been fruitless. This is not extraordinary; for it is much to be doubted whether any English library would be found to contain an English Marine Policy, though probably 200,000 are issued in London alone during the course of a year, many of which, being on parchment, are very durable documents. I do, however,

---

notice of themselves to the undermentioned Illustrious Court of Notaries, who shall be elected to such charge, in the book kept for affairs of Insurance, and that within eight days next to come, after which no one else shall be able to set up a Bank of Insurance without first notifying it, and giving notice of himself to the undermentioned office, nor shall any other person exercise the function of Broker or Agent without having executed this present order and decision of the Illustrious Signors, under pain of whatever punishment they or their successors shall think proper to determine. That the book in which shall be registered the Insurances given notice of in accordance with the Act of 1605, shall be kept secret, and not shown to any person whatever, nor any copy made from it of any kind, except with the express permission of two at least of the Illustrious Consuls, oath being taken before their Illustrious Lordships by whomsoever shall desire any copy from that book, that they have a particular interest in the policy which they desire to see, under pain to the Notary or his assistant of fifty ducats for every transgression, and other penalties according to the judgment of the Illustrious Signors.

Published on the Rialto in the Street of Insurance.

receive notice of various commercial documents connected more or less nearly with Insurance, and the preamble of a more permissive Act passed on September 29, 1586, explained by a succeeding decree of October 25, 1607, which says—

> And because the intention of this decree (viz. that of 1586) was principally to favour such merchandise as is destined for and arrives at Venice for the service of the trade of this place, and there being at the present time much merchandise brought to this city by land, which has previously arrived in foreign vessels at Leghorn, Genoa, and other alien ports, and which, for lack of shipping or from other causes, does not come here direct by sea; Therefore, it being convenient and necessary that such merchandise, destined for this city, though brought from an alien port to an alien port, should be capable of being insured, similarly to all other merchandise arriving at Venice, it is put to the vote that, &c. &c.

And I have before me an original broadside, dated Venice, March 15, 1706, containing authoritative regulations issued under the Signory, by 'The Five skilled in Commerce and Consuls of the Merchants,' to correct 'many abuses introduced into a subject so delicate (*gelosa*) as that of Assurance, and into the form of Policies and the manner of expressing them,' &c. The first actual form of a Venetian Policy is one printed in 1780, and published by Baldasseroni, at Leghorn, in 1800. And I have a tracing of the signatures of the three underwriters on the Policy prefixed by the adjuration, 'Dio la Salvi. Amen:' which is the only written part of the document, the policy being a printed broadside. The written part is not given by Baldasseroni.

I close this part of the subject by quoting Mr. Brown's words, accompanying some enclosures. 'From the series of these laws, I think it may be inferred that the good faith and integrity of the underwriters of Venice was proverbial in all the marts of Europe; and that the brokers of Insurance Street, at Rialto, had therefore more custom than their brethren elsewhere.'

The first clear indication I find of underwriting in England comes to us also from Venice. Amongst the State documents calendared by Mr. Brown, is found the representation, by a Venetian merchant, made in 1512, that Insurances were being effected in England on property from Candia; and that the rate of premium charged was above 10 per cent. The Island of Candia was still one of the Venetian dominions, and it was for several centuries the place which supplied our country with Sack, the wine so loved by Sir John Falstaff and Englishmen generally.

The attempt is, however, probably fruitless, to ascertain the exact time when Insurance was introduced and first practised in England; but it found here a congenial soil, and flourished: and London remains pre-eminent, as she ever has been, for the application of the system.

Insurance seems to have been in use in England, says Anderson,[v] upon the revival of commerce, somewhat earlier than on the Continent; and Antwerp, though in its meridian glory, learned it from England. And whereas, says Malyne's 'Lex Mercatoria,' the meetings of merchants in London were held in Lombard Street (so-called because certain Italians of

[v] 'Hist. Orig. of Commerce,' vol. ii. p. 203.

Lombardy kept there a Pawn-house, or Lombard, long before the Royal Exchange was built), all the policies of Insurance at Antwerp which then were and now (1622) yet are made, do make mention that it shall be in all things concerning the said assurances as was accustomed to be done in Lombard Street, in London; which is imitated also in other places of the Low Countries.

Guicciardini, speaking of the vast commerce which subsisted between the Netherlands and England (date 1560), says, that the merchants on both sides are so sensible, that neither of these countries could possibly, or without the greatest damage, dispense with this their vast mutual commerce 'that they have fallen into a way of insuring their merchandise from losses at sea by a joint contribution.' 'This,' adds Anderson, who quotes the passage, 'is the first instance we have met with of *Insurance from Losses at Sea*, though probably in use before this time, and first practised in Lombard Street, in the City of London, as will be seen under the year 1601.'[w]

To be sure, the 'joint contribution' of 1560 seems a meagre account of Insurance as now understood, yet it contains the rudiments of the present system, which has grown up here and in other countries since that time continuously.

Soon after Malyne wrote, among a number of projects, of which the reign of Charles I. seems to have been fruitful, one was introduced, in the year 1627, 'for the sole making and registering of all manner of

---

[w] 'Hist. Comm.' vol. ii. p. 109.

Assurances, intimations and renunciations made upon any ships, goods, or merchandise, in the Royal Exchange or other places within the City of London, for thirty-one years.'

This scheme, it is presumed, burst, like its fellow-bubbles; and, indeed, the name 'Assurance,' coupled with the two following terms, would rather seem to have related to the conveyance and transfer of property—for that was then the common acceptation of the word 'Assurance'—than to Marine Insurance as we understand it.

The suggestion, however, is not important, for a special meaning had already been given to the term when applied to maritime adventure; and 'Marine Assurance' and 'Policy of Assurance' were already words of well-known signification, as is seen by the Statute 43 Elizabeth, cap. xii., in 1601, for the formation of a Court of Policies, by which Act we learn also that there existed an office in the Royal Exchange, set apart for the transaction of Insurance business.

In the preamble to that statute we find the following words:—

> Whereas it hath been time out of mind an usage amongst merchants, both of this realm and of foreign nations, when they make any great adventure (specially into remote parts) to give some consideration of money to other persons, which commonly are in no small number, to have from them assurance made of their goods, merchandises, ships, and things adventured, or some part thereof, at such rates, and in such sort, as the parties, assurers, and the parties assured can agree; which course of dealing is commonly called a Policy of Assurance; by means of

which it cometh to pass, upon the loss or perishing of any ship, there followeth not the undoing of any man, but the loss lighteth rather easily upon many than heavily upon few, and rather upon them that adventure not than upon those that adventure; whereby all merchants, specially of the younger sort, are allured to venture more willingly and more freely: And whereas heretofore such assurers have used to stand so justly and precisely upon their credits, as few or no controversies have risen thereupon; and if any have grown the same have from time to time been ended and ordered by certain grave and discreet merchants, appointed by the Lord Mayor of London: Until of late years that divers persons have withdrawn themselves from that arbitrary course, and have sought to draw the parties assured to seek their monies of every several assurer, by suits commenced in Her Majesty's courts, to their great charges and delays. For remedy thereof, it is now enacted that the Lord Chancellor, or Keeper, do award one general or standing yearly commission, for the determining of causes or policies of Assurances, such as now are, or hereafter shall be, entered within the Office of Assurances within the City of London. The Commission to consist of the Judge of the Admiralty, the Recorder of London, the Doctors of the Civil Law, two common lawyers, and eight discreet merchants, or to any five of them. Which Commission shall have authority to determine all causes concerning Policies of Assurance in a summary way, who shall summon the parties, examine witnesses upon oath, and imprison disobeyers of their decrees. They shall meet weekly at the Office of Insurance, on the west side of the Royal Exchange, for the execution of their commission, without fee or reward. And any such as may think themselves aggrieved by their determination, may, in two months, exhibit his bill in Chancery for a re-examination of such decree, provided the complainant do first lay down to the said Commissioners the sum awarded, and that the Lord Chancellor or Keeper may either reverse or affirm the first decree, according to equity and conscience; and if he decrees against the assurers, double costs shall be awarded to the assured. Lastly, no Commissioner shall be either assurer or assured.

The expressions in this enactment are important in confirming an undefined antiquity to the practice of Insurance in England and elsewhere, declaring that it had been 'an usage among merchants, both of this realm and of foreign nations, time out of mind.' The above-cited date of 1601 is the earliest at which there appears to have been any legal enactment in England on the subject of Insurance.

It will be observed, from the foregoing extract, that the Court of Policies of Assurance was in substance a Chamber of Arbitration, of which the Arbitrators, or judges in the domestic tribunal, were permanently appointed. But the new forum, as we learn from Blackstone, had not a continuous success; nor had it a sufficient ambit to make it generally applicable to the purposes required: for it did not extend beyond London, and it took cognizance only of Insurances on merchandise, and entertained alone suits brought by the assured, and not those of insurers. So the Court fell into disuse, for many persons withdrew themselves from its remedies; and even under the amended constitution given to it by the Statute 13 & 14 Car. II., the necessary commissions ceased to be issued.

Although an office at the Royal Exchange, then recently erected, is spoken of, the calling of Marine Insurance seems to have been principally carried on by individual merchants in Lombard Street, who afterwards, for the greater convenience of themselves and the assured, assembled at a coffee-house, the first establishment of the kind having been set up in a yard opening on

Lombard Street, about the middle of the seventeenth century. Sixty years later, namely in 1710, Lloyd opened his coffee-house in Abchurch Lane, and it became the chief centre for underwriters and the merchants who resorted to them. Coffee-houses went then, as many do still, under the short form of the proprietor's name converted into a possessive; and the term 'Lloyd's,' as representing the underwriters and others who met there, grew to be known all over the world; it found its way into legal phraseology, into newspapers, parliamentary language, and the chat of drawing-rooms. A certain personality has been acquired by the name; and 'Lloyd's' is spoken of in a way that has led to the common and mistaken notion, both at home and abroad, that it is a corporation; and in Austria a Steam Navigation Company has adopted the name of 'The Austrian Lloyd's.' In 1774 the underwriters migrated to the Royal Exchange, where their local habitation has remained ever since, except during an interruption caused by the rebuilding of the Exchange after its destruction by fire in 1838. Through that interval the members and subscribers of Lloyd's occupied apartments in the Old South Sea House.

In the year 1720 Charters of Incorporation were granted to two Insurance Companies carrying on business under the names they retain at the present day, of the London Assurance, and the Royal Exchange Assurance. These Charters appear to have been obtained in consideration of a sum of money lent, or to be lent, to the Government of George I., and no

charters have since been given to any other association for the purpose of Insurance. Among the privileges accorded to the two Companies were those of suing and being sued under the titles of The London Assurance, and The Royal Exchange Assurance; signature by seal; the right of pleading 'Not Guilty' to civil actions for damages, &c., and some immunities under the Stamp Acts; so that the two Corporations were entitled to make valid contracts for Insurance, called slips or labels, enduring for three days, on unstamped paper.

In Elizabeth's time, and long afterwards, there existed a strong feeling—some will call it prejudice—against corporate trading associations. They were named 'monopolies,' and the partners in them 'engrossers' and 'monopolisers.' They excited the jealousy of the public, as interfering with the detached, independent trader; and dislike and suspicion were increased by the fact that the charters of incorporation gave these companies exclusive privileges. Bluff Queen Elizabeth, having been entrapped into granting such privileges, recalled many which had been given, and subjected others to legal control. With a candour of confession we are not accustomed to from recalcitrants in political economy, she actually thanked the House of Commons, which had made head against such grants, and gave them her 'hearty commendations for having recalled her from an error proceeding from her ignorance, not her will;' and acknowledged that 'these things would have turned to her disgrace had not such harpies and horse-leeches been made known and discovered to her by her faithful

Commons.'[x] And in the twenty-first year of James I., Parliament again interfered, and condemned all monopolies, as contrary to law and the known liberties of the people. The impecuniosity of Charles I. led him, amongst other expedients for raising money, to confer again exclusive privileges; but, on Parliament meeting, they protested against the grants, and resolved that all members having a share in them, directly or indirectly, should be incapable of holding a seat in the House. Many, in consequence, vacated their seats, and those who did were expelled.[y]

The second Charles created for himself, by his extravagance, a dearth of means as abundant as that which his royal father had enjoyed, and charters were one of the consequences. The grant to the Hudson's Bay Company dates in 1670, but nothing was effected at the time regarding Insurance. Very early, however, in the eighteenth century, an agitation commenced to organise companies, but all attempts were abortive to gain the privileges required till the year 1720, when, as has been already mentioned, the civil list having fallen greatly into arrear, the London Assurance and the Royal Exchange Assurance Corporations were allowed to be erected on the promise of providing George I. with the sum of 600,000*l.*, to enable him to liquidate these debts. 'Thus,' says Mr. Marryat, 'the existing Companies owe

[x] Rapin, anno 1600. Quoted in the speech of Mr. Marryat in the House of Commons, February 20, 1810.

[y] Rushworth, p. 37; Whitelock, p. 38. Quoted in Mr. Marryat's speech in the House of Commons.

their establishment to a job.' Happily neither the 'job' of the Hudson's Bay Company nor that of the chartered Insurance Companies were bubbles, but turned out to the permanent advantage of the country which cradled their birth. Little was understood by the public as to the profits made by insurers, but soon, by a popular delusion, they were imagined to be fabulous, and underwriters were looked upon as a mine of wealth in which every man might sink his shaft: and a modified form of this superstition seems to have continued to the present day. Every wild commercial and financial project was at the time at its highest inflation; and in a few months after the establishment of the two Companies, the stock on which 10*l.* per cent. had been paid rose to the price of 160*l.*, or sixteen times the capital Owing to the bursting of the South Sea bubbles, and an accumulation of disasters at sea, the losses of the two Insurance Companies were so great that their stock fell from the extreme point named to 12, and the Corporations were unable to meet their engagements to the King for the subsidy of 600,000*l.* In point of fact, they never did pay more than one-half the sum on the promise of which their charters of exclusive privileges were granted. They had to appeal to the Crown, and the next year the two Companies, with some ingenuity, were reconstituted.

That was the epoch of bubbles; and our Dutch neighbours showed that, out of Insurance and other soapsuds, they could blow bigger and thinner bubbles than we could. At Rotterdam, the same year, an Insurance Company was established, the shares of which rapidly

rose to 1000 per cent., and the shares of a similar Company at Gouda attained the premium of 3000. At Delft an enterprise of the same kind attained a like proportion. Of course the artificial elevation could not be long sustained, and when they fell the ruin was great. Financial waterspouts always carry commotion and destruction when they break; but our eyes, which have so lately been accustomed to mark the rapid growth of Jonah's gourds, have learnt to look for their sudden withering. The spirit of gambling appears to be inherent in Holland, and the same people who in 1720 made and lost fortunes by Insurance Companies, had previously staked their means by speculating in tulips, and had given the value of an estate for a single bulb which they had never seen, and probably never cared to see.

In 1721 an Act of the British Parliament was passed, having the object of raising half a million of money, to be charged on the revenue of the Civil-list, and it contained a clause discharging the two chartered Assurance Companies from the unpaid part of the sums in which they were indebted to the King, and this 'in consideration of the difficulties which those two Companies laboured under.' How near soever these two Companies were to shipwreck at their outset, they continued their after course with great success; and in their primal perils they only resembled nearly all Marine Insurance Companies of later institution. Indeed, it seems as if this species of adventure had to run, like animate creatures, through a course of infantile diseases. The two Corporations used their exclusive privileges with such

effect as to frustrate or put down attempts that were made during the following ninety years to found new Insurance offices. In 1810 a more determined effort was made to introduce a competition, under the title of The New Insurance Company. It was largely subscribed for, the proposed capital being five millions, and many subscribers to Lloyd's were among its supporters. In February 1810, Mr. Manning brought a motion before the House of Commons 'to consider our present means of effecting Marine Insurances,' &c., this being a preliminary step towards gaining Parliamentary powers for the establishment of the new Marine office. In reply to this motion, Mr. Marryat made the speech from which I have already quoted frequently. He spoke in the interests principally of the underwriters of Lloyd's, and endeavoured to show the strength of that establishment, and that there was no necessity of organising another company to transact the Insurance business of England. Indeed, at the period he spoke, 1810, and for the next ten years, Lloyd's was in its most palmy state. Whereas in the year 1771 there were but 79 subscribers to Lloyd's, there were 1500 in 1810. At that time it was common for underwriters to take 500*l.* lines, and there were several who subscribed much larger amounts. If we suppose that, of the 1500 persons who composed Lloyd's, 400 were underwriters, there would have been no difficulty at that period of effecting Insurance in the room, on a single ship and her cargo, to the extent of 150,000*l.* or 200,000*l.*

In the evidence taken before a Select Committee of

the House of Commons to consider the state and means of effecting Marine Insurance in Great Britain, Mr. Bennett stated the number of underwriting subscribers to Lloyd's to be 500—a number far too great for that coffee-house to accommodate, and Mr. Angerstein gave in evidence that the sum of 631,800*l.* was effected at Lloyd's on specie by the 'Diana' frigate from Vera Cruz. The 'Lutine' frigate had 300,000*l.*, and the 'Althea,' an East Indiaman, had 400,000*l.* done on their cargoes at Lloyd's and the two chartered Companies. These vessels became losses, and the immense sum of 700,000*l.* was discharged by the underwriters with honour and promptitude.[z]

On the other hand, a very strong showing was made of the necessity of further facility for Sea-Insurance: First, from the rapid growth of commerce. For whereas British imports and exports amounted, in 1719, to only a little more than twelve millions sterling, they had risen in 1809 to upwards of eighty millions, exclusive of the imports from India and China; and another immense addition might be expected whenever peace should be established. It was estimated that the insurable interest in ships, goods, and freight, which might have come to English underwriters in 1810, was more than 320 millions, including foreign property, but excluding, as before, imports from China and the East Indies. Of this mass, it was calculated from the stamp returns, that rather more than 162 millions had

[z] Pamphlet, 1810. Cursory Observations, p. 8.

been insured here, and of this sum the two companies had not insured more than 4 per cent., or 6,150,000*l.*

Secondly, it was stated that at certain times in the year underwriters voluntarily abstained from insuring; and during the months of August, September, October, and November, they withdrew themselves from Lloyd's, to the inconvenience of those requiring to effect Insurance.

Thirdly, that, as a consequence of the inadequacy of the means of Insurance, people had been driven to illegal methods, and that various combinations for mutual Insurance had sprung up. One, named the Friendly Assurance, existed in London to protect regular transports; and a second, the London Union Society, for the purpose of mutually protecting vessels trading to London. Twenty such associations were known to be in operation in different parts of England.

And, fourthly, it was shown that, in places where Marine Insurance could be legally practised, many companies had sprung up There were already three in Ireland, thirteen in our East Indian dependencies, and a few in our West India settlements, one in Newfoundland, and one at Halifax. And abroad the movement was more advanced. There were thirty-six Marine Insurance Companies in Hamburg alone, and several others in the north of Europe; whilst in every part of the United States of America abundance of Insurance Companies had been established.

Upon all these grounds the Committee resolved that the exclusive privileges of the two chartered Companies

should be repealed, saving their charter and their other powers; and that encouragement should be given to other undertakings for the promotion of Sea-Insurance. Great opposition was made to this: counter-resolutions were brought before the House, and a cloud of letters and pamphlets was thrown out, in the usual skirmishing manner of such warfare. In result, matters remained undisturbed for the next fourteen years. A new system, however, began in 1824. That year, the Alliance Life and Fire Assurance Company added Marine risks to its business, and an independent company specially devoted to Sea-Insurance was established, under the name of the Indemnity Mutual Insurance Company. Its second title was adopted from some plan of insuring only shareholders' interests, but it has since laid itself out for general business without such restriction. A few years served to show the success of these two institutions; and in 1836 the Marine Insurance Company was founded, and about four others. After no small initial dangers, the Marine entered on a prosperous voyage, but its contemporaries did not succeed, and have long ceased to exist.

The commerce of England and of the world continually increasing, the want of, or the room for, more joint-stock projects for facilitating Insurance seemed ascertained. It had been hitherto held that the principle of limited liability was not applicable to these companies, their powers of undertaking risks being unlimited; but within the last five years several new societies have been formed, 'limited;' and the public did not appear

to entertain any want of confidence in them on that account.[a]

London continues to be, as she has always been, the great English mart of Insurance. It is true that Mutual Insurance Associations for ships have multiplied round our coasts, and have proved themselves very serviceable to local communities. Liverpool and Glasgow have long possessed underwriters' rooms, and have transacted a large amount of business.[b] Yet the enormous import and export commerce of Lancashire did not lead, till very lately, to the erection of any independent Marine Insurance Companies, either in the Great Western port or in Manchester. Latterly, two or three offices have been established there, and Bristol has claimed the right of drawing Marine Insurance business to its busy mer-

[a] With that tendency which Englishmen have of overdoing a good thing, the example of successful Joint-Stock Banks and Insurance Companies led, in the year 1864, to an extraordinary number of projects for Banking and Insurance. This multitudinous following a lead showed a want of originality in our countrymen; though we must admire the benevolent spirit which made every person desire to keep every other person's money, and insure every other person's property from loss and damage.

[b] These are mainly on the principle of Lloyd's, and what may be termed Insurance circles—that is, an arrangement by which one broker or agent is empowered by ten, twenty, thirty individuals to underwrite in their separate names as their proxy. The agent having generally himself to effect Insurances, he can often transact that part of his business, and underwrite for his clients, without going out of his office. The same system obtains at Glasgow, and some other of the chief emporia of trade. Certain of the Metropolitan Companies have also established branches or agencies in the great cities.

cantile city. Yet in all these places the Insurance system flourishes rather like an exotic, having its true habitat in the metropolis of the empire.

There are in London at the present time upwards of twenty proprietary Marine Insurance Companies, besides several Mutual Ship Insurance Associations, which extend their operations in a smaller degree to the protection of freights and outfits. The aggregate of members and subscribers to Lloyd's is rather above fifteen hundred, of whom four hundred are underwriting members. The China, India, Colonial, and a few foreign Insurance Companies have agencies here, and some of them take outward risks. There is also a circle of Irish underwriters, having a *gérant* or agent in London. We must add to this enumeration, that the Peninsular and Oriental Steam Company possess within themselves an Insurance system, by which their fleet of fifty-three large steamships insure one another, and the profits go into a separate Insurance account. The Company also insures their passengers' baggage and effects, and, under the name of their 'red bill of lading,' issues policies on goods to and from the East.

Thus very extensive facilities exist in the metropolis for Marine Insurance. One necessary effect of which abundance is the strong competition set up. Competition is one of those entities which are advantageous on one side of a central line, dangerous on the other. When a too pressing competition pares away the margin of profit which is the right of the underwriter and an essential element in the Insurance scheme, an evil is induced which

rapidly tells even on the assured. Too cheap premium is another term for bad security.

Spread round the outposts and coast towns of England, Wales, and Scotland, are a large number of Mutual Insurance Clubs. These clubs are for the insurance of the bodies of ships and freights. Whilst, like the Lloyd's underwriters and the Assurance circles which have been mentioned, there is no solidity or partnership among the associated members, there is a greater degree of organisation in the system than individual underwriters possess. They are bound by stringent rules, and the management is in a committee and a secretary or manager, called, also, in Scotland, an agent.

India, China, and Australia possess many Insurance societies, having agencies in London for the regulation and payment of claims on homeward produce, and, in some cases, for taking outward risks. In general their representatives in London are mere agents, making payments for claims only if they have sufficient funds in hand, referring disputed questions to the head office abroad, and are not capable of accepting service of a writ if sued. The offices in China and India consist frequently of a coalition of a very few natives or Europeans; often the constituents of one mercantile house, who institute the society for the purpose of facilitating their own business in the way of Insurance.

Throughout Europe, Insurance may be said to be now largely practised—Paris and Hamburg taking the lead. In these cities, and some others, there exist many companies and Insurance circles. In Paris the insuring

power consists of thirty-one companies established on the 'anonymous' principle; *i.e.* the subscribed capital being stock, and one company formed on the plan of limited liability. There are, besides, nine agencies of companies having their head administration in other parts of France, three agencies of foreign Insurance Companies, and three '*réunions*,' or circles of private underwriters, each of which acts by a '*gérant*.'

In Hamburg there are twenty-two Joint-Stock Companies, a circle of private underwriters, having a capital of forty millions of marks banco, and the agencies of thirteen foreign companies. The general plan of the Hamburg Insurance Companies is that their term of existence is ten years. At the end of the period so limited, if the result is not a successful one, the institution is dissolved. If, on the other hand, the management and outcome are satisfactory, the company is generally renewed for another term of ten years.[c]

Insurance is practised with more or less activity in other parts of Europe; and among the northern cities of the Continent stettin appears to take the lead.

In New York, Boston, San Francisco, and other places in the United States, Insurance is extensively carried on.

Most of the foreign European sea policies contain an elaborate and precise system of rules, exceptions, provisoes, &c., printed on the instrument, by which they

---

[c] Although the number of these companies seems large, the aggregate of Insurance effected in Hamburg is insignificant compared with the business of London Insurance offices.

differ in several respects from our Lloyd's policy, and rather approach those used in the Mutual Insurance Associations.

Thus, by this brief survey, we have, as it were, the suffrages of the world to the value of the Insurance system; a benefit ever more appreciated and acted on as commerce extends in its range and quantity. Or rather, we would say, Insurance is a necessity, without which the present gigantic fabric of trade could not be upheld. I have claimed the honour of its invention for modern Europe, purely, I think; or if other writers attribute an ancient birth to the abstract idea, they will admit that the moderns have at least a right to the name of its inventors, in the sense that he really invents who makes a mere and inactive discovery usefully known to his fellow-men. It has been complained that the now present race is a generation of pigmies; and comparing the generality of our contemporaries with some of the gigantic minds of former times, the description may appear a true one. Nevertheless, the Past is always making the Present its heir, and endowing it with accumulated gifts, which that heir thankfully receives and prudently treasures and uses; and we have a right to say, with Didacus Stella, that the dwarf mounted on a giant's shoulders see farther than the giant himself.

The words Insurance and Assurance,[d] their meaning

---

[d] Fr., L'Assurance; Germ., Assekuranz and Versicherung; Dutch, Assurantie and Verzekering; Swed., Dan., and Norw., Assecurans; Ital., Assicuranza, Assicurazione, or Sicurezza;

being identical, imply a making sure or certain, or the state of being made secure. In former times the name of Common Assurances belonged to all deeds and records for the conveyance and transfer of property; and the learned Sheppard, in his 'Touchstone,' whilst instancing, directly or incidentally, every description of deed and instrument coming under the name of Assurances, does not, so far as I have ascertained, once allude to the policy of Marine Assurance.[e] Nevertheless, as we have seen before, the policy of Marine Assurance was in use long before Sheppard's time, and in the Act of Elizabeth, anno 1601, already quoted, the instrument by which such security was given was 'commonly called a Policy of Assurance.' As the indemnity afforded by Insurance was invented by merchants, who, from the nature of their calling, were always 'giving hostages to fortune,' it was confined for a long period to the dangers of Marine Insurance. The great conflagration in 1666 led to the adoption of Insurance against fire the year following, whilst speculations concerning human life and death connected themselves with the principle of purchased

Intention and use of Insurance.

Span., Seguro or Aseguraçion; Port., Segurança and Seguridad; Russ., Застрахованіе.

[e] It is obvious that the security obtained under a policy is not that of real property, and Sheppard is writing of conveyances; but in that part of his work in which he treats of covenants, obligations, warranties, &c., he speaks of rights and other immaterial interests, and not unfrequently takes his instances in such future events as a promise to marry a woman before a certain time, to ride to Rome in a given number of days, &c. My edition is that of 1651.

security more tardily, and Life Assurance Societies did not take their rise before the eighteenth century. The first of these, the Amicable Company, was established in 1706; and at the outset, its composition was rather that of a tontine than a true Insurance Company. As we accept the term at the present day, Insurance provides security or indemnity against loss by (1) casualties affecting ships and merchandise at sea, (2) by fire, (3) by death of a person. The design of this volume is to deal exclusively with the first of these classes; and when Fire and Life Insurances are alluded to, they are introduced incidentally, or for the sake of illustration. Under the head of Marine Insurance are, however, included protection against risks of river navigation, and of railway and other land carriage connected with sea transit.

The security sought by Marine Insurance is not the safety of the thing insured. Loss and damage will occur to the vessels and their cargoes committed to the ocean. Yet there may spring from the Insurance system some increased measures of safety to ships and merchandise indirectly. The vast amount of interest at sea which underwriters have would lead them to stimulate scientific discovery in navigation, hydrography, ship-building, &c., and to promote the formation of harbours of refuge, and the multiplication of lights and life-boat stations;[f] but

[f] Amalfi, famous for the safe custody it gave to the one existing copy of the Pandects, and for producing laws of its own named the Amalfitan Code, is even more famous for the invention of the Mariner's Compass, reputed to be by one of her citizens.

the office of Insurance is apart from this meaning of the word safety; and it is beyond a doubt that more losses occur, both by sea and by fire on land, *in consequence* of a system which removes the immediate onus of his property from the possessor, rendering him thereby less careful, and opening a door to fraud available to dishonest persons. This is the one blot, and perhaps the only one, which attaches to the scheme of Insurance, so admirable in all other respects.

The security which Insurance provides is to the person who adventures his vessel or his goods in the way of commerce. For a price paid, others make agreement to adopt as their own the possible losses by sea-risks which would fall on the assured. He is relieved thereby from great anxiety and danger. But a mere mercenary transfer of liability from one individual to another would not describe Insurance. A more important element necessarily enters, viz. *the subdivision of liability.*

This is the central principle of Insurance, the division and distribution of liability; to remove from the individual to the many the incidence of a loss; to enlarge the area of its pressure, so that it comes not with local and oppressive weight, but falls evenly and lightly over a large surface.

When this principle is set aside, the particular value of Insurance ceases. The mere change of liability, I repeat, is not Insurance. If Caius ships five thousand pounds' worth of merchandise, the loss of which at sea would be ruinous to him, and Titius agrees to insure him for that sum, and accepts the premium for doing so,

though he would be equally ruined in case a loss should happen or be unable to pay the loss, clearly no security has been gained by this mere mercenary transfer of liability; and the very object of Insurance is defeated. But if Caius pays premium to twenty-five or to fifty persons who undertake to indemnify him if a loss occurs, each being only responsible for the two hundred or the one hundred pounds he has subscribed, the position is different, the principle of distribution is acted on, and security is obtained. Here the true design of Insurance is adopted. And, secondly, the system of division or distribution is carried out also in the person who is insured. He likewise *loses*—for, as it has been said, no Insurance can *prevent* losses; but by this means his loss is gradual, progressive and certain, not sudden and unexpected; it apportions itself to the profits of each transaction; and premium forms one ingredient in the price at which merchandise is sold, and in the freight for which it is carried. Presuming that premiums are adequate, that is, that the price an underwriter receives is equivalent to the risk he undertakes, it is, clearly, the merchant or other assured who suffers the loss. His loss is indeed spread over a number of years, piecemeal, in the payment of premiums to his assurers; and this is the advantage he seeks and obtains—the equalisation of a known defect over time, and the avoidance and security from a sudden, local, and uncalculated loss. This, with the advantages which follow such security, is the sum and substance of the Insurance system.

The same principle affects the insurer or underwriter,

and produces safety to him in what would else seem a dangerous calling. It is the division and distribution of the risk he undertakes; the spreading his assumed liabilities over a large area and in small portions; the diversity of chances, and the accumulation of a sufficient number of every class to allow the doctrine of probabilities to work out safely. If forty-nine white balls and one black ball are put in a bag, the mathematical chances in drawing are one in fifty on drawing the black ballot, or forty-nine to one against drawing it. It is true that a drawer may take out the black ball at his first trial; but mathematically the rate of the probabilities remains the same. So Titius who insures 5,000*l* on the goods of Caius, in the hope that the ship conveying them will not be lost, may escape loss, and win his premium, which was mathematically adjusted to the chances. On the other hand, he may lose the sum insured the first time he takes that risk, and be ruined. If, however, Titius, instead of taking 5,000*l.* on one adventure, underwrote on one day fifty risks of 100*l.* each, of separate and varied kinds, there is the *possibility* of the whole being lost, and there is the *possibility* of none being lost; and there is the *probability* of just that number of losses on the fifty risks, that average of loss, which the premium paid was intended to cover. In the third case, Titius is no loser by the loss; and as to the mathematical premium a calculated profit is added, he is a gainer by the transaction of fifty risks, and only sees in the losses a development of that scale of chances he calculated his premium on. If he had five hundred risks of equal amount and varied

character, the result would work out in fulfilment of the calculated probability with even more regularity. And the rule is general, that the larger the cycle in which probabilities act, the more precise will be their action or evolution. Practically, an underwriter's safety lies in writing equal sums on varied risks, and in such numbers as to produce in each variety, and on the whole, a sufficient average to neutralise local disarrangement or disturbances of the programme.

We have already seen that by the Insurance system the assured does, in fact, pay his own losses; and he pays something more, in the addition made in the premium to the mathematical value of the risk for brokerage and the underwriter's trade profit. What the assured gains is *security*; freedom from anxiety, which would interfere with commercial undertakings; and that convenient distribution of loss over time, which enables him to recoup himself for this progressive loss, progressively out of the profits of his transactions. The underwriter acts as a reservoir, to collect the scattered drops and store them, ready to deliver them again in a stream upon any emergency, however sudden. If premiums are rightly adjusted to risks, each transaction by the underwriter gives him its quota of profit; and whilst Pactolus is ever flowing past, it leaves its grains of gold in its course.

A very fitting parallel to the underwriter's office in commerce may be taken from mechanics. The underwriter is a fly-wheel, which, gathering force from small and frequent impulses, discharges the accumulated power when and as it is required, and causes the machine,

of which it forms an adjunct, to act smoothly and continuously.

As risk has been described to be the mother of profits, so without risk, Insurance could not exist. Risk. Risk is in the essence of its system, and therefore, though a policy be opened and executed, it is no Insurance if it prove that no risk existed in respect of the interest insured.[g] With Marine Assurance the risk must have relation to the sea, or, it may be, to rivers—and, by extension, to land conveyance, harbours, and places of deposit and transhipment, when a voyage is interrupted; as in what is termed the overland route from India, China, &c., the transit from terminus to terminus being broken, and, for a small part of the journey, proceeding across the desert by land. So a Marine Insurance will protect from fire goods landed and stored in a warehouse, under certain circumstances.

It is necessary to the validity of an Insurance that it have reference to a real interest, and that a commensurate one. Interests are of various kinds, material, Interest. as ships and merchandise, and immaterial, as freight, profit, commission, &c. These will be treated of in their proper place; and all that it is necessary to say here is, that there must be a real, valuable interest at stake at the commencement of the risk, which often coincides with the commencement of the voyage, though not always. It is not essential, however, that the interest be in exist-

[g] But see the recent case of *Gledstanes* v. *Royal Exchange*, mentioned farther on; and which may tend to shake some people's faith as to the necessity of risk or interest either.

ence at the time of making the Insurance. The event and the subject-matter may at that time be in the future, and therefore not yet existing; or it may be that at the time of effecting an Insurance the interest and the event may already be lost and determined, or determined by safe arrival, and so no longer existing.[h] For Marine Insurance is permitted to have a retrospective efficacy, provided neither the assured or the underwriter have information, or a very strong presumption, of the event being determined at the time of making the Insurance. If the assured know that the interest is lost, or the underwriter know that it has arrived safely, such an Insurance is void and fraudulent. In providing for past-future events, Marine Insurance differs from that on lives. In effecting an Insurance on a person abroad or distant, evidence has to be given to his being alive, and as to his state of health at the date when last heard of, and certificates must be afterwards produced that the same state of things continued at the time when the risk commenced. Thus Life Insurance is not retrospective, even between the date of last information and the date of making Insurance, although both the proposer and the office may be dealing in perfect good faith, and it may be of great importance to provide against an unknown contingency already determined. The Marine policy has a larger scope, and provides to insure the interest 'lost

---

[h] This principle seems pushed to the extreme in the late case of *Gledstanes* v. *Royal Exchange Assurance*, to be spoken of hereafter.

or not lost;' *e. g.*, on a vessel that *was to* sail, or goods that *were to be* shipped; provided always that the event insured against was unknown, that *bona fides* prevailed, and that a real, commensurate interest *had* existed.

The nature and adequacy of interest will be considered hereafter under its proper rubric. Here we have only to state generally, that risk and interest are as essential to true Insurance as breath is to human life. Take away risk, and a payment for Insurance is an incomprehensible waste of money; take away interest, and the transaction reduces itself to a wager—a tendency which, it is true, has very frequently manifested itself, and has been met in most commercial countries with prohibitory acts of legislation.

Nevertheless, chance enters into the composition of the Insurance contract: but it is the calculated probabilities of real events happening to valuable interests. 'The contract,' says the Commentator of the 'Code de Commerce,' 'is "alcatory," because the obligation of the assurer is essentially subordinated to the eventualities of navigation. It is this which in an especial manner characterises Insurance.' And he quotes Casaregis in his Discourse:—*Principale fundamentum assecurationis est risicum, seu interesse assecuratorum, sine quo non potest subsistere assecuratio.*

A clear definition of the object and extent of an Insurance is necessary in making the contract. If it is for time, the policy must state it to be, *e. g.*, from noon of December 31, 1864, to noon of December 31, 1865; or, from July 1, 1864, to

Scope of the Insurance must be defined.

December 31 following, both days inclusive. Or if it be for a voyage, thus, from A. to B.; or, from A. to B. and thence to C.; or, from A. to B. and thirty days after arrival at B.; or, from A. to B. and from B. to C., with liberty to make an intermediate voyage to D. Any limitations over and above the printed limitations in the policy are to be settled and written. Thus, 'on goods and merchandise, as interest may appear, excluding oil.' Or, 'on produce from the West Indies, exclusive of the mark A B.' Under the head of Warranties, many other restrictions may be introduced, as to time of sailing, &c.; and these will be treated of in their proper place; but whatever be the intention of the assured as to voyage, interest, value, and other circumstances in effecting a policy, when those particulars are agreed to by the underwriter, they are to be clearly described in writing, and afterwards logically adhered to. This does not mean that Insurance is necessarily very limited in its action, and can give at least only a partial protection or indemnity; it is, on the contrary, as a system, elastic in comprehending the variety and greatness of the necessities of commerce and navigation, and plastic in fitting itself to the changeful outline of their wants and circumstances. But to do this effectually, it must be free from vagueness; it must know its purpose, and the extent of its obligations and liabilities. Clearly understood between the two contracting parties, and then clearly expressed in the written contract, any contingency, any complication of contingencies, not legally uninsurable, may be provided against by a policy of Assurance. Clear thought and good faith are alone re-

quired to produce an Insurance valid against any species of marine risk conceivable, and to prevent disputes in the intricate circumstances which events and disasters may afterwards give rise to.

The practice of Insurance is purely mercenary. All its advantages must be bought and paid for; and the payment of the price or reward is essential to the validity of the contract. In discussing hereafter this subject in greater detail, it may seem that too much weight has been given to the pre-payment of premium, and that by changes in the method by which commerce is carried on facilities are required inconsistent with the tendering and paying down the premium to the underwriter at the time of executing the Insurance, which would seem to have been the case originally; and the Lloyd's policy still contains a form of receipt, in itself fitted to a separate cash transaction:—'Confessing ourselves paid the consideration due unto us for the assurance, by the assured.'

Premium.

There is a considerable return, in the present day, to the system of cash or nominal cash payments for premiums; yet the law recognises running accounts between brokers and underwriters, and, to a certain extent, between underwriters and the assured; and the plan of setting off claims and losses against premiums due, has its conveniences. But the principle stands that the payment of premium is a condition precedent to an Insurance. It is an actual price or consideration given for the benefit received. And herein, again, Insurance differs from a wager, where both payments, on and against an event,

wait, and are dependent on, the decision of that event. In its proper place Premium will be fully entered upon, and we shall there find that an agreed premium is due to underwriters who accept a risk; but events relating to voyage, to the merchandise, or the ship, &c., unknown or uncertain at the time of making the Insurance, may, on being known, modify the premium, and, in the more general course, lead to the underwriter 'returning' or repaying part of a premium which he has in hand, and which was intended to cover all possible risks, though it was probable that they would not all be incurred.

Summary. Insurance, then, may be defined as a recognised system, based on the doctrine of chances; its object being to give security to maritime commerce; its office, to remove the immediate onus of loss from those who engage in the carrying on of trade, to another class of persons who vicariously accept those risks; its rationale, that the price paid to those who accept the contingency of such losses is the true or mathematical value of the risk and something more, namely, the profit of those who insure; so that, in fact, it is the assured who ultimately pays the losses, and the insurers are but a convenient bank of deposit. It is a system regulated by laws, controlled by customs, very useful, and even necessary to commerce. As a vocation, Insurance is honourable, and moderately remunerative to those who follow it. It differs from wagers and mere speculative bargains, inasmuch as it is always concerned with real value; does not proceed upon an advantage which a concealed knowledge of facts gives in those transactions, to one party or the other; but, on

the contrary, demands all knowable facts as its proper data; and the price of the desired indemnity against the contingent dangers is paid in advance and irrevocably. Its fundamental object is on the side of prudence, not of unhealthy speculation; it is to divide those losses which form a constant quantity in maritime commerce, and so to distribute them, by its agency, as that they fall evenly and lightly over the community, instead of coming as an overwhelming catastrophe to the individual.

An Indemnity.

The expression that a policy of Insurance is a 'writing of indemnity,' though embodying a general truth, has often led to misconception and much disappointment. It is, in fact, a *partial indemnity* to the policy-holder; but certainly not that plenary one which many persons suppose they have obtained when an Insurance is effected; and which makes them say when any kind of loss, detriment, or delay occurs in relation to their insured interest, that it is immaterial to themselves, as 'the underwriter stands in their shoes.' He does not stand in all respects in the same position as the assured. The policy defines, in a somewhat inarticulate manner, the underwriter's risk and liabilities; statutes and cases in law produce other limitations; the custom of merchants and of Lloyd's is listened to as showing the intention of the Insurance contract; and finally, some concessions are made to the usages and codes of foreign countries in deciding to what extent an underwriter is to indemnify a suffering assured. A policy of Insurance is an excellently useful aid, but more must not be expected from it than it professes or was intended to give.

In my Handbook of Average, I have already discussed this subject partially; and in the next edition of that work I shall have occasion to enter more fully upon it. The principle of indemnity concerns claims on policies more nearly than it does a general description of Insurance itself.

CHAPTER II.

THINGS WHICH PRECEDE AN INSURANCE—THE SLIP—REPRESENTATIONS.

THERE is something which must precede a policy: it is the proposal for an Insurance, and the arrangement of terms. This preliminary is the office of the assured, or his broker; the proposal comes from him, and the particulars are generally collected very briefly on a small piece of paper called the Slip. On it are written the name of the proposed assured, the shipmaster's name, nature of the interest and voyage, and when there is a current rate, the premium. Sometimes the rate of premium is inserted tentatively as a step to fixing a price; sometimes it is left blank till a rate can be agreed on. Other terms necessary to be fixed are indicated by letters: as '*f. p. a.*' (free from particular average), '*f. f. c.*' (free from the risk of foreign capture), '*r. d. c.*' (including running-down clause), &c. It is usual, too, to inscribe on the slip, '*Cash*,' if the premium is to be paid immediately, as that circumstance affects the premium.

In Marine Insurances the policy itself is made out on paper bearing the due stamp-duty the day after the slip is signed, or, more commonly, initial'd, and is then presented for signature to the underwriters. In Fire and

Life Insurances, the period between making the proposal for Insurance, and completing and issuing the stamped policy, is greater, sometimes a week or fortnight; because the proposal has to be submitted to the Board of Directors, and the probationer has to be examined by the surgical or medical referee in Life Insurance; and the premises, in case of Fire Insurance, must be inspected by the Company's surveyor. What questions arise on the Slip, or proposal-paper, are much the same in all three instances, but we confine ourselves to our special subject, Marine Insurance.

There is a common belief that the Slip is a valid document, good against all attacks for twenty-four hours; that is, during the reasonable time required for making out a more formal document on a stamp. The law, however, having regard rather to interests of the Exchequer as fed by policy-stamp duties than to the necessities of commerce, denies any validity or legally binding power to the slip. Unstamped, and consequently unproducible as evidence in a court of law, the slip is regarded as sacred and a bond of honour by the two parties who make terms by its instrumentality. The curt expression of conditions under initials, and the signatures of the underwriters indicated as shortly, offer no temptation to persons of common honour to deny the document or run from its obligations. A court of equity, on an occasion on which it could be moved thereto, would probably give relief by receiving the slip as evidence of an intended contract, though unstamped, between the parties. In an analogous cause in Chancery which came before

Lord Eldon at the beginning of the present century (*Paine* v. *Mellor*), where there was an agreement to purchase a house, and the house was burnt before the completion of the purchase by its conveyance, the purchaser was held bound to perform his contract notwithstanding. In *Mead* v. *Davison*, which was a case directly in point, Lord Denman claimed the analogy there was, when premium had actually been paid for an indemnity by underwriters, with cases dealt with by Courts of Equity coming under the statute of frauds.

It will appear, by the chapter which follows this, that these contracts for an intended Insurance come under the same regulations with regard to stamp-duty as the perfected policy, and have penalties affixed for non-use of them; and to guard against the abuse of insurers and assured contenting themselves with slips or labels, and not issuing a properly stamped policy, the Act 54 George III. c. 144, was passed. By this, the Commissioners were to allow back for Slip-duty on production of the completed policy duly stamped within a month. This is the only clause which defines any time in which the interchange of slip and policy is to take place, except in the case of the two chartered Insurance Companies. By a subsequent Act, 7 Vict. c. 21, sec. 4, the penalty for infringement, 500*l.* in former Acts, was reduced to 100*l.* This statute, like that of the 35 George III c. 63, gives immunities to the two chartered Companies, the Royal Exchange Assurance and the London Assurance; the earlier Act exempting these corporations from the

penalty, and the last permitting their contracts for Insurance to be valid for three days, at the end of which time the policy must be effectuated.

The state of the law at the present time regarding slips may be seen as brought out incidentally in the cause of *Xenos* v. *Wickham*, and of *Parry* v. *Great Ship Company*. In the former, the distinction is properly drawn between the Lloyd's slip, signed by underwriters as an agreement or promise to execute afterwards a proper policy on the terms contained in the slip, and the label or proposal-paper now generally in use with Insurance Companies, which, as Justice Blackburn remarks, 'is not an agreement for an Insurance, but simply a request, requiring no stamp, and does not infringe the revenue laws.' Being so, he thought it probable that it might be made use of in Equity.

In the latter case, before the Queen's Bench, *in banc.* (November 1863), the nature and value of the Lloyd's Slip was more expressly considered. The learned judge whose words have just been cited, said here, that he remembered a case when he was at the bar, in which the loss had occurred after the slip, but before the policy, had been signed, and the jury had found that the risk had not attached. Lord C. J. Cockburn, in delivering judgment, spoke as follows :—

> These slips, though merely honorary engagements, are yet such as no underwriter would fail to respect. Still, when we ask whether they fulfil the meaning of the term 'Insurance,' we are compelled to answer that they do not; and the plaintiff (on whose behalf a slip had been initialed, but policy not signed) was therefore during several days practically uninsured.

It is clear from this that the slip, in law, has no binding power, owing to its want of stamp, and that the repose and confidence which an assurer feels when his slip is signed or initialed, arises from a belief in—or rather a knowledge of—commercial honour. Hughes cites *Marsden* v. *Reid*, where an unstamped slip was not even allowed in evidence as priority of underwriters' signatures. But, as it often happens, just where the law is ineffective and weak in its binding power, custom, convention and honour are strong in inverse ratio. Few disputes consequently arise on the slip as a general engagement; whilst there is much room for misunderstanding and contest as to the intentions and terms and conditions of Insurance written on the slip, or omitted therefrom, and by the assertion of non-correspondence of the policy with the slip as initialed by the underwriter.

Some assured consider certain conditions so usual and consistent as not to notice them in the slip, and only insert them when filling up the policy. A still more ambiguous position of the two parties is, when an important condition—as that of paying general average upon a foreign adjustment, if made up—is omitted. To pay average by foreign adjustment even by a written condition is a concession to the assured, and against the doctrine that the covenants of a contract are to be governed by the *jus loci* where the contract was made; but in the instance now cited a further concession is not unfrequently yielded by underwriters paying general average by foreign adjustment where no agreement to

the effect was inserted in the policy. 'And so creeps in this petty pace' of first varying a usual document by written concessions, and then claiming unwritten concessions, till great uncertainty is produced in the very document where all ought to be certain, fixed, and well understood by both parties.

Representations

On presenting the slip to the underwriters, i.e. on proposing to him the subject and terms for an Insurance, the assured frequently makes representations as to the quality and other circumstances connected with the risk offered. The matter of Representations is a large and a delicate one; opening questions in morals as well as in law and trade. In making them scope occurs for the exercise of ingenuity and equivoque, and the opportunity of so saying things, and leaving things unsaid, as to produce a desired effect and yet leave no definite ground of accusation against a 'clever' man of business for untruth or want of candour.

Representations are clearly distinguished, in the first place, from Warranties. A Warranty not true, or uncomplied with, vitiates the policy, of which it forms a part, being written therein. A Representation is not embodied in the written policy, but precedes the policy, and is a motive with the underwriter in accepting or refusing a risk, or in fixing the commensurate premium. While, therefore, a warranty, expressed or implied, goes to the essence of the Insurance, and being broken, even though it is not material, or its infraction not conducive to a loss, destroys the policy *ipso facto*, a representation has not an equal importance; its exact conformity with

facts is judged of more leniently, and if it prove a misrepresentation, the question rises whether such misrepresentation was or was not material to the underwriter's decision, or influential with him in accepting a risk. When a misrepresentation or a concealment is important and fraudulent, the underwriter will be relieved from his subscription to a policy wrongfully obtained from him, and the policy will be vitiated on the ground of fraud.

Secondly, representations, with their correlative misrepresentations and omissions or concealments, are distinguished as material and non-material A material representation requires to be substantially true in fact, though a literal inexactness will not convert it into a misrepresentation. A non-material representation, though not true in fact, will not be a successful defence to an underwriter or a policy.

Again, there are certain questions which an underwriter ought not to ask; or if he asks, and is misinformed, he must take the consequences thereof. These are about subjects of public notoriety, or for information to which he has equal access with the assured, or such as might be answered by knowledge of his proper vocation, with which he must be supposed to be endowed He has no right, for example, to ask, or at least to depend on the answer to, the question, 'Would you write this risk yourself?'

It must be constantly borne in mind that good faith should be the foundation of this contract, as of all others; but it is not easy to draw an exact boundary line, or to

define the license to be allowed in *viva voce* communications between persons whose interests are opposite—one seeking to buy in the cheapest market, the other wishing to sell in the dearest. We must take things as they are, and, possibly, not expect to find greater purism in Insurance than in other departments of commerce. It is difficult to reconcile all decisions in the cited cases of misrepresentation, or always to see why one statement has been pronounced material and another immaterial. So in concealments; there are times when the assured, in making an Insurance, may well be silent. He may know a circumstance which is really irrelevant; he may know another which the underwriter is properly supposed to know, or he may form his own estimate of a risk in a speculative manner, but not be bound to communicate the result of his deliberations. Then there is the coarsely-expressed proverb about depreciating one's own commodity, and there is the natural suspiciousness of the opposite side, and the allowance that one makes for generally appreciative remarks by people who have something they wish to dispose of. Laws protect men from wrong, or procure them restitution for wrongs suffered; but they do not, and cannot, save persons from the effects of their own want of caution, their ignorance, incapacity, or wilful blindness.[a]

If, however, the underwriter has suspicions raised, and cannot procure from the assured definite information

[a] Since writing the above, the whole subject has been amply discussed in the case of *Bate* v. *Hewitt*. Queen's Bench, January 1867.

which he desires, he has a remedy by demanding a warranty on that particular head, or he may decline the risk. If he put the question, 'Do you think any of these goods will come by the "Ann?"' and the assured replied that he did not think any would come by that vsssel, that answer would not afterwards avail the underwriter, because it was but an opinion. But if the underwriter disapproved of the 'Ann,' he might pass beyond an indefinite representation, and demand to have an absolute warranty inserted in the policy against that particular ship.

A representation is in its nature additional information running the way of the policy itself, not a communication of facts opposite to the stipulations of the completed insurance. And great uncertainty would prevail if evidence of verbal conversation was to be received in contradiction to the express terms of the policy. No doubt there have been cases of gross contradiction amounting to fraud: but for the assured to say 'There will be nothing by the "Ann,"' though a rather definite assertion, is after all only another form of stating an opinion, and would not, according to *Weston* v. *Eames*, avoid the policy.

The whole subject is delicate and difficult, and full of legal niceties, involving the production of evidence. Each future case will have to be dealt with on its particular merits, and we must not be surprised if we find some discrepancies in decisions.

It is not quite clear how far a representation made to one underwriter is binding on another, or can be taken

advantage of by another. A representation made to the first underwriter on a policy, the *vir gregis*, might possibly be conclusive on others lower down; because, in underwriting, as in settling a loss, a conventional precedence is given to the first underwriter on the policy; he is supposed to have satisfied himself in the one case of the value of the risk in premium, and in the other of the validity and correctness of the claim, and, in general, to what he does the others follow suit. Yet, as we cannot too often repeat, there is no solidarity between underwriters on a policy, and therefore each subscriber has an indefeasible right to examine and to contend for himself, down to the last name on the instrument; but practically and usually a uniform action is adopted; and, by implication, a communication made to the first underwriter may be held to be communicated to all. This principle has been questioned by high authority, but the preponderance of opinion and of cases is favourable to it.

For a representation to be material, it is not necessary that the misrepresentation should be the cause of a loss. It is the fraudulent assertion or concealment that voids the policy, for that led efficiently to the underwriter accepting the risk, whilst if he had known the truth the option would have remained to him of declining to subscribe the policy.

The following cases illustrate the subject of Representations, and embody most of its points at the latest time.

Russell v. *Thornton* was first tried at Guildford in 1858; in the Queen's Bench; and afterwards in the Court of Exchequer, June 1859. The facts, reduced to their

shortest form, are these:—The steamer *Butjadingen* was insured for time, on a policy which would expire on January 20, 1857. On January 2, she got on shore near Gibraltar, sprang a serious leak, and remained aground nearly four-and-twenty hours. She was got to Carthagena, and was there repaired. On the 6th of the same month, the captain wrote from that place to its owners, giving full details of the accident; and the letter reached them on the 15th. They were anxious to have another year's insurance effected on their vessel, and were at the time in communication about it with their brokers. The plaintiff was in possession of the captain's letter on the 15th, and the same day left it with his brokers. The same day the brokers presented a slip to the underwriters, and the next day Thornton initialed it for 3,000*l.*, but they did not show him the captain's letter, or say anything about it. On the 19th, Thornton signed the policy, still unknowing that the steamer had been on shore. On the 22nd the plaintiff sent an extract from the captain's letter to the secretary of Lloyd's, who had the accident entered in the Casualty Book, and the same day it was printed in 'Lloyd's List' and in the 'Shipping Gazette.' Upon this, Thornton wrote to the brokers as follows :—

> Understanding that the steamer *Butjadingen* has been on shore, I do not consider that my risk commences until the vessel has been surveyed and repaired. Yours, &c.,
>
> R. THORNTON.

The brokers do not seem to have been of a communicative character, for they did not show the letter to their principal, the assured. About nine months after-

wards, the steamer was totally lost, and the underwriters declined to pay the loss. They did not allege that the loss was a consequence of the former stranding, or was in any way connected with the concealment. At the *Nisi Prius* trial the jury found there had been a concealment, and a verdict was entered for the underwriters. In the Court of Exchequer the Judges pronounced the concealed fact material, and that the policy was void from the beginning.

Thus, the overzeal or the want of judgment of the brokers in concealing the captain's letter vitiated the policy, and proved fatal to the interests of their principal. A material fact being concealed is equivalent to a fraudulent misrepresentation, and voids the contract. It is not necessary that the concealed fact should conduce to the loss claimed.

It will be observed that the plaintiff's real ground for establishing his claim was the expression in Thornton's letter, 'I do not consider that my risk commences until the vessel has been surveyed and repaired'

It was urged that the words 'until,' &c amounted to a waiver or condonement of the breach of good faith in concealing the fact, and only postponed the inception of the underwriters' risk till the ship was again in a seaworthy condition. This argument was not, however, allowed to prevail. Letters of business men are not always written with logical circumspection. The language might be Thornton's mode of expressing his discontent with the insurance after such a revelation. In law, the policy had never had an existence. Mr. Thornton's mis-

taken view would not revive that which had not lived. 'It is,' said Baron Watson, 'if you like, the legal opinion of Mr. Thornton on the point, that the policy would not attach until the ship was repaired. I beg leave to say this, that I am prepared to hold that if that is his opinion, it is an erroneous one; because the policy was void *ab initio*, and never took effect at all.'

Upon the other branch of the same argument, viz. that Thornton's words implied an assent to a new contract to be made upon the abrogation of the first contract by the concealment, the same learned judge dismissed it on the ground that no such contract had been entered into by the two parties alone able to contract, viz. the assured, Russell, and the underwriter. The brokers, by concealing the second letter, never let the plaintiff into the position of making a new contract, for he was perfectly ignorant of what had taken place; and the brokers themselves had not such large agency powers as to make them capable of creating a new contract.

The case was appealed to the Exchequer Court, in July 1860, where the decision of the Court below was confirmed.

A *Nisi Prius* case, having features very much in common with those of *Russell* v. *Thornton*, has very lately (April 1865) been decided in Liverpool. In *Uzielli* v. *The Commercial Assurance Company*, the owners of a steamer, which, under the name of 'Sea King,' had been employed as a tug and as a passenger-boat, afterwards called it the 'Red Jacket,' and changed its employment to that of a blockade-runner. Whatever may have been

the illegality of this change of name, it does not seem to have affected the question before the court; but on her voyage out, the steamer, on August 2, broke the crank of her main shaft; and on the 6th, she put into the port of Ferrol, in Spain, for the purpose of having the damage repaired; and the same day, the master telegraphed to the owner these facts. The owner was at the time negotiating some Insurances on the steamer through his agent in London, Uzielli; and the latter, on the 10th of the same month, effected an Insurance for 1,500*l.* with the Commercial Assurance Company, without communicating to the company the facts sent by the captain to the owner of the steamer's injury and her puting into Ferrol. On the contrary, the broker showed the insurers a letter from the owner, in which he represented the steamer as 'in splendid condition.' Justice Mellor, before whom the case was tried, left it to the jury to decide whether the facts conveyed by telegraph, and concealed from the underwriters, were material, and conducive to their judgment of the risk. The jury found that the information withheld was material, and gave a verdict for the defendants.

In the foregoing case there was a fraudulent concealment. Whatever material information the assured is possessed of he is bound to communicate. And if he pleads that some supposed facts which came to his knowledge, and which he did not impart to the underwriter, proved afterwards to be false, that subsequent discovery does not cure his reticence of them when effecting an Insurance. It is true that it must be difficult sometimes for

the assured to know whether a fact is material; and the decision of materiality is not generally even left to a jury, but is ruled by the judge.[b] Safety lies on the side of full disclosures.

In another case, *Carr* v. *Montifiore*, a cargo of guano was shipped at the Leones Islands, in the Pacific, by a vessel under the American flag, named the 'James Cooper.' Both ship and cargo met with damage on the voyage, and put into Monte Video, where part of the cargo was discharged, and finally, both the vessel and the guano were sold into English ownership, and the ship's name was changed to the 'Dos Hermanos.' An Insurance was then effected in London by the plaintiff with the Alliance Assurance Company, on a cargo of guano shipped at and from a port or ports in the River Plate. A loss occurred subsequently, and the company defended itself on the grounds of misdescription of the voyage, and concealment. At trial of the action, the right of the plaintiff to claim on the policy was upheld. The court held the concealment that the guano had been in part damaged immaterial, and likewise the change in the ship's name under the new ownership.

With these apparent contradictions as to the materiality of facts concealed or not mentioned, one must pause before giving a decided opinion on any particular case of 'reticence.' As men's minds are differently constituted,

[b] In the case just mentioned in the text, and in *Lindenau* v. *Desborough*, and *Westbury* v. *Aberdeen*, it was left, however, to the jury to say whether a fact which had not been mentioned was or was not material. See, also, *Bate* v. *Hewitt*.

and ways of looking at the same fact are various, it is uncertain beforehand how a judge will view the reticence. If his eye is fixed strongly on the fact of there being concealment, he will probably be led to give importance to the matter withheld. If, on the other hand, he is possessed with the equity of the plaintiff's case, the question of materiality may present itself to his mind without force, and be regarded as an interruption to the argument he is engaged in. Unless explained in this or some similar manner, it is difficult to see why, upon like grounds, different conclusions should be arrived at.

For the large class of Representations in which fraud is not attributable, a general and not a minute correspondence with fact is legally required. Representations are often loose, immethodical statements and hearsay reports, and they are received as such, *cum grano*, and an underwriter accepting them does not lean too much on them in his estimate of a risk. Allowance is made for their conversational character and the natural desire to promote business. In treating with an agent for the purchase of a house, we make a considerable abatement from the superlative adjectives he uses; and do not accuse his honesty because the premises, as a fact, have not always the brilliant sky above them, the gay hollyhocks by their side, and the equestrian figure at their gates, which made the view in his office so attractive.

'If,' remarks Mr. Roscoe, 'fraud be no necessary ingredient [to render an incorrect representation vitiating] it should seem that, then, parol representations by insurers (assured ?) are not essentially different if their conse-

quences from express warranties.'[c] 'If the misrepresentation or concealment,' says Chancellor Kent, 'be fraudulent, it avoids the policy without inquiring as to its materiality; if by mistake or oversight, it does not affect the policy, unless material and not true in substance.' The French Code de Commerce is very distinct and severe on this point.

Toute réticence, toute fausse déclaration de la part d'assuré, toute différence entre le contrat d'assurance et le connaissement qui diminueraient l'opinion du risque, ou en changeraient l'objet, annulent l'assurance.

L'assurance est nulle même dans le cas où la réticence, la fausse déclaration, ou la différence n'auraient influé sur le dommage ou la perte de l'objet assuré.

It will be readily conceived that evidence as to misrepresentation and omission is difficult to establish. The underwriter who pleads concealment by the assured for his defence is burthened with the proof, first, of the fact concealed; secondly, the assured's knowledge of the fact; and thirdly, the assured's noncommunication of the fact. As to the last, we know that it amounts to a contest of word against word, and character against character: and indications are sometimes taken as proof, where they run the way of the habits and interests of mankind. Thus, in *Elkin* v. *Janson*, the fact that the underwriter had signed the policy was accepted as a proof of the concealment of a material circumstance; because the fact concealed was of such a depreciating nature, that being

[c] 'Digest of the Law of Evidence.'

known to an acute and experienced underwriter, it would have prevented his subscribing.[d]

We gather from the foregoing, as a corollary, that a Representation precedes the execution of the completed policy: that it is usually verbal, or if written, it is not embodied in the policy itself: that its effect is to influence the underwriter's decision in accepting or declining a risk: that it is corroborative in its character, and does not oppose or limit the conditions of the Insurance: that as to consequences, it ranks lower than a warranty: that its complete accordance with the fact it represents is judged of with some leniency: that its proof is difficult to establish: that in non-material things its disagreement with fact is not fatal to an Insurance except in case of fraud: that material concealments or misrepresentations void a policy without the imputation of fraud: that when fraud is present, even non-material concealments or misrepresentations have an equal effect, and vitiate a policy *ab initio*: that an assured is bound to communicate all material circumstances, and must himself judge whether they are material to an underwriter's decision: that he need not communicate (in good faith) non-material circumstances such as should not influence an ordinary man's decision, or such as the underwriter is, or should be, equally possessed of himself; or which relate to the assured's own opinion or estimate of a state of things: and, finally, that it is no defence to an assured who has concealed a material circumstance, that that supposed fact proved subsequently to be untrue.

---

[d] See *Bate* v. *Hewitt*.

As to the Slip, we see it disclaimed by the law as having any binding power or as being producible at all in evidence, if unstamped—and it always is unstamped; but, perhaps, in Equity it may be produced as evidence of an intended and promised contract. We find it subject to the most express stamp regulations, which are relaxed only in respect of the two chartered Marine Insurance Companies, and with these the indulgence is but for the space of three days. We find, in spite of these express regulations, as a matter of fact and daily experience, that no slips, labels, or contracts to insure ever are stamped; and that the stamp distributor would be entirely unable to supply stamped slips if demanded. In this we have an instance of the impossibility of fettering commerce by cords which, if strong enough, would destroy her progress and her life; and we see the wisdom of that ignorance by which the law does not remark in certain circumstances that her stringent enactments are being daily and hourly broken.

CHAPTER III.

THINGS NECESSARY TO AN INSURANCE—EXECUTION OF THE POLICY—STAMP DUTY.

BEFORE proceeding to consider in some detail the policy itself, I propose in this chapter to speak of those actions and duties which relate to the document in its completion and execution. These are the writing, signing (or sealing), and delivering the policy, and seeing that it bears the proper stamps for duty.

All the conditions and stipulations agreed upon by the slip, in an abbreviated manner, are written at length on a printed form—the policy. With the private underwriters of Lloyd's this is done by the assured. In Companies and Insurance Clubs the policy is prepared by the insurers; whilst in Liverpool and some other large centres of commerce, a system has grown up for one person or firm to act in the double capacity of Insurance broker, and agent for a circle of private underwriters from whom he holds a power of attorney. In this case the same individual arranges the terms of the insurance and writes out the policy, and also signs it on behalf of the underwriters he represents. The definition of the voyage or period insured, the description of the interest, the rate of premium, the name of the assured, and such particulars as form a necessary part of every Insurance,

are filled into spaces left in the printed form for the purpose; whilst particular stipulations and warranties, marks and numbers identifying goods insured, &c., are written in interlinear spaces, in the margin, or on the back or fly-leaf of the policy.

In former times it was essential that all deeds should be inscribed on parchment. This material is no longer necessary to the validity of the document, and in the majority of cases paper is used for the printed form, and a policy is sometimes described in the antiquated language of law as 'a paper writing or deed-poll.' Parchment and vellum are, however, still very frequently employed, as some policies undergo a great deal of wear. The writing must be on a stamped sheet: the policy cannot be stamped after execution. This regulation leads to the inconvenience of occasionally spoiling stamps, and having to recover the duty paid from the Inland Revenue Office. The subject of stamps is treated on subsequent pages.

The policy being written and dated, the assured presents it to the underwriters for signature, marshalling the names as nearly as possible in the same order as they occur on the slip, and with particular care to have the leading underwriter who first signed the proposal at the head of the names on the policy. It has been explained in the preceding chapter that the first underwriter stands in a somewhat responsible position with regard to the others. He is 'a leader of men.'

It is the underwriter's duty (often neglected), and his interest (commonly overlooked), to see that the written

policy presented to him perfectly agrees with the slip he initaled. Now is the time to question its accuracy, or to object to the introduction of any condition or words which he did not specially agree to when signing the slip, but included in the policy by inadvertence, or on the ground of their being common, or with a fraudulent intention. Though methodical persons keep their slips, and some use small books instead of loose labels, an underwriter can never depend in aftertime, or on the occasion of a dispute, upon the production of the original slip; and even could he have it produced, we have seen of how small value it is in evidence. Fire and Life Companies usually, in sending a completed policy to the assured, use a printed form, requesting him to examine the document and see that it perfectly corresponds with the intention and agreed terms. Were this always done, many disputes might be avoided: for it is in the nature of the Insurance system to bend itself to almost any terms, conditions or limits, so that they are lawful, *and quite understood by both the contracting parties.*

In signing, it is necessary that every underwriter should write his name separately, with the amount he undertakes, in words, and the date of the subscription. If the policy is signed by a substitute, the signature of the latter must be also inserted. When one person underwrites for three or four names, he must still write each 'line' in full, not using the word 'ditto' in the repetitions. Signatures on a policy do not require witnesses.

Whilst great importance attaches to the subscribing a policy, by a singular anomaly, little weight seems to be

given to the personality of the actual signer. An underwriter signs for himself, or he deputes some one else to sign habitually for him, or a more casual substitute—sometimes a mere youth; or, not unfrequently, another underwriter sitting in the same box will sign for him. No power of attorney is required for this agency. It is sufficient that the policy be signed: no collateral proof is necessary in litigating a policy. Like a bill of exchange, it is facile as to signature, and as binding, when once signed, as an acceptance.

The Insurance Companies make out their own policies from the label or slip signed by the assured at the time the terms were agreed on. They are signed by two or more of their directors, who attach usually an official seal to their signatures, but only as a matter of routine; it does not give additional security. The two chartered companies, the London and the Royal Exchange Assurance, are under seal, and their policies are not signed by directors. The secretary of the Company, however, attaches his name, but this is not essential to the proper execution of the policy, which is complete when the seal is affixed. He does it as a witness, and as a security to the company that their seal has been properly used. He is probably looked to for its safe custody, as a sort of Keeper of the Seal.

Prudent as this precaution may be towards a company, there appears to be considerable danger to the public in the growing up of a custom of counter-signature to a sealed document; for it may some day be set up as an old and invariable usage to defeat the holder of a

policy sealed, but, from any circumstance, not having the counter-signature. There is reasonable room for jealousy about such additions. If a company is under seal, the public has a right to expect security in a document bearing the seal, and does not enquire whether a custom exists in that company to countersign its seal. Internal regulations, and usages with which the public is unacquainted, ought never to be allowed to detract from the security of the holder of a deed issued by a company. A few years since, a gross case of this kind came before our courts, and called forth, not only the judges', but general indignation. An unsuccessful Life Insurance Society issued a policy duly signed by directors, countersigned by the secretary, and bearing the official seal. In an action by the holder, to enforce the same, the defendants, having failed in their other pleas, pleaded that, though in all other respects complete, there existed a by-law on their minute-books, or a clause in their deed of foundation, which required an order of the Board to issue their policy to the assured (such by-law or clause being unknown to other persons than themselves), and that in the case of the policy in dispute, it had been issued without such order. This plea was pertinaciously urged by a very leading counsel, at trial; but was rejected with well-merited anger, as a position dangerous to public security.

In Liverpool, Glasgow, and a few other places where there are private underwriters, there is not the same precision used in signing as prevails at Lloyd's. Several names are bracketed together, and the underwriters'

agent, or holder of their power of attorney, signs his name once against all the names for whom he underwrites. In Mutual Insurance Associations, the manager or agent signs for all under a power of attorney, without recapitulating the names of the members.

Witnesses are not necessary at the signing of a policy, nor does the underwriter when he signs an insurance murmur 'I acknowledge this to be my act and deed,' as in executing some other documents. Nor does it require formal words in delivering the signed policy to the assured, like those of a referee, 'I publish this as my award.' The delivery, though legally necessary, is informal amongst Lloyd's underwriters. The handing back the policy to the person who presents it for signature is, in fact, its delivery; and under the agency system of underwriting as practised in Liverpool, Glasgow, &c., it can hardly be said that even this shadow of a form is gone through; for the broker signing the policy for others, cannot deliver it to himself. With companies, the issuing the completed policy to the assured, though without stated form, is the delivery; and where a policy has not been taken away from the office of the company granting it, so that it has never been in the hands of the assured, a claim cannot be established on it for loss, because it remains a thing only inchoate, or not completed.

Delivery of Policy.

This is a position which will be new to many persons, but it is fully confirmed in *Xenos* v. *Wickham* (Ex. Ch. 1863). At the previous trial, the Court of Common Pleas had held that the policy in litigation, which had

remained in the possession of the company granting it, the assured never having applied for it, or taken it away, 'never was perfectly delivered, so as to vest a right of action in the plaintiffs.' Yet the policy had been regularly authorised by the Board, written, signed, and kept ready in the office of the company, to be taken away by the assured, or his broker Lascaridi. In the Exchequer Chamber, it is true, the two Justices present dissented from the doctrine laid down in the court below; but the four Barons, including the Chief, were unanimous in maintaining the non-validity of the policy, as of a deed not fully executed. For even if the keeping the signed instrument in the company's office, ready for the assured when he came for it, could be construed as an issuing and delivery—which they did not allow, however, to be more than a readiness to deliver—yet these failed to be an acceptance of the same by the party for whose benefit it was granted, or by his agent. And Baron Bramwell took occasion to administer a reproof to the mercantile community for their laxity in systematic details, saying, 'Merchants will find it desirable to observe the rules of law.' Which truism, it may be observed, would be reasonable enough, if it were not that the law has a multitude of technical rules which merchants do not and cannot be expected to know.

Baron Martin quoted and adhered to the Fifth of ten necessary incidents to a deed laid down by Sheppard, in his 'Touchstone,' that fifth being its delivery. He allows that 'it may be delivered to any stranger for, or on behalf, or to the use of him to whom it is made, without

previous authority: but a delivery must he made; for otherwise, albeit it be never so well sealed and written, yet it is of no force.' And the same learned judge expressed his individual opinion in the strongest manner that 'where a contract is to be by deed, there must be a delivery to perfect it; and this is a positive absolute rule of the Common Law, which nothing but an Act of Parliament can alter, and which, in my judgment, ought not to be frittered away by judicial decisions, to meet the supposed or alleged hardship of a particular case.'

The Chief Baron also concurred that the contract had not been completed, though there was some difference in the ground of his decision, which was the non-acceptance of the executed deed by the plaintiffs. 'I attach no importance whatever to the technical delivery of the deed. The rules which are applicable to a bond or grant . . . . do not, in my judgment, apply to a commercial instrument, because it happens to be under seal.' His lordship looked rather to the material consideration that an assured has a right, before accepting a policy, to object to any of its terms, or to propose other terms; that he is not to be bound—will-he-nill-he—by the acts and expressions of the other side; that he has a right to concur and accept their policy, or to decline and reject it: and this important power is taken away from him if one of the contracting parties can, without the instrument coming into the hands of the person for whose benefit it professes to be made, bind him by all its provisions, or limit his rights by its verbiage.

In truth, it is equally necessary where the insurer makes

out the policy, as is done by the officers, for the assured to examine it before accepting and adopting it, and satisfy himself of its correspondence with his proposal agreed to by the label, as it is for an underwriter before signing a policy written by the assured to ascertain by comparison that the stamped document coincides with the slip he initialed, and that the conditions of the Insurance, as arranged between himself and the assured, have not been altered, or new ones introduced. In the hurry of business, such exactitude is not always practised; but were it universal, it would prevent many after questions and some litigation. Fire and Life Offices, as previously observed, generally in sending a completed policy to the assured, request him to examine it, for the purpose of knowing that it embodies his intentions; or, if it does not express them, giving the opportunity of having the document rectified before misunderstandings can arise.

Of greater and more constant importance than that of delivery are the stamp regulations which affect Marine Insurances; for unless a policy bears a stamp, and that of proper class and amount, it is valueless in a legal light; no proceedings can be taken upon it, because it cannot be produced in court as a chose-in-action; and there is a heavy penalty on those who make and execute a policy without stamp, thereby defrauding the revenue.

Stamps.

All the severe regulations relating to stamps are purely fiscal in their origin. There is nothing in a stamp which of itself would affect the legal security of a document; and the disqualifications and penalties for not using stamps are all for the support of the inland revenue, so

important a part of which is raised by means of stamp-duties. In law-making, the punishments attached to offences are not always condign as to moral guilt, but are often intended to be deterrent, and are sometimes proportioned to the facilities with which certain crimes may be committed. Thus forging a document and stealing a sheep were formerly punished with death; not that simulating a signature was always of fatal importance, or that stealing a sheep was more wicked than stealing a sack of flour; but both were acts easily committed, and a dreadful penalty was laid on their perpetration because the community was much exposed in these things; and capital punishment was affixed *in terrorem*.

And unquestionably the stamp-duties would be constantly evaded were it not for the strong and prickly hedges which the law has planted round them. It is proper, therefore, that those who have occasion to use stamped documents should be aware of all the regulations concerning them. Where there is a succession of Acts of Parliament, some of them containing clauses expressed negatively, it is often difficult to ascertain the ultimate state of the law. It is not easy, for instance, for a merchant or underwriter to discover whether all 'slips' and labels do not still require stamps. He sees that practice has decided the question, and he knows that in the course of his business none are used; but he must read all the Stamp Acts, and Acts in which stamp-duties are mentioned, before he can ascertain his safety or his danger in using or trusting to these preliminary agreements bearing no stamp. When he does read, he will perhaps be astonished

at finding how express the law is which makes the use of stamps imperative on slips; and he will seek in vain for an Act by which the regulations concerning such use are repealed. He will find by the 54 Geo. III. strict provisions enacted for preventing loss to the revenue by the omission of the use of stamps on slips; and he will see in the 7 Vict. the confirmation and continuance of those regulations, and a penalty assigned of 100*l.* for each offence in the non-use of stamps in such cases; the London Assurance and the Royal Exchange Assurance being expressly excepted, as before; and even these two corporations only privileged so far that they are allowed three days for the conversion of their label into a policy properly stamped and executed.

For the convenience of those using stamps, a special office for the sale of sea-policy stamps is established by the Commissioners within the City of London, under the superintendence of a responsible officer. Those persons who are doubtful as to the proper stamp to be used when they are effecting an Insurance, will do well to make enquiry at this office. It is often difficult to extract information from public officers, even on the particular subject about which they are occupied; but it will be observed in reading the provisions of the Acts, given in the following pages, that upon the payment of a fee of ten shillings, the Commissioners of Inland Revenue may be required to assess the proper duty and affix a stamp which will be conclusive and not subject to subsequent legal objection.

I now proceed to epitomise the various Stamp Acts.

