that the interlocutors therein complained of be, and the same are hereby affirmed. 1773.

M'NAIR v. COULTER, &c.

For Appellant, *E. Thurlow, Tho. Lockhart.*
For Respondent, *Ja. Montgomery; Al. Wedderburn, Ilay Campbell.*

(M. 7106.)

ROBERT M'NAIR, Merchant in Glasgow, *Appellant.*
JAMES COULTER and Others, Merchants in Glasgow, Insurers of the Ship Jean and her Cargo, - - - - } *Respondents.*

House of Lords, 15*th February* 1773.

VALUED OR OPEN POLICY—PROOF—BILL OF LADING—INTEREST.—Insurance for £1000, on ship and cargo, lost on her voyage from Virginia to Barbadoes. The son of the insured was master. The policy proceeded on false information of the value sent by the son to the insured, but without the latter's knowledge. The Court of Session held, that the bill of lading was not good evidence of the value and quantities of goods. The question was, Whether he was entitled to recover the sum named in the policy, or the real value of the ship and cargo only. Held, reversing the judgment of the Court of Session, that he was entitled to recover the sum of £1000 named in the policy; also to recover interest thereon.

This question arose out of a policy of insurance effected on the ship Jean and her cargo, for the voyage from Virginia to the Barbadoes, in which the respondents were the insurers, the appellant the party having the insured interest.

The particulars of the case are fully detailed in a report of the case, which went to the House of Lords (Vide *ante*, p. 224.) The case was then remitted back to the Court of Session to dispose of the other points in the cause.

By interlocutors of 8th February and 21st June 1765, the Court found that the insurers were not bound to pay the sums at which the ship and cargo were insured, but only the real value, as the same might be ascertained, and finding the value of the ship to be £450. When the case came back from the House of Lords further discussion took place, on the point, whether it was an open or a valued policy?

Of this date, the Court pronounced this interlocutor: Feb. 13, 1772.

"Find that the charger (appellant) is not entitled to recover from the suspenders (respondents) the £1000 Sterling specified in the policy, but only a sum equal to the damage he sustained by the loss of the ship Jean and her

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" cargo: Find, That in this circumstantiate cause, the bill " of lading and invoice, which last is only signed by James " M'Nair, cannot be admitted as good evidence, neither of " the quantities nor value of the goods which were put on " board said ship in Virginia: But find, That the quantities " must be held to be as ascertained by the manifest of the " naval officer, and the values ascertained by the oath of " John Hood, by whom the goods were mostly furnished: " Find the suspenders (respondents) are also liable to make " good the value of the ship as formerly ascertained, ex- " pense of shipping the goods, and the freight thereof from " Virginia to Barbadoes, and likewise the sums paid for the " insurance: But find, That out of the sums aforesaid, the " suspenders (respondents) are entitled to have deduction " of £2 per cent., in terms of the policy, as also to have de- " duction of the value of the goods aboard the Jean which " belonged to Mr. Smith, to the extent of £100 Sterling; " and, in the last place, find the suspenders (respondents) " liable for interest of the balance, after deducting as above, " from the date of the decree of the Admiral Court, and " remit to the Lord Ordinary to proceed accordingly."

Against this interlocutor the present appeal was brought, and a cross-appeal brought, in so far as the interlocutor found the respondents liable for the value of the ship and cargo, with *interest*.

Pleaded for the Appellant.—That this is a valued policy of both ship and cargo, and under such a policy the insured was entitled to recover the whole sum (£1000) in the policy. A valued policy is one wherein the ship and cargo are valued at a particular sum, without any further account to be given, and upon such a policy, where the interest insured is admitted to have existed, so as to take it out of the meaning of the statute 19 Geo. II., the rule is, to take the quantum of that interest from the value expressed in the policy, without any other proof of the quantities and values of the goods. He is further entitled to insure a sum larger than the value of the cargo, to protect him from loss. This the appellant maintains as a general principle of law. But even if he were wrong in this, and any further proof of value than the policy affords were necessary, it is clear that the value of the ship, as ascertained by the interlocutors of 8th February and 21st June 1765, cannot be held to be her true value at the time she was lost; because, although James M'Nair paid £450 for her, it is proved at this time she required very considerable repairs, which cost £150. And in regard to the cargo, the kinds and quantities are fully proved by the bill of lad-

ing, and other proofs, in support of it. It was, therefore, wrong in the Court below to hold that this bill of lading was not good evidence of the quantity of goods on board, and of the value thereof. And in regard to the cross-appeal; if the appellant be entitled to recover every part of the sum under the policy, he is then clearly entitled to interest during the time the sum has been withheld. Here there was *mora* in making payment; and in all such cases interest is due in name of damages for that *mora*, and therefore the interest has been properly awarded from the commencement of the suit.