They comprise 5 Will. and Mary, c. 21; 35 Geo. III. c. 63; 37 Geo. III. c. 136; 43 Geo. III. c. 127; 54 Geo. III. c. 133 and 144; 55 Geo. III. c. 184; 9 Geo. IV. c. 49; 5 & 6 Vict. c. 82; 7 Vict. c. 21; 13 & 14 Vict. c. 97; 16 & 17 Vict. c. 9; 27 & 28 Vict. c. 56.[a] There are also the rules and regulations issued by the Stamp Office in 1816, as to allowances for spoiled or misused stamps, which give important elucidations. I print these at length in an Appendix.

Epitome of Stamp Acts.

By the 5 Will. and Mary, no instrument requiring a stamp can be pleaded or given in evidence in any court, until the duty and penalty, if any, have been paid and the instrument stamped. This is confirmed by 35 Geo. III., which enacts, in addition, that no policy shall be stamped after it has been signed by the insurers. By the 17 and 18 Vict. c. 83, unstamped, or improperly stamped, instruments are allowed in evidence in *criminal* proceedings. By the Common Law Procedure Act of 1854, in civil causes, the duty is imposed on an officer of the court of pointing out deficient duty on documents offered in evidence, and requiring immediate payment of duty and penalty; after which they may be received in evidence. This will scarcely apply to policies of Insurance, the pre-stamping of which is obligatory, and of their essences. By the 35 Geo. III, no broker or agent can recover commission, or

Stamp confers Legality

---

[a] There are many other Acts of Parliament relating in part or in whole to stamp-duties, but which are irrelevant to Marine Policies.

payment for his trouble in effecting an Insurance, where the policy is not on a stamp.

By the 7 Vict. c. 21, the following stamp-duties per cent. are imposed on Marine Insurance policies, viz. :—

Scale of present Stamp-duties.

	s	d
Where the premium actually paid or contracted for does not exceed 10*s.* per cent. . .	0	3
Not exceeding 20*s.*	0	6
„ „ 30*s.*	1	0
„ „ 40*s.*	2	0
„ „ 50*s.*	3	0
Exceeding 50*s.*	4	0

When the Insurance is for time,—

Not exceeding six calendar months . . .	2	6
„ „ twelve „ „ . . .	4	0

And no certain term or period greater than twelve months can be covered by one stamp (35 Geo. III. c. 63). Every fractional part of 100*l.* requires a stamp for 100*l.*

When separate interests belonging to two or more persons are insured by one policy, the fractional parts of each interest, separately, require a stamp for 100*l.* It is not sufficient to add the several interests together, and pay duty on the one fraction which may result on the united interests.

The duties recited above apply alike to policies on ships, merchandise, freight, and any other insurable interest.

By the 35 Geo. III. c. 63, the same stamps as for

policies are to be used for every contract or agreement made for an Insurance. And such contract or agreement shall be deemed and called an Insurance. Contracts or Agreements to Insure.

The 54 Geo. III. c. 144, recites that a great proportion of Sea-insurances in London is transacted at Lloyd's; and that a practice has prevailed there of using unstamped slips of paper for contracts or memorandums of Insurance, previously to the Insurance being made by regular stamped policies, as the law requires, from want of time to fill up such policies in the first instance; and whereas stamped policies are oftentimes neglected to be used afterwards, whereby the revenue is defrauded, and heavy penalties are incurred by underwriters and by the brokers, or others effecting such Insurances, and it is expedient to make further provision for preventing the said practice, and for better securing the duties as well as for facilitating the business of Insurance in London, duly stamped paper of convenient size shall be issued for the purpose of effecting contracts of Insurance thereon. Every contract of Insurance is to be dated on the day on which the underwriters are to sign; or if signed on different days by different underwriters, to be dated respectively. Penalty for signing without the proper date, 100*l.*

The contract or slip is to contain the name of the ship, the voyage or risk, the premium, the interest, the names of the consignees or consignors, and the name of the agent or broker. In default of all which, the contract to be null and void, to all intents and purposes.

Such stamped contracts or slips not only render it

obligatory on the underwriters to subscribe a regular policy, but are also available as competent instruments of Insurance in case of regular policies not being underwritten.

Upon production of the completed policy to the Commissioners, the stamp-duty on the slip is to be allowed. But in case the policy is not signed by all the underwriters who subscribed the slip, the relative part of the slip stamp-duty for the amount not underwritten on the policy is not returnable. No allowance to be made if the slip be underwritten to a greater amount than the stamp will carry, except if done inadvertently, and a regular stamped policy is made out and underwritten in full or in part in lieu thereof within three days afterwards, and application be made for the allowance within seven office days after the last subscription on the contract.

The Act also contains provision for slips spoiled before being signed by any underwriter, and when a regular stamped policy is not underwritten in lieu thereof; in which cases duty is to be allowed similarly to allowance on spoiled policy stamps.

Allowance of stamp-duty on slip may be made by Commissioners, although explanatory matter is added in the policy, and any errors in the slip be corrected—provided the policy has been underwritten before the determination of the risk, and that the interest remains in the same proprietorship.

The above enactments are confirmed under modifications by the 7 Vict. c. 21, which enacts that if any person shall become an insurer, or underwriter, &c.; or enter into any *contract*, *agreement*, or *memorandum* of Insu-

rance; or shall receive or contract for any premium, &c.; or agree to pay, or to allow in account, &c., relative to any loss, peril, or contingency, unless such Insurance is written on vellum, parchment, or paper, duly stamped; or if any person be concerned in any fraudulent contrivance, &c., to evade the stamp-duty, he shall forfeit for each offence 100*l.* Exception is made for the Corporations of the London Assurance and Royal Exchange Assurance, which are allowed to make agreement to insure by an unstamped label, slip, or memorandum; provided the date of each agreement be truly expressed thereon in words; and provided that a policy according to such agreement, on the proper stamp, be made out and executed within three office days after the time of making such agreement. These punitive forfeitures appear to override the penalties imposed by 35 Geo. III. c. 63, viz.: All persons engaged in an Insurance transaction without stamp, or who shall enter into any contract or agreement for such Insurance—including brokers, agents, scriveners, &c.—shall forfeit the sum of 500*l.* Commission, brokerage, &c., on such Insurances not recoverable.

Any policy or instrument, by whatever name called, for mutual Insurance, on which no premium or pecuniary consideration is previously paid, must bear the stamp of 2*s.* 6*d.* for each sum and fraction of 100*l.*, when the Insurance is for any voyage. When for a fixed period or term, mutual Insurances conform to the scale for time-policies stated above.

Stamps for Mutual Clubs

But Club-insurances being frequently continuous, and fresh policies not being usually issued for each new year of Insurance, the Act 9 Geo. IV. c. 49, makes it lawful to

stamp with additional stamps such policies of mutual Insurance, provided they have been originally stamped and signed or underwritten; and that at the time they are brought for additional stamping the sums insured thereby do not exceed the sums which the stamps previously impressed warrant.

Alterations in Policies.

By the 35 Geo. III. c. 63, lawful alterations, and that do not affect the amount of duty, may be made in a stamped policy, without infringing the Stamp Acts, provided they be made before the termination of the original risk, and in cases where the premium is not below 10*s.* per cent., and the interest has not changed hands, and the alteration does not prolong the term beyond the year.

Various Regulations.

By the same Act, the Commissioners are to supply parchment, paper, &c., and the cost of stamping, without charge on policies for 10,000*l.* and upwards.

They are to date each stamp on its being issued.

And they are to establish an office in London, near the Royal Exchange, for the distribution of policies.

They may keep accounts for duty with persons giving bond.

By the 43 Geo. III. c. 127, a document is not invalidated by bearing a stamp of greater value than that required, if it be of the proper denomination.

By the 5 and 6 Vict. c. 82, stamp-duties and regulations in Ireland are assimilated to those in England. Printing, stamping, and paper to be provided without charge on policies of 5,000*l.* and upwards in amount.

By the 54 Geo. III. c. 133, allowances may be made by the Commissioners under the following circumstances :— Allowances for spoiled stamps

1. When a policy is inadvertently filled up in an incorrect or improper manner, or obliterated, or otherwise spoiled for use; or filled up with an Insurance which is not proceeded with and not signed by any underwriter, application for allowance being made within six calendar months after the spoiling of the policy.

2. In case of a policy not being underwritten to the full amount the stamp will cover, upon another policy being substituted, having the same names, amount, interest, risk, &c., the duty may be allowed, if applied for within three calendar months after the date of the last subscription on the first policy.

3. On a policy substituted on account of an error in the original policy, the same underwriters signing the substitute, and making a declaration as to the cause of cancelment of original, and of return of premium thereon, and on satisfactory proof being given of the error; and provided that the new policy is signed before notice of the termination of the risk insured, and application made within three calendar months after date of the last subscription on the original policy.

4. Where the terms and conditions of an Insurance are afterwards altered by mutual agreement, and a substituted policy is produced to the Commissioners, having the same names, interest, &c., the underwriters signing a declaration as to cause of cancelment, and the new policy being underwritten before notice of termination of

the original risk; the interest remaining the property of the same persons, and application being made within three calendar months after the date of the last subscription on the original policy.

5. On a policy underwritten, subject to the approbation of the assured, such conditions being expressed in the policy, and the assured disapprove thereof within the time prescribed in the policy; underwriters signing a declaration as to cancelment and return of premium (with exception for underwriters dying, or becoming bankrupt, or insane, or leaving the kingdom), application being made within three calendar months after the time prescribed for such disapprobation.

6. On a ship-or-ship's policy, where the Insurance becomes void by want of interest or of risk, viz. in vessel, goods, or freight, &c., for a particular voyage, the ship not proceeding on that voyage, or not within the time specified; or by the non-shipment of the intended goods, or their shipment extra the specified time, or not on the ships described; or on its turning out that the assured had not an insurable interest: underwriters signing declaration as to cancelment and return of premium (with exception for death, bankruptcy, &c., of any underwriters); application being made within three months after assured, broker, or agent coming to a knowledge of the facts. But no allowance to be made if the underwriters have run any risk whatever under the policy, unless a substituted policy be produced, insuring the same interest and amount on some other voyage, or the same voyage at some other time.

The allowances in the above six cases are to be made in fresh policy stamps of the same amount and value as the stamps spoiled.

The Act further provides by § II. having reference to the second, third, and fourth cases; viz. as to a policy written on too large a stamp, a policy containing an error, and a policy mutually agreed to be altered; that if some only of the underwriters on the original policy sign the substituted policy, only a corresponding proportion of duty shall be allowed. Also, where the original policy is required by the assured for instituting legal proceedings against the underwriters on it, the Commissioners have power to cancel the stamp, and mark it with a denoting stamp, and give back the policy to the assured.

§ III. In the second case above, viz. a policy written on a stamp of too large value: if it be inconvenient to substitute another policy, the Commissioners may cancel the stamp, and mark the policy with a denoting stamp, showing the reduced amount of duty, and give policy stamps for the difference or excess of duty paid.

§ IV. In case of short interest on a policy, the Commissioners may allow the proportion of duty on the amount of such short interest, on the assured delivering the policy to be cancelled; provided a single interest exceed 1,000*l.* where the duty is 1*s.* 3*d.* per cent., or 500*l.* where the duty is 2*s.* 6*d.* per cent. and upwards. Allowance to be made in stamps for difference in duty. Underwriters (with exception for deceased, bankrupt, &c.) to sign declaration of short interest or over-insurance. Application to be made within three calendar months of

the value being known, if the assured be in Great Britain, or to his broker or agent, if he be out of the kingdom. But no allowance is to be made when the interest has been valued at the sum insured.

§ V. No allowance whatever to be made in the cases above mentioned, if the policy on which allowance is claimed have been underwritten to a greater amount than the stamp will cover.

§ VI. If, however, a policy be underwritten for more that the stamp will cover, by inadvertence, the Commissioners may make allowance for the duty, provided that another policy, bearing the proper stamp, be underwritten in lieu thereof, by the same persons, for the same amount, &c., within three days afterwards; and application be made for allowance within seven office days after the date of the last subscription on the erroneous policy; and when some only of the underwriters subscribe the substituted policy, the stamp to be cancelled, and a denoting stamp impressed on it for the sum or sums not transferred, and the policy may then be given up to the assured. If inconvenient to get a policy so substituted, duty may be allowed by the Commissioners upon production of the policy within three office days after the date of the last subscription; and a payment of the proper duty for the excess of interest-policy to be marked with a denoting stamp for the additional duty due and paid. These things being done, the policy is thereby rendered valid.

§ VII. In all the foregoing cases, it is necessary for underwriters to sign declaration of return of premium, writing

their surnames at length. Any underwriter refusing to sign declaration after agreeing to return the premium, subjects himself to forefeiture of 50*l.* for each offence.

§ VIII. The above allowances may be made, notwithstanding that from the full amount of premium declared to have been returned, there has been deducted the broker's commission thereon, and a consideration to the underwriters (when given) not exceeding one-half per cent. for their trouble.

§ IX. Penalty on any underwriter wilfully signing any false declaration in the above cases, 100*l.* for each offence.

§ X. Penalty for forging or counterfeiting, or causing to be forged, or aiding in forging, any underwriter's handwriting to a declaration, for the purpose of obtaining an allowance of duty; and for altering or assisting, &c., to alter such declaration, or for uttering and using such declaration, knowing it to be forged, or fraudulently altered, 500*l* for the first offence, for each person; and for the second and every subsequent offence the offender to be adjudged guilty of felony.

§ XI. Makes provision in respect of Quakers claiming allowance for spoiled stamps; and gives power to Commissioners to call for such written documents and other evidence as are requisite for substantiating claims for the allowances above recited.

§ XII. Empowers Commissioners of Stamps to authorise any of their officers to receive and examine claims for allowances, &c. and to do all other acts which the Commissioners themselves are authorised to do.

§ XIII. Penalty for making false oath, affidavit, or

affirmation, all such pains and penalties as are by law in force for persons convicted of wilful perjury.

As to Stamp-duty on Re-insurances.

The 27 & 28 Vict. c. 56, which legalises re-insurances, imposes on them the same stamps as on original insurances; and permits allowance to be made for such stamps, provided that application be made to the Commissioners within three calendar months after the termination of the risk on the policy of re-insurance; and it being proved to the satisfaction of the Commissioners, that the re-insurance is on the same property or interest and risk which had been previously insured to the same or a greater amount by one or more policies existing at the time of making such re-insurance, and duly stamped for denoting the full duty thereon. Such allowances to be made in like manner as for spoiled stamps under the Act of 54 Geo. III. c. 133, subject to all the provisions contained in that Act.

Reduced Duty on some Time-risks

By the last Stamp Enactment, 28 & 29 Vict. c. 96, the following scale of duties is chargeable on time-policies:—

For vessels lying in dock, harbour, or river for a term or period—

	per cent
Not exceeding one month . . .	Sixpence.
„ „ three months . . .	One shilling.
„ „ six „ . . .	Two shillings.
Exceeding „ „ . . .	Four „

Duty on mixed Voyage and Time-risks

Any Insurance on an interest insured for a voyage *and* a certain period, exceeding twenty-four hours after anchorage at destination, to be charged duty as for a voyage and also as for time.

The limitation is repealed for confining application for allowance of stamp-duty on re-assurances to three months.

Allowance on Re-insurance Duties

The most important part of this Statute, as affecting Marine Insurances, is that which relates to the stamping of policies issued in India, our colonies, or in foreign places, by agents of companies carrying on business in the United Kingdom, or by insurers out of this country whose policies are payable or recoverable within the United Kingdom. This re-stamping is additional to the policy-duty imposed by Indian, colonial, or foreign governments on the same insurances. The clause is as follows :—

Duties on English Policies issued abroad.

§ 15. The stamp-duties chargeable under this or any other Act for the time being in force upon or in respect of any Policy of Insurance of any description shall extend to and be deemed to be payable upon and in respect of any policy or other instrument of Insurance which shall be made or signed out of the United Kingdom, by or on behalf of any person carrying on the business of Insurance within the United Kingdom, or by which, according to any stipulation, agreement, or understanding, expressed or implied, any loss or damage, or any sum of money, shall be payable or recoverable in the United Kingdom upon the happening of any contingency whatever; and no such policy or other instrument of Insurance shall be valid or available in the United Kingdom for any purpose whatever, unless the same shall be duly stamped for denoting the duties chargeable thereon as aforesaid: Provided always that if such policy or instrument shall be brought to the Commissioners of Inland Revenue for the purpose of being stamped as aforesaid within two calendar months next after the same shall have been received in the United Kingdom, and upon proof of that fact to the satisfaction of the said Commissioners, they shall cause such policy or instrument to be duly stamped, on payment of the duties

chargeable thereon; but after the expiration of the said period it shall not be lawful for the Commissioners to permit the said policy or instrument to be stamped on any pretence whatever.

The foregoing ill-expressed clause cannot be considered a successful piece of law-making. On first coming into force, persons interested in Insurance complained that it was difficult to ascertain its meaning, and there still remains much obscurity as to its action. It does not appear that it is compulsory to stamp all the above-described policies when received in the United Kingdom, or that there is any penalty for omitting to do so; or for a company or agent paying the claim on an unstamped policy, if so inclined; or for an assured or his agent receiving payment upon an unstamped policy. The provisions of the Act seem to have power when such a policy is litigated, and the stamp is necessary before the policy can be brought into court. Most persons receiving these policies are unable to say whether litigation upon them will arise, and when that necessity is discovered it is generally too late to procure the impressed stamp. Thus the Act is very compulsory in some cases, apparently inoperative in the majority of instances, and could be readily evaded by those persons who receive such policies having them stopped on their way by an agent at a near continental port (Calais, for example), and only being forwarded to this country when the necessity occurs; by which they would compel the Commissioners to stamp the policies, in terms of the Act, as they would be brought to them within two months after having been received in the United Kingdom.

From the foregoing chapter it is to be gathered that for a policy of Insurance to have validity in law it must be properly signed, each underwriter signing Summary for himself, in letters at full length, his name, and the date and amount he undertakes; but that with regard to the actual handwriting little or no restriction exists, and little inquiry is made as to whether the substitute who signs for the underwriter has been specially empowered. In some cases the policy is to be sealed; and in the two chartered companies the seal of the corporation is sufficient, and a secretary's or other countersignature is intrusive as regards the rights of a policyholder; though it may be, with respect to the Company, a proper precaution to use for their security. It is signed only by one of the two parties to the contract, the insurer, who from the circumstance of his handwriting forming the conclusion of the document is called an 'underwriter,' and his signature 'the subscription.' The material on which the instrument is written is no longer of importance, and to all legal use, paper is as good as parchment. Where there are several underwriters, the priority of a signature gives to the insurer a certain leadership on that policy; and though all the underwriters are really co-ordinate and independent of each other, yet custom and comity give this tacit precedence to the leading man, and cast upon him some responsibility in deciding for the rest. As the subscription of each underwriter occupies a single line only, the amount he makes himself liable for is often technically called his 'line.' Before executing a policy, it is the underwriter's

duty to see that in all things the written document agrees with the stipulations of the slip. Every subscription is to be written in full and in writing letters, the only figures permitted being those in the date. For convenience, the line commences with numerals expressing the sum each subscriber insures, but these are surplusage, and the amount is repeated in words. The policies of Insurance Companies are made out in their office, and are signed by two or more of the directors, who often attach a seal, or their seals; though this is by custom, and does not necessarily increase the validity of the document. The two chartered corporations execute policies by simple sealing, according to the provision of their charters. After signature there must be delivery of the policy. Though in law good delivery is essential to the effect of a deed, in the daily practice of Insurance delivery is almost nominal, or scarcely even that, no separate action being made to represent legal delivery, which must consist, therefore, in the underwriter's handing back the policy after subscribing it; and nothing short of his absolutely withholding it from the assured would seem, among private underwriters, to amount to a non-delivery. But with the more complete organisation of Assurance Companies, greater consequences sometimes attend delivery; and in the case of *Xenos* v. *Wickham*, mentioned above, the court decided that the non-delivery of the policy was fatal to the delivery of the document; though the Chief Baron laid the stress rather on its non-acceptance by the assured.

A policy must be stamped before it is executed, fully,

both as to the amount it bears, and to the nature of the risk, different duties being chargeable according to the terms of Insurance. An unstamped policy is altogether out of court; and penalties attach to evasion of stamps. The slips which precede the policy should also bear stamps. The law is express on this point; but by tacit consent and universal custom the enactment is ignored—no stamps are ever used on the slips or labels, and no penalty has ever been enforced for evasion; so that it may be considered that that part of the statute has been purposely allowed to fall into desuetude.

I have given an epitome of the several Stamp Acts as they relate to risk, amount, allowances for spoiled stamps, penalties, &c.; and I print in an Appendix that very useful document, the Regulations issued by the Commissioners of Stamps in pursuance of the 54 George III. c. 133, for recovery of policy-duty.

CHAPTER IV.

THE POLICY.

THE LLOYD'S, or common form of policy of Marine Insurance, is in itself worthy of notice in several points of view. It is interesting from its age, and the obscurity of its origin; from its short and archaic style of verbiage; from the pious solemnity with which it opens, and which pervades its language; from the brevity and the tautology which it combines; from its elastic inclusiveness as a whole, and the rigid limitations of its clauses; and, lastly, from having been during the last century the groundwork of so vast an amount of litigation, and the cause of so many and remarkable judicial decisions.

General characteristics.

Its very name is of uncertain derivation. It is clearly quite distinct from that other word formed of the same letters, which from expressing the internal government of a city has grown into other meanings—the general scheme of a ministry, and the subtle management of private affairs. I do not think it derives from 'poll.' All deeds were divided into *indented* and *poll* deeds. Indentures were necessarily in counterpart, each party to them retaining one facsimile writing. By a legal fiction, they are supposed to have formed a single sheet (and

Its name.

probably at first they did so), and to have been cut apart with an undulating line; and being so indented, the counterparts could, on being collated, be identified by the coincidence of the edges. The other description of deed was *poll, i.e.* plain, or not indented, being *polled* or cut smooth. It was in one part only, and did not require the same sort of mutual identification as bipartite or tripartite documents. I believe we must look back farther for the origin of the name. The Saxons executed instruments by a cheirograph, signing their name and adding the form of a cross, as is still the common manner in Spain to this day: but when the Normans came, we learn from Sheppard, they introduced the consummation of deeds by simply impressing them with their seal, or even with a stick, or any substance capable of making a mark on wax. And we hear of charters or grants, the seals of which were bitten by the donor's teeth, or were impressed—and this is directly to our purpose—with his thumb; which, as warlike men of those days had heavy thumbs, was not a bad style of sealing on wax that was cool, as the tortuous lines of the skin have a certain individuality about them which would seem to identify such a signature. Signed, therefore, *pollice*, by the thumb, I take to be the real, though curious origin, of the name of this deed.[a] We need not, however, spend more time over its mere designation.

---

[a] This may elucidate the antique expression of 'having something under the thumb.' A distich, applying to what was the great Western capital, says that—

How long the present form has been in use in England is a point equally unsettled. There is no tradition as to its first introduction. Its language speaks some antiquity and permanence, but not necessarily a very high degree of age. Its form is probably substantially the same as it was three centuries ago; yet we know of some changes which have been made in it within the last two hundred years. An old policy preserved at Lloyd's, bearing date 1708, omits the clauses which relate specially to the body of the ship. It is evidently a form used for insuring goods only; whilst the policy now in use is applicable to all species of interest. It was probably brought into England by those Lombard merchants who have already been spoken of, translated, and modified to our national views. We are informed by Beckmann that in the year 1523 five persons who had received a commission for that purpose, drew up at Florence some articles relating to trade, which articles continued afterwards to be employed on the Exchange of Leghorn. Among their regulations appears to have been the prescribed form for policies. This, together with the commercial articles alluded to,

---

'Whenever to Bristol you come,
'Tis best to have something under the thumb.'

Which may mean, not a sufficiency of money for its exacting citizens, but a written and executed document for anything due or engaged by them.

The derivation of the English word 'poltroon' is held to be an abbreviation, through the French 'poltron,' of the Latin '*pollice truncatus*,' *cut in the thumb*. Thus, by an easy transition, we have the *pollice sigillata*, or *pollice impressa*. We do not assert, however, that this opinion must be held *de fide*.

was published by Magens in his treatise on 'Insurance,' Hamburg, 1753.

The same writer mentions that in 1537 the Emperor Charles V. enacted a short regulation respecting Bills of Exchange and Insurances, still extant; and in 1556, his son, Philip II. of Spain, gave the merchants of that country some rules for Insurance, and among them are found some forms of policies on ships going to the Indies.

The Chamber of Commerce was established at Amsterdam in 1598; and two years afterwards regulations for Marine Insurance were framed by the city of Middleburg, in Zealand. So that at the time of Elizabeth's Act, in 1601, in which the policy is mentioned by name, and Insurance spoken of as 'an usage among merchants both of this realm and of foreign nations, time out of mind,' it is certain that a received document was then in use, the recognised instrument by which Insurances were effected in several European countries. A writer also makes this gratifying remark concerning the English underwriters, that prior to the period of Elizabeth's Act, insurers had gained the confidence of the public so completely by the honesty and rectitude of their conduct, that few occasions of dispute had arisen.

We have in the contemporaneous adoption of the policy a confirmation of the fact that an invention or discovery beneficial to society has usually a rapid spread and an unobserved manner of progression, which give it almost the appearance of a simultaneous birth in two or more places or minds. We have seen instances of this apparent plurality of discovery in the finding of planets and comets,

in the invention and application of steam-power, in the electric telegraph, &c. With a certain prepared state for its reception, when men's minds have been already turned generally to some object, it wants but a spark to kindle the train. An event or a natural phenomenon may convey the germ to several communities at one moment; or nations may rapidly borrow from each other, almost without perceiving their indebtedness. In a few years after the adoption of an idea doubt and obscurity gather over its origin; another short period elapses, and each country claims its priority in the discovery or the invention.

In the sixteenth century internal and external communication was slow and incomplete contrasted with our age of rapidity; yet a system of correspondence was established between distant places to a more perfect degree than many suppose; and international commerce was beginning to make strides. We may consider, then, that the idea of Insurance and the production of the policy having once had birth, several countries made the adoption at once, and were under obligations to each other for its perfection.

Its Essence and Form

The form of a policy of Insurance is that of an obligation or covenant, in one part, signed by the obligor, who, for the consideration of a certain sum, the premium, confessed by him when he delivers the policy to have been paid him, agrees to take upon himself the weight and responsibility of those risks and contingent losses which affect ships and merchandise and some other interests arising in maritime commerce; and

which risks, &c., previously to such contract belonged to the shipowner, merchant, or whoever having a valid interest in the same had thereby a right to insure; *i.e.* to enter into this species of agreement.

It is not, as we shall hereafter see, every risk and detriment to which commercial enterprises are liable which the underwriter, in signing this engagement, takes upon himself. Various contingencies are specified, and certain losses, &c., are excluded by name in that part of the policy called the 'Warranty.' The insurer has also farther limitation of responsibility by custom and by legal decisions.

From many changes which have occurred, by the greater intercourse of nations, by the large expansion of commerce, and the rapidity of communication, the form of the Lloyd's policy can no longer be said to be a convenient one; and there would be little motive for retaining it at the present day, were it not that it is so encrusted with customs, decisions, and cases in law and with a traditionary interpretation, that the inconvenience might prove greater in giving it up. Marshall, speaking of the common policy, calls it 'extremely inaccurate, and unskilfully framed,'[b] and Justice Buller said of it, that 'it had always been considered in courts of law as an absurd and incoherent instrument.'

The common policy is, indeed, undergoing a gradual transformation, and is scarcely continued in its precise form anywhere but at Lloyd's. The various companies

[b] 'Law of Insurance.'

and mutual Insurance associations which take it for the basis of their engagement, modify it according to their several views, in its preamble and its warranties and by the introduction of fresh clauses. The mutual clubs attach to the policy a schedule of rules, and declare them to be essentially in the contract. The more recently-formed Insurance companies have greatly modernised its language in parts; and, with no irreverent feeling, have removed from it certain words and expressions which were reverently introduced at first, yet which now seem, to our habits of thought, better excluded from merely mercenary transactions and strictly commercial documents.

But whatever its perfections and its imperfections, the law recognises in the policy of Insurance a definite contract, the obligations of which must be perfectly fulfilled by him who has signed it, and who should have no escape until he has performed its covenants. It is true that its obligations are transient, lasting but a voyage, or a year; and that claims on the obligor are contingent; not certain, but depending on the happening of accidents; and that his liability is conditional to limitations and warranties contained in the instrument: but the policy is a bond; it is to be its own expositor whenever possible; and what is contracted within its four corners to be done is exigible by the obligee. And although the law looks to the general intention of Insurance in interpreting its doubtful or difficult or contradictory clauses, it is very jealous of allowing the 'custom of Lloyd's,' or 'mercantile usage,' to interfere with that interpretation, excluding custom

and usage when they contradict a printed or written clause, and using them as additional lights only when there is confusion or opposition in the wording of the policy itself, and doubtfulness in the intention of the insurer and the assured.

A policy stands in a somewhat different position when it is enforced by law and when its effect is sought to be given to it by customary settlement, or even by a friendly tribunal. The law ignores the circuitous methods by which in practice and by mercantile usage justice is yet done to a policy-holder; and sees in the policy—whatever may be the external means of compassing the assured's objects—an absolute bond or agreement which must be directly complied with; leaving the underwriter recourse to those usages or customary methods which among merchants and others may be common for his relief or repayment. As an instance of this distinction, let it be supposed then some goods belonging to a merchant, and insured by him, are jettisoned on the voyage—thrown overboard to secure the general safety. Those goods are absolutely lost to the assured merchant. True, the loss is of a specific character—one well known under the name of Jettison, and generally made good to the loser by a contribution of all interests which have been benefited by his particular loss. But genus goes before species; and he may choose to claim his loss on his policy which protects him from losses generally, and moreover protects him by name from this particular species of loss. The assured in this case has a legal right to come to his underwriters direct and immediately, and to leave them

to levy a contribution, *ad valorem*, on all the parties benefited by the jettison. We know practically that this claim on a policy has rarely been enforced. The loser of the jettisoned goods, by common custom, waits to be recouped his loss by a general average contribution, and comes only to his underwriters for the proportion of that contribution which falls on the goods they have insured. I take this as an example of two methods by which the policy may be dealt with, the different manner in which that instrument may be practically regarded, in custom and in law; and I select this particular instance because the direct right of the assured against his underwriters is sometimes lost sight of or disputed: and it is not unlikely that hereafter the question will have to be brought forward for distinct solution, as to the right of the assured to recover on his policy in cases where the customary general average contribution does not replace the whole value of his jettisoned goods, as declared in a valued policy. A chapter will be devoted to the divergences of law and custom, and I do no more here than indicate how practice in dealing with a policy may differ from the rule of law; and hope that the occasion may arise which will call forth an explicit declaration of what the law is on this and some other questioned rights on either side.

The following is the precise form of the Lloyd's policy:—

S. G.

£

Delivered the day
of 186
(*No.*)

Policy-Duty Stamp.

In the Name of God, Amen.

As well in own Name as for and in the Name and Names of all and every other Person or Persons to whom the same doth, may, or shall appertain, in Part or in all, doth make Assurance and cause and them, and every of them to be Insured, lost or not lost, at and from

Upon any kind of Goods and Merchandizes, and also upon the Body, Tackle, Apparel, Ordnance, Munition, Artillery, Boat, and other Furniture, of and in the good Ship or Vessel called the whereof is Master, under God, for this present Voyage or whosoever else shall go for Master in the said Ship, or by whatsoever other Name or Names the same Ship, or the Master thereof, is or shall be named or called; beginning the Adventure upon the said Goods and Merchandizes, from the Loading thereof aboard the said Ship,

upon the said Ship, &c.

and shall so continue and endure, during her abode there, upon the said Ship, &c. And further, until the said Ship, with all her Ordnance, Tackle, Apparel, &c., and Goods and Merchandizes whatsoever, shall be arrived at

upon the said Ship, &c., until she hath Moored at Anchor Twenty-four Hours in good safety; and upon the Goods and Merchandizes until the same be there discharged and safely landed. And it shall be lawful for

the said Ship, &c., in this Voyage, to proceed and sail to, and touch and stay at, any Ports or Places whatsoever

without prejudice to this Insurance. The said Ship, &c., Goods and Merchandizes, &c., for so much as concerns the Assured by Agreement between the Assured and Assurers in this Policy are, and shall be valued at

Touching the Adventures and Perils which we the Assurers are contented to bear, and do take upon us in this Voyage; they are, of the Seas, Men of War, Fire, Enemies, Pirates, Rovers, Thieves, Jettisons, Letters of Mart and Countermart, Surprisals, Takings at Sea, Arrests, Restraints and Detainments of all Kings, Princes and People, of what Nation, Condition, or Quality soever, Barretry of the Master and Mariners, and of all other Perils, Losses, and Misfortunes that have or shall come to the Hurt, Detriment, or Damage of the said Goods and Merchandizes and Ship, &c., or any part thereof. And in case of any Loss or Misfortune, it shall be lawful to the Assured, their Factors, Servants, and Assigns, to sue, labour, and travel for, in and about the Defence, Safeguard, and Recovery of the said Goods and Merchandizes and Ship, &c., or any part thereof, without prejudice to this Insurance; to the charges whereof we the Assurers will contribute each one according to the Rate and Quantity of his sum herein Assured. And it is agreed by us the Insurers that this Writing or Policy of Assurance shall be of as much force and effect as the surest Writing or Policy of Assurance heretofore made in *Lombard Street*, or in the *Royal Exchange*, or elsewhere in *London*. And so we the Assurers are contented, and do hereby promise and bind ourselves each one for his own part, our Heirs, Executors, and Goods, to the Assured, their Executors, Administrators, and Assigns, for the true performance of the Premises, confessing ourselves paid the Consideration due unto us for this Assur-

ance, by the Assured at and after the Rate of

IN WITNESS whereof, we the Assurers have subscribed our Names and Sums Assured in

N.B.—Corn, Fish, Salt, Fruit, Flour and Seed, are warranted free from Average, unless general or the Ship be stranded; Sugar, Tobacco, Hemp, Flax, Hides and Skins, are warranted free from Average under Five Pounds *per Cent.*, and all other Goods, also the Ship and Freight, are warranted free from Average under Three Pounds *per Cent.*, unless general or the Ship be stranded.

In considering this instrument, it will be convenient, first, to proceed through the policy, commenting on the clauses *seriatim*, and comparing step by step the modifications, omissions, and additions, which have been made by various bodies granting Marine Insurance, and who all adopt the Lloyd's policy as the basis of their several contracts. Some of the more important subjects, such as interest, premium, warranties, &c., will be reserved for succeeding chapters, and will be only lightly touched on in the present.

We observe at the top of the policy, in the left-hand margin, the two letters, S. G. Various surmises have been made as to their intention, some supposing them to be the initials of a motto or exordium standing at the head of the document, probably '*salutis gratiâ*'—'for the sake of safety.' This is a mere assumption, and it is more likely that the initials stand for the words *Ship* and *Goods*; because the present form of Lloyd's policy is

The initials.

applicable to both or either of those interests. This explanation is much confirmed by the circumstance that in policy preserved at Lloyd's, before alluded to, dated 1708, these letters do not appear, and in the body of that policy the clauses which relate specially to the ship are omitted.

The invocation

The authorised policy printed for the Stamp Office continues to invoke the name of the Supreme Being; but from a sense of propriety rather than from irreverence this sentence is omitted from nearly all modern policies, as it has been removed from the greater number of Bills of Lading now used; and it is now rarely seen in the office copies of the Lloyd's policy used by Insurance brokers and agents.

Name of the Assured

There is a little inaccuracy or clumsiness in the sentence which introduces the name of the person or persons who are insured. '*A. B.*, as well in *his* own name, as for and in the name and names of all and every other person or persons to whom the same doth, may, or shall appertain, in part or in all, doth make Assurance and cause *himself*, and them, and every of them to be insured,' &c.

The unclearness arises from the relative sentence, 'to whom the *same* doth, may, or shall appertain;' there being no previous correlative to the word *same*. It relates to the following member of the sentence, and must be understood to mean the *right* of persons intending to insure, or the policy itself. The right to insure is grounded on the possession of interest, and no person not having an interest can insure. The words are obscured further to ourselves by the manner in which the verb is

introduced, 'doth make Assurance;' for at the present day, the active verb 'to insure' is used for the act of those who grant Insurance, *i.e.* the underwriters; but the assured can use the neuter, 'I insure,' to mean that he protects himself by Insurance; and even can use it in the same sense transitively as 'I insure *with* the Royal Exchange,' &c. The intention of the first form of the verb in the policy is, however, cleared by the parallelism 'and cause himself and them, &c., to be insured.'

The policies of the Insurance Companies use a different form in their opening, going at once to the right of the individual to enter into this arrangement to insure. The following are common forms of commencement:—

Whereas *A.* and *B.* have represented to us whose hands are hereunto subscribed, and who are two of the Directors of the *C. D.* Marine Insurance Company, &c.; or, Whereas *A.* and *B.* have represented themselves to be intrusted as owner or agent to make the Insurance mentioned and described with the *C. D.* Insurance Company, &c.

Or, Whereas it hath been proposed to the *C. D.* Insurance Company, Limited, by *A.*, as well in *his* own name as for and in the name or names of all and every other person or persons to whom the subject-matter of this policy does, may, or shall appertain, in part or in all, to make with the said Company the Insurance hereinafter mentioned and described, &c.

The two chartered Companies adhere closely to the common or Lloyd's policy. The London Assurance, instead of introducing the initials S. G. in the margin, heads the policy with 'Ship and Goods;' and before the invocation, which both retain, proceeds, 'London Assurance, No. 7, Royal Exchange, London.' Below which

are the words, 'By the Governor and Company of the London Assurance.' In the portion of the form which defines the duration of the risk it inserts the printed warranty, 'Including the risk of craft. With leave to call at all ports and places on either side of and at the Cape of Good Hope.'

It terminates with 'The said Governor and Company are content with this Assurance for *l.*' 'By order of the Court of Directors.' The latter words stand over against the Common Seal, beside which also is the counter-signature of the Secretary as before mentioned. The policy contains, like the Lloyd's policy, a confession of payment of 'the consideration due unto them for this Assurance;' as also the date of the year, month, and day when the policy was issued.[c]

The policy of the Royal Exchange Assurance is, *mutatis mutandis*, in the same terms as that of the London, and is executed in the same manner.

The next words are 'lost or not lost.' These words are very important. For the protection of a commerce scattered over the world, it would not be sufficient to insure with an express or implied warranty that the Insurance took effect only provided the interest was in safety and completeness at the moment of effecting the policy. The Insurance is retrospective, and

The Contract retrospective.

---

[c] It is curious to know that dates were not inserted in deeds till the time of Edward II. and Edward III.; and, according to Sheppard, dates of place and time are not necessary to the validity of a deed, nor will a false date invalidate it.

able to commence the risk undertaken at a given former period fixed by a specified date, or from a particular spot; and this although, in fact, the event insured against is already past, or the interest insured already lost—if these facts are unknown to the assured. If, however, he has information of their loss, &c., or is in possession of facts not possessed by the underwriter, which would lead to a violent presumption as to the fact, the policy which he obtains is fraudulent and void from the beginning. The guarantee which is actually required by the underwriter, the condition on which his undertaking is based, is, that the interest shall have existence and be in safety at the time or place specified as the *commencement of the risk* Thus, if an underwriter insure, on July 1, a ship at sea, beginning the risk on June 1, past, and the vessel have been lost on May 30, there is no Insurance. But if she were lost on June 2, he would be liable to the assured for the loss. Or, if he insured goods from B to C, which goods were to be received at B from A, and they did not arrive at B at all, or in a damaged condition, then, in spite of the clause 'lost or not lost,' the risk would never have attached to him in the first case; and in the second, he would not be liable for the partial damage, but only for their *status in quo*, and any subsequent damage of the goods at and from the time of their shipment at B. In connection with this clause, the late case of *Gledstanes* v. *Royal Exchange Assurance* requires to be examined, but in that case there is another element, and its consideration is deferred to a later part of the volume.

At and from *C.* to *D.* upon any kind of goods and merchandizes, and also upon the body, tackle, apparel, ordnance, munition, artillery, boat, and other furniture, of and in his good ship or vessel called the *E.*, whereof is Master, under God, for this present voyage, *F.*, or whomsoever else shall go for Master in the said ship, or by whatsoever other name or names the said ship, or the Master thereof, is or shall be named or called; beginning the adventure upon the said goods and merchandizes, from the loading thereof aboard the said ship, *as above*, upon the said ship, &c.; and so shall continue and endure, during her abode there, upon the said ship, *&c.* And further, until the said ship, with all her ordnance, tackle, apparel, &c., and goods and merchandizes whatsoever, shall be arrived at, *as above*, upon the said ship, *&c.*, until she hath moored at anchor twenty-four hours in good safety; and upon the goods and merchandizes until the same be there discharged and safely landed.

Definition of Voyage and Interest

In this passage there is a good deal of pleonasm. The desire in the framers of the policy to define and limit the risks strictly, has led to tautology; whilst reverential feeling, or possibly the manner of the age, again introduces the sacred name into its language. This section contains (1), a definition of the voyage; (2), a general description of the interest insured—or rather an enumeration of insurable interests—for the particular subject-matter of the Insurance is inserted lower down in the policy; (3), the identification of the ship by its name and the name of its master; (4), precise limitation of the endurance of the risk. The words 'upon the said ship, &c.' are repeated; the first time they are used they relate to goods loaded on board the vessel; the second time they speak of the ship being the subject of Insurance, the adventure continuing upon the ship till she is moored, &c.

(1) The words 'at and from' are comprehensive, and would appear to cover risks previous to the commencement of the actual voyage insured. In a limited sense they have this value. I am inclined, however, to think that the framers of this policy merely used the two words as being parallel, and introduced them like the redundancies of legal diction ;[d] seeking by their means to make the contract perfect between the ship and the starting-point. Yet they are sometimes strained to a larger meaning. It is clear that a ship insured from London to Bombay would not cover the vessel whilst she lay an indefinite time in docks or the river, and therefore there is a space left after the words 'upon the ship, &c.,' for further definition. With goods, there is greater need of this provision; for the process of loading vessels is gradual and often prolonged; and some merchandise is necessarily the first put into the hold, where it remains till the loading is completed and the vessel leaves her berth. Now, the risk of the merchandise so loaded is taken by the underwriters, even though the loading occupies many days or many weeks; for the underwriters' adventure, *i. e.* responsibility, is stated to begin 'from the loading thereof aboard the ship,' &c. So that, as regards merchandise, the word 'at' strictly applies, and is necessary to complete the definition of their liability to the assured. The inception of the underwriters' risk on

[d] Or, the tautology of some people's conversation, who think they give force by repeating the same idea in synonymous words, as, *e. g.*, 'of any sort or kind,' 'in any shape or way,' &c.

ship is considered to be the commencement of loading the cargo; for that is a positive act, defining the beginning of a voyage or adventure; and the inception of risk on a freight policy is also at the commencement of loading; the underwriter becomes from that time responsible for the entire freight, should the ship or voyage be lost; although only a part of the cargo—it may be a very small part—be on board at the time when an accident happens which leads to the loss of the ship or the voyage.

There is no difficulty when the Insurance on a ship is 'for time,' in dating the commencement or inception of the risk. It is defined to take effect at a certain day or hour; as, 'at and from noon of the 1st day of July,' &c. The only difficulty which is here likely to present itself is when a succeeding policy, effected with different underwriters than those who subscribed a previous Insurance, takes effect whilst the vessel is at sea. Should she never again be heard of, it is uncertain in the currency of which policy the loss happened; uncertain and not provable, in many cases, whether the second policy ever had an inception of risk; uncertain also and not provable in case the vessel abandoned and derelict were brought into port and there repaired, as to what state of completeness or of damage she was in at the hour in which the second policy entered upon the risk. I am supposing, in this latter case, that no human evidence is obtainable. With regard to merchandise, the protection of the Insurance during its loading and waiting till the ship sails, is confirmed by the subsequent clause, 'during her abode there;' which provision seems also to apply to the vessel, though from the word-

ing of the form, and its interruption for the purpose of filling in written particulars, this is not clear.

The limitation of the underwriters' risk at the place of destination is more express. On the ship it is 'until she hath been moored at anchor twenty-four hours in good safety.' That means in the proper and ordinary place of mooring; if in a dock, by the usual way of securing vessels therein, though the anchors may not be used. The anchorage which liberates underwriters after twenty-four hours, must be the proper and final place, customary at the port. They would not be released by a ship anchoring a day and night outside a harbour waiting for sufficient water to enter it. On the other hand, the anchorage need not be a physically safe one, if it is the usual place of mooring. It may be in a roadstead, or on an open shore, a dangerous place for lying; but if it be the agreed terminus of the voyage and the acknowledged anchorage of the place it is sufficient.[e] It is not quite clear in such a case to what extent the plea in defence of an action, that the vessel had been moored twenty-four hours in good safety before she was lost, would serve against a replication, that before the twenty-four hours had expired a storm had arisen which, after the expiry of the time, drove her from her anchors and wrecked her on the shore; that though she was not driven from her moorings till the twenty-fifth hour, yet she was not in 'good safety' after the twenty-third hour; and that

---

[e] See *Haughton and another* v. *Empire Marine Insurance Company.* Excheq. Feb. 26, 1866.

causes were at work, increasing in violence, before the underwriters' risk ceased, though the fruit of these was not seen till after the warranted time had expired.

When written modifications, or new terms, as to the points of departure and of destination—often called the *terminus à quo* and the *terminus ad quem*—they must be read in with the printed text of the policy. If a greater or a contradictory change is intended, the printed words should be struck out. Where a policy was effected on ship to *A.*, and thirty days after her arrival there, it has been decided in the case of *The Mercantile Marine Insurance Company* v. *Titherington* (Q. B. Nov. 1864), that the thirty days do not commence running till after the expiry of the twenty-four hours named in the printed policy.

The underwriters' liability on goods terminates only when they have discharged and safely landed at the place of destination. The landing of goods very commonly takes place at a wharf, or in docks, where the merchandise is discharged at once on terra firma; but it likewise is very frequent that lighters, boats, &c., have to be used to land the goods. If such be the known custom and necessity of the place, the underwriters' risk continues whilst the goods are in the boats, lighters, &c., and until they have once been deposited on the firm ground. The warranty is complied with if the goods have once been on the land at the intended place of destination; and if they are afterwards carried by boats or other conveyance to another wharf, dock, warehouse, or place, it is no longer at the undertaker's risk. Not as doubting the insurer's responsibility during the process of landing by

boats or otherwise, but rather to give increased clearness and certainty, it is very general to add the written words in the policy, 'including all risk in (or of) craft and boats.' There is this attendant danger in the habitual use of an added written clause, that it implies a negative in the printed words without the addition. This is not logical; but an argument has sometimes been successfully grounded on the use of additional precautionary words; whereas the *à fortiori* expression added does not reduce the standing condition which precedes it When the clause relating to craft and boats is introduced, the risk of loading goods at shipment seems also covered by it.

And it shall be lawful for the said ship, &c., in this voyage, to proceed and sail to, and touch and stay at, any port or places whatsoever, without prejudice to this Insurance. Permission to touch and stay at.

Nothing can be larger than the permissions here given; yet the course of a voyage is much restricted both by law and custom. Whatever may have been the intention of the framers of the policy, a ship is not now allowed to deviate from the exact route described in the Insurance or to enter ports not specified for the purposes of trade, or gaining freight. After the word 'whatsoever' in the above clause, some persons in filling up the policy add 'or wheresoever;' but neither the printed or the written allowance is available to the assured if the vessel, for lucrative purposes, puts into additional ports not agreed to, or goes to the agreed ports in a different order of succession than that prescribed. To enter unnamed ports, or to change the succession of named ports

and places, is held to be deviation; and deviation vitiates the policy at and after the moment of deviation. How far this rigid law should be enforced to innocent shippers of goods on a vessel where the master, in ignorance or for some particular object, goes to a port not named, and thereby defeats all the insurances on the cargo, is a difficult question; especially if it can be shown that his deviation did not conduce to a subsequent accident by which the merchandise was damaged. A ship may vary its route, or put into unnamed ports and places for the purpose of refuge, repairs, or in any pursuit of the general safety; to coal, to procure water or supplies, or to tow into port another ship disabled or in distress, if from humanity. If she gain a salvage-payment by doing so, previously agreed on, the divergence from the route may be held to be a deviation from the voyage, so as to excuse the underwriters. An insured shipper of goods, whose policy becomes thus vacated has a remedy against the captain and owners for damages, which, however, in a large number of cases, would prove inadequate or quite unavailing; or he may re-establish his claims on his policy if the conduct of the master amounts in law to Barratry. There is a blank left in the form of policy after the words 'any ports or places whatsoever,' and in this space may be inserted the specified places where, by agreement with the underwriters, the ship has liberty to go for the purposes of trade. Any other conditions or enlargements of the voyage can here be introduced. Thus, where the order of two or more ports is uncertain, such words of permission as the following are used:—

'Forwards and backwards, and backwards and forwards, in any order or succession.' In filling up a policy where more than one port of lading or of discharge, the following form is often employed :—*A.* $\frac{\text{and}}{\text{or}}$ *B.* This gives three options, viz. of either port or both.

The said ship, &c., goods and merchandizes, &c., for so much as concerns the Assured by agreement between the Assured and Assurers in this policy are, and shall be valued at Value of Interest

Policies of Insurance are distinguished as 'valued' or 'open.' From the very precise wording of the form recited above, it seems probable that it was contemplated at first that a definite value of the interest insured should be established and agreed on in every case between the two parties to the Insurance contract. And no better or more comprehensive words could be selected than those used in the policy for expressing that agreement. The latter is bound to indemnify up to the specified value in case of loss, and to contribute on a sum not exceeding that value in case of general average, supposing the whole value to remain at the time an average contribution is made. But the clause carefully states that the value is one by agreement, and that it concerns only the assured and the insurer. Such valuation has no value or effect beyond the policy. When value comes in as an element affecting other persons—contributaries to general average, for instance—the real ascertained value must be taken. The frequent reference of insured persons to their policy when called on to declare the value of their ship, goods, &c, for contribution, is quite beside

the question. The value in a policy may be sometimes a guide, because persons often insure as nearly as possible the value of their interest; but this is by no means universal. The rise and fall of markets constantly disturbs the correspondence of actual and insured values, leaving the latter below or above the value of the merchandise at the terminus of the voyage where contribution is to be made to general average. Some merchants habitually put, by estimate, a very full value on their goods; others act on the opposite plan, valuing their interest low, thereby saving premium, and themselves running the risk for any deficiency of Insurance.

The valuation of ships for Insurance is more difficult than of goods. Age, injuries, the state of the carrying trade, and other influences affect the value of shipping always; and one ship differs from another in internal condition by degrees hard to ascertain, and by the varying care with which one owner will keep a vessel in repair and in stores. A ship's value in a policy is generally far more arbitrary and speculative than that of merchandise. As a rule, underwriters prefer a relatively high value, especially on a vessel of low class, as a means of causing the owner to run part of the risk with themselves. Thus, if a ship worth about 600*l.* and insured thereat, be valued in the policy in this arbitrary manner, at 800*l.*, the assured bears, in cases of accidents, one fourth of the responsibility; and this affords some guarantee to the underwriter of the owner's care and good faith. The subject of the true value of a ship was discussed in the jurisprudence section of the Asso-

ciation for Promoting Social Science, held in Edinburgh in September 1863; and I print in an Appendix the paper embodying my views of the question, read at that meeting.

When the value of the interest insured is not known, or cannot be fixed, at the time of executing the policy, the nature of the interest, simply, is inserted in the space following the words 'valued at'—as 'on ship,' or 'on freight.' Sometimes there is an addition to this; as 'on produce, as interest may appear;' or 'on cotton, to be declared and valued hereafter.' Sometimes, though quantities and other circumstances are left open, the basis of valuation is fixed; thus, 'on silk and tea; the invoice dollar to be valued at five shillings;' or, 'ten per cent to be added to invoice cost,' &c. Policies are consequently distinguished as 'valued,' and 'unvalued' or 'open.' An interest being valued, many questions are shut out; and a demand by the underwriters that the value shall be opened, that is, exhibited and proved, can only be enforced afterwards upon a strong suspicion that the valuation was fraudulently excessive.

When merchandise, &c., is expected to be shipped or received by a ship unknown, or by several vessels, the description inserted in the policy is 'by ships;' or 'by any ship or ships;' or 'by ship or ships, $\frac{\text{and}}{\text{or}}$ steamer or steamers;' this last declaration giving several options or combinations; viz., of one ship, one steamer, several ships, several steamers, a ship and a steamer, several ships and steamers, &c. Such Insurances are called 'ship-or-ships' policies, also 'open' and 'floating' policies.

Another chapter will be devoted to the subject of interests. What has been spoken of them in this place concerns their relation to the form of policy in use in England, and to the manner of filling up the space or blank left for their insertion.

Though the words in the printed form clearly indicate that the space about which we have been speaking is the right place for fixing the agreed value of the thing insured, some persons in filling up a policy use a different method, and one which has given rise to after-questions. In the space after the words 'valued at,' they write, *e. g.* 'on Coals, 400*l.*;' or '1,000*l.* on Ship;' and then, at the foot of the policy, just above the signatures of the underwriters, they define the valuation. So that the figures mentioned in the space left for valuation in the body of the policy mean, in this case, nothing more than that a certain sum, as 400*l*, is insured on coals, but the value of those coals is neither agreed or determined. And other persons, though they insert in the proper place such a declaration as above mentioned, '1,000*l.* on Ship,' fail to define at foot the value of the vessel, and the policy remains, in fact, an open or unvalued insurance.

In the late case of *Wilson* v. *Nelson* (Queen's Bench, May 1864), which was that of a freight policy, no value was filled into the space left for valuation in the body of the policy; but instead, the words 'as below' were inserted; and then, at foot, above the underwriters' names, was written '1,300*l.* on Freight.' The Court held that this was not a valued policy.

Touching the adventures and perils which we the assurers are contented to bear, and do take upon us in this voyage; they are, of the seas, men of war, fire, enemies, pirates, rovers, thieves, jettisons, letters of mart and counter-mart, surprisals, takings at sea, arrests, restraints, and detainments of all kings, princes, and people, of what nation, condition, or quality soever, barretry of the master and mariners, and of all other perils, losses, and misfortunes that have or shall come to the hurt, detriment, or damage of the said goods and merchandizes and ship, &c., or any part thereof. The Risks undertaken.

Now, it is to be noticed that this list of contingencies, however extensive, and ending with a sweeping comprehension of 'all other perils, losses, and misfortunes,' does not amount to a plenary indemnity against every risk and expense and disappointment which may attend a merchant or a shipowner in his pursuit of his trade. In spite of its perplexing iterations, the repetition making doubtful the meaning of words previously used, it is clearly in its nature and intention a definition of the liabilities which the underwriter contracts to take upon himself by his signature to the policy; and therefore when it is urged in argument, as it often is, that a policy is a writing of indemnity, the answer must be that the indemnity is one limited by the terms contained in the contract itself, and to which regard must always be had that it is an *imperfect* indemnity; certainly not co-extensive with every possible loss which may happen to the assured, but at the same time very fully answering the purposes for which the instrument was originally designed.

I accused this part of the policy of tautology, short as it is. Out of sixteen perils enumerated by name, twelve

are results of human violence, of which the greater number relate to public enmity and warfare, and the rest to authorised depredators carrying 'letters of mart,' or, as we should say, 'of marque,' and private miscreants, corsairs, buccaneers, and other highwaymen of the ocean.

When we read this manifold provision for one description of risk, a picture is presented to us of the times in which the policy had its beginning, of the special dangers to life and property affecting those who went down to the sea in ships and occupied their business in great waters. The natural dangers mentioned in this paragraph are two only, seas and fire; to which may be added the third, of mixed character, the necessary but voluntary sacrifice of property called Jettison; and the framers of the policy expend their ingenuity and care against dangers arising from violence, not of the elements, but of mankind; whereas it might have been supposed that in a document where many things are expressed in few words, it would have been sufficient to cover acts of public and private depredation by a couple of words—enemies and thieves.

I remove from the text, in the form of an Appendix, a note to this passage, giving some account of that commencement of maritime commerce between Italy—and, through her, with the East—and this country, by means of the little Venetian fleet, mercantile in intention, but partly belligerent by necessity, known as the Flanders Galleys, which formed so important a bond in connecting England with her continental cotemporaries, with the coast of Africa, and with the shores and islands of Asia. In

giving this condensed view, I am greatly indebted to Mr. Rawdon Brown's important and valuable 'Calendar of Venetian and other Italian State Papers relating to England' (vol. i. 1864). It affords not only an interesting insight into European trade in the fourteenth and fifteenth centuries, but also serves to explain the greatness and frequency of those dangers, arising from human agency, which interfered with the young beginnings of commercial navigation, and claimed so large a proportion of the sea perils provided against in the policy of Marine Insurance. On comparing that list with the sketch given in this note the Lombardic origin of the present policy will find confirmation, and a rough guess may be hazarded at the date of its first conception.[e]

After the catalogue of risks thus particularised, comes a sweeping immunity to the assured of 'all other perils, losses, and misfortunes,' &c. &c.; so that if practice and case-law had not subsequently placed some limits, it is difficult to see where an underwriter's liability would cease, or what kind of contingency could have been excluded from his contract:—

> And in case of any loss or misfortune, it shall be lawful to the assured, their factors, servants, and assigns, to sue, labour, and travel for, in, and about the defence, safeguard, and recovery of the said goods and merchandizes and ship, &c., or any part thereof, without prejudice to this Insurance; to the charges whereof we the assurers will contribute each one according to the rate and quantity of his sum herein assured. The Sue and Labour Clause

[e] Appendix.

Great and many have been the attempts in the interests of the assured to expand this clause in a very comprehensive manner, and to give it a meaning not dreamed of by the compilers of the policy. But a candid and careful reader will not have difficulty in apprehending the intention of the words, which make two very equitable provisions; the first that the rights of the assured under the policy (abandonment, for example) shall not be adversely affected by any steps he takes or causes to be taken for defending, saving or recovering the interest insured when endangered or apparently lost. His efforts to prevent or lessen the ultimate loss shall not be turned against himself; for to do so is to act unwisely as well as unjustifiably, and leads to the result of a selfish indifference and inaction on the part of the assured, who is taught by experience to avoid any salutary exertions which, being made, may defeat his proper claim. The second part of the clause contracts that so far from such endeavours being misused against the assured, the underwriters will contribute towards the expenses incurred in making them.

Some of the most modern Insurance Companies have introduced into their policies a very satisfactory and equitable clause, to the effect that 'no steps taken by the assured or the insurers for the preservation of the property insured shall be deemed or construed to be a waiver or an acceptance of an abandonment.' This removes a restraint from both parties which has often acted and does still act, when the clause does not exist, very injuriously in the case of property wrecked, involved and imperilled.

Other uses have, however, been made and attempted to be made of this clause in the Lloyd's policy, as has been already mentioned; and conspicuously in the case of 'the Bombay' and *Booth* v. *Gair*, the 'sue and labour' clause was worked very hard to cover transhipping expenses, but unsuccessfully. In *Kidstone* v. *Empire Marine Insurance Company* (Common Pleas, May 1866; Exchequer Chamber, Feb. 1867) its full but legitimate value was allowed to prevail.

And it is agreed by us the insurers that this writing or policy of assurance shall be of as much force and effect as the surest writing or policy of assurance heretofore made in *Lombard Street*, or in the *Royal Exchange*, or elsewhere in *London*. Confirmation Clause

These words form a general guarantee of good faith on the part of the underwriters; and they point out the two special places where Insurances had been accustomed to be made. The expression 'heretofore' does not necessarily imply a perfect-past; it may, and probably does here, mean a continuance, as if it had been written 'heretofore and still made,' &c.

And so we the assurers are contented, and do hereby promise and bind ourselves each one for his own part, our heirs, executors, and goods, to the assured, their executors, administrators, and assigns, for the true performance of the premises. Binding Clause

It is an essential feature of a fagot-policy like that of Lloyd's, where one document of contract is signed by several contractors or underwriters, that though they

unite in signing the instrument, theirs is a mere juxtaposition of names, and there is no solidarity, no common responsibility between them. This fact is of the highest importance to observe. It is one which the law fully upholds. Each insurer contracts with the assured for himself alone, and makes his own estate liable for the contingent debt he incurs. For convenience sake, underwriters often group themselves in one, or are so grouped, upon a presumption that their interests are similar though individual; and they frequently act together, or agree to leave their common question in the hands of one of their number for settlement: yet every underwriter has the right to decide for himself; and one is not bound by the action, the concession, or the resistance of another. By the procedure of Common Law, in bringing an action on a fagot-policy, it would be necessary to serve a writ on every underwriter: but it is nearly always deemed sufficient for trying the rights of the assured, to bring the action against one underwriter only on the policy, generally the first name, and the result is accepted by the rest, who contribute rateably to the costs incurred.

An Insurance Company, though internally composed of many proprietors, among whom solidarity does exist, is externally a unit, and for all purposes of claims, actions, or suits is an individual underwriter. Proceedings in law are brought against its chairman, or one or more of its directors, or its registered officer; or, in the case of the two chartered companies, by name, against 'The London Assurance' or 'The Royal Exchange Assurance,' as bodies corporate.

Mutual Insurance clubs are externally and for some purposes taken as individual bodies, and their proceedings are managed by a committee and a secretary, or manager, the whole controlled by a general meeting; but internally they are not partnerships as Insurance Companies are; but each member has a right of action against the others, which partners could not have. In an action against a club, a writ would be served against each member; but usually, as in the case of the more casual association of underwriters on a Lloyd's or other fagot-policy, it suffices to bring the action against one member of the club, the decision being accepted by the rest.

When a private underwriter, being one member of a firm, subscribes policies, he does it in a single name, and is individually responsible, even when the whole firm participate in the arrangement, and it is known by those concerned that this is the case. But an Insurance Company, though treated as an individual in respect of its collective acts, disintegrates, so to speak, when the company becomes insolvent, and a creditor on a policy can select any partner or shareholder against whom to prefer his claim. It was formerly thought and held that Insurance Companies were not subjects for limitation of liability, in spite of strenuous denial expressed in the policies of certain of them that the company would be liable for more than its subscribed capital, or individual members liable for more than their subscription. Limited liability is now conceded to companies carrying on the business of Insurance, and several of the more modern of these associations add 'limited' to their title. It may be

remarked that, as a general rule, Insurance offices are tenacious of life; and that though in their early course they pass through certain trials and dangers, they are not easily killed or wrecked; and the number of Insurance Companies of life, fire, or marine, which have produced ultimate loss to policy-holders is very small indeed. When there have been sufferers, they have been amongst the proprietors.

The Receipt Clause.

Confessing ourselves paid the consideration due unto us for this Assurance, by the assured at and after the rate of .

The condition precedent of the payment of the premiums to the validity of an Insurance has already been remarked upon; and that herein our theory of the system differs somewhat from that of France; for there a mutual duty is claimed, involving the right of set-off by the underwriter, in case of loss, of the premium unpaid. Familiar as the word *premium* is to the lips of all persons concerned with Insurances, and familiar as most suppose themselves to be with the short document called the policy, it has probably struck very few indeed that the word *premium* never occurs once in the policy. Little, therefore, is to be built upon that mere expression. 'Consideration' is the word used; and this price or consideration is confessed by the underwriter when he signs the policy to be paid him; and is stated by him, in explanation, to be due for the writing of Insurance which he executes and issues. Both parties are dealing with the future, or with a past equally unknown; but the

present bargain is paid for on the spot when the document which engages the underwriter is signed.

That this confession of prompt payment is a fiction in the generality of cases, and that various and complicated questions arise as the consequence of that fiction, will be shown in a subsequent chapter.

In witness whereof, we the assurers have subscribed our names and sums assured in . The Confirmation.

The manner of executing a policy has already been described; but in Liverpool, where there are circles of underwriters acting by one broker, the plan has been introduced of printing his constituents' names in the margin, and making one signature of the underwriting broker or agent suffice for all.

N.B.—Corn, fish, salt, fruit, flour, and seed are warranted free from average, unless general or the ship be stranded; sugar, tobacco, hemp, flax, hides, and skins are warranted free from average, under five pounds *per cent.*, and all other goods, also the ship and freight are warranted free from average, under three pounds *per cent.*, unless general or the ship be stranded. The Warranty or Memorandum.

The important, though technical, paragraph given above, and called the Warranty, is apparently of later date than the rest of the policy. It is a limitation by name of certain interests, which being from their nature more susceptible of injury than other merchandise, are excluded by name from forming claims against the underwriter, except where they are totally lost, or are contributaries to general average. The Lloyd's policy names

six substances which are thus excluded; and afterwards six others which are not entirely deprived of a remedy against the underwriter in case of their being damaged, but exclude it in some proportion, found by experience of their susceptibility to external injury more than other goods, or their liability to waste, decay, heat, &c., from their own natural qualities; but which demand for the underwriter's protection that he should be free from claims for the minor damages arising to such goods, and only liable for loss or injury to them when it arrives at the extent of 5 per cent, *i.e.* a twentieth part of their value. The warranty then continues, that all goods, the six species previously named excepted, and also ships and freight, have in like manner a limit, viz. 3 per cent., established on their value, below which injury and loss, though arising from sea-perils, are not claimable from the underwriters. General Average—the contribution to sacrifices or expenses made for the general benefit when the associated interests are imperilled by fortunes of the sea—is not subject to this test or limit, but is claimable on a policy, however small in amount. Besides general average, this warranty makes one other remarkable distinction—that in favour of the stranding of the vessel. If a ship on any part of her voyage accidentally comes to the ground and stays there, or even stops upon some wreck or other substance which has itself become fixed on the ground, the test of percentage in the warranty is destroyed, whether for merchandise, ships, freight, or other interest; and the damage, however small, accruing to the thing itself is exigible of the underwriter. And

this is so by virtue of the act of stranding, which destroys and abolishes the warranty with its several conditions; and removing it altogether from the contract, admits against the underwriter all sea-damages to the interest insured, previous to the stranding as well as subsequent to it; damages also which were not consequential to the stranding, but such as might even be demonstrated to have happened quite independently.

The marked distinction in favour of stranding seems to have been introduced on account of the notoriety of such an accident, separating it from less defined or unknown causes of damage; rendering it highly probable that damage to ship or merchandise would be the result from the event of striking and remaining on rocks or sands or the shore.

The catalogue of exempted or partially exempted articles called the Warranty or Memorandum has been frequently varied or modified. As new productions have been added to commerce, and a greater experience has been obtained of those previously known, Insurance Companies have taken their own view of the risk attaching to merchandise, and whilst adopting the Lloyd's Memorandum for their basis, have rearranged it to their own satisfaction. One company adds *saltpetre* in the list of goods free from average, another introduces *rice* in the number of those made free under 5 per cent., a third classes *jute* (a fibre only imported in late years) with hemp and flax. Indian offices exclude altogether from particular-average metals and liquids, and, in general, raise the scale of exclusion from average. Different

insurers take their own view; and when they use the Lloyd's policy, make specific variations from the established memorandum in writing. Such arrangements between the assured and insurer in this part of the policy resolve themselves into questions of premium.

The subscriptions of the underwriters follow the printed warranty, except when the space immediately below it is occupied by explanations or further conditions; in which case the insurers' signatures are postponed to those written clauses, and complete the document.

Such is the common or Lloyd's policy—an instrument which has had an important part in the commerce of the world, and especially of our own country. Where it is not used in the British empire and dependencies in its pure form, it generally forms the basis of the Insurance contract. Most mutual Marine Insurance Associations avail themselves of it, either as the groundwork of their reciprocal agreement, adding to it a schedule or a book of special rules, or on account of the stamp-duty, purchasing stamped policies as a convenient method of payment of the duty. There are, however, mutual clubs which dispense altogether with the Lloyd's policy.

If we compare this instrument with the policies of foreign countries, we are struck by the contrast it presents to them. *They* are modern compositions, conceived by modern thought, and couched in the language of the present day. They miss the brevity of the document we have been considering, but it may be urged they are more exact and perspicuous. We look upon our own as a curious and venerable institution, one

Foreign Policies

which our conservative character would be sorry to discard. It is like some antique vessel drawn up from the sea, with which its keel has long been conversant, strangely encrusted with barnacles and other marine growths over all its surface, an incrustation we cannot conveniently disturb; and though beside the trim and commodious forms of modern shipbuilding it looks a quaint anachronism, we preserve it as a relic of the past, and in gratitude for its former usefulness. The policy largely in use in Paris may be taken as a representative of the continental form. It is highly organic, methodical, and detailed. It arranges in twenty-nine Articles the terms and provisions of the contract undertaken by the insurer. It endeavours to define by name each specific risk of the underwriter, and to state the excepted cases and positions exhaustively. Were not the document so long as it is, a study of its minute provisions arranged in neat formulæ which have a scientific exactness, could leave little doubt in the mind of the assured as to the protection afforded him by his Insurance on all possible occasions. But to master completely an instrument so protracted and filled with particulars, requires careful and frequent reading and a retentive memory. The list of goods in the table of '*franchises*' contains more than one hundred and ten articles of commerce.

Upon a policy so explicit as to the duties and rights of the parties concerned, and so minutely specific in details, few questions of construction are likely to arise; and when it has occasion to refer to the French Commercial Code, it claims direction from a body of laws

having a similar regular organisation, and expressed in well-understood modern language. It is to the credit of France, that in her law and in her science clear thoughts are expressed in clear words, however much her publicists and diplomatists may adopt a cloudy inflation of style, and use expressions which contain a *double entendre*, making speech a method to conceal thought.

In an Appendix I give a translation of the Paris policy, and only here point out a few remarkable passages in it, wherein it differs from our own instrument.

In Article 13, the danger in case of abandonment of the assured prejudicing his rights of renunciation by any beneficial acts which he may take about the property, is foreseen and provided for; and a duty is placed on the abandoner 'to watch over the safety and preservation of the objects insured,' without in any way prejudicing his rights.

The word *stranding*, a word so difficult to hold to any definition, and which is so often a bone of contention with us, receives an elucidation in the French policy by the addition of the expression *with violence*. There are a great many occasions where the decision as to legal stranding could be arrived at in cases where vessels have grounded, if the feature of violence was always to be considered.

In the table of articles on which claims for damage are excepted or limited to certain proportions, corresponding with the memorandum or warranty in the Lloyd's policy, a distinction is seen in the Paris instrument. Whereas by our system all sea-damage of the

article insured is paid if the ratio of damage exceeds the warranted 3 or 5 per cent., the Insurance effected in Paris pays only the *excess* of 3, 5, 10, or 15 per cent. of the value insured. This arrangement is called the *Franchise.* In cases of *collision*, and of 'stranding with violence,' the articles otherwise totally excluded from claims for damage are subject to average to the extent of the excess of 15 per cent. of their value. Particular averages on goods in the sense of special charges consequent on sea-perils, are also subject to a deduction of 1 per cent. on the insured value. Thus the clauses, Nos. 19, 20, and 21, in the Paris policy, contrast unfavourably with the more liberal warranties of Lloyd's. We make no deduction in those expenses falling specially on the thing insured, also called particular average.

By Article 20, an underwriter's liability on the policy is absolutely limited to the sum he subscribes. 'He can never be accountable for more.' An English underwriter by an accumulation of claims may become liable for a far larger sum than the amount of his subscription.

Article 23 is explicit and very important. It contracts that the regulation of claims for general and for particular averages, whenever they may arise, shall be made according to the laws and usages of France. The principle o interpreting the policy-contract, therefore, is clearly defined to be on that of *jus loci contractûs.* This principle seems very reasonable. It has been deviated from in England, both by special clause and by silent allowance. What was first yielded as an additional privilege to the assured, and was considered in the premium,

is now often claimed as a right, even where no additional consideration has been given to the underwriter. The reasons for construing a contract by the law and customs of the place where the contract is made, have always appeared to me stronger than for allowing its interpretation by the codes or tribunals of any country where a ship may find its way—Spanish or Russ, Hottentot or Polynesian. The French in this matter take a more dignified view of their legal institutions than ourselves.

Article 25 gives the right of set-off by an underwriter, in paying a loss or average, of unpaid premium. It does not appear to authorise a general set-off of all premiums due by the assured to the underwriter, but of the particular consideration for the Insurance on which the claim arises. The Insurance contract in France is '*Synallagmatique*' and '*Consensual*,' to use the expression of M. Beddaride; it includes mutual duties—duties which may be subsequently performed. *Our* theory is, that the payment of premium is necessary to the existence of the Insurance—a condition precedent—and that afterwards the assured owes no duty to the underwriter; but in the French system mutual duties subsist between the two parties to the contract. A postponement of the assured's payment of premium does not invalidate the policy, and in case of claim on the underwriter it may be made a matter of set-off.

Various particular stipulations are written in the Paris policy at the conclusion of the printed form; and equally minute provisions are introduced for special contingencies affecting the particular interest or voyage forming the

subject of the Insurance. One such provision is, that touching at ports not foreseen at the commencement of the voyage is condoned or permitted upon payment of one-quarter per cent. additional premium for each of such voluntary calls or touchings at ports. In England, there being no such general arrangement, a voluntary entrance into a port not specified—*i.e.* not a necessitated going into port on account of accidents or for the general safety, but by the captain's choice, for purposes of trade, &c.—vacates the policy, by reason of the deviation from the voyage insured, at the moment of deviation.

An important concession is made to the French underwriters in Article 27. It is the power given them to concur in, to reject, and to choose the master or captain of the ship insured by them. 'He may be accepted or not accepted, or another may be substituted.' When we remember how much of safety and success in a voyage depends upon the knowledge, power, and character of the person in command of the ship, how all the results of his errors and misdoings fall upon the insurers, it must strike most persons as wonderful that the underwriters should have no voice or veto in the appointment of the master to whom so much is confided which eventually affects themselves It is true that the captain's name generally, or at least often, forms part of the particulars inserted in the slip; and an underwriter having a prejudice against the name of a shipmaster may refuse to insure the risk on account of the captain; but such a decision is, in practice, of rare occurrence. Some of the mutual ship Insurance associations, seeing the high im-

portance attaching to the master, introduce in their rules a power to dismiss a bad master and to reward a meritorious one. Underwriters on the common or Lloyd's policy have no such power; and indeed so little remedy have they in this respect, that after the place in the policy where the captain's name is inserted, follow the printed words, 'or whosoever else shall go for master in the said ship.'

The French policy, it has been observed, has the appearance of a very modern or a very modernised instrument; yet there lingers in one of its clauses, Article 29, a relic of an earlier state of things in France. That article makes the Insurance valid retrospectively, like our own, 'on good or bad intelligence'—equivalent to our own form of 'lost or not lost;' and after declaring that the document shall be 'executed freely and in good faith,' concludes by both parties 'renouncing the league-and-a-half per hour.' This expression points to the time when the legal measure at which news travelled was one league and a half in an hour, about four miles and a half. This is a rate which before the introduction of railroads was much exceeded by *estafettes*, and was probably more than equalled by the *malleposts* and regular *diligences*. But the law had to draw a line, in the best way it could, that should meet the generality of suitors' cases; and that line was not too stringent for even a century ago. We have in English law some rules of time, in obscure cases, made with the same easy hand. Whether the assured or the underwriter had received intelligence '*bonnes ou mauvaises nouvelles*' affecting the subject insured or

proposed to be insured was to be subjected to the rule of the old rate of travel; viz. a league and a half per hour. Accelerated modes of conveying information by steam-ships, rail, and telegram certainly made the renunciation contained in Article 29 reasonable and necessary.

Reviewing shortly what has been said in this chapter we have seen that the Lloyd's policy deserves attention on several accounts, that its name as well as its origin is uncertain, but that it was probably introduced by those traders from the Italian cities and republics known in England under the general name of Lombards, who came hither as early at least as the commencement of the thirteenth century. They had united in their own country the patrician order with the vocation of useful commerce; in their hands trade became a glorious as well as a necessary vocation. They sent envoys to the Great Khan and to Pekin; they built chains of fortresses to protect and give shelter to their merchants and carriers as their trade orientated, passing through regions of desolation, of enemies and of barbarity; they sent to sea a fleet which bore the products not only of Italy, but of the Levant and India, into the Northern seas, leaving them at the doors of Britain, France, and the Netherlands; they instituted the order of Consuls in foreign places; showed the value of money, and the marketable price of its use; and they probably brought to London the ingenious instrument which is the subject of this chapter; and in the Merchants' Walk at Lombard Street signed policies of Insurance, which contributed as greatly as any other

Summary.

aid to the enormous after-growth of our maritime commerce. But in whatever age or country the policy was invented, the system of Insurance found congenial ground in England, and was practised with success and with integrity. Probably it was pursued in London only, which has always remained the great centre and mart of Insurance.

Passing to the form of the instrument itself, we found the policy stiff and archaic, not very well adapted to our present wants, but still retaining its place in commerce unchanged, partly from our conservative tendencies, and partly as being the vehicle of so much case-law, and the battle-field of so much discussion. We saw that though the unchanged Lloyd's policy is still in very large use, various modern Insurance Companies have modified it and adapted it to their own views; and that mutual associations for insuring shipping, though they generally adopt the common form, attach to it a schedule or book of rules and regulations, distinctive of their own engagements, and in various places overriding the provisions of the Lloyd's policy.

It was next pointed out that though every clause of the policy has been subjected to litigation and made the basis of legal decisions, yet the instrument has also a more popular use, and in which custom is the exponent of its intention; and that in dealing with a policy according to practice among ship-owners and merchants, a different result will sometimes be gained from that which would be derived by litigating it. The policy itself was then set out at length, and its clauses were considered

seriatim, comparing them from time to time with those changes and modifications which have been made in the policies of modern companies and in the rules of Insurance Clubs. The distinction between valued and open or unvalued policies was shown, and that the value agreed upon in a contract for insuring a specific interest, though binding between the underwriter and the assured, does not concern other parties outside the policy. A value given for contribution to general average, for instance, must be an actual value on a given day, and may be greater or less than the declared value of the interest in the policy. The somewhat difficult subject of the true value of a ship for Insurance was touched on, and some ambiguity in the manner of filling up a policy as to valuation of the interest was pointed out.

The risks or perils which the underwriters undertake, and which are enumerated in the policy, were shown to comprise as large a proportion as three-fourths of dangers arising from the violence and voluntary acts of men; and it is rather curious to remark, that of the remaining one-fourth of the list, two perils only of those mentioned are purely dangers of the elements. This striking circumstance was considered as indicating the unsettled state of Europe at the time when the list of dangers in the policy was drawn up; when few police regulations had made the sea a *mare clausum* as to violence, robbery, and private warfare; and it was suggested that a consideration of this characteristic of the policy might give a clue to the date of its invention, or of the adoption of its present form. To assist such inferences, a valuable note is

added on the state of maritime commerce in Europe in the fourteenth and fifteenth centuries, the age when most probably the policy had its birth. The perfect independence of each other among all the individual underwriters who sign a policy was stated, their separate liability or non-solidarity. While the fortuitous association of several insurers subscribing one document produces no legal joint responsibility, there remains their equal and similar responsibility, and a practical community of interest, and a useful etiquette that the underwriter first signing the policy shall, *pro hac vice*, have a sort of leadership, entailing on him some of a leader's duties to those who follow him with their signatures.

With respect to Assurance Companies, it was shown that though amongst the constituents of such a society there is a joint liability, yet with regard to the assured, the whole of the persons associated under the company's title form but a unit, and an Insurance Society signs as an individual, in the same way as an underwriter. Mutual shipping Insurance associations are not companies. Each member has a right of action against all the rest, except the rules of the club specially provide some other machinery for the adjustment of claims and questions.

That list or memorandum of articles excepted or placed on different terms from other interests, called especially the Warranty, and standing immediately above the underwriters' signatures, was only slightly touched on, because it will be recurred to in a subsequent chapter. A brief comparison was made between the common or

Lloyd's policy and the policies of foreign countries, and particularly with that largely in use in Paris, a translation of which is appended, and some advantages which it has over our own instrument were pointed out; at the same time it was shown that the French policy contains some clauses which, upon the same comparison, are unfavourable to the assured; and that the possible indemnity which Insurance in France will afford in extreme cases is not so large as is given in this country.

CHAPTER V.

THE POLICY—WARRANTIES.

A WARRANTY is a statement of fact, or an undertaking by the assured that a certain thing shall be done or omitted, written or printed in the policy, becoming thence a part of the terms on which the Insurance is granted; and such a condition to the underwriters' liability, that if it be broken or not complied with, the policy itself is vacated, and the insurer is liberated. Generally speaking, the thing warranted is one necessary to be known or considered by the underwriter—one, the non-compliance with which enhances his risk; but this is not always so; and a thing or act though indifferent, yet if warranted, must be, or be performed or omitted, or the policy will be voided. Thus if a ship be warranted to have on board three chains and anchors, and she, in fact, have but two; or that she is British-built, and she is really Colonial; or that she sail on or before the 1st of August, and she does not sail till the 3rd; or that goods are packed in tin, and it prove that they are packed in canvas;—all the above breaches of a warranty discharge the underwriter from his engagement to pay a loss or damage, even though the loss or damage is traceable to causes not proceeding from such non-compliance with the warranty, or can be shown to be quite independent of that breach.

A Warranty differs from a Representation in its being written, and forming part of the substance of the contract, and from the fatal consequences of its breach or non-performance upon the policy. A representation, we have seen, is a statement made before the consummation of the contract: it affects the underwriter's decision as to taking or declining the proposed insurance and in fixing the rate of premium; and even if incorrect in fact, yet if the fact be immaterial, it need not annul the after contract. If, however, a misrepresentation or concealment be fraudulent or malicious, it does vacate the policy *ab initio*. A warranty, on the other hand, must be strictly and literally complied with; no license is allowed to it, nor can the immateriality of its breach be pleaded A great deal of the printed form of the policy, and nearly all that is added to the form in writing, is of the nature of warranties. The printing and the writing form together the terms of mutual agreement between the assured and the insurer. An underwriter agrees to pay a loss occurring under that certain state of things, having regard to the warrants and conditions inscribed in the contract; but as he cannot afterwards add new warranties for his own protection, so he will not be responsible for a loss, if the warranted conditions be altered, broken, or unperformed.

As a warranty limits and curtails the liability of an underwriter, so the warranty itself is contracted and modified by exceptions and conditions. Thus, 'the ship warranted free from particular average, unless stranded;' or 'sugar free from particular average, unless the ship be

stranded, sunk, or burnt.' Warranties are commonly in favour of the underwriter; but the benefit he derives becomes efficiently shared with the assured who inserts them in the policy, the latter person receiving a benefit in the reduced premium consequent on the limitation of risk.

Implied Warranties.

So far the definition of a warranty and its distinction from a representation are clear. But now there comes in a principle which, acting under the same name, tends to impair the definition which has been made, and to throw doubt on the distinction which has just been drawn—this is the implied or unwritten warranty.

It is a common fate with scientific definitions that after a time they lose their distinctness and value by additions, exceptional cases, improvements, change in language, new lights, and by *dicta* which, having been uttered with more or less of authority, cannot afterwards be ignored or got rid of. We have before us a strong example of this It has become to be said and admitted that there are *implied* warranties; that is, warranties which, in fact, are not made and are not written, differing thus from the essential notion of a warranty, which is that of a positive declaration made in writing. An unexpressed warranty is a contradiction in terms, as strong and of the same kind as if we were to talk of an invisible phenomenon, or a whispered shout.

It is also said that unwritten or implied warranties arise out of the very nature of the Insurance contract itself. But there would be great difficulty in finding our

way without further guidance as to what are the warranties which do so arise. The unassisted judgment would not, for instance, discover that on a voyage-policy on a ship there is an implied warranty of seaworthiness but that on a time-policy on ship there is no such warranty. And that the two policies thus differing in so important a point might each be effected on the same vessel, starting on a voyage from a port where the underwriters on the two policies reside, and taking their commencement at the same point of time.

Nor could it be known that the plea of unworthiness which may be pleaded in the case of a ship, *i.e.* her unfitness to proceed on an intended voyage, will not be allowed in respect of cargo to be carried in a ship, although there may be about the goods themselves an unfitness for the voyage intended—a source of danger to themselves or to the ship and other interests. Yet this was expressly laid down in the recent case of *Koebel* v. *Saunders*; and Justice Willes remarked that, apart from the *novelty* of the plea, it was unadvisable, because it sought to create a new implied warranty.

But however inconvenient may be the confusion of ideas produced by calling things by wrong names, the fact remains that there are in the law of Insurance two species of warranty, the written and the implied. By the latter is meant, that in the absence of a written condition or warranty, there are some things and some duties owing to the underwriter which the general nature of the Insurance contract, and the more general constraint of common right and good faith render necessary, and which thus

become conditions precedent to the assured's claim upon his policy, if not to the validity of the Insurance itself. What these are can only safely be gathered from decided cases; and in the most material of them, that of the implied seaworthiness of a ship, it has been shown that there is such a large exception in respect of policies effected on vessels for time, that it would be very dangerous to assert any precise rule on the subject.

Under the enlarged meaning of the term a Warranty is, then, a reservation from, or limitation to, the general design and extent of the policy. And its nature is such that if there be an infraction of a positive warranty, as that a ship shall sail on or before a stated day; or of a negative one, as that she shall not carry a deck cargo; or that the relieving condition to a warranty cannot be proved (as that the underwriter is not liable in certain cases 'except the ship be stranded'); or the infraction of an implied warranty (as that the ship, at the commencement of a risk on a voyage-policy, shall be seaworthy), then the underwriter is liberated from his liability, either entirely and *ab initio*, or in respect of the more limited ground covered by the warranty. As an instance of the latter, Where goods are insured 'free from particular average, unless the ship be stranded,' the underwriter is freed from claim for damage to the goods if there have been no stranding, but is still liable if they be lost totally.

Warranties are nearly always in favour of the underwriter, as the terms and conditions printed and written in the policy are for the benefit of the assured: the former restrict the underwriter's liability, the latter define

that liability and bind him to it. But practically, the benefits, if they are so to be called, are shared between the two parties to the contract; since every admission or limitation to the insurer's liability finds its way into the price or consideration paid by the assured, and thus becomes a question of premium.

We will now consider, in the first place, the implied warranties affecting a policy of Insurance. Writers do not pretend that of such there are more than three cases: viz. that a ship shall at the commencement of a voyage policy be seaworthy; that she shall not deviate from the insured voyage; and that she shall carry proper papers.

Of Seaworthiness.

It is highly reasonable that not only the utmost good faith should prevail where a contract is entered into, but also that the subject-matter of the contract should be fit in the sense in which fitness applies to the particular contract. A ship must be fit for, and capable of, the purposes designed for her. She must be able to live at sea, to sail with safety—as far as that ability and that safety depend upon her own condition, loading, manning, &c. If, however, she have inherent defects and weaknesses, or is so loaded or manned as to be unseaworthy at the commencement of the insured voyage—*i.e.* in an unfit state to undertake that particular voyage with safety—then she is also an unfit subject for insurance; and though having the outward semblance of a ship, may be said to be, in language more than once used by our judges in another case, 'a congeries of planks and materials, but not a ship.' Other contracts suppose that the subject-matter of the contract, whether persons

or things, should be fit for and capable of the objects of such contract; and this though the words of the contract are silent as to fitness. Thus the marriage contract supposes and takes for granted that the persons united are of different sexes and physically qualified for marriage, otherwise it is no marriage; and the civil court, whose relief is sought in case of natural disqualification, has only, on proof thereof being afforded, to give a declarative sentence of nullity. In this case, however, nothing is said about implied warranty. The very nature of the contract supposes the fitness of the subjects, who are at the same time its objects. In Insurance, also, the fitness of the object is presupposed (though with one important exception), but the natural right is shaped into the formula of an 'implied warranty.' Thus, in *Small* v. *Gibson*, it was said that a warranty was implied from the very nature of the contract, which rests on the supposition that its basis is the seaworthiness of the vessel at that time.[a] An 'implied warranty,' then, may be looked upon as a figure of speech expressive of a natural right, grown into a sort of substance by being repeated and accepted legally as a reality.

The implied seaworthiness of a ship, as the condition precedent for a recovery on a policy of Insurance for loss,

---

[a] In seeking for analogies of this doctrine applied to other subjects than shipping, we may instance the late case of *Jones* v. *Page* (1867), where damages arose in consequence of the wheel of a hired omnibus coming off; and the court, *in banco*, held that there was an implied warranty of fitness by the person who let the vehicle.

extends also to the Insurances on merchandise carried by the vessel, although the shippers are ignorant of her condition, and in case of accident or damage, giving ground for a claim on their policy, are innocent parties. The unseaworthiness of the ship, as a breach of the condition precedent, taints the contract of the underwriters on goods, as it does on the ship itself. As regards the goods, a warranty of seaworthiness on them is not inferred; and, as has been mentioned above, the underwriters on goods cannot plead their unseaworthiness at time of shipment.

What, then, is that seaworthiness of a ship which is so implied at the commencement of the risk on a policy-voyage? What is the extent of obligation which a ship-owner impliedly lays himself under to his underwriters when they sign such a policy? It is a reasonable obligation, circumscribed by certain limits both of condition and time. The vessel insured must be tight, staunch, and properly found, equipped and manned for the voyage she is about to commence. She must be in a fit state, as was said in *Dixon* v. *Sadler*, as to repairs, equipment, and crew, and in all other respects, to encounter the ordinary perils of the voyage insured. 'To be seaworthy, is now used,' says Lord Campbell, 'and understood to state, that the ship is in a condition in all respects to render her reasonably safe.' A vessel must be so, when she starts on her voyage, as to make the completion of that voyage in safety possible. But seaworthiness admits of degrees; and the seaworthiness warranted by the assured is referential to the voyage or service in contemplation. A steamboat intended for river navigation may be both by

build and strength quite fit for fluviatile voyages, though she would be unfit or unsafe for voyages on the ocean. A vessel might be strong enough for ordinary sea-navigation, but not fit for the Buffin's Bay trade, or any North Sea whaling; vessels in that employment requiring 'fortifying' in the bows, and other protective arrangements against the pressure of ice. A ship may be sufficiently manned for a coasting voyage, though she might require a larger complement when bound foreign. Then, seaworthiness may be progressive. Where the voyage is distinguished into stages, each stage may require a different degree of preparation, that the ship may be seaworthy as she proceeds through those stages. A vessel leaving a port up a river, need not, at her starting, have the same crew or the material strength as she requires to make her seaworthy when she leaves the river for the sea. This was decided in *Bouillon* v. *Lupton* (Common Pleas, 1863), where the vessels in discussion, steamers, on leaving their first terminus of the policy, the place on the Rhone where they had been built, but not quite (and this by necessity) completed, proceeded down the river, and on arriving at its mouth were finished and put into a reasonable condition for undertaking a sea-voyage, but were lost on that voyage, the implied warranty of seaworthiness was held to be complied with; because on leaving Lyons they were sufficient for river navigation, though not fit for sea; and before leaving Marseille for the Danube, they were put into a further state of navigability. The progressive requirements for seaworthiness were met by progressive additions to strength and completeness.

The compliance with a warranty, whether implied or expressed, which is to be looked for from the assured, is to be a reasonable one; it is to be in some matter within his power. Whilst, therefore, the shipowner warrants his vessel seaworthy at the commencement of the voyage, he is under no implication that she will continue so, for that is a matter out of his power. She is unseaworthy not only if the hull is defective or requires repair, but if unsufficiently supplied with ground tackle, if her sails, or some of them, are rotten, if her crew is deficient in number, if the master be incapable, or clearly unfit to navigate the ship, or if she sails without a pilot where a pilot establishment exists, and it is customary to take a pilot. The last position will not apply where the master has himself taken out a pilot's certificate. In fact, as C. Justice Erle said in *Small* v. *Gibson*, a ship insured is seaworthy if she is 'fit in the degree which a prudent owner uninsured would require to meet the perils it is then engaged in, and would continue so during the voyage unless it met with extraordinary damage.' But in things beyond the owner's power, and, perhaps, in some things not in his knowledge, there may be cause of unseaworthiness which would not vitiate an Insurance. It has even been said that if an owner at the time he makes insurance on his vessel, knows nothing to the contrary of her being unseaworthy, he is entitled to recover; and in *Thompson* v. *Hopper* it held necessary for the defence, to show not only that the ship went to sea unseaworthy by reason of being short manned, but that the assured knowingly and purposely sent her to sea in an unseaworthy condition. It

is difficult, however, to reconcile these two last propositions with the general rule, that on a voyage-policy a ship must be seaworthy at the commencement of the risk, and that unseaworthiness does, *ipso facto*, vitiate a policy, even on goods carried in the vessel—the burden of proof resting with the underwriters. There will be a reasonable relaxation of the rule under undeniable circumstances; as, where an Insurance is effected on the latter part of a long voyage or circle of voyages, where the vessel sails from a distant port on her insured voyage. Without waiving their right to seaworthiness, the underwriters would apply the criterion loss strictly. And if at effecting an insurance underwriters agree to consider the ship seaworthy, though she afterwards prove not to have been so, the assured is absolved from the consequences of the general implied warranty.

The implied warranty of seaworthiness is, then, the rule. In *Christie* v. *Secretan* it was said, 'Warranty is implied from the nature of the contract. The consideration given for an Insurance is paid in order that the owner of the ship which is capable of performing the voyage may be indemnified against certain contingencies; and it supposes the possibility of the underwriters gaining the premium;' which could scarcely be the case if owners sent insured vessels to sea in a condition rather to be lost than to perform their appointed voyage. And so strongly is the principle to be adhered to that in *Lyon* v. *Mells* it was laid down that the implied warranty of seaworthiness is not affected by carrier's notice. Which analogy I should understand to apply not only to those various

clauses added to the bills of lading used by steamship proprietors, disclaiming almost every risk happening to the goods committed to their care for carriage, but even when those disclaimers are published by being affixed in the steam-owner's office, wharf, &c.

But it was stated in the early part of this chapter, that to this wholesome and judicious care for the underwriter's safety, and the exaction of good faith in the shipowner who has his vessel insured, there is a large and remarkable exception; and this is the non-application of implied seaworthiness in time-policies. It is to be considered now perfectly settled from *Fawcus* v. *Sarsfield*, *Thompson* v. *Hopper*, and *Gibson* v. *Small*, that when a ship is insured for a certain length of time, and not for a definite voyage no warranty of her seaworthiness is implied in the contract. This principle has been laid down distinctly, and without exceptions; and it was one which the late Chief Justice Campbell asserted in the most vigorous manner. If we enquire what is the germ of this remarkable distinction, and why 'the very nature of the contract' should demand an im-implied warranty in one case and not in the other, we find it to be in the reasonable proposition that a person is only to be answerable for those things which are within his power. To say that he is only answerable for things within his knowledge cannot be so safely affirmed; for it is questionable whether an owner's perfect ignorance of some defect in his ship, rendering her unseaworthy at her sailing on a voyage-policy, would avail him against the underwriter's plea of unseaworthiness and implied warranty.

Time Risks.

In *Thompson* v. *Hopper*, however, the defendant's plea had to be amended, that the owner did 'knowingly, wilfully, purposely, &c., send his ship to sea in an unseaworthy condition, and 'that by reason of the premisses she was lost.' But even this decision was reversed upon appeal, and the underwriters had to pay the loss.

When a ship is insured by time, either in an Assurance company or mutual association, or at Lloyd's with underwriters, if at the time of making the insurance she has been previously insured in the same way, it is very desirable, nay, it is necessary for the safety of the assured, that the expiring policy and the new one should be coterminous—that at the instant the former insurance expires the succeeding policy should take effect, and leave no interval or momentary discontinuousness. But at the moment of junction of the two insurances the ship may be at sea, out of the ken and power of the owner. If, therefore, it were indispensable that at the inception of the risk on the new policy the ship should be in every respect seaworthy, the assured would be unable to give a warranty to that effect, and, by consequence, to procure himself to be insured. And if the tacit understanding, or implied warranty, of the ship's seaworthiness at the inception of the risk were a *sine qua non*, then any insurance made, or taking its commencement whilst a ship was abroad or at sea, would be hypothetical only, dependent for its existence upon proofs afterwards to be furnished as to the seaworthiness or unseaworthiness of the vessel at the moment the risk commenced.

Under the stamp regulations no policy of Insurance

can be made for a longer time than one year certain. If, then, a ship be insured by a company that might be willing to continue the same insurance upon the expiry of a policy it had previously granted, it must be by a new contract, stamped and executed afresh. It is, in truth, a new insurance, requiring a new inception of the risk. And even in Mutual Insurance Clubs, where there is still greater continuity, that continuity is broken legally by the completion of each twelve months; and though, phœnix-like, the new insurance springs from the mortality of the old, it is in the eye of the law a separate existence, of which the law can take no cognisance unless it be made on a separate stamp But at the inception of new risks of this kind, happening at all moments of time and in every conceivable part of the globe, there is no implied warranty of seaworthiness.

We may say, then, that this waiver of the universal warranty of seaworthiness in the case of policies as continuous as they can be made, is a concession to expediency and convenience: reasonable, because from the circumstances of the case the owner cannot give an express warranty on a ship which is out of his power and observation, and should not consistently be burthened with an implied warranty; and the absence of warranty is advantageous in a commercial point of view, since it allows a large amount of Insurance which could not otherwise be safely effected. But then the principle of non-warranty is carried in law beyond the case which so well justifies it, and is applied to *all* time-policies on ships, though at the commencement of the risk they may be in

port, and within the owner's power and knowledge. What analogy has this position with the former, that both cases, so completely distinguished, should be brought under the same rule?—None. Let two vessels be owned at one port, belong to one owner, sail at the same time, and on the same voyage. Let one be insured for the voyage, and the other for time, and let the risk on each commence at the same moment. On the former insurance there is an implied warranty of seaworthiness, and on the other none. It is an anomaly, not reconcilable to our plain reasoning, but it is so decided by law. There must have been a choice of difficulties in the judges' minds; whether it were less desirable to make two rules for one class of insurances, viz. time-risks; or to embrace under the rigid yoke of one rule cases differing so greatly in circumstance as those do which are described above; to one of which the principle applies on which the legislation originally proceeded—that principle being distinctly absent in the other.

Goods. There is no implied warranty on goods of their seaworthiness. This is clearly laid down in *Koebel* v. *Saunders*, and refers to the condition and packing of the goods themselves; but the question arises, in how far are the goods affected by the unseaworthy condition of the vessel in which they are shipped? If we adhere to the principle that an assured is only responsible for an unseaworthiness which he has power to ascertain and to remove; if, further, it must be pleaded against him that he knowingly, willingly, and improperly sent such a vessel to sea on a voyage; and, beyond this, that all insurances on

ships for time are excluded from an implied warranty of seaworthiness, though they commence a voyage and the risk contemporaneously, and that in the owner's own port and under his own observation, the inference rises almost irresistibly, that if such privileges belong to the ship itself, goods conveyed in the vessel must be at least on as good a footing, and as much excluded from the effects of the ship's unseaworthiness. For if there are occasions when the shipowner can neither know or remedy a defect in his vessel, and therefore is excused from any warranty, still more must the shippers of goods be supposed to be ignorant of the state of repair and other circumstances belonging to the ship on which they place their merchandise, and still less could they have any power to restore an unseaworthy vessel to the proper sea-going condition. They, no doubt, have a duty, and that is not to ship by a vessel known or suspected to be unseaworthy; and should they persist in risking goods which they have insured in such an unfit and improper conveyance, they are open to the charge of having acted knowingly, wilfully, and improperly, and probably fraudulently. However reasonable such a conclusion appears, there are, notwithstanding, two decisions, though not recent ones, which look the other way, and make the seaworthiness of the ship essential to the validity of a policy on goods.

A mutual society in London for insuring freights and outfits, has introduced into their instrument the special clause or warranty, 'provided the ship was seaworthy at the commencement of said voyage.'

Of the three subjects understood to be comprised in the tacit warranty, the next is deviation. It is implied that the ship insured shall proceed without deviation on the insured voyage. But as deviation forms a special part of Insurance law, it seems hardly necessary to rank it also under implied warranties. Of course there is an implied warranty that a person I meet shall not knock me down with a stick. This is implied from the general tenor of our laws and police; but in case he did so knock me down, my remedy would be preferably by way of action for an assault, than for infringement of the general majesty of the laws and their protection of my person.

Not to deviate.

Like the former silent warranty, it is presumed that this does not operate when a ship is insured for time. Were it not for this exemption, it might be possible to show by charter-party, &c., that though a vessel were insured for a year and not for a specified voyage, she actually deviated. This variation of the voyage would liberate underwriters on the goods at and after the point of deviation, but yet it would not avoid a policy on the ship in which there were no engagements as to definite voyage or ports capable of being broken by this deviation. All that an implied warranty against deviation appears to mean is, that a ship insured to go from A to B shall go from A to B, and if she voluntarily goes to C, she is uninsured at and from the point where she deviates from her proper course.

It is not every stoppage or retardation on a ship's progress on a voyage, or even her entering a port not

leave on a certain day may have been sufficient to expose her to the hurricane she would otherwise have escaped, or to have got clear of ice which, by the loss of those hours, keeps her a prisoner for a whole winter.

Warranties are to be strictly construed and rigidly fulfilled. To break the warranty is to destroy the Insurance; which will also be done by substituting something in place of the thing warranted, even though the thing substituted be better than and preferable to the thing warranted. There may be no changes or variations in the written terms of the policy, unless the underwriter's consent be obtained thereto and expressed. The warranties in a policy are for the benefit of the underwriter; and are, consequently, by another rule of law, to be construed against him; *i.e.* he is to have a strict fulfilment of them when the meaning or the facts are plain, but in case of doubt of facts or ambiguity in the meaning of a warranty, the doubtfulness is to be in favour of the assured—for his benefit who is the general beneficiary of the Insurance contract. It would seem, too, that in legal constructions of a warranty where there are difficulties, and the literal rendering of a clause is opposed to the clear and general intention of the policy, a construction will be given in favour of the assured. If a vessel is warranted to be in a neutral port, it is sufficient fulfilment of the warranty that the port was neutral at first, or for a time, though afterwards its neutrality was lost. The description of the voyage in the policy, the nature of the interest, and other material statements contained in that instrument are of the nature of warranties, or rather are warranties themselves. In thus defining

the exact facts, limits, and objects of an Insurance, the warranties of the policy do not differ in their effect from those of other contracts. In *Routh* v. *McMillan*, which was an action on a charter-party, the vessel was described to the charterers as 'the A 1 ship Hannah Eastee;' and the court held that 'the written description amounted to a warranty; and the warranty failing in fact, the charterers must recover for damages.' I admit that there is in some contracts such a thing as *a written representation*, which is given for the sake of definition and identification, to which the weight of a warranty is not to be attached; but then this distinction must be known and understood between the contracting parties. This kind of representation is very common in charter-parties, which usually describe the ship as being 'now in the port of A,' and then continue, that 'she shall proceed to the port of B, and there load a cargo, &c. for the port of C.' This description is usual though the voyage contemplated by the owner and charterer is from B to C; and the representation of the present locality of the vessel may be looked upon as words of surplusage, serving to identify the vessel, and give the charterer information as to the time in which he may reasonably expect the ship to arrive at the port B, and so be in a position to commence the contracted voyage. It is unfortunate that this form of descriptive representation should be prevalent in charter-parties, since it leads to obstinate questions. The same, or a similar, sequence of words is sometimes used when the intention of the parties really is that the payment for the ship's use shall commence at the first port, A. Consequently the

meaning of what is written has to be determined by a knowledge of the previous intention of the parties. And other interests are at stake. There may be an insurance on the chartered freight, and the interest in the policy may be dependent on the construction of the charter-party. Also (and this has actually happened), though there be no insurance on freight, a general average may take place on the passage from A to B; and the underwriters on ship, or the proprietors or underwriters of cargo, have demanded to have the freight brought in as a contributary in respect of the general average occurring on the passage between A and B, in virtue of the description in the charter that the ship was at A, which they construed to be the *terminus à quo* of the voyage agreed for.

To make such written representations have the force of warranties, or rather to make them actual warranties, two things are necessary; they must be express, and they must have an important bearing on the contract. The court is to decide on the importance of the matter represented, and is to be led to a conclusion by the surrounding circumstances. 'It was no part of the Judge's duty,' said Justice Williams, in *Behn* v. *Burness*, when delivering judgment in the appeal from the Queen's Bench, 'to leave the jury any question as to the construction of the contract, or the materiality of any of its statements. It was *his* duty to construe the contract, with the aid of the surrounding circumstances' (Ex. Ch. Feb. 1863). In *Dimech* v. *Corlett*, the expression 'now at anchor in this port,' was held not to amount to a warranty; but in *Ollive* v. *Booker*, where the words in the charter-party

were, 'now at sea, having sailed three weeks,' they were held to be express and bearing directly on the contract, for the charter was dependent on time. But the Judge remarked, that any language less exact, as, *e g.* 'having been at sea three weeks, or thereabouts,' would have been descriptive only, and not in the nature of a warranty. In *Glaholm* v. *Hayes*, also, there was the distinctive feature that besides the description of the ship's locality when the charter was made, there was a stipulation that the vessel should 'sail from England on or before February 4.' The ship was to load at Trieste, and it was most important that she should arrive there before a certain time; the limitation, therefore, of 'on or before February 4,' was highly important, and the words, for they related to the subsequent sailing and were contained in the charter-party itself. The words amounted to a warranty, and as they were not complied with, the charterer was released from his engagement. Here, it is to be observed, the words were specific, and the thing engaged by them to be done was necessary to the after performance of the contract. The sailing of the ship from England by a certain day was a *sine quâ non* to her being able to sail from Trieste on her chartered voyage at a particular time; and the object of the charterer would be defeated unless he could procure her departure from Trieste at a given period. The charterer might have entered into a contract dependent on time, and on the sailing of the ship would depend his power of fulfilling it, and the consequences be at his loss if the contract were unperformed; there might have been blockade consider-

ations, difficulties of navigation, and of season, &c. which would render it of the highest importance to him to have the ship in his hands at a certain time, as her coming to him after that time might be absolutely useless.

'With respect to statements in a contract,' said Justice Williams, in *Behn* v. *Burness*, 'descriptive of the subject-matter of it, or of some material incident thereof, the true doctrine established by principle as well as authority appears to be, generally speaking, that if such descriptive statement was intended to be a substantive part of the contract, it is to be regarded as a warranty; that is to say, a condition, on the failure or non-performance of which the other party may, if he is so minded, repudiate the contract *in toto*, and so be relieved from performing his part of it, provided it has not been partially executed in his favour.'

Warranties in charter-parties being homologous in nature with those contained in policies of Insurance, are quoted in cases arising on the latter for precedent and illustration. Since written descriptions in either instrument may thus obtain all the force and functions of warranties—may be found to be warranties themselves—it is greatly to be wished that a representation written in a policy or charter-party, *and not going to the essence of the contract*, should be clearly distinguished, in writing it, from that descriptive definition which is a *warranty* and an integrant of the contract itself. In the policy of Insurance especially, all words which define the risk, name places, or limit time, are of the

highest importance; they are really warranties, and must be absolutely and strictly complied with.

At and from.

But the words used are sometimes vague and questionable in themselves. Among such definitions, the expression very commonly used of 'At and from,' in describing the first terminus of a voyage or risk, has been productive of great difficulties and many questions. Their general sense is, that a ship or other interest is protected by the policy of Insurance not only at and after the moment of departure from the place where the voyage commences, but even before that moment, for such hours and days as are necessary for the loading or outfitting of the vessel and making her ready for sea. But, then, how long is this period to be? Is it to be from the minute of the ship's first arrival at the port or from the time she is fully discharged? She may be protected, as is frequently the case, by the outward policy containing the clause 'unto A, and thirty days after arrival,' and then the homeward voyage may be described, as is common, 'at and from A to B.' In this case there would be a double Insurance, unless some means are taken to express that the two policies are coterminous, the second commencing at some moment when the first ceases.

In *Carr* v. *Montefiore*, an important case, which will have to be spoken of again in another chapter on account of a remarkable phrase which the contention afterwards assumed, the ship 'Dos Hermanos,' and her cargo of guano, were insured by two policies effected with the Alliance Assurance Company and the Royal

Exchange Assurance, 'at and from a port or ports in the River Plate to the United Kingdom, the risk to commence from the port of loading.' There was also a clause expressing that the policy was intended to protract the interest of owners residing in the River Plate. The antecedents of the voyage and whole transaction were not communicated to the underwriters. The vessel, an American, and originally named the 'James Cooper,' had taken on board a cargo of Patagonian guana at the Leones Islands, and, meeting with damage at sea to both ship and cargo, she put into Monte Video, where a portion of the guana was landed, but was afterwards re-shipped, the sea-damage not extending below the upper surface. In the event, both ship and cargo were sold, and the purchasers, not being able to sail the vessel under American colours, adopted another flag, changed her name to that of the 'Dos Hermanos,' and despatched her for England. However, she showed herself incapable of making the voyage, sprang a leak, and was taken in to Maramham, in the Brazils, where she was finally abandoned, and both ship and cargo were sold. A claim for loss was made on the two policies effected in London, and was resisted on the ground of concealment of circumstances which ought to have been disclosed when the proposition for Insurance was made. The defendants pleaded that material facts were known to the plaintiffs and concealed from the companies, the defendants, viz. that the ship 'James Cooper,' with a cargo of Patagonian guano, had been so damaged as to render her unseaworthy; that her cargo had been wetted

and part landed at a port of distress, and that the defendants were prevented from knowing these facts by the name of the ship having been changed, by which her identity was lost to them. On these pleas nothing has to be said here, as they relate to the previous chapter on Representations; but there was another plea which comes into the present subject. It was urged that the voyage was misdescribed in the policies, that Monte Video was not the ship's proper port of loading, and that the actual voyage was not 'from a port or ports in the River Plate,' inasmuch as the port of loading and the *terminus à quo* of the voyage were the islands of Leones in Patagonia. The cause was tried at Liverpool, and a verdict given for the plaintiffs, with permission to the defendants to move, &c. A rule having been subsequently obtained, the trial came on, *in banco*, in the Court Queen's Bench, in November 1865. And, after an able argument on both sides, the Lord Chief Justice delivered the judgment of the Court in favour of the plaintiffs. He said that, though it was plain that the guano had not been loaded in the River Plate, there was a constructive loading there. It had been established that, in such a case, a constructive loading was sufficient to satisfy the language of a policy. There had been no attempt to deceive the underwriters, who were aware of their own knowledge that guano was not a product of the River Plate. Under a new ownership, this must be looked upon as a new voyage, which 'at and from' would rightly describe, even although the cargo had been on board previously to the ship's arrival 'at' Monte Video.

There had been an actual loading of part of the guano there; and for the intention of the contract of Insurance, Monte Video was the port of loading.

We should be wrong to generalise hastily on the above decision, because it contained several special features; but we learn from it that the words 'at and from,' though they are popularly understood to mean, when relating to cargo or freight, the original loading of the cargo, are not so strict as to exclude a commencement of an adventure or risk where the cargo is on board already. This, however, supposes that the underwriters on such cargo and freight are only liable for the *status quo* of the goods at that point where their risk has its inception.

A parallel case to the above occurred in France. An Insurance was effected on goods 'from Curaçao to Amsterdam,' the underwriters' risk commencing from the day and hour the merchandise was or should be loaded on board the vessel 'La Dame Ursule.' The cargo was really loaded at Martinique, whence she proceeded to Curaçao. She took her departure from the latter island, and on her voyage was taken by the English. The underwriters refused to pay the loss, on the ground that the vessel had 'been loaded at Martinique, a place not mentioned in the policy, nor comprised within the limits of the voyage.' It was answered that the loss had taken place on the voyage insured; and that, being so, it was a matter of little consequence whether the cargo had been loaded at one place or another. The Court of Admiralty at Marseille, acting upon the Ordonnance of 1681, so decided the case, and

Case of 'La Dame Ursule.'

its judgment was confirmed by a decree of the Parlement of Aix, dated June 1, 1761. Emérigon accepts the principle thus consecrated. 'What,' says he, 'does it signify if a ship enter on the voyage insured from a point beyond? That voyage is only cognizant of a commencement at the place named in the policy as the beginning of the risk, so the voyage terminates at the other place named in the contract. Here the termini *à quo* and *ad quem* are Curaçao and Amsterdam. Martinique, where the cargo was loaded, is unknown to the insurance. The loss happens between the termini of the insured voyage, and the underwriters are liable.'

Under Article 348 of the 'Code de Commerce' a different decision must, it appears, be arrived at. That Article, which treats of 'Reticence,' says that 'every difference between the contract of insurance and the bill of lading which would diminish (the underwriter's) opinion of the risk, or changes the object of it, annuls the Insurance.' Acting in conformity with this Article, the Court of Aix, in 1836, refused to admit that, under the terms of the policy, 'on property loaded, or to be loaded, on board a vessel, from the time of leaving that port,' a cargo would be covered which had only been manipulated (*opéré*) in that port. So, in consequence, if the cargo had been shipped previously, and in a port at a distance, the insurance would be void as to the underwriters, whether by failure of identity of the cargo, or by false declaration or concealment on the part of the assured.[b]

---

[b] Bédarride. 'Com. Code de Com.' vol. iii. tit. x. p. 267. The

When special conditions printed or written in the policy are preceded by the word 'Warranted,' as they thereby receive additional emphasis, so they require a minute and exact compliance. Had, for instance, the guano in the 'Dos Hermanos' been 'Warranted to be shipped at a port in the River Plate,' the very ostentation of the declaration would hardly have admitted of an argument to reconcile that condition with the fact that the guano had nevertheless *not* been shipped in the River Plate in the ordinary acceptation of the words; yet the distinction resides only in the more vigorous and imperative expression of the terms of the risk. Warranties by name.

A colourable compliance with such a warranty is not sufficient. When a ship is warranted to sail on a certain day, it is not enough that she hauls out, or proceeds a certain distance with a design to return, or to wait till she is completed as regards crew, stores, or other necessaries, without which she could not perform her voyage, or would be unseaworthy (see *Thompson* v. *Hopper*). It must be virtual, *bonâ fide* sailing; and any commencement of a voyage on a day warranted will be looked at jealously if an immediate detention or return into port ensues. Yet there are certain valid sailings when a ship is not in her absolute completeness when she unmoors, because the incompleteness of a part may leave her still seaworthy and navigable for a portion

---

sentence of the Court of Aix is quoted by him from the *Journal de Marseille.*

of a divisible voyage. Thus, when a vessel sailing down the river at Berbice on her warranted day of sailing, proceeded without her chronometer, which was left to be rated (as is necessary in that climate), and which chronometer was to follow in one of the ship's boats to the ship's anchorage, thirty miles distant where she had properly to wait to receive her clearance papers, I apprehend this to be a true sailing, because neither the chronometer or the boat was necessary for the ship's seaworthiness during the first portion of the voyage, and no delay or detention was caused by the proceeding. So in *Bouillon* v. *Lupton* (Common Pleas, 1863), three steamers were insured from Lyons to Galatz, 'warranted to sail on or before August 15.' These steamers had been plying on the Rhone, but now had been purchased for navigation on the Danube, and, to place themselves on their intended station, had to make the voyage by sea from Marseille to the Black Sea. They were fit to steam down to Marseille, where they were to receive proper masts, anchors and chains, ballast, &c., which would make them fit for the sea-voyage, but which, had they put in at Lyons, would have rendered the steamers unable to get down the Rhone. They left Lyons respectively on July 24 and August 2, and this was held to be a real sailing within the warranted time. It is true that the steamers were detained at Arles and Marseille to be completed in the manner mentioned above, but the voyage was from Lyons, and they all left that place before August 15, in a fit state for navigating the Rhone to its mouth; and, to make it more clear, the steamers

could not have got to Marseille had the preparations for a sea-voyage been added to them at Lyons.

The Memorandum.

There is a class of warranties contained in the Lloyd's policy, and in all policies on goods, known as The Memorandum. The object of these warranties is to excuse underwriters on ships, on goods, and on freight, from claims for damage of a trifling, doubtful, and vexatious character. To effect this, it is warranted that the ship and freight, and certain kinds of merchandise, shall be free (*i.e.* shall leave the underwriters free) from average unless the loss or damage reaches the limit of 3 per cent. of the value of the interest. These warranties are very special and technical, and play an important part in the system of Marine Insurance. As they enter directly into the subject of averages, and have been already treated of in my 'Handbook of Average,' little need be said of them here. There are, however, a few remarks which are necessary in this place concerning specific warranties. They must be minutely fulfilled. If underwriters are free from claim if the loss or depreciation, or both of these together, do not amount to 3 or to 5 per cent. of the value of the interest insured, that ratio must be distinctly shown to be reached. If the loss in quantity or price, or both, fall short of the 3 or 5 per cent. by a single penny, a claim against the underwriters fails. It would do the same if the deficiency were only a halfpenny. But if the defect of 3 or 5 per cent. were some still smaller quantity, represented by a vulgar fraction or expressed in decimals, I cannot say whether the law would hold

the limit to be arrived at sufficiently near, and support a claim against underwriters, or would treat it as a mathematical question, and maintain the demonstration in their favour that the limit of the warranty was not reached. Such nice discrimination is not to be considered trifling, for on it may depend the payment of large sums. It is the special office of judgment to distinguish differences; and though to fix the eye and thoughts on a penny or a halfpenny may seem a mean employment of the sight and intellect, it is not mean if in that way only the line of justice can be drawn between man and man.

Again, in ascertaining whether a claim is established on a policy under these memorandum warranties, the test must be applied according to certain legal, usual, or technical methods. Thus, a ship is warranted 'free from particular average' under 3 per cent. If she receive damage by sea-perils it must be ascertained whether the injuries so received amount to 3 per cent. on the declared value in the policy. It is not to be done by a survey and estimate of the damages sustained, but by the actual cost of the repairs rendered necessary to restore the vessel to the condition she was in before meeting with the accident. *One third part* is to be deducted from the cost of materials and labour for melioration before testing the amount; and there are other and very technical rules to be strictly observed before the claim can be ascertained.

With goods the method is different. The object with all merchandise is to establish a ratio or percentage on

the article itself by its value in the policy, high or low. If, by a comparison made in accordance with certain legal decisions and established usages, it is found that the article insured has lost in weight or value, or in both these particulars together, the 3 per cent. or the 5 per cent. stipulated in the memorandum, a claim is established, and the ratio is applied to the value declared in the policy, be it higher or lower than the price in the market. On freight an analogous rule prevails, and for both the latter the rule differs from that which applies to ships, which is not so satisfactory when reasoned upon or so consistent. The value placed on a ship when she is insured is arbitrary; sometimes it is fixed purely by the owner, and he may be guided by the motive of what the vessel cost him, or what is about the value at the present price of shipping, or with reference to what her use is to him in a certain trade. Sometimes, however, the underwriters have a voice in the value to be insured in the policy, and their desire is usually to secure a high valuation. Much afterwards depends on the value agreed upon; a high value will often save the underwriters from a claim which could have been enforced on a lower valuation. Thus, suppose two ships in every respect similar, one of which is valued at 1000*l.* in the policy, and the other valued at 1200*l.* Suppose, also, that both meet with the same accident, and receive an equal quantity of damage, and that in each case the repairs, after being manipulated in the customary manner, amounted to the net sum of 33*l.*, the assured owner of one ship establishes a claim on his policy with the lower

valuation, for it requires only 30*l.*; whilst the owner of the other vessel can exact no claim on his underwriters, owing to the declared value making 36*l.*; necessary for an average. On the formula adopted for goods this anomaly would not happen; for, if the loss or depreciation could be shown to reach 3 per cent. of the article itself, a claim would be exigible on policies whether the valuations in them were high or low.

The special warranties of the memorandum were intended to set a guard against the petty, frivolous, and innumerable claims which would be made on the underwriter were it not for this limitation. When there is clear and notorious reason for damage occurring, as by a ship being on shore, these warranties are withdrawn by another clause attached to the memorandum, which modifies its excluding effects by the words 'unless general, or the ship be stranded.' The warranty therefore does not exclude claims on the policy, however small, in case of general average contribution, or loss or damage to the interest insured, provided in the latter case that the ship has been on shore, or any way stranded within the legal definition of the term. It is now very frequent to insert in writing on a policy of goods the words 'unless stranded, sunk, or burnt,' or 'on fire.' The memorandum is then counteracted by stranding, sinking, or burning. The introduction of 'sunk' appears rather a surplusage; for if a vessel sink in the deep sea it is a total loss, and if she sink in shallow water she is stranded when she comes to the bottom. When this clause relates to goods, as it generally does, the construction is, that the warranty on

them is removed if the *ship* be on fire, &c. It is not necessary that the special goods themselves should be on fire.

There is this difference between the warranties of the memorandum in the English policy and the *franchises* in many foreign policies. The former only guard the underwriter from trifling claims where the causes of them are doubtful or obscure; when the cause is clear and notorious, as by fire or stranding, he pays the smallest damage. Foreign policies do not generally make any exception in favour of stranding, nor do most of the Insurance offices established in India and China. And secondly, when the loss or damage on an English policy exceeds the warranted 3 or 5 per cent., the underwriter pays the whole loss or deterioration; whereas most foreign Insurances pay only *the excess* of the franchise, be it 3, or 5, or 10 per cent., and the assured bears himself 3, or 5, or 10 per cent. of the entire damage.

The exception or counter-warranty of stranding, &c., has the effect of expunging the warranty altogether, and makes claimable, not only the smallest quantum of damage received at the time, or by means of the stranding, but also damages received previously to that accident and clearly unconnected with the act of stranding. In fact, by these excepted perils the written warranty is deleted from the policy, and is as if it had never been inserted.

The form in which a warranty is made is immaterial. The very ordinary mode commencing 'warranted,' is

very proper, but is by no means necessary. It has been seen above that numerous descriptions and limitations and exemptions making part of the policy are valid warranties, and their positive or negative fulfilment is of vital importance to the existence of the contract. What is required is, that they be expressed, (we are not now speaking of implied warranties), that they be expressed in writing, and that the writing be on the face of the policy; or if necessary to continue the writing on the reverse side, it must conclude before the underwriters' subscriptions commence. They are in practice sometimes superadded on the fly-leaf of the policy, in connection with some series of declarations of interest, and initialed by the underwriters; but this is dangerous, because the fly-leaf may be detached, and whether they would be held valid in strict litigation is doubtful. At all events, they must be written on the parchment or paper of the policy itself. To write a declaration on a slip of paper and to enfold it within the policy is no warranty; even to attach the description or other matter intended to be warranted to the policy with wafers, has been held to fail in its object; and in both these cases the written matter remains merely representative. But warranties may be written in the body or in the margins of the policy; they may be written horizontally or at right angles to or across the printed words, and so forth; they must, however, be inseparably connected with the written contract, for they are one of its integral parts.

Form of Warranty

Gathering shortly into one view, according to the

method I have adopted, what has been said in this chapter, we find the warranty to be a written description or declaration, embodied in the policy itself, affirming a particular state of things, or undertaking that certain things shall be done or excepted; and that this written agreement as to particulars becomes part of the contract of Insurance itself, and its infraction is fatal not only to the potency of the contract, but to its very existence; and this even when in result the failure of a warranty complained of could be shown not to have affected in any way the safety of the property, or to have increased the quantum of risk. Summary.

The difference between a warranty and a representation was traced, and it was shown that a great part of the matter, both printed and written, which makes up the entire policy is in its nature warranty, although that name is not mentioned. We saw that warranties are frequently attended with exceptions, which are counter-warranties; so as that on happening of the latter the policy is not voided though the warranty be broken. We had then to lament that anything so clear as the definition of a warranty, viz., a written statement embodied in the policy, and distinguished therein from a representation, should have been perplexed and obscured by the mischievous adoption of its name for a totally different principle, viz., 'implied warranty,' which, if admitted, destroys the fundamental notion of a warranty; and is in itself so vague, that it breaks down in its one only important application, that of seaworthiness, and has to involve itself with another paradox—that all ships

must be seaworthy at the commencement of the risk, except such (and these are probably more than half the number) which their owners choose to insure 'for time.' The other implied warranties are only in two cases, viz., that a vessel shall not deviate from her voyage—and this is useless, because deviation is a direct infraction of the positive warranty which defines the voyage, and that a ship shall be properly documented. It is certainly inaccurate to use the word warranty for these three tacit obligations, and it only leads to difficulties when so used. All that can be meant is that, both by natural justice and conventional usage, certain things are taken for granted, or are to be done or abstained from, and that good faith is to be observed when an Insurance contract is entered into; and that these unexpressed duties, &c., ought to have as much force as if they were written warranties. The implied warranty of seaworthiness extends from the ship to the goods she carries, and an unseaworthy vessel vitiates the insurances on her lading; but the plea of unseaworthiness of the goods themselves cannot be entertained. The probable grounds on which the doctrine of implied seaworthiness rests were examined, and they are not in themselves unreasonable; but they do not extend far enough, and the same object might be attained by less doubtful means. It is not permitted to a master or owner to carry goods entrusted to him on deck; but in case he do so, and the goods are thereby injured, the remedy against him would be by an action for damages, and not by setting up an implied warranty that merchandise shall be carried below deck. The meaning of

seaworthiness itself was then considered, and the term was seen to be flexible, bending itself to varying circumstances, and adapting itself to the exigencies of the case. It was pointed out that with ships insured for time instead of the voyage, the implied warranty does not exist; an inconsistency, though useful in some instances, the more evident because the election to insure a vessel by the voyage or for time rests with the assured.

There are not many difficulties about express warranties. They are vital parts of the Insurance contract, and require a literal compliance; but where there is obscurity of expression or doubtfulness about facts, the uncertainty will be construed in favour of the assured. Nor will the literalness of the compliance be allowed to be overstrained. It is sufficient that there was an actual and *bonâ fide* compliance, although afterwards an adverse change might have happened.

The expression 'at and from' was singled out as one of those vague terms introduced into policies which lead to obstinate questions afterwards. Two leading cases, one English the other French, were examined; the former, a very late one, was decided, apparently upon an equitable view of the intention of the Insurance and of the surrounding circumstances, in favour of the assured. The other instance was also given, both by an Admiralty Court and afterwards in a Court of Appeal, on the same side; but the authority of the case is disputed and negatived by Article 378 of the 'Code of Commerce.'

It was shown that the introduction of the word 'warranted' before these stipulations adds little or nothing

to their cogency, which is strong enough without that prefix. What all decisions have to rest on is the real and not the colourable compliance with a warranty.

A number of very technical quantitative warranties are enumerated at the foot of the policy in the clause called the memorandum, and these fall rather under the province of the adjuster than the law; except in so far as they are affected by the great exception or counter-warranty of stranding. This section of the subject is amply considered in works upon Average.

Finally, the form in which a warranty is to be written on the policy was mentioned; unimportant as to the position or direction of the lines written, but all-important that they should be on the policy itself, not attached or enclosed but forming a portion of the contract. When a warranty or stipulation is introduced by consent after the execution of a policy, or modified or expunged, the initials of all the underwriters must be affixed to the new matter or the alteration.

CHAPTER VI.

THE PREMIUM OF INSURANCE.

THE premium, or consideration given to the underwriter for the risks he takes upon himself under the policy, goes to the very essence of Insurance. It is the absence of premium which distinguishes from true Insurance those remunerations for losses sustained during the wars by Roman citizens, concerning which some notices are certainly found. Though those losses might have occurred at sea, and in the conveyance of corn, stores, &c., for the State, the sum paid, even under a guarantee, was simply a recompense to the sufferer.

In the English view the premium must be prepaid before an Insurance can have existence; to which, therefore, the premium is a condition precedent. Accordingly, we find that the common form of policy embodies an acknowledgment of receipt of the premium: 'confessing ourselves paid the consideration due unto us for this Assurance, by the assured, &c.' And this receipt shuts the door to the underwriter of escaping from his liability on the ground that the premium has not been paid him. The stamp on the policy suffices for a receipt stamp for his money so acknowledged to be paid.

In the matter of premium there is a difference between

the French conception of Insurance and our own. The contract of Insurance, they say, 'is synallagmatic' (involving mutual duties): 'it contains an obligation on one side to pay the premium, and, on the other, to reimburse the loss.'[a] The English scheme of Insurance lays no duties on the assured when he has paid the premium—the obligations lie entirely with the underwriter. It is true that the word *premium* means a reward, and that if a mere price or consideration were intended, the term *pretium* would have been more apposite. But then we must not construe our own language too hardly. Reward is capable of expansion. As there may be gratitude for favours to be received, so there may be a reward for services to be performed.[b] In this case the validity of the Insurance seems intended to be made dependent on the true payment of the agreed premium; and so, assimilating to the French definition, there is reciprocity of duties in the contract.

And still further. By the system in commerce of

---

[a] Bédarride, 'Com. de Code de Commerce.'

[b] In such sense our translators of the Bible use the expression 'the rewards of divination,' in speaking of the present carried to the seer by one who sought his prophetic offices.

In point of fact, the premium is rarely received at the time of effecting an Insurance, and several of the offices have varied the form of their policy, so as not to be concluded by the admission of receipt of premium. The following is an example:—

'The persons authorised to make the Insurance have promised, or otherwise obliged themselves, to pay forthwith for the use of the company the sum of , as a premium or consideration, &c.'

hypothecating the shipping documents, and by them the goods shipped, to the bank or other capitalist advancing on the shipment, a Marine Insurance on the goods was necessary as a security. The assured often drew a bill on the receivers of the shipment at its port of destination for the premium; and the policy contained the proviso that the Insurance Company was only liable for claims under the policy if the bill for premium were duly paid. There might certainly arise the position of a loss occurring to the interest insured, and of the bill for premium being dishonoured or unpaid; and then the question whether a set-off of premium against part of the loss would be an equivalent to the due payment of the bill. And this exhibits the disadvantage to underwriters of making premiums contingent, for in the hands of dishonest men the premiums would not be paid in case of safe arrival.

The most contingent payment of premium is that mentioned in a former chapter, where in certain China and East India policies it is agreed that in case of loss 2 per cent of the sum insured shall be abated from the amount due to the assured. That part of the premium, therefore, is of the nature of a bet on the voyage, and the policy has somewhat the appearance of a wagering insurance.

The numerous Assurance Companies that have adopted a form of words in lieu of the receipt clause of the old Lloyd's policy, will render obsolete a good deal of what was formerly written as to the position of assured and underwriter in relation to the payment of premium.

The introduction of mutual societies brings with it some changes of principle, and affects our notions of

premium; for in Mutual Marine Insurance Associations there is strictly no premium. Neither are these associations companies. Solidarity is absolutely avoided; and the society is a mere *congeries* of individuals bound together by no other tie than the agreement to bear among themselves in certain defined proportions, and under certain limitations set forth in their rules, the losses of any individual member who suffers. It is true that some of these clubs have thought it necessary to print or write into their policy an imaginary premium, *e. g.*, 20 per cent.; but the members pay nothing when they enter on their year of mutual engagement, except sometimes a small subscription for the purpose of having a fund for the payment of current expenses. The composition of mutual clubs being considered elsewhere in this volume, the only feature demanding notice here is the absence of premium in their system. When a loss has occurred to a member, and has been investigated and settled by the managing committee, a 'Call' is made on each member of the association to contribute his quota to the suffering member's loss, the suffering member being himself a contributary.

The construction of premiums is, in each of the three branches of Insurance, based on experience; but the three methods of deducing premiums from experience are very different. In Life Assurance, premiums are the result of the highest science brought to bear on data most laboriously collected. The production of marine premiums is practical, merely empirical, and unscientific in the last degree. The most successful underwriter would

probably describe the competency he exhibits for his vocation as derived from personal experience, united to some mental qualification which might be called tact, instinct, or intuition. Life premiums are tabulated, and require correction from time to time, as human life is made more secure and protracted by the advance of science and external circumstances. Fire premiums are still more fixed, and when a premium is adopted it is necessary, speaking generally, that all Insurance Companies should adopt it together; and even when suspected or known to be inadequate, the greatest difficulty exists, in consequence of competition, to having it altered. A well-known instance of this is the ordinary domestic-risk premium of 1*s.* 6*d.* per cent., of which it takes (not reckoning interest) 1,333 premiums to pay for one total loss; or, to put it in a striking light, if an Insurance Company had commenced business in the year 534 A.D., *i.e.* in the reign of Justinian, it would—leaving out of sight the opposed elements of interest and office expenses—have accumulated a fund by which it could pay a first total loss in the present year of 1867. Or, more practically considered, an Insurance Company has to make 1,333 entries in all its books for one total loss on this scale of premium.

Returning to life premiums. Their construction has been effected by the highest mathematical acumen and labour. The collection of data has given birth to a new branch of science, called Vital Statistics. The pursuit of this science has been productive of some most important discoveries, valuable to our hygiene, municipal economy

and even moral philosophy; and the association of many enlightened minds engaged on one subject has led to the establishment of a separate profession, an institute, and a periodical and a permanent literature.

The experiences of life were principally collected in three successive tables, called the Old Northampton Table, constructed from observations made between the years 1775 and 1780; Milne's Carlisle Table, from data gathered in the years 1779–1787; and the Actuaries' Experience Table, being the actual experience of seventeen Life Insurance Companies, and embracing 80,000 policies. These tables have been supplemented by Dr. Farr in his New Northampton Table, and by his English Life Table, constructed from the returns of the Registar-General. In addition, technical results have been derived from surveys of life in different trades and occupations, different countries, and varied climates. The tabulated data were manipulated by actuarial science, first, into tables of the expectancy of life at every period: and then, taking into view modifying circumstances, and adding the elements of rates of interest at which the paid premium might be invested and the remarkable effect of compounding that interest, of profit to a company undertaking Insurance business, and the expenses in carrying on that business, with some minor ingredients,—tabulated rates of premium were cast, which after-experience of results has generally justified. Different companies vary their tables among themselves at their pleasure, and for the convenience of the classes who propose to insure. Some make the rate of premium low in early life, and augment at a more rapid

ratio for entries at later years; others make it higher in early life, increasing with a slower progression for entries at older ages; but the original statistics are sufficiently settled and agreed upon that the differences in the scales of premium are not organic differences, and, to use the expression of Mr. De Morgan, the various tables of prudent life companies only ring the changes on equivalents.

(But between the premiums of Life and Marine Insurances there are real and organic differences. The event contemplated by every life policy is a certainty—the death of the assured. The contingent part of the transaction is the time for which that event may be deferred. The event insured against by a marine or fire policy is a mere contingency, one that may never happen at all. This constitutes the first distinction. The second distinction among life, fire, and marine premiums is the condition upon which they are respectively paid and received. A life premium is an instalment of an annuity. It is a section of a continuous payment which is to be coextensive with the assured's life. When once the terms of Insurance are settled and an equable rate of premium is determined, the policy is an engagement that its grantors will continue to accept the same premium, year by year, as long as the grantee's life continues.) I am purposely, for the sake of simplicity, excluding from sight change of circumstances, as of going abroad, &c., which avoids a policy, or is provided for by an extra premium; also ascending and descending scales, payments in a single sum, and other varieties and vagaries in 'ringing changes on equivalents,' and confining myself to the even, ordinary

premium for life. As the premium is to be unvarying, it follows that at its commencement, *i.e.* in the earlier years of life, it is in excess of the mathematical value of the risk run. The excess diminishes with progressing years, till it reaches an equinox or point where the premium and the true value of the risk coincide. Then, as life advances, the premium is left in defect of the mathematical value, and gains an increasing disparity to the end. But whilst the year's premium in any year after the point I have called the equinox is too small for the risk at that age, a compensation is made to the insurers by the growth of the entire amount of premiums paid by the assured, and increasing by means of compound interest in a geometric ratio. There need, therefore, be no 'calamity of so long life' on the part of the insurers, since the premiums and accumulations at a certain point exceed a total loss on the policy. All that is required—and is earnestly cared for in a well regulated life office—is, that any division of profits made to proprietors or mutual insurers, shall be strictly *out of profits*, and not out of the accumulating fund, the produce of premiums and interest which provides for the increasing onus of the policies.

In a fire-policy the scale of premium is more conventional. Except with changing circumstances, the value of the risk on a house or other property does not increase with years. It is as adequate at one period as at another. So the same unvarying rate is charged; and a tacit undertaking is given that the insurers will continue to receive it as long as the policy-holder continues to pay it—except there happen a deteriorating change of circumstance to the property insured. Fire companies are thus bound on

their part to run the risk during the pleasure of the assured.

The conditions on which the premium on a Marine Insurance is accepted are quite different. The engagement terminates with the end of the voyage or year insured; and in time-risks the revenue laws prevent an engagement to insure by one policy for a longer period than twelve months. When the voyage or year is completed, there is no agreement, actual or implied, that the underwriter will continue to insure the assured at the same rate, or continue to insure at all. A new policy is a new contract, independent of what preceded. It is true that it is sometimes very expedient to retain the same underwriters on a following policy when the first policy expires before the risk is over, and when in case of loss it would be impossible to give proof as to which policy would be the one liable for the loss. This may happen when a policy for time on a ship terminates whilst the vessel insured is on her voyage; or when merchandise is insured from one port to a second by a policy, and the goods are sent forward to a third port as their destination; *e.g.*, silk from Japan to Shanghai, and thence to London. But the principle remains of the separateness of the succeeding insurances. A more real exception is in the insurances of Mutual Shipping Insurance Associations, where the assured has a right to continuous insurance, if he continues to pay his calls and is not expelled by resolution of committee, &c, under the by-laws of the society. But it must be repeated that these mutual associations have rather the nature and character of benefit clubs and friendly societies than of Assurance Companies.

Again, premiums in the three departments of Insurance are much distinguished by the manner of their construction. Life premiums are the result of mathematical synthesis. They, and all other parts of the actuary's work, are capable of algebraic expression. They are tabulated, and remain unaltered usually for many years. Fire premiums are arrived at by merely registering experiences of localities, occupation, &c.; or an assumed rate becomes conventional, and is changed with the utmost difficulty; the public and the companies not caring to consider much whether it is in favour of one or the other, whether eighteenpence for a hundred pounds enables a company to pay losses, expenses, and agency and secure some profit to the company which undertakes this business. When a great calamity by fire takes place, it often drives the Insurance societies to reconsider their scale of hazardous and extra-hazardous premiums, and gives them the opportunity of advancing them, at least for a time, till they are weighed down again by competition.

Marine Insurance premiums are an admixture of experience, tradition, and personal fancy. They fluctuate with seasons and states of the barometer; they are affected by locality, by a storm, and by political events; by prejudice, by the character of the assured or broker, by competition, by the comparative strength of will of the two contracting parties. They are too uncertain to be tabulated, too unsettled even to be quoted in a price-current. A marine premium combines more elements in itself than a life premium, but the quantitative relations of those elements are not mensurable, and can be brought

into no formula, except a most rudimentary one. Yet, unscientific as is the process by which the individual underwriter weighs the risk and fixes the premium, there *is* a process; the mind combines the ingredients, makes deductions, compensations, forecasts. Instances are known by comparisons made after a long series of years in which the adjustment of premium and risk has been so exact, as to have left the underwriter just a living profit for each year of his operation. And, generally, premiums coincide pretty well with the risk undertaken; for if experience proved them to have been too high, they would cease to be given; and if to be inadequate, the underwriter must at last succumb.

The premium being agreed upon between the assured and the underwriter, is due immediately; is, indeed, a condition precedent to the effectuation of the insurance. Fire and life offices do not issue their policies till the money is paid for premium, and in the old form of marine policy, still extensively used, a receipt is given for the premium, as mentioned above. Therefore the underwriter cannot plead that a policy is void by the non-payment of premium, on this form, except it were fraudulently obtained from him. In Marine Insurances the assured pays the stamp-duty; and in Fire Insurance he pays a Government duty each year of three shillings per cent, equal on the lowest, or non-hazardous rate, to 200 per cent. of the premium. In Life Insurance the duty is very low, one shilling per cent., paid once only; and it is frequent with offices not to charge this to their assured. Whilst the validity of the policy is secured to

Premium, when due, and by whom

the assured by the receipt for premium which it contains, that acknowledgment is not conclusive as regards the broker or agent who actually effects the insurance—an intervention which is very common. Underwriters and brokers have, frequently, running accounts between themselves, and often set off their mutual claims for premiums and losses, paying the resulting balance at stated or irregular times. Against a broker an underwriter can support an action for premiums not paid, notwithstanding the receipt clause in the policy.

Deductions from Premium.

From the premium nominally agreed to be paid to the underwriter, two deductions are made before the money comes into his hands. One is a brokerage of 5 per cent. due to the agent effecting the insurance, but which, it is to be remarked, is paid equally although the assured does his insurance personally, without that intervention. The other deduction is a discount, usually of 10 per cent., for immediate payment. It is also paid to whoever effects the insurance; and even when a broker is employed, it depends upon arrangements between him and principal whether he retains it or any part of it; but it is always allowed by the underwriter. It has, in truth, somewhat lost its original character, and is not exclusively connected with prompt payment, for the same discount is allowed on balances in the six-weekly settlements customary with the offices, and with the yearly settlement which generally takes place at Lloyd's.

An inconvenience attends this system of deduction. It is that the quoted premium must always be 15 per cent. above the rate equivalent to any risk, including

underwriter's profit. Premiums are increased, and as an absolutely certain result, the amount of insurance effected is diminished. As to a very large extent the assured now makes his own insurances and receives back himself the nominal brokerage and discount, the plan is to him only a circuitous way of doing nothing.

Much would be gained if the word discount were expunged from the commercial vocabulary. It has lost its true import, and is used far more for concealment and temptation than to any valid and useful purpose. A true discount is the rebate of a payment before its due time, and should be only for the exact number of days anticipated, at the current rate of interest. But we see discounts of 10 per cent. and even 20 per cent. given with scarcely reference to the day of prompt or the value of money. At Birmingham and Sheffield the term discount seems to have passed into a different use or signification; and hardware at a stated price, with a discount of probably 75 per cent., must mean that it is an easier method of equalising the rise and fall in prices of the manufactures than altering the figures of the multitudinous price-lists. Such an explanation of 75 per cent. discount is reasonable and comprehensible; but the evil remains that shippers and others can get, in many trades, invoices made out to them without allusion to the discount. These remarks are possibly *obiter dicta*, but the subject is worth some consideration by the mercantile world.

After a premium has been paid to an underwriter, it may be claimed back from him, in part or in full, on several grounds, namely :— Returns of Premium.

For want of interest
For absence of risk.
For double insurance.
For innocent illegality.
For fraud.
For conditions made in the policy.

Want of Interest.

If it should prove after effecting an insurance that goods expected by a ship were never on board, or that a supposed interest the assured had in a ship or goods was not his, so that he had no right to insure; or that, after insuring his freight, the freight was paid him by the shippers of cargo before the sailing of the vessel; or that, having an interest but not knowing its exact amount, he insured more than his interest, as it proved; —then, in case of entire want of interest, the policy must be cancelled, and the whole premium returned to him who paid it:—and this means 85 per cent. of the nominal premium; for since the underwriter received 15 per cent. less than the entire premium, he will, of course, only give back as much as he received. At one time underwriters were allowed to retain one quarter per cent. when they cancelled a policy, and this upon the ground of the trouble they had taken in the transaction, and that it was by no fault of theirs that the transaction was frustrated: but I think this is now rarely done, except where there has been from the first something uncertain and hypothetical about the interest. In cases where the want of interest is partial and not total, a proportionate part of the premium is returned, and the policy is not cancelled, but remains in force so far as it is filled with interest.

We are now considering the failure of interest, and the corresponding return of premium. Excess of interest does not affect an underwriter, because his own risk is confined to the sum he subscribes in the policy. In general it is beneficial to him that the interest should be really more valuable than its value as declared; only his rights are not to be invaded by an increased value being put upon the subject-matter he has insured and that excess of value being insured elsewhere. He may of his own will admit by writing that the interest valued in his policy at 100*l.* is 150*l.*, and then in case of loss with salvage he would receive for his proportion only two-thirds of the proceeds; but without this concurrence in an altered valuation he is entitled to take all the proceeds, although the value of the thing insured was greater than its declared value.

And I would here observe by an interpolation, that as there is often a want of interest, obliging a return of premium, or a decaying interest involving no return of premium on the underwriters' part, so there may be such a position as an inadequate premium, by reason of the repetition of interest under one and the same premium. This is a position naturally unintended by an underwriter, and can rarely exist with merchandise, but it frequently does exist, virtually, with ships. The position does not seem to have been observed upon, and the digression on the subject is consequently the more excusable.

If an insured cargo of sugar, saltpetre, or other soluble goods were washed out to the extent of one half, underwriters on the policy of Insurance would pay a claim of

50 per cent. in respect of such partial loss. But after that loss had taken place, the interest remaining at stake on the same policy would be reduced to one half the original sum insured, and any claim arising after the first loss, whether for general average contribution, or for further loss of the article itself, would be confined to that half interest, consequently to half the sum originally insured. If the vessel, after losing half the cargo, put back to her loading-port, and were filled up again by the shippers of the first goods, so that the cargo was thereby reestablished to its original quantity and value, the second shipment would not form an interest on the existing policy, nor throw any risk on the underwriters of it. It would be essentially a new interest, requiring a fresh Insurance.

But when the Insurance is on a ship, the case is otherwise. Suppose that early in the course of her voyage the vessel be dismasted in a hurricane, and that the expense of reinstating the spars, rigging, and sails, and of repairing the damages below, consequent on their fall, amount to a claim of 33 per cent. on the policy; it is the same as saying that a third part of the ship has been destroyed, and that a new ship has, to that extent, been built at the underwriters' cost. The underwriters have thus paid a total loss of one third of the interest at risk; nevertheless, after repairs, the entire interest revives on the policy, and continues till the voyage is terminated; and if, subsequently, in the course of the same voyage, the vessel be totally lost, the underwriters pay the entire value, although they have paid for the loss of one third of the same interest before.

It is easy to imagine an extreme example of this kind, to suppose a new ship (on which underwriters pay the whole repairs without deduction) on a time-policy for a year; the vessel dismasted at one time, run on shore at another, on fire at a later period of the currency of the policy; and, as a result, so entirely reconstructed after one accident and another, as to present a good illustration of the perplexing problem of personal identity combined with material change and renovation. The three accidents might cause the underwriters to pay upwards of a total loss on the insured interest; and if, finally, before the policy expired, the vessel sank, the insurers would pay two total losses, or even more, for one premium.

It may be urged that the underwriters can protect themselves from this catastrophe by themselves insuring the outlay for making the repairs. This is true, but it does not affect the question. The principle remains the same whether the original insurers sustain the total loss, or other insurers be subrogated into their place, to whom the first set pay the exact equivalent of the transference of the risk.

There will be no return of premium for an interest that decreases during the currency of the Insurance, if the entire interest has once been in the position of capability to a total loss. If an entire cargo which had been at underwriter's risk a single day were voluntarily reduced in quantity afterwards, there would be, legally, no return of premium claimable. I do not mean to say thnt underwriter might not agree with the assured to return part of the premium under such circumstances,

because he might see it expedient for his own interest that a smaller cargo should be taken. So, again, when ship or cargo has been at underwriter's risk and it is determined to end the voyage at an intermediate place, no return of premium can be demanded, although a voyage from the shipping port to the substituted port could have been insured for a less premium. Yet here, again, as a matter of negotiation, it might suit an underwriter to return part of the premium on account of the curtailment of the voyage insured.

Premium is returnable though an interest exist, if the risk contemplated by the insurance is not run. If a ship is insured on a voyage from A to C, and she loads and sails from B to C, she has never been at the underwriter's risk, because never sailing on the voyage insured, and the premium must be returned. If on a voyage from A to B the ship deviates from her voyage at a point *a* on the road to B, and it be clearly brought home that it was intended to deviate when she left A, it has been held that the policy was void from the beginning, so that there was no risk on the underwriter, and he must return the premium. But in this case the evidence of the original intention to deviate must be very clear; and in civil causes the law is indisposed to judge undisclosed intentions, and prefers to keep in the way of open facts, or of those intentions which are rendered undeniably patent by subsequent acts. Nothing is disclosed by act till the point *a* was reached and departed from, and the intention to deviate might have been conceived at that time; in which case the interest was at the

Absence of Risk.

underwriter's risk till up to the point *a*, and he had earned his premium; although from that point the policy became void, and the interest was no longer at his risk. There would consequently be a necessity, in order to claim back the premium, to prove by written or personal evidence the intention to deviate before the ship left her loading port A.

It may be supposed that want of interest and absence of risk in a policy are not only tantamount in effect, but are convertible terms. It may be said, where no interest exists the underwriter can stand under no risk. These conditions are not, however, so identical, and there may be interest without risk; and when the further consideration of fraud enters, and risk to the vessel has had place, there may be no return of premium exigible, although there was no true interest, for the loss would prevent the discovery of want of interest.

Double Interest.

It is illegal and fraudulent to insure more on an interest than its value. But, without fraud, it often happens that two persons, each having an interest, in the characters of shipper, receiver, or agent, ignorantly insure the same interest twice, or in aggregate insure more than the value, or one person may do so under a misconception. When this happens, the insurance has to be rectified, and a return of premium in respect of the super-insurance made. It is essential for a Double Insurance to show that not only the interest is the same, but that the risks undertaken by each set of insurers are identical, otherwise one insurer might be only supplemental to the other, as is often purposely

the case; *e.g.*, one policy may insure Total Loss only, and a second policy on the same interest may insure Particular Average, or some risks not included in the other policy. Or the voyage may not be identical. One Insurance may be from A to Z, the second from B to Z; in which case, although B be on the line from A to Z, and only a short distance from A, yet, inasmuch as a loss might happen in the transit from A to B whilst the interest was on one set of insurances only, that set has earned their premium, and would refuse to return any part of it. But assuming the interest, the voyage, and the risks to be identical, if one person, in error and without fraudulent intention, has effected two policies, the interest will attach wholly to the first in order of time, and the second as to time will return its premium. When identical insurances on the same interest are insured by different persons in two places, without collusion, each insurance will retain a half interest, and return half its premium.

In twofold insurances without fraud, the rate of premium given may be very different, and it would be the interest of the persons insured to attach the whole interest to the policy at low premium. This, however, cannot be done. It is true that, in case of a loss, the assured may select that one of the two insurances to recover from which he prefers, and the set of insurers from whom he recovers must seek their own remedy against the other set of insurers for their half loss. The assured may be guided by considerations of the greater solvency, or the local nearness of one set of under-

writers in respect to the other; and a third consideration may determine him. The identical interest insured against the same risks may be valued at a different sum by the two persons effecting insurance. One may have unobjectionably valued the interest at 1,000*l.*, the other at 1,100*l.* This being so, recovery in case of loss would be usually made on the 1,100*l.* policy, and that set of insurers would claim on the 1,000*l.* policy for half their insurance, viz. 500*l.* The larger policy having thus to pay 600*l.*, would return premium on 500*l.*, and the smaller policy would return on a like sum.

Save in the respects of differential valuation and premium, solvency of underwriters and locality in which claims are payable, it is not generally important to the assured which set of underwriters is liable to him in case of loss, or from which he receives back the moiety of double premium. But the case is altogether different with the underwriters. The question of liability and interest affects them on every policy they subscribe. It is their object to retain full interest where there is safe arrival; to have it reduced in case of loss and damage. The contention about interest, and, consequently, return of premium, is therefore usually raised by them; and, strictly, the assured should be ignorant of the questions agitated, or indifferent to them, since they concern only the two sets of underwriters. But, practically, the course of business brings in the assured as a third person in the discussion. It is of the rarest occurrence that one set of underwriters, or one company, claims a return of premium directly on the other set of underwriters or

company. The convienent arrangement is, that the proportions of interest and returnable premium being equitably settled on the two policies, the assured receives from each the due return of premium, and looks to each policy for the proportionate payment in case of loss.

There are three suppositions of fraud. There may be fraud on the part of the assured, fraud on the underwriter's part, and fraud by both parties to a policy.

Fraud

Where there is fraud by the assured the premium is in general not recoverable back though the policy is vacated; for a risk may have been run previous to the discovery of the fraud, and, had the ship or goods been lost on the voyage, no discovery of fraud would have been made, and the underwriters would have paid a loss.

If a discovery of fraud be made previous to any actual risk having been run there might then be no ground for the underwriter retaining the premium, and he would have a remedy against him who attempted to defraud him, by criminal proceedings.

When the fraud is the underwriter's, by insuring an interest after he had had private information, not known to the assured, that the risk was already over by a safe arrival, &c., he must return the premium. But it is not all information possessed by an underwriter that will have this effect; for notices publicly affixed, intelligence gained in the newspapers and the like, are equally cognizable by assured and underwriter; and it is a sound principle in mercantile matters that both parties to a transaction are taken to know their business. And this is carried to the length of holding each party to be in-

formed, when it might be shown that there was no possiblity of reading all the lists and available information at the time the Insurance was effected. On the other hand, there must be a general presumption of *bona fides* in people who deal together.

When there is fraud, or attempted fraud, on both sides—when assured and underwriter are mutually endeavouring to take each other in, or both are engaged in defrauding the revenue—the law will not assist either party in such nefarious transaction. It refuses to be invoked to such a quarrel. Neither will it be a party to an insurance illegal by mutual consent, as a no-interest policy and others void by statute 19 George II., although there may be no imputation of moral turpitude. The parties begin with a tort, and they must get out of it as they can.[c] But where it is an innocent illegality, as from ignorance of *facts*, the premium would be recoverable in spite of the underwriter's advantage of possession.

Lastly, there are returns of premium on various conditions stated in the policy itself, which go to reduce the underwriter's risk. It is found, practically, more convenient for the underwriter to receive the entire premium for all contemplated risks, binding himself to return conditional portions of it when it is ascertained at the end of the voyage how those conditions have been fulfilled, than that he should receive premium equivalent to the minimum of risk, and

Stipulated Returns

[c] Tudor's 'Leading Cases,' p. 210, ed. 1860.

be paid for additional contingent risks when it is known they have been run. The circumstance of the underwriter being in possession of the whole premium is sure to bring the assured to him again when a return is due to the latter; who, if he had to pay an extra premium for the uncertain risks, might, in the hurry of business, forget to go back to the underwriter, and the underwriter would find it difficult, or rather impossible, to watch all contingencies of all risks undertaken by him requiring further premiums, which contingencies he has no private means of ascertaining.

The stipulation for returns of premium is nearly always accompanied with a condition, expressed or implied, that there shall be an arrival of the interest, *i.e.* that the returns will not be made (except for short interest) unless the ship or goods arrive safely at their destination; safely, because if only half the value arrive, the returns will be made on half value only, and so for any other proportion of the interest which arrives. A few persons, however, stipulate that the returns shall be made whether the interest arrives or not, absolutely. Those who do this are in a very small minority.

With regard to many conditional returns of premium, it is difficult to understand the reasonableness of a fulfilled condition being affected by a subsequent event. If a vessel have liberty by the policy to 'load at A or B a cargo for C, with a return if she load at A only,' and she loads only at A, and is subsequently lost on the voyage, it is not easy to see why a reduction of premium having been agreed to by underwriters, equivalent to a reduction

of risk by the vessel not going to the second loading-port, the reduction should not be made, though by a subsequent event altogether unconnected with the ports of loading, the interest never arrives. Yet it is so; and, the custom being uncontested hitherto, it is wise in those who see the position in its true light to provide, by their policies, for an absolute return. I suspect that this is a case of sentimentalism—a spirit creeping a good deal into our institutions, but which has had little influence as yet in Marine Insurance, except when connected with the modern names of the ships insured. It seems to proceed on the principle that it is hard on the underwriter who pays a loss to ask him for any additional payment, although justly due; that to demand a return of premium whilst recovering a loss from him is to add aggravation to misfortune; and that it is better—at least more humane—to gild the bitter pill at the expense of a little gold-leaf.