Pleaded for the Respondent.—1st. The policy in question cannot, by the law of Scotland, be considered a valued policy, which obliges the underwriters to pay the whole sum of £1000 mentioned in the policy; but only a policy, the claim under which is for the value of the ship and cargo insured, as the same might be ascertained. This latter rule of adjusting the claim between the insurer and insured, has been long recognized in Scotland, and is agreeable to the spirit and meaning of 19 Geo. II., as it effectually discourages the pernicious practice of effecting insurances for more interest than the insured has in the subject insured. In any view, the insurers are entitled to deduction of £23. 7s. as salvage for that part of the wreck saved, and also to 2 per cent. the deduction mentioned in the policy in case of loss. 2d. In regard to the cross-appeal, a policy of insurance is not a contract which carries interest for any sum which the underwriters may become liable to on account of a loss; they engage only to be liable for the loss itself, not for any interest for or upon such loss, as the policy cannot be placed on the same category with a bond, bill, or other security, which, upon the face of them, or by law, carry interest; and there has never been any instance in the courts of Westminster where such interest has been allowed on a contested policy.

After hearing counsel this day upon the original appeal, complaining of *certain parts* of three interlocutors of the Lords of Session in Scotland of the 8th February 1765, the 21st June 1765, and the 18th of February 1772, it is

Ordered and adjudged that the interlocutors of 8th February and 21st of June 1765, in so far as they found the policy of insurance does not, in this case, oblige the insurers to pay the sum at which the ship and cargo were insured; and also the interlocutor of the 13th February 1772, in so far as it finds the appellant is not entitled to recover from the respondents the one thou-

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sand pounds sterling specified in the policy, but only a sum equal to the damage he sustained by the loss of the ship and her cargo, be, and the same are hereby *reversed:* And it is hereby declared, that the appellant is entitled to recover from the respondents the sums by them severally underwritten, and interest thereof from the date of the decree of the Admiralty Court, and of the sum of £83. 1s. as the expenses of extracting the decree in the said court, under discount of 2 per cent., in terms of the policy, and of £23. 7s. as the acknowledged value of what was recovered from the wreck, and dismisses the cross-appeal.

For Appellant, *Ja. Montgomery, Al. Wedderburn.*
For Respondents, *J. Dunning, Fl. Norton.*

ROBERT ALEXANDER, Esq. - - *Appellant;*
JAMES MONTGOMERY & Co. - *Respondents.*

House of Lords, 19*th February* 1773.

SALE—LOCUS PENITENTIÆ.—Circumstances in which written correspondence, in regard to a sale of coal, was not held to amount to a final and conclusive agreement, the parties having stipulated that their agreement was to be a *written* agreement, and, until this was executed, either might resile; affirming the judgment of the Court of Session.

A proposal was entered into for the sale of coal, on the appellant's part, to the respondents on the other; and the question was, Whether the following letters, which passed from the one to the other, imported a definite and final agreement on the subject of the sale?

The respondents were possessors of the Newton colliery in Ayr: and Mr. Alexander addressed the following letter to Dr. Campbell, one of the partners of that com-

Mar. 12, 1770. pany. "Sir,—My friend, Mr. M'Adam, acquaints me, he "had talked over a proposal which I had desired him to "make to you and partners of the Newton coal work, for "the delivery of a quantity of coals at the harbour from "my brother's estate yearly. Mr. M'Adam informs me that "your company agree to take 25,000 tons yearly, and to "pay for the same, on delivery, 5s. per ton, the agreement "to commence Martinmas next. Mr. M'Adam says nothing "of the endurance of the agreement, but my agreement was "to agree for 21 years. It being understood that, should "the coal work cease for want of coal, or other unavoidable