In Mutual Insurance Associations or Clubs, it is usual to provide for losses, not by premiums properly so-called and prepaid, but by contributions from the members from time to time towards the claims made by suffering members and allowed by the managers. It is clear that these instalments have no right to the name of premium; although by the arrangements of some clubs a near resemblance to premium is arrived at. This is not general, and the ordinary method of meeting losses is by contributions, by call, made after the event. To secure the due payment of these contributions, the club rules provide, that upon failure of a member to pay calls, his ship

entered in the association ceases to be insured, yet remains liable to the end of the specified period to contribute to the losses of others. Parallel to the stipulated returns in ordinary policies, there are provisions in club rules for an allowance to members whilst their vessels are laid up unemployed. This allowance is carried to their credit when making the calls.

Fire and Life Policies.

On fire-policies there can be but few opportunities of return of premium: errors, over-insurance of property the value of which was unknown or uncertain at the time of effecting a policy, or a conditional stipulation complied with, will be the principal grounds of return.

Life-policies stand on a different footing. Besides stipulated returns—*e.g.*, 'to return 20*s.* per cent. if the life insured does not leave Europe'—there are those virtual returns of premium which are called purchases of the policy.

It has been already stated, that whilst the events insured against in marine and fire policies may never arise, the event contemplated by a Life Insurance is a certain one at an uncertain period, for it is a mortal being's death. The yearly reception of premium is a terminable annuity, which in the mass, and fructified by interest, provides against the certain event, and leaves a surplus for profit and working expenses. A fire premium is also an annuity, on an even and minimum scale. The subject-matter does not deteriorate in safety by lapse of years, and accordingly the rate charged remains the same. The year's premium is the exact payment for a year's insurance. It is a cer-

tain article at a certain price. Not so with life premiums. There is an unvarying yearly price paid for a varying yearly risk. It is mathematically commensurate with the risk of one year only of the life insured. Before that point of time is reached, the premium is too high for the actual contingency; after that point is passed, the price is in defect of the risk run, and its inadequacy increases constantly with each year of life. In the former period an Assurance Company is enjoying a profitable annuity, and has every interest to retain it and not part with it; after the balancing or nodal point there is a growing argument to get rid of the undertaking before the event contemplated takes place. This can be done by reinsuring the life with another office, thereby securing part of the earlier profits; or by purchasing the policy assured; which really means, purchasing an indemnity against the impending event by giving back part of the sum already accumulated out of the premium paid. Each office has a different method of calculating the value of the risk which they are ready to buy off; but the soundest plan appears to be on the basis of difference between the premium the company actually receives, and the premium it must pay by reinsuring the risk elsewhere, a certain margin of profit coming to the aid of the purchasing company. This differential annuity, capitalised at an adopted rate of interest, is the value of the policy, *i.e.* the value of the riddance from the policy; and it is either given in full, or in some certain proportion which is the usage of the Company.

It appears that for a long time it has been usual, and

allowed for the assured in suing for a loss on his policy, to enter two counts, viz. one for the loss, and another for the return of his premium in the event of his not succeeding on the first issue The alternative is quite equitable in those cases when the underwriter's resistance is on the ground of the policy never attaching to the suggested interest, or being void, *ab initio*, from some other cause; but it is perfectly illogical in other instances, as where the interest has attached and a risk has been run on the policy and resistance to a claim is grounded on subsequent events, errors, or frauds. Yet this position leads, as was observed by Lord Chief Justice Cockburn, in the recent cases of *Carr* v. *The Alliance Insurance Company*, and *Carr* v. *the Royal Exchange Assurance*, to the most flagrant and palpable injustice; and the rules of procedure which permit such an anomaly as that the plaintiff can on one count receive back the premium he paid for an insurance, and then, on the second count, recover a loss on the very policy which has thus been shown, by the recovery of premium, to be void, have embarrassed the courts, as another judge observed at the same trial, ever since the time of Lord Mansfield.

Actions for repayment of Premium

In *Carr* v. *Montefiore*, &c. (Queen's Bench, Nov. 1864) the companies, acting under erroneous advice, pleaded that the policies in question had never attached, and paid the premiums they had received into court, in virtue of the insurances being void. The plaintiff took out the premiums so paid—paid on the ground of there being *no insurance*; and he then proceeded on his other count for loss to be indemnified *by those policies*. The amount of

damages or loss (the fact of loss having been established to the satisfaction of the court) was assessed by arbitrators and was paid by the defendants. They then brought before the court their contention that the plaintiff could not recover on two contradictory counts on the same subject-matter, and that the premiums wrongly paid by the defendants ought to be refunded to them. The justice of their demand recommended itself instantly to the court, who would not hear an argument from the plaintiff's counsel as to the moral right of the twofold recovery; but the complex machinery of the law seemed to lack an instrument for rectifying the paradoxical position of injustice brought before the court, 'which could not see its way,' as Justice Mellor observed, 'to putting its hands into the plaintiff's pocket to take the money out again' which he had buttoned up so safely there.

In recapitulation of what has been said in this chapter, we have seen that premium is the distinguishing mark of insurance; that though actually named a *reward*, it is really a *price*; and that either absolutely paid in advance, viz. at the time of executing the policy, or supposed to be so. The common or Lloyd's policy, therefore, contains in itself, in order to make (in this view) its contract valid, an acknowledgment of the payment of the premium; and other policies also confess the payment, or, at their outset, state the basis of their contract to be the promise or obligation of the assured to pay forthwith the agreed premium; while some East Indian and China companies, which frequently draw bills on England for the premiums, endeavoured by the word- Summary.

ing of their policies to make the insurance dependent on the payment of those bills; a form which was very inconvenient in practice, and led to some intricate questions. Nothing was said on the important subjects of the intervention of brokers and agents; running accounts for premiums; and the relative position of the three parties, when insurances are effected by a broker's medium; which subjects are reserved for a separate chapter.

We saw that the system of mutual shipping Insurance associations, or clubs, introduces another principle. Premium, or a prepaid price for the risk undertaken, is discarded; and instead thereof a number of shipowners associate themselves together for their mutual security against losses, which are paid rateably by the members, on the value each declares on his property entered in the club. As losses occur a contribution is made among the members; and these 'drawings' stand in the benefit society as a substitute for premiums.

As to the methods by which the varied risks of maritime commerce are estimated in an equivalent premium, we found the premiums based on experience, but arrived at by very unscientific roads, thereby greatly differing from the premiums of Life Insurances. The various elements which go to compose the estimated value of a risk are constantly changing, and are many in number; and these are often blended with personal considerations, prejudices, special knowledge of articles or localities, and other things; from all which the underwriter elicits by a certain tact and the aid of memory an equivalent in price; which premium when formed by persons of skill

and experience, very often proves itself singularly true on a comparison with results.

The very low rates charged on certain risks was mentioned with surprise, as seeming inadequate even to the labour of keeping accounts. Nevertheless, a sort of market value or possible price at which such risks will find insurers, they continue to be underwritten; and we must presume that they blend with the whole mass of premiums, and lead to some indirect advantage. A slight examination was made of life premiums, their history, and the methods of their construction, and the points of distinction were shown by which they differ from marine and fire premiums, and in the terms on which underwriters accept them. Premiums on ordinary marine policies were also contrasted with the payments or quasi-premiums of mutual Insurance associations.

Concerning the time at which premiums are payable, and the persons by whom paid, it was shown that the insurance contract contemplates a cash payment, and that the engagements of the policy depend on that payment as a condition. To render the holder of a policy safe, a receipt is given in most policies for the premium; but when a third person intervenes in the transaction, as broker or agent, the receipt in the policy does not avail him; for the system of running accounts between brokers and underwriters is publicly known and is recognised in law (*Xenos* v. *Wickham*, &c.). The position is more difficult as to a running account between the assured himself and the underwriter; and the right of setting off premium against loss has been a frequent source of

dispute. In law, the underwriter's receipt stands recorded in the policy, and will generally be conclusive. Valin, looking upon insurance as a contract of reciprocal duties, implies that the premium due and unpaid might be satisfied by deducting it from a loss the underwriter has to pay. His words are, that a company or individual by this contract guarantees all losses and deteriorations which may happen by accidents or perils of the sea to the ship or cargo during the voyage and during the continuance of the risk, *less* a sum which the assured must pay to him. Our system of Insurance is based on a different principle.

The deductions made before payment of premium to the underwriter were then mentioned, viz. discount and brokerage; and an opinion was expressed adverse to discounts in trade generally, and especially of concealed allowances, as being seldom beneficial and often a mere facility to dishonest practices. Returns of premiums were next entered on, and the conditions which give rise to them, whether in part or in whole; and a divergence was made from the subject to the converse position of premiums which prove in result inadequate by a repetition of risks under the same premium, which principally happens in insurances on ships. A test was given when premiums should not be returned; viz. when at any time the underwriter was exposed to the risk of a total loss, however short the time of such exposure. An anomaly was pointed out as to the custom affecting claims for return of premium, by allowing subsequent events to negative a return of premium on some certain condition,

which condition was fulfilled before the interest insured entered into danger: as when an option was given of sailing from two ports, with a return if she only sailed from one; and the ship sailed from one port only and was afterwards lost. A difficulty was also shown relative to intended deviation vitiating a policy *ab initio*.

The subject of double insurances as demanding returns of part of the premiums was entered upon; and also the effect of fraud on policies, and in what cases the underwriter is entitled to retain his premium on a policy vacated through fraud. Stipulated returns of premium specified in the policy were mentioned, and the reasons given why, in naming a premium when the exact conditions of a risk are not known at the time of effecting an insurance, it is a more convenient and a more common plan to fix a maximum price, with conditional returns for contingencies reducing the underwriter's risk, than that he should receive the minimum rate, with a promise that the assured should pay him additional premiums for circumstances enhancing the risk, when the particulars of the voyage, &c., become known.

Returns of premium on fire and on life policies were slightly glanced at. On the former class they can be but seldom, and on a few, defined causes. In assurances on lives there is a separate ground for return; for a life policy is an engagement to assume the risk of mortality for a year (generally), with a further engagement to continue to enter upon that risk, year by year, at the same premium, as long as it continues to be paid. Were it not for this latter engagement, the completion of each year,

of insurance, whilst the assured life survives, would be pure profit; a successful speculation on the life of the assured. But as the speculation is to be continued, even to the end of life, at the assured's option, the stated premium is yearly growing disproportionate to the increasing risk of death happening, and a loss having consequently to be paid. After a few years it becomes, therefore, the interest of the company granting insurance that the insurance should be discontinued, because that secures the company all the premiums it has received absolutely. The renewal of future risk can be effected in two ways; viz. by sharing the sum received with the assured, on condition that he discontinues the insurance; or to reinsure elsewhere their own risk, paying necessarily a higher premium proportionate to the advanced age of the assured life A calculation of the price at which the latter operation can be effected; that is, a calculation of capital, representing the differential value of two annuities—the premium to be received, and the premium to be paid for the remainder of the assured's life—gives the office value of a policy. And if from that deduced sum a deduction be made for office expenses, profit on the transaction, &c., the value is arrived at which can be given as purchase-money to the holder to lapse or cancel the policy. A sale of a policy in open market does not differ in general greatly from the price the issuing office is willing to give for it. Insured persons should disabuse themselves that there is a fixed or universal price at which they can sell their policy to the office—as one-third of the premiums paid. It is not so; and

several elements enter into the computation of the actuary who values it.

Finally, the paradoxical position was pointed out in which an underwriter is placed by the present rules for pleading, when an action is brought upon a policy in a certain form. The late case of *Carr* v. *Alliance Insurance Company*, embodies in a crucial manner this anomaly. As the case will probably be mentioned again hereafter, there is no occasion now to do more than refer to it.

CHAPTER VII.

OF INTERESTS.

Necessity of Interest.

AN actual interest is essential to the validity of an insurance. This cardinal fact is to be accepted with the following reservations:—

1. A policy of insurance may be opened and executed upon the expectation of interest, before it is known of what the interest will consist, its amount, quantity, &c. Such a policy may be called a provisional insurance. Its existence will still depend upon the actual interest subsequently declared upon it. If the interest turns out in result to be smaller than the sum 'opened' or insured, the vacant part of the amount insured is null, and the premium on such portion is to be returned

2. A policy may be effected upon a real interest, either on a ship at sea, or on merchandise, &c., shipped or to be shipped in some foreign place; and the ship and the goods may have been lost or destroyed before the execution of the policy, so long as the fact is unknown to the assured. For the policy contains the admission 'lost or not lost,' and has a retrospective comprehensiveness.

And now, strangely, by the doctrine laid down in *Gledstanes* v. *Royal Exchange*, an insurance may be

effected, and a loss claimed thereon, where before effecting an insurance both assured and underwriter know of the loss of a ship or goods, but do not know (*i.e.* are not certain) that the interest thus destroyed is to rank on the policy so opened.

3. If, without fraud, two persons having right or reason to insure—as *e g.* a shipper and a receiver of goods—insure separately the same interest, such interest will remain insured, but will be shared between the two policies.

4. It is not necessary that a real interest should be exclusively a material interest; certain debts and liabilities, and even expectations of profits and commissions, are good insurable interest if they truly exist, and can be endangered by the contingencies of maritime perils. But those debts which shoot over the voyage, as a personal debt claimable at law whether a ship arrive or is lost, are not insurable; neither are documents merely representative of value or debt, which value or debt could be recovered by independent evidence though the documents be lost, as deeds, bills and, *semble*, bank-notes, valid interest.

So freight, or the price payable for the carriage of goods, is insurable:—by the shipowner or charterer if the freight is contingent on the arrival of the ship at her place of destination; by the shipper of goods if he has paid the freight in advance and absolutely; for then the contingencies of the voyage affect him, and not the person who has already received the freight.

5 The lives of persons cannot be insured by a marine policy, except by indirect methods; as by a clause pur-

posely framed to meet that part of the Navigation Act which gives remedy against the ship (and now, by the 'Fusileer's' case, against cargo also) for loss of life; and on slaves or Coolies, and other involuntary labourers, by insuring as passage-money a value on each head. The pen revolts from saying more on such appraisement of human beings as objects of risk and merchandise.

The true province of Marine Insurance is to give protection from risks in respect of real property or real value. Everything which would make it approach betting is to be jealously avoided. There is in mankind a common tendency to find excitement and to hope for profit by dealing with contingent events, chances; and since insurance has existed as a system there has been, and now is, a constant attempt to divert it from its useful and legitimate end, and make it subservient to these gambling propensities. The law has been particularly stringent and severe in its determination to prevent such misuse of a valuable institution; and the Statute 19 Geo. II. c. xxxvii, rendered necessary by this flagrant misuse, was framed so strongly as now to seem somewhat out of proportion to other enactments relating to commerce, where a certain libration is permitted, and is found necessary, for the free exercise of mercantile adventure. And it has happened that a traditional terror of an infraction of this act has been handed down, when from the progress of ideas and events a little more liberty would be desirable.

The preamble of the Act 19 Geo. II. states—

> It being found by experience that the custom in England of making assurance, interest or no interest, or without further

proof of interest than the policy, hath been productive of many pernicious practices, whereby great numbers of ships with their cargoes have been either fraudulently lost or destroyed, or taken by the enemy in time of war; and that such assurances have encouraged the exportation of wool, and the carrying of many other prohibited and clandestine trade, &c.

And the statute proceeds to enact:—

That no assurance shall be made on any ship belonging to His Majesty, or any of his subjects, or any goods laden on board any such ship, interest or no interest, nor without further proof of interest than the policy, nor by any way of gaming or wagering, or without benefit of salvage to the assurer. And that such assurance shall be null and void. Yet,

First,—Assurance on private ships of war may be made for the owners thereof, interest or no interest.

Secondly,—Any goods, merchandise, or effects, from any ports or places in Europe, or America, in possession of the Crowns of Spain or Portugal, may be assured in such manner as if this Act had not been made.

Thirdly,—It shall not be lawful to make re-assurance, unless the insurer shall be insolvent, become a bankrupt, or shall die; in either of which cases re-assurance may be made.

Fourthly,—All sums to be lent on bottomree, or at respondentia, upon any British ship bound to the East Indies, shall be lent only on the ship, or on the merchandise laden on board such ship, and shall be so expressed in the bond, and benefit of salvage shall be allowed to the lender, who alone shall have a right to make assurance on the money so lent. And none shall recover more than the value of his interest in the ship, or on its merchandise, exclusive of the money so borrowed. And if it appears that the value of his share in the ship or merchandise does not amount to the full sum so borrowed, such borrower shall be responsible to the lender for so much of the money borrowed as he hath not laid out on the ship or merchandise, with lawful interest, together with the assurance and charges in the proportion the money not laid out shall bear to the whole money lent, notwithstanding the ship and merchandise may be totally lost.

Fifthly,—In all actions the plaintiff shall declare, within fifteen days, what sums he has assured.

Sixthly,—Persons sued on policies of assurance are to bring the money into court, and the plaintiff not accepting it with costs, to be taxed, in full discharge, and shall afterward proceed to trial in such action, and the jury shall not assess greater damages to the plaintiff than the money so brought into court; such plaintiff, in every such case, shall pay to the defendant in every such action, costs, to be taxed; any law, custom, or usage to the contrary notwithstanding.

Legal and Illegal Interests

Of interests at stake a line must be drawn between those which are and those which are not legally insurable. The interests uninsurable because of illegality, are themselves to be subdivided. In the first class are those which are not legal, because tainted with wrong-doing, or which contravene public safety, or the majesty of our own laws. Such are smuggling risks, inward; insuring enemies' property; running an effective blockade. In the second class are those interests which are illegal in a technical sense, but without imputation of criminality. The persons interested are debarred from making a legal insurance by virtue of a statute, or from the nature of the proposed risk or interest itself, which, according to the doctrine of insurance, makes it incapable of being protected under this system. Thus, to introduce the terms into a policy, 'free from average, and without benefit of salvage,' or 'this policy to be proof of interest,' renders the insurance illegal, because those terms are against the enactment of George II., quoted above: whilst to insure a separate homeward charter before a vessel has completed her voyage on the first or outward charter, is illegal from the nature of the thing; it having

been judicially pronounced that till a ship arrives at the spot where the second charter is to take effect, and in a condition to take in cargo on the second charter, there is only an expectation of procuring that second chartered freight; and a freight is insurable, but the *expectation* of a freight is not an insurable interest.

This is the present law on the subject; but those most practically conversant with the intricacies of chartering and insurance know that it is very difficult to harmonise it with what is permitted in other cases, and what the necessities of commerce as at present practised require.

The law will give no assistance towards the assured's recovering on policies which are illegal in the innocent sense of illegality; but no penalty would fall on the parties to such a contract, if put on a proper stamp. No doubt a vast number of illegal insurances are constantly being effected—some, because the parties effecting them are positively ignorant of the fact that they are illegal, and others, because the assured wishes to protect himself against some contingency to which he is exposed, and knowing that he could not bring his policy, even though stamped, into court, determines to rest on the good faith of his underwriter; and thus such insurances are named 'honour policies.' Such were the reinsurances from one office or private underwriter to another when over-full on a risk, or from other causes, before the Act of 1864 was passed, permitting reinsurances.

It should be remembered that even an 'honour policy' without stamp renders the parties concurring to effect it liable to a penalty under the Stamp Duty Act.

How Interests affect the Insurer.

It may be said, speaking generally, that, except when fraud enters into the subject, underwriters are not greatly concerned about the interest they insure. I rigorously except fraudulent intention; for if that possesses the assured, there can be no safety to his underwriter. But an underwriter's business is to calculate the paying rate of premium for all sorts of risk, and the premium is to include a reasonable amount of profit. It may be very dangerous to the assured to have it discovered that the interest or the risk he has caused to be insured is illegal, and his policy, in consequence, worthless if a legal dispute arose on it; but the same position need not, and would not, affect the underwriter. He received the premium under the honest intention of paying a loss if one arose; and on closing the record of the risk he undertook, in his premium book, his thoughts are not recalled to it until the result is known, and he either marks it off as an arrival or a loss, total or partial. The underwriter lives on his business; and the more profitable business brought to him the better it is for his trade. He is not called upon to scrutinise and question the risks presented to him, if suspicions of improper dealing have not been raised in his mind.

The Underwriter's Interest

When we speak of the interest of an underwriter in relation to the subject he insures, it must be understood to mean, not that he has any actual right or vested interest in the thing itself, but only in the adventure. He has no ownership until abandonment is made to him of the thing insured by the assured, and is accepted by him, the underwriter. After

abandonment, if he voluntarily accepts it, or if the facts give the assured the right to relieve himself from the ownership of the thing insured and cast it upon the underwriter, the property in ship, cargo, &c., together with their incidents, vests really in the underwriter, and he can dispose of the property in any way he chooses. As between himself and the assured he is actionable for damages; but in respect to parties outside the policy he must sue and be sued through the assured, except after acceptance of abandonment; and even in the latter case it is convenient for him to fight through the sides of the assured, or that the assured should fight with his concurrence for his ultimate relief, and usually with his guarantee for costs, expenses, and other consequences.

Change of Practice in the Admiralty Court

In the Court of Admiralty proceedings are generally *in rem*, and underwriters have hitherto not been allowed to appear as parties to a suit or action; but this exclusion has been lately overruled by Dr. Lushington, in the cause of the '*Regina del Mare*' (Adm. 2nd Aug. 1864), in which his lordship decided against an application that underwriters should not appear and defend. He said, 'It is true, underwriters were not formerly allowed to come in, but I have made up my mind not to shut out any person having a real interest in the result of the suit.' Having satisfied himself that the underwriters had this qualification, he admitted them to defend.

It will be observed in reference to the above ruling, that a person may have a real interest in the result of a

suit who has only a derivative or hypothetical interest in the subject-matter of the thing litigated.

The interest in a ship as insured consists of the hull, masts, rigging, sails, stores and victualling provisions for the crew; but not necessarily, in a passenger ship, the cabin stores for the passengers. Iron kentledge, even when occasionally left on shore, is now decided to belong to the underwriter's interest in ship. The spare sails, ropes and spars, carried when an outfit is complete, are included in the same. Well found vessels have usually a chronometer as part of their outfit: the captain frequently takes with him a second, belonging to himself; and sometimes the owner puts on board a third. In a claim for loss, the presumption is, that one chronometer is part of the underwriter's property; but there are often disputes on this subject, the owner claiming the chronometer as his own private property; and there being no enactment as to what ships or classes of vessels shall carry a chronometer in order to make them seaworthy, it is often the ground of troublesome discussion. The metal-sheathing forms, as a matter of course, part of the interest; yet there are some local shipping insurance clubs which except metal sheathing, excluding it from the insurance, and not claiming the proceeds of it in case of a loss and sale.

Ships

Besides the material interest which vests in the underwriter in case of the loss of the ship accompanied with salvage, there are the immaterial interests in her named incidents; these are her profitable uses; and, practically, they are confined to any freight due at the time of loss and abandonment, or which may grow to be due after-

wards, or which may be earned subsequently by the abandoned ship But the term would, in all probability, include any amount for salvage services rendered by the insured vessel before her abandonment, but not paid till afterwards; particularly if that payment was the result of a suit or action in Admiralty. Many persons, knowing that freight is itself and separately an insurable interest, are startled at hearing that what is saved of freight becomes the right of the underwriter on the ship. When speaking of interest in freight the subject will be referred to again. Considering that the law which has settled this point proceeds on unusually doctrinal grounds, it seems possible that we may ere long see a change effected, and a position which strikes the majority of people as highly anomalous exchanged for one resting on a plainer and less abstruse basis.

A ship may be insured for a voyage or for a specified time, not exceeding twelve months. Whether the insurance be for time or a voyage the interest has this peculiarity, that it does not diminish during the currency of the policy by losses or damages sustained by the vessel and repaired or replaced by the underwriter. Though the ship be almost rebuilt at the underwriter's cost, the whole value agreed in the policy revives; and if the vessel be subsequently lost he pays for the ship in totality, though he has previously paid 50 *per cent.*, or any other portion of her value, for the partial losses she has sustained. The interest in a ship is in this very much distinguished from that in goods or freight; for, in the two latter interests, if a portion be

Interest in ship does not diminish

lost on one part of the voyage and paid for by underwriters, it is only the remaining part of the value which continues at his risk, and which he can be called on to pay in case of the subsequent loss of the ship which contained them. If a thousand bags of sugar or rice were insured, and by reason of damages or losses sustained by sea-perils the vessel returned to the port of loading, or put into some other port, and there a quarter of the thousand bags was found to be damaged and was sold, and the shippers of the original goods replaced the 250 bags by an equal number of packages, the latter would not be at the risk of the underwriter of the first shipment; his interest during the rest of the voyage would be 75 *per cent.* of the agreed value. But if a ship put into port dismasted and with the loss of her rigging and sails; and new masts, rigging and sails are purchased and paid for by the underwriters to the extent of 25 *per cent.* of the policy value of the ship, the reinstatement does not relieve the underwriter from any part of the value of the vessel as against an after loss We may imagine the extreme case of a vessel on a long voyage being rebuilt piecemeal in consequence of a succession of accidents; having a new keel and floors, &c., and new metal in one port; receiving new decks and upperworks at another place; and new mastage, rigging and sails in a third, so that she is at length virtually a new ship, for which the underwriters have paid progressively the entire insured value, spending as much as if they had built another ship to replace that which was lost; but for the remainder of the voyage or time insured by them the original interest has not dimi-

nished, and they are liable yet for a total loss on the policy, should one occur to the vessel.

There seems at first sight something anomalous in this position. It might be urged that the value of the new work done to the ship in restoring what was lost or destroyed demands a new premium, because the subject-matter is not the same which the underwriters originally insured. But we must remember that the principle of *identity* applies to ships as to human beings. The 'Jane' remains the 'Jane' in spite of all her successive repairs and replacements; just as her owner, Thompson, remains Thompson, notwithstanding the unceasing flux and change which goes on in every part of his body. The underwriters agreed to insure the 'Jane' for a voyage or for a year; and Thompson must be kept indemnified to the end.

And, secondly, we have to recollect that the position of the shipowner uninsured is in all respects the same as that of an underwriter who, for a premium, undertakes a shipowner's burthen in respect to sea-perils. The owner, uninsured, is under the necessity of repairing his vessel however often she may meet with damage, and of encountering the danger, after repairs, of her being totally lost. When a total loss occurs of an insured ship, though at the very beginning of the voyage or period of time insured, the underwriter on payment of the loss closes the transaction; no interest can in this case revive. And if an insured ship be taken by enemies, and abandonment is made to underwriters, and they pay the loss, though there be a recapture subsequently to such payment, the risk on the policy does not revive nor

the property in the ship revert to the owner; it is the underwriter's salvage.

Ship's value

It is of great importance for the avoidance of difficulty and disputes, that the interest insured should be valued in the policy whenever it is practicable. And the insertion of the value at the time of insurance is the more necessary when the interest is in a ship, because, in case of a loss or of extensive repairs, the data are frequently lost or unknown on which a value might be estimated, and also because there exists much diversity of opinion as to what the real value of a ship is for insurance, and as to the methods of arriving at a proper value. The subject of ship valuation was thought of sufficient importance, in the year 1863, to demand a discussion at the Edinburgh Congress of the Association for Promoting Social Science. The papers read on that occasion investigated the topic with care and great minuteness, and a record of some of them, and of the *viva voce* proceedings, will be found in the volume of Transactions for the year. I shall condense my own view, in the text, by referring to the paper I read at the Congress, and which will be found at length in an Appendix. This paper having been reported *in extenso* in some journals at the time, was excluded, by the regulations of the Association, from their Transactions, and consequently requires its reproduction here, as I cannot better summarise the steps which bring us to the conclusion that the value of a ship is the sum for which she would sell. There ought, however, to be no real difficulty as to the value of a vessel if inserted in the policy

when the insurance is effected, whatever there may be in assigning a value, after a loss, on an unvalued policy; because a certain liberty must be left to the assured in this instance, as in others, of putting his own estimate on the worth, or importance to him, of his property. If he values it high, it is at the cost of larger payments in premium; if low, it is at the disadvantage of a smaller recovery in case of loss.

Over-Insurance.

It is a cardinal principle in Insurance that an interest shall not be insured for more than its value. Where it is discovered that, by different policies, a larger sum in total has been insured than the declared value of the interest, there is a *primâ facie* presumption of fraud. If the over-insurance be very excessive, the presumption of fraudulent intention might be so violent as to give ground to a court of equity to relieve the underwriters from the danger they stand under, by vacating the policies. And, if the accusation of fraud is not pressed, though an excess of insurance be found, the assured will not be allowed to recover, in any way, on his several policies more than the declared value, if declared, or the true ascertained value, estimated liberally, if undervalued. There would be a short interest on the several policies in consequence of the over-insurance to the extent of the excess.

But the principle is not to be pressed too hard against the assured. A ship insured by her owner at one time and valued in the policy, may, from a rise in the price of shipping or some other cause, require a higher value; and on the assured effecting a second insurance on the

same vessel, he would be quite justified in inserting a higher value in the second policy than in the former one, although the aggregate of the two insurances form a larger sum than that at which the ship was valued in the first policy. What has to be carefully observed is, that the rights of the underwriters on the first insurance are not to be affected unfavourably by any subsequent valuation to which they are not parties. In case of a loss occurring, and the saving of part of the interest, the proportion of a salvage falling to the underwriters on the first policy will be in ratio to the smaller valuation of the ship, and not to the secondary and larger valuation. Thus, suppose a ship valued at 2,000*l.*, had 1,000*l.* insured on her in policy A, and a further sum insured on her in a second policy B, in which her value is raised to 2,500*l.*, the underwriters on policy A will be entitled to one-half the proceeds, according to the value in their contract, and not to two-fifths only, which would fall to them if they were concluded by the second valuation. If, by subsequent endorsement, the underwriters agree to accept the second and larger valuation, of course no questions can arise as to the value or share of salvage; but in ignorance of, or withholding their consent to, a subsequent larger valuation, they must receive their proportion of salvage on the value in their contract.

In *Bousfield* v. *Barnes*, a second policy was effected on a ship, at a higher valuation than that inserted in the first. The two sums insured exceeded the value of the whole ship as stated in the former policy, but not as valued in the second It was shown that the vessel was really of

the value stated in the later policy, and the plaintiff was permitted to claim the full amount of both insurances. The underwriters on the first policy were not allowed to reduce the interest on their policy, by the sum in excess of their valuation produced by the second insurance.

On the other hand we have the case of *Irving* v. *Richardson*, where two insurances were effected on a ship valued in each policy at the same sum. The two sums insured exceeded the value of the vessel as declared; and the assured was not entitled to recover more from the two policies than the sum declared to be the ship's value in the policies. Unless the allegation of fraud were sufficiently strong to taint the whole transaction, the assured would receive a return of premium from his underwriters for over-insurance, since it left a short interest falling upon the later policy, or, sometimes, rateably on both insurances. It is, however, an open question as to the right of the first set of underwriters to claim a reduction of their interest, on discovery, after loss, of a subsequent insurance. If they can sustain an allegation of fraud against the assured, they may indeed prevent his recovering on both policies conjointly more than the value of the ship; but it is by no means clear how an after wrongful act of his can produce the retrograde effect of altering the interest on the first policy. Premiums and losses are practically looked upon as correlatives, and the rights of underwriter and assured therein are demonstrated reciprocally. If the underwriter on a policy is entitled, in case of arrival, to retain his whole premium, he is, conversely, obliged, in case of loss, to pay his whole sub-

scription. If he could have been held at any time during the currency of the risk liable for a total loss of the sum insured, he is not be deprived, in case of arrival, of any part of the full premium. The only reservation to this principle is in the case of fraud, which distorts ordinary transactions, and requires a new rule.

Interest in Goods.

Under the name of goods or merchandise are included all substances used in commerce; and the private effects and baggage of passengers, if it exceeds what they carry about them or require for use, or can reasonably keep in their cabin as personal. Specie and treasure are always denoted by name, and not comprised in practice in the term 'goods,' though they fall under the present division, in which we are considering material interests, apart from the ship itself.

General titles are sometimes appropriated to special uses; and not unfrequently the word 'goods' is used exclusively to express textile manufactures, and even cotton fabrics as distinguished from other products of the loom. The Lloyd's policy speaks throughout of 'goods and merchandise;' but the two words are probably used only for the sake of fulness, and not to assert any differences of kind in water-borne objects of value.

The insurable interest of merchandise is either in gross or in detail. An underwriter may insure a ship's entire cargo, as of corn, coals, wood, iron, &c., some of which cargoes are not identifiable, as corn in bulk, and coals, whilst others, as wood and iron, may have marks on them. An entire cargo may be in bulk or in packages. When the former, the interest is treated as a whole, a unity;—

the standard of claim, 3 per cent. or 5 per cent. applies to the entire cargo; and when insured 'free from particular average,' a loss of all is required before a claim can be made on the policy. Or an artificial separation may be made, so as to allow, in case of injury, the claim of smaller degrees of damage. The policy then expresses that the damage must reach the 3 or the 5 per cent. standard on each arbitrary division of the bulk, as, 'on each one hundred bags,' 'each five tons raised from the hold,' or 'on each 100*l.* value,' and so forth.

The identification of the interest, where possible, is very necessary. This is done by inserting quantities, marks, numbers, dates, in the policy, and they then become warranties. Were not care used in specifying the underwriter's interest, there could be no certainty in bringing or paying claims. The package belonging to A might be claimed of B, and so forth. There are, however, cases where exact definition cannot be made in effecting an insurance, and the parties are obliged to content themselves with a very general description.

Interests in goods are either valued or unvalued. It is advantageous to have values inserted in policies; it shuts an important door by which uncertainty and questions enter, and facilitates the arrangement of claims. The manner of valuing is various. It may be by valuing the entire shipment in one sum; or valuing each package; or the divisions of weights and measures—as per ton, quarter, gallon, &c.; or it is done by valuing the currency in which the invoice is made out, giving it a fictitious exchange for the purpose of covering charges or profit; thus, 'valuing

the dollar at five shillings; valuing the tael at six shillings and eightpence,' &c.; or, adopting the real or proximate exchange of the currency of the country, the valuation is frequently made in this manner, 'Valuing the goods at invoice cost, and including all charges, insurance, and ten per cent. for imaginary profit.' All these last methods are on the supposition of the interest being on homeward goods, or in case the quantities and qualities cannot be known at the time of effecting the insurance; but wherever these particulars are known, as they are generally in exported cargoes, an absolutely fixed value of the interest is to be preferred. Such alone are properly entitled to the name of valued policies; for though in open policies, intended to insure interests when the particulars of the shipments expected are unknown, a scale of values is inserted, yet the quantities and other details being uncertain, the interest remains without complete definition. As a general rule, it is better not to disturb a valuation once made and admitted on the policy, even though it prove in the event to have been incorrect, unless it be done before the event of the risk is known, or in a case where fraud can be shown.

By *Sill* v. *Swann* (Exchequer, 1863), where, on an open policy containing a scale of value per ton, &c., a weight was endorsed on a policy taken from a bill of lading, and the weight with proportionate value was initialed by the underwriter, but the quantity so agreed on proved afterwards, in fact, to be erroneous and greater than the actual weight, the court held that the declaration of value must stand, on the ground that when the weight was endorsed

on the policy and brought to the underwriter, it was in the nature of a tender to him to accept it as a fixed valuation of the interest; and that by the underwriter's placing his initials to it, he declared his acceptance of that value. When there is absolutely no valuation at all, and no invoice, as when goods are consigned for sale, there appears to be no other method of valuing than by taking the current market price of the commodity at the time of its arrival, stripped of freight and duty. And in the still greater difficulty of having to assign a value after a total loss has taken place, the same method must be resorted to. But in the last supposition both quantity and qualities may also be unknown, and a mean price, and average of weight or measure, must be adopted. In this position underwriters are quite excused if they watch the process narrowly by which the resultant value is obtained.

It should be observed that the words 'valued at,' standing in the body of the policy, are sometimes erroneously used when there is not the intention of defining the value of the interest insured. Some persons are in the habit of inserting in that place the sum they are insuring, which may be divided among several separate policies, and they desire to indicate that the present policy forms a portion of a certain entire sum. But the practice leads to misunderstanding; and the proper manner of proceeding is to strike out the printed words 'valued at,' or add to them in writing 'as below,' and at foot, before the underwriters' signatures, describe the interest and its value—thus: 'On 100 bales of wool, valued at 3,000*l.*' Then in the blank space in the body of the

policy may be written—*e. g.* '1,000*l.* being part of 2,500*l.*' Or, '5,000*l*, with other policies, in all 20,000*l.*' Such an erroneous filling up of a policy came before the court in *Wilson* v. *Nelson* (Queen's Bench, May 1864). In the body of the policy after the printed form 'valued at,' no figures were inserted, but instead, the words were added 'as under.' The filling up of the margin at foot was as follows—'1,300*l.*, on freight.' It might have been inferred that this 1,300*l.* was the value referred to in the body of the policy as being declared 'as under;' but the court held unanimously that the words did not constitute a valued policy, but only expressed that the sum insured was 1,300*l.*; and that the value of the interest was to be proved in evidence.

Bartering Voyages

The interest in the African trade and other bartering voyages presents some difficulties:—First, because the profits of the trade necessarily increase the value of the homeward cargo; and, secondly, because goods are going out of the vessel and being shipped simultaneously. The quantity and value of such a cargo may be changing every hour. Some persons, to remedy the first difficulty, open a separate policy for the increased value of the homeward goods; but as oil, nuts, and other African productions frequently occupy more space than the closely-packed manufactures, needles, cutlery, &c., which formed the outward cargo, it frequently happens that the ship cannot carry back all the merchandise purchased or obtained by barter, and the second insurance requires to give permission for part of the interest to come by another vessel; and this circum-

stance again opens the way to other questions affecting the rights of the first policy.

Another method for avoiding difficulties arising from the inconstancy of interest on a bartering voyage is to assume a uniform value as being at risk, although at one time a considerable part of the cargo may be on shore, and the ship, in consequence, only partially filled. The goods discharged or purchased, waiting in stores or on the beach, are usually covered by the general policy, as is the risk of craft in landing and loading; but it seems carrying indemnity to a great length to claim a loss for interest not lost in the ship, but in safety on shore. The case of *Tobin* v. *Harford* (Common Pleas, 1863), decides against this principle. An insurance was effected on ship and cargo for twelve months, dating from the day the vessel left Liverpool The cargo was valued at 8,000*l*, with liberty to extend the valuation of the homeward cargo. The policy also contained this clause—'Outward cargo to be considered homeward interest twenty-four hours after arrival at the first port or place of trade.' The invoice cost of cargo was 6,226*l*. The ship arrived at the first place of trade in Africa, Kinsembo, on August 14; discharged goods to the value of 2,952*l*.; sailed for the Congo on the 17th, not having taken in any fresh cargo; and was totally lost on the 19th of the same month. The assured claimed a total loss, viz. for the value of ship and for the entire insurance on cargo. Justice Williams in delivering the judgment of the court, after referring to the plaintiff's argument that the insurance was for time and not for the

voyage, and that the words 'cargo valued at 8,000*l.*,' ought to be construed to mean any merchandise which should be on board at time of loss, ruled this not to be the true construction of the policy; and that the valuation of 8,000*l.* applied to a substantially full cargo, and not to a quantity of goods substantially less than a full cargo.

'It is clear,' he said, 'that the policy covers the merchandise on board in all or any of the ship's movements, and throughout every variation of loading, unloading, or trans-shipment, and entitles the assured to 8,000*l.* in the event of a total loss of a substantially full cargo, or to an indemnity in case of any partial loss, and not in any case exceeding 8,000*l.* But the plaintiff's claim is to more than the indemnity, namely, to the value named for the whole cargo, though only part of the cargo was lost, and all the rest was landed in safety; but we do not find this intention expressed in the words of the policy.'

The Lloyd's policy defines the commencement of the underwriter's risk on goods in a two-fold manner. First, as being 'at and from *A.* to *B.* upon any kind of goods and merchandises.' And, secondly, as 'beginning the adventure upon the said goods and merchandises from the loading thereof aboard the ship as above,' and the risk 'so shall continue and endure, during her abode there,' &c.

Endurance of the Risk.

The goods are at underwriter's risk from the instant they are on board; and it is usual now to include in the policy the risk of craft at loading; and this involves the casualties of getting the merchandise out of the boats, &c, and on board the vessel. As the whole of a cargo cannot

be shipped simultaneously, but is generally some days, not unfrequently some weeks, in being loaded and stowed, the words 'at and from' become necessary for the protection of the assured, whose safety during the vessel's stay at the shipping port is provided for by the condition 'at,' as the point of departure is indicated by the term 'from.' The risk of goods on a wharf or in a warehouse whilst waiting to be shipped, is not, however, the underwriter's, unless by special agreement. This additional contingency often finds its way, at the present time, into policies on the 'overland route' and other adventures connected with steam traffic; as do also intermediate journeys on shore by rail.

It had been much taken for granted that the expression in the policy 'from the loading' implied the necessity of the *act* of loading at the place where the risk commenced; but in *Carr* v. *Montefiore* (Queen's Bench, 1863), this reading was held to be incorrect; that the word 'loading' was intended to define the time and place at which the underwriter's liability commenced; but that where the goods were already on board the failure of the *act* of loading will not militate against the assured. This case has been already mentioned. Guano had been shipped in Patagonia, and the vessel put into the River Plate under average, and there all the property changed hands by a sale, and the purchaser was insured by a policy in the usual form, commencing at Monte Video, where the transaction took place. It is true that a small part of the cargo had been landed and re-shipped, and considerable stress was laid in the plaintiff's argument

on this fact of reloading, or, as it was then called, loading; but the decision of the court appears not to have depended on this exceptional dealing with the cargo, but on the broad principle that the term '*loading*' was consistently employed, though in fact the cargo was already *loaded* when the underwriter's risk commenced

The interest continues at underwriter's risk 'during the ship's abode there'—*i.e.* at the place of loading, and until the goods and merchandises be 'discharged and safely landed' at their place of destination. Once landed the adventure as affecting the underwriter ceases. Whatever damage the goods have sustained up to this point falls upon him, but he is not liable for injury on the wharf, or at any subsequent time, nor for an increase of the original damage. This makes it important that the loss or injury of goods should be ascertained as soon as possible after their landing. The state of markets may sometimes make it desirable to the merchant to keep the goods in a warehouse or elsewhere, and during the delay before selling them their diminution or deterioration may go on increasing; but this additional loss is not to be charged to the underwriters, and practically there must always be difficulty in separating it from the original loss for which he is liable.

Ship-or-ships' Policies.

In a policy opened to insure merchandise shipped or to be shipped, with certain definitions, but the particulars of the shipments being unknown at the time of effecting the insurance, as to date of shipment, name of vessel, species of goods, quantity and value, two rights spring up. The assured's right is that

he may declare in succession all shipments on the policy coming under the agreed definitions, and so always be insured; the underwriter's right is that all the successive, defined shipments shall be declared on his policy. It is his interest to have as many safe arrivals as possible. In the generality of cases he cannot ascertain or check all the possible shipments of merchandise from any port which might or ought to rank on his policy. He is, by the course of business, quiescent till the assured brings an endorsement of a shipment on the policy for the underwriter to take notice of and initial. Where there is loss or damage the assured is not likely to fail in this duty of declaring interest; but if he forgets, or in any way omits to endorse the policy with those portions of interest which have arrived safely (for it often happens that the shipment and the arrival of goods are known at one time) the underwriter is prejudiced. Yet, he has little check on the declarations. He is obliged to trust to the integrity and regularity of the assured in declaring *all* the shipments which ought to rank on the policy till it is filled. If he have cause to suspect the honesty of the assured in withholding some shipments which are known to be in safety, he might institute inquiries and demand to have them endorsed, but he is much at the mercy and the memory of the assured.

The order of declarations should be strictly that of the order of shipments; but inasmuch as the bills of lading or notices of shipment may not arrive in the same order, it is sometimes stipulated that the declarations shall be made on the policies as the bills of

lading arrive, and irrespective of the precedence of shipments.

The assured also has a right to declare all the shipments falling under the category agreed in the contract of insurance: and the underwriter cannot exclude a shipment though the knowledge of its loss arrives at the same time as the advice of its shipment, or intended shipment (when it is lost in craft or boats carrying it off to the vessel). When a policy is exhausted by successive declarations, or nearly so, another is opened in continuation. Such insurances are called consecutive; and the later one usually contains in it a sentence connecting it with its predecessor, such as, 'to follow and succeed a policy of 10,000*l.* effected on January 1, 1867.' The second policy is not necessarily made with the same underwriters or insurance office, but is a new contract in itself.

The right of the assured to declare interest seems pushed to an extreme in the late case of *Gledstanes* v. *Royal Exchange Assurance* (Queen's Bench, Nov. 1864). The loss of the 'Red Gauntlet' was known both to assured and insurers, not only before it had been ranked on an open floating policy, but before the policy had been effected on which the court afterwards decided it had a right to rank. In the discussion it appears to have been lost sight of that the existence of *risk* is *essential* to an insurance; and that in this case there could have been no risk when the new policy was opened, for the event was already past and was known to be decided before the insurance was proposed for. In this view the distinction does not seem material between knowing that a certain ship was already

lost, and knowing that the lost ship was one which should rank on an open policy; for there was no open policy at the time; and after the event became known, upon the strictest doctrine it became impossible to make an insurance in respect of the 'Red Gauntlet,' *in consequence of the absence of risk.* It will be urged by practical persons that the underwriters might and should have secured themselves, knowing of this loss, by excluding the particular vessel by name from coming on any future policy to be effected with them: but, looking to principle, the underwriters' right of resisting the claim rested not on that precaution, but on the impossibility of creating an insurance where there was no existing risk.

The plaintiffs' case rested on an equitable right. There was an understanding between them and the Insurance company that the latter would, from time to time, issue open policies, on which the plaintiffs should inscribe declarations of interest as they were received, being reinsurances of surplus assurances taken by a company in India. It was an understanding—for till July 1864 reinsurances were illegal by law—and it could not be more than an understanding even after the passing of the act permitting reinsurance; for by the Policy Stamp Duties Act every contract or promise to make or cause to be made any insurance is illegal without being stamped with the duty. But it seems to have been considered that as there may be an *implied warranty*, so there may be also an *implied policy*. As the case stands, it appears to be competent to declare on a policy which has not begun to exist, an interest which has ceased to exist.

As floating policies are for the protection of merchan-

dise, of which the quantities, or value, or both, are not
Short Interest known at the time of effecting the insurance, there may be a surplus of insurance left undeclared at last, and this is known as *short interest.* On the assured being sure that no further shipments will apply to his open policy, he cancels the part left in excess, and procures from all the underwriters a return of premium in respect of the amount of short interest, *alias*, over-insurance. The premium returned is stripped of brokerage; for the underwriters having already paid the assured the brokerage out of their premium, or, in other words, having received a sum from which brokerage has been deducted, they can only return premium treated in the same way: if otherwise, they would not only lose all advantage on the amount of short interest declared—which they do—but would be absolute losers of the brokerage on that part of the premium. It is very frequent, in order to avoid any mistake or question in this matter, to state on the face of the policy 'the net premium to be returned by the underwriters in the event of short interest.' The same treatment applies to the discount which underwriters allow for cash payment of premium. It should also be stated that brokerage is allowed by underwriters on all insurances, even when they are effected by the assured himself without the intervention of a broker or agent. As policies must be stamped previous to their execution, a return is claimed from the Stamp Office on such partially cancelled policies for the duty on each unbroken 100*l.* of short interest.

The amount of premium returnable in respect of the

failure of interest, is paid in equal proportions by all the underwriters on the policy; not, as in France, by the last subscribers—the interest being made to descend through the names in succession till it is exhausted. Sometimes the interests expected to rank on an open policy are limited by special warrants, as, 'to be shipped before January 1, 1867;' or 'on all goods shipped by *A*, *B*, and Co.;' or 'excluding shipments by *C*,' &c. Under such restrictions it not unfrequently happens that a long period elapses before a policy is completely filled with interest. Policies sometimes remain open two or even three years; but there are inconveniences about this; the underwriters cannot be sure when the risks on a certain insurance will be over; his books are, in consequence, kept open, or deranged. During the time, also, from the taking the risk to the final declaration on the policy, the rate of premium may have increased, and he is in the unintended position of underwriting insurances at an inadequate premium or one under the current rate.

On the other hand, there is a danger to the underwriter in the power of the assured to close an open policy, at his pleasure, by cancellation. If premiums are falling there is the temptation to the assured to cancel the open portion of an existing, unfilled, policy, and open a new policy at the lower premium. Or he may find that he could procure similar terms at a lower price for an insurance, if effected with some particular office, or in the provinces, or abroad.

The short interest spoken of above was from the failure of sufficient interest to fill an open policy: we now have to

consider the position of excess of insurance by reason of more policies than one being effected on the same interest. This may arise in several ways; as from two or even more persons having an interest in the same shipment of merchandise; from ignorance of the shipper that the consignee or other receiver of the goods has made insurance on them, and *vice versâ*; from a misunderstanding among the parties concerned who have some *primâ facie* right to insure; from shipments of goods which would rank on an open policy, being specially insured by a separate policy. It may also proceed from a fraudulent intention; but, in the latter case, the repeated insurance will not fall into the category of double insurances, as the policy effected in fraud would be, on discovery, inoperative.

Double Insurances

Where, without fraud, the same sum has been insured twice on the same interest, and the terms are in all respects the same, it is tantamount to there being a half interest on each policy; and on each policy one-half the premium must be returned by the underwriters. But it is necessary that the terms of the two insurances should be identical, that there should be a symmetry between the two policies; for if one policy contains restrictions or permissions not contained in the other, it will be maintained when a claim is made on either for return of premium on arrival, that one policy is only the supplement of the other, and that on both the premium has been earned.

In law, the assured under two insurances has a right to recover, in case of loss, on which policy he may

choose, and leave the underwriter who pays the loss to recover half from the underwriter on the other policy. This rule would appear to give the assured a similar right to claim a return of premium on the policy he may select, and leave the underwriter to recover half that return from the corresponding insurance. Practically, this right is not pursued; and the assured himself apportions his loss and claims from each set of underwriters, and demands in like manner a return of premium from both.

It is not necessary that an interest doubly insured should be valued at the same sum in both policies. In the most genuine cases this can scarcely be; for it is frequently a want of correspondence between the two parties having right, which leads to the inconvenience of a twofold insurance. One may know the exact cost or value, the other may be ignorant of it; one may adopt for value the invoice with a per-centage in augmentation, the other may make his estimate of value at so much the ton, pound, &c. As the person who has the *right to recover* under the double insurance has the power to select either of the two policies, and as he will naturally select the larger sum, the higher value, it will not afford him his rightful indemnity to cause each policy to pay half the claim for loss, and to return premium on the unoccupied half of each policy; but he must be able to claim the larger value: and therefore, as to a settlement between the two sets of underwriters, those on the larger policy will recover half the insurance from the smaller, place it as a credit to their policy, and

pay the whole difference themselves. This system will be made clearer by an example. Suppose *A* insures 1,000*l.* on the merchandise, so valued. *B* insures 1,200*l.*, on the same interest, valued also at the sum insured. Let the right to recover be in *B*. If *B* could only recover half on each policy, his recovery would be 500*l.* +600*l.*=1,100*l.*; leaving him 100*l.* short of the amount at which he valued his interest: but by the system explained the settlement is as follows. *B* receives from the first policy one-half the double insurance, viz. 500*l.*, and this being deducted from the other policy, that of 1,200*l.*, leaves 700*l.* for the larger policy to pay, and gives the assured a full recovery at the higher valuation. The theory, I repeat, is the option which an assured has, in case of double insurance, of recovering on which policy he prefers. Assuming that he selects the larger amount and claims it, the underwriters on that policy have recourse to the other set of insurers; and this being a double insurance, or a case of half interest, the latter underwriters settle one moiety of the sum insured with them. Practically, the assured himself settles on each policy according to this formula, and recovers on each a return of the premium for the over-insurance, viz. premium on 500*l.* short interest on each of the policies.

The justification of making the second policy contribute 700*l.* whilst the first policy only pays 500*l.* may be stated thus:—that each set of underwriters shares equally the burden of the smaller valuation, that of 1,000*l.*, and the second policy pays the increased value

of 200*l.*, at which *B* declared the interest, and on which premium was paid.

Where there is an insurance on an interest by a named ship and also an open policy, on which by right that interest should be declared, a short interest will be the result on each policy; and the application of a loss of the two insurances, and the recovery of surplus premium, will be arranged by the same rule. But, in this latter case, great care must be used in ascertaining the intention of the policy by name, and the right of the parties effecting that specific policy which diverts a portion of the interest which would flow to the open policy: for an injustice is equally done to the underwriter on an open policy, by fixing on him more than the proper amount of payment where there is a loss, and by depriving him of part of his premium earned, in case of safe arrival.

Some great difficulties which affect double insurances and the application of interest to policies, not unfrequently arise from ownership of the property insured. The true vesting of the interest is often very obscure and difficult to ascertain, both on account of the complication of business transactions, and from disinclination of parties engaged to lay bare their mutual relationship and expose the nature of their operations. Yet, ownership is often the real and only test for determining the right of an underwriter to reject interest sought to be declared on an open policy, or to claim shipments as those contemplated to form part of interest he insures. An open policy is not a general convenience, like an

omnibus, to which various persons may run and throw in their interests: it is an instrument taken out by one who has a right to insure, and it is effected for the protection of one or more defined interests. The floating policies of Fire Insurance companies are singularly open to the fraud of interests being fastened on them which were never intended; and after a great fire at a wharf or warehouse, much ingenuity is exerted to show that uninsured goods, consumed or damaged thereby, had a right to be covered by some unfilled policy. Purchases of goods actually on fire at the time of sale, have been made; and unexecuted orders from the country or abroad have been suddenly completed when it was known that the place the goods—uninsured in fact—were lying, was on fire; and contracts and sale notes have been hurried off, so that the transfer of property into the hands of a purchaser having a floating policy might be effected—or rather, simulated. It need not be added that such designing arrangements are fraudulent; but it may be said that such transactions will cease to be seen as frauds, and will be looked upon as sharp, ingenious strokes of business, unless the strict notion of right is always kept in view, and commerce be allowed to possess a rigid code of morals.

Moreover, the difficulties spoken of above as involving the ownership of property, and such agency as gives a *primâ facie* right to insure, are the more hard to clear up, because the rights themselves are sometimes dependent and transitional. Thus, a purchaser of goods protects himself by insuring his shipment, though he

may not at that time have actually made payment; and the seller of the same merchandise, not having yet received payment, may conceive it necessary to insure the same to make his protection complete. Neither party, probably, consulted the other as to the insurance or made terms by which a single insurance would have served for both. As time proceeds, and the day of payment draws nearer which would produce the complete transfer of the property, the right of one party to insurance may be increasing, whilst the right of the other may be equally diminishing till it becomes finally extinguished, though the policy by which it was effected remains in existence. In *Seagrave* v. *Union Marine Insurance Company* (Common Pleas, February 1866), the plaintiff, as agent for a guano manufacturer, sold a cargo of that article to a dealer in Ireland, with whom he had had previous transactions, and shipped it, sending the purchaser the bill of lading. Payment was not made at the time, and some discussions as to price went on, but the purchaser did nothing as rejecting the guano, and he had insured it, on March 2, for 1,200*l*, before entering on any discussion of price. On March 3 he wrote to the seller, the plaintiff, complaining of the price, and on the 4th the plaintiff effected an insurance with the Union Company for 1,150*l*. on the shipment of guano. No fraud appears in the trial to be imputed to either party; and the plaintiff's motive for insuring the guano was his supposition, from his letter of the previous day, that there was a danger of the shipment being repudiated; or, at least, that it was doubtful, from the buyer's tone of complaint,

coupled with the fact that the guano was not paid for, whether the property had really passed to the purchaser, and whether the risk did not still remain with the plaintiff. On the night of March 7–8, the vessel and guano were totally lost; and on the 9th, before either party knew of the loss, the purchaser gave his bill in payment for the guano. On hearing of the loss, the purchaser demanded the policy effected by the plaintiff, though it does not appear from the report how he knew that the seller had insured the goods, or why he should prefer to recover a loss on that policy rather than on his own, which was 50*l.* more in amount. Subsequently, the purchaser sued, and recovered a total loss on his own policy.[a] Hitherto there is no difficulty; but afterwards the plaintiff sought to recover on *his* policy. The underwriters pleaded a denial, and want of interest. In fact, the only interest which the plaintiff could allege after the fact of the recovery by the buyer on his policy, was as for some bank interest on the purchaser's bill, which had been renewed, some law costs, and some travelling expenses. It is difficult to conceive law costs on proceedings after a loss being made retrospectively to enter into the value of the thing lost, the subject of the litigation. Baron Martin directed the jury that the plaintiff had an insurable interest in the guano, as he had taken the bill of lading in his own name, making the goods deliverable to himself (*i.e.* probably, to his order). At the trial, *in banco* at Common Pleas, a rule

[a] *Joyce* v. *Swann*, mentioned below.

absolute was granted for a new trial on the grounds that the judge had misdirected the jury, and that the plaintiff had no interest. Justice Willes, in delivering judgment, said that the bill of lading taken in Seagrave's name did not necessarily give him the interest; nor was he a *del credere* agent, having claims for commission or a general balance against his principals; nor did the interest vest in the real sellers of the guano, for whom Seagrave was agent, for they were not unpaid vendors. From these negations we may infer what sort of interest will give a right to insure, though in the case before us there was none. Judgment was for the defendants, the underwriters. Leave was given for the plaintiff to amend his declaration, but no farther proceedings were taken by him, so the decision remains undisturbed.

In *Joyce* v. *Swann* (Common Pleas, May 1864), the action was against the underwriters who insured M^c^Carter's (the purchaser) interest in the same shipment of guano for 1,200*l.*, for they had also disputed the interest, and refused payment of a loss. In the correspondence between the parties, when treating for the shipment of guano, Seagrave, the agent, had written, 'Please say if you purpose effecting insurance at your end?' And thus an inference arose, though on slight foundation, that it was his own intention to insure. No other ground for resistance by the underwriters on this policy is discoverable. It is true that Seagrave, on receiving the purchaser's letter of March 3, did effect an insurance, thinking that the contract *might* be repudiated; but this step proved unnecessary, as has been shown above, the purchase being accepted and

paid for. In the arguments at this trial, the case of *Brown* v. *Hare* was adduced, and the meaning of the term 'binding bargain' was discussed, and the fact of 'goods passing, though price have not been finally agreed on,' and the effect of the Statute of Frauds was considered. But here nothing militated against the *bona fides* of the assured, the purchaser, or shook his right to insure. So he recovered in full. It would seem from what fell from Justice Willes, that M^c^Carter, the purchaser, would have had an insurable interest, even though the property in the guano had not absolutely passed to him by the contract.

The two trials here instanced and briefly commented on are recent, and embrace some of the peculiar difficulties which attend the right to insure as affected by ownership, agency, unconcluded contracts, and the passage of time in changing relative positions. And this particular dispute, this double quarrel, has the further advantage that under the two actions we are viewing the subject from two points, and gaining, as it were, a stereoscopic image of it, as when a natural object is seen at two angles Yet after all, no great clearness, possibly, can be attained; the points involved are fine and delicate; and if a similar case again arose, it is more than likely that it would receive no satisfactory solution except that which can be given it by a legal tribunal.

Interest in Freight.

Freight is the most important of the intangible interests with which Marine Insurance deals. The hire or profit which a shipowner is to gain by the conveyance of merchandise or passengers in his

vessel, as it may be lost to him by the events of the voyage, becomes an insurable interest. Though this interest be immaterial, it is quite distinguished from a wager, because it is a real and defined value ; it is the price for work and service done, with payment deferred till the carrier has delivered the goods intrusted to him at their agreed destination. That payment, which is the profit an owner expects in possessing and using a ship, is contingent on the arrival of his vessel at her port of discharge, and the right delivery of the goods she carries. His expected profit may be frustrated by the loss of the ship or of the goods by sea perils ; or it may be consumed by expenses, in his endeavours to carry the goods he received to their destination, when his own ship is broken down and is unable to complete her voyage. He has, consequently, a right under the laws which regulate Marine Insurance, to protect himself against such losses and misfortunes by a policy on his freight, *i. e.* on the payment he is by agreement to receive for carriage of goods.

But because freight is intangible, the interest in it (as it is with other immaterial properties), is more difficult to define and separate from other interests ; and questions rise in connection with it which may be called abstruse, the discussion of which has been eager, and has not hitherto led those who are interested in those questions always to the same conclusions.

The French, whose views on scientific subjects are usually clear, are neither clear or consistent in this matter. Starting with the error, which to ourselves

seems paradoxical, that freight not yet made (*fret à faire*) is uninsurable, for such are the words of the Ordonnance of 1681, they arrive at the converse, that freight secure may be insured. The Court of Cassation and the Tribunals of Commerce of Nantes and Bordeaux, did, indeed, expose the impropriety of this principle, but without success. The first-named authority quoted the practice of England, but the Commission rejected the demands of the Tribunals in favour of insuring freight at the shipowner's risk, and invoked the views of Valin; and the authors of the Code confirmed the decision of the Ordonnance; so that insurance, says the Commentator on the Code de Commerce, remains as it was. It protects 'things' from the risk of being lost, but not 'gains' from the risk of not being made.

As the French nation cannot get rid of the fundamental mistake, they endeavour to straighten what is crooked by ingenious decisions and arguments in a contrary direction; but the result is unsatisfactory and uncertain. According to the first principle named, the right of insuring freight remains with the shipper of goods, if he pays it in advance. M Pardessus maintains, and we quite coincide with him, that freight being in such a case an actual disbursement by the shipper, he has a right to add it to his invoice and insure it. Yet this view is not universally adopted in France. 'It menaces the insurer with new dangers, who already has sufficient,' reasons M. Bédarride; 'and this consideration, we think, ought to repulse the opinion of M. Pardessus.'

Returning to the English system, it may be safely said

that the subject of freight, connected with advances and with insurance, has the distinction of being at present among the least understood branches of maritime commerce. The three elements mentioned produce new combinations from time to time; and some recent legal decisions have disturbed previous views, and make a new settlement of questions necessary. Still, having regard to the data of law and mercantile custom, most of all the intricacies may be solved by keeping the eye fixed on the leading principles which govern the contracts of affreightment and insurance. It is true, that both from haste and from partial information, those who enter into serious contracts often, on both sides, make them in a vague manner; without perceiving the difficult knot they are tying, or inquiring how, in case of need, that knot is to be dissolved.

In order to treat this important part of my subject sufficiently in detail to produce clearness, I have thought it better to remove its consideration from the present chapter, and make it a separate section.

Commissions and Profits

We have noticed an essential point of difference between the French idea of insurance and our own. In France, the Ordonnance of 1681 prohibits insurance on freight not made (*fret à faire*); expected profit (*profit espéré*) on merchandise; bottomry premium (*les profits maritimes des sommes prêtées à la grosse*); and the moneys themselves borrowed on hypothecated property. We clearly gather the notion thus illustrated, that insurance can only be made on things or values actually existing, not on such as are uncertain—

hopes or expectations, however well-founded. Our own system, on the other hand, allows an insurable interest in things and values *in futuro*, under certain limitations. *We* also exclude from insurance a mere hope or expectation of profits—dreams of gain, emoluments which are to be received after many things have happened; risks which have no present validity. But we allow Insurance on accruing interests, as under a written contract, and where there is a defined commencement of the growing interest and an inception of the risk; also on an interest inherent in another subject or growing out of it, whether the possession of such inherent or emanating interest be in the owner of the original interest or in another person. Thus we are able to insure freights, and thus commissions and profits may also be insured. If a consignee, factor, or agent is entitled to a payment for the reception or sale of the commodity consigned to him, his commission or emolument is as much lost to him by the loss of the commodity as the goods so lost are to their owner. With regard to profits a somewhat similar argument is held, but with this difference: Profit is a thing depending on the state of markets, and markets are gained or lost by the time occupied in a voyage. There may be an entire loss of profit by mere delay, without the occurrence of any sea-peril, and underwriters hold it as a fundamental axiom that they are not involved in the rise or fall of markets, the prolongation of a voyage, or any effect of time simply. Profit is analogous to the aroma of a fruit. By mere lapse of time the aroma may exhale, though the material fruit

remain otherwise unchanged. So with profit; a cargo of timber or other goods may continue in safety, but by retardation of its arrival by any cause, all profit on it may disappear. Nevertheless, both commission and profits are allowed in England as fit subjects for insurance, though I think our accepted principles are a little strained in order to include the latter, in some cases. There are ordinary profits, depending on mere change of place and the charges of conveyance to a market, which may be called regular; and there are secured profits, where a sale of goods 'to arrive' takes place before their reception, and no other contingency remains in such a case but that of non-arrival. To insure such fixed profit is a valid office of insurance. The more questionable cases are those where a separate policy is effected simply 'on profits;' and it is well known that policies 'on commissions' or 'on profits' are sometimes effected by persons having no interest, and are really bets on a voyage, and the last remains of the old wagering insurances.

I would add that the French have, under the title of 'Assurance for safe arrival,' a compensation, apparently, for their restrictions from insurance on future or accruing interests permissible in this country. It is easily seen that, under an indefinite description, such as 'safe arrival,' equivalents to profits and commissions, &c., may be provided for, and a door is opened to dealings of a yet more speculative character.

There remain a few interests which can scarcely be classified with the foregoing divisions. They grow out of modern inventions and necessities. Mixed Interests.

Shareholders in submarine telegraph projects are exposed to the dangers of laying down the cable, both by its parting—and thereby the immediate loss of the capital invested—and also by smaller and undiscoverable injuries preventing the working of the telegraph. These perils are altogether apart from commercial dangers as to the success of the undertaking; and, as they arise in connection with the sea, the shareholder in a telegraph company seeks protection under a marine policy. Yet it is very difficult to define his interest. It consists, not of a share of the cable itself, but a share in the capital of the company which undertakes the working as well as the laying down of telegraphic communication. The danger to the shareholder, the danger into which he proposes to subrogate the underwriter, is one affecting the cable itself, and one which is not over until the cable is safely laid, and has shown itself capable of transmitting messages In *Paterson* v. *Harris* (Queen's Bench, 1861), Chief Justice Cockburn, in delivering judgment, dealt with this species of interest. The declaration in the policy was 'On a 1,000*l.* share in the Atlantic Telegraph Cable Company.' His lordship remarked: 'It is obvious that the *share in the Company itself* was never capable of being put on board ships or steamers; nor was it directly liable to be lost in consequence of the maritime risks.' He therefore treated the essence of the underwriter's risk to be in the cable itself, although the assured's interest was necessarily defined as a thousand pound share in the Company. 'It appeared to us, therefore,' he said, 'on the true construction of this policy, the underwriter's contract to

indemnify the owner of that share against any losses arising to his interest in the cable.'

Among mixed interests may be mentioned prizes taken in time of war from the enemy; a branch of insurance law which, happily to us, has become rather rusty. The captors of a ship taken and sent home, have, under the Prize Act, an insurable interest both in the vessel and the valuables she contains, or with which the captors load her. And this right to insure is not confined to naval belligerents. Land forces, taking joint part in an action, where both a fort and some shipping were taken, and the plunder from the former was placed on board the ships, had an equal right to insure with the naval captors. Even without the authority of the Prize Act this would have been supposed to be the case, as there is nothing in the position which militates against our insurance system.

Among subjects permitted in England to be insured are Bottomry and Respondentia bonds, and the premium on them. Wages of the shipmaster and his crew are not insurable by or on account of the master and mariners. They do, however, form part of the gross freight insurable by the shipowner.

In shortly reviewing what has been said in the foregoing chapter, we observed that a real interest is necessary to a valid insurance; not a nominal or colourable interest partaking of the nature of a mere wager, but something valuable, and within limits commensurate with the sum insured. Whilst, however, legislation has shown an exceeding anxiety to protect the

Summary.

insurance system from the taint of gambling, it allows it to be sufficiently expansive to take in those *bonâ fide* cases where provisions for an insurable interest must be made before the precise amount, and other particulars of the subject of it, can be known. Thus we have 'Open Policies.' Marine Insurance, to effect its legitimate objects, is permitted the capacity to have both a forward and retrospective action. In connection with the latter privilege a late case was mentioned in which the principle seemed carried to the extreme verge of consistency. The necessary liberty allowed in protecting interests by insurance permits more than one person to insure the same thing, but does not permit both policies to be claimed in case of loss. This is Double-Insurance.

We saw that real interest is not confined to material objects, but that several impalpable subjects claim to come under that character—profits, freight, certain debts, &c. Human lives, however, are not insurable by marine policies in their ordinary acceptation.[b] Freight was too large a department to be embraced with the other interests described, and is treated of separately in another chapter. We then considered what were the legitimate subjects of Marine Insurance, and what the enactments of English law to prevent the misuse of this valuable system; and extracts were given from the Act 19 George II. against wagering policies. We saw that contingent interests for which persons might desire to protect themselves by in-

---

[b] I believe one or more companies exist which undertake the special business of insuring lives exposed to dangers at sea.

surance, were distinguished into legal and illegal interests, and that of the latter class a further division was to be made between those interests which are illegal by reason of the transaction which gives rise to their being injurious or infamous—as smuggling, and those which are simply incapable of insurance upon other legal considerations, such as indefiniteness, want of proof, and so forth. In the latter connection the class of insurances called 'honour policies' was mentioned. We then proceeded to inquire in what way the nature and quality of an interest affected the insurer; and, secondly, what sort of right, if any, an underwriter has over the thing he has insured, the fate of which concerns him so greatly; and it was shown to be little or none except in case of abandonment; after acceptance of which the property abandoned vests absolutely in him.

We then went on to consider more in detail the several kinds of interest which may be insured under a policy of Marine Insurance; and, first, ships; and it was pointed out that in case of abandonment of a vessel to the underwriters, they have a right not only to all the materials and accessories of the ship, but to any freight due and unpaid at the time of abandonment of ship. The value of ships for insurance was considered, and the effect of over-insurance, and of different valuations of the same vessel in separate policies. Interest in goods was shown to include all materials, articles of value, excepting the personal effects of passengers. In the Lloyd's policy the words 'and merchandise' are added, but probably not to make a distinction, but rather to give fulness to the

expression. In modern times the word 'goods' receives with many persons a special meaning, and is used to denote textile manufactures. Policies issued in India and China frequently contain the words 'and treasure;' but by 'goods' we understand generally all articles of commerce, from coals to cambrics, from diamonds to Dutch ovens, and use it as a term to distinguish such classes of insurable interests from those of ships, freight, and other immaterial valuables. We then entered somewhat in detail on the manner of insuring goods—whether as an entire cargo in bulk, or with artificial separation of a whole into definite portions, for the purpose of adjusting claims for damage; and we drew the distinction between valued and unvalued interests, giving the preference greatly to the former, as conferring greater definiteness and completeness on the contract between the underwriter and the merchant, and shutting the door to troublesome questions after the event insured against has happened. Various methods of valuing were mentioned, and some difficulties pointed out, together with an undesirable manner of filling up the policy in the valuation clause which causes an unclearness of meaning.

In some adventures and trades it is very difficult, or even impossible, to arrange a value quite satisfactorily; as in African and other trading or bartering voyages, where the interest is changing from time to time, and articles taken in exchange have not on the spot a definite money value. The methods which have been devised to meet this kind of difficulties were described.

Next, we proceeded to consider the endurance of the

risk which the underwriter takes on himself; when and in what manner it begins, how long it continues, and when, where, and by what act it terminates, and so sets him free of further liability. In reference to the commencement of the risk, the meaning of the words 'at and from' was dwelt on.

After which, we examined those policies of insurance which are effected before the precise interest which they are intended to protect is fully known. As the interest which is to rank upon them may be shipped by one vessel or by several, such contracts are called 'Ship-or ships-policies.' Many questions may arise on these in the matter of declarations made upon them, either as to the assured's right to rank a shipment on his policy; or to the underwriter's right to claim the declaration of shipments which the holder of the policy has not inscribed on it. This class of insurance is most useful; but, like other valuable plans, it is open to errors and to frauds. Connected with such insurance-contracts is the subject of short-interest, which affects these as it does other open or unvalued policies.

Another department, fruitful in questions, is that of Double-Insurances, to which we were then brought. Cotemporaneous policies, usually effected by persons distant from each other, both of whom have a right, or conceive that they have, to insure, must be identical in their provisions to constitute them true double-insurances in such a sense as to compel an underwriter to make a return of premium in respect of the amount thus over-insured on an interest. If their terms are not identical,

an underwriter on one of the policies would state as the ground of his resistance to a claim for return of premium, that one policy was the complement of the other and embraced risks not contemplated in the contract he had himself signed. The methods of claiming on those duplicate insurances in case of loss, and of recovering the excess of premium paid thereon, together with questions arising from difference of valuation in the policies, were then shortly entered upon.

To show the difficulties and niceties which sometimes attend a two-fold insurance, the cases of *Joyce* v. *Swann* and *Seagrave* v. *Union Insurance Company* were examined. They are valuable as being very recent precedents, and as covering a good deal of the ground of real and supposed right to insure.

Passing on to interests which are immaterial in their nature, the most important of this class was freight; and the difficulties which affect it as a subject of insurance were glanced at, and a comparison was made between the French manner of viewing it and our own: but the subject of freight connected with insurance and advances being too large to be dealt with at the end of a chapter, its separate consideration was removed to a succeeding section.

Besides freight, there are other immaterial values which may be insured; such as profits which will be realised if the merchandise arrive at its market; commissions, which will be lost to the factor, agent, &c., if the expected merchandise do not arrive at its destination; and some forms of indebtedness where the recovery

is made contingent on the arrival of the ship or other thing insured. These were mentioned; and yet there remained insurable subjects which do not conform to any of the above descriptions, and which were named 'mixed interests,' embracing, as they do, material and intangible values. Such are shares in a submarine telegraph undertaking, where, nominally, the thing insured is a length of wire and gutta-percha, but the object really contingent is the successful laying of the cable and the actual transmission of messages through it. In the same class were also mentioned some rights and expectations under our Prize Acts, both in those who make the capture and other belligerents in an expedition who have a share in prize, though not actually the captors. The interest in such shares is, however, rather to be classed with the material interests of ships and merchandise. The last subjects in this category were Bottomry and Respondentia bonds. Wages of the master and crew are not allowed to be insured, on grounds of expediency; but those persons may insure their personal effects.

CHAPTER VIII.

OF FREIGHT AND ADVANCES.

FREIGHT is the price or reward for conveyance of material by water, as carriage is for its conveyance by land. Freight now includes both species of transport when united in what are called 'overland routes,' and in modern days the name has been adopted by railway companies for carriage of goods on their lines. By English law and custom freight is an insurable interest under marine policies.

When persons are conveyed by ships and other vessels the consideration paid is called Passage-money, and is also insurable. In the days of slavery the unhappy captives were looked upon in the light of merchandise, and 'freight of a cargo of slaves' was a usual term. We have changed that name for a more euphuistic one —suitable to the perfect freedom which voluntary labourers from China and India are known to possess; and we now speak only of 'passage-money of coolies.' Unpleasant associations, nevertheless, still connect themselves with the unsuspicious words 'passage-money and expenses of coolies.'

Under the name of freight are included those payments for the use of a ship when one person hires it

from another, the duties of navigation remaining with the owner. These hirings are named chartering; and the instrument by which they are effected is the charter-party. A ship may be chartered for a voyage, the charterers loading the vessel and paying an agreed rate of freight on the quantity delivered; or the charterer may take the ship at a certain single payment—a lump sum; from which the transaction is sometimes spoken of as 'lumping a ship.' Or the charter may be for a specified time for a defined payment; or lastly, it may be a running charter for time, freight payable per month, or other agreed period, the hiring to be terminable by notice given at a certain number of days or weeks previous. Under these various contracts, all of which are based on the groundwork of sea-transport, several interests and rights arise, as between the owner and the charterer, and as between both and underwriters who insure the risks to which such interests are liable.

Experience shows that much want of clearness exists on the subject of freight in connection with insurance, and the more so when advances are also involved. Of necessity, many intricacies arise from these combinations, and many questions of perplexity propose themselves for consideration. The only means of avoiding confusion of thought and arriving at a true decision of these questions, is to keep the mind steadily fixed on main and unaltering principles. By doing so every knot may, with care, be dissolved.

First, let it be remembered that an insurable interest

in freight resides only in him to whom that freight may be imperilled by the events of the voyage or period in question. If the shipowner receives freight before the sailing of his ship, he is secured at once; no after peril can affect him in respect of the sum received; he has no right to insure.

Secondly, freight continues an existing quantity though the shipowner's right to insure be taken away. Payment to him does not destroy a right that the sum so paid shall be insured by some one else to whom the same sum is at risk till the voyage is completed. There is a transferable right to insure prepaid freight.

On the other hand, a shipper who contracts by charter-party or bill-of-lading to pay freight on delivery of his goods at their place of destination, has no insurable interest in the freight, since he cannot be called on to pay freight in case of a loss, or to contribute to charges on freight arising during the voyage. But if he pay freight, absolutely, before the risks of the voyage commence, he has a sum at risk during the voyage, which he has a right to insure under the name of Advanced Freight, or, as an increased value of his goods. And it does not seem to me to be necessary, in the latter case, that the policy should express the interest to be 'on goods and freight advanced,' or 'on goods including advanced freight,' because the freight has become concrete in the goods, as much a part of them, in fact, as their lighterage or railway carriage to the port or place of shipment, or any other invoice charge. 'A great proportion of all goods shipped by steamers have their

freight prepaid, and are insured without mention of that circumstance. It is true that in bulky articles, like coals, prepaid freight may form a large, perhaps the major part, of the entire value insurable; but this fact is one of degree only, and does not at all contravene the principle proposed, viz., that the shipper has a right to include all *bonâ fide* payments which go to make up the value of his goods-venture in an insurance on those goods. I press this principle the more, because it is one on which difference of opinion prevails; but were the question looked at attentively and with candour, I believe all difficulties about it would cease. Were an underwriter to analyse any value of goods insured by him, he would find it to consist, beyond the price of the material, of charges for packing, inland conveyance, &c.; and, in most cases, of a margin of profit less or greater. He would find in a great proportion of instances prepaid freight among the invoice charges The question is only raised by him when the prepaid freight bears a large ratio to the whole value insured, and carries with it that liability to pay average-charges, which, under the name of freight, it would be liable for at the shipowner's expense, in case it had not been prepaid Indeed, a learned judge has said, that a prepayment of freight to a shipowner is not properly freight, but a payment for the privilege of putting goods on board his vessel. The weight of this distinction, I admit, is difficult to perceive; but what we do observe is, that the learned authority in making it distinguishes in his mind between the rights adhering to freight when payable at the end

of a voyage, and those when the payment is made before the voyage commences.

The case of *Baillie* v. *Moudigliani* will perhaps be cited in opposition to what has been here said.

Much depends on the place and time of payment of freight. Freight may be paid—

a. On the delivery of goods at their place of destination.

b. At the time and place of their shipment.

c. At a given time after the sailing of the ship.

d. It may be paid, and usually is, on the quantity (weight or measure) delivered at the place of destination.

e. Or it may be paid by a fixed sum; or, as a rate on invoice quantity, without reference to the actual outturn at the place of destination.

The manner of payment may be, when under charter—

a. As a whole, either at the commencement or the end of the voyage.

b Or divided; as one portion in cash; another portion by bills at a certain date; $\frac{\text{and}}{\text{or}}$ a portion at the termination of the voyage.

c. Or the charter may stipulate that the charterers, or the shippers under a charter, shall advance a portion of the freight to the captain at the commencement of the voyage.

This advance of money is generally under conditions. It may be irrevocable; or it may be returnable in case of the ship's loss. It may be advanced as a pre-payment of the freight to become due; or it may be advanced to the master as a personal loan.

The right of insurance remains with him whose money, or whose stipulated gain, is imperilled by the risks of a

voyage. If nothing is paid to the shipowner out of the freight by stipulation or by mere advance, he can insure the entire freight.

If a portion of freight is prepaid, he can only insure the balance due at the termination of the voyage; that being the amount of his risk depending on the safety or perils of the sea. If the charter be for time, payable monthly, the owner can usually insure one month's freight at a time; for as the following month's earning is contingent on the ship's safety in the present month, it is rather the expectation of a future freight than the existence of a freight commenced and at risk: but this will be considered hereafter. If a charter be for time, and a series of duties or voyages are to be performed and payments are receivable under the charter, but not monthly, the whole earning under that definite charter may be insured; but, in case of loss, a recovery on the policy is not to put the assured in a better position than he would have been had the vessel not been lost. Of this hereafter.

The owner insures the gross sum to be received for freight. In case of a successful voyage, his profit is the surplus of freight over the expenses of the voyage; viz., the port-charges, the wages, and—as he and law reckon, though custom does not—the crew's provisions. The profit of a successful voyage can never, therefore, equal the gross freight; and as the owner insures the gross freight, it is plain that a loss at any part of the voyage is, *quâ* freight, more profitable to him than an arrival; and if at the commencement of the voyage, it is much more profitable. In this case, an insured owner profits by a loss.

This position is opposed to a very righteous dictum of the law; but it would require so cumbrous a machinery to avoid it that the remedy would be worse than the disease, and we must be content to let it remain an exceptional position.

When an advance is made, repayable out of the freight itself, the shipper advancing the money has the right to insure the same for his own benefit. He has, as it were, purchased so much interest in freight, and his interest is imperilled by whatever imperils the ship and goods in the course of the voyage. So, as is quite reasonable, he must contribute his quota of any general expenses by which the adventure (of which his interest forms a part) is saved from loss, and of any expenses which enable the voyage to be completed if it has been interrupted by sea-perils.

If, on the other hand, a shipper makes an advance on the personal security of the captain, such an advance does not give the lender a right to insure. His right to recover a common debt is not affected by sea-perils or the non-arrival of the ship and cargo at their destination. It overrides the ocean, as it were, and takes effect beyond. Neither is the lender to contribute to general average, because his right to recover is not affected by sea-perils.

There is another species of loan which does not conform to either of these two kinds of advance, but partakes somewhat of each, but yet is distinct. This is a loan on Bottomry, or on Respondentia. Such debts come under the general name of Impignoration, because the ship under the former title, and the cargo, under the second, are pledged to the lender; and the captain requiring to

take up money to enable him to complete his voyage, hypothecates or impignorates his ship, his freight, and the cargo—the three if necessary—and gives a bond and lien to him who advances the funds on the property itself: but the nature of such a bond is, that if the property be lost on the subsequent voyage, the bond ceases to take other effect against the owners of the property. Such bonds, and the premium on them, are good insurable interest, because the security of the sum advanced by the lender is exposed the risk of loss until the arrival of the ship and cargo at their destination Bottomry loans and their premium are, however, excused from contributing to general average by custom, or for convenience. The lender, indeed, receives a benefit by the sacrifices and expenses which save the property from loss; but it may be expedient not to expose him to this claim, as it would enhance the difficulties of procuring loans on Bottomry and demand a larger premium. This antique species of loan must therefore be left an anomaly, but a useful one. In giving a bond of Bottomry or Respondentia, the captain pledges his own credit besides the ship and goods; but this is of little importance; for if a loss happen, the whole bond is by its stipulation null and void; and, in case of arrival and failure of the whole property to produce funds enough to pay off the bond, the chance is generally very small of recovering anything from the master who signed the bond. Proceedings on those bonds are usually taken in the Admiralty Court, and are *in rem*; in which case the proprietors of the property sold under the bond, are not liable beyond those proceedings.

It may be remembered, whilst on the subject of Bottomry bonds, that though the money raised by their means goes generally in the repairing of a ship which has met with damages and other expenses incurred in a port of distress for sending her again to sea, the owner of the ship does not contribute in respect of the Bottomry loan to general average charges:—not for averages incurred before the repairs, for the ship only contributes on her reduced value; not for a subsequent average, because, apparently, the practice of making interests contribute on their arrived value, which sometimes means their least value, is convenient, and an encouragement to the shipping interest.

When an advance is made, not to be repaid out of freight as a part-payment of that which will be afterwards due, nor on Bottomry or Respondentia, but upon the captain's and owner's credit—as for average disbursments in a port of distress—such an advance is insurable as a new interest created at the place of the loan. It is true that this permissibility clashes with the principle previously laid down as to personal debts not extinguished by the loss of the ship; but it is very advantageous to, if not a necessity arising from the exigencies of, marine commerce and the safety of those who usefully lend them money for the purpose of promoting it. These advances do not contribute to general average.

Chartered Freights

The freight derivable under a charter may be insured by the shipowner. The charter may stipulate for a succession of duties to be performed by a vessel, she making, as it were, a chain of voyages; and if these are all contained in a single contract, the whole

catena is insurable by one policy. If there be an inception of the risk, that is, a legal commencement of it, the underwriter is liable for a loss of the whole immediately after the risk has commenced. If the freight for the series of passages is due only on the completion of the last link, on the arrival at the ship's last place of destination by charter, the loss to the underwriter will be total, at whatever point it occurs. If, on the other hand, there be successive payments for successive portions of the compound voyage, the underwriter is to be relieved, in case of loss, to the extent of those payments made for freight previous to the loss of the ship; otherwise, the owner would make a gain by losing his vessel; and this is distinctly against the spirit of our law.

If a ship sails on a chartered voyage to the port A, and her owner at the same time makes a separate charter for the employment of the vessel from that port after the delivery of her cargo there, and insures the two charters separately, the second policy is conditional on the ship's arrival at the port A and the inception of risk in respect of the second voyage. It is not valid and binding till the vessel is in the position to make a legal beginning, or inception of the second voyage and risk. Till her arrival at the port A, the owner has not an insurable freight, but only the *expectation* of a freight; and this the legal authorities decide to be uninsurable. If, however, an underwriter agrees in one policy to insure both voyages, though contracted for by two separate charters, he would probably be held to his engagement to pay the freight, though the ship should be lost on the first

voyage, because it was competent to him and the assured to agree to any state of things not positively illegal; and in this case the two voyages were *quâ* the underwriter one transaction, and he had power to regulate his premium according to the nature of the risk he took on himself.

Expectation of a Freight.

And here it will be well to consider shortly the meaning of the expression that 'a freight may be insured, but not the expectation of a freight,' for the words may be easily misunderstood and misapplied.

All unpaid freight is really 'expected freight;' and in this sense the French law, as we have already seen, denies the shipowner's right to insure it. In the same sense, the only 'certain' freight is that which is prepaid; and, with regard to the latter, as by its payment, the element of uncertainty or risk is eliminated, both by English and French law the shipowner has no right to insure So, according to the law of France, a shipowner cannot insure his unpaid freight, because it is uncertain and expectant; and he cannot insure his paid freight (even if he would) because it is certain and free from risk. It amounts to this in France, that a shipowner cannot insure in respect of his freight.

But the term 'expectation of a freight' has a different import in our own country, and the very circumstance of a freight not prepaid being uncertain and exposed to risk, is the very cause of its being an insurable interest. But then, there must be a certainty or reality about the transaction. If under a charter, the freight is still in

expectation till the voyage is successfully completed, but the terms of the contract are a certainty, and the transaction in which the ship is engaged is a real one. Let there be but a beginning of the risk, and the underwriter is forthwith bound by his contract to indemnify the assured against sea-perils. If, without a charter, a ship lies in a berth to take in cargo, and has received some before a loss occurs, the freight is real to the extent of the goods she had on board at the time of her loss, but hypothetical only as to a complete cargo, even though other goods intended for the ship were lying on the wharf ready to be loaded in her. This may appear a severe view; but the freight on goods by mere bill of lading is so identified and connected with the goods themselves that it is commonly said to be *in* the goods; therefore, as the goods on the wharf were not jeopardised by the loss of the ship, neither was the freight on those goods jeopardised—for till their lading on board the freight had no existence—it remained in expectation. By 'expectation,' then, is meant *hypothesis*. All valid and insurable unpaid freight is, it must be repeated, 'in expectation' till the completion of the voyage; and by our law the whole is dependent on delivery of the goods at the contracted place of destination. So, when the vessel is fully loaded and on her voyage, her freight, whether under charter or simply by bill-of-lading, is a reality and not hypothetical; and, under charter, it is real as soon as the ship commences taking in goods, or has sailed on the contracted voyage, because the owner is acting on a real contract, and has a right to insure the fruits of

that contract. But what are guarded against are mere hypothetical gains, by the possible or even the probable use of a ship, when in fact there is, at a given time, no freight in a ship, but the mere potentiality of a freight—a power of making freight, if employed. The rule expressed in the dictum that the expectation of a freight cannot be insured, acts, practically, as a bar excluding speculative and deferred interests from the benefit of insurance; insurances on freights hereafter to be made, existing now only in hope and imagination, dependent on other voyages being first made, and other things being previously done; but, allowing such an arrangement of a voyage or employment of a ship as is real, and the matter of an immediate contract, although the voyage or chain of voyages is divisible, geographically and for the objects of that contract, into consecutive portions. Thus, under one charter a ship might undertake to load coals at Cardiff for Hong Kong, then proceed to Shanghai and take a cargo for Europe, and even make an intermediate voyage with passengers or native produce to Japan, or some other port, before loading her home cargo; and, if the entire freight were dependent on the arrival of the vessel at her final port, the whole freight could be rightfully insured, and would remain at the underwriter's risk till the ship's reaching her last terminus. Not so, if a ship sailed with cargo to a certain port and her freight were there insured, and by a second policy a charter was insured for the after employment of the vessel from the port to which she was first bound: for, as it has already been said, the second policy would have no effect, the

risk could have no inception unless, and till after, the outward voyage had been completed. Till after the fulfilment of that condition-precedent, there would be no ground for a legally valid insurance. Yet, were an underwriter to consent by one policy to undertake the double and consecutive risks, I apprehend such a contract for insurance would not be in itself illegal, because, *quâ* the contract between the assured and the underwriter, there was a sufficient *nexus* between the two voyages: but the unity is rather that of two kernels in an almond, which are held together by the shell which encloses them, and not by any connection between themselves.

Were it allowed for a shipowner to insure freights *in posse*, to arise from future voyages of his vessel without limitation, such insurances would be too speculative to conform to a system which, whilst it deals with contingencies, is based on realities and certainty. Insurance is intended to protect actual interests from possible losses; not to secure contingent interests from contingent perils, unless under the conditions mentioned above.

A shipowner, then, cannot insure under a Lloyd's or common policy the future employment of his vessel, after the completion of a certain voyage on which she is now engaged, which voyage has had definite commencement, and is unconnected with the future voyages which the shipowner intends or expects his vessel to make. I am unable to put the proposition in more general terms; and even now the statement must be confined to its legality; because, for convenience, insurances are frequently made

in perfect good faith and with the understanding of both parties to the contract, yet which the assured is aware cannot be enforced by law; and because new forms and means of insurance open up in this busy, impatient, and inventive age. Thus, under the mutual or club system, a shipowner can insure in a 'Freight and Outfit' association, for a year; and his policy will protect him on certain terms for a loss of freight at any portion of the term insured; and, more than this, will pay a specified sum for outfit, even if the ship be not earning freight at the time of the loss. This arrangement contravenes two legal views; one, that a non-existing freight, a freight not contracted for and commenced, cannot legally be the subject of insurance; and the second, that the stores and outfit of a vessel are parts of the ship, insurable under the ship's policy, and claimable in case of loss with salvage, by the underwriters on the ship. In fact, in most things which concern freight, practice and law are much in conflict.

Now, let us see what future employment of a ship, what freights that are to be, may be legally insured, and by what means an owner can effect an insurance which will secure him against risks in the current employment of his vessel where a loss cuts short that profit he looks forward to by the continuous employment of his ship, and for which employment he has laid out his money in providing all necessaries.

He may insure his monthly freight; in which case his interest will not at any time exceed one month's freight. By a loss, the contract with the charterer determines and

freight ceases; so that, on a running employment of this kind, there is strictly nothing certain but the current freight of a month, or fortnight, as the charter provides, and beyond this only the 'expectation' of further payments for further use of the ship. It is clear that such an insurance as this, if this were the only form possible, would be a very poor indemnity to a shipowner who, with a contract for the continuous use of his ship through some certain or indefinite period by a charterer, should lose his vessel at the outset, losing thereby the benefits of the contract and all his outlay in fitting the ship for sea on that service. Some other form of insurance is necessary. If there be a charter for the use of the ship during six months, payment to cease at the end of the month or fortnight (as agreed) in which the vessel may be lost, an owner may insure the total amount receivable under that charter; only, in recovering from his underwriters for a loss, he must give credit for those payments of freight which he received previous to the loss occurring Did he not do so, a loss would give him more than he could have gained by the completion of his contract, and more than the amount of his interest insured He would be distinctly a gainer by the loss, in violation of one of the plainest principles of justice. In arranging insurances of this nature it is sometimes stipulated expressly in the policy, that the interest shall be decreased by a stated sum or proportion for each month of employment accomplished.

By a similar method, a shipowner may insure a divided voyage consisting of several links or parts, but all form-

ing one voyage or employment, though portions of the freight are to be paid at stated places as the voyage is so far accomplished. In recovering from his underwriters for a loss occurring at any stage of such a voyage, the assured must account to them for the partial payment of freight he has already received under his contract or charter.

In a bartering or African voyage, where freight and goods are insured separately, the insurance is of the nature of an open policy, on which interest in freight at the time of loss must be shown. This is often impossible to do, and is at all times difficult and complicated; for vessels engaged in this service are sometimes full, sometimes partly empty, often have outward and homeward goods in them at the same time, and are frequently engaged in discharging and loading simultaneously. The difficulties of such a policy are prevented by a stipulation that the freight shall be taken at a stated amount throughout the voyage or employment, or with such deductions for time elapsed or uses accomplished, as may be agreed on. A very necessary additional stipulation on the underwriter's behalf in such a policy is, that he shall not be called on to pay more than a total loss of the sum insured. The fundamental principle must be kept in mind of the oneness of the insurance contract, and that the policy is not a succession of insurances to cover a succession of separate interests, but only a continuous insurance on one interest, which may vary and fluctuate during the period of the insurance, but yet has an essential identity.

The mutual associations named Freight-and-Outfit Clubs,

in use in the coal trade and some other trades, chiefly coasting, grant a continuous insurance, during a stated period, for the protection (generally only a partial one as to amount) of the shipowner's profits in the employment of his vessel. These associations, which are of the nature of benefit societies, act by their peculiar rules and usances; but, in general, their object is to make to the owner of a vessel that is lost a certain payment for loss of freight, if the ship were loaded at the time of the accident, and another, less, payment if she were light, *i.e.* unloaded at the time of her loss; the latter payment being to replace the owner's outlay in fitting his vessel for sea. Colliers spend half their time in returning in ballast to the coal ports; and hence the advantage of such an arrangement as a freight-and-outfit club, which gives a partial indemnity to a trade which is subject, more than other branches of our marine, to casualties.

Several separate interests may grow up in respect to freight in a single voyage. The shipowner who charters his vessel has an insurable interest in the whole sum, if unpaid and contingent on the performance of the voyage, or in any portion of it not prepaid, and contingent. The charterer loading the hired vessel at an advantage, may insure his surplus or profit freight; and if he, or his shippers, have advanced any part of the freight, that portion may be insured by him or by them. It even happens sometimes that a charterer having 'lumped'—that is hired a ship for a stated sum—recharters her to a second operator, who lays her on a berth for loading, so that here there are three

Separate insurable interests in Freight

persons having a right to make insurance on freight; whilst those who have advanced freight, either charterers or shippers of goods, may also cover themselves by insurance. Nevertheless, the whole insurable interest can never exceed the entire of the largest of the freights involved, however it may be divided and in whatever way the right to insure may become transitive. Thus, if *A* 'lumps' his ship to *B* for 1,000*l*, and *B* recharters her to *C* for 1,100*l*., and *C* procures freight to the amount of 1,200*l*, the entire insurable interest is but 1,200*l*.; *A*'s being 1,000*l*., *B*'s 100*l*., and *C*'s 100*l*. Then, if advances be made, the interest looks rather more complex Suppose that *B* pays *A* 800*l*. absolutely, leaving 200*l*. contingent on the termination of the voyage; that *C* pays *B* 500*l*., and leaves 600*l*. contingent; and that the shippers, or some of them, pay 200*l*. in advance. The several rights to insure will be as follows, the proportions modified, but the entire mass remaining the same:—

	£
A may insure 1,000*l*., less advance by *B* of 800*l*. . . . . =	200
B may insure 100*l* + 800*l*.,=900*l*.—500*l*. received from *C* . . =	400
C may insure 100*l* + 500*l*.,=600*l*.—200*l*. advance received from shippers . =	400
The shippers may insure their advance .	200
Total	£1,200

From the above example, the reader's experience or imagination will suggest other combinations of a similar kind.

What the exact nature of a profit-freight is in regard to the liability of the underwriter has not been much examined, and two opposite views are entertained of the subject. Suppose *A* charter a ship, freight (this for simplicity's sake) payable at the termination of the voyage, and load goods at a profit on the price he gives, he has, as stated above, the right to insure his surplus or profit-freight. Suppose that *A* is to pay a price for the vessel which will give the shipowner 1,000*l.* on delivery of the cargo at its destination, and that various persons ship goods at a rate which will produce on delivery 1,100*l.*, *B*'s whole interest in the voyage is 100*l.* If the ship arrive safely, that is his profit on the transaction. If the ship be lost, that is what he loses, whilst the shipowner loses his 1,000*l.* *B* insures his 100*l* 'profit-freight,' as such. If the ship be lost, there is no room to question what his claim is on his policy; but if there be a *partial loss* of freight, what is his position then as to a recovery from his underwriters? Suppose one-eleventh of the cargo be washed out by the sea, the freight of the remaining portion at the place of delivery will be 1,000*l.*; this sum under the compact is payable to the shipowner, and *A*'s profit is gone. But can he recover from his underwriters a total loss of his profit-freight? The assured argues that he must recover. His object in insuring was to protect himself in respect of that surplus over the first freight which was his profit and his insurable interest, and he insured it under its true name, he having no interest in the shipowner's freight. If, then, by sea-perils his profit is destroyed—for 1,000*l.* must be paid to the

shipowner—he demands that his underwriters are responsible to him for 100*l.*, the entire loss of his interest. On the other hand, the underwriters submit that the loss is not total but partial; viz., an eleventh part of the whole and of each portion of the whole, and that the assured's claim on the policy of 100*l.* is only 9*l.* Something will depend in this question on the exact terms of the contract between the shipowner and the charterer, and something upon the precise terms of the contract between the charterer and his underwriters. In the underwriter's view, the profit of 10 per cent. is a profit on every part of the 1,000*l.*, shipowner's freight, and therefore every 100*l.* lost of that 1,000*l.* carries with it the loss of 10*l.* profit, but not more. It is true that the result is not satisfactory to the charterer; but the difficulty being now seen, it is competent in him to frame his policy in such wise as to afford him the full protection he seeks; competent for the underwriter to demand an increased premium, if he see in such framing an increase of risk.

Dead Freight.

There is the danger to the charterer of a ship, arising from sea-perils of not being able to complete the cargo intended, and of the ship proceeding on her voyage with a part cargo only. The loss to the shipper in such a case is called Dead Freight. It is a risk which writers have enumerated among those which are insurable; and it is insurable by the charterer and not the shipowner, who, having insured his entire chartered freight, has nothing to lose that is not protected either by his policy, or by the usual clause in a charter-party that the ship 'shall load a full and complete cargo,' to which in some of

these contracts is added a provision as to the payment of dead-freight. If, without a charter, an owner lays his vessel alongside to receive a general cargo, the risk of being prevented by sea-perils from completing a cargo remains his; and as his ordinary policy on freight protects him only to the extent of the actual freight he has on board at the time of accident or loss, the risk of 'dead-freight,' it may be presumed, is one which he is allowed to insure against. Such policies are extremely rare; the special risk is very limited in its occurrence, and the loss anticipated must be produced by a peril of the sea It often happens on other accounts that a ship leaves port, either as a general ship or under charter, with an incomplete cargo, but the dead-freight so arising forms no claim on the freight policy.

There is another contingency connected with freight-charters of a similar kind, but affecting the charterer. It is entirely mercantile, arising from fluctuations of the freight market and not insurable by a marine policy. I merely mention it, and give an illustration. When a charter-party is signed by which one person takes or hires a ship of another on speculation, or to lay it on as a general ship, and he pays a stated sum or a certain rate of freight at delivery, there is permission given that the master shall sign on the charterer's behalf bills-of-lading at any rate of freight. Those who trade or speculate in freights, hire vessels at the cheapest rate they can, and send them either for a cargo which is already sure and the rate of freight already agreed, or lay the ships on the berth to load and make the best

freight they can, or they send them 'seeking' to one or more ports, to load a cargo at the rate of freight current there, under the hope or expectation of making a profit on the transaction. There is the possibility also in such operations of the charterer making a loss. He may find no goods where he expected them, or to obtain a cargo may involve a long and expensive delay. Moreover, the rate of freight at the ports where he sends his vessel may be low, either from the paucity of merchandise for shipment or from the abundance of shipping there. All these, and others like them, are commercial risks affecting the chartering trade. If the speculation is profitable, *i. e.* if a higher rate of freight can be obtained by the charterer than he gave in taking the ship, the master signs bills-of-lading, on loading his vessel, at the higher rate; and, supposing the chartered freight to be receivable at the termination of the voyage, the shipowner, or his agent, receives the freight on delivery of the goods, and hands over to the charterer the difference between that and the agreed rate in the charter-party. But the operation in freight may have an opposite result; and the master may be obliged to leave the ports in which he seeks cargo in ballast, or to accept the freight current there at the time In the latter case he may have to sign bills-of-lading at a lower rate than the rate in the charter-party. The owner, or his agent, on receiving freight at the termination of the voyage will be in a deficit as to the freight due to him by charter, and he will have to procure the balance in defect from the charterer. As this species of business frequently moves through the hands of one or more brokers

or agents, and the two parties to the contract of affreightment are probably quite unknown to each other, a security is necessary, even when the shipowner is to be receiver of freight for this kind of 'dead-freight;' and one of the means employed to give such security is a bill drawn by the master on the charterer in favour of the shipowner for the difference, *i.e.* the deficiency of the actual freight which will be receivable by the bills-of-lading upon that due to him under the charter-party. From a rather recent case of this nature which has occurred, it would almost seem that a bill drawn under these circumstances gives rise to a new interest, and one which should form the subject of a separate insurance.

A chartered a ship of *B*, at sixty shillings per ton, and sent his to a port in the Black Sea, where he had an agent. Freights, affected by the war in the Crimea, had been very high, and *A* anticipated procuring a freight home of seventy or even eighty shillings a ton. The captain, as customary with seeking ships, had power to sign bills-of-lading at any rate; and to provide for the contingency of that rate being lower than the sixty shillings in the charter, authority was given by *A* to the captain and agent, in case a cargo were shipped at a rate lower than sixty shillings, to draw a bill on him, *A*, in favour of the shipowner *B*, for the difference; and *B* was to be the receiver of freight on delivery of the cargo in London. *B* was consequently protected against any loss which might arise on *A*'s freight speculation. When the vessel arrived in the Black Sea, freights had fallen very considerably; and the best cargo which could be procured

was shipped at the rate of forty shillings freight per ton. In accordance with the authority given, the agent then drew a bill on *A* in *B*'s favour for the deficiency which would arise on the freight when the cargo should be delivered, viz., of twenty shillings per ton. The bill was negociated in the usual way, and passed into the hands of a third person for valuable consideration. The ship was lost on the way home. *B* had no claim whatever on *A*, as payment was to be by the freight receivable on the bills-of-lading at delivery; *and any difference, i.e. deficiency, on that freight* had been provided for by means of the bill, which was to be drawn in case of need, to make that compensation. *A* had insured his entire chartered freight, and claimed a total loss on the policy. An action was brought upon the bill. The answer was that the bill was hypothetical to provide for a contingency, which had not in this case occurred; for as no freight was paid to *B* for the cargo, no deficiency of freight could result, be the rate by bill-of-lading what it might. The result of the trial was, however, that the charterer was obliged to pay the bill. It was urged on the part of the defendant that the bill formed only part of a contingent transaction, and was a supplement to a freight to be received; that as there was no freight receivable or due by reason of the loss of the vessel on her homeward voyage, the bill became inoperative, because the purpose for which it was drawn had been superseded. By allowing a separate existence to the bill independent of the object of its being drawn, it put the shipowner into a position not intended, and he became a gainer by the loss of the ship; since the ship-

owner could recover on the bill, and a total loss on his freight policy, which was for the whole amount of freight per charter. There is certainly something unsatisfactory in this precedent; and we must suppose that the ground on which the bill was upheld, in opposition to principles which have long been esteemed highly equitable, was that the bill under such circumstances might be in the hands of an unconcerned holder who had given value, and whose right of recovery on such bill must in all events be sustained.

Thus, then, a new interest seems to be created by a chartered freight which should be protected by insurance. It is a risk which the charterer runs, under the terms of such a contract as has been described. If the ship be lost, the charterer receives no benefit whatever from his charter, yet has to pay a portion of a freight which he does not get. It cannot be looked upon as an advance of actual freight, for it belongs to a contract apart from the freight by bill-of-lading payable by the receivers of the cargo. The shipowner had a right to insure the whole of his chartered freight; the drawer of the bill should in prudence have insured the amount of it against the contingency of the loss of the ship; and then there would result the question whether the underwriters on the chartered freight were not entitled to a reduction from the total loss claimed on their policy, to the extent of the bill, the value of which the shipowner received.

In considering freight as an insurable interest, we are led to remember that the character of one who

carries merchandise by sea for hire, casts upon him specific duties and invests him with certain privileges. These duties and privileges, as they attach to the owner of a ship or the charterer of it, are not identical; but they affect insurers both immediately and indirectly. We will, therefore, now briefly consider them; and they form together a subject on which it is singularly desirable to possess and to promulgate clear notions.

The duties and privileges of Freight

The duties of a sea-carrier under a contract of affreightment, whether it be by charter-party or bill of lading only, are those of safe custody, conveyance, and right delivery. The carrier must fulfil his part of the contract before he can obtain the price of his bargain. He is to bring his vessel to the appointed place of delivery, and is there to yield up the goods and merchandise in the same quantity and condition as he took them on board. As the exact weight or measure of goods sent on board a ship cannot, in the hurry of loading, be always verified by the master (who generally signs the bills-of-lading), he frequently disclaims any admission on his part of the quantities stated by the shipowners on the bill-of-lading, and also as to what the packages contain, a knowledge of which only comes to him from the shipper's statement: he, consequently, prefaces his signature with the words 'weight and contents unknown.' This exception does not, however, excuse him from responsibility, because the quantities, &c., are matters of fact and capable of proof. And now a paradox meets us—the whole subject of freight being fruitful in para-

doxes. The bill-of-lading, though bearing only the carrier's signature, is a contract of mutual duties;[a] the master promises to deliver the goods entrusted to him, on the receiver of them paying freight; and a tacit promise is made on the receiver's part that he will pay freight on receiving the goods. So there are two conditions, and two duties; and as no precedence among them is established, the whole transaction ought to come to a dead-lock as soon as the vessel arrives at her destination and is ready to discharge the goods of her lading. For there remains the master, ready to deliver the merchandise if freight is paid him; and there stands the merchant, ready to pay freight if his goods are delivered to him. And there the two parties might stand for ever, with two litigious claims growing up in the meantime—a claim by the shipowner for demurrage of his vessel, and a claim by the merchant for the wrongful detention of his goods. But commerce, which possesses a good deal of practical sense, has a short way of cutting a knot which she cannot see the means of untying. She decides that the master must deliver first; but the inconvenience of this proceeding is, that in giving up the goods he loses his lien for freight. A sort of fiction is therefore invented. If the ship is in a public dock or at a public wharf, delivery is made there,

---

[a] The case of *Churchward* v. *the Queen* (Queen's Bench, Nov. 1865) may be studied as to contracts. The form of a contract is not all-important; and a contract made in one person's name, or bearing one signature only, implies, from its nature, another party, and often correlative duties.

by discharging the merchandise on the wharfs; and immediately after, the master or shipowner, by a notice, stops the goods in the possession of the wharfinger or dock-proprietor until the freight be paid. When the discharge is in the river or roads, over-side into boats or lighters, the freight is payable progressively for each lighter-load, &c.; or a payment on account of freight is made by the merchant; and much trust is placed in the routine of commerce and the good faith of mercantile men. In France, the claim for freight is not extinguished by delivery of the goods; and the captain or shipowner can follow goods in the hands of innocent purchasers and re-purchasers, for his unpaid freight.

The master or shipowner is excused from making delivery of the goods for which he has signed, when he has been prevented by the act of God, the Queen's enemies, and all and every other dangers and accidents of the seas, rivers, &c. And if the goods, or part of them, are so lost the master or owner loses his freight on them also (except it has been paid in advance): he cannot claim carriage for merchandise he does not deliver; for the profit is most intimately connected with the goods as its subject-matter; and though the claim for freight grows up under a written contract, the carrier's lien is on the goods carried.

The excepted casualties and contingencies above named, whether termed 'acts of God,' 'dangers of navigation,' or 'perils of the seas,' fall upon underwriters when the merchandise is insured. The instrument by which the master of the vessel defends himself against claims by

merchants, for damage or short delivery of their goods under that clause in the bill-of-lading which promises true delivery, is the Protest. This the master is bound to note within twenty-four hours of his arrival. It is a question whether it is incumbent on him to 'extend' it, *i.e.* to state the full particulars of the risks protested against, or at any rate, to do so at ships' expense. For their further protection, shipowners and brokers insert, frequently, additional restrictions of their liability in the bill-of-lading; and, of course, it would be very convenient to owners of vessels to free themselves from every description of claim which might be made upon them in respect of the property confided to their care as carriers. It was the habit of the late Lord Chief Justice Campbell's mind to refer most things relating to the contract of affreightment to the Common Carrier's Act; and, no doubt, he had much reason for doing so. The Acts referring to carriers are pretty distinct; and it is not sufficient for a carrier generally to disclaim his responsibilities for the safety and right delivery of the articles given into his charge; he is bound to make his terms known to those who use his conveyance, and to affix them in his receiving-house or usual place of business. Steam companies, in our day, are especially anxious to avoid claims, and some of them encumber their bill-of-lading (prepared by themselves) with a number of clauses intended to reduce their liability within the smallest limits.[b]

[b] When a powerful steam company has displaced other means of conveyance, and gained a monopoly of the road, the terms are often very arbitrary on which alone they will consent to

Whilst there are some duties which belong to the beneficiary of freight, whether the actual owner or the hirer of a ship who uses it in carrying the property of others, the manning and navigation of the vessel is the particular and invariable duty of the owner. In whatever manner the vessel is chartered or let to another, the owner provides the master and crew, pays their wages, and the port charges and other expenses of the voyage. I do not recall any instances where the hirer of a ship had to find or pay the crew or victual them for the voyage, although, under very exceptional circumstances, such an arrangement might possibly be made or forced on the hirer by the exigencies of the case. The charterer sometimes places in the ship, for his behalf, a supercargo, who has charge of the merchandise she carries, and who

Navigating the Ship.

---

carry goods, for the conveyance of which the company was set up. The conditions and disclaimers of responsibility introduced in the bill-of-lading of certain steam companies are so numerous that they sometimes occupy all its margin, and in one case which we have seen, flow over on to the back of the document. It seems as if in condescending to carry a merchant's valuables, the carrier renounced almost every duty of his calling, and strove to protect himself from every possible risk. Shippers may struggle against shipping on such terms, but, being individuals, they are beaten by the helplessness of their position: theirs being frequently Hobson's choice. On the other hand, we must remember that the claims of all sorts, valid and invalid, made by the receivers of a general cargo on its delivery, are very numerous and often very vexatious; and were there no protection to the shipowners against them, they would become a serious impediment to the carrying trade, and especially to steam carriage, since by steamers there is often a multiplicity of articles shipped belonging to many different persons.

has authority to direct the course of the voyage. The finding and providing for a master and crew is a privilege as well as a duty of ownership. The owner is bound to keep his ship properly manned, as far as it is within his power; and in having his own captain and crew he feels himself represented whilst his vessel is at a distance from him. The wages of the crew, the port charges, and working expenses of the voyage, are ultimately payable out of the freight, to gain which they are undertaken. Not so, however, the victualling of the crew; the stores and provisions being held by law to be part of the ship and included in a general insurance on 'the ship, her tackle, &c.' It is often very difficult to make shipowners see the propriety of this rule; it is often difficult to give them a satisfactory reason why the rule should exist; for the owner knows well enough that the crew's stores and provisions are put on board in connection with the crew itself, and are working expenses disbursed specially to procure freight, and that they will be paid ultimately out of the freight, and are inseparably connected, in the owner's consideration, with the freight.

This duty of manning the ship, maintaining the crew, and paying expenses incidental to a voyage, confers a privilege on the owner, and in a certain manner renders freight a preferential interest for insurance. For whereas the ship and the cargo, in case of general-average, contribute to it on the entire value saved and brought to their destination, freight is allowed to pay its quota, not on the actual amount saved, that is, the gross sum receivable at the port of destination, but on that amount stripped

of all wages and port-charges for the whole voyage, reducing the contributing value frequently to a moiety, or less. The practice of adjusting freight for general average contribution on this principle, has been long in force. It is not defensible in itself, as a little reflection will show; and it was probably introduced either as an encouragement to ship-owning, or by a mere error. The anxiety which I feel to place the matter in its right light arises not only from the effect which these privileged deductions have on freight as an insurable interest, but because they give rise to errors and troublesome questions in reference to other interests, which have no right to participate in the same privileges.

As an insurable interest, it is the full or gross sum of freight which may be made on a voyage that can be insured; and even to this, the premium of insurance itself, the policy duty and the brokerage for settling a loss, may be added to make the full insurable amount. It is plain, however, that though this be the shipowner's *interest* for a given voyage, his *profit* on the voyage can never be so great. The outfit of the ship in preparation for the voyage, the advances to the crew before sailing, the expenses of taking in and stowing the cargo, the pilotage and port-charges before the ship gets to sea; the provisions put on board for the crew, and the current wages of the voyage, these all go in reduction of the freight gained, and all have to be paid really out of freight, for the ship itself produces no other profit than freight. If the vessel arrives at the destination, there are still expenses to be incurred; port-charges, delivery of cargo, &c.: and the amount of

freight itself is nearly always subject to brokerages and commissions. Consequently, the gross freight can never represent the owner's profit. If the voyage be successfully performed, that profit is curtailed by the ordinary disbursements, even leaving out of consideration the wear and reduction in value of the ship itself; and even if the vessel never completes the voyage but breaks down, or is lost, all the expenses mentioned in the first list, including wages paid or due at the time of the breaking up of the voyage, have been paid in anticipation of that expected freight the owner was to receive. Yet it has been thought proper, and it has been long settled, that the owner may insure the gross freight, the extreme amount receivable on a voyage, making no deductions for actual, unavoidable, and prepaid expenses; although under such system a loss is better for the owner, *quoad* the freight, than a completed voyage could possibly be; and so the owner is in the anomalous position of really gaining by a loss; for by a loss he is prevented paying wages which would have occurred after the loss, and the port-charges, address commission, and cost of delivering cargo. Yet the reason of this position approves itself to the mind. The sum at risk to the shipowner, so long as it has not been prepaid, is the whole sum he can receive by the completion of a voyage. To say that he has already, and whatever happens, spent a portion of it, so far from giving him less interest in gaining the entire freight, is a greater reason why the receiving it is necessary to recoup his disbursements already made. It is, then, the gross freight which is always at risk during the voyage; and in case of a

voyage interrupted by loss of the ship, &c., what the shipowner saves are the wages which would have been incurred to the crew between the moment of the loss and the time at which in ordinary course the voyage would have been completed, and the commission and expenses in the port of discharge. Therefore, in claiming a loss on a policy effected on freight, when the voyage has been broken up at any point, exact justice would be done by deducting from the entire amount of the insurance, supposing that to coincide with the entire freight at risk, the wages which would have become due after the breaking point of the voyage, and the expenses, &c., in the port when the adventure was to have terminated:—and both these sums could be nearly arrived at by calculation. As practice stands, no such deductions are made in cases of loss; though, as I have already remarked, if the loss take place early on the voyage, the shipowner will be a considerable gainer by the wages and expenses saved to him by the non-completion of his undertaking But, clearly, to allow him only to insure or recover his *net* freight would not put him into a true position or give him a complete indemnity.

Contributing value of Freight.

Out of the foregoing considerations there arises naturally the question, what should be the value of freight taken for contribution to general-average? And this is only another form of the question, what is the interest in freight at stake at the time of an act of general-average? Either from a misapprehension, or for the encouragement of shipowners, who have to make considerable outlays in winning freight, long custom, as I

have already remarked, has given them a privilege in this matter—viz., that the disbursements both before an act of general-average as well as after it, which go to the production, or are incidental to, the contract, of freight, shall be deducted from the amount at risk, in bringing freight in as a contributary to that sacrifice which has been the saving of all the interests. In itself, nothing can be more unreasonable or more illogical than this practice. An illustration will be the clearest argument.

Suppose, gross expected freight under charter-party or bills-of-lading, 1,000*l.*

	£	£
Insured for, and valued at . .		1,000
Advances to crew, loading, and port-charges at the place of departure, and commission	200	
Crew's wages by advance-notes, and due at time of termination of voyage .	200	
Port-charges at destination, expenses of discharging, and address commission	100	
		500
Balance, being the net sum procurable by the transaction; in other words, the owner's profit on the voyage .		£500

So, whilst by the prosperous completion of a voyage the owner's emolument would be no more than 500*l.*, he has the right and power to insure 1,000*l.*, and claim it in case of loss.

In this illustration, in order to avoid complication, I leave out the consideration of the cost of insurance, the wear of the ship, and the question of the crew's victual-

ling; which latter, by a strange obliquity, has been made to be a part of the ship and an interest insured by the ship's policy, and not part of the insurable interest in freight. The rule which makes provisions part of the vessel, is about as consistent as one which would give the purchaser of a house the milk and meat that were in the larder, and the meal ready on the table.

A lengthened voyage reduces the owner's profits by the increase of wages he has to pay. A very protracted one will sometimes consume the whole freight in wages and keep of the ship's company; but, in any case, it is equally necessary that the owner should at last receive the freight for which he carries goods, and for which he has undertaken those expenses and has made those outlays. Up to the last minute, therefore, the entire sum he has to receive on completing the voyage is the amount at his risk—the amount insurable by him.

If, on the other hand, a loss occur early on the voyage, the owner still loses his freight receivable, but with greater advantage to himself if the freight be insured. Thus:—

Gross freight, as before, 1,000*l.*		£
Insured for	£	1,000
Advances and charges at loading port .	200	
Crew's wages and advance-notes up to the time of the rupture of the voyage .	100	
	——	300
Balance, being the sum received from underwriters, less expenses incurred		£700

Thus, looking only to the position of a single voyage

and freight, the loss of the ship early on the voyage when the freight is insured, is profitable to the owner; and in a similar manner, but in a less degree, if a loss occurs at any later part of the voyage. But the interest at risk remains still the whole freight—whether to the owner himself, if uninsured, or to the underwriter, in case the freight is covered by insurance. If the former, the owner looks to the gross receivable freight as the fund out of which to repay himself the expenses already incurred, and, supposing his vessel completes her voyage, the charges still to be incurred; if in the latter case, the underwriter's liability remains the same and undiminished till the voyage is terminated. The only exception is (and it regards the owner alone), that by the loss of the ship on the voyage those expenses arising after the rupture of the voyage are saved to him which he, as owner, would have had to bear in the ordinary course, had the voyage been completed. In settling a loss of freight with underwriters this saving to the owner is, by custom and convention, left entirely out of sight.

I have been thus precise, even tedious perhaps, in demonstrating the permanence of the interest in freight during the voyage, because on this fact hinges the solution of most of the questions concerning freight, advances, and insurance. Let it be observed that a privilege is accorded to the shipowner, but to him alone, that for the purpose of contribution to general-average in respect of freight, his interest in freight shall be reduced in amount by what we will call the working expenditure of the voyage; not only those expenses necessary to complete

the voyage and make delivery of cargo *after* the act which has saved this and the other interests from loss, and which would not be incurred if the ship were lost at that time of peril and not saved; but also those expenses which had been incurred previously to the peril; and, bygones being bygones, made irrecoverably, whether the ship afterwards sank or swam. This remarkable privilege was probably granted, as I have before remarked, to encourage shipowning, and in consideration of the expense the owner is under in obtaining freight.

The underwriter on the shipowner's freight profits, it is true, by this arrangement or privilege, inasmuch as he is subrogated for some purposes in the owner's position; and contribution to general-average falls, consequently, more lightly on him than on the insurances of the other co-interests. His position remains at present an anomaly. The deductions from freight are not in the situation of deductions from the contributing value of ship or of cargo, when their worth has been reduced by sea-perils previous to their arriving at the port of destination, for the underwriter's contribution in respect of each of these interests corresponds to the value saved to their proprietor by the act of general-average, as that value is discovered in the port of destination; so that if half the value only arrive, the contribution is on a moiety only. But in freight, if there have been no loss in quantity on the voyage, it is the *whole* amount which is receivable on delivery, and, consequently, the whole interest in freight has been saved by the act of general-average, except the sum of those expenses which grew up *after* the general-average act;

for they would not have been incurred if the interests had not been saved. Where part of the freight itself is lost by the loss of part of the cargo, the case is altogether different, for so much of the interest ceases to be receivable even though the ship arrive When this happens, freight conforms to the rules which apply to ship and cargo. Independent of such loss of the interest itself, the position may be formulated thus:—

Ship insured for 1,000*l.*

Her value at final port, 1,000*l.*

Contributes to general-average on 1,000*l.*

Cargo insures for 1,000*l.*

Its value at final port, 1,000*l.*

Contributes to general-average on 1,000*l.*

Freight insured for 1,000*l.*

Its value at final port, 1,000*l.*

(being the amount receivable there).

Contributes to general-average on 500*l.*

The exceptional position of the shipowner in respect of contribution on freight, and of the underwriter on owner's freight, does not extend to persons who advance part or the whole of the freight at shipment. The expenses of working the ship are not theirs; so that they have no claim to any concession as regards their contribution to general-average more than the other contributaries. Yet there are underwriters and other persons who assert that the advancer of freight, and his underwriter, should participate in a privilege which in their case would not only be wrong (for the diminution of one value increases the quota of contribution on the other contributing interests)

but absolutely meaningless. If the shipper of cargo who absolutely advances 1,000*l.* as part freight, does, by some act of general-average performed, save the 1,000*l.* which would otherwise have been lost to him, reason, equity and usance combine in deciding that he must contribute towards the loss or sacrifice, on the value of 1,000*l.* Those who maintain in practice or by argument the opposite view, can hardly have examined with care the grounds on which their decision should rest. The special expenses of reshipping goods discharged and other costs, by custom applied to freight itself, conform to the same principle which governs the general contribution.

Reshipping Expenses

It must be confessed that the part of the subject now touched upon is very unsatisfactory. It stands thus:—If goods are shipped upon the terms of the bill-of-lading only, with freight payable on their delivery at the place of destination; and if from sea-perils the ship puts into an intermediate port, and there, for the purpose of repairing, &c., has to discharge her cargo; the expenses of reshipping the goods, of getting the vessel out of port and to sea are—rightly or wrongly, I am not here deciding—charged specially to freight[c] The owner pays such reloading and outward charges; and if he has insured his freight, he recovers his payment of those expenses from his underwriters. The reason given by writers on Average why the shipowner should be exclusively charged with the reshipping and outward charges, is that he could not earn his freight by delivering the

[c] The subject is discussed in my Handbook of Average.

cargo at its port of destination unless the goods were replaced in the vessel, and she again set forward on the voyage.

A more serious and real motive for the appropriation of reshipping charges remains behind, which is not mentioned by writers; and this is, the covenanted duty which lies on the shipowner to convey the goods laden on board his vessel to their destination. By the contract of affreightment, the charter-party, if there be one, and the bill-of-lading, he takes the valuables of another person into his charge, and assumes the responsibility of a carrier to convey them to a specified place, and there deliver them into the right hands. His only salvo is, the act of God and the dangers of the seas preventing him. The consideration for which he undertakes this responsible duty is the freight payable to him. But, having undertaken the duty, he is bound by law and by honour to complete what he is engaged to do. He is not allowed on account of an accident which can be remedied to break up his voyage, and leave the goods with which he is entrusted half-way. If a wheel come off a common carrier's cart on the road, he must repair it; and if it be necessary to unload the cart in order to effect those repairs, he must do so, and afterwards reload and proceed. He is certainly not allowed to wash his hands of the goods in his charge, and leave then on the road or at a wayside inn. Still less is the shipowner or master to be allowed, in case of an accident on the voyage causing expenses or detention, to consider whether it would now be *more profitable* to himself to reload and complete his voyage, or to allow or

cause the voyage to be broken up. When freight is payable only at the port of destination, there is a general argument acting on the owner to induce him to continue and complete the voyage, even though the expenses of reloading and again going to sea are heavy. And it is to provide this security to merchants shipping goods that the English law does not recognise 'distance-freight,' or freight often called in books '*pro ratâ itineris peracti*,' but which is sanctioned in most foreign maritime nations. Those countries allow the owner to receive freight, though he do not deliver the laden goods at their intended destination, for the part of the voyage performed; and an apportionment of freight is accordingly made to the distance sailed. The English law says, 'all the freight, or none.' And, by the English system of General-Average, all the expenses of reloading and returning to sea are chargeable to freight; as if the receiver of the benefit of freight must use every effort, and make all necessary outlay, to fulfil his contract.

Whilst the freight remains unpaid till the voyage be completed, there is therefore a great stress on the shipowner to carry the goods of his lading to their destination, and there deliver them. He feels an anxiety to deliver his cargo at his *terminus ad quem*, in order that he may receive the freight due on so doing; and we may hope also that he feels an equal anxiety to effect the true delivery, in order to fulfil those serious duties to which he has bound himself by the bill-of-lading. But, suppose the owner be relieved from one part of this pressure. Suppose that the freight, instead of being made contingent on

arrival at the port of destination, be paid by the shippers at the port of loading—would he still feel as great an anxiety to take up his load, after such temporary stoppage as has been named, and strive by every effort to complete his voyage? Would he still undertake the expense of reshipping the goods, which necessity had caused to be discharged, and of getting his ship once more to sea? Would, in fact, duty inspire him with the same alacrity to fulfil his written engagement, as the knowledge would do that in no other way he could secure the anticipated freight?

It is to be feared that—owing to the prevailing view which supposes that all reloading and outward expenses at a port of refuge are incurred for the sole purpose of winning or saving freight, and the practice of charging those outward expenses entirely on the merchant if he have paid the whole freight in advance, and charging him with part of them in proportion to his prepaid freight, where part has been advanced—it is to be feared that the answer to this question must be in the negative In case of all the freight of merchandise having been prepaid, the owner says to the merchant: 'There are your goods, in such a place, where they were necessarily discharged owing to perils on the voyage; my vessel is again ready for sea; if you wish me to continue the voyage I shall do so on your reloading the goods on board, and paying the towage, pilotage, and all other charges of exit, so as to place my vessel again on her way. But, for myself, I have no further interest in the completion of the voyage: having received my freight in advance, I can gain nothing

more by the discharge of the cargo at its destination. Looking solely to the production or saving of freight, you have all and I nothing to lose by the fracture of the voyage; it is, consequently, your concern that that voyage should be completed.'

And so the case stands according to the present custom, a custom recognised by law; viz., that under an engagement—a serious, written engagement—a carrier will take charge of the valuables of another person and deliver them in a stipulated place, he will take all the steps necessary for effecting what he has promised, if his payment of the consideration be deferred to the end of the voyage and be dependent on right delivery then of the goods; but that if the carrier have the additional benefit of receiving payment of the consideration beforehand, he is absolved from taking, or taking at his own expense, those necessary steps (reloading, outward charges, &c.) for carrying the merchandise to its destination after an accident which has necessitated a putting into port and the discharge of cargo. That duty which the shipowner undertook to perform, and bound himself by a written and stamped document to fulfil, is to be forgotten under the foolish, erroneous view that the completion of an interrupted voyage is solely for the purpose of saving the endangered freight; and that if the freight is safe to the shipowner by prepayment, he is at liberty to forego the proper duty of his vocation, and his bounden duty by the contract of freight,—all which propositions are untrue; for the circumstances against him (perils of the seas and acts of God) must be very strong, which should liberate a carrier from his engaged duty of safe-custody and

delivery; and the charges of reloading, exit from port, and all other expenses, which enable a ship to take the sea again and continue and complete a voyage, which has been interrupted and endangered by sea-perils, ought not to be thrown on the freight alone, but should be divided according to the value (which indicates the benefit received) of ship cargo and freight; since it is as necessary that the ship should again be at sea, and finally reach the owner's hands, and that the cargo should arrive at the market where it will attain its value and come into the possession of its proprietors, as that the freight should be saved to the shipowner, if still at his risk, or to the shipper or advancer, if prepaid.

In dealing with the subject of freight as an interest, I have been obliged to introduce some considerations which would properly belong to freight and advances in their relation to average; but it was impossible to avoid it; for average is an incidental though large subject connected with insurance and with the interests concerned in a marine adventure, whether insured or not. In endeavouring, therefore, to describe the interest of freight, it was necessary to point out its peculiar position, what privileges it possesses, and what dangers or claims it is subject to I have touched as briefly as I could on those portions of the subject which the reader might expect to find dealt with in a work on Average; but no place is a wrong one for pointing out errors and inconsistencies, or for enforcing duty as the guide by which a contract is to be acted on rather than expediency, or the desire of saving money to one party to that contract.

Freight, considered as a separate insurable interest, is

placed in an anomalous position by being held legally to be an incident of the ship; *i. e.* something essentially belonging to a ship, and passing with the vessel when the latter property changes hands. We do not find that the incidental character of freight is insisted on in ordinary transfers of ships by sale, even though the contract or bill of sale contains no express stipulation excluding any freight that may be due to the ship at the time of sale. It is, indeed, quite competent to sell a ship whilst on a voyage with the contract of affreightment she is then under, as a race-horse is sometimes sold 'with its engagements;' but then it must be agreed and understood that both ship and freight are sold. Yet the law is tolerably express, that by the abandonment of a ship to the insurers, any freight then due or accruing passes to the abandonees—the ship's underwriters—as one of the incidents of the property abandoned. Practically, this can only take effect when the abandonment is accepted by the underwriters of a ship, as they would have to claim the freight due; it would not be proffered to them; and without accepting the abandonment they would not be in a position to make any claim for freight or any other accessory or incident of ship. Yet the legal principle has been carried so far, that when a vessel and her cargo arrived at their port of destination, which was Liverpool, and the ship was taken into dock and delivered her cargo, and was then abandoned to her insurers, on valid grounds, it was held that the freight then due on the cargo was payable to the underwriters of the ship. This paradoxical position has

Freight an Incident of Ship

already been mentioned, and will be alluded to again hereafter; all that concerns us with it now is, to inquire how far it affects the rights of an underwriter on freight. If freight be really an insurable interest, distinct from the ship, the security of the underwriter on freight should not be affected by the shipowner making an insurance on his vessel; which it would be if the underwriter on ship has a claim, in case of abandonment of the ship, on the freight due, the very subject-matter of another insurance. If it be that freight is an inseparable incident of the ship—an emanation from it, as it were—so that an abandonee of ship receives it, as he receives the masts, rudder, and iron kentledge, &c., then, clearly, freight has not such a separate existence as to make it capable of a separate insurance. As well, it would seem, might a specific insurance be made on a mast Unquestionably, in case of wreck and abandonment, the general underwriter on ship would take the proceeds of the mast with the proceeds of the rest of the vessel, leaving nothing for the underwriter on the mast. But it need not be said that separate insurances on masts are not made. It follows, that if the freight be inseparable from the ship, and passes with the vessel's materials and accessories to the abandonee of ship, the abandonee is concerned in its preservation and safety, and should contribute *ad valorem* to the salvage or general-average expenses by which it has been preserved to him. This argument, which appears to me to be incontrovertible, may be looked upon as merely a *reductio ad absurdum*. If so, it would be well to get rid of the absurdity which it points out.

But express as the law is as to the right of the abandonee of ship to take the freight due as part of the proceeds, the underwriter on freight by no means consents to the arrangement. The right which he had in case of loss—and especially in case abandonment is made to him by the assured—to receive, by way of salvage, what freight was due and obtainable at the time of loss and abandonment, he rightly thinks it unassailable by any after-act of the shipowner, to which his own consent was not given. He cannot admit that his rights under the policy on freight are reduced by the owner subsequently insuring the ship. And so, practically, the underwriter on freight retains his salvage of freight, even though the owner, having abandoned his vessel to the ship-underwriters, is obliged to hand to them, as an incident of their interest, the equivalent of freight saved, and this from his own pocket

In summing up what has been said in this chapter, we have seen that freight, including passage-money, is one Summary of immaterial interests which may be legally insured; that freight is the shipowner's profit, which he acquires by the use of his vessel, either by carrying merchandise, or by letting the ship to another person who makes a similar use of it; that the duty and expense of navigating always belong to the owner, whether he conveys goods in his ship for which he, by his captain, signs bills-of-lading, or whether the vessel is chartered or let to another person, or even subchartered, or let by the charterer to another person still. Then, considering freight as an insurable interest, we found that it conforms

to the general laws affecting such interests, and that the whole of that amount of payment for carriage which a ship is to make on a voyage may be insured, but not more. We saw that freight is sometimes Protean, and assumes a different form, that of advances or prepaid freight; and can be divided, part remaining as ordinary freight and part as advances or prepaid freight; but that, though under a different name or form, the whole amount contingent on the arrival of a vessel and her goods at a stated place, is insurable, but the right to insure may not always remain in the same person, and that partial rights may be acquired in the same freight, but not together greater than the whole amount at risk. This position became a key and leading principle to the whole subject. A payment in respect of freight before the conclusion of the voyage does not destroy so much of the interest in freight, but it transfers the risk of so much, and the right of insurance, from the payee to the payer: *i.e.* generally, from the shipowner to the merchant or shipper. A difference was distinguished in payments made at shipping; between those made absolutely, to be repaid at the port of destination out of the freight there due, by deduction, but in case of the ship's loss not returnable to him who advanced; and those made on the personal security or credit of the master or owner, and recoverable from him as a common debt, whether the ship arrive or be lost. The former kind of advance is insurable by the advancer; the latter is not. It was then shown that there were two or three ways of insuring such advanced freight, either *eo nomine*, as 'advances,' by a separate policy; or, as an

addition to the invoice value of the goods, without specifying in the policy how the value is made up, but leaving the analysis of value to be shown, should it be required at any time; or, thirdly, by insuring the advances in the same policy with the merchandise to which they related, either in a separate sum, or included in the value of the merchandise, with a declaration that that value involves freight paid in advance. The right of the merchant shipping goods to insure the advanced freight, and to insure it in the manner he prefers, was pressed on, in order to avoid misconceptions which prevail with some persons on this subject.

The place and manner in which freight is made payable were entered upon, and the circumstances under which advances are made to the shipowner, together with the right of insuring, which is affected by those circumstances, both as regards the persons and the amount; and other loans made to an owner were mentioned, as Bottomry; and the right of insuring such were considered. The exemption of a Bottomry loan to contribute to a subsequent general-average was alluded to, and a reason was sought for it. The large subject of chartered freights was then examined, and the difficulties were shown which the term 'expectation of a freight' have given rise to. It was pointed out, that all freight contingent on a ship's arrival at her destined port, remains in 'expectation,' and that the French law prohibits the insurance by the shipowner of his unpaid freight. Then, as he has no necessity to insure freight that is prepaid, it follows that in France the right is denied to a shipowner of insuring his freight.

It became necessary to define at what point under English law the profits of a ship *in futuro* ceased to be undetermined insurable risks, and entered into the description of expectations of future possible employment of the vessel; passing, in fact, from a present engagement for hire, to the region of undefined plans for uncommenced voyages. And because the words 'expectation of a freight' have been frequently repeated and often misunderstood, we paused a short time to consider the true import and bearing of the term, and the key, which, in legal phraseology, has been given to determine these questions, as they affect insurances on freight, viz. 'the inception of the risk' The various forms of future profit, *i.e.* freight, were reviewed, and it was pointed out that there are positions in respect of the forward earnings of a ship when insurance may be desirable and prudent, and if they do not come within the present provisions of the law, the assurers and assured may agree between themselves to effect such a policy as will meet the case; and if there be nothing fraudulent in the transaction and no infringement of the Stamp-duties Act, it only requires that the two parties should quite understand each other, and express the agreed compact in distinct language, to make a good and binding insurance. Some methods of protecting shipowner's by means of mutual freight-insurance associations were described.

The intricacies were then touched on which arise from the fact of two or more interests growing up in respect of a freight—as by 'lumping,' chartering and re-chartering, and advancing on freight; and two or three paradigms

were given for example The difficulties attending settlements of loss on 'profit-freights' were spoken of, about which subject there is plenty of room for difference of opinion. The risk of a charterer in not being able to fill the ship he hires or charters with cargo was mentioned, as being classed by writers on Insurance as an insurable interest. It is most rare in practice to find that this right to insure is availed of, even if one exist. The contingency of a deficient cargo is generally a mercantile risk, and when so, not insurable. It can only come into the category when a sea-peril is the direct cause of a ship proceeding to sea with a part-cargo.

In connection with dead-freight, another contingency was described, by which loss to a charterer arises, not from the deficient quantity of cargo, but from the rate at which goods are shipped. This is also a speculative or commercial risk, and in itself is not a subject for insurance. But a position, grounded on actual occurrences, was shown, in which a loss may be thrown on a charterer of a very vexatious kind, by a loss of ship by sea-perils supervening on the failure of an adequate freight, thus entailing a loss, the risk of which would seem a fit subject for insurance. An instance of this kind of loss was given.

Still, considering freight in its relation to insurance, we were led to examine what duties are imposed on the sea-carrier, in virtue of the office he undertakes, and the profits he makes thereby; and what privileges have been conferred upon him in respect of the profits of his profession, viz. the freight And we were glad of the oppor-

tunity thus afforded of entering somewhat at large into this subject:—first, because, after a lapse of time, whilst we pursue any avocation attended with profit, we sometimes allow the sense of duty to grow fainter, and fix our attention more eagerly on the gains, the ultimate end to ourselves of the calling we pursue; and we require, from time to time, to be hark'd back to the correlation which subsists between our undertaken duties and our profits. This is the more necessary, when we can adduce customs or even legal decisions which act towards a relaxation of the strictness of duties required of us, and of which easier state of opinion or law men are not unready or slow to avail themselves. And, secondly, because a clear apprehension of what a shipowner's duties are in carrying goods for freight, and with them the consequent liability of the underwriter on a freight policy, is necessary, in order to come to a decision as to two legal judgments, which have been much discussed and have caused much disturbance of previous ideas on the subject. These are 'The Bombay's case,' and *Booth* v. *Gair*. The tendency of the remarks made was to show that the position of a shipowner, conveying goods by sea for hire, *i.e.*, on freight, is strictly analogous to that of a carrier of goods on land: but the contracts by which the former binds himself—the bill-of-lading, and the charter-party—are more serious and solemn than the Way-bill of the carrier, which only enumerates the particulars, destination, &c., of the goods he takes charge of and carries, but for which he becomes responsible. Throughout the chapter the shipowner is named and not the captain, the

former being the really responsible person; but, practically, the captain generally signs, and does a great many acts as the owner's agent or substitute, and is under no small responsibility also himself. The chapter urges the responsibility of the shipowner for the goods carried in his ship, and the bounden duty to which he is engaged by signature to the bill-of-lading; and that, though his object in coming under that responsibility was for his own profit in gaining freight, yet, from whatever motive, having in a solemn manner—for the language of the bill-of-lading is very solemn—tied himself to certain duties to other persons, he is not to be released from them except by those insuperable accidents named in the same document, 'Acts of God, and dangers of seas and navigation.' The duty must, then, be separated in thought from the motive which led to the acceptance of that duty—the intention of gain. And it is deeply to be regretted that so great a fallacy should have come to prevail as that a prepayment of freight, *i.e.*, a payment of carriage at the commencement of the voyage undertaken, should in any way alter the contract a shipowner binds himself to, or absolve him in any respect from the duties to which he thereby pledges himself. Whether paid at the beginning or at the completion of the voyage, the duty of safe custody and right delivery lies equally upon him. To say that in a case where a cargo, the freight of which has been prepared, has been discharged at an intermediate port, the shipowner shall be excused the expense of measures for reshipping the goods and proceeding again to sea, and shall throw those expenses on to the proprietor, not because

they always appertain to cargo as such, but in virtue of their carriage having been *prepaid*, will strike some minds as an injustice and others as an absurdity. The underwriter as standing behind the proprietor of the goods, is affected by this question; and the whole *crux* seems to arise from the reshipping and exit charges in a port of refuge being classed to freight instead of general-average.

The risks of the carrying trade, and the disclaimers of risks by sea-carriers, especially by steam-ship proprietors, were briefly noticed; the invariable duty, also, of navigating their vessel, even when let by charter to another person who employs the ship. Then, as regards the underwriter's interest, it was shown that the *wages* of the crew are referred to freight, but the *provisions* for victualling the crew are referred to the ship, so that we have the unexpected position of the hire of the ship's company being divided and placed to separate interests—the payment in money, to freight; and the payment in food, to the ship. It would be difficult to find a valid reason for this curious arrangement. The distinction does not seem to reside in the fact of the materiality of the latter—the provisions; since food and stores, if for use of cabin passengers, are not necessarily part of interest in ship.

The privilege of the owner in respect to freight, attaching to the duties involved by ownership, was then considered somewhat at large, especially in reference to the contribution of freight and of advances on freight to general-average. It was carefully shown on what different bases the two interests stand; and that an exceptional privilege—

which has been conceded to the owner in contributing to general-average, in virtue of his expenses in navigating the ship—does not apply to the shipper of goods who advances part of the freight, *i.e.* carriage, the whole of which advance becomes at risk till the completion of the voyage, and the amount of which, therefore, is the value which contributes to general-average. It was demonstrated that the method of making the owner's freight contribute, as at present practised, is irrational; but, then, many privileges are irrational.

The great anomaly was dwelt on of the distinction set up in relation to a sea-carrier's duties, when the freight or payment depends on the completion of the covenanted voyage, and when it is paid at the commencement of the voyage. In the latter case, he is excused from some acts, or the expense of them, which are necessary for the completion of that contract to carry and deliver property in a certain place to which he has bound himself. No moral change takes place as to a given duty from the mere circumstance of the payment being made before-hand. It might even be argued that the stress of duty was greater when the payment for it was made before the duty could be accomplished; heightening, as it does, the fiduciary character of the transaction, and appealing more strongly to the good faith and honour of him who undertakes the duty, inasmuch as he who trusts has given a further proof of his confidence, and has placed himself still more in the other's hands.

As the position of an assured becomes generally the

position of his insurer, these considerations affect directly the subject of insurable interests.

Lastly, reference was made to the paradoxical position in which an underwriter on freight is placed by the right of an abandonee of ship to receive, as an incident of his interest, the amount of freight due and recoverable at the time of loss and abandonment of ship. As this legal knot remains at present too firm to untie, the Alexander of Practice cuts it through with his sword, and makes the shipowner give the same salvage of freight, both to his underwriters on ship and his underwriters on freight.

CHAPTER IX.

THE THREEFOLD RELATION:—ASSURED, INSURER, AND BROKER.

THERE would be greater simplicity in the Insurance system if the assured and underwriter always dealt personally and directly with each other; but in an extensive commerce, such direct relations cease to be maintained, and in most places, where mercantile transactions are large, it is found convenient or necessary in several departments of business to employ a middle-man, under the name of agent, factor, or broker. This division of labour has its advantages and its inconveniences. On the one hand, facilities are gained by having a go-between whose special vocation it is to know all that concerns the particular kind of business the principals are desirous of doing together; who knows all the technicalities of carrying it out; and who can propose and negotiate and draw things together in a professional manner. On the other hand, such intervention is attended with the inconvenience of new and sometimes complex relations, which spring up as its consequence.

Confining ourselves to the position and duties of the Insurance Broker, frequently called in law, but nowhere else, the 'policy broker,' we shall find that when he interposes, the dealings of the underwriter with the merchant or shipowner who desires to insure, are changed in

method; the original parties do not necessarily see or know each other; the assured, in many cases, does not even see the policy after it is effected, but leaves it in the hands of his broker and receives, instead, an unstamped copy, which often does not even contain the names of the persons who have underwritten his risk; and his acceptance of the policy—which we have before seen is necessary to its validity as a contract—can only, by a figure of speech, be said to have been made by the assured, and, indeed, was disputed in the case of *Xenos* v. *Wickham.* Moreover, such an interposition, although now a necessity, leads to a want of personal acquaintance by the assured of the terms of his policy and the exact indemnity it affords, and permits such a remark as 'I am not certain as to the conditions; I leave the insurance entirely in the hands of my broker.'

And beyond this, the course of business which becomes established by the intervention of agents or brokers involves a new and rather complicated system of debtor and creditor, of receipts and payments: for, in the dealings of *A* and *B*, with *C* intervening, the receipt of premium which *B* gives *A* and is binding on *B*, is no receipt as in favour of *C*, and so forth, as we shall have occasion to learn as we proceed in the present chapter, when these threefold interests will be described with as much clearness as I am able to give the subject.

When an assured [a] makes an insurance with an under-

[a] Here and in other places Assured is, to avoid periphrase, used both in its exact sense, and also to describe a person desiring to insure, but before the contract is completed.

writer without the medium of a broker, the course is as follows:—Having arranged the terms of the proposed insurance on the initialed slip, he fills up the stamped policy in accordance with it, and procures the underwriter's signatures. Originally, he paid down the premium at the same time; for the Lloyd's policy contains an acknowledgment of its receipt, and the payment of the premium was held essential to the validity of the insurance. Nominally, the position remains the same; but the law now recognises current accounts between the insured and the insurer; and most of the modern companies have relaxed the ancient form, and in their receipt-clause introduce in addition, 'or has promised to pay,' or words to that effect. Supposing, however, the transaction to be 'for cash'—which means, practically, a payment shortly after the completion of the policy but not at the moment of effecting it—the assured gives his check to the underwriter, yet not for the full amount; the agreed premium being subject to two deductions—brokerage and discount. This brokerage represents the agent's emolument for effecting an insurance, and comes, or is supposed to come, out of the underwriter's pocket: but now it is allowed indifferently to broker or principal in doing an insurance, and is looked upon as a regular and constant deduction from the nominal premium paid. And this induced the expression that brokerage was 'supposed' to be at underwriter's cost; for the underwriter, in fixing the value of a risk, and forming his premium accordingly, has regard to the customary deductions, and arranges such a *net* price as he considers equivalent to

Insuring without a Broker

the risk. And this way of looking at premium accounts for an inexact manner of reckoning brokerage. When, in a policy, conditional returns of premium are provided for, where the premium is twenty shillings per cent. the return is fixed at nineteen shillings, *i.e.* 95 per cent. of the whole, the other 5 per cent. being reserved by the broker; but, if the original premium be in guineas—as it very frequently is—the stipulated return written in the policy is in pounds. So that twenty shillings is returned out of the premium of twenty-one shillings, which is not 95 per cent, but 95*l.* 4*s* 9*d.* per cent., and the shilling retained by the person who effects the insurance is 4*l.* 15*s.* 3*d.* per cent. only. This difference is not large in amount, but it is important in assisting to define the position of a broker, as will be pointed out by-and-by.

The other customary deduction from the nominal premium is called discount, and is fixed at 10 per cent., for cash settlements, and 12 per cent. upon any balance due to underwriters for the yearly settlement on credit accounts at Lloyd's. As true discount is only a rebate from price for prompt payment—since the value of money per annum in this country scarcely attains the average of 5 per cent., and as a comparatively small number of premiums have their prompt at so far distant a period as a year—10 per cent. discount on a premium must have some other meaning and intention than the mere use of money paid before it is due. It is rather to be looked at as compounded of a true discount and an allowance encouraging early, but seldom immediate, payment, instead of long credit. But even this is not a complete explana-

tion of the allowance having the name of discount; for while the insurance companies have stated times of payment—usually each month—and allow discount only when the premium is paid on the prompt day following the transaction, the Lloyd's underwriters allow discount at the rate of 12 per cent. on the balance of premiums due at the yearly settlement of account. Some premiums, therefore, on which they give discount may be twelvemonths' old, and the rest, of dates varying downwards from that maximum. So that, reduced by both the allowances, the actual premium received by an underwriter is 15 or 17 per cent. below the nominal amount; or rather, the nominal premium is 15 or 17 per cent. above the mathematical value of the risk.

Receipt Clause

The receipt-clause, which has been mentioned in a previous chapter as being contained in the Lloyd's policy, operates as a bar in law to the underwriter pleading, against the assured, want of consideration, and the nullity of the policy on that account Whether the direct dealing of the assured with the underwriter be for cash or credit, the latter confesses himself paid the consideration due unto him, and that question cannot be afterwards raised The doctrine that the validity of an insurance rests on the prepayment of the premium, has already been stated, and it is still thought good to shut the door to doubts and disputes arising on policies in that direction, as far as the assured is concerned. The receipt-clause also precludes the underwriter from a denial of debt in an action by the assured to recover a return of premium. Modern insurance companies have modified

their language in stricter accordance with the present course of business, and use such words as '*A* (the assured) hath promised or otherwise obliged himself to pay forthwith for the use of the Company.' And afterwards, 'in consideration of the person effecting the policy promising to pay the Company the sum of £ , the Company takes upon itself the burthen, &c.' Whether this acknowledgment, which is not so absolute as the Lloyd's form, will be found in future litigation to give the assured equal assistance, remains to be seen. It is, however, to be noticed that, though the binding of the company appears intended to be made conditional on the payment of the premium, the exact language used conveys that the engagement by the company depends on the *promise* to pay—not on the actual payment; and the promise is absolute and unconditional.

By paying actual cash, the assured secures the above-mentioned deduction of 10 per cent. from the premium; but if the account between the assured and underwriter is for credit on a yearly settlement, the whole so-called discount is only obtained by the assured if no losses or averages have been set off against the account. As soon as a loss is settled by the underwriter, so much discountable balance is obliterated. If, just before the time of settling accounts, 100*l.* was due to the underwriter, and before the period of payment a loss of 100*l.* occurred, and was shown to the underwriter and settled by him, no discount would be received by the assured on the account. The assured, in consequence, hastens to agree and pay the balance of premiums due to

Set-off of Losses

the underwriter as promptly as possible at the regular settling day, to avoid the diminution of discount which a loss coming in before payment would occasion. A loss known, and posted in Lloyd's Register of Losses, stops the running account at the date of its being known, even before settlement of that loss. If it just clears off the premiums due to the underwriter, no discount is allowed, and the account commences afresh. If the loss claimed exceeds the premiums due, the underwriter pays the assured the difference between the two sums, sometimes immediately, but more generally one month after settling the loss. If the account is 'good,' *i.e.* if the premiums due exceed the loss claimed, the loss is written off against the premiums, and the balance is carried on in the new account. As a general rule, losses are paid by the underwriter one month after they are settled by him in writing on the policy. Thus, the system of underwriting, when carried on without intervention between the two original parties, is as simple as any commercial transaction can be.

The Broker. His position.

The Broker is, speaking generally, the employé of the assured. The underwriter either carries on his business personally, or deputes it to a clerk specially qualified; or otherwise, and very frequently, underwrites through a deputy skilled in the vocation, who acts in this manner for one, two, or more persons, and receives usually from each a stated annual stipend, and beyond it a participation, by way of per centage in the profits actually resulting to his principals. With regard to the assured, several reasons may make it

desirable to him to effect his insurances through a broker. In a large business it may be advantageous to avoid adding to the organisation of an office the fresh machinery necessary for carrying on this branch. In a small business there may not be employment for a special insurance staff; and by having Lloyd's policies effected by a broker, the expense is saved to the assured of the entrance fee and annual subscription to the underwriter's room. Then, the use of an agent specially qualified by experience, &c., for a very technical and often delicate department of commerce, is attended with benefit; and the law throws on him a considerable degree of responsibility to his principal for errors or omissions by which the latter is damnified. In naming the broker the employé or agent of the assured, a reservation was used. He is often more than this. In his mediation between the two parties desiring to deal together, a certain impartiality is looked for in him, and he has duties towards the underwriter as well as to the assured. Then, although as *between* these two parties he is a middle-man or broker, he commonly stands to each of them severally in a different and an independent position in his transactions, keeping with each, probably, a running account of debtor and creditor, and being in many cases the depository of the policies which he has been the agent in effecting. Thus, like a figure of Janus, he seems but one person to the outer world, and by the law is sometimes eliminated from the consideration of claims between assured and insurer altogether; yet, on a nearer approach, he is found to present a distinct face to each of the two contracting parties, in the aspect of his

relations as between broker and assured, and between broker and insurer. His office requires that he should possess the confidence of both parties between whom he mediates; and, though set in motion by the assured, he is expected to preserve an impartial line of conduct towards both. Baron Parke, indeed, in *Power* v. *Butcher*, quoted by Arnould,[b] expressly calls the broker 'the agent both of the assured and the underwriter.'

And his Duties

The broker having received his instructions from the assured in respect of a proposed insurance, has to ascertain the premium at which underwriters will insure the risk. Much delicacy is often required in fixing the rate. The premium fluctuates from time to time and according to other circumstances, and some underwriters are more inclined than others to a certain adventure. Two motives also operate on the broker. He is bound to get the insurance effected at the lowest premium consistent with safety—this both as his duty as a broker to his principal, and on his own account, for if others can get risks underwritten at more favourable prices, his business will leave him; and, on the other hand, he is not to be oppressive in forcing down the premium below its equivalent value, for overstrained economy will bear the fruit of throwing impediments in the way of getting business done with underwriters when they find they have taken risks at inadequate rates. And his personal interest is not to drive down premiums to extremity, since his own remuneration is a per centage

[b] Law of Ins.: p. 194, 3rd edition.

on those premiums; and in cutting down the reasonable profit of the underwriter, he cuts off an equal proportion of his own income.

In arranging with the underwriter the terms on which the proposed insurance is to be made, the broker has to give all necessary information; that is, all that is necessary but not within the knowledge, or means of knowledge, of the underwriter himself; and a concealment or misrepresentation of a material fact, which being known would have influenced the underwriter's decision in taking the risk, will vacate the policy *ab initio*, as in *Russell* v. *Thornton*, previously mentioned. Yet the broker is not expected to report all generalities or surmises to the disparagement of the risk; he will answer the direct question of the underwriter, if he is able. Let it be recollected that in a great number of instances the underwriter knows as much, or it may be more, of the quality and history of the ship and the nature of the risk than the broker does himself, who may have received from a distance but scanty particulars; and beyond these the same means of information may be open equally to underwriter and broker. But the latter stands in a delicate and even dangerous position; for if by his laches and negligence, or his ignorance and incapability, a loss against which an assured wished to insure was unclaimable of the underwriters, the assured would claim of the broker the loss and damage he thereby sustained. The broker commissioned to effect an insurance, is bound to do his utmost to make the insurance. Insuperable difficulties will excuse him; so will the arrival of the order after

hours of business, as far as that day is concerned. The underwriters of Lloyd's and the Assurance Companies in London cease business at four o'clock P.M., and on Saturdays at two P.M.; and till the opening on the following morning, the interval is *horæ non.* It may be possible, by favour, to get insurers to take a risk after the *canonical* hours, but the broker cannot be taxed with negligence who does not attempt this or to do an insurance on a Sunday. An insurance would probably hold as good if effected on a Sunday as on any other day; but it would be a dangerous enlargement of the broker's liability if precedents became common of insuring on that day or in the ultra hours If the order to the broker is strictly limited as to premium, he—supposing him a London broker—will be excused for not effecting the insurance if he can assert that he tried the Lloyd's underwriters and the London offices, or as many as it was possible to make the proposal to before the close of business hours, and they all refused the risk.

More embarrassing is it to a broker to receive an order for insurance when a limit is mentioned, but vaguely expressed, or conditionally or inexactly spoken of; so leaving the assured the opportunity of repudiating the insurance as being not in accordance with his intentions and instructions. In both these cases a broker often does the insurance 'on approval'—sending the result of his efforts to the assured, who either confirms or rejects the terms. The underwriter on his part sometimes 'takes down' such a risk, *i.e.* enters it in his book, or he leaves it unnoted till the slip is again presented to him as an

absolute transaction. In either case it is customary to add the condition, 'No risk to attach until confirmed, and accepted by the underwriter.' Or, 'If the ship be lost or arrived, this insurance to stand.' The former clause appears the more equitable; for it is manifestly unjust that the underwriter should be running actual risk in the interval during which the assured is deciding whether he will pay the premium demanded or renounce the temporary insurance on which the underwriter receives no premium. It is not only uncertainty as to the rate of premium which gives difficulty to a broker in effecting insurances on orders from a distance; equal difficulty arises to him by unclearness and want of definition about the ship, interest, &c. He has need of much discretion in acting on such orders: he must give effect to them if possible; and he will have the additional motive in doing this of promoting his own emoluments. A London broker who has exhausted all the channels about him in endeavouring to do an insurance is not under an obligation to make the attempt in other places. London is, and always has been, the great emporium of insurance, and the broker may safely confine his efforts within that extensive market. It is not clear that a broker practising in a smaller place, presenting fewer facilities, would be excused if he made no effort to effect insurance on an order, beyond his immediate neighbourhood.

What is expected of a broker is, that he shall possess an average degree of knowledge and intelligence in his profession, and shall use a reasonable amount of

diligence in the business entrusted to him, whether in effecting the insurance, procuring settlement and payment of a loss, or doing any other things by which his employer's safety and interests in regard to the policy are secured. With less than such average measure of intelligence and industry he may lay himself open personally to consequences, and be made to bear the damages which by his imperfect procedure the assured has suffered. Yet, who shall define this saving measure of knowledge and industry? What shall be the test in any particular case under dispute that the broker has exhibited average ability and activity? Who is to decide in a matter when scarcely two minds would draw exactly the same line? Is the decision to rest with the court or a jury? I believe these questions must remain unanswered for the present; and I can only recommend the reader to pick his way through those cases collected in Arnould;[c] but he must not expect a very consentient assemblage of decisions. In some cases the evidence of 'experts' has been admitted, *i. e* of persons versed in or practising brokerage business; but this is not general; and indeed such evidence is only an expression of opinion, and the judge or the jury in adopting it would seem but to depute their own office to such witnesses. Of the fallaciousness of the evidence of experts, in the true sense, any person may convince himself who has been present at trials where this very confident class of witnesses has been under examination. With the utmost care it cannot be

[c] Maclachlan's Arnould, 1866, p. 156 *et seq.*

determined from cases what will be the decision in a future similar contention, where so much must depend on the quality of a jury's judgment; so much, in such a balance of propriety, on the line of thought at the moment in a judge's mind; and where the decision may be thrown from plaintiff to defendant, or *vice versâ*, by a sudden suggestion, a feeling of weariness, or a slight fit of indigestion.

However, a broker should consider himself under an obligation to do certain things without special directions. He must insert customary clauses, and he is guilty of negligence if he does not do so; and if the assured suffer in consequence, he will have to bear the consequences. Yet there are some clauses which are in very general use, and still cannot be called customary in its meaning of universal. Such, for instance, is the insertion of 'General-Average payable according to Foreign Statement.' Some brokers adopt it in all outward insurances on goods or freight; some use it, also, in homeward insurances, and some omit the clause, even upon the ground (an uncertain one) that underwriters are legally obliged to pay contribution by foreign adjustment, or, at any rate, will not refuse to do so. Policies filled up by different brokers present often great contrasts to each other. One man crowds his parchment with writing in every margin and vacant space, on the principle of 'fast bind, fast find,' and thinks, like the Lilliputians, to bind the underwriter with a thousand little chains. Others, trusting to the good faith or feeling of those with whom they do business, use scarcely a dozen words, and leave their policy in a sort

of naked simplicity. Practically, and in the course of experience, the latter kind of insurance is subject to no more dispute, in case of claim, than the other. Human nature likes to see itself trusted, and feels grateful for such trust, and, when inclined to speak playfully, remarks that 'honesty is the best policy.' Arnould mentions a case,[d] *Mallough* v. *Barber*, in which a broker was found guilty of actionable negligence, because he omitted to insert in a voyage policy from Teneriffe to London, a clause giving 'liberty to touch and stay at all or any of the Canary Islands,' which clause 'it was shown to be the invariable practice' to insert in all policies from Teneriffe to London. Now, presuming that 'an invariable practice' of any sort in insurance matters is provable—which the experience of the last few years leads us greatly to doubt—the very universality of practice should have excused the broker, because that which is invariable does not require special stipulation in each case. Thus it is that many underwriters, conceiving it to be grown into a custom that outward policies on goods should pay general-average according to foreign statement, will settle on the foreign adjustment, even in the absence of a clause which can only be said yet to be very customary: and they argue, that they would have allowed the insertion of that clause, if it had been demanded, without charging any additional premium.

The case cited in Arnould, following that just quoted, is unfortunately selected. He says, 'It has been repeatedly

[d] Maclachlan's Arnould, p. 160.

and notoriously decided that a policy on goods, "beginning the adventure from the loading thereof on board," without any addition, only attaches on goods loaded at the port, which is the *terminus a quo* of the voyage insured. So completely is this settled law, that all insurance brokers are bound to know and act on it. Hence a London policy broker, being directed to effect a policy for a voyage "from Gibraltar to Dublin," upon goods which, upon his instructions, already appeared to have been loaded on board at Malaga, was held liable for negligence in having effected the policy on such goods "at and from Gibraltar to Dublin, beginning the adventure upon the said goods and merchandise from the loading thereof aboard the said ship." *Park* v. *Hammond.*' For this decision has been distinctly overridden by *Carr* v. *Montefiore*, where a cargo of guano was insured from the River Plate as from a *terminus a quo*, though the guano had originally been shipped at the Chincha Islands. The matter in Arnould becomes mystified by a foot-note added by the editor, to the effect, 'This last report, as Judge Duer points out, commits the absurd mistake of stating the risk under the policy to have been on the goods "from the loading thereof on board at Gibraltar."' Now there is no perceptible 'absurdity' here; but had the policy been filled up with the emphatic words 'loading on board at Gibraltar,' a real difficulty might have stood in the way; although even this seems to have been got rid of by *Carr* v. *Montefiore*, in that part which refers to a *constructive* loading.

Enough cases, however, remain on record to show the

danger to a broker of acting negligently, or without sufficient knowledge of the customs and technicalities of his profession. Yet, it must be added, the instances are few within the experience of several years past, in which pardonable errors have been visited on the broker himself. Even if he escape, his laxity or ignorance may entail loss on his principal, which he would feel a personal punishment. In *Russell* v. *Thornton*, the broker, from over-cleverness, first concealed from the underwriter a letter from the captain of the vessel to be insured, which letter was held to be material evidence, and the non-production of which proved fatal to the assured's case; and secondly, the broker concealed from the assured the underwriter's refusal to accept an abandonment, which deprived the assured of the opportunity of taking other steps.

It should be mentioned, that the importance of having a special class—brokers—to effect insurances, consists greatly in the necessity for personal communication with underwriters. No respectable insurance company or private underwriter accepts business by letter from an assured. Persons at a distance requiring to effect insurances must consequently employ an agent whom they can instruct and can converse with, by post or telegraph, and the agent places himself in direct communication with the office or underwriter. Thus a system which was begun probably for the underwriter's safety, confers a privilege on the broker's vocation.

Immediately an insurance transaction is completed through a broker, two accounts are initiated; one be-

tween himself and the assured, the other between himself and the underwriter; for even if the transaction be for cash, it is very rare that payments on both sides are so prompt as not to necessitate account-keeping. The broker keeps his account with the underwriter, and is indebted to him for the premium. The receipt-clause in the policy, which is conclusive in favour of the assured, is no bar to an underwriter's claim against the broker for an unpaid premium. If the broker do not declare the name of his principal, or intimate that the policy is effected for another person, he will stand himself in the position of an assured; but being also in the character of a broker, if he have a running account with the underwriter, the latter could not enforce payment of the special premium before the ordinary period of settlement, but must admit it in the set-off account; and the broker cannot plead the receipt-clause in his own favour, even when he does an insurance on his own account as principal. And it may be stated generally, that the receipt-clause will only avail the assured when the policy has been effected by another person, either directly for him, or when existing policies are transferred to him. Were it otherwise, any shipowner or merchant who prefers effecting his own insurance, might stand in a preferential and unintended position. All the offices are open to him, and he does not require in them the intervention of a broker. He might, consequently, effect a policy without at the moment paying the premium, and might then plead the receipt-clause. But the plan would be defeated in law by the principle that the receipt-clause

The Accounts

only applies when a third person intervenes between the assured and the underwriter; and secondly, because the assured, though he were insuring his own property, must be taken to have the character of a broker, inasmuch as he is allowed 5 per cent. commission on the transaction, like any other broker, as well as the discount; and an account between him and the underwriter is to be inferred or recognised. Should such an attempt be made as that which is here conceived possible—that of an assured doing his own insurance and sheltering himself under the receipt-clause from payment of premium—it is probable that the Court of Chancery would give relief, and allow evidence of the non-payment of premium. Nearly all the companies have now taken the precaution of modifying the clause in their policies relating to payment of premium, making it conform more with the actual methods of transacting business.

Cash and Credit

The broker's accounts with underwriters are for cash or for credit. Under the present system of doing business at Lloyd's, most brokers keep two accounts with each underwriter—one for credit, and one for cash; and their slips, or proposal papers, are headed accordingly.

Credit Account.

Whether in the first beginning of insurance each premium was paid on the spot to each underwriter, which it probably was and which the receipt-clause in the common form of policy seems to assert, the credit system in modern times was, till within the last few years, that most generally in use at Lloyd's. Credit accounts run till the end of the year, and are then

stopped; and a new account commences on the 1st of January. In effecting an insurance on credit the brokerage is secured to the broker, the underwriter entering in his book the premium deprived of 5 per cent.; as, for example, he enters a premium of one pound as nineteen shillings. At the end of the year a balance is struck between the amount of premiums and the losses and averages on the other side, and on the balance a discount of 12 per cent. is taken by the broker (or the assured, according to arrangement). To call a deduction of 12 per cent. on a payment deferred—it may be twelve months—a discount, is a misnomer. What the meaning and action of such an allowance are, will be considered farther on. What may here be remarked, however, is, that a discount on a balance is a different thing from a discount on the premiums, as allowed on the cash account. For example:—On an account where the whole premiums for a year amount to 1,200*l.* and the losses during the same time are 1,100*l.*, the balance, subject to discount, is 100*l.*; the discount on which, viz., 12*l.*, equals only 1 per cent. on the whole quantity of premiums received.

At any time during the currency of credit account, when a loss becomes known, the account is stopped and (in theory at least) settled. Where the balance is not actually paid by the underwriter, a line is drawn, and the effect of the loss in nullifying discount is made the same. Thus, if at the moment of a loss declared of 100*l.*, there be due to the underwriter for premiums 50*l.*, the latter sum is expunged, and the underwriter pays the difference, viz., another 50*l.* Then the account com-

mences afresh; and should no further losses occur within the twelvemonth, the broker or assured at the end of the year gets his discount on the premiums he then pays the underwriter. And the same discount is due, though the balance of loss be not paid by the underwriter, but remain on the books, and the clearance of the account is only indicated by a line drawn. This action is shown in the following example:—

	£
Premiums due to the underwriter, say on the 1st of October	50
Loss declared on that day . . .	100
Underwriter pays balance . . .	£50

Closes that account, and a new one commences.

	£
Premiums subsequent to the above loss due to underwriter to December 31 .	50
Broker's or assured's discount . .	6
Underwriter receives	£44

On an ordinary debit and creditor account, the position would be:—

	£
Balance of loss due by underwriter, October 1, carried on	50
Premiums subsequently due . . .	50
Balance on which broker or assured is to receive discount	Nil

But, as above stated, by the system of noting or marking off the loss, even when it is carried on in the account, the broker or assured is placed in the same position as regards receiving discount on the subsequent premiums as in the former example.

If, at the occurrence of a loss, a larger sum than that loss be due to the underwriter for premiums, the loss is deducted, and the balance of premiums is carried on, subject to discount at the end of the year.

The system of cash accounts has increased at Lloyd's so much of late years that it now greatly predominates over credit. It seems to have been borrowed from Glasgow, where for a long time cash accounts have been almost exclusively in practice. It is also the method of all the insurance companies in London, and the manner in which they transact business will be mentioned below. The attraction to an underwriter, commencing business or a new account, of the cash system, is its giving him an immediate fund in hand, though at the expense of a heavy payment for use of money; thus obviating the necessity of capital to him from the beginning; to the broker or assured, it is the securing to him against all subsequent contingencies a liberal discount, in addition to the 5 per cent. brokerage.

Cash Account

The principle of cash accounts is, of course, that of paying ready money for the risk insured, and receiving an abatement for immediate payment. Thus, as above stated, to the person effecting an insurance the discount as well as the brokerage is made sure to him; and even should the loss of the thing insured become known before the premium be received by the underwriter, the principle rules and the latter still allows discount.

Cash, as at present understood, rarely means ready-money at the moment of effecting an insurance, but within

a short time afterwards. It cannot, either, at Lloyd's, be said to indicate a fixed time, though it does so with the companies; and the time of payment varies among individuals very considerably. It may probably be said, that the legitimate sense of the word cash is complied with when payments are made without further delay than from a month to six weeks after the completion of a policy.

But such limited prompt does not by any means represent the cash system as now current in Lloyd's Room. Cash accounts remain unpaid not only a few weeks but for several months, in many cases; and whilst the underwriter suffers a deduction of 10 per cent. for a nominal prompt payment, he does not in reality gain the advantage for which he makes the sacrifice. The evil—for it is an evil when a system, useful it may be in design, is allowed to become hollow and unreal—seems to have greatly increased latterly, and many of the accounts we now speak of are said to run as long as those opened on credit. We are led to inquire, what is the meaning of a cash account? By cash is clearly no longer meant ready-money. Indeed the rate of the discount allowed, even were it for immediate payment, would represent something other than the mere value of money. Taking the mean rate of interest in London as high as 5 per cent, and the medium prompt of credit accounts as six months, $2\frac{1}{2}$ per cent. would be the true rate of discount for cash, *quâ* discount. The discount both on the cash account and also on the credit, must rather be set down as a convenient form of remuneration to the broker when he can keep it, and as a stimulus to the settling the accounts When the

broker is not permitted by his arrangement with his principal to retain the discount, the allowance has no rational meaning except under the latter view; and it must be classed among customs of trade which, when once established, are so difficult to break from.

Regarded as belonging to the category of concealed allowances, such discounts are scarcely to be defended. The underwriter, who calculates the value of a risk at forty shillings per cent., receives only thirty-six shillings, and is the first loser; in other words, the allowance comes out of *his* pocket Finding that thirty-six shillings is below the equivalent of the risk, he necessarily raises the premium to forty-five shillings, and thus the allowance comes out of the pocket of the assured. By this change, instead of the underwriter losing four shillings, the assured loses four shillings and sixpence.

Still, what the observer of the business of Lloyd's is concerned about is, not the custom itself, but the abuse of it; the purchase by the underwriter, at a heavy rate, of an advantage which he does not receive; his dealing, in fact, for cash and being held to credit. The companies do not fall into this inconsistent position. They, too, grant the same 10 per cent. discount for cash, but they are strict in receiving payment of premiums on a set day in each month. Thus their average prompt is fifteen days only; and if payment is delayed beyond the monthly settling day, the discount is lost to the broker or assured. Were there at Lloyd's a managing body possessed of sufficient authority to regulate the course of business in the Room, and to take notice of the deviations

of individuals from rules, a better amd more consistent procedure might be established. The most obvious suggestion as to cash accounts is, that a settling day should be fixed, either monthly, as with the companies, or each six weeks, if that interval appear more convenient; and that in default of the premium being paid on the stated day, the cash-discount should be forfeited and the account pass at once to the heading of credit accounts. The uniformity thus produced between the business of Lloyd's and that of the London Companies would in itself be an additional advantage gained.

In returns of premium on cash accounts the return itself has to be reduced by 10 per cent.; otherwise the underwriter would be an absolute loser by the transaction. Thus, 1,000*l.* insured at 10 guineas per cent, with a return of 5*l.* per cent. for sailing before a certain day The company's account stands thus:—

		£
1,000*l.* at 10*l.* 10*s.*		105
Less the brokerage (taken as) . .		5
		100
Less discount, 10 per cent. . . .		10
		90
Return of premium:—		
Five per cent.	£50	
Less discount	5	
		45
		£45

But were there not a rebate of discount made the insurer instead of receiving 45*l.* would receive only 40*l*, losing,

in fact, the amount of the discount without advantage to himself.

On a loss happening on a cash account, the underwriter pays it one month after settlement; a 'settlement' meaning, as before mentioned, his acknowledgment by an endorsement on the policy that the loss is due from him; and, as was stated above, even when a settlement between the broker and underwriter of the premium due and of the loss takes place at the same time, as by setting off one against the other, the broker is by custom allowed the full discount on the premium.

Insurance companies usually pay at a shorter date than a month; and frequently checks for payment are drawn at the first board-day after settlement of the loss. The China and India Insurance offices mostly claim by stipulation in their policies one month's delay. A few years ago, when postal communication with the Eastern world was less rapid, three months, and in some cases six, of delay were demanded. The reason for this was, that the representatives of the companies in London were only agents of the offices established in India and China, and were under obligation to pay claims here only to the extent of funds in their hands at the time. The delay of three or six months gave opportunity to procure funds from the head office in India or China.

The second account, which is established on completion by a broker of an insurance, is that between himself and his principal, the assured. The terms on which this account proceeds will differ according to the arrangement made for it. The broker debits the

Broker and Assured

assured with the whole premium, and adds to it the cost of policy-stamp; he credits the assured with all 'returns,' whether losses, averages, or returns of premium. These are entered in the account as soon as the underwriter settles them—that is, accepts them as correct, with an engagement to pay. If a loss occur where there is no balance on the account due to the broker, the underwriter having settled it pays it a month afterwards to the broker; and he, frequently, pays over the money without delay to his principal; whilst others have a custom of advising the settlement of the loss to their principal, and authorising him to draw on the broker at three months. This practice, though a well known one, is not very generally acted on. If a loss supervene when there is a balance due to the broker, he sets it off against his balance, and pays the difference to his principal. This is supposing that the broker has his settlement of the loss—either by his having retained the policy in his possession, or his having it remitted to him by the assured for collection. Whilst the policy remains in the broker's possession, he has a lien on it for the premium of that particular insurance, or generally for any balance of premiums due to him. If the assured having possession of his policy, and yet owing a balance to the broker who effected it, places the policy in the hands of another broker to collect, or collects the loss which has occurred personally, the broker loses the advantage of balancing the account by this loss. He cannot, not having the policy in his hands, demand that the underwriters should pay only to himself, for they are not taken to be cognizant of the account between

assured and broker, and their sight extends not beyond the hand which holds the policy; and they have acknowledged in the policy itself that the consideration or premium has been paid them. Neither can the broker, for the same reasons, restrain the underwriters from paying to the assured or his agent holding the policy, the entire loss; he cannot demand of them to pay to himself the particular premium due on the policy; though such attempts are sometimes made at Lloyd's, and underwriters knowing the state of an account, sometimes throw a difficulty in the way of settling a loss to any except the effecting broker. If there be any relief in case of the broker having parted with his lien, it must be sought through a court of equity.

The privilege of retaining the policy as a security entails on the broker corresponding duties towards the assured, who in such a case cannot have it in possession. It is true that usually the broker sends him an unstamped copy, showing the terms and clauses of the insurance, and sometimes, also, the names of the underwriters; yet the law looks upon the broker holding the policy as, in certain ways, subrogated into the place of the assured. He is bound to look after and protect the assured's interests, and to take all those necessary steps with regard to the insurance which the assured would take were he acting for himself. If by his omissions or laches the assured's security be reduced, or he be endamaged thereby, the broker becomes liable for the damage. The latter person holding the policy, as it were, in trust, but using it also for his own security, must not extend his authority too

far, as by taking steps in regard to it which are against his principal's interest. In *Xenos* v. *Wickham*, the broker took upon himself to cancel the policy he had in his keeping, and this was held to be *ultra vires* and an illegal act. Sometimes policies are left by the assured in the broker's hands for safe custody only. The relations between the assured and the insurer, the broker intervening, as respects payments, are delicate; and though, on consideration, they will be found logical consequences from acknowledged law, they are so technical as not easily to be arrived at in every case with certainty by those most concerned in such accounts.

The great point to be observed is, that by the common form of policy, the underwriter acknowledges the receipt, as from the assured, of the premium; and consequently admits his full liability to the assured on the terms of the policy. The assured has a right, if he has the policy in his hands, of action against the underwriter, over the head of the broker. The underwriter's acknowledgment of payment of premium is no acknowledgment to the broker; and the law fully recognises the system of running accounts between him and the underwriter. The assured's right of action, therefore, remains personal, and must be brought in his own name. It will fail if brought in the name of the broker who effected the insurance. Yet the broker is fully recognised as the agent of the assured—his *alter ego*, in some respects; but the distinctions are nice, and much caution is necessary. Thus, when an underwriter 'settles' a total loss on a policy presented to him by the broker, and especially if he defaces his signa-

ture with his pen at the same time, and afterwards pays the loss in money to the broker, that payment to the broker is equivalent to a payment direct to the assured himself, and the latter need not trace the money beyond the broker's hands, even though no receipt is given in these settlements by the assured or his agent. But if, after settling for a loss, the underwriter does not pay money, but is credited with the amount in the current account between himself and the broker, that arrangement, however ordinary and comprehensible, is not such a payment as will bar the assured's action against the underwriter for the loss, even after a considerable lapse of time; and especially if the underwriter have failed to deface his subscription. If the settlement be for an average and not for a total loss, the payment to the broker seems a less absolute discharge of the underwriter's liability to the assured. The reasoning which supports this distinction is not very satisfactory or lucid. So potent, however, remains the underwriter's confession of having been paid the premium, that though it were not in fact paid, the assured can enforce a return of part or the whole of it under stipulations in the policy by an action at law. And the underwriter cannot, in an action for a loss brought by the assured, plead a set-off of the premium unpaid at the time of action on the insurance which is the matter of action, even though the assured effected the insurance himself.

A remark may here be properly introduced as to the obliteration of signatures by underwriters. Some deface their name, with a mistaken caution, in settling a partial

loss or average. This is wrong; as their liability on their signature is not fully discharged by the adjustment of a partial loss, which may be followed by another average or by a total loss, which will also require to be settled; at which time there will be the awkwardness of presenting to the underwriter a policy the subscription to which is defaced, the inference being that the disclaimer of further liability by the underwriter has been assented to by the assured or broker. Still more objectionable is the usage of some agents of India and China Insurance offices of retaining the policy upon which they have made a settlement, even though it be for a small average only. It is clearly an absurdity to demand from the assured the very instrument which is the only proof of contract made with him by the underwriter, and on which further claims may be preferred. The practice may be compared to the acceptor of a bill of exchange making a part payment on account, and demanding to retain the bill—a position which would never be allowed.

To return. Though a settlement in account with the broker of a loss be *primâ facie* no discharge of the underwriter's liability to the assured, it is admitted that a practice or custom of so arranging is very common and convenient; and if it can be shown that the assured assented to the proceeding, it will bar his action subsequently against the underwriter. In a lower degree, his right of action will be impeded by proof given that the assured was well acquainted with this customary course of business, and did not disclaim it or object to it. It must be shown, however, that he did really know the

method taken in dealing with the loss under settlement, otherwise his silence will not be made out as an assent so as to militate against his claim. The imputation of fraud will, however, open the question, even when a settlement by set-off in broker's account seemed conclusive—as it opens all insurance questions.

One of the latest cases relating to settlements between assured, broker, and underwriter, and at the same time one of the most instructive, because three times ably argued, and embracing in the final decision of a Court of Error the unanimous expressed opinions of five judges, is that of *Sweeting* v. *Pearce* (Exch. Chamber, 1860). This case is also useful, because during its progress an insurance broker of long experience, Mr. Natusch, described the customary course of business at Lloyd's, and the manner in which accounts are kept and arranged between the broker and underwriter, and between the broker and the assured.

B, a broker, effected an insurance on behalf of his principal, *A*, with *C*, an underwriter. A loss occurred, and was settled by the underwriter on the policy, who credited *B*'s account with the amount, his account being good for that sum, *i. e.* sufficient premiums were due to the underwriter to allow a set-off of the loss. Thus no money passed between *C* and *B* in respect of the loss. At the same time the broker *B* credited his principal's account, *A*, with the same sum, less brokerage for settling, and sent a credit note to *A*. In this case the assured had had the policy in his own possession, but handed it to *B* for the purpose of getting the loss settled by the under-

writers. The assured was a London ship-builder, and deposed that he was—and he was admitted by the defendant to be—ignorant of the method of account-keeping between broker and underwriter—in fact, of the custom of Lloyd's. *B* failed, without having paid over to *A* the amount of the loss settled by *C*. Then *A* brought his action against *C* for the amount of the loss settled and endorsed on the policy, ignoring the set-off in *B* and *C*'s mutual account, and any custom of Lloyd's that prevented his receiving the money due by the underwriter in respect of that loss. In all the three successive trials it was ruled that the underwriter must pay direct to the assured the amount of the adjusted loss (less brokerage for settling), in spite of an admitted custom of Lloyd's as to accounts and sets-off between underwriter and broker.

We learn several important things from this decisive trial.

1. That the law recognises the current accounts kept between broker and underwriter, and the system of extinguishing the cross claims which compose those accounts, by means of setting-off

2. When the assured has given his assent to this arrangement in respect of losses claimed by him from underwriters, the credit given by them in the broker's account is an answer to his direct claim against the underwriters, though the latter have acknowledged the receipt of premium, in the policy. Nevertheless, the assured may at any period before the usual time of settling broker's and underwriter's accounts give notice

that he intervenes, and he may demand to have the loss paid in cash to himself.

3. If an assured be aware of such a custom and usage of Lloyd's affecting the settlement of claims, and do not object thereto, his reticence will be taken for assent and concurrence in such custom.

4. But if the assured is not aware of such a custom and usage, his silence does not, of course, act against his personal right to receive payment from underwriters, even when he puts forward his claim long after the usual time of closing and settling claims between underwriter and broker.

5. The law gives no countenance to *A* paying a debt due to *B*, with the money of *C*; and consequently does not allow a set-off of a loss due to the assured, against premiums due by brokers to underwriters, without a showing of consent, expressed or silent, of the assured, as above.

6. That a contract to pay money must be satisfied by the payment of money; and that a payment in which nothing is paid is not a payment.

This last is one of those self-evident propositions which require to be repeated from time to time lest they should be forgotten.

Transfer of Policy.

The facility and freedom from forms with which a policy of Marine Insurance can be passed to another person, so as to give him protection and the right of recovery under it, distinguishes it strongly from the policy of Life Insurance. The latter has to be regularly assigned, and proper notice given to the company

which issued the policy, with a showing of the consideration or other ground of transference of interest by which the assignee acquires its possession. But in Marine Policies the procedure is much more simple and easy; and in what has been already said in this chapter, it must have been inferred that the mere possession of a policy goes far to establish the right of the possessor to its benefits. Insurance is an institution which shapes itself to its subject-matter. Marine Insurance is nearly always commercial, and it puts on the ease and irregularity with which mercantile transactions are so frequently conducted.

The unconstraint with which a policy passes from one person to another, and gives the transferee or holder a right to recover against underwriters, is, however, subject to one important circumstance: the holder of the policy, in order to recover thereon, must have an interest in the insurance. It may be direct or it may be a transitive one; it need not be coextensive with the amount of the policy; but an interest of some sort must be made out; and, it may be added, has occasionally been made out in an ingenious manner.

Both the ease of transfer and the necessity of interest seem to be contemplated in the opening sentence of the common form of policy itself. '*A B*, as well in his own name, as for and in the name and names of all and every other person or persons to whom the same doth, may, or shall appertain, in part or in all, doth make assurance,' &c. Here we see the very largest interpretation given to the personality, looking even to interests

acquired future to the making of the insurance; but we also observe the inference running through the same clause, that the insurance must 'appertain' to the person, whoever he may be, who holds it for the purpose of recovery: and interest is the link which causes the insurance to appertain to the person possessing the policy. Of course a policy fradulently obtained is subject to other considerations, and legal relief would be sought should it be dealt with.

Under the term 'assignment' the law appears to include every possible form of passing a Marine Policy from one holder to another person, even to the mere delivery of it without words of comment; and the different manners in which a transferred policy is made over and received seem to depend on the caution or scrupulosity of the individuals, or the want of these qualities, rather than on the circumstances affecting the insurance. Thus one will endorse such a notice on his policy as the following:—'The interest in the within policy is hereby declared to be transferred to *A B*;' and he may ask the underwriters to initial it. Another will simply endorse his name on the policy: and there are some brokers who make a practice of thus endorsing in blank all their insurances, apparently as a renunciation of their own right to hold or claim on policies effected by them as agents. Again, other persons accept policies without notice of transfer or endorsement. Indeed, with the exception of one special class, to which a different rule is applied, the written transfer seems of little importance, and notice to underwriters is not necessary to the validity of the change

of ownership in a policy. The one exception is, that of floating policies on cargoes to arrive, when goods are sold on the terms, 'Cost, Freight, and Insurance;' the latter part of the clause meaning that the purchaser shall receive as part of his purchase a policy of insurance to the extent of his interest. If we seek a reason for the distinction here made we shall perhaps find it in the fact that floating cargoes frequently change hands, and that several persons in succession have the interest of possession in one shipment. As there can be no insurance without interest, it is highly necessary to identify the interest throughout the voyage, and to proclaim each link where there is a *catena* of interests by successive purchases. And if we inquire why so little precaution is used in the ordinary transfer of Marine Policies, whilst there is so much legal precision necessary in the case of policies on lives, the answer probably is, that the former are not the subjects of sale and purchase, as life policies are, which are frequently sold by private arrangement or at public auction; and the purchaser who previously possessed no interest in the insurance acquires one in virtue of his purchase-money.

In connection with the subject of the present chapter, we are principally concerned with the right which may be said to be transferred to a broker who has effected a policy as agent, and retains the policy, of recovering, as principal, from the underwriters, till his claim for unpaid premiums or a general balance due by that principal is satisfied; or the same position may be otherwise described as the right which a broker has of retaining the power

of recovery on policies he effects and holds for premiums or a general balance due to him by his principal; to whom he does not transmit the power of recovery as long as he himself retains the policies. To secure this lien, the broker often retains policies effected in his name as agent, and issues unstamped copies of the same to his principal, sometimes not even adding the names of the underwriters. Underwriters are, justly, very decided in not settling a claim on a copy of policy; and if when it is stated, and seems likely, that the original policy has been accidentally lost or destroyed and they are induced to settle on a copy, they can only do so prudently on the broker or assured to whom they settle guaranteeing them against the risk of an enforced settlement afterwards on the original stamped policy. To withhold the names of the insurers is not without danger to the broker, since it may be construed into his guarantee of their solvency, and place him in the position of an agent dealing between undeclared principals.

The difficulties which arise on policies assigned, or retained by the broker, proceed nearly invariably from the insolvency or bankruptcy of one of the parties in what I have styled the threefold relation. The underwriter may fail, the broker may fail, or the assured may fail; and there is not always that mutuality of claim which allows a simple set-off of premiums against a loss, for example, which in many other branches of commerce goes far to balance an account. Like Captain Marryatt's 'Duel of Three,' *A*, who receives the shot of *B*, may have to fire at *C*, and so forth. I can do

scarcely more than mention these positions, because here the subject of Insurance incidentally connects itself with the wide field of common and equity law; and in the difficulties I allude to steps should be taken under the guidance of a solicitor. Some cases have lately occurred in which underwriters who have settled with a broker who became insolvent, have been called upon to settle a second time to the holder of the policies. When a broker fails, owing underwriters premiums, and a loss is declared, the underwriters will have to become creditors on the broker's estate, and pay the loss in full to his assignees, if they have the right to recovery on the policy.

Settlements are nearly always caused by the failure or insolvency of the broker. Whilst he is able to pay, the assured is in no danger from the double system of accounts, those between himself and the broker, and between the broker and the underwriter; and the assured is by the common course of business very frequently indebted to the broker for premiums on insurances effected.

The broker's lien on a policy he has effected, and the right to recover on a policy, by a person who has ordered that insurance, but who has himself received similar order, involving the subject of agency and an undisclosed principal, lead so directly into refined questions of law, that it would be apart from our present business and design to attempt to follow them here. Such litigious questions must necessarily be referred by those engaged in them to their legal advisers; and it is often on apparently

small points of law, but hard and insurmountable, that the decision of such cases turns. Opposite results will sometimes surprise the non-legal community from two cases which had, to lay eyes, a brotherly resemblance to each other. And sometimes the solution will be unsatisfactory, after the greatest pains have been taken with it, where there are many links in the chain of transactions which lead to obstinate questions, and eventually to law proceedings. Many of these steps may involve circumstances scarcely afterwards to be proved—words spoken, impressions received, understandings supposed to have been mutual, ignorance of a custom, omissions, and the like; and to prove every link of such a claim may be beyond the powers of the most skilful examiner. An instance of an actual case of this kind, at present undecided, will give a notion of the intricacies which commercial questions can sometimes assume.

A was a merchant in a provincial city, who effected his insurances through a brokerage firm in the same town, named *B*. There not being sufficient local facilities for insuring in their own place of residence, *B* entered into arrangements with a house in London to get policies underwritten here on such orders as *B* sent up; terms of business being stipulated, one of which was that the London brokers (who will be indicated by *C*) should keep the policies they effected as security. There were to be two accounts, cash and credit. The firm in the country, *B*, had insurances done in London on their own account as merchants, as well as on orders they received

from *A* or from others. In this way transactions took place between the parties for two or three years. *A* then ordered an insurance, which *B*, as usual, re-ordered to *C* in London, and an open policy was taken out. From time to time, as *A* received information of more goods being shipped to his account, he notified his intelligence to *B*, who forwarded particulars to *C*, and declarations of interest were made accordingly on the policy.

The entire interest being at length ascertained, and it being intimated that this should be a cash transaction, *A* paid the premium to *B*, and *B* in like manner forwarded the premium, about 80*l*., to *C* in London; and the latter sent a regular receipt or acknowledgment for it to *B*. *B*, however, on the credit account, was indebted to *C* at the time about 300*l*. The ship was lost, and *B*, the country broker, failed. *A* then requested of *C*, the London broker, his policy. *C* refused to deliver it, on the ground that *B* had not ordered the insurance in the name of *A*, or for the latter's account, and that *B* was indebted 300*l*. to *C*, although the premium for this particular policy had been paid. *A* urged that *C* had a constructive notice; or, at least, a knowledge that the insurance was for *A*'s account and benefit, because that was necessarily shown in the correspondence which took place about the interest, as it progressively increased and required fresh endorsements. *C* replied that in the original compact for doing business with B, one of the terms was that *C* should hold the policies. *A* replicated that he had no knowledge of, and was no party to, the private terms or understanding on which the two brokers conducted

their business together. In the meantime, *C* continues to hold the policy, and *A* puts a stop on the underwriters' paying their subscriptions to *C*. The rights of the parties will probably be the subject of litigation; viz. the right of *A* to take his policy out of *C*'s hands and recover on it; and the right of *C* to hold the policy against *A*, for the balance of account due to *C* by *B*. The case will be interesting if the dry points of law be brought out in it; but the result will probably be decided upon some minute circumstances agreed on or understood by the parties in doing business together; and if so, general interest will concentrate on the law elicited as to what degree of direct or accidental knowledge in one party to the private terms subsisting between other parties, as to their method of doing business together, amounts to a constructive concurrence in those terms.

If Arnould's view in this matter be the correct one, there will be a decision in favour of the assured. He says,[e] grounding his statement upon *Whitehead* v. *Vaughan*, *Parker* v. *Carter*, *Westwood* v. *Bell*, and *Cahill* v. *Dawson*, 'Where the broker is employed immediately by the assured himself, his lien on the policy is as above described (*i. e.* he has a right to retain it against a balance due to him by the assured); but if he is employed by some intermediate agent, and he knows that to be the case, he has no lien on the policy in respect of the general balance of account against his immediate employers, but only in respect of the premiums and commissions on the par-

[e] Maclaclan's Arnould, p. 196.

ticular transaction ; and if, on the contrary, he is ignorant that the policy is not really effected for him by whom he is immediately employed, he may refuse to give it up until he is paid the general balance of his insurance account against his immediate employer. "The only question," says Gibbs, C.J., "is whether he knew, or had reason to believe, that the person by whom he was employed was merely an agent." '

Thus we see, that in the case I mention by way of illustration, the assured, in order to succeed, has only to show that the broker knew, or had reason to believe, that the country broker did not order the insurance on his own account, but for a principal; and this fact is to be discovered from the correspondence and other circumstances of the transaction.

For the present, the position of matters as here described sufficiently illustrates the troublesome nature of questions arising from the threefold relation.

There is another way in which a broker is employed. He may effect an insurance quite ministerially, in the name of his principal; in which case he receives his brokerage on the insurance from his employer, but in all other things leaves the assured and the underwriter to account directly to each other. He has no occasion to keep an account against the underwriters on the policy. On a loss happening on a policy thus effected, the broker may be entrusted with it to recover from the underwriters, but only as an agent; and he would be entitled to one per cent., or any agreed brokerage, for so doing.

On account of the length of the present chapter, I

shall not add a recapitulation of the subjects embraced by it, but will, instead, point out some of the peculiar qualifications required to be a thorough and successful insurance broker or underwriter. I find a very good summary ready to my hand in Mr. Marryat's speech in the House of Commons, when, in 1810, an effort was being made to bring out a new Joint-stock Insurance Company. It is true he was speaking in the interests of Lloyd's, but what he says of individual underwriters is applicable, even in a higher degree, to the underwriter of a public company; for the latter has not the assistance of the instantaneous communication of intelligence from other underwriters around him, when in doubt and hesitation or ignorance of special circumstances; he has not, so to speak, the sympathetic atmosphere which surrounds the member of Lloyd's writing in his box; and has to depend more greatly on his solitary judgment, memory, and will. 'I am aware,' said Mr. Marryat, 'that the occupations of an insurance broker and underwriter are generally considered as requiring but very superficial attainments; but a candid investigation of the subject will prove this idea to be erroneous. An insurance broker can only qualify himself for his business by considerable study and application: he must learn how to fill up policies of every description, with all the various clauses adapted to every possible circumstance; he must be able to make accurate declarations of interest, so as to cover the parties in case of loss, and yet not expose them to the payment of any unnecessary premium in case of arrival; he must know how to make up com-

plex statements of average and partial losses on every species of merchandise, and on the various principles applicable to every different case.[f] He must be informed of the current rates of premiums on every voyage, in order that he may be enabled to transact the business entrusted to him to the best advantage; and he must be well acquainted with the character of the different underwriters, to guide him in the selection of the names he takes upon his policies. The underwriter must possess every species of knowledge requisite for the broker (except indeed as to the solidity of his brother underwriters), it being his province to examine all his papers and statements; in addition to which, he must be well versed in geography; must be informed of the safety or danger of every port and road in every part of the world; of the nature of the navigation to and from every country; and of the proper season for undertaking different voyages; he should be acquainted, not only with the state, but the stations, of the naval force of his own country and of the enemy; he should watch the appearances of any change in the relations of all foreign powers, by which his interests may be affected; and, in short, constantly devote much time and attention to the pursuit in which he is engaged. Those who commence underwriters without the necessary qualifications, or continue underwriters without the necessary caution,

[f] This is no longer a part of the insurance broker's duties. During the last half century, the statement of claims is delegated to professional average-adjusters.

generally soon find their error, in their own ruin, and the injury of those with whom they are connected.'

I will only add to the foregoing, that the moral qualities of honour and candour can never be safely absent in these transactions. Those gains are not to be accounted success which have been acquired by little arts, by reticence, and equivocation. The Insurance system is one which depends in a singular manner on the trust which man reposes in man; and he who by his own conduct shakes such confidence commits high treason, not only against virtue, but against society as it is constituted, and the facilities of commerce, on which society so greatly depends.

NOTE.—Whilst these sheets are passing through the press, a Bill has been brought into Parliament, and read the third time in the House of Commons (April 1867), entitled 'The Policy of Insurance Act of 1867,' having for its object 'to render policies of insurance assignable at law, and to enable assignees of such policies to sue thereon in their own names.' The Bill, as it stands at the moment I write, provides that every policy of insurance shall be assignable at law (and this, of course, includes Marine, Life, and Fire Insurances), and gives liberty to the assignee to sue in his own name to recover on such policy.

The assignment may be either by endorsement of the policy (duly stamped) or by a separate deed. The stamp-duty is not defined in the present stage of the Bill. The assignment may be made in the following form:—

> 'I, A B, &c., in consideration of, &c., do hereby assign unto C D, of, &c., his executors, administrators, and assigns, the (within) policy of insurance granted, &c. (describe the policy). In witness, &c.'

In an action by an assignee on a policy, any defence which would be valid against the assignor may be relied upon, and is valid against the assignee.

Any *bonâ fide* payment of, or on account of, an assigned policy to a party who would be entitled under the unassigned policy, shall be valid against the assignee, if the party making the payment had no notice of the assignment.

It would seem from the terms above, that the Policy of Insurance Act of 1867 leaves, as they were before, those equitable assignments for the transference of marine policies which have been spoken of in the foregoing chapter; but that it clothes the assignees, made in the short but formal manner provided by the Act, with more distinct rights, and the power to sue, &c., in their own names.

More need not be said at present of this Act, which is not yet in its complete state.

CHAPTER X.

ON THE NATURE AND CONSTITUTION OF MUTUAL MARINE INSURANCE SOCIETIES.

In my 'Handbook of Average' I introduced a short chapter on the constitution of Mutual Insurance Associations Such a sketch was necessary to the purpose of that volume before speaking of claims on this now important branch of the Marine Insurance system and their manner of settlement. At the time I wrote, I had not formed the intention of engaging in the subject of the present work; but it is requisite now to the completeness of a treatise on Insurance, to describe the character of Clubs, and the part they play in marine adventure.

The object of Mutual Insurance Clubs, or Associations, is to relieve individuals, 'suffering members,' in case of loss in respect of ships. Their plan also Their Objects. embraces, but to a much smaller extent, the freight and the outfit of vessels; but it does not extend to merchandise, with the exception of coals.

The nature of all these associations is that of benefit-societies, but I am not aware that they are ever certified by the Registrar. The protection they afford Their Nature. is distinguished from Insurance, properly so called, by the circumstance that no premium is given as the price of the indemnity; and that their members are in a sort of

co-partnery, although they disclaim solidarity, or united responsibility, and claim instead, the individual liability of assurers. Their resemblance to true insurance consists in the protection mutual clubs give against similar losses and contingencies—subject to local rules and usages ; and in their attaching their 'rules,' frequently, to the common form of policy, with some necessary modifications; in the body of which is printed, by some associations, for form's sake, a nominal sum or premium, as 20 per cent. This is done principally to meet the requirements of the policy-duty Acts. As a general rule, the clubs stamp their policies each year ; but I believe there are some which take the risk of not stamping, or of not renewing the stamp from year to year ; this, probably, from a doubt whether as benefit societies they require the stamp at all ; or, supposing the society to be really insurers, whether an initial stamp is not all that is necessary, as in the case with Life Insurances, in the continuousness of which there is a likeness between them and Mutual Marine Insurance Associations. The stamp, also, has less practical value in mutual societies—supposing they are not in danger of penalties—inasmuch as claims among themselves, even disclaiming, as the members do, the name of co-partners, rarely come before courts of law ; for nearly all the clubs have adopted an 'arbitration clause' for the settlement of disputes on claims, by which members are barred from legal proceedings till after arbitration, and then only for the enforcement of the award made. Of this important feature more will be said hereafter.

The principle of reciprocity had been long acted on in

Life Assurance before its application to marine adventure. Indeed the first life office set up, the Amicable, established in 1706, on the most rudimentary ideas of insurance, had the character of mutuality. It was a sort of lottery or tontine in which death drew the prizes. All the entering members paid a certain sum (it might be called a premium), and at the end of the year the total receipts of the society were divided among the representatives of those members who had died within the twelvemonths. The Amicable in its first beginning may be termed a benefit society, or a tontine, or a lottery; but it bore a certain resemblance to the modern mutual shipping clubs. The name, but not the principle, of mutuality was adopted nearly forty years ago, on the establishment of one of the largest and most successful of the London Assurance Companies, the Indemnity Mutual Marine Insurance Company. It was and is, however, simply a proprietary office, and the title given to it was so far a misnomer.

The system of Mutual Insurance Societies has, during the last twenty years, been gaining ground. Several Clubs and groups of Clubs have been established in London. I am not aware whether the plan finds much favour in Liverpool; but it is among the smaller ports along the coasts of England that it prevails most, and was for a time most successfully acted upon. In some places doubts begin to arise as to its efficacy and its economy as compared with the ordinary method of marine insurance. A large and tolerably long experience will now allow those who are most interested to investigate the working

of the club system, and to ascertain its advantages and its weaknesses. At present I may still assert my own belief, that the system to be of value belongs essentially to a small community, and to a limited number of vessels; for where reciprocal action is intended, a personal knowledge among the members of the association of each other, and of the shipping each possesses, is very material to its prosperity.

The principle is a very simple one in itself. It is intended to effect among shipowners a saving of that surplus of premium over the absolute risk, which is the professional underwriter's profit. And it is not necessary to proceed upon any calculated tables of what is the dry premium (as it is called in Life Assurance)—for even that would nearly always be, practically, either in excess or defect of the result of any one year; but, by feeling their way along, as it were—that is, by making call after call for the actual losses that have occurred—each year is an experiment, and whether it be a good year or a bad one, only the exact equivalent to the risk run is paid by the assured.

Though this is the outline of the system, some adjustment is required to make it work in practice. There must be a parity among the members. As to amount, that is easily settled. The amount for which the club is liable in respect of the ship of any particular member is the sum on which that member is to contribute towards the losses of others. But amount alone will not produce parity. If ships of high and low class are associated to-

gether without regard to quality, the owners of the high-class vessels will soon find that theirs is a union in which the advantages are possessed by the owners of the opposite class of ships. The result will be that the superior vessel will be always the loser by its association with inferior shipping. The former class will, from its superiority, bring in comparatively a small quantum of risk, and will, for the same reason, pay a high proportion of the losses.

Some arrangement must therefore be made to prevent this double disadvantage. In some associations, called A1 Clubs, only vessels of that registered class are admitted, and they are thus pretty nearly on a footing. In other clubs the vessels are gathered into separate classes: there are associations which carry such division into as many as six classes. Again, in some associations an imaginary value for contribution is placed on the ships, apart from the value claimable in case of the ship's loss. In a fourth set of clubs the disproportion is rectified by the introduction of premiums, of which there are classes suitable to the classes of vessels. And a fifth plan is, by a return of part or the whole of the third deducted for melioration in settlements of particular average, to encourage the introduction of ships of high intrinsic value. This kind of sliding-scale acts in the following manner:—All ships are valued in the club for the purpose of equalisation at one rate—say 6*l.* per ton—but owners are allowed to value their ships separately at their true value, or at such value as they please A formula is made for

settling averages (not losses) by which the difference for melioration shall be inversely as the difference in value, within the limits of 9*l.* and 6*l.* per ton. It is very difficult to make the expression of this arrangement understood without an example. Here is one :—

An A1 ship of 500 tons put into a club at a value of 9*l.* per ton; of which value the club takes as a maximum 1,500*l.*

	£
Amount of average for repairs to the vessel	300
Less for melioration, one-third . .	100
	£200

If the whole value, 4,500*l.* pay 200*l.*, the sum insured will pay in proportion 66*l.* 13*s.* 4*d.* To rectify this for high class. As 6*l.* per ton is to 66*l.* 13*s.* 4*d.*, 9*l.* per ton will be to 100*l.*; or, as it would stand :—

500 tons, at 6*l.* (3,000*l.*) : 66*l.* 13*s.* 4*d.* :: 500 tons, at 9*l.* (4,500*l.*) = 100*l.*

Thus, in this instance, the whole of the melioration deducted is given back as an encouragement for high values —high values indicating ships of superior quality or class. And the same principle is carried through all intermediate differences of value; 6*l.* per ton giving no augmentation at all on the actual claim, and 9*l.* per ton giving the maximum. Ships of still higher value only to be taken at 9*l.* per ton for the purposes of settlement of Particular Averages.

I fear this will appear a rather complicated arrangement for producing a desirable end. I think a very

much simpler one and one more efficacious would be the following.

The object is to compose the club as much as possible of valuable high-classed ships. The vessels of inferior class, having correspondingly low values, *bring in a high proportion of risk, and therefore loss*, to the association; and, owing to low value, *bear only a minimum proportion of the general losses* in relief. The following illustration will serve.

Suppose a club composed of 200 vessels of high and low value—

	£
Say, of A, 100 ships of 200 tons each = 20,000 tons, at 10*l.* per ton . .	200,000
And of Æ, 100 ships of 200 tons each = 20,000 tons, at 6*l.* per ton . .	120,000
Total capital of the club . .	£320,000

Imagine that the effect of fine build, recent construction, and ample supply of spare stores was, that the 100 A ships had ten of their number which met with casualties in the course of a year to the extent of 5 per cent. of their value, viz. :—

	£
10 ships of 200 tons = 2,000 tons, value 10*l.* per ton, 20,000*l.*; damage, 5 per cent. =	1,000
And that the 100 Æ ships had 30 of their number with casualties, in a year, to the extent of 10 per cent. of their value, viz. —	
30 ships of 200 tons = 6,000 tons, value 6*l.* per ton, 36,000*l.*; damage, 10 per cent. .	3,600
	£4,600

	£	
The 100 A ships would pay .		
on 200,000*l.* . . .	2,875	of the averages.
The 100 Æ ships would pay		
on 120,000*l.* . . .	1,725	„ „
	£4,600	

So that we have this unjust anomaly:—that the 100 A ships, which brought in only 1,000*l.* of averages, pay a quota of 2,875*l.*; while the 100 Æ ships, which introduced 3,600*l.* of averages, pay a quota of only 1,725*l*

Now, the remedy I propose would be this simple one: let all the ships, of whatever class, contribute to losses upon one value. Thus—

A, 100 ships, 200,000 tons, at 10*l.* per ton, 200,000*l.* will pay 2,300*l.*

Æ, 100 ships, 20,000 tons, at 10*l.* per ton, 200,000*l.* will pay 2,300*l.*

This will approximate more nearly to a just distribution; but even then, the association of first-class ships with ships of inferior quality will generally be advantageous to the former. It will prove the reverse of the fable of the pot of brass and the pot of earth; for, on these waters, it will be the brazen pot which sustains a greater degree of loss by collision than the earthen one.

Nevertheless, the plan would have the corrective effect of making inferior ships pay something for keeping high company It would be virtually making them pay a premium inversely as their class. The worse the vessels were, the more expensive would their insurance be to

them, which is a similar result to what happens when they are insured at Lloyd's or in proprietary companies. Thus the clubs would be somewhat weeded of the expensive, claim-producing ships; and those of that class which did come in would contribute more fairly towards the general loss. Those which thus rejected themselves owing to inferior class would perhaps form themselves into a distinct club. *Pares cum paribus facillime congregantur.* An association of them might be readily effected; but the same fact would follow them after their elimination from the other club, the fact *that insurance on inferior vessels is very expensive.* It *must* be expensive whether they are insured with underwriters, whether they are admitted into clubs of heterogeneous classes, or whether they mutually insure their own class. Inferiority of class *will* produce excess of claims. It must be observed that all such devices as are described above have but a partial effect, because they come into action only in case of damage; they have no corrective result in the still more important claims—those arising from total loss.

Constitution of Clubs.

The ideal of a local insurance club, then, requires, according to the view previously expressed, that it be formed in a port or place where there is a limited community, and where the members of the shipowning class are well known to one another; this implies, what usually follows, that their ships and concerns are also matters of mutual knowledge. These persons combine together upon the principle of a benefit society for reciprocal insurance. No profit is expected to be set aside, no capital is required; it is a temporary

union, generally for one year, during which period the members guarantee one another, or, in other words, divide among the whole, the individual loss of a 'suffering member.' The management consists of a committee of some five or more intelligent members of the club; and there is a secretary or manager, usually also one of their own number. The expenses consist of his salary, which is generally proportionate to the extent of the association—an allowance of four shillings per cent. is a common rate of payment—and of such charges as printing, stamps for policies, &c. Indeed, the simplicity of the constitution and working of a club is one of its great merits. At the beginning of the year or term a small subscription is usually made for current expenses.

At stated times, but usually once in each year, there is a general meeting, to make, amend, or abrogate rules. These rules are the by-laws of the society; they are optional, and can be altered from year to year. The policy in use at Lloyd's is frequently taken as the basis of the mutual agreement, *mutatis mutandis*, so as to adapt itself to the form of the association. The policy is also used, as has been mentioned above, in order to comply with the regulations of the Stamp Act. To this policy is affixed a printed copy of the rules. Otherwise the rules are contained in a separate book or sheet; but in either case they are declared on the face of the policy to form an integral part of it. The manager or secretary signs the policies on behalf of the whole of the members by a power of attorney given by them.

The rules form a most important part of the subject;

for by the provisions enacted at a general meeting an indemnity more or less complete can be secured for the members. Thus, if it be desired to provide an indemnity far more full than that granted by the Lloyd's policy, it can be done; of course at a greater expense in the way of subscriptions, termed calls or drawings. If, on the other hand, a slighter insurance be considered advisable, restrictions of any sort can be introduced, and then suffering members recover less, but the expense of the drawings, which take the place of premiums in ordinary insurances, will be proportionably less also. Thus, the wishes and the convenience of the members of the club will determine whether at a large general expense any member suffering loss shall receive a full indemnity; or whether a smaller indemnity shall be granted to suffering members, but at a less rate of calls or premiums. Accordingly, one club will have repairs paid without deduction for melioration; others will allow for the wages and keep of the crew during the time a ship deviates, or is under average; another allows for cables parted and anchors lost; one excludes caulking and some other specified repairs. In many, variable deductions, according to age, are made for materials and labour; and particular voyages, seasons, and goods are excepted; or it is agreed that specified deductions shall be made from claims on ships when they have been engaged in such voyages, during such seasons, and whilst carrying such cargoes.

The associations to which I have alluded are for the insuring the bodies, stores, &c, of ships. There is

another class called Cargo and Freight Clubs. These are intended for the owner's protection when he is carrying coals and other cargo on his own account, and in respect to his freight when carrying other persons' goods. The object of the Freight Club is to insure the owner at all times when his ship is at sea, whether she be loaded or in ballast. It is taken for a basis that the stores and expenses necessary to send a vessel to sea must have been provided, whether she be carrying cargo, or be light; and thus, by very natural reasoning, such stores and outfits are connected with the freight or profit the ship earns, rather than with the ship itself, as in other insurances.

Cargo, Freight, and Outfit Clubs.

These policies contain two scales of payment in case of loss—one for ships loaded, the other for ships in ballast. The scale is generally a fixed allowance in both cases of so much per ton or keel, and often with distinctions for different voyages. They are sometimes called Freight and Outfit Clubs.

One of the most important practical points in insurance—one which is very material to the success of the underwriter—is that an equal sum should be taken on all the risks he writes. By a figure of speech, the sum insured by each underwriter is called his *line*, because his signature, the date, and amount are all written on the policy in one line. To *write even lines* is known to be a desideratum, though it is not, or cannot be, always persevered in: but a regulation in almost every club is to have a maximum of amount to be taken.

Limit and Amount of Risk taken

This, however, will not give even lines, because smaller

sums are insurable. It is a wholesome provision, nevertheless. An inconvenience arising from it is in rendering the local club only partially serviceable to the local shipowner possessing a large vessel. Several owners in a town may have ships of values from 1,000*l.* to 3,000*l.* The original club may have a limit of 500*l.* for any one ship, and the owners must seek elsewhere if they require to insure more than that amount on their vessels. To remedy this defect, a second club, or even a third, having the same rules and regulations, perhaps the same committee and most of the same members as the first club, is formed; and thus three times the amount of insurance in the same place can be secured by those to whom it is an object.

Though most of the local clubs begin, and some afterwards continue, to insure the ships owned in the immediate neighbourhood where the club is established, many of them do not reject the admission of vessels belonging to other ports at any distance from home. This sometimes arises from the shipping of the place not being sufficient by itself properly to support a club; for it is essential to every species of insurance that there should be a considerable number of cases, to afford scope for the cycles of probabilities to develop themselves—in other words, to give an average. But it also arises from the ambition of making a large club, or from the natural wish of the manager to increase his remuneration, which depends on the amount insured in the club. Yet, in my opinion, the introduction of these stranger ships is, in general, a detraction from the

Advantage of Locality.

safety of the association, and from that feature which seems to me an essential, viz locality. If fifty men, possessing among them one hundred vessels, and living in the same place, unite in an association of this kind, there is something personal and familiar in its character. Everyone is known, every ship is also known; so that hazardous vessels, or owners of bad repute, can be excluded from entering the club. Then the exact manner in which each vessel is found in stores, spare sails, spars and ropes is also a matter of knowledge and conversation among the members; so also the usual trade of the vessel, and what is more important perhaps than all, the masters are known. Being known, the good and successful ones are prized, and sometimes are even rewarded by the clubs, whilst the bad and ignorant masters or mates are dismissed, since the clubs will not admit a vessel which is not provided with a competent, sober, smart master and officers. Probably from deficiency in the two respects of stores and masters, one-third of the whole number of losses occurs. Of collisions perhaps *two-thirds* might be avoided if there were more care used in looking out, more presence of mind discovered when a collision was probable, and more strict attention paid to the Board of Trade rules for steering and showing lights.

Another advantage in a limited and local club is that when a disaster to a ship occurs, it is superintended and watched by members of the association, some of whom are practical men, able to survey damages, direct repairs, and go the cheapest way to work in the matter of expenses. It may not be too much to say that one-third of

all the money spent in repairs and expenses of ships under average is lost by extravagance and bungling.

There are no such things as premiums in the system of clubs. Premiums of insurance are sums paid in advance, being the calculated equivalent of the risk undertaken, and they include a profit to the underwriter. In the mutual principle nothing is paid for profit. Clubs are truly *benefit societies* on a large scale, their object being to guarantee members mutually from a particular class of loss. In some clubs a small fund is subscribed at the beginning of the year for the convenience of making prompt payments; but the general plan is to hold periodical meetings of the committee, when all claims sent in are examined and discussed, and those which are found to be in order are collected in one sum, and a call is made on the whole capital of the club, called 'a drawing.' The drawing is frequently effected by bills which are accepted by the several members. There are clubs which make their payments for losses in these accepted bills; but that plan appears very clumsy, and is open to some risk, and the more usual way is to pay a check for the loss, and for the manager or secretary to collect the quotas of all the members. Method of paying the Losses.

As soon as a member has lost the ship which was placed in the club, mutuality ceases in regard to him. A certain period is assigned, differing in various clubs, after which the suffering member is no longer a contributary to the losses of other members. Possibly this is an imperfection, and might be amended. Each association being for one year, there should perhaps be a unity of

interest and risk for that time, and a liability to contribute reciprocally on the sum entered in the club, whether the ship be lost or safe. Otherwise the insurance has something the character of a lottery; and the member who is fortunate enough to meet with a loss early in the year receives payment at once, and pays scarcely anything for his indemnification; whilst, on the other hand, the number of contributaries contracts as the year progresses, so that with each new loss the ratio becomes higher upon the remaining members.

The committee of management generally decide on the claim for losses and damages made by the members.

Adjustment of Claims.

In some clubs, the manager, being a man of experience and intelligence, prepares the statement of claim for the meeting of the committee, so that this part of their functions does effectively rest very much on him. In some associations it is a rule that the claims shall be adjusted according to the custom of Lloyd's; in others, all the claims are to be submitted to some London average adjuster. In most of them there is a clause relative to the arbitration of disputed claims, giving power to refer such disputed claims to a single arbitrator, or to two—one being named by the committee, and one by the suffering member, the referees having power to appoint a third, or an umpire. Of this hereafter.

Clubs not so applicable to very large Communities.

I have shown that the character of the constitution of these clubs has something essentially local in it; and as soon as there is a large importation into a club of ships foreign to the port where it is established, it loses one of its important character-

istics. It appears to me, that the club system is not developed purely and properly in a very great community, like that of London or of Liverpool. That reciprocal knowledge which I have mentioned is wanting. The club becomes to most purposes an ordinary insurance office, without that variety of risk in which there is safety, and having the disadvantage of leaving a great deal of power in the hands of a junto of persons, the committee, who, if they be not very upright men, may pass their own or some favoured member's claim and reject the claim of another member on insufficient grounds. And there cannot be that surveillance exercised on the vessels, on the manner in which they are found in stores, and on the masters who command the ships, as is possible in a small and connected neighbourhood.

Great variety in the Rules of Clubs, and some Specimens.

Having already stated that it is clearly in the power of a number of consenting persons to bind themselves reciprocally to grant any degree of indemnity determined upon, so it is equally in their power to introduce any rules which may be thought proper. The rules of some clubs are very long and minute; others are shorter, and leave more power with the manager and committee. The rules of some associations having been drawn by a solicitor, have had a legal circumspection and lengthy verbiage given to them which have swelled them into a small volume.

I will now select a few points from various club rules which are distinctive, and from some of which useful hints may be taken as to the requirements or the dangers of certain trades and parts of the coast There is no

part of the country where the system of clubs is better understood than along the north-east coast. When it is efficiently carried on it is a simple and an economic means of keeping shipping insured; and in some very well managed clubs, I am informed that during a considerable series of years the calls have not averaged much more than 5 per cent. per annum. The clubs I speak of are very local in constitution, and those where a strict surveillance is maintained.

In some other clubs, which have been more indiscriminate in the ships they have taken in from distant ports, and from other circumstances, the calls have sometimes amounted to 10 and 12 per cent. in the course of a year, and there are some which would show a much heavier result still. In the latter case, the reciprocal system becomes a very expensive method of insuring a ship.

Many of these associations are instituted for the purpose of insuring small vessels, carrying usually heavy cargoes of very small value. Such cargoes throw an extra risk upon the association, both from their nature, and from the small value they possess on which to contribute when there is a general average. A compensation is therefore made by vessels carrying such cargoes, in the form of a deduction from the amount of claim; and, according to locality of the clubs, various articles are excluded from the rules of one which are not mentioned in those of another.

Hazardous Cargoes

Strict limitations are also made in respect both to the times of sailing and the voyages and ports to which the

vessel is bound. The clubs generally concur in the broader distinctions of season, and of the times when increased danger belongs to voyages to the North Sea, Canada, &c., but most of the clubs have also their local dangers which they desire to avoid—hazardous ports, tidal harbours, rivers, &c.—which are practically known to be dangerous at certain seasons, or at all times of the year. In some of the policy-rules, these limitations are exceedingly stringent and minute. These limitations are enforced by deductions from claims when they occur in respect of the expected season or place, or by an extra premium charged. And as the rules of clubs, generally speaking, are rational and not needlessly oppressive, as would be expected from the result of deliberations for the reciprocal advantage of the members, we find in some relief provided with respect to the forfeits and extra premiums just mentioned; in one, as enacted, for example, it is, that if a vessel sailing contrary to the limitations, do not procure any damage thereby, one half the extra premium incurred by such infraction shall be returned. So again, the same club legislates, that if the owner of a ship be not accessory to his vessel sailing contrary to the warranties and rules, he is to be held harmless of the consequences of his captain's independent acts.

Hazardous Voyages.

The committee, or the manager, is frequently entrusted to state the claim of a member whose vessel has sustained damage or has incurred expenses. These claims are adjusted in reference to the special rules of the club, but taking the 'custom of Lloyd's' for the basis. In some associations it is stated that the rule of Lloyd's is

Adjusting Averages.

to be adhered to; in others, that all claims are to be made out by a professional average stater; in a third class, that average claims are to be settled by an average stater at Lloyd's. One club will allow claims to be made out with or without a London average stater; but as much as possible in conformity with Lloyd's, as provided by another. Then, as a remedy for any dissatisfaction a suffering member might feel in the result of a statement drawn up by the insurers, there are several provisions. Thus, in some clubs the shipowner may procure another statement to be made at his own expense, and the club is at liberty to compromise between the two average staters, or may call in a third. By the rules of one association, or more, the suffering members may refer the case to a general meeting; whilst the most usual course is that prescribed by the arbitration clause, by which, in general, under particular limitations of time, &c, an arbitrator is to be chosen by the suffering member and another by the club, and the two arbitrators have power to call in a third as umpire, or, as by one association, the suffering member and the committee may agree mutually to refer the claim to one arbitrator, whose decision is to be final.

In adjusting a claim, reference is to be had to the warranties, rules and conditions annexed to the ordinary policy; and which rules are by most clubs declared to form part of the policy itself. Thus many modifications, some very judicious, are made in adjusting averages for clubs.

The Special Rules of a Club to be considered part of the Policy.

The scale which establishes or excludes a claim on clubs for damages and expenses, varies exceedingly in

different associations. In some, the Lloyd's memorandum of 3 per cent. of value is adopted. Sometimes the rate is per ton of registered or of builders' measurement. In one society, and that a very successful one, claims are admitted if they amount to half-a-crown per ton: in most the warranty is higher. In one club it was formerly fixed at twenty shillings a ton, which on coasters worth five pounds per ton, is 20 per cent.: that rate has since been reduced to fifteen shillings per ton. On the north-eastern coast the clubs occasionally fix the limit at per keel:—3*l.* per keel is somewhat less than three shillings per ton. It is in this regulation that clubs differ greatly among themselves; and members uniting to form an association have to balance the respective advantages of smaller calls or a more inclusive protection.

Warranty as to Claims.

Then, as to the deductions on the score of new for old, there is as much variety. The regulations respecting repairs differ almost as much as the limit fixed for average. Some adhere to the custom of Lloyd's, but various arrangements are adopted in the local associations. As these rules pertain to the subject of average, it is unnecessary to pursue them here.

Deductions for Melioration.

From the greater inquisitorial character belonging to a club, it is able to prescribe certain stores as necessary for making the vessel admitted 'seaworthy;' and, in some measure, to watch and see that those stores, &c., are provided. This personal inspection constitutes the greatest advantage of clubs over other insurers, for a well-found ship is a very different risk to underwriters to an ill-found vessel. Thus, several of the

Certain specified Stores required.

clubs prescribe the extra stores a ship shall carry; the number and weight of her anchors and chains, &c.; and a vessel not having the necessary quantity of stores on board and meeting with an accident is to be placed at a disadvantage.[a] In several the rule is made very stringent; and in some the deficiency in this respect is met by a deduction of 15 per cent. from the amount of the claim on the club; whilst in one club the deduction is left discretionary up to the proportion of 50 per cent. of the claim, and in another association the discretion is even higher.

Anchors, chains, &c., how paid for.

The manner in which anchors, chains, &c., are dealt with in clubs is very various. In some the association pays for their loss whether they be slipped, cut, or broken, and the deductions for melioration are various—the anchor being generally allowed without deduction, and the chains subject to a reduction of a third, a fourth, a sixth, &c., and in some the deduction is dependent on the age of the chain.

Accumulation of Claims and running down.

The Lloyd's Policy, in case of collision, holds the damage done to the ship insured and that received by the vessel run into, quite distinct and independent of each other; but it is very common in the clubs to allow the two separate claims to be added together in order to make up the necessary proportion warranted.

The cautionary one-fourth thrown on owners by the

[a] The *Jersey Mutual* recently established a chain-testing machine at the expense of the Association, so necessary do they consider it to ascertain that cables are trustworthy.

practice of Lloyd's is rarely deducted by the clubs in collision cases.

The Compensating Clause for Mixed Classes.

In those clubs which are open to vessels of various classes, an arrangement is sometimes made, as has been already mentioned, to endeavour to equalise the risks between ships of high and ships of low value; and although it does this imperfectly, it is a step towards the accomplishment of that object. Thus, in some, a nominal value is placed on vessels for settling averages of 5*l.* per ton for colonial-built ships, and 6*l.* per ton for English-built ships; and by a process similar to the inverse rule of three, a proportionate advantage is given to vessels of higher value in settlements, up to the extent of returning them the whole of the third deducted for melioration, but it is not allowed to go beyond. In others, uniform value, as of 8*l.* per ton, is put on the vessels; whilst in some, a nominal value of 9*l.* per ton is placed on all vessels below that worth, which I believe is intended to have a reversely analogous action, viz. that of making the low-class vessels contribute to losses on a larger value than their real value. As I have already gone into this part of the subject at the beginning of the present division, I need not enlarge upon it now; but it constitutes a most essential feature in the club system, and may be considered the pendulum or balance-wheel of the machine, by which it is equitably regulated.

In an association which has given the most exact attention to compensation for mixed classes, there is a table contained in the club rules which, although at first sight

it is intricate and apparently needlessly minute, is found to be constructed in a very delicate manner: it embraces two or three means of progressive compensation, and indeed comes nearer to my own idea of equitable adjustment than any other. But it is open to the charge of being somewhat complicated; and I have already stated my views, that a scheme of compensation almost as perfect may be arrived at by an even valuation. The apprehension of simplicity is a progressive work. [b]

[b] I may here remark of the club particularly alluded to above, that it has made, and is making, most praiseworthy efforts to attain both simplicity of action and the fullest degree of protection to its members. It has entered on some courageous experiments; *e. g.* foreign-going and coasting vessels are placed on the same footing; for contribution to averages a uniform value of 10*l.* per ton is given to all ships; repairs are allowed if they amount to 2*s.* 6*d.* per ton, and are paid in full without deduction for melioration; chains which part (after having been tested) are paid for; and in collision cases, damage done to the other vessel *and her cargo* is allowed. As an extreme case, a vessel insured in the club for 1,000*l.* colliding another ship, and occasioning the loss of both, would receive a total loss in respect of herself; and if the other ship and her cargo were of the same value, would receive three-fourths of the same sum, viz. 750*l.* Notwithstanding the liberality of their principles, the calls of this club, during a considerable series of years, have been at almost the minimum scale. Other associations seek to attain the same object by their manner of making calls. One divides its vessels into five classes, and calls in money to pay losses in the following proportions: —

First class .	nominal value	10*l.*,	rates of calls	15/	per cent.
Second class .	„	9*l.*	„	17/6	„
Third class .	„	8*l.*	„	20/	„
Fourth class .	„	7*l.*	„	25/	„
Fifth class .	„	6*l.*	„	30/	„

A distinguishing principle in club laws is that many of them admit in average the additional expenses of the crew consequent upon a ship having to put into port under average and repair. In this, the associations assimilate to most foreign systems, which consider that from the hour a ship deviates from her course in a '*relâche forcée*'—an obligatory putting into port—the wages and victuals of the ship's company become extra, and a loss which an owner should not sustain. Thus, in some clubs, when vessels are under average, the actual wages and provisions of the crew are allowed, whilst others specify an allowance of one shilling a day for maintenance, besides wages during repairs, &c. Some allow it under conditions. One allows wages if the claim is 3 per cent. independently, whilst another has a rule by which six shillings per keel per spring is allowed for master, mate, and boys when in dock, under average, with four shillings additional when only one mast is lifted, for the first springs. So minutely have been con-

Wages and Provisions of the Crew.

Another fixes the rates at 4 per cent. for foreign-going ships, and 5 per cent. for coasters, and colonial-built vessels are to pay one-fifth additional premium besides.

Other associations have similar arrangements on different scales, or construct different schemes, having the same general object in view. And, further, there are associations which consider it necessary to have separate clubs for the several classes of vessels, thinking it more desirable to incur the additional trouble and multiplication of books, rules, and calls, to obtain a simple action, than to embrace the different classes in the same club, and endeavour, by a systematic arrangement, to distribute the risk in an equitable manner.

sidered the rates of compensation to be made to a shipowner by men whose local and practical knowledge enables them, in forming and managing a club, to proportion it exactly to the requirements of the case. In this knowledge and power consists the chief strength of Local Insurance Associations.

Many of the clubs have the wise provision of giving rewards to deserving captains and officers. This is again a stimulus which it would be scarcely possible to carry out beneficially except in limited communities; and yet when the merits of praiseworthy masters and subordinate officers are well ascertained, it is doing the whole service a benefit to mark the estimation in which good conduct and scientific qualifications are held. And still more distinctive is the power taken by several clubs to dismiss and punish bad and careless masters. Considering that underwriters are liable for the acts of masters, and the more culpable those acts are the more direct is their responsibility, it is anomalous that they have in general no power over their own agents. Some associations, however, take that power into their hands, and enact stringent provisions in this respect: they dismiss captains for misconduct and intemperance; they reward meritorious masters and crews; and set restrictions as to the age and experience of the man who is to take charge of a vessel insured in the association. One local group of clubs makes it incumbent on their masters going on foreign voyages that they should have a scientific knowledge of navigation.

Rewards to and Dismissal of Officers

Some of the clubs have provided special regulations in case an owner wishes to abandon his vessel in consequence of very extensive damages. In some of the clubs owners may abandon, but with the concurrence of the committee. This, however, seems a useless provision, as it is like begging the question. Another club has the same rule, but gives the owner the absolute power to abandon if the expenses amount to 75 per cent., and so on. In one place the clubs put on a penalty for abandonment at home of from 15 to 50 per cent. of the value. After all, the right to abandon must always turn very much on the merits of the case; and the interests of underwriters are nearly always to avoid an abandonment and sale. In clubs, the principle of mutuality would rather modify the position of the ordinary underwriter in this respect.

Abandonment.

The reciprocal principle of clubs makes it doubly important to establish rules relative to ships not heard of. The custom at Lloyd's is unfixed, and the period before a ship is considered lost varies in every case almost according to the differing circumstances of that case. But when shipowners require to have a limitation made, not only for receiving the value of their lost vessel, but from which also to date their release from further contribution towards other members' losses, it is necessary to reduce it to a definite rule. We accordingly find regulations in all club rules to this effect: and the periods of *not hearing* of ships approximate very closely in the associations. The most usual allowances are three or four months for the *North* and adjacent seas, and

Missing Ships.

six months for the *Atlantic* and more distant voyages. One association is more defined. Its scale is three months for the *North* sea, five months for the *Mediterranean* and *White* seas, six months for the *Atlantic*, and nine months for voyages *south of the Cape of Good Hope*. On the other hand, there is a club which considers all ships lost which have been unheard of for three months.

Cessation of Liability.

The cessation of a member's liability to the losses of others is various. In some clubs it dates from the time of the wreck; in others, from forty-eight hours after wreck; again, in another the limit is three months afterwards; and in a fourth, the liability continues through the whole year of insurance, which appears to me the true principle. In missing ships, the expiration of the stated period mentioned above is considered equivalent to the date of loss or wreck when known.

There is a distinction in the method of various clubs for paying losses; in some, the suffering member contributes towards his own loss, in others he does not. I consider the former method the more correct.

Vessels laid up.

The object of club rules is to apportion the true value of risks as equitably as possible. When, therefore, vessels are laid up, either necessarily, for repairs, or by option, as for winter, &c., some clubs credit the member with a return or a bonus for the diminished liability he lays upon the joint concern. Thus one club's rule for vessels lying in safe harbour is, to keep them insured against fire and harbour risk, and to place to their credit ten shillings per cent. each month they lie up from the 31st of March till the 30th of September, and twenty

shillings each month for the remaining half of the year. And the same return is made to vessels in port under repairs, provided that the period of delay is greater than thirty days.

At periodical meetings of the managing committees, the times of meeting varying in different associations, the claims which have been agreed on, or passed, are collected and divided over the whole capital liable at that stated time to contribute to such claims. A call is then made by letter on all the members by the manager or secretary, and if a payment in respect of an average or loss is due to any member, the call is a set-off, *pro tanto*, against it. The calls are generally in the form of bills of a certain date, and if a member do not pay his acceptance, his vessel, very properly, ceases to be insured by the club. In some clubs the payment to suffering members is made in the members' bills, which mode, I venture to think, is, for several reasons, objectionable.

Manner of paying Losses.

The clubs, the rules of which we have been examining, are solely for ships. But there exists another class, though not so numerous, which acts as a sort of supplement to the former, and is intended to complete the safety of the insured owner. This consists of what are named freight-and-outfit clubs, or cargo-and-freight clubs. Looking upon a ship not only as a valuable chattel, but as a means of profit and subsistence to its owner, the loss of it must be the abstraction not only of the cost of the thing itself, but also of the means whereby he lives; it is like the loss of his tools to a workman; and in the interval before he can replace his vessel

Cargo, Freight, and Outfit Clubs

by another, he may suffer loss and inconvenience from it. The above-named clubs were instituted to meet this disadvantage. They go upon the principle that whether a ship be loaded, or light—*i. e.* in ballast without cargo—the owner loses something beyond the value of the ship itself; but a difference is made in the scale of repayment according as she is lost with a cargo or board or without one. This species of clubs was, indeed, instituted for a particular trade, and the associations are mostly confined to the coal ports. Colliers come loaded to the south of England and go back in ballast, with almost the regularity of a coach that plies between two places. Nearly half their time, therefore, they have not freight on board, although they are returning to their port in order to earn more. But whether loaded or light, expenses always attend the employment of a vessel; and though all the stores and outfit are by the strict law, and custom of Lloyd's, held to be included in the insurance of the ship, with a few exceptions, an owner cannot easily disconnect the temporary stores, provisions, and outfit from the idea of freight, which has been called the *mother of wages*.[c]

These policies are stated to be against general-average and total losses of freight. Only a limited amount is taken on a single ship. The extent to which one club goes is twenty-five keels at 12*l.* per keel, equal to 300*l.*, another extends to fifty keels at 20*l.* per keel, 1,000*l.*;

[c] This time-honoured dictum of a great judge has now lost its force. By the Navigation Act of 1854, the dependence of wages upon freight is abolished, and consequently the maternal relationship ceases.

whilst a third fixes its protection at twenty keels at 20*l.* per keel, or 400*l.* When a total loss occurs, it must be shown that the owner's interest on board was really equal to the sum insured; in which case he is paid the amount of his policy. If the ship was in ballast, a compensation for outfit is made on somewhat the following scale:—

If in the coasting trade	1*l.* per keel
If on voyages to the Baltic, Archangel, or Onega, and the ports between Ushant and Gibraltar, the Canaries and the Cape de Verd Islands	3*l.* „
If on voyages to the United States, North America, and the Mediterranean . .	5*l.* „
If on voyages to the West Indies and coast of Brazil	7*l.* „
If on voyages to the Cape of Good Hope, Mauritius, East Indies, and all other foreign voyages	10*l.* „

Thus, a vessel is entered according to her capacity measured in keels of twenty-one tons. If she be lost with a cargo on board, she receives the full amount of insurance to that extent; if in ballast, then on the above scale. If she have to contribute on freight to general-average, then the owner recovers in proportion as the sum entered in the club is to the whole amount of freight on board at the time.

This species of insurance is, however, subject to great variety. We have the principle of *pro rata* freight introduced into some of the policies, which is a mistake;

because if a ship be lost the day after she sails, the whole freight which the owner would have made is as much lost to him as if the vessel had been lost the day before her arrival at her destination. Other distinctions and restrictions have been introduced, avowedly with the purpose of reducing the amount of claims, and for the prevention of fraud. Thus, to prevent voluntary condemnations, *absolute* total losses have been strongly distinguished from constructive total losses, &c. Fine-drawn rules, however, are objectionable, and give rise to misconception and dispute. If protection against certain contingencies by mutual insurance be sought by a number of shipowners cooperating, let it be carried out according to the original intention. If circumstances occur which show that some members are great gainers by the mutual principle, and the rest are great losers, and there is any idea of unfair dealing, let the club be broken up, and let every man be his own underwriter, or insure elsewhere; *but avoid the semblance of safety where it virtually does not exist*, for such an insurance is far worse than none at all. The motto of all mutual assurance associations in which fairness prevails is, '*Mihi hodie, cras tibi.*' Casualties will run round the circle; and although it sometimes seems as if misfortune singled out one owner and let another constantly escape, this can only be a coincidence; if otherwise, the origin of frequent misfortune to one member must lie in causes which should be examined carefully.[a]

[a] It may be observed that the great philosopher, La Place, has remarked on what are called 'runs of luck.' He thinks, that though to us unaccountable for the present, they should

There exist a few mutual associations founded for the express purpose of protecting owners from certain contingencies against which they are not indemnified by their existing insurances; and against those portions of expenses which by practice are charged against an owner in adjustment, as the fourth in collision cases, and some other matters. Protection Clubs.

In general, it must be considered that the protection and advantages afforded by a mutual association do not extend beyond the person immediately interested in the ship insured therein, and who, in virtue of his vessel being admitted, is named a member of the association. However, in *Hutchinson* v. *Wright* (Rolls Court, April 1858), a part owner absolutely assigned his sixteen sixty-fourths of a vessel to a co-owner to whom he was indebted, and who held the remaining shares of the ship. The first-named person was insured in the *Eligible Insurance Association of North Shields*, but neither party gave notice to the association of the transaction. The ship was lost, and the court held that the assignor could recover. From which it would appear that, in spite of the 'selling clause,' the assignor having a good interest when he commenced his insurance, his right to recover remained in spite of the assignment. Transference of Interest

On the other hand, a mortgagee does not become invested with the benefits which the mortgagor has as member of a club in respect of the mortgaged vessel,

---

not be cast aside as *mere accidents*, but noted, as they may possibly form links in the chain of some extensive law — the footsteps of some cause with rarely observed phenomena.

except upon due notice given to the club, and their acceptance of him in substitution of the original member. Nay, even the want of notice by a member to the association that his vessel in the club was mortgaged, proved fatal to his own claim for loss of the ship, though no failure of calls had been made by the member, and the loss of the vessel could in no way be attributed to the infraction of the club rule on the subject; which was to the effect that any mortgagor of a ship seeking to be insured in the club was bound to obtain from the mortgagee a guarantee that he would, if called upon, pay the calls in respect of the mortgaged ship. (*Turnbull* v. *Woolfe.* Appeal to the Lord Chancellor from Vice-Chancellor Stuart's decision, which it reversed, Nov. 1863.)

Advantages of the Mutual System, and their contrary

In considering the advantages and disadvantages of a system which has now attained a large proportion in this country, we may classify them in somewhat the following manner. First, the benefits may be reckoned.

The mutual system affords an immediate and local means of effecting an insurance on the shipping of the place or the district.

It has become a necessary adjunct to the Insurance system of London and a few great centres, inasmuch as there has been, and is, a growing disinclination, with underwriters to insure the bodies of ships, especially the smaller vessels; some underwriters and some insurance offices declining this business altogether.

The subdivision of payments which take the place of premium has the advantage, real or imaginary, which

people find in paying by instalments. It has the real benefit of a deferred payment. With the insurance companies, and on cash accounts at Lloyd's, the payment on a time policy is immediate. A member entering his ship in a club will, on the contrary, make no payment for a portion of the year, and several of his instalments will be dispersed through the following financial year; giving him an average credit, we may calculate, of twelve months. He consequently saves in interest to that extent. 10*l.* 10*s.* paid on the 1st of January is equal, with money at 5 per cent., to 11*l.* 0*s.* 6*d.* by the 31st of December.

As long as the interests of a club are local, a point I have already impressed as vital to its success, there is the great advantage of a personal acquaintance by its members of all the ships admitted to share in the mutual indemnity. The members also knowing the peculiar dangers of locality, season, &c., to which their shipping is liable, are able to legislate by restrictions as to places, seasons, and cargoes carried, so as to avoid perils which those ignorant of the coasts and local elemental disturbances would run into. Also by having their own surveyors, or sending one of their own members to superintend when ships are injured or in difficulties, an extravagance of expenditure is avoided. It is the personal character of associations which is one of their most valuable distinctions.

Against these benefits may be enumerated some dangers and drawbacks. Foremost, perhaps, that of mutual jealousy or distrust; the fear or the belief that partiality and favouritism prevail with the managing committee, in

the shape of allowing the claims of some members and disputing or disallowing those of others.

There is the danger also of a litigious spirit springing up in an association; and, instead of the club working harmoniously, of every act being scrutinised in the most legal manner: although the mainspring of such societies being reciprocity, it would be supposed that a more liberal and neighbourlike way of conducting business would be adopted.

There is the risk from the ambition of the members to enlarge the club, or the desire of the manager to increase his *ad valorem* remuneration, of the association breaking through the safeguard of locality, and taking in ships from all places, about which and their owners the club has little or no intimate knowledge; thus converting the society into a mere ship-insurance company, without having, after all, that general and practical knowledge which the established insurance offices and the professional underwriters at Lloyd's possess. As the result of this and other blunders, members in some associations find, to their cost, that their mutual club is far more expensive than insuring with underwriters would have been, and that calls amount in a single year to 20 or 30 per cent.

The last and most important danger besetting almost all Marine Insurance Clubs, is their withdrawing themselves by the shield of the 'arbitration clause' from the action of the law. Unquestionably the arbitration clause has its advantages, and frequently prevents litigation; but it is a very serious objection that the legal remedy of

members, the appeal to the laws of the land in support of what they esteem their just right, should be thus taken from, and legal remedies become inoperative to, them, except through the preliminary process of arbitration; and even, after that condition precedent, only to be used to enforce an award made.

These remarks are not by any means made in the spirit of an alarmist, but merely to point out a danger which should be considered by persons about to cause themselves to be insured in a mutual association.

For, I repeat, these associations have become not only a great convenience, but a necessity. They may still increase in number and in the extent of their operations; and it is well that their principles should be well considered and understood, so that their efficiency and stability may be secured in the largest degree possible,—

> That future pilgrims of the wave may be
> By doubt unclouded, and from danger free.

CHAPTER XI.

ON THE CONFLICT BETWEEN LAW AND CUSTOM.

Universality of Custom

In all trades, mysteries, and professions, in fact, in all the pursuits and activities of men, we observe a guiding and restraining power acting on and influencing both the worker and his work—and this influence is custom. The laws of all nations, too, have their origin in custom. Before men learn the use of letters, or discover how to chain thoughts in visible symbols, the instinct of order makes itself felt in the form of rules generally known and acknowledged throughout the community. Without them the multitude of men would be, not a society, but a herd: and the most savage tribes are not without regulations, however primitive. When Cadmus and Themis enter any land, they find there Custom already seated on a lowly throne. As society advances, laws, at first orally proclaimed, are added to the customs of the land. Then the art of writing is acquired, and some of the customs or common laws are collected and perpetuated in part; whilst others continue to live in a silent method, a proverb, a distich, or a name. The Manx 'breast-laws,' which were committed to writing for the first time only a few years ago, were an instance of customary laws remaining in activity long after written

law had been promulgated and statutes enacted. And although customs are in part superseded by written laws, those laws themselves were at first but the fixing of prescriptive uses—the *ultra tritavum*—and ran parallel to those rules, which were afterwards often useful in interpreting or supplementing the laws. Thus, in agriculture, a lease is to be read with reference to the 'custom of the country,' or 'of the manor,' in which it is granted; and these customs take such hold, as it were, of the soil, that the difficulty is known practically of enforcing a system of farming contrary or different to the custom of the country.

The common laws of our own country, first collected by Alfred in his 'Dome-book,' and again promulgated with additions by Edgar and Edward the Confessor, are judiciously surmised by Blackstone[a] to be named common, because, unlike the partial systems of a divided England—the Mercian law, Danish law, and West Saxon law; and contradistinguished from special systems, as the civil law, the law-merchant, custom of London, &c.—they were applicable generally to the entire country. They were common to all the realm. The same great writer also observes on this subject that 'it is one of the characteristic marks of English liberty that our common law depends upon custom, which carries the internal evidence of freedom along with it that it probably was introduced by the voluntary consent of the people.'

It does happen that, through long lapse of time, a

[a] Blackstone's Comm., book i.

divergence, very small at first, between custom and the law growing from custom, proceeds so as to destroy the parallelism of the two; and this divergence may continue till ultimately a circularity results from it, and custom and law find themselves opposed to each other. Hence a conflict. Custom cannot be often the aggressor, for she believes herself to be walking in her old paths. That custom should have any force in law two things are necessary: first, that the custom be proved to exist and be certain; and to do this, it must be consistent with itself; for if two opposing customs are alleged on one point, the law decides that there is no custom; secondly, that the custom be known to those whom it affects. But here the ground is open for proof as to whether the person affected by custom took any steps to acquaint himself with a custom that is notorious, or could be known by enquiring with ordinary diligence.

In the case of *Turnbull* v. *Woolfe*, Vice-Chancellor Stuart said of a rule or usance in a mutual insurance club, that the effect of that rule was so dangerous, that the club must show that the party to be affected by it knew the rule, or had distinct notice of it; and that showing a constructive knowledge of the rule would not be sufficient.

When the law acknowledges the existence of a custom, it defines and limits the office of custom in somewhat the following manner. Custom may interpret law in a part that is doubtful; explain it where it is obscure; fill up where a provision is vacant by omission. In doing this, however, custom must act in conformity with the general

tenor of the law on the subject in question. It is not to supersede or override law, or be pressed to the defeasance of a legal right—as in opposition to the terms of a written contract, or any other thing that is legally clear in itself. 'Custom,' said Lord Kames, 'ought to have no weight when inconsistent with equity.' '*Malus usus abolendus est.*'[b] Nevertheless, there are some customs so established or privileged as to have the full force of law, and which must be acknowledged as law. 'Such,' says Blackstone, 'are many particular customs within the city of London, with regard to trade, ... and a variety of other matters. All these are contrary to the general law of the land, and are good only by special usage; though the customs of London are also confirmed by Act of Parliament.' He adds, 'Then there is to be added to this category a particular system of customs, used only among one set of the king's subjects, called the custom of merchants, or *lex mercatoria*; which, however different from the general rules of the common law, is yet engrafted into it and made a part of it; being allowed, for the benefit of trade, to be of the utmost validity in all commercial transactions; for it is a maxim of law that "*cuilibet in sua arte credendum est.*"' This generous sentence of ancient lawyers ought not to be lost sight of.

A system like that of Insurance, the very origin of which is obscure, and which we seem rather to have found by chance than to have created, is exactly one in which customs are likely to abound, and

Application to Insurance

[b] Litt. Instt. in Black. Comm., book i.

to be the rule by which its action is guided. The customs of insurance are its instincts, and they reappear after a more formal education and even repression. What assists to make custom influential in Marine Insurance, is the form of the very contract itself, on which all its engagements are founded. Antiquated, defective, tautological and contradictory, the language of the policy is the stammering utterance of a child, to which, however, heed is to be given, and which we are to endeavour to render intelligible by large allowance and necessary interpolations.

Custom of Lloyd's.

The general usages which guide the business of Marine Insurance are commonly known by the name of the 'custom of Lloyd's.' The expression is now rather too restricted; for so large a proportion of business is done at the offices of insurance companies and elsewhere, that what is done within the subscription room of Lloyd's, and the traditions which are current there, do not of themselves represent the business and opinion of the insurance world. The term 'custom of Lloyd's,' then, when employed in courts of law and elsewhere, is to be understood as referring to the usages prevalent in insurance business, wherever practised in England; but London having so long absorbed the greater portion of that business, and still giving the tone to it when transacted in other places, it may be proper to say that the custom of Lloyd's is the custom of London, in respect to insurance.

The great question to be debated hereafter is how far any received practice is entitled to the name of a custom.

If the practice be not very general, and also long in existence, it can hardly be called a custom, in the sense of entitling it to privilege or recognition in law: but is it necessary that a custom to earn its name be universal? And, secondly, are there any customs, in any department, that are universal, so as to have no exceptions? It would be bold to affirm that there are any such. The old Vincentian definition, What has been held always, everywhere, and by all, can never really find any counterpart. Exceptions are notoriously to be found for every rule; nor can it be affirmed of any custom or doctrine that it is universal, 'held by all,' till every individual in the 'all' has been canvassed and his suffrage taken.

I think we may safely say of the customs of Lloyd's, that there is not one which can be pointed out as universal and invariable. We must be contented with a lower definition, and instead of 'universal,' allow the name of custom to a practice which is notoriously general, and of long continuance.

It is very difficult to ascertain with great certainty the custom of Lloyd's. Custom is an impalpable thing, subject to changes working slowly in time, like the gradual change in a language; subject to fluctuations, acted upon by opinion, and invaded by exceptions. And yet, in spite of the difficulty of gathering so cloud-like an existence into substance, in spite of the difficulty of having instances of different or contrary practice adduced against a given custom, those conversant with the matter about which a custom obtains, feel as certain of the existence of a custom as they do of the

Difficulty of ascertaining Custom

reality of the air, though they cannot see it. But if to be a custom a usage must be universal and without exception, then we shall seek in vain for a custom in this or in any other subject. Then any individual refusing in any special case to conform to a custom has destroyed the custom, however long and widely spread it may have been. And any one acting in a particular case in a manner not according to general custom, has the power to vary the custom, to add to it, or to introduce a new custom. But, in truth, customs live on in spite of occasional variations and exceptions, as the ocean keeps its saltness and is still the ocean notwithstanding the rivers which pour into it. An absolutely invariable custom is rarer than the 'black swan' of the Latin syntax.

The office of laws in commercial matters, when they are other than for fiscal purposes, is to give effect to contracts and other engagements arising in mercantile transactions. They are the bulwark against fraud, but were never intended to impede trade or cast doubt on *bonâ fide* dealings; and even when made for the object of raising revenue, are clearly mistaken when their action harasses the general trade of the country, or any particular branch of its commerce. The late Chancellor of the Exchequer wisely withdrew certain stamps, though after some resistance, which he had imposed, when the united testimony of commercial men convinced him that their action was troublesome and vexatious, and impeded the course of business quite out of proportion to the amount of duty raised by their means. Sometimes even statute laws fall into desuetude and

Office of Law

oblivion from the almost impossibility of acting on them. A remarkable instance of this occurs in Marine Insurance. The stamp-duty laws require that every slip or label, on which underwriters by their initials accept a risk and engage to execute a policy when made out, should bear a stamp of the commensurate duty for the insurance agreed on or contracted for; but, as far as my knowledge extends, no person has ever used or seen a slip so stamped. The Distributor of Stamps in the City of London knows of no such stamp, cannot produce one on application: and this total disuse and ignorance is in the face of some express existing statutes. It is the custom, and has been one so long, 'that the memory of man runneth not contrary thereto,' to make and use unstamped slips, and in this case custom prevails.

Sometimes laws fall into partial or entire desuetude from the inability of the executive to enforce them, or even ascertain their infraction. The office of informer, being one detestable in the eyes of Englishmen, was abolished or no longer encouraged; and without information many regulations cannot be enforced, because they are not open and obvious, but the infraction remains in privacy. Again, enactments are broken or overlooked through the haste of business or the innocent ignorance of those who break them. An example illustrating both these positions is easily found in Marine Insurance.

Under the stamp-duty laws every ship-or-ship's policy, or open policy on which declarations of interest are to be made, is only available in a court of law if each separate interest declared thereon pays the duty

Faggot Policies

on each hundred pounds of value, and the full duty for 100*l.* on each fractional part of 100*l.* An interest of 110*l.* must pay duty as for 200*l.* If nine separate interests of 110*l.* be declared on one policy, making the aggregate of 990*l.*, the necessary duty is not that on 1,000*l.*, but on 1,800*l.* Yet in practice this rule is scarcely observed, and half the policies of this kind effected, probably, are bad in law, and if brought into court might be challenged as illegal under the Stamp Act. How does this happen? Not often from a conscious determination to defraud the revenue, but generally from the ordinary course and necessities of business. As far as the broker is concerned, he inscribes on the policy the declarations of interest sent to him by letter or memorandum. His office is ministerial, and he has no means of knowing whether the goods so declared are really one interest, or whether, from some difference in circumstances, they would be separate interests. The underwriter knows even less. The declarations are very commonly sent up by an agent or a corresponding house of the assured, and he would probably, in the majority of cases, be unable to decide as to identity of interest, even were his attention called to that point, for the question is one of ownership—one which, from the system of mercantile business, is very intricate. Here, notwithstanding the *bona fides* of the parties concerned, insurances are constantly in conflict with the revenue laws, and those who effect them are liable to penalties. But commerce hastens on, without time to discuss fine points of casuistry; and these bad policies answer the intentions very well of those concerned in

them; and there is no penalty because there is no informer, and if there were, he would require a fine nose to draw such a cover.

The Act of George II. prohibiting certain methods of insurance, under the name of 'wagering policies,' brings several perfectly innocent and customary forms of insurance into conflict with the letter of the law. One of these is the effecting a policy without inserting the name of the assured; another, making an insurance in which the policy is agreed to be proof of interest; a third, effecting insurance on interest, 'free from average, and without benefit of salvage:' and there may be other forms of insuring, innocent and honourable as far as the intentions of the parties to them are concerned, but invalid and illegal by virtue of the Act above mentioned, which detected, in expressions such as have just been quoted, a covert form of mere wagering. Other Illegal Policies

The collisions described above may in part be considered circumstantial or accidental, but there lies beyond a conflict more real and obstinate between law and custom, and of which the Lloyd's, or 'common form' of policy, is the arena. Law persists in bringing to bear on this instrument all its general formularies and maxims, and interpreting it as strictly as it would interpret any contract in modern form. Custom uses the policy as an acknowledged though antiquated vehicle, on which, through long habit, it is convenient to hang the meaning and intentions of those who deal together in insurance, and who, whilst they employ this defective form, maintain that it is meant to be construed in the spirit of their intentions and

of commerce, rather than according to the letter of an unbending legal rule.

There has been a growing disposition during the last few years to disallow and ignore custom in the Marine Insurance cases which have come before our legal tribunals. There are tides in legal and judicial thought, as there are periodical oscillations in the sea and air, cycles of seasons, and driftings of popular opinion. At present the tide sets strongly against customs. In the meanwhile custom, repulsed and beaten back, reasserts itself after each rebuff with the tenacity of an osier-bed, which, cut down in the autumn, springs up as green as ever in the spring.

Hence it comes to pass that when a non-legal opinion is sought on some questions between the assured and the underwriter, the answer is not unfrequently that, 'according to custom and the practice of Lloyd's, the claim in doubt is, or is not, payable by the underwriter; but that, if litigated, the result would be probably the opposite one.'

One or two examples will suffice of this conflicting position.

The oldest known form of general average contribution is that of jettison; and there is a universal custom that the owner of goods which for general safety have been thrown overboard from below deck, receives back their value by the contribution of all those co-adventurers who benefited by the sacrifice. The policy of insurance contains among the risks which the underwriter undertakes, that of 'jettisons.' If A have goods insured by policy, and those goods be jettisoned for the

Jettison.

general benefit, by constant custom the underwriter on that policy is only asked to pay his *contribution* to the jettison. Yet if the law were to be pressed, it would allow A to recover the loss of his jettisoned goods from the underwriter, and leave the latter to recoup himself as he could by demanding contribution. This we admit is, with regard to law, a plain logical position. The questions for a jury are these: Have these goods been totally lost? Are these goods insured by this policy? And the two affirmative answers conclude the case, and leave no room for a custom of contribution to be adduced so as to affect the verdict or arrest judgment. In explanation, a judge would say, 'Here is an express contract; and among other provisions the contractor engages to protect the assured from loss by jettison. The question is within the four corners of the policy, and we can look no farther; a jettison of the goods insured has taken place, and the underwriter must pay.' But farther, though 'jettison' were not expressly named among the risks accepted by the underwriter, he would equally be liable to make good the assured's loss; for jettison is only one form of loss, and the underwriter is engaged to protect the assured against loss. If A shows that his insured goods have been lost to him entirely during the voyage, in consequence of sea-perils, it is no answer for the underwriter that the particular form of that total loss was the species called jettison.

There seems no escape from this reasoning: but the resort to legal right on the policy has seldom been made in this matter, and custom has usually taken its course; one cause

for which is, that the value recoverable for goods jettisoned under the ordinary practice, is their full market value at the place of their intended destination, and this is generally larger than the sum insured in the policy.

But there are two cases in which it may be advantageous to the assured to claim jettison directly from his underwriters:—1. In event of the failure or insolvency of the person collecting and paying the jettison; 2. When, from falling markets, miscalculation, and other causes, the value insured is in excess of the value recoverable by contribution; viz. the value in the market. In one article, cotton, we have not unfrequently seen latterly a difference of half the value between the sum insured and the net market value. When this occurs, the merchant asks whether he is not entitled to receive the value of his lost goods as stipulated in the policy, either by claiming the entire loss from the underwriters direct, or claiming from them the difference between the value fixed in the policy and the sum made good to him in general average contributions. These are questions which have drawn forth doubtful answers. Underwriters have given a customary refusal on such a claim being made, but the subject will inevitably some day come prominently before a legal tribunal for solution.

Here is another subject, which looks different when viewed in a practical and in a legal light. The case of disagreement is this:—A vessel meeting with damages from sea-perils, puts into a port of refuge for repairs. On examination, she is found to possess, besides the sea-damages, defects and deficiencies

Constructive Total Loss.

of a kind for which underwriters are not liable. On an estimate being made of the entire expense necessary for thoroughly repairing the ship, and sending her forth again in a seaworthy condition, it is found that the estimated expenditure equals or exceeds the value of the vessel, in that port, after the repairs should have been effected. This being the case, it may be a very prudent thing for the owner to sell the ship in her damaged condition in preference to undertaking the repairs and consequent expenses. Here concurrent causes of two species lead to the loss of the ship. A sound vessel would not have perished from the actual sea-damage; and without the sea-damage, the ship with all her inherent effects might have kept the sea and completed the voyage. It is the case of a man already weakened by disease who meets with an accident and dies: the accident proves fatal because of his previous condition of health; yet, without the accident, he might have lived on for awhile.

The independent but non-legal view of this position is that the underwriter should not be held liable for a total loss led to, in part only, by the perils against which he protects the owner; and this view is strengthened in proportion as those perils have played the less part towards the result. Carried into a court of law, an owner nearly always succeeds in his claim against the underwriter; he establishes a *primâ facie* cause against the underwriter for going into port, and a necessity of repairs, and the concurrent defects and damages not depending on sea-perils, do not prevent his recovering on his policy. Out of court, this would be a subject for a compromise on

the merits of the particular case; in court, the underwriter is made to bear the whole of the consequences of both causes producing the loss.

I consider this case of very great importance, as exemplifying the conflicting views of law and customary practice. And however much, latterly, common law has been applied by some of our judges with regard to equitable considerations, it has not in the present instance seen its way to the broader perceptions of commerce, and to a partition of results to their concurring but separate causes.

Carr v *Montefiore.*

The case now about to be mentioned is one in which common sense and a smarting feeling of wrong about to be done or permitted by law, untied, finally, a legal knot of some technical difficulty.

The contention in *Carr* v. *Montefiore* divides itself into two parts, and has been several times before the courts. The first trial has already been mentioned in these pages, and related to an alleged misdescription in a policy. The defendants, under wrong advice, maintained that the policy had been void *ab initio*, that no risk had ever applied to them, and they paid back the premium which they had received from the plaintiff into court The plaintiff took out the money so paid, and continued his action for damages on the policy, thus admitted by him, *ipso facto*, to be void. It must be remarked, in explanation, that had the defendants paid the premium direct to the plaintiff without the intervention of the court, and the latter had accepted it, the defendants would have demanded and received back the policy, cancelled. Thus there would have been no *chose in action*, and it is

presumed proceedings must have ceased at that point. The plaintiff obtained a verdict for a loss on the policy, the amount of which was found out of court, and the defendants moved for a new trial.

The cause was heard *in Banco* in the Queen's Bench, in November 1865, where it was fully discussed. Each judge in succession saw the anomaly, even the absurdity, of the position, and the Lord Chief Justice expressed with some indignation his sense of the injustice inflicted; but the rules of pleading were alleged to support the propriety of suing on two counts, and recovering in succession upon them, though they were, as Sir Alexander Cockburn expressed it, 'inconsistent and contradictory.' Another judge remarked that this incident in the law of insurance had embarrassed the courts ever since the time of Lord Mansfield; and the Lord Chief Justice added that this, and many similar cases, involved the most palpable and flagrant injustice. Mr. Justice Crompton, however, 'strongly felt the difficulty of deducting from a verdict on one count a sum of money paid into court and taken out on another count.' Mellor, J., admitted the fact that 'the plaintiff had put the money into his pocket, and the court could not see their way to putting their hands into his pocket and taking it out again.' After an animated conversation, in which bench and bar took part, the court took time to consider their decision. It is satisfactory to know that in the result legal difficulties, however obstinate, gave way before the urgent voice of justice; and the sum taken out of court on the count of premium returned, was allowed in deduction of

the amount found due on the policies by way of an average loss.

The original cause of the action was a denial by underwriters that the words, 'at and from' a port in the River Plate covered a cargo of guano which had put in there under average, and after a change of ownership, went on in the same ship to its destination. They maintained a customary use of the words 'at and from' as invariably implying the original shipment of a cargo, and that the definition was heightened by the additional expression printed in the policy, 'beginning the adventure upon the goods, &c., from the loading thereof aboard the said ship,' &c. But it was held that a more literal meaning must be given to the words: the voyage insured by the policy was from the River Plate, and although the cargo of guano had arrived there from the Pacific, yet, as to the underwriters on the policy, Monte Video was the insured *terminus à quo*. Holding, in consequence, that there was no risk, as there had been no commencement of risk, and therefore no insurance, the underwriters had been advised to pay the premium given them into court; the taking out of which by the plaintiff was the ground on which the after proceedings arose.

The 'Kensington's' Case.

We now come to the important case of *Harrison* v. *The Universal Insurance Company*, in which custom and law came into fair conflict. After a hard-fought battle of two days at *Nisi Prius*, the underwriters were defeated in their endeavour to set up a usage for their relief against a special description of damage.

The ship 'Kensington' on her voyage, and insured by the defendants, fell in with a heavy gale, during which she was hove down very much on her side, and from springing a butt or from violent straining, made much water afterwards. Having arrived at her destination it became necessary, in order to stop the leaks and make the bottom tight, to strip off her metal sheathing, which involved resheathing the ship with metal after the repairs and caulking had been done. At the trial, the underwriters pleaded that by long and general custom they had not paid for coppering and other repairs to a vessel below water unless she had struck on the ground, or on a rock, or other hard substance other than water. Submerged ice would come into the latter definition. The assured denied that the policy sanctioned any such exception to the liability of the underwriter, and denied also that such a custom as was alleged existed. The attack on custom was made in the form of ignoring it. A great number of witnesses were called for the defence, —underwriters, managers of Marine Companies, surveyors, and average adjusters. They all concurred in pronouncing for the custom claimed by the underwriters. All were *homines experti*, of extensive and long experience, and, according to the old legal maxim, that every man is to be credited in what concerns his own calling, their unanimous testimony was entitled to respect. Though all concurred that the alleged custom existed, yet the perseverance of the plaintiff's counsel in cross-examination forced each witness to recall some instance where such a claim had been admitted, or had been

allowed in part, or by way of compromise; and though each witness in adducing the few examples contrary to the custom did so, as it were, under protest, yet the evidence was defeated in detail, and the jury's finding was that no custom existed such as was attempted to be set up by the underwriters. It is to be observed, even at the expense of repetition, that all the witnesses distinctly affirmed that the underwriter's custom prevailed; yet each, when his memory was stimulated, could remember, during prolonged experience, an exception or two to the rule, cases wherein the *custom had been departed from* for special reasons. By the indefatigable industry and perseverance of the cross-examiner each portion of an evidence, generally unanimous, was broken down and discredited. The custom had been shown to be general and the exceptions few; but what was insignificant seemed to outweigh with the jury that which was abundant. Instead of the exceptions proving the rule, they destroyed it.

We are led to infer from the result of this trial—First, that, in future, a trade custom cannot be established; since there is no usage, however old, however widely spread, to which an occasional exception cannot be adduced. And it will depend on the determination and perseverance of counsel to bring out, and force into prominence, the exception to the overthrow of the rule, by the method of proving the non-existence of usage where there are any exceptions.

Secondly, it leaves the question still open, whether an established custom would have the effect of contravening

or varying the words or inferences of a written contract. Had the defendants in the 'Kensington's' case succeeded in establishing the custom that underwriters did not pay for damages to a ship below load water-line, except she had been in contact, &c., there would still have been the contest whether that custom was stronger than a contract to indemnify the assured against 'perils by the seas, . . . and all other perils, losses, and misfortunes,' &c.—the policy of insurance being such a contract.

And, thirdly, one cannot help feeling grateful to the litigants in *Harrison* v. *The Universal* for the authoritative overthrow of one of the most childish and impertinent of maxims, *exceptio probat regulam* — 'the exception proves the rule.' Here, manifestly, exceptions destroyed the rule; and in all cases every additional exception to a rule detracts from the force of the rule, because it lessens its universality. Yet people repeat this silly saying, as if it contained the profundity of wisdom. If it were worth inquiring into, it would be seen that its only strength lies in a logical quiddity. Thus:—

An exception is a deviation from a rule.
For a deviation to exist a rule must pre-exist.
Therefore, if there is an exception there must be a rule.

But practically exceptions are antagonistic to rules.[c]

A succession of three trials having much in common amongst them, has also brought the custom of Lloyd's

[c] Even the Greek paradox, that 'a Cretan said, all Cretans are always liars,' would have fallen instantly to the ground if the exception of this truth-telling Cretan 'proved the rule.'

strongly before the courts, but in a more incidental manner than did the 'Kensington's' case. The first of these, *The Great Indian Peninsular Railway Company* v. *Saunders*, called for brevity *The Bombay's Case*, related to a cargo of iron, warranted in the policy 'free from particular average.' The ship in the early part of the voyage from London to Kurrachee, having been reduced by sea-perils to a state of almost innavigability, put into Plymouth, when the cargo was discharged, and the vessel being in so wrecked a condition could not proceed to the completion of her voyage, and the voyage was consequently abandoned by the captain and owners. The latter had already received part of the freight of iron in advance. The cargo was subsequently sent on by other ships to its destination. The proprietors of the iron claimed the cargo's quota of general average on their policy, and they also claimed to be paid the excess freight which had been necessary to get the cargo on to Kurrachee; for the conveyance by the re-ships had been higher than the original freight per *Bombay*. The underwriters refused to pay the extra freight, pleading that it was particular average, and that by the policy they were free from particular average, and the iron was in perfect physical safety at Plymouth, and would have continued so. Also, that if the assured had elected to sell the iron there, instead of reshipping it, no loss would have been claimable from the underwriters, because the article remained in specie, and would have so continued to remain. The assured contended that the expense of carrying forward the iron

Particular Average and particular Charges

was not 'particular average' but was to be classed as incidental or 'particular' charges. The underwriters succeeded, and the result became law, but it occasioned many and obstinate discussions, and a disturbance in the customary method of adjusting claims on underwriters in similar cases.

There was still a point left undecided, and that was, whether the underwriter's arguments would apply to goods 'free from particular average' but perishable in their nature—the interest in the 'Bombay' having been imperishable. To determine this issue, the cause of *Booth* v. *Gair* was tried, in which the insured interest was bacon, a substance very liable to corrupt and decay after being wetted with sea-water. In other respects the circumstances were similar to those of the 'Bombay.' The vessel put into Bermuda, and could not proceed on her voyage. Some of the bacon was sold, and the rest was transhipped at a higher rate of freight, and arrived at its destination. The assured claimed to be paid the warehouse-rent, transhipping charges, and extra-freight. A special case was stated for the opinion of the Court of Common Pleas, and the Court, after hearing the arguments, gave judgment against the assured, and therefore in conformity with the decision in the 'Bombay's' case The plaintiff rested his claim to recover on the ground that 'particular charges' were a distinct title to 'particular average,' and that a policy warranted 'free from particular average' was not necessarily free from particular or special charges; for the latter went towards the conservation of the interest from total loss. His

counsel pressed the stipulation in the policy known as 'the sue and labour clause;' concerning the late use of which clause I am bound to say, with great deference, that persons have acted under a mistaken notion of its meaning, or at least its true intention, in the policy. In the course of the plaintiff's argument, Mr. Quain said, 'There was the *custom*, admitted in the case, by which the underwriters had always paid such charges. The custom did not contradict the policy, but simply explained the "sue and labour" clause.' In reply, Mr. Mellish, for the defendants, said, "With reference to the alleged custom to pay such charges, the law merchant could not be altered by a general, as distinguished from a local, custom (*Edie* v. *East India Company*, 1 W. Black, 295). The custom, no doubt, had arisen, not from the underwriters having intended to set up a custom varying the general law, but from their having supposed the general law to be different from what it really was.'

Yet in spite of these authoritative decisions, the question of charges on goods 'free from average' in a port of distress, was by no means set at rest. Neither could merchants, and even many underwriters, dispossess themselves of an old belief that 'particular average' and 'particular charges' were separate in their nature, and subject to different treatment. Specially, the charge of warehouse-rent for goods discharged at an intermediate port, with fire insurance whilst so stored, seemed to them not to be included in the idea of 'particular average,' which they held to mean injury to the thing insured itself; but rather that these two charges were for the protection of the goods

against total loss. Many merchants looked upon the underwriter's liability for such charges as an understood part of the contract of insurance; and some companies and many private underwriters continued to pay warehouse charges as they had done previously, while others introduced a clause to meet the case, making themselves responsible for certain expenses. Indeed, as a strange consequence of the judgments in the two cases cited, a clause was drawn up and is in frequent use which actually throws on the underwriter a greater onus than he was under before these causes were tried.

But, so far, the tendency of these decisions was against custom, either by disallowing or disproving it; and their effect was to put aside the ordinary or understood distinction which persons practically interested in Marine Insurance make between 'particular average' and 'particular charges.' The unsettledness of thought and practice produced in consequence, gave to the late case of *Kidstone* v. *Empire Marine Insurance Company* singular interest and importance. In the two former causes the subject-matter had been goods, in the present it was freight, which, being an immaterial interest, produced some new aspects in the contention. The ship 'Sebastopol' loaded a cargo of guano at the Chincha Islands for the United Kingdom. She met with serious damage in her passage round Cape Horn, and put into Rio de Janeiro, where the ship was abandoned. The master, in his discretion, chartered another ship to carry the guano to its destination; and his prudence and *bona fides* were not questioned, for the cargo arrived, and the freight on the re-charter was

less in amount than the original freight, so that no excess freight was thrown on the receivers of cargo, who only were called on to pay on the original agreement; and, looking upon the original freight as being lost, a saving was made for the underwriters' benefit to the extent of the difference between the first and second freight.

The underwriters grounded their defence on the presumption that the expenses of reshipping the guano, and of conveying it to England, were 'particular average,' inasmuch as they were charges; and the highest legal authorities had previously announced that they were not acquainted with such a head of insurance law, and knew only of two kinds of claim, viz. 'general average' and 'particular average.' As, therefore, their policy was warranted 'free from particular average,' it followed that it was free from 'particular charges,' which were, in this view, 'particular average.'

The plaintiffs depended on a certain stipulation in the policy named 'the sue and labour clause;' one which I verily believe has little bearing on the question at issue. Mr. Justice Willes, in his elaborate judgment, exhausts all that is to be said about the 'sue and labour' condition, and showed that, even without abandonment, the means taken to avert a total loss of freight from underwriters were charges for which they were liable, even on a policy 'free from particular average.' By whatever train of reasoning arrived at, the result was highly satisfactory. A contrary decision would have violated our primary notions of justice. The case comes to my mind in even a stronger and simpler form. The non-material nature of

freight makes it distinct from substantial interests. If a freight cannot be carried—if the voyage, by sea-perils, is frustrated—the freight ceases to exist. The freight is a thing living in the future, in the completion of the voyage. Cut off the future by the loss of the ship, and freight is destroyed. At the time the captain determined to send on the cargo to its destination he devised a plan to save the cargo, and at the same time to effect a saving to the underwriters of freight. The original freight had perished by the perishing of the ship, but he revived a part. The means whereby he effected this salvage were, therefore, not 'particular average'—they were steps taken on behalf of the underwriters of freight by which, in a total loss of freight, a rebate or salvage was effected for them The claim in this instance was really a total loss, in which the good sense and judgment of the master prevented its monetary entirety from falling on the underwriters.

And this is quite in analogy with other total losses with salvage on goods warranted free from particular average. If a cargo of salt, discharged at an intermediate port, wetted by sea-water, is in a state of deliquescence, and what still remains of it undissolved is sold because it is perceived that its total disappearance is only a matter of time, and must be accomplished before the voyage can possibly be completed, the proceeds in money are given to the underwriter on the salt: they do not frustrate the assured's claim as for a total loss; he receives them as a sort of brand out of the burning—a salvage in a loss that was in its character total, and would, if left to its own progress, have been entire.

In the course of his luminous judgment, several sentences dropped from the lips of Justice Willes having an immediate bearing on the subject of this comment. He said, 'Hitherto we have only adverted, in passing, to the evidence and the finding of the jury upon the understood meaning, in the business of Marine Insurance, of the phrase "particular average." If necessary, we should have been prepared to hold that the evidence established an understood meaning, according to which particular average *does not include* particular charges, and to act on such usage is equally sound with the express part of the contract.' And, 'It is satisfactory, however, to think that in arriving at this conclusion' (judgment for the assured) 'upon the meaning of the contract into which the defendants have entered, we are deciding also in accordance with the approved usages of commerce.'

Sweeting v. *Pearce*

In *Sweeting* v. *Pearce* (Error, Exch. Chamber), the question turned on an alleged custom of Lloyd's and of the plaintiff's knowledge or ignorance of such custom. This case was three or four years anterior to the one last cited. The existence and effect of a trade custom was not denied, but various limitations were laid down to its operation. It must be known to the party affected by it Justice Wightman said, 'It was held in *Gabay* v. *Lloyd* that the usage of Lloyd's was not such a general usage as could be considered either to bind or to give notice to all the world that such an usage did exist.' It must be a good usage. Crompton, J., said, 'The case of *Brown* v *Burn* is very well decided, which shows that usage of a particular trade may be introduced

in the contract where the usage is a reasonable one. The editor of the third edition of 'Arnould on Insurance,'[d] commenting on the remarks of Baron Bramwell in the same case, says, 'The result of these remarkable observations of the learned judge is that the presumption of law as to all cases is directly contrary to the usage of Lloyd's, and that this usage is not allowed to be binding in any case unless there be facts evidencing assent on the part of the assured sufficient to rebut that assumption.'

I confess I do not perceive so sweeping a sentence against custom in the judgments as that expressed by Mr. Maclachlan, though they certainly exhibited an *animus* to depreciate trading customs, or, at least, to keep them under great control.

The 'Iris'

Again, *in re Arbitration between Delcomyn, Badart, and Brook* (Com. Pleas, in Banc. 1864), the custom of London was pleaded in defence of a deviation by arbitrators from a common rule of law, defending such deviation as being customary with 'the way it was usual with trade arbitrations in the City of London.' But the Lord Chief Justice ruled that the award must be set aside. 'He might say that he had an extreme desire to support the usage of merchants engaged in the seed trade, and to give effect to their arbitration, unless a principle of more importance compelled him to upset their conclusion.' But 'the decision of the umpire had been arrived at contrary to known principles of law (that of hearing the evidence of both sides). It had always been

[d] Maclachlan's Arnould, p. 185.

recognised as a great principle of justice that a tribunal must hear both sides,' &c. Thus an alleged custom (even if it really does exist in London) cannot be allowed if it be a bad custom, and in violent opposition to what is plainly just and legal.

If, however, the mercantile world and the microcosm of Lloyd's feel at all disheartened by the above two decisions, they will be relieved by the compensating judgment quoted above in *Kidstone* v. *Empire Marine*, delivered after both of them, but which does not, in truth, conflict with either of them. Indeed it does not require any great amount of ingenuity to bring all the cases, including the *Bombay's* and *Booth* v. *Gair*, into a great, if not a complete, degree of harmony; and every candid thinker will be ready to consent that when a small special usage comes into direct conflict with a great and established rule of law, it is the former that should give way when reconciliation is impossible.

Yet we have to admit that custom and law are in occasional conflict; and this sometimes happens inasmuch as the decisions of law, at times, conflict with themselves, and then it may be beyond the office of custom to reconcile them. We considered in an earlier part of this volume the implied warranty of seaworthiness in a ship insured for a voyage, and the non-implication of seaworthiness in a ship insured for time, though both ships might commence their risks and their voyages at the same time and from the same place. This is a great anomaly, but at present it is the law. To cut this knot, a colonial insurance company has, I observe, introduced the follow-

ing clause :—'The policy for hulls of ships is issued on the same conditions as to seaworthiness as a voyage policy.' Here, whether the implied warranty be a judicious view of the law or not, there is an effort at consistency.

Besides unwritten customs, usages, and customary ways of settling and of looking at questions, all which make up the 'custom of Lloyd's,' there are in the Mutual Insurance Societies of shipping printed rules, intended to bind alike all the joint members of the association, and some of them claim to have usages not written, but which guide the conduct of business and settlement of claims on the club. It is quite right that law should look with some jealousy at these internal regulations, which may easily be made oppressive to members of the association; and especially as most societies of this kind, if they do not quite attempt to 'oust' law of its jurisdiction, and prevent an appeal to it by a 'suffering member' for his relief, certainly build up such a barrier by their 'arbitration clause,' as practically to exclude in great measure legal interference; and even in the choice of arbitrators, and the conduct of arbitration, some clubs affect to have usages—breast-laws, in fact—which exercise an important effect on the results.

And in respect to the printed rules of clubs, which are thus notified to the members, there may be stipulations to which the law would not give force, on the ground that they are in themselves detrimental to the public welfare, or partial or injurious to some of the members. It is competent to societies to make by-laws, but it is not

permitted to them to make by-laws which are dangerous to the lives, or detrimental to the morals, of the public, or of their own community.

In such cases, whether a court will uphold a custom, usage, or rule, or not, will depend whether the custom, &c., be a good or an evil one. There is, for example, a tacit agreement between the underwriter on a ship and the assured, that one-third part shall be deducted from the labour and materials necessary for the repairs of sea-damages, on the ground of melioration. Sometimes the repairs to a vessel produce much advantage to the owner, sometimes none; and occasionally, if the whole repairs were allowed him, he would be a loser on his ship in consequence of the accident. Yet, taking the mean of cases, it is believed that this practical arrangement concerning 'thirds' acts very fairly; so fairly, indeed, that the same principle is extended to all the interests concerned in a general average, when it happens that repairs made to the ship are to be repaid by general contribution. In this latter case there is no implied compact as to melioration; it is adopted simply as a usage, or practice, in adjusting the average. The customary view, then, of melioration, and the practice of 'thirding' repairs, is a good one; it is never disturbed or questioned by law, but it is upheld universally.

On the other hand, a custom, or even a rule, that seems highly inconsistent with equitable notions, will, as I have said, be questioned or upset in law. In *Turnbull* v. *Woolfe*, there was a rule of the mutual insurance club in which the plaintiff was insured, that any member of

the association who mortgaged his vessel must give notice of such mortgage to the club, and obtain from the mortgagee a guarantee that he would, if called upon, pay the calls as they were made and became due. The plaintiff gave notice to the agent of the club that he had mortgaged his vessel, but he did not procure from the mortgagee the guarantee or undertaking as prescribed by the club rules. It did not appear that any loss accrued to the members of the club from this omission, as the mortgagor, the assured, had regularly paid the calls as they were made; and it appeared that they were in no danger of losing by him, because if the ship were lost—which did happen—the club, in paying the loss, held in their own hands the means of repaying themselves any unpaid calls. Moreover, it did not appear that the association, through their agent, was informed by the assured of the mortgage, or had ever supplied him, or offered to supply him, with a form for the mortgagee to fill up with the required guarantee. The vessel was lost, and the club refused to pay the assured in consequence of his noncompliance with their rule. Vice-Chancellor Stuart made a decree in favour of the plaintiff; and remarked that a rule such as that before him was so dangerous to the assured, that to make it apply, due notice of it must be given to the person to be affected by it, and that a constructive notice would not be sufficient. He would not support the rule, as being against the safety of persons to whom it would apply. I have, however, to add, that on an appeal to the Lord Chancellor, the Vice-Chancellor's decision was reversed (Nov. 1863), on the ground that the rule was a

constitutional part of the mutual contract, and the plaintiff had failed to perform his part. Possibly his lordship considered also that the printed rules were a sufficient notice to members.

And sometimes a court of law will put a construction on a rule different from its literal meaning, to bring it into conformity with the general objects of the association using it, and in correspondence with general principles of equity. In the recent case of *Gray* v. *Gibson* (Com. Pleas, Banco, Nov. 1866), there was a rule, or engagement in the rules, that the calls made on the members should not exceed 20 per cent. during the year. The calls exceeding this proportion, the defendant, a member of the club, refused to pay the calls in excess. The court, however, gave judgment that all the members of the association were liable for the annual premium (in the form of calls) and for any further expenditure by the club. Here the strictness of the rule was relaxed by law for the benefit of those members who were sufferers by loss of their vessels or who might become sufferers. Had the rule been rigorously upheld, the purposes of the club—the indemnity of its members against losses—would have been sacrificed. This was not so in *Turnbull* v. *Woolfe*, where the upholding of a rule was for the beneficial working of the association, the interest of all; it pressed hard only on the individual, the suffering member; and very hard it would appear to him in his particular case, because no loss to the club had accrued, or could, as it happened, accrue, from his omission.

In conclusion, it may be enquired, what is to be the

final appeal, where the ultimate tribunal, from the conflicting authorities of law and custom, or from custom itself? Sir William Blackstone asks a similar question in respect to that wider range of 'established customs, rules, and maxims,' upon which common law rests; the authority of which maxims, he adds, 'rests entirely upon general reception and usage.' And it is on the same authority that the customs and usages of a particular trade, mystery, or corporate body depend, which trade, &c., is guided by established methods in its acts and manner of viewing things, whether those methods are written or unwritten. The great jurist proceeds: 'The only method of proving that this or that maxim is a rule of the common law, is by showing that it hath been always the custom to observe it. But here a very natural and a very material question arises: How are these customs and maxims to be known, and by whom is their validity to be determined? The answer is, By the judges in the several courts of justice. They are the depositaries of the laws, the living oracles, who must decide in all cases of doubt, and who are bound by an oath to decide according to the law of the land.'[e] Final Appeal

So, then, we are thrown back on the legal tribunals of the country to interpret and decide questions arising among those who deal together according to a customary manner. And this admits that there co-exist two systems —law and custom. The law necessarily looks obliquely and from a distance at the community which devotes

[e] Commentaries, vol. i.

itself to commerce under the guidance of that vague and shadowy code 'the law merchant.' The most acute judge, the most industrious counsel, may well be pardoned if after his best efforts he fail perfectly to apprehend that 'feeling,' those traditional ways of thought, those unexpressed understandings, that direct mercantile transactions 'with a touch that's scarcely felt or seen;' just as the astute merchant, with a keen and enlightened general knowledge of laws, will escape blame for not knowing the refined and intricate technicalities which are at the finger ends of the lawyer in constant practice. Some customs may offend the judge's innate sense of right; some may seem trivial, inconvenient, and others appear to him 'more honoured in the breach than in the observance:' 'so that the law,' says Blackstone, 'and the opinion of the judge, are not always convertible terms, or one and the same thing; since it sometimes may happen that the judge may mistake the law.' The judge's *nescio*, then, of a custom—his ignorance, for example, that there be any kind of claim against an underwriter except general average and particular average—need not be conclusive. Hobbes accused Sir Edward Coke and his cotemporary judges that they 'seldom well distinguished when there were two divers names for one and the same thing;' and perhaps merchants and underwriters in the case of 'average' might object of the judges that they did not distinguish that two or more things were yoked together under one name. 'Upon the whole, however, we may take it as a general rule, that the decisions of courts of

justice are the evidence of what is common law.' [f] And if common law, then of 'the perfection of reason,' as Selden and Coke affirmed it to be.

No doubt, the arbitrators' court, the *forum domesticum*, does much to prevent more lengthened and expensive litigation. And as the transient judges of these homely tribunals are for the most part the persons versed and interested in the very pursuits out of which the question at issue arises, they possess that intimate knowledge, that 'feeling,' which is so important a guide through an investigation to the correct result. Whether the 'law merchant' will ever have a more recognised position; whether regular tribunals of commerce, or those courts of conciliation which Lord St. Leonards recommended, in use in Sweden, &c, will ever be instituted, is a question which the future will decide. In the meantime custom will march in its own orbit—eccentric, it may be, or angularly inclined to the orbit of law—and they will do best who can best reconcile the two cycles, and prevent serious collisions. They will deserve most thanks from the numerous and important body to whose transactions the Insurance system is an ægis of safety, who perfect and verify 'the great system of marine jurisprudence, of which the foundations have been laid, by clearly developing the principles on which policies of insurance are founded, and by happily applying those principles to particular cases.' [g]

---

[f] Blackstone's Comm., book i.

[g] Ibid. vol. ii.

APPENDIX I.

NOTE ON EUROPEAN MARITIME COMMERCE IN THE FOURTEENTH AND FIFTEENTH CENTURIES — THE FLANDERS GALLEYS.

THE first known voyage of the galleys took place in the year 1317. The number of these vessels destined for the north of Europe varied in different years from three to five; the fleet does not seem to have exceeded at any time the latter number, and four ships was a usual equipment. The undertaking was jointly set out by the Signory of Venice and by private merchants there, but it was much controlled by the State, and the commodore who commanded the whole was appointed by the Grand Council. The galleys were put up to auction, but it does not appear what the exact process was. The ships belonged to the State, and the bidders would be the merchants who designed to ship the manufactures of Venice and the produce of the Levant to the north of Europe, and receive in return wool, cloth, wheat, &c. There was generally a prescribed route or course which the galleys had to take, and the entire voyage occupied nearly a year. They sailed from Venice by Capo d'Istria, Corfu, Otranto, Syracuse, Messina, Naples, Majorca, the principal ports of Spain, Morocco, and Lisbon. On reaching the English Channel, the fleet rendezvoused at Camber, before Rye, or in the Downs. The vessels destined for our trade then proceeded to Sandwich, Southampton, St. Catherine's Point (Isle of Wight), or London. For a time, viz. in the second half of the fifteenth century, London, strange to say, was scarcely visited; but at other periods the galleys sailed up the

Thames to our metropolis, where there was a factory of Venetian merchants and a consul. One of the wharfs or landing-places in Thames Street, eastward of London Bridge, still retains the name of Galley Quay. We may presume this to have been the accustomed spot where the Venetian merchants and mariners lay their ships and discharged and loaded their cargoes. The other portion of the fleet parting in the Downs, or at *Caput Dople* or *Doble* (query the Reculvers?), continued their voyage to Sluys, Middleburg, or Antwerp. They carried on a trading voyage as they proceeded, interchanging the commodities of one port for those of another. One of the first and most important articles they brought to England was currants from Patras. Their importation is mentioned as early as 1317. They were eagerly expected and largely consumed here. At Messina, the galleys loaded for our market sugar, molasses, comfits, and preserved fruits. It is made clear that the English people were ever lovers of sweet things. The Venetian ships brought also coral beads, Maltese cotton, yarn, silk yarn, saltpetre, glass and earthenware. They seem not to have omitted printed books, for in the year 1524, some officers of the galleys were arrested at a port of Spain for selling Bibles with commentaries there. Those of the ships which had discharged their foreign goods in English ports, loaded homeward cargoes, and the whole fleet reassembled at Sandwich or Southampton. They took back wool, hides, tin, and woollen cloths called 'Stamfords.' It is probable that the English exports included also coals, cheese, and lead; because these articles are mentioned in a French MS. of the thirteenth century as being sent by us to Bruges and Flanders. The coals, it is to be observed, are mineral coals—'*charbon de roche*'—and not charcoal, commonly called coals in earlier times. On the return voyage, the galleys distributed British productions in other places than Venice. Thus in 1466, one of them is by lot appointed to call on the coast of Barbary, and discharge their 'fine and other cloths and goods' loaded in England. One of the articles taken by the ships and mentioned

as early as 1272 and 1273 is '*Cambium*.' Mr. Brown suggests that this may be 'exchange metal of the sterling value:' but may it not mean exchange in the form of bills? Thus, at the former of the above dates, Venetian merchants going to France might carry *Cambium*, but not silver or gold; and they might receive it thence 'if for their advantage.' Bills of Exchange are mentioned as early 1394. One of them exists of the date of 1476. An account of the protesting a dishonoured bill is given circumstantially under date 1453, and several other instances are afterwards recorded of protest, in presence of a notary public; the rate of exchange of the day always being stated.

The galleys were invariably commanded by nobles, and the captains seem usually, on arrival in England, to have had an audience with the king. The last voyage made in vessels belonging to the State of Venice was in 1532; and during the 215 years under review, the regulations of the Signory, under which they sailed, were as precise and numerous as they were severe. The instructions, or rather commands, contained in the commission from the Doge to the noble Bortolomeo Mocenigo, in 1485, appointing him captain of the Flanders galleys, occupy an illuminated volume of 163 pages of parchment. The galleys were large, some of them of a thousand tons burthen and upwards. They were manned by a crew, and by 180 oarsmen, chiefly Sclavonian, to each vessel. They carried a military armament of thirty archers or arbalast men, commanded by four young patricians. By the instructions mentioned above, each of the galleys was to purchase 'in the West' four pieces of ordnance. The arrangements of the voyage, and probably the mercantile operations, were vested in the master, who may have had the character of super-cargo; but sometimes merchants are spoken of as being on board. There were, besides, a captain, an admiral, two physicians, musicians, two fifers, two trumpeters, and a notary public—a complete little community. I do not find any chaplain, however. The trumpeters would probably

be required for those 'letters of horning' which were part of the notary's public acts. The masters had also to engage, either permanently or on occasions, pilots, scribes, and handicraftsmen; and all the above functionaries, from the highest to the lowest, were paid by the master. A captain, whom the State appointed, was expected to keep three servants on board as his retinue. He might hold no share in the cargo. The commodore seems latterly to have attained the rank of admiral, a transformation we have seen take place in America during the late civil war. The galleys had *fore-castles*, and high castellated poops, such as we see in the old illustrations of ships, and in models of the Great Henry. In the poop was situated a State cabin, called the '*scandolarium*.' No goods were allowed to be carried in this place; and it was granted occasionally to some great noble of England or other Christian country, bound to the East, to join the holy war against the Turks, and who solicited the Signory of Venice to give him a cast as far as the Levant in one of their trading vessels going that way. Some kinds of goods were carried on deck, but not all. In 1449, a decree of the Senate prevented cloths 'and other merchandise' to be carried on deck. Another decree of the same year ordered that the freight on goods under deck, and on those on deck, should be at the same rate. Certain payments made during the voyage, presents to potentates, to facilitate trade, &c., were paid for 'by average,' that is, a rateable contribution on the property benefited. This 'average' is frequently mentioned in the Venetian papers relating to the galleys, and both the outward and homeward goods were generally made to pay their quota of it. The other vessels afloat beside galleys, mentioned in these papers, are 'coggos,' 'tarrits,' 'caravels'—the last principally Spanish—and 'galley-fusts,' which were vessels with three masts, but probably having banks of oars like the ordinary galleys. The commission issued by the Doge to the captain was in very solemn form, and contained those religious appeals which, it has been noticed in the text of this work, are intermixed

in the language of the existing policy of insurance, and also remain in the common bill of lading.

As the rules under which the galleys sailed and traded were exact and arbitrary, so the privileges granted to them were great. After their sailing from Venice or from London, the merchants were not allowed to ship other goods of the kinds carried in the galleys till a month or two months after the galleys' departure, that law being given them to secure their having a clear market. And even when the Venetians of the English factory had a surplus of goods which the galleys could not carry, and were allowed to ship them by Genoese, English, or other vessels, a freight upon such goods was given to the galleys as a bounty or fine. The earliest mention I find of insurances being effected on the Venetian vessels is in a decree of the Senate dated 17th of May 1470. After the year 1532 the State no longer supplied ships to the merchants of the Republic, nor interfered with the more usual courses of trade; and the Venetians' commerce was conducted by private, independent adventurers, of whom Shakspere has drawn a cotemporary picture in Antonio, and of the Jews who stood ready with the sinews of trade, in the person of Shylock.

Towards the close of the fifteenth century, and thereafter, the seas must have been studded with a considerable number of vessels of different sizes and nationalities; ships of war, armed ships engaged in commerce, smaller unarmed vessels, and every kind of piratical craft of Christian and Moslem. Looking to these predatory sails, white and many-coloured, that chequered and spread terror on the seas, we forgive Shakspere's wretched pun that 'there be land-*rats* and water-*rats*. . . . I mean *pirates*'—which he evidently intends to be pronounced 'pi-rats.'

The perils of the sea are at all times great and many; but four centuries ago they were greater in proportion to the numbers of vessels afloat, from the unscientific construction of the ships with so much top-weight, from an imperfect knowledge of navigation and hydrography, and from the deficiency of lights

and marks. In 1506, the trade to India was attractive; but Quirini, the Venetian Ambassador to England, mentions in a letter to the Senate, in which he relates his own shipwreck, that of 104 ships, which went the Calicut voyage, 19 were known to be lost, and of 13 more there were no tidings, and their loss was considered indubitable. This is a total loss of 30 per cent. of the vessels engaged in one trade. In 1499, the captain of one of the Flanders galleys writes home that he intends to take a pilot at Lisbon by reason of the dangers; as in November and December 50 ships have perished in those seas—by which he seems to mean the Bay of Biscay and the English Channel. The very place of the galleys' parting and rendezvous, the South-Eastern headlands of England, was singularly full of danger. There lay the dreadful 'Goodwins'; a very dangerous flat, and fatal; where the carcases of many a tall ship lie buried.'[a] And our 'narrow seas' with their stormy and changeable winds, currents, and cross-tides, roared their death-notes over the brave men and rich argosies who navigated hitherward; or drove the 'scarfed bark' into our bays and scanty harbours, and saw her

> return,
> With over-weathered ribs, and ragged sails,
> Lean, rent, and beggared by the strumpet wind[b]

But if the natural dangers of the sea were numerous, the perils arising from human agency were even more formidable and constant. To the galleys themselves a little piracy appears to have been allowed; and fighting, when attacked, was *ad libitum*. 'Kings, princes, and peoples' preyed upon the merchant vessels and their argosies at times, and did not leave the game entirely in the hands of 'pirates, rovers, and thieves' of a more private character. In 1478, we find the Signory complaining to the Duke of Burgundy that the king of France had taken several Venetian ships and had repeatedly waylaid the

---

[a] Merchant of Venice, act iii. scene 1. [b] Ibid. act ii. scene 6.

galleys which the State sent annually to Flanders and England. But at this time there was war between France and the Republic. Some of the encounters with corsairs became regular sea-fights. One of these battles, which took place in 1485, is of singular interest, for it brings us into the company of a great, adventurous man, in his earlier days—in the '*Sturm und Drang*' period of his life. The galleys, on their voyage to England, were attacked off Lisbon, on the 25th of August, by six pirate vessels, commanded by a dreaded corsair who was called 'The son of Columbus,' his nephew Christobal, the subsequently great admiral and discoverer, being himself on board the attacking ships. The name of Columbus had long been a terror to the Venetian traders. The 'Dove' was decidedly, at sea, a bird of prey. In 1469, the consul in London and the merchants there and in Bruges, wrote home a warning that the pirate Columbus (*i.e.* the father of the corsair above mentioned) was lying in wait in the Flemish Channel, with eight ships and bellingers, for the galleys; and as commercial navigation moved then at a leisurly pace, there was time for the subject to be debated in the Senate, and orders sent to England for all Venetian shipping there to place themselves under the convoy of the captain of the galleys, which were armed. Again, in 1470, the Venetian ambassador in France sent intelligence that the pirate Columbus was making preparation to attack the ships and subjects of the Republic; and in the precautions ordered by the Senate, in consequence, involving delay in sailing and providing a payment for the damage thus entailed on ships, occurs the interesting incident, that in so doing 'the insurances made on these ships are not to be considered vitiated.'

Washington Irving, who gives an account of the engagement of the 21st of August 1485, which he finds recorded in the 'Decades of Sabellicus,' and more fully by Garcia de Reesende, in his Life of John II. of Portugal, makes a doubt whether his hero, Columbus the discoverer, were on board his uncle's ship at the time of the attack; but the doubt rests only on a small

discrepancy of time, and a confusion about an incident which seems misplaced, and on the whole it appears to me not to shake the fact that Christobal took part in the action. He would be at the time thirty years of age. The fight lasted nineteen hours; 130 of the Venetians were killed, and many others wounded. The Genoese corsairs, or French, as they were called, then triumphed, and carried the galleys into Lisbon; and the captain, the two masters, and the merchants, were left by the pirate with scarcely clothes to their backs. One of the accounts of the capture sent to Venice, states that the masters of two of the galleys and other noblemen, with 300 of the crews, were killed. The very circumstance that Columbus the discoverer had finally left Portugal in 1484, is in favour of his being with his uncle, who fitted out his piratical squadron at Genoa. What would be more probable than that Christobal would betake himself, after leaving Portugal, to his own native state, and, being 'at a loose end,' accept service in his uncle's bold but indefensible adventure?

The Genoese pirate fleet having sailed under French colours, expostulations were made, and negotiations were set on foot by the Signory with the King of France, for the restoration of property captured from Venetian subjects; and the next year the pirate himself, Columbus junior, otherwise called Nicolo Griego, came to the French king with a view to arrange a compromise; apologising (according to the Venetian ambassador's account) for his act. The king gave sentence that the corsair had unduly captured the galleys, and that the loss of the Venetians was 200,000 ducats. As the exchange was upwards of 48 pence per ducat, this represents more than 40,000*l.*, a very large sum when we consider the equivalent of their money at the present day; one historian (Cobbett),[c] assuming for his estimates of property in England in Henry the VIII.'s reign, that money was twenty times its present value. A curious incident

[c] Hist. Reform.

appears in the course of the negotiations. The hulls and decks of the galleys taken were held to be good prize; and the Venetian Senate instructs its ambassador in France, that should he find it quite impossible to obtain indemnity for the entire loss, and that the French insist on deducting the two items of hulls and decks, the ambassador may allow a deduction of 50,000 ducats on this account, estimating the decks at 30,000 ducats —'although not really worth more than 20,000.'

The English nation themselves were inimical, at sea, to the Venetian traders. As early as 1319, a merchant-vessel on its way to Boston (Lincolnshire) to load wool, was attacked by British pirates in the Wash, and the captain of her lost his life. Three years afterwards, the galleys, in one of their first voyages, on arrival at Southampton became assailants, and an affray took place with the inhabitants, attended with serious loss of life. Three years after the Columbus attack, the galleys were attacked by three English vessels. Two of the crew of the former were killed and eighteen of the assailants. In this case, however, it seems to have been a quarrel involving national honour, the English claiming a salute, and on the matter being examined into, an easy compromise was recommended. That year, 1488, the galleys seems to have lived the life of the flying-fish, and to have found security in neither element. The Senate is informed by Pietro Malipiero, captain of the trading squadron, that twenty-five French ships, fitted out at Honfleur, and commanded by one St. Germani, were watching to attack the galleys. Then, in the Mediterranean, the indefatigable Venetians, in pursuit of commerce, had not only to encounter corsairs from the African shores, but they stood in danger of the Turkish flotilla, and had their disputes with the ships belonging to the Knights Hospitallers of Rhodes.

The policy of the Venetians being generally conciliatory and tending to material wealth, the captain in charge of the galleys had instructions to secure the favour of potentates and persons in high command with presents, by which means the merchants

procured privileges and escaped from difficulties. Such payments, made for the general advantage, or the safety of the adventurers, were repaid by an *average, i.e.*—a rateable contribution—from all the goods benefited. Many instances of this method of paying expedient outlays are mentioned in Mr. Brown's 'Calendar of State Papers;' and sometimes, still more to equalise the payment, both the imported and exported cargoes on the voyage requiring the disbursement, were made to contribute.

Whilst the Venetians were taking a strong lead in maritime commerce, other states and nations were doing their part. Genoa, Lucca, Spain, and Portugal, were sending their ships to sea. In the North, France and England had their shipping; and the shores of the North Sea and of the Baltic had not forgotten their ancient prowess in navigation. Common dangers beset them all. Genoa possessed, in the words of Washington Irving, an opulent and widely extended commerce, visiting every country; and a roving marine, battling in every sea. And he sums up, in his brilliant manner, the danger of the seas in the fifteenth century. 'The seafaring life of the Mediterranean, in those days, was made up of hazardous voyages and daring enterprises. Even a commercial expedition resembled a warlike cruise, and the maritime merchant had often to fight his way from port to port. Piracy was almost legitimatised. The frequent feuds between the Italian States; the cruisings of the Catalonians; the armadas fitted out by private noblemen, who exercised a kind of sovereignty in their own domains, and kept petty armies and navies in their pay; the roving ships and squadrons of private adventurers, a kind of naval condottieri, sometimes employed by hostile governments, sometimes scouring the seas in search of lawless booty;—these, with the holy wars continually waged against the Mahometan powers, rendered the narrow seas, to which the navigation was principally confined, scenes of the most hardy adventures and trying reverses.'[d]

[d] Life of Christ. Columbus.

But out of such a turbulent school came the navigators who were shortly to open new oceans, and enlarge the world. Seven years after the attack on the Venetian galleys described above, Columbus sailed from Spain on his memorable first voyage; and he conducted his discoveries, it would seem, in large but undecked vessels. A few years saw the eastern shores of America rising out of the mists of the obscure unknown. One more step in time, and the western shores were reached; and not very long afterwards the Spanish galleons were yearly pursuing their timid, solitary path across the Pacific, between the Spanish Main and the luxuriant islands of the Philippines.

A survey of the articles dealt in by the Venetian merchants in the fourteenth and fifteenth centuries is highly interesting, and the catalogue of goods is larger than would have been thought probable before the list was collected by the diligence of Mr. Rawdon Brown, from whose 'Calendar of State Papers' I have derived most of the facts which are here presented in a condensed form.

Sugar was then, as now, a 'leading article.' Brown and refined sugar, together with molasses, comfits, and sugared confections, were brought from Sicily. Sugar was also imported at Venice from Cyprus, Alexandria, Syria, Valentia, and other places. The wide-spread habitat of the cane was as striking then as it is at the present day. In 1450, according to the MS. diary of Marin Sanuto, dated 1496, the island of Madeira was discovered, and was also found to be a sugar-producing country. In 1486, *i.e.* six years before the first voyage of Columbus, so large a quantity of sugar was received thence in Venice as to cause a serious fall in the price of sugar from other countries. Five or six ships, caravels, or barques, arrived annually in Venice from Madeira with sugar, each bringing from 200 to 500 butts.[e] In England, the sugar of Sicily was preferred.

[e] It is difficult to reconcile to this statement Humboldt's assertion, that no inhabitants were found in Madeira by Gonzalves and Tristan

From the same island came also dried prunes, saltpetre, spun cottons, Maltese cottons, raw silk and yarn, and the coral beads called 'Pater-nosters.' From Venice itself came manufactured silks, damasks, satins, embroidered silks, and the fine silken stuff used for ladies' wimples. The brighter coloured silks, though dyed in Venice, were procured from Persia, Turkey, Greece, Sicily, and parts of Italy. I would here remark, that coloured satins appear to have been used in Britain in very early times; for in the ancient Welsh work called the 'Mabinogian, or Red Book of Hergist,' translated by Lady Charlotte Guest, it is mentioned in one of the Athurian stories, that yellow satin was worn at the king's court. The Venetian silk manufactures date from the year 1240.

The entire number of articles of commerce introduced into England by the Venetian galleys, as tabulated by Mr. Rawdon Brown, are eleven descriptions of raw material and manufactured goods, principally fibrous; twenty-one kinds of spices and the finer drugs; and about thirty of groceries (*specie grosse*). The catalogue of the last division is, however, of the most miscellaneous character; for it includes not only objects as different as brown sugar and wine, but takes in seed-pearls and elephants' tusks; staves for bows, and glassware; printed and MS books, and illuminated works. The sixty-two enumerated articles were brought either direct by the galleys from the place of their production, as the Sicilian merchandise; or they were procured by other of their galleys which traded to the Levant, to Alexandria, and the coasts of Syria and Turkey. Venetian merchants appear to have travelled inland to Aleppo and Damascus.

Aleppo seems to have been much frequented, and was

Vaz, in 1519, or by Robert Macham and Anna Dorset, at an earlier time, supposing their romantic story to be historically true (Cosmos, Notes to vol. ii.). The latter fact would not of course militate against probability; for it was about 1320 when the lovers were driven in their boat to the sheltering isle of Madeira.

reached by caravan probably from Alexandretta, as at this day. The name was well known in England in Shakspere's time. He makes one of the witches in Macbeth say, 'Her husband's to Aleppo gone.' Of the merchandise so brought by the galleys from the Levant to Venice, and there transhipped to England, some goods were the products of the places where they were procured by the merchants of the Republic; as the malmsey from Candia, and the wine from Tyre, named in England after the place of its growth; currants from Patras, rhubarb from Constantinople, &c.: but other articles were productions brought from India and distant eastern places to the emporia frequented by the Venetian traders. Persian silks were found at Aleppo; the ginger and pepper of India, and the cinnamon of Ceylon at Alexandria and Damascus; galangal (mentioned by Chaucer in the fourteenth century) from India; camphor from Borneo; aloes from Socotra; sal ammoniac from Egypt; gum-arabic from Arabia; pearls from the Persian Gulf, and ambergris from the shores of the Indian Ocean, were purchased at the same great centres of trade, Damascus and Alexandria.

Besides the imports to England above mentioned, the Venetian galleys brought special objects for the Flemish market; as ostrich feathers, cardamoms, and alum for Bruges; Sicilian sulphur, diamonds, rubies, turquoises, and large pearls, &c., for Antwerp.

The exports from England taken by the galleys consisted of woollen cloths of various kinds (nineteen descriptions are enumerated); tin, in rod and block, dressed hides, and platters and other utensils made of pewter. The State galleys did not load grain, but other vessels appear to have taken cargoes of cereals. A Venetian vessel is mentioned as taking a return cargo of grain from Calais in 1498. The principal places in England for the manufacture of cloths were Guildford, Stamford, Winchester, Lowestoft, and other parts of Suffolk, Norwich, and Loddon in Norfolk, Witney, and the county of Essex. From Flanders the galleys took wool.

A fact is made very apparent in considering the foregoing details, that the Venetians, very early in the day, found the carrying trade an early and important one. The State galleys, it is true, carried only or generally for their own citizens: but after the first third of the sixteenth century, the monopoly of ships was abolished, and the Signory supplied no more. His depreciation of the carrying trade by sea is perhaps the greatest of the few errors made by Adam Smith in his estimate of the wealth of nations. The importance of this branch of industry has been made apparent to our own and other nations since that writer's day with ever-increasing distinctness.

If, looking to the enormous expansion of commerce in the present century, we are inclined to somewhat under-estimate the trading enterprise of our English ancestors, there are many indications in history which remind us that a large commerce actually existed, especially in maritime adventure. Thus M. L. Puiseux, speaking of the early part of Richard II.'s reign, *i.e.* the last quarter of the fourteenth century, tells us that 'the bold corsairs of Harfleur, Honfleur, and Dieppe, gave chase to British vessels and returned into port—so says the monkish chronicler of St. Denys—loaded with an amount of riches past belief. If English rovers, ravaging the coast of Normandy, carried off our fishermen, and carried them captive to their island, in their turn the English merchants, whom storms cast on the Norman shore, had no other alternative than either to be treated as wreck (*warech*), or as prisoners of war.'

APPENDIX II.

ON THE VALUE OF A SHIP.[a]

It would be adopting, at the outset, a grave error to suppose that the word 'value' has but a single meaning, or is used univocally. Its original signification is, no doubt, 'worth,' or 'equivalent;' but the word used concretely, as in the language of commerce, has assumed several shades of meaning, according to several applications. And as I believe the losing sight of this fact is one ground which gives rise to the question or questions proposed in the circular, I will commence the few remarks it is my intention to offer in giving force to this distinction of meaning, as a preliminary step towards answering more specific enquiries.

An object may be said to have value in the following senses:—

(*a.*) A personal value. It may have a particular value to myself. It may be endeared to me by association, by sentiment, by long use, by the conforming of the hand to its accustomed instrument. This value may far exceed its marketable value, or the price at which another private individual would buy of me. The hundred acres left me by my father are to me worth threefold any other hundred acres of similar land. A ship bearing some family name, may have in my eyes a value greater than its worth to others.

---

[a] Paper read at the Social Science Congress held at Edinburgh, October 1863. Section of Jurisprudence.

(*b.*) A usitative value. To myself, the use and the object are blended together. I have particular occupations for which a certain ship is singularly well adapted as to speed, burthen, &c. This value is like that of a shop and its goodwill; it has a far higher value than the bare selling price of the shop itself.

(*c.*) A market value. Its selling price as a commodity or chattel. This value always bears reference to supply and demand, but it is also grounded on the cost of production, and its condition as to age, soundness, and other incidents. This is a ship's value in the most common sense of the word. It can be tested by private sale or auction, or approximately arrived at by persons conversant with ships and the state of the market.

(*d.*) A depressed value. A price depreciated by some particular state of things, as when a ship is sold in payment of a bottomry bond, where, from circumstances, the price obtained is usually below the average market value of vessels sold in the ordinary manner. This value also may be estimated by those who have experience in sales conducted under such deteriorating conditions.

(*e.*) A conventional value. A statute value, like the mint price of gold, and the old regulated price of bread.

(*f.*) An arbitrary value. A value agreed for certain purposes, as in valued policies of marine insurance, and in 'interest admitted' life-policies; these agreements being intended to avoid any after discussions as to value; or the value may be agreed, where there is an impossibility of knowing a ship's exact condition at a given time; or—but this is objectionable—to make an object bear a proportion to some scale upon which other property is being valued, as where the joint value is to contribute to common expenses.

The word 'value,' then, is relative to certain objects had in view, and any question proposed as to value must define in what sense or aspect the term is used, and in what sense the answer to that question is expected.

Thus in the circular to which replies are invited, five separate cases are enumerated in which it may be required to fix a ship's value. These are all different aspects of value. Then the circular proceeds to give five methods by which a ship's value may be estimated, the use of which methods, it adds, may give widely different results. But having in these ten postulates opened a tolerably wide field for discussion, the circular suddenly narrows the consideration of the question to the single view of a ship's value regarded as an investment for the sake of profit. Therefore the discussion is restricted to a very technical aspect of value, and one in which shipping differs but little from other property. The same question put in one of the three examples or special instances, viz. the question which refers to the value of the 'Great Eastern,' might equally be made of the value of the Crystal Palace.

On an occasion like the present, it is a great advantage to cause the discussion to flow in a defined channel, instead of letting it spread into a marsh of generalities.

Insisting, nevertheless, on the necessity of distinguishing among the different uses or aspects of the term 'value,' we turn to the particular question proposed, viz. 'The value of a ship considered solely as an investment for the sake of profit.' To this question the circular adds a prescribed method of treating it, which is, 'To discuss which of these, or what other, is the true test of the value of a ship. Secondly, which is the most available for practical purposes.' Looking to see to what antecedent the pronoun 'these' relates, we find it refers grammatically to five legal decisions named in the immediately preceding paragraph. And we notice that the second point raised in the discussion is a distinction taken between the 'legal,' as being probably theoretical or speculative, and the 'practical' test of value. So, then, we may eliminate all other matter from the circular, and we find the question proposed to the section to be the following:—'Having regard to five cited legal decisions, which of them is the true test of a ship's value, solely considered

as an investment for the sake of profit? And if none of these (the legal decisions) can be pronounced the true test, what other true test can be proposed?

The true and 'practical' value of a ship, in this defined sense, is the price she will sell for. The value which a purchaser will give, sums up in a short, comprehensive manner, all the circumstances, advantages, defects, and incidents of a vessel. It includes in itself the consideration of her age, build, repair, nationality, and size; and it has reference to the abundance or scarcity of ships in the market, and her saleability.

The price in the market represents the mean estimated value made by the ship-dealing world. But a purchaser may have private views as to whether, at a certain time, with particular prospects, and for a special use, he has bought cheaply or not.

In the case of the *African Steamship Company* v. *Swansy*, Vice-Chancellor Wood distinctly confirms this view. He says, 'The natural meaning of the words, "value of a ship," seems to be that which the ship will sell for;' and afterwards, referring to certain special uses or opportunities which an owner might have for the employment of his ship, Vice-Chancellor Wood remarks, 'It would be opening the door to speculation, to an enquiry far too vague for this court to deal with, to consider what might be the particular value of a particular thing used or wanted for a particular purpose.' So then, as against the world at large, the value of a ship is the price she would fairly obtain. Nevertheless, the value which a ship may possess in particular hands may be much greater than this, because of incidental uses and advantages; and her owner may fairly and rightly place a higher value upon that which is a fitting instrument in his hands. So that underwriters, in signing a policy of insurance, make no objection to that particular value, the policy-value is binding as between them and the owner; but it binds no one else outside the policy.

I have read the shorthand writer's notes of the judgment

which the same Vice-Chancellor pronounced in the cause of *Leycester* v. *Logan*. Little, however, for our present purpose is to be gained from it. The same order was finally made as in the case of the *African Steamship Company* v. *Swanzy*; but the fact which these decisions, and that in *Wilson* v. *Dickson*, establish, is this, that where an owner's liability is sought to be limited to the ship's value, that value is to be taken at the time of the robbery, collision, or other occurrence through which the owner becomes liable; and that value is to be the ordinary selling value of the ship.

In *Leycester* v. *Logan*, the vessel arrived at her destination, and was arrested, and by the time the case came before the court, her value had decreased and was still diminishing; which caused the judge to speak of the ship's 'ultra value' at the time of the occurrence, the shipowner having to make good the excess, whatever it might be, over her value when sold or while in arrest.

The difficulty which will here present itself to every person's mind is a practical one. How, when a robbery or collision takes place in the centre of the ocean, far from a market, remote from those *homines experti* who have a minute knowledge of a ship's value, how shall a selling value be established? Well, we must still have recourse to the experts, the surveyors and valuers of shipping, who, from their experience and the data furnished to them, will make a proximate estimate of value, always taking for their basis the consideration of what such a ship would sell for.

But I desire not to wander from the particular question which the circular sets before me, viz. the value of a ship, considered solely as an investment for the sake of profit. The few remarks which follow will, therefore, be directed to the nature of a ship's value under this aspect.

The value of a ship, as an investment, is similar to that of an annuity. It is a diminishing interest, and the same care is necessary in dealing with the profits of a ship as is required

with an annuity — that of separating between income and capital, between interest on the money invested and the repayment by instalments of the purchase-money. And besides what may be called the ordinary, natural death of a ship by gradual deterioration and decay, which is the progressive consumption of the investment, a ship is singularly liable to sudden death by accidents, which occasion her total loss. Therefore, out of her profits or makings have to be drawn the funds necessary for repairs and restitutions, so as to keep the vessel in good seaworthy condition as long as possible; and, secondly, the provision of insurance against her sudden loss or innavigability. These two items of expense reduce the apparent profits of a ship; but the former, to use a French expression, *parachutes* her fall in value, and prolongs the annuity; the latter makes provision aganst the event of its sudden extinction. Looking, then, to a ship's value as tested by her freight-producing power, it will often prove fallacious. High interest means bad security, and the mother of profit is risk. It is, no doubt, a fascinating spectacle to the uninitiated, to see a ship at the end of her voyage yield a sum in freight equal to, perhaps, half her own cost; but independently of the working expenses of the voyage, the freight paid is not the true earnings of a vessel quâ profit, but is partly that and partly a reinstatement of capital. Equally fallacious as a single test of value is the cost-book method of valuing, viz. that a ship was purchased for a certain sum, and that since then her cost, and consequently her value, have been increased by moneys laid out upon her in repairs, new stores, and even insurance; so that she 'stands in the owner's books' at a much higher value than at her purchase. It must be remembered that deterioration and waste are ever going on, that the metal sheathing is practically consumed in about four years, steam boilers are burnt out in given times, and stores and the ship's fabric are constantly wearing and weakening; so that deterioration and repair, like reversed and equal cones, may produce the same total in result. The plan is falla-

cious, because it takes only into account some of the necessary elements of value, leaving out others which are important.

The progress of a ship's value is naturally downward.

In the case of the *African Steamship Company* v. *Swanzy* the steamer 'Forerunner,' which had cost two years previously nearly 13,000*l.*, was reduced by her owners in her value for insurance to 10,000*l.*; and even then the court upheld the estimated sale value, which the appraising surveyor had put on her, viz. 5,900*l.*, as a probable true value.

In conclusion, and looking to those decisions where the Court of Chancery has been called on to interfere under the protective clauses of the Navigation Act, we say that the sole value of a ship—her value as by sale—is the true, best, and most practical measure of her value. No doubt, courts of equity are guided by their traditions; and a sale of property is that which the Court of Chancery loves, and considers to be the natural and necessary consummation of things; but the principle appears to be the correct one; and the sale value of a vessel is to be approximated as nearly as possible where an actual sale has not taken place.

And then, as to the method of arriving at that value. Where there is no sale, recourse must be had to those professional persons whose regular, constant, and conscientious business it is to buy and to sell, and to estimate the value of shipping.

Before closing this short paper, I would for a moment call attention to a practical inconvenience which has grown out of a useful institution. The 'Lloyd's Register Book of Shipping' is a valuable reference to those who insure or deal in vessels. Under certain letters and signs, a character is given to ships, and it sticks by them till a new classification is made. A value attaches to ships which appear in that book under the higher letters and signs, a less value to those which appear with inferior signs. But there has also emerged the fact of a minus sign attaching to vessels' values which are not found in that book,

either from the ships never having been inserted, or from having been withdrawn. That book, in fact, gives rank. In the land of Burns I need not remind an audience that

The rank is but the guinea stamp.

But though not all-important, the negative affirmative thus produced is found to be a serious inconvenience to some shipowners. We do not say that this unintentional effect can now be avoided: and all maritime nations have imitated our Register Book. It is, however, necessary to point out the existence of this result, and that the value of a ship must not be prematurely fixed by that single test. It is with ships as it fares with men. Not to be in a certain circle implies, though not necessarily, an exclusion from that circle; and exclusion is a stigma, although he who never sought admission may possess high intrinsic value. The man may be the true gold 'for a' that.' This incidental remark has really the most contact with social science of any part of the subject treated.

APPENDIX III.

POLICIES OF INSURANCE.

STAMP OFFICE, LONDON: *July* 1816.

RULES and REGULATIONS prescribed by the Act of Parliament, 54 Geo. III., cap. 133, and by the Commissioners of Stamps in pursuance thereof, respecting Allowances for spoiled or misused Stamps, on Policies of Insurance;—to be observed by all Persons claiming such Allowances, and by the Persons authorised by the Commissioners to receive and examine the Claims for such Allowances.

THE Act expressly enacts that stamps on policies of insurance shall be allowed as spoiled or misused, in the following cases, and upon the following terms and conditions *only*.

FIRST CASE, Act Sect. 1.———Policies spoiled or rendered useless, but not subscribed by any underwriter.

In this case, application must be made for the allowance within *six calendar months* after the policies are spoiled. And the claimant must make an affidavit, according to the Form No. 1 in the Appendix, that the policies have been inadvertently filled up in an incorrect or improper manner, or been obliterated or otherwise spoiled and rendered unfit for use, or have been filled up for some insurance not proceeded in;—and that the same have been so spoiled within six calendar months; and also that the insurances for which the policies were intended to be used, have not been effected or underwritten, in all or in part, upon any unstamped slip or piece of paper The claimant must also insert, in or upon the affidavit, a list or schedule of the policies, stating the sums for which they were issued, the amount of the duty on each, and the total amount of duty, for which an allowance is claimed.

SECOND CASE, Act Sects. 1, 2, 3.———Policies underwritten, but not to the full amount of the sum which the stamp-duty thereon will cover;—*including policies intended for insurances liable to a higher rate of duty, but having insurances liable to a lower rate of duty made thereon by mistake.*

In this case, application must be made for the allowance within *three calendar months* after the date of the last subscription on each policy of this class. The claimant must write upon or annex to each policy a statement, signed by him, of the grounds of his claim; and (*if the fact be so*) that another policy has been underwritten, in lieu thereof, *by the same persons*, and to the same amount, on the same property or interest, and for the same risk in all respects; in which case only an allowance is to be granted of the *whole* duty on the first policy.

If *some only* of the underwriters on the first policy shall have underwritten another policy in lieu thereof, the statement must aver that another policy has been underwritten in lieu thereof, by some of the same persons, to the amount of £ , on the same property or interest, and for the same risk in all respects;—in which case a deduction must be made of so much of the stamp-duty on the first policy, as shall be due for the sum or sums not transferred to the second, and an allowance claimed for the *residue* only.

The claimant must also make an affidavit, to the purport or effect of the Form No. 2, A. in the Appendix, referring to the statements written upon or annexed to the policies brought for allowance, and verifying the same; and he must indorse on the affidavit, or annex thereto, a list or schedule of the policies, with the amount of the duty on each, for which he claims allowance. The policies brought for allowance must be delivered up to be cancelled. And the policies underwritten in lieu thereof must be produced.

But if in the said case of a policy being underwritten, but not to the full amount of the sum which the stamp-duty thereon will cover, it shall be inconvenient to get another policy underwritten in lieu thereof, and the party shall be desirous of having the stamp expunged and another stamp substituted for denoting only the duty payable in respect of the sum or sums underwritten, and of having an allowance for the difference, pursuant to the third section of the Act, a special application must be made to the Commissioners of Stamps, at their Head Office, for that purpose, within *three calendar months* after the date of the last subscription on the policy, accompanied with the affidavit above required in this case.

THIRD CASE, Act Sects. 1, 2.———Policies underwritten, wherein any error or mistake shall afterwards be found, Error. so that the insurance intended shall not be thereby effected.

In this case, application must be made for the allowance within *three calendar months* after the date of the last subscription on each policy. The claimant must write upon or annex to *each* policy, a statement signed by him specifying the particular nature of the error or mistake, and how it arose—and stating that another policy, in which the error or mistake is rectified, hath been underwritten in lieu thereof, by the same persons and to the same amount, or by some of the same persons, to the amount of £ , as the case may be—and that the insurance made by the first policy is cancelled by all the underwriters, or by those who have underwritten another policy in lieu thereof, and that the premium is returned, or agreed to be returned, on the ground *only* of the error or mistake specified—and that the new policy was underwritten before notice of the termination of the risk first insured.

If the new policy be underwritten to the same amount as the first, the *whole* duty is to be allowed. But if not, a deduction must be made of so much of the stamp-duty on the first policy as shall be due for the sum or sums not transferred to the new one, and an allowance claimed for the *residue* only. Except that if the error or mistake shall be in the amount of the sum insured, as if a greater sum shall be insured than was ordered, or intended to be ordered, by the insured, and another policy shall be underwritten in lieu thereof, to the amount of the sum ordered or really intended, the *whole* stamp-duty on the first policy is to be allowed; provided all the other requisites shall be complied with, and provided the error or mistake shall be positively proved by the affidavit of the person by whom it was committed.

The claimant must also make an affidavit, to the purport or effect of the Form No. 2, A. in the Appendix, referring to the statements written upon or annexed to the policies of this class brought for allowance, and verifying the same; and he must indorse on the affidavit, or annex thereto, a list or schedule of the policies, with the amount of the duty on each, for which he claims allowance. The policies of this class brought for allowance must be delivered up to be cancelled, and must contain a declaration, signed by the underwriters, that the insurances thereby made are cancelled and the premium returned, on the ground of error or mistake *only*. And the policies underwritten in lieu thereof must be produced.

FOURTH CASE, Act Sects. 1, 2.———Where a policy shall be underwritten, and the terms and conditions of the insurance

shall afterwards be agreed to be altered, and another policy shall be underwritten in lieu thereof, on the same property or interest, and with such alteration in the terms and conditions of the insurance as may have been agreed upon.

Alteration of terms

In this case, application must be made for the allowance within *three calendar months* after the date of the last subscription on the first policy. And the claimant must write upon or annex to the policy brought for allowance, a statement, signed by him, specifying the alterations agreed upon—and stating that another policy hath been underwritten in lieu thereof, by the same persons and to the same amount, or by some of the same persons, to the amount of £ , as the case may be, on the same property or interest, and with the alterations agreed upon—and that the insurance made by the first policy is cancelled, and the premium returned or agreed to be returned, on the ground *only* of the alterations specified—and that the new policy was underwritten before notice of the termination of the risk originally insured—and that the thing insured then remained the property of the same person or persons.

If the new policy be underwritten to the same amount as the first, the *whole* duty is to be allowed. But if not, a deduction must be made of so much of the stamp-duty on the first policy as shall be due for the sum or sums not transferred to the new one, and an allowance made for the *residue* only.

The claimant must also make an affidavit, to the purport or effect of the Form No. 2, A. in the Appendix, referring to the statements written upon or annexed to the policies of this class brought for allowance, and verifying the same; and he must indorse on the affidavit, or annex thereto, a list or schedule of the policies, with the amount of duty on each, for which he claims allowance. The policies of this class brought for allowance must be delivered up to be cancelled, and must contain a declaration, signed by the underwriters, that the insurances thereby made are cancelled and the premium returned, on the ground *only* of the terms and conditions of the insurance being agreed to be altered. And the policies underwritten in lieu thereof must be produced.

It is apprehended that this fourth case will not happen very often; because the Act of the 35 Geo. III. cap 63, by which a percentage stamp-duty was first laid on policies of insurance, allows (sect. 13) alterations to be made in the terms and conditions of an insurance upon the policy itself, without requiring any additional stamp-duty, so that such alteration be made before notice of the termination of the risk originally

insured, and so that the thing insured shall remain the property of the same person or persons, and so that such alteration shall not prolong the term insured beyond the period allowed by that Act (namely, twelve months, in cases of insurance for a certain term or period of time), and so that no additional or further sum shall be insured by reason or means of such alteration. And it is presumed that it will be found less troublesome to make the alterations agreed upon in the original policy itself than to get a new one underwritten. And it is to be observed that, although a new policy shall be underwritten, the stamp-duty on the original policy cannot be allowed, on account of any other alterations, than might have been made in the policy itself under the Act referred to. Upon which it has been held by the Court of King's Bench, that an insurance on '*ship and outfit*' could not be altered to an insurance on '*ship and goods*' without a fresh stamp. And in another case where an insurance was made on goods and specie, in ship or ships, which should sail between the 1st October 1799 and the 1st June 1800, and it was afterwards agreed, by a memorandum written on the policy on the 11th June 1800, to extend the time of sailing to the 1st August 1800, this alteration was held to be within the Act and valid.

If, in the second, third, or fourth case, some only of the underwriters on the policy brought for allowance shall have underwritten another policy in lieu thereof, and if any legal proceedings shall be intended to be instituted by or on behalf of the insured, in respect of any sum or sums underwritten on the first policy and not transferred to the second, which may require the production of the first policy, and the insured or his or their broker or agent shall be desirous of retaining the first policy, and of having the stamp thereon expunged and another stamp substituted for denoting only the duty payable in respect of the sum or sums not transferred, a special application must be made to the Commissioners of Stamps, at their Head Office, for that purpose, within *three calendar months* after the date of the last subscription on the first policy, accompanied with an affidavit of the fact of legal proceedings being intended, and with such other documents as are before required for establishing the claim to an allowance of duty in these cases respectively.

Further provision respecting the 2nd, 3rd, and 4th Cases, Act Sect 2.

FIFTH CASE, Act Sect. 1.——Where a policy shall be underwritten, and the insurance shall be made subject to the *approbation* of the insured, and such condition shall be expressed in the policy, and the insured shall signify

Approbation

his or their disapprobation thereof, within the time to be prescribed for that purpose in and by the policy.

In this case, application must be made for the allowance within *three calendar months* after the time so prescribed for disapprobation. And the claimant must write upon or annex to the policy brought for allowance a statement, signed by him, that the insured did signify his or their disapprobation of the insurance, within the time prescribed by the policy for that purpose;—and that the insurance has been cancelled and the premium returned or agreed to be returned, on that ground *only*, by all the underwriters, or by all, except those (*naming them*) who are deceased, or become bankrupt or insane, or departed out of the realm, *specifying the particular circumstance attending each.* The claimant must also make an affidavit to the purport or effect of the Form No. 2, A. in the Appendix, referring to the statement written upon or annexed to the policies of this class, and verifying the same; and he must indorse on the affidavit or annex thereto a list or schedule of the policies, with the amount of the duty on each, for which he claims allowance. The policies of this class brought for allowance must be delivered up to be cancelled, and must each of them contain a declaration, signed by all the underwriters (except as aforesaid), that the insurance thereby made is cancelled and the premium returned, on the ground of disapprobation *only*.

But if any underwriter shall *refuse* to return the premium and sign such declaration, or if the declaration shall not in fact be signed by all the underwriters, except as above mentioned, no allowance of stamp-duty can be made.

SIXTH CASE, Sect. 1.———Where insurance shall be made upon any ship or ships—or upon any goods or property on board any ship or ships—or upon the freight of any ship or shipsor upon any other interest in or relating to any ship or ships—for a particular voyage—and the ship or ships shall not proceed at all upon the voyage specified, —or shall not proceed thereon at or within the time specified, if any. And also where insurance shall be made upon goods or other property on board any ship or ships—or upon any interest in or relating to any ship or ships—for or upon a particular voyage—and the goods or property intended to be insured shall not be shipped at all—or not within the time specified—or not on board the ship or ships named or described—or it

No Risk
No Interest.

shall turn out that the insured had not the interest intended to be insured.

In these cases, application must be made for the allowance within *three calendar months* after the insured, if in Great Britain, or his or their broker or agent, if the insured be out of Great Britain, shall know the facts upon which his claim to an allowance is founded. And the claimant must write upon or annex to the policy a statement signed by him, and dated on the day of his application, specifying *the particular facts and circumstances* upon which he claims the allowance, so as to show that his claim falls within the provisions of the Act—and stating that such facts and circumstances have come to his knowledge, within three calendar months preceding the date of his application, and not before, if he be himself the insured, or if he be the broker or agent and the insured be out of Great Britain, which must be positively stated—and that the insurance has been cancelled and the premium returned or agreed to be returned, on the ground *only* of the facts stated by all the underwriters, or by all, except those (*naming them*) who are deceased, or become bankrupt or insane, or departed out of the realm, as the case may be, *specifying the particular circumstance attending each—and also that the underwriters have run no risk whatever under the policy* brought for allowance—or (*if the fact be so*) that another policy hath been underwritten, whereby the same property or interest has been insured, to the same amount, for or upon some other voyage, or for or upon the same voyage to be performed at some other time; which other policy must be produced

If the insured shall be in Great Britain, and the claim for the allowance shall be made by his broker or agent, there must be delivered with the policy an affidavit by the insured, specifying *the particular facts and circumstances* upon which the allowance is claimed, and that such facts and circumstances have come to his knowledge *since some given day, and not before,* so that it may clearly appear whether the application for the allowance is made within the three months prescribed by the Act. Which affidavit must be to the purport or effect of the Form No. 2, B. in the Appendix.

The claimant must also make an affidavit to the purport or effect of the Form No. 2, A. in the Appendix, referring to the statements written upon or annexed to the policies of this class, and verifying the same; and he must indorse on the affidavit, or annex thereto, a list or schedule of the policies, with the amount of the duty on *each*, for which he claims allowance. The policies of this class brought for allowance must be delivered up to be cancelled, and must each of them contain a declaration, signed by all the underwriters (except as aforesaid), that

the insurance thereby made is cancelled and the premium returned, on the ground that the ship or ships did not proceed upon the voyage specified, or some other of the grounds before mentioned, as the case may be.

But if any underwriter shall *refuse* to return the premium and sign such declaration, or if the declaration shall not in fact be signed by all the underwriters, except as above mentioned, no allowance of stamp-duty can be made.

SEVENTH CASE, Act Sect. 4.———Where insurance shall be made on any ship or ships—or on goods or other property on board any ship or ships—or on the freight of or other interest in or relating to any ship or ships—and the sum insured on the account of any one person, or on the joint account of two or more persons, shall be found to exceed the value of his or their property or interest, by the sum of 1,000*l.*, where the duty shall be at the rate of 1*s.* 3*d.* per cent., or by the sum of 500*l.*, where the duty shall be at the rate of 2*s.* 6*d.* per cent. or above: *provided the property or interest insured be not expressly valued, in the policy, at the sum insured thereon.*

Short Interest.

In this case, application must be made for the allowance within *three calendar months*, after the value of the interest or property on which the risk shall have attached shall be known to the insured, if in Great Britain, or to his or their broker or agent, if out of Great Britain. The allowance must be claimed for so much only of the stamp-duty on the policy as shall exceed the duty payable in respect of the value of the property or interest on which the risk shall have attached; and, in calculating the duty so payable, it must be observed that the full duty for 100*l.* is payable for any and every fractional part of 100*l* value of each separate and distinct property or interest. And satisfactory proof must be given of the value thereof.

The policy in this case must be delivered up to be cancelled, and must contain a declaration, signed by all the underwriters (except such as may be deceased, or have become bankrupt or insane, or have departed out of the realm), that the premium is returned, *on account of short interest*, in respect of their several proportions of the excess of the sum insured beyond the value of the property or interest on which the risk shall have attached.

But if any underwriter shall *refuse* to return the premium and sign

such declaration, or if the declaration shall not in fact be signed by all the underwriters, except as above mentioned, no allowance of stamp-duty can be made. Nor can any allowance be made on account of short interest in any case where the property or interest insured shall be expressly *valued at the sum insured thereon*, in and by the policy whereby the insurance shall be made.

If the allowance shall be claimed by the insured in person, he must make an affidavit to the purport or effect of the Form No. 3, A. in the Appendix.

If the allowance shall be claimed by the broker or agent of the insured, *and the insured shall be in Great Britain*, there must be delivered with the policy an affidavit by the insured, to the purport or effect of the Form No. 3, B. in the Appendix; and the broker or agent must make an affidavit to the purport or effect of the Form No. 3, C. in the Appendix.

If the allowance shall be claimed by the broker or agent of the insured, *and the insured shall be out of Great Britain*, the broker or agent must make an affidavit to the purport or effect of the Form No. 3, D. in the Appendix.

And where the allowance is claimed by a broker or agent, he must indorse on his affidavit, or annex thereto, a list or schedule of the policies of this class, specifying the sum insured on *every separate* property or interest, and the actual value thereof, and the excess of duty for which he claims allowance.

No provision is made by the Act for the case of *double insurance*, and therefore no allowance can be made for the duty on either of the policies underwritten in such case, unless the amount of the sums insured by *both* parties shall exceed the value of the property or interest insured; in which case there will be *short interest*, and an allowance may be made for so much accordingly. Double Insurance

NOTE, Act Sect. 5 —No allowance is to be made, in any of the cases herein before mentioned, if the policy brought for allowance shall be underwritten *to a greater amount than the stamp-duty thereon will cover.*

EIGHTH CASE, Act Sect. 6.———Where a policy shall be underwritten to a greater amount than the stamp-duty thereon will cover; *including the case of a policy intended for an insurance liable to a lower rate of duty, but having an insurance liable to a higher rate of duty made thereon by mistake.*

In this case, application must be made for the allowance within *seven office days* after the date of the last subscription on the policy. And

the claimant must write upon or annex to the policy a statement, signed by him, declaring that it was inadvertently underwritten beyond the sum which the stamp-duty thereon will cover, and that another policy duly stamped was underwritten in lieu thereof, *within three days afterwards*, by the same persons, to the same amount, on the same property or interest, and for the same risk in all respects; or by some of the same persons (if all the underwriters cannot be procured to underwrite another policy within the three days) to the amount of £
on the same property or interest, and for the same risk in all respects. The claimant must also make an affidavit, to the purport or effect of the Form No. 2, A. in the Appendix, referring to the statement written upon or annexed to the policy brought for allowance, and verifying the same; and he must indorse on the affidavit the sum for which the policy was issued, and the amount of the duty, for which an allowance is claimed.

If the new policy be not underwritten to the same amount as the policy brought for allowance, a deduction must be made of so much of the stamp-duty on the first policy as shall be due for the sum or sums not transferred to the second, and an allowance claimed for the *residue* only. The policy brought for allowance must be delivered up to be cancelled. And the policy underwritten in lieu thereof must be produced.

If, however, the claimant shall be desirous of retaining the policy brought for allowance, where the new policy shall not be underwritten to the same amount, and of having the stamp thereon expunged, and another stamp substituted for denoting only the duty payable in respect of the sum or sums not transferred to the new one, a special application must be made to the Commissioners of Stamps, at their Head Office, for that purpose, *within the said seven days*, accompanied with the documents above required in this case.

And if in any case of a policy being underwritten to a greater amount than the stamp-duty thereon will cover, it shall be inconvenient to get another policy underwritten in lieu thereof, and the parties shall be desirous of paying the duty in respect of the sum or sums underwritten beyond what shall be covered by the stamp-duty thereon, and of having an additional stamp put on the policy for denoting the duty so to be paid, a special application must be made to the Commissioners of Stamps, at their Head Office, for that purpose, within *three office days* after the date of the last subscription on the policy.

NOTE.—All policies brought for an allowance of duty must be signed by the claimant in the margin, and have a date added to his signature, so as to identify them.

Act Sects. 7, 11.—No allowance can be made, in any case, where it

depends on the condition of the underwriters signing a declaration of the return of premium, unless the underwriters shall sign such declaration, *with their surnames at length*, and not with their initials only, as heretofore practised; nor if the names of the underwriters, subscribed to such declaration, shall be effaced, or struck through with a pen, in such a manner as to be rendered illegible, or not easily compared with the names underwritten on the policy. It will also be necessary, where the underwriters' names on the policy are struck out, that they should not be absolutely obliterated, but that they should be left in a state that will admit of their being readily compared with the signatures to the declaration of the return of premium.

Act Sect. 8 —Declarations certifying the return of premium, with an exception of not more than one shilling in the pound or guinea, for the broker's commission, and of any further sum not exceeding one-half per cent. on the sum insured, for the underwriter's trouble only, *and not on account of any risk incurred*, will be sufficient; but the negative must be expressly stated.

Act Sect 11 —All affidavits (or solemn affirmations in the case of *Quakers*) in support of claims for any of the allowances before mentioned, must be made before a Commissioner of Stamps, or before an officer acting under the authority of the Commissioner of Stamps, *in which case the affidavits will be exempt from stamp-duty*; or before a Master in Chancery, ordinary or extraordinary, *in England*, or before a person duly commissioned to take affidavits by the Court of Session or the Court of Exchequer, *in Scotland, in which case the affidavits must be written on a 2s. 6d. stamp.* And the Commissioners of Stamps and their officers are authorised by the Act to call for such written documents and other evidence as shall appear to be necessary for substantiating the claims made for any of the allowances aforesaid.

Act Sect. 11.—All declarations of the return of premium must state the ground upon which the return is made, and that the insurance is cancelled and the premium returned, *on that particular ground only*, as the Act requires. And these declarations must be signed either by the persons who shall be liable as underwriters or insurers on the policy brought for allowance, or by the persons who shall have underwritten the policy for them, or by some other persons, having sufficient procurations or authorities from them for the purpose, which shall be produced.

NOTE.—Act Sects 9, 10.—The Act imposes a penalty on any underwriter who shall knowingly and wilfully sign a false declaration of the grounds on which the premium on any policy shall be returned, or of the quantity of premium returned; and also severe penalties on any person who shall forge, or procure to be forged, or assist in forging, the

name or handwriting of any underwriter, to any declaration of return of premium, or fraudulently alter, or procure to be altered, or assist in altering, any such declaration, after it shall have been signed by any underwriter, or who shall utter or make use of any such declaration, knowing the same to have been fraudulently altered, or the name or handwriting of any underwriter to have been forged thereon, for the purpose of obtaining any such allowance as aforesaid, or who shall make a false oath or affirmation concerning any of the matters aforesaid.

NOTE also,—In those cases in which application for allowance is required to be made within a certain time after the date of the last subscription on the policy, no allowance can be made, if the date shall appear to have been erased, or altered so as to obliterate what was first written.

And no allowance of duty on any policy will be granted, upon the affidavit of any other person than the insured, or the broker or agent of the insured, who procured the insurance to be made.

WM. KAPPEN, *Secretary.*

APPENDIX IV.

THE POLICY OF MARINE INSURANCE OF PARIS

Sworn Broker's Name and Address, ——
No. A. 10,000. Dated the of 186 .

ASSURED, Messrs. ——
SHIP'S NAME, ——
CAPTAIN'S NAME, ——

Sum Insured	.	Francs
Premium at per cent.	.	,,
Policy and Stamp	.	,,
Total	.	,,

Voyage, —— to ——.

ARTICLE 1.—The insurers take at their risk all damages and losses arising from storm, shipwreck, stranding, collision, forced putting into port, forced change of route, of voyage and of vessel, jettison, fire, robbery, captures and molestations by pirates, barratry of master, and generally all chances and accidents of the sea.

ARTICLE 2.—Risks of war are not at the insurers' charge, unless there be an express agreement. In that case, it is understood that they are answerable for all damages and losses arising from war, hostilities, reprisals, arrests, captures, and molestations, of any government, friendly or hostile, recognised or not recognised, and generally all chances and accidents of war.

ARTICLE 3.—The insurers are free from all damages and losses arising from the natural defect of the thing (insured);

from captures, confiscations, and any events arising from smuggling, and illegal and clandestine commerce; from barratry of the master, if it bear the character of deceit or fraud—but only with regard to the shipowners, whether proprietors or persons clothed with owner's rights (*leurs ayant droit*), when the captain is of their choice; in fact, of all expenses whatever, of quarantine, wintering, and demurrage.

ARTICLE 4.—In term-policies, the insurers are exempt, except when otherwise agreed, from risks of Sénégal at all seasons, and of those of the Black Sea, Baltic, and North Seas on the further side of Dunkerque from the 1st October to the 1st April.

ARTICLE 5.—The risk on property commences from the moment of its being laden on board, and finishes at the moment of its landing at the place of destination. The risk of transport by lighters and barges, from the shore on board (the ship) and from on board to the shore, in the ports, roadsteads, and rivers of lading and discharge, as well as all transhipments at Havre and Honfleur, for proceeding up to Rouen, are always at the insurer's charge. In case of assurances at fixed or time premiums, the risk continues on the objects substituted for the first and arising from their sale or exchange, in so far as the sum insured agrees, and providing that there be proofs of their value and of their being included in the risk, in case of accident or average.

ARTICLE 6.—The risk on the hull (ship) commences from the moment the vessel has begun to load cargo, or, failing that, from the moment of her unmooring, and ceases five days after that she has been anchored or moored at her place of destination, providing that the discharge have not been completed sooner, or that she have not taken on board goods for another voyage before the five days have expired.

ARTICLE 7.—The risks of quarantine are at the insurer's charge, at the place of destination. Should the vessel quarantine elsewhere, an increase of premium is to be paid, viz. 1 per

cent. per month on the ship, and $\frac{3}{4}$ per cent. on goods, counting from the day of departure to the day of return.

ARTICLE 8.—In case of an insurance at fixed premium for a voyage beyond Cape Horn or the Cape of Good Hope, the captain is allowed six months' stay, to count from the day of his arrival at the first port, where he is to commence operations: only four months are allowed for other voyages. At the expiration of those terms, every month's stay, over and above, gives rise to an increase of premium of $\frac{3}{4}$ per cent. per month, till the close of the twelfth month. From that time the insurers are free from all risks, and have a right to two-thirds of the fixed premium, stated by the policy; and further, to the increase of premium arising from the protraction of the ship's stay.

ARTICLE 9.—In all cases where the premium is reckoned by periods of a month or otherwise, every period begun is counted as completed.

ARTICLE 10.—Should the insurance be made on unnamed ships (ship-or-ships' policy), the assured is bound to make known the ship's name within six months' time, at latest, for voyages beyond Capes Horn and Good Hope, in four months' time for voyages of long duration, in two months for long coasting voyages, and in one month for short coasting voyages, the whole reckoning from the date of the policy; failing which, the policy is null (*de plein droit*); and the insurers are paid $\frac{1}{2}$ per cent. for cancellation on long voyages, $\frac{1}{4}$ per cent. on coasting voyages.

ARTICLE 11.—When an insurance is made on a ship sailing from Europe, should her departure be delayed for more than three months, dating from the time of signing the acceptance of the risk, the insurers have the right of annulling the policy, and are entitled to keep $\frac{1}{4}$ per cent., under head of return for cancellation.

ARTICLE 12.—Abandonment, on the ground of want of news, can be made after a year for all voyages on this side of Capes

Horn and Good Hope; and after two years for voyages beyond those Capes; the whole counting from the day of date of the last news received.

Abandonment of goods cannot be made, except in the case provided for in the preceding paragraph, and by the 394th Article of the 'Code of Commerce,' and in a case in which, independently of all charges whatever, the loss, or material deterioration, absorbs three-fourths of the value. Any other case, even that of a sale, in the course of the voyage, gives no right for abandonment of goods (*facultés*).

Abandonment of ship cannot be made, except in the case of want of news, shipwreck, stranding with violence (*avec bris*), which render the vessel innavigable, or of innavigability arising from any other accident of the sea. The directions of the 'Code of Commerce' (and notably those of the Articles 369 and 375), being contrary to the provisions of the preceding paragraphs, are hereby expressly modified. [This means that the parties to the policy agree to depart from the code.]

ARTICLE 13.—Whether there be or be not ground for abandonment, and without prejudicing in any way his rights, the assured is bound to watch over the safety and preservation of the objects insured.

ARTICLE 14.—General averages are adjusted independently of particular averages, without accumulation (*cumulation*), and are payable under a reduction of 1 per cent. of the insured value for voyages of long duration, and 2 per cent. for long or short coasting voyages.

The proportion of average falling on freight shall never be placed to the insurers of ship.

ARTICLE 15.—Particular averages on hull, keel, rigging, furniture, and appurtenances, are payable with a reduction of 3 per cent. of their insured value.

ARTICLE 16.—In case of insurance at fixed premium (*prime liée*), or for time, every voyage is the subject of a separate adjustment. The close of each voyage is determined in the

way mentioned in the first paragraph of Articles 5 and 6, and the subsequent voyage is considered to begin immediately.

ARTICLE 17.—In case of abandonment of ship, the shipowner remains liable for the wages due to the crew previously to the voyage on which the accident took place.

ARTICLE 18.—Those objects only are admitted in particular averages on ship which replace those which have been lost or damaged by accidents of the seas; and all things substituted at the insurer's charge are subject to a reduction of a third of their proved cost at the place where the repairs were executed. That reduction applies equally to all repairs, refittings, and labour; nevertheless it is not made on anchors, and is fixed at 15 per cent. on iron chain-cables. The same reductions are applicable to adjustment of the indemnities due for general averages by insurers on ship.

The provisions and wages of the crew during repairs are not at the insurer's charge.

In fishing risks, insurers are free from all losses and averages arising on the boats, fishing implements, anchors, chains, cables, and appurtenances, during the fishing and anchorage. In the same manner, in the various anchorages of the *Isle de Bourbon*, the loss, be it in general or particular averages, whether the insurance be on ship, anchors, chains, cables, or appurtenances, is not at the insurer's charge.

ARTICLE 19.—Bottomry-premiums contracted for repairs and extraordinary expenses during the voyage, are only at the insurer's charge up to the place where that voyage terminates (*lieu de destination*). All loans contracted at that place are not at their charge (*leur demeurent étrangers*).

ARTICLE 20.—The following articles are free from particular average:—Fresh and dried fruits, cheeses, wool in the grease, salt, feathers, liquids in bottles, mirrors, and other fragile objects, and goods subject to rust; nevertheless, in cases of collision, or stranding with violence, particular averages on these objects are paid, with a reduction of 15 per cent. of their insured value.

In case of particular average on other merchandise, the insurers only pay the excess or overplus of—

3 PER CENT ON

Alum	Cloths and other Woollen-stuffs	Pepper, in bags
Butter	Coined specie	Peruvian Bark
Wood	Madder, in casks	Ribbons
Pitch and Tar	Indigo	Soap
Coffee, in casks	Washed Wool	Silk and Silk-stuffs
Cinnamon	Metals	Sulphur
Cassia Lignea	Mercery	Tallow
Wax	Goldsmith's Ware and fine Jewellery	Tea
Cloves	Lace Goods	Linens, and Linen and Cotton Goods
Cochineal	Precious Stones	Quicksilver
Tarred Rope	Allspice, in bags	Verdigrise
Raw Cotton		

5 PER CENT ON

Madder-root	Horn	Rice, in casks
False Jewellery	Cotton-thread	Saddlery
Cocoa, in casks	Indian Saffron Meal, in barrels	Sugar, in casks or cases
Coal	Ginger, in casks	Tobacco, in casks
Glue, in casks or cases	Gum, in casks	
Untarred Rope		

10 PER CENT ON

Almonds, in casks	Grain and Seed, in barrels or sacks	Potash, Pearlash, and Alkali (weed-ash)
Starch	Engravings and Lithographs	Pepper and Allspice, in bulk
Aniseed	Cashmere Wool	Carbonate of Soda
Cocoa, in sacks or bales	Liquids, in casks	Soda
Coffee, in bulk	Animal-black	Sumac
Hemp and Flax	Gall-nut	Sugar, in bags or bales
Horsehair and Hair	Paper and Stationery, in cases	Tobacco, in bags or bales
Leather and Skins	Furs	Dies
Oak-bark	Dried or salted Fish	Blue Linen Cloths, called 'Guinea Cloths'
Meal, in sacks	Rice, in bags	Salted Meats
Flour of Sulphur		
Ginger, in sacks		
Gum, in sacks or bulk		

15 PER CENT. ON

Cocoa, in bulk	Nitrates	Paper and Stationery
Grain and Seed, in bulk	Hay and Straw	Oil-cakes
Dried Vegetables		

The quota of the *franchise* on subjects not mentioned in the preceding table is fixed at 5 per cent.

The *franchise* of 10 per cent. fixed, as above, for liquids in casks, is independent of the ordinary franchise for leakage, which is fixed at 2 per cent. in short coasting voyages, 4 per cent. in long coasting voyages, and 10 per cent. for voyages of long duration.

ARTICLE 21.—The *franchises* resolved upon in the article preceding, are only deducted in the case of damage to the thing insured (*avariés*). Particular averages, composed only of expenses, or which arise from proportional contributions, are paid with a reduction of 1 per cent. of the sum insured, and that independently of particular averages arising from damage (*matérielles*).

ARTICLE 22.—The sum subscribed by each insurer is the limit of his engagements; he can never be accountable for more than his subscription.

ARTICLE 23.—Indemnities for accidents, and for general and particular averages, are adjusted according to the laws and usages of France, whatever be the place where the accident occurred, or where the voyage terminated, or where the adjustment has been made up.

ARTICLE 24.—All losses and averages, at the insurer's charge, are paid in cash, without discount, fifteen days after the deposit of the substantiating documents (*pièces justificatives*), to the bearer of those documents and of the present policy, without his being obliged to use a power of attorney (*procuration*).

ARTICLE 25.—In case of payment of losses or averages before account for premium has been paid, the insurers can deduct from the indemnity credited by them the amount of that account, which is there to be taken as cash.

ARTICLE 26.—In case of nonpayment of premium, proved by the Usher (*huissier*), the insurers have the right to require security, or to annul the insurance.

ARTICLE 27.—It is agreed that the captain in command may be accepted or not (*reçu*), or another may be substituted; and

that the manner in which his name is spelt does not prejudice the insurance.

ARTICLE 28.—The insurers and assured mutually engage to act conformably to the maritime laws and regulations in force, as regards those points not provided for by the present policy.

ARTICLE 29.—The present assurance is made, 'lost or not lost' (*bonnes ou mauvaises nouvelles*), to be executed freely and in good faith, the parties hereto renouncing 'the league and a half per hour.'

INDEX

Abandonment
clause introduced in respect of, 138
in the Paris policy, 148
abandonee of ship entitled to freight due, 334
abandonment of ship in mutual clubs, 417

Accounts
between underwriter and broker, 349, 361
between broker and assured, 361, 369
how kept by the broker, 361
cash and credit account, 362
credit account stopped by a loss, 363
settlement of credit account, 363
cash accounts, greatly increased lately, 365
some disadvantages of cash accounts, 365
rarely means ready money, 365
settlement of loss on cash account, 369

Adler, Mr. M. M.
paper on Government Life Annuities, 7

Admiralty Court
change of practice in, as to underwriters, 241

Advances
connected with freight and insurance, 288
conditions under which advances are made, 290
repayable out of freight, 292
on captain's personal security, 292
advance freight contributes on gross amount, 325

African voyages
nature of interest in, 254
methods of overcoming difficulties about, 254
insurances on, 302

Alboin
King of the Lombards, 16

Alliance Assurance Company
commences marine business in 1824, 41

'All other Perils'
clause in policy, 135

'Althea'
the cargo of, 39

Amalfi
compass invented at, *note*, 48

Amicable Assurance Company
established in 1706, 47

Anchorage
terminates risk on ship, 127
what is proper anchorage, 127
not at anchor, 179

Anchors and chains
how paid for in clubs, 412

Angerstein, Mr.
his evidence in Parliament, 39

Antwerp
insurance at, in A.D. 1622, 29

Appeal
final appeal in conflict of law and custom, 460

Approval
order for assurance on approval, 354

Assignment of policy
what is sufficient to constitute assignment, 379
forms for assignment, 379
Act regulating assignment, of 1867, 389

Assurance
another name for insurance, 46
common assurances, 47
a name well known in Elizabeth's time, 30
meant also conveyance, 30

Assurance Company. *See* Insurance Company

Assured
ultimately pays losses, 50
and something more, 52
bound to communicate material information, 74
not excused by concealment of material information, though afterwards proved false, 74
pays the policy duty, 209
frequently employs a broker, 350
appearing in character of broker, 362

'At and from'
clause in policy, 124
enquiry as to meaning of, 125
frequent description in policy, 182
how to be construed, 182
defined in policy, 256
necessity of clause, 257
customary use of the words, 444
legal meaning, 444

Austrian Lloyd's, 33

Bartering voyages. *See* African voyage

Benefit Society, 7

Betting
formulated, 1, *note*

Bill of lading
a contract of mutual duties, 313
of steam companies, 315

Black Book of the Admiralty, 13

Boats. *See* Craft and boats

Bonds
bottomry, hypothecation, &c., 3
insurances on bottomry and respondentia bonds, 279, 293
nature of, 292
do not contribute to general average, 293
proceedings on, in admiralty, 293

Broker
acts in some places in a double capacity, 80, 352
in Liverpool and elsewhere, signs on account of underwriters, 80
cannot recover commission for an unstamped policy, 91
running accounts between underwriters and brokers, 210

Broker—*continued*
action against, by underwriter, for premiums, 210
employment of middleman general in extensive commerce, 344
advantages of a separate profession, 344, 360
his duties and position, 344, 353
paid by underwriter, 346
his accounts with underwriter, 349
generally speaking, the assured's employé, 350
his duty described, 352
bound to communicate to the underwriter all necessary information, 353
need not report generalties, 353
must answer underwriter's enquiries, 353
but must also consult assured's interest, 353
his difficulties under vague orders, 354, 355
his need of discretion, 355
bound to use all efforts to effect an insurance, 355
what is expected of a broker, 355
bound to do certain things even without directions, 357
differ in their mode of filling up policy, 357
excused by universal practice, 358
errors of brokers, 360
his account with the assured, 360, 369
and with the underwriter, 361
how he keeps his accounts, 361, 362
cannot restrain underwriters from paying loss to assured, 371
his lien on policy, 382, 385
summary of qualifications required, 387

Brokerage
Insurance agent's emoluments, 346
apparently paid by underwriter, 346
inexact method of reckoning, 347

Bristol
underwriting at, 42

Bubbles
South Sea and other, 36
in Holland, 36

Burial Club, Roman
rules of one inscribed on an altar, 7

Calls
take the place of premiums in mutual clubs, 400, 405
manner of making, 405

Cancelment of policy
for want of interest, 212
underwriters formerly entitled to one quarter per cent. for cancellation, 212
of open policy, 263

Candia, Island of Crete
produced Sack wine, 28

Catellans, 21

Charles I.
confers exclusive privileges, 35

Charles II.
his poverty consents, 35

Chartered Companies
extraordinary rise in price of stock, 36
and rapid fall, 36
unable to pay their subsidies, 36
appeal to the crown for relief, 36
are reconstructed, 36
reestablished in 1721, 37
nearly shipwrecked at the outset, 37
amount of their business in 1810, 40
their exclusive privileges partially repealed, 40
sealing policies, 105

Chartered freight. *See* Freight

Charters
granted to two companies in 1720, 33

Claims on policies
where to be adjusted, 149

Claudius
often referred to by writers on insurance, 11
his supposititious invention of insurance, 16

Club rules
the by-laws of mutual societies, 400

Clubs. *See* Mutual Insurance Societies

Code
Justinian, 2, *note*
of laws, during the Crusades, 12

Code de Commerce, 15, 186

Cœur-de-Lion, 14, *note*

Coffee-house
devoted to insurance, 32
first established near Lombard Street, 32

Coke, Sir Edward
Institutes, 14, *note*

Commerce
rapid increase of, 39
required further facilities for assurance, 39
imports and exports in 1810, 39
constantly increasing, 41

Commissioners of Inland Revenue
may be required to assess duty, and fix stamp in policies, 90
to allow duty on slip, 94
to provide parchment and paper and cost of stamping, 96
to date each stamp on issue, 96
to establish an office in London for sale, 96
may keep accounts with consumers under bond, 96

Common assurances, 47

Common carrier
his duties, 327
bound to complete his journey, 327

Competition
in insurance, 43

Concealment
of circumstances, 67
relieves the underwriter from liability, 67
when fraudulent, vitiates the policy, 67, 74
when the assured may be silent, 68
difficult to establish, 77
reticence, in the Code de Commerce, 186
of a material fact by brokers, 353

Consolato del Mare, 12

Constructive total loss
different views of, in law and in practice, 440
owner generally in law establishes his claim for, 441

Consuls, Venetian, of merchants, 27

Contract of affreightment
its duties and privileges, 312
form of contract, not very important, 313, *note*
the covenanted duties under, 327

Contract for insurance. *See* Slip

Contradictory pleas
illustrated in *Carr v. Montefiore*, 442
paradoxical position of this case, 443

Corporate associations
strong feeling against them, 34

Corporations
of the London Assurance, 34
of the Royal Exchange Assurance, 34
use their exclusive privileges with effect, 37
prevent the founding of new offices, 38

Countersigning
what dangers may arise to assured from, 83

Court of policies
a court of arbitration, 32
falls into disuse, 32
new constitution of 13 and 14 Charles II., 32

Coutumier
of Normandy, 13

Craft and boats
risk of, or in, 129
included in policy, 256

Crusades, 12

Custom
affecting clauses in policy, 358
of Lloyd's partially adopted by the clubs, 409
conflict between law and custom, 428
universality of custom, 428
custom the origin of laws, 428
limited by law, 430
interprets and explains law, 430
application to insurance, 431
when practice entitled to the name of custom, 432
no custom invariable, 434, 445
growing disposition to disallow custom in law, 438
persistence of, 438

Custom of Lloyd's, 432
difficulty of ascertaining, 433
frequently disallowed in law, 438
sometimes at issue with common law, 438
illustration from Jettison, 438
illustration from constructive total loss, 440
illustration from *The Kensington's* case, 444
whether an established custom contradicts a written contract, 446
illustration from *The Bombay's* case, 448
illustration from *Kidstone v. Empire Marine Insurance Company*, 451
illustration from *Sweeting v. Pearce*, 454
notice must be given of custom of Lloyd's, 454
presumption of law contrary to usage of Lloyd's, 455
illustration from trade arbitrations, 455
bad custom cannot be allowed, 456

Cycle of probabilities, 52

Daneion
Greek loans on voyages, 4

Dead freight. *See* Freight

Decree
by Venetians against foreign insurance, 20
proclamation of 1424, 21
permissive, of Venetians, 27
of 1586 and 1607, 26

Deeds
poll and indented deeds, 108
dates not inserted in deeds till Edward II., 122

Delivery of policy, 85
its necessity, 86
how far technical delivery of importance, 87
opportunity it gives to assured, 87

Deviation
from insured voyage, 130
subject of an implied warranty, 174
forms part of insurance law, 174
does not avoid a time policy, 174
not every stoppage or putting into port a deviation, 175
deviation to rescue life, or give aid, 175

Diana frigate, the, 39

Digest
Justinian's, 2, *note*

Discount
an allowance from premium, 210
has lost its true meaning, 211
mischievous effects of, 211, 367
for cash settlements, 347
on yearly accounts, 347, 363
its practical bearing, 347

Double insurance
ground for return of premium, 217
risks of the two insurers must be identical, 217
when without fraud, 218
assured may recover on which policy he pleases, 218, 264
may arise in several ways, 264
sometimes with fraudulent intention, 264
how premium returned, 264
illustration of settlements on, 266
difficulties relating to, from ownership of property, 267

Duration of risk
defined by policy, 256

East India Companies
their present numbers, 44
their composition, 44

East Indies
Insurance companies existing there in 1810, 40

Eleanor Duchess of Guienne, 13, *note*

Elizabeth
statute of, relating to insurance, 30
establishes court of policies, 30
feeling against corporations in her reign, 34
recals privileges granted to monopolies, 34
her candid confession to the House of Commons, 34

Emerigon
his belief that the Romans practised insurance, 15

Engrossers
alias monopolisers, 34

Evidence
whether slips producible as, 62

Exceptions
whether they 'prove the rule,' 447
practically are opposed to rules, 447

Expectation of freight
what meaning in the words, 296
all unpaid freight expectations, 296
legally not insurable, 297

'Fœnus,' 4, 5

Fire insurance, 47, 48

Fire of London, 47

'Franchise'
part of some foreign policies, 147, 149
underwriter pays only the excess of the franchise, 193

Franck, Dr. C. H. H.
treatise on Bottomry, 4

Fraud
whether promoted by insurance, 49
double insurances without fraud, 218
three suppositions of, 220
generally prevents return of premium, 220
but when return may be claimed, 220
of underwriter, 220
when fraud on both sides, 221
disturbs the course of ordinary transactions, 250

Florentines
whether they invented insurance, 18
republic, 18
at war with Genoa, 21

Freight
an insurable interest, 239, 272, 286
expectation of freight, said not to be insurable, 239, 295
after abandonment, 242
is the shipowner's profit by his vessel, 272
insurance on, distinguished from a wager, 273
may be lost by sea perils, 273
difficult questions concerning it, 273
how treated in France, 273
freight not received uninsurable in France, 274
as connected with advances and insurance, 275
produces intricate combinations, 275
definition of, 286

Freight—*continued*
passage money also insurable, 286
various methods of affreightment, 287
who may insure freight, 288, 290
advanced freight, 288
by steamers, 288
when freight prepaid, 289
freight, enters into value of goods, 289
different methods of paying, 290
on monthly freight, 291, 300
by charter, 291
duties involved thereby, 294
by succeeding charter parties, 295
in posse, too speculative for insurance, 299
separate insurable interests in, 303
profit-freight, its nature, 305
dead-freight, 306
considered insurable, 306
a contingent loss on freight, whether insurable, 307
duties and privileges of a carrier by sea, 312
the contract of affreightment, 312, 327
lien for, in France, 314
its contribution to general average, 317
why exceptional to other interests, 318
gross amount insurable, 319
and is at risk during the voyage, 319, 323
erroneous views regarding its contribution, 320
position of underwriters on freight, 324
an anomaly in respect of other interests, 324
expenses of reshipping cargo, 326, 330
pro rata or distance-freight not recognised in this country, 328
effect of payment on completion of voyage, 329
freight advanced does not excuse the shipowner from his duties, 330
held to be an incident of the ship, 332
payable to abandonee of ship, 334

Freight-and-outfit clubs
their nature and use, 303, 402, 419
in what trades chiefly in use, 303, 402
scope of their action, 419
scale of payment, 420

Friendly Assurance Company, the, 40

General average
Bottomry bonds do not contribute to, 293

Genoese, 21

George I.
incorporates the two chartered companies, 35

Glasgow underwriters
their room, 42
method of signing policies, 84

Good faith
should be the foundation of the contract of insurance, 67

Good safety
of ship, 127

Goods
commencement of risk on, 126, 256
termination of risk on, 128, 258
landing of, 128
methods of valuing, 133
no implied warranty on, 161, 172
how affected by unseaworthiness of ship, 172
insurable interest in, 250
sometimes used exclusively for manufactures, 250
but really identical with merchandise, 250
insurance of goods in bulk, 250
and on goods in detail, 250
advantage of valuing goods for insurance, 251
various methods of ditto, 251
underwriter's risk ceases when goods safely landed, 258
damage on goods should be ascertained at once, 258
'sold to arrive,' 277

Grant
to the Hudson's Bay Company, 35

Greeks
monetary loans on voyages, 4

Grotius
his *Mare liberum*, 14, *note*

Guicciardini
account of commerce between the Netherlands and England, 26

Guidon de la Mer, the, 19

Hamburg
insurance there in 1810, 40
present number of offices, 43–45
amount of insurance business at, 45
construction of their offices, 45

Hovedon, Roger of
account of Richard I.'s journey, 15, *note*

Hudson's Bay Company
receives its grant in 1670, 35

Illegality
of policies, sometimes innocent, 437

Impignoration
bonds of, 4

Indemnity
how far insurance is an, 59
partial, 59
concerns claims on policies, 60
afforded by Mutual Insurance Societies, 401

Indemnity Marine Insurance Company, the
founded in 1824, 41
meaning of its title, 41

India and China Insurance Companies
their method of business, 369
their custom of retaining policies, 374

Inscription
Latin, 7, 8, *note*
Lanuvium, 7

Institutes
Justinian's, 2, *note*
Coke's, 14, *note*

Insurance
essentially a modern system, 1
whether provided for in the Justinian code, 2
idea of, a probable one, 11
invention due to modern era, 12
supposed invention by Claudius, 16
probably invented by the Lombards, 17
suggestion as to the Jews, 17, 18
whether invented by Florentines, 18
said to have been used in Italy, A.D. 1194, 18
no legislation on it till the fourteenth century, 19
first indications among the Venetians, 20
known to be in practice in Venice in A.D. 1411, 20
on foreign vessels by Venetians, 20

Insurance—*continued*
decree against, by Venetians, 20
protected in Venice by proclamation of 1588 and 1605 and 1670, 23
first indication in England, 28
on merchandise from Candia in A.D. 1512, 28
in use in England earlier than in Northern Europe, 28
at Antwerp in A.D. 1622, 29
practised in Lombard Street in A.D. 1601, 29
project for registering in A.D. 1627, 29
sometimes called Assurance, 30, 46
made at Royal Exchange in A.D. 1627, 30
statute relating to, of 43 Elizabeth, 30
its usage among merchants in A.D. 1601, 32
illegal methods of, 40
mutual system springs up, 40
encouraged by Parliament in 1810, 41
a new system commences in 1824, 41
London the great mart of, 42
increase of mutual societies for, 42
in London at the present time, 43
competition in, 43
state of in Paris, 44
in Hamburgh, 44
at Stettin, 45
benefit of to commerce, 46, 52
a necessity now to trade, 46
its invention due to modern Europe, 46
the same as assurance, 46
meaning of the word, 46
against fire, commenced in 1667, 47
on life, dates in 1706, 47
its object stated, 48
includes some other risks, 48
what security it affords, 48
whether it prevents loss, 48
or conduces to losses, 48
stimulates scientific discovery, 48
sometimes accused of opening a door to fraud, 49
the security which it provides, 49
a mercenary transaction, 49, 57
subdivision of liability an element, 49
its true design in distributing losses, 50
could not exist except for risk, 53
marine insurance includes some other casualties, 53
sometimes retrospective, 54
on lives, 54
not retrospective, 54
marine insurance or interest, lost or not lost, 54

Insurance—*continued*
calculated probabilities, 54
'aleatory,' 55
clear definition necessary, 55
an elastic system, 56
suits itself to all contingencies, 56
good faith necessary to, 56
premium an essential part of, 57
summary of its objects, 58
whether a complete indemnity, 59, 135
how far available, 59
good faith the basis of, 67
as affected by stamp regulations, 88
regulations by the Emperor Charles V., 111
Philip II. of Spain, 111
city of Middleburg, 111
may be retrospective, 122
the premium. *See* Premium
when two persons effect insurance on same interest, 235
on passage money of coolies, 236
practically many illegal insurances effected, 239
technical and moral illegality of, 239
those insurances called 'honour policies,' 239
re-insurances made legal by statute of 1864, 239
by 'ship or ships' policy, 258
difficulty of ascertaining right to insure, 272
on commissions and profits, 275
in England, allowed on interests which are accruing, 276
on mixed and other interests not enumerated, 277
on submarine telegraphs, 278
on prizes in war, 279
on bottomry and respondentia bonds, 279, 293
on treasure, 282
on freight and advances, 286
passage money also insurable, 286
average-disbursements insurable, 294
the uncertain future employment of a vessel not legally insurable, 299
but may be insured in freight-and-outfit clubs, 300
what future freights may be insured, 300
on freights payable monthly, 300
on bartering or African voyages, 302
separate interests in freight insurable, 303
illustrations of this, 304
on profit-freight, 305
a losing freight, can it be insured, 307
illustration of such a case, 309
without medium of broker, 346

Insurance—*continued*
method of business, 246
doctrine as to prepayment of premium, 348
not invalid, though effected on Sunday, 354
insurance 'on approval,' 354
hazardous cargoes and voyages, 408
adjustment of claims on, 409
customs relating to, 431

Insurance Associations. *See* Mutual Insurance Societies

Insurance broker. *See* Broker

Insurance circles
in Paris, 44, 45
also called Reunions, 45

Insurance Company
one established at Rotterdam in 1720, 36
at Gouda, the same year, 37
also at Delft, 37
the Friendly Assurance, 40
the London Union Society, 40
the Alliance commences marine insurance in 1824, 41
the Indemnity, founded in 1824, 41
the Marine, founded in 1836, 41
the Amicable Life, 47
considered as a single underwriter, 140

Insurance Companies
subject to dangers at their beginning, 37, 142
attempt to introduce one in 1810, 38
many in various parts of England in 1810, 40
in the East and West Indies, 40
in our colonies, 40
in Hamburg in 1810, 40
in north of Europe, 40
in United States, 40
many new, formed, 41
adopt the 'limited' principle, 41
make out their own policies, 83, 106
proceedings against, 140
formerly not subjects for limited liability, 141
tenacious of life, 142
their form of receipt of premium, 349
close business at 4 P.M., 354
do not accept business by letter, 360
only by personal communication, 360

Insurance Street
in Venice, 22, 25, 26, 28

Insurer
insurers of Lombard Street, 32
rectitude of, in Elizabeth's reign, 111
how affected by the interest, 240

Insurers or Assurers. *See* Underwriters

Interest
a real, essential to insurance, 53
commensurate interest, 53
various kinds of, 53
immaterial interest, 53
must exist at the commencement of the risk, 53
sometimes lost, before insurance, 54, 234
lost or not lost, 54, 234
adequacy of, 55
essential to insurance, 55
description of, in policy, 124
return of premium, for want of interest, 212
excess of, 213
how it affects the underwriter, 213, 240
want of interest not identical with absence of risk, 217
necessity of, to an insurance, 234
expectation of, 234
may have ceased to exist before policy is effected, 234
when two persons insure the same, 235
is not confined to material interest, 235
what interest may be insured, 235
lives not insured by marine policy, 235
in passage money of coolies, 236
policies effected 'with or without' interest, 236
statute of George II. against this, 236
legal and illegal interest, 238
what constitutes illegality, 238
two classes of illegality, 238
what is meant by underwriter's interest, 239
consists not in the thing, but in the adventure, 240
acquired by underwriters on abandonment, 241
in ships, 242
what it embraces, 242
in freight, 242, 272, 286
in ship, does not diminish, 243
in this is contrasted with interest in cargo, 243
illustration of this position, 244
value of ship, as an interest, 246 *and appendix*

Interest—*continued*
not to be insured for more than its value, 247
valued differently in different policies, 248
in goods, 250
identification of, necessary, 251
valued and unvalued, 251
advantage of valuing interest in goods, 251
in African trade, 254
and in bartering voyages, 254, 302
in freight, not of the nature of a wager, 273
in commissions and profits insurable, 275
not allowed in France, 275
insurance on mixed interests, 277
and interests not enumerated above, 277
in prizes in war, 279
in bottomry bonds, &c., 279, 293
in average disbursements abroad, 294
in monthly and other running freights, 300
separate interest in freight, insurable, 303
illustrations of this, 304
in dead-freight, 306

Ireland
stamp duties for, assimilated to those of England, 96

Iron Crown, 16

Italian Republic. *See* Republics

Italy
insurance said to have been used there in A.D. 1194, 18

James I.
interference with monopolies, 35

Jettison
different remedy for in law or custom, 438
whether claimable direct on policy, 439

Jews
suggested to have invented insurance, 17, 18
familiar with usury and banking, 18

Joint contribution
for losses at sea, 29

Jubilee
laws of purchase of, 18

Jugements de la mer, 13

Jus loci contractûs, 149

Justinian. *See* Code

Lanuvium
inscription at, 7, *note*

'Lutine frigate,' 39

Laws
of Oleron, 12
of Wisby, 12
note concerning, 13, *note*
commercial laws, their office, 434
conflict of, 456

Liability
subdivision of, by insurance, 49
mere change of liability not insurance, 49
cessation of liability in members of clubs, 418

Life Insurance, 48

Limitations
in policy, 56

Limited Liability
adopted by insurance companies, 41
of companies, 141

Liverpool underwriters
their room, 42
method of signing policies, 84

Lloyd
opens his coffee-house, 33
frequented by underwriters and merchants, 33

Lloyd's
became a representative name, 33
mistaken notion as to, 33
Austrian, 33
discussion in Parliament concerning, 38
its flourishing condition in 1810, 38
number of subscribers in 1771 and 1810, 38
estimate of business affected there, 38

Lloyd's—*continued*
immense losses paid by them, 39
periodical absenteeism of underwriters, 40
present number of its members and subscribers, 43
slip used at, 64
close business at 4 p.m., 354
Sunday a *dies non*, 354
committee of, 367
course of business at, 375
custom of Lloyd's, 432

Lloyd's policy. *See* Policy

Lombard
another name for Pawn-house, 28

Lombard Street
insurance practised in, 22, 29
meeting of merchants at, 28
individual insurers of, 32
coffee-house established near, 32
mentioned in policy, 139

Lombards, the
they settle in London, 17
probably invented insurance, 17
merchants probably introduced policy, 110

Lombardy, 16

London
present extent of insurance in, 43

London Assurance, 35
receives its charter in 1720, 33
privileges it received thereby, 33
statutes as to slips or labels, 63, 95
policies of, 121
proceedings against, 140

London Union Society, the, 40

Losses
not prevented by insurance, 50
how they affect the assured,
distributed by insurance, 50
are gradually paid in premiums, 50
posted in Lloyd's Register, 350

'Lost or not Lost,' 122, 152
its equivalent in the French policy, 152
admission in policy of clause, 234
makes insurance retrospective, 234

Manning, Mr.
his motion in the House of Commons, 38

Mare clausum, 14, *note*

Mare liberum, 14, *note*

Marine Insurance. *See* Insurance

Marine Insurance Company, the
founded in 1836, 41

Mariner's compass
invented at Amalfi, 45

Marryat, Mr.
his speech in the House of Commons, 38
opposes Mr. Manning's motion, 38

Materiality
of representation, by whom decided, 75 and *note*
apparent contradictions as to, 75
strikes different minds differently, 75

Memorandum. *See* Warranty

Merchandise. *See* Goods

Merchants
often unsystematic in detail, 86
Baron Bramwell's reproof to, 86

Misrepresentations
if important, 67
void the policy, when fraudulent, 67, 74
difficult to reconcile decisions in, 68
difficult to establish, 77

Monopolies, 34

Monopolisers, 34

Mutual insurance clubs. *See* Mutual Insurance Societies

Mutual Insurance Societies
the London Union, 40
twenty existing in 1810, 40
increase in numbers of, 42, 393
extent of operations, 43
their present number, 44
no partnership of members, 44, 141
their rules and management, 44
manner of signing their policies, 85
policy often continuous, 95
stamp duty relating to, 95
how managed, 141
action against members, 141
often combine their rules with Lloyd's policy, 146, 410
continuity of risk, 171
'calls' take the place of premium, 202, 223, 400, 405
allowance for laying up, 224, 418
their objects and nature described, 391
resemble benefit societies, 391
constitution of, 394, 399
various requirements and adjustments, 395
indemnity afforded by, 401
localisation of, 403
exist for one year only, 405
committee of management, 406
not applicable to very large communities, 406
great variety in their rules, 407
partially adopt custom of Lloyd's, 409
their warranties, 411
inquisitorial character of, 411
accumulation of claims, 412
rule as to collisions, 412
compensation clauses for different classes of ships, 413
illustrations of foregoing, 414
often pay wages or provisions of crew, 415
give rewards to, or dismiss, masters or officers, 416
abandonment of ship, 417
rule as to missing ships, 417
cessation of members' liability, 418
vessels laid up, 418
method of paying losses, 419
protection clubs, 423
advantages and disadvantages of, 424
have sometimes unwritten usages, 457
and stipulations to which the law will not give force, 457

Mutuum, 11

Netherlands
trade with England in A.D. 1560, 29
insurance practices in A.D. 1560, 29
tendency to gambling in, 37

New Insurance Company
attempt to introduce it, 38

'Not Guilty'
plea of the chartered companies, 34

Novels
Justinian's, 2, *note*, 5

Old South Sea House, 33

Oleron
laws of, 12
roll of, 13
note concerning, 13, *note*

Ordonnance, the
of 1681, 19

Over-insurance, 247

Overland Route, 53
policies effected on, 257

Ownership
of goods, the real test in double insurance, 267

Pandects, 2, *note*

Paris
insurance in, 44
number of companies established in, 45

Park
his belief in the necessity of insurance, 11

Parliament
interferes and condemns monopolies, 35
again interferes, 35
pass an act in favour of the chartered companies in 1721, 37
Mr. Manning's motion on marine insurance, 38
the select committee of the House of Commons on marine insurance, 38
Mr. Angerstein's evidence in, 39
Mr. Bennett's evidence in, 39

Peninsular and Oriental Steam Navigation Company
insure their own vessels, 43
insure merchandise, 43
their 'Red Bill of Lading,' 43

Perils of the seas
classification of, 135
excuse the shipowner under his contract, 330

Policies, Court of, 30

Policy
the Venetian not discoverable, 26
English policies not often preserved, 26
on parchment, 26
Venetian of 1780, 27
of assurance, name well known in Elizabeth's time, 30, 47
of insurance first confined to marine risk, 47
limitations in, 56
warranties in, 56
Lloyd's policy, contains a receipt of premium, 57
must be previously stamped, 81, 91
Lloyd's policy made out of assured, 80
of companies, made out by themselves, 80, 83
manner of filling up, 80
immaterial whether written on parchment or paper, 81, 105
cannot be stamped after execution, 81
method of signing, 81, 105
little restriction as to who signs, 82
no power of attorney required to sign, 83
of companies, generally signed by two directors, 83
a seal usually affixed, 83, 105
of the two chartered companies, sealed, 83, 105
whether counter-signing of secretary necessary, 83
danger of counter-signatures, 83
mutual insurance associations, how signed, 85
witness not necessary to signature, 85
delivery of policy necessary, 85, 106
at Lloyd's generally informal, 85
no fixed form for delivery, 85
should be examined by assured before accepting it, 88
fire and life offices' policy usually invite examination, 88
must bear proper stamps, 88, 107
stamp-duty. *See* Stamps
restamping policy, issued out of the United Kingdom, 102, 104
the Lloyd's policy interesting in itself, 108
uncertain derivation of the name, 108

Policy—*continued*
how long in use in England uncertain, 110
its language indicates some antiquity, 110
of 1708, preserved at Lloyd's, 110
probably introduced by Lombard merchants, 110
mentioned in Elizabeth's act of 1601, 111
but in use previously, 111
probably adopted by several countries about the same time, 112
an obligation or covenant, 112
its form, 112
the form no longer a convenient one, 113
yet cannot be dispensed with, 113
Lloyd's policy, forms used only at Lloyd's, 113
a definite contract, 114
the common form of policy at length, 117
the initials, 119
solemn language of policy, 120
inaccuracy of expression, 120
opening of the companies' policies, 121
of the London assurance, 121
of the Royal Exchange, 122
the words 'lost or not lost,' 122
when it takes effect, 122
'at and from,' 124, 125
definition of voyage and interest, 124
identification of ship, 124
limitation of risk, 124
inception of risk, 125, 170
clause of touch and stay at, 129
what permission is given in policy, 130
distinguished a, valued and open policy, 131
valuations in, 131
ship-or-ships' policy, 133,'258
open or floating policy, 133, 252
place for valuation, 134
'all other perils' &c., 135, 137
not an indemnity against every risk, 135
the 'sue-and-labour' clause, 137
new clause relating to abandonment, 138
fagot-policy, 139, 435
confession-of-premium clause, 142
generally a fiction, 143
'the warranty,' 143
foreign policies, more modern in form, 146
Paris policy, 147
contains the 'franchises,' 147
translation of the Paris policy. *See* Appendix
table of articles excluded in Paris policy, 148

Policy—*continued*
claims on, where to be adjusted, 149
the league-and-half per hour in French policy, 152
summary, 153
coterminous policies, 170
for voyage and time what stamp required, 171
contains an acknowledgment for premium, 199
law will not assist to recover on illegal policies, 239
'honour policies,' 239
valued policies, 251
erroneous filling up as to value, 254
consecutive policy, 260
'floating' or open policy, 261
warranties on an open policy, 263
sometimes remain open inconveniently long, 263
floating policies of fire companies, 268
different modes of filling up policies, 857
retention of policies by broker, 371, 380
transfer of, 377
assignment of, 379, 389
on cargoes to arrive, 380
copy of policies, 381
broker's lien on, 382
illustration of difficulties of, 383
Lloyd's policy, customary use of, 437
legal rights on, 439

Policy-Broker, 344

'Policy of Insurance Act of 1867,' 389

Premium
the form in which losses fall on the assured, 50
an essential part of insurance, 57
prepayment of, 57
confessed to be paid in Lloyd's policy, 57, 142, 199, 318
cash premium, 57
running account for, 57
set-off of, 57
payment of a condition precedent, 57, 199
affected by uncertain conditions, 58
return of, 58
the word premium does not occur in the Lloyd's policy, 142
is the underwriter's consideration for his risk, 149
difference between English and French view of premium, 200
validity of the policy dependent on the payment of premium, 200
form of receipt for premium in policies of offices, 200
bill sometimes drawn for premiums in India, 201

Premium—*continued*
effect of the plan, 201
conditional premium in form of abatement, 201
no real premium in mutual insurance associations, 201
'calls' take the place of premiums in clubs, 202, 223
construction of premium, 202
on life insurance, 202, 203, 225
on fire insurance, 203, 206
inadequacy of domestic fire premium, 203
life premiums founded on vital statistics, 203
'Northampton' and 'Carlisle' tables, 204
'English,' and 'Actuaries' experience' tables, 204
premium varied in different companies, 204
still only changes on equivalents, 205
difference in nature of premiums in life and marine insurance, 205
continuousness of life and fire premiums, 205
fire premium more conventional, 206
conditions different in the marine premium, 207
marine premium not scientifically constructed, 208
too uncertain to be quoted, 208
combines many elements, 208
in what manner constructed, 209
due immediately on effecting insurance, 209
set off of premium against losses, 210
action against broker for premiums not paid, 210
deduction from premium, brokerage, and discount, 210
returns of premium, 211
inadequate premium under some circumstances, 213
instances of the, 213
on ship, 214
how premium arranged, in case of double insurance, 219, 264

Pretium, 6

Principal
undeclared, 361
declared, 386

Probabilities
theory known to, but not utilised, 1
work out by accumulation of cases 51, 52
contrasted with possibilities, 51

Proclamation
of Venetians, A.D. 1670, 22
A.D. 1706, 27

Profits
an insurable interest, 276
what risks subject to, 276

Protection Clubs
their object, 423

Protest
the shipowner's defence against claims, 315
whether incumbent on him to extend it, 315

Rawdon Brown, Esq.
his calendar of Venetian state papers, 137

Receipt clause
forms part of Lloyd's policy, 57, 142, 199, 348
acts as a bar against underwriter, 348
has been modified by modern companies, 348
is not a bar against broker or premium, 361

Registration
of insurances, 29

Reinsurances
rendered legal in 1864, 239

Reloading expenses
by whom to be borne, 330
ought not properly to be thrown on freight alone, 331

Representations
importance of the subject, 66
distinguished from warranties, 66
not embodied in the policy, 66
how they act on the underwriter, 66
judged of somewhat leniently, 67
material, and non-material, 67, 70
if not true in fact, 67
assured need not depreciate his proposal, 68
its nature is additional information, 69
sometimes a vehicle for fraud, 69, 74
if made to one underwriter whether binding on another, 69
generally made to the first underwriter, 70
when it voids the policy, 70
the materiality of generally left to the court, 75
but not always, 75, *note*
minute correspondence with fact not always demanded, 76
sometimes a general correspondence sufficient, 76
often loose and unmethodical, 76
conversational in character, 76
parol representations, 76
view of the Code de Commerce severe, 77

Representations—*continued*
general summary of, 78
how they differ from warranty, 159
written representations in charter parties, 178

Republics
Italian, 12
Florentine, 18

Responsa prudentium, 6

Return of premium, 58
may be claimed from underwriter, 211
on several grounds, 212
for want of interest, 212
none of whole premium, where the interest has been at risk, 215
instances where not claimable, 215
from absence of risk, 216
double insurance, 217
how arranged between two sets of underwriters, 219
fraud prevents return of premium, 220
stipulated returns, 221
generally imply arrival of the interest, 222
whether stipulated return of premium should be affected by a subsequent event, 222
on fire and life policies, 224, 231
in life assurance, called purchase of policy, 225
action for, 226
for short interest, 262
in France made by the last underwriter, 262
on cash accounts, 368

Reticence. *See* Concealment

Rialto
hour of, 25

Richard I.
charter by, 12

Risk
a necessary element of insurance, 6
the mother of profits, 53
without it insurance would not exist, 53
in marine insurance what it includes, 53
commencement of, often coincides with the commencement of the voyage, 53
commencement of, 123
limitation of, in policy, 124

Risk—*continued*
inception of, 125
at and from, 125, 257
commencement on a time policy, 126
on merchandise, 127
termination of, 127, 128
of craft and boats, 129
risks undertaken by underwriters, 135
want of interest, not indentical with absence of risk, 217
endurance of, 256
of goods on wharf or in warehouse, 257
'from the loading,' 257
'during the ship's abode,' 258
'taking down 'risk by underwriter, 354
amount of undertaken by underwriter, 402
cessation of in members of clubs, 418

Roll
of Oléron, 13

Rome, Ancient
whether any indications of insurance, 7

Roole d'Oléron, 13

Rotterdam
an insurance company established in 1720, 36

Royal Exchange
insurance made in A.D. 1627, 30
office for insurance at in 1601, 30, 31
underwriters migrated to, 33
statute as to slips, 63, 95

Royal Exchange Assurance, the
receives its charter in 1720, 33
privileges it received thereby, 33
policy of, 122
proceedings against, 140

Rules. *See* Club Rules

'Rutter of the Sea,' 12

Sailing
what is a true, 188

Seal
signature by, 34
signature of the two chartered companies, 83, 105

Seaworthiness
in what it consists, 165
implied, 163
may be progressive, 166

Selden, John
his *Mare clausum*, 14, *note*

Set-off
by underwriter, for unpaid premium, 150
of losses against premiums, 349

Sheppard's 'Touchstone,' 47, 86

Ship
identification of, in policy, 124
valuation of, 132
premium on, 214
freight held to be an incident of, 332
this legal doctrine unsatisfactory, 332
laid up, 418

Ship-or-ships' policy, 133
assured's, right under, 258, 260
manner of declaring interest, 259
order in which goods are to be declared, 259

Ship's papers
what documents must be carried, 175
implied warranty to carry proper, 175
simulated papers, 175

Shipowner
owes certain duties to goods he carries, 173
his duties under contract of affreightment, 312
his duties to navigate the ship, 316
finds and provides the crew, 317
pays all disbursements, 317
privileges arising from these duties, 317
have rendered freight a preferential interest for insurance, 317

Short-interest. *See* Over-insurance

Signature
by seal, 34
used by the Normans, 109
obliteration of, 373