

would give effect to the insurance, or not, as they thought it most for the advantage of their employers.

No 21.

THE LORDS unanimously adhered to the judgment pronounced by the Lord Ordinary, who had sustained the defences pleaded for the underwriters.

Lord Ordinary, *Lord Brasfield.* Act. *Lord Advocate.* Alt. *Craig.* Clerk, *Home,*
C. *Fol. Dic. v. 3. p. 329.* Fac. *Col. No. 281. p. 432.*

1786. November 15.

MARSHALL, HAMILTON, and Company, against JOHN CRAWFORD and JOHN BARNES.

No 22.

A VESSEL belonging to Marshall and Company of Greenock, was destined to sail on a voyage from that port, according to the following plan, contained in the instructions given to the shipmaster; her lading consisting chiefly of coals: "To sail first for Newfoundland, there to receive on board 300 casks of fish; and with these, the coals, and other goods, to proceed to Barbadoes, where a correspondent was to direct to the best market: The great object of the voyage being to obtain a freight homeward, if possible one to be engaged there, or at the neighbouring islands; and if this could not be done, then to proceed to Morant Bay in Jamaica, where the master was to leave the ship, and wait on other correspondents at Kingston and Manchineal, in order to secure a freight."

A vessel being insured 'to a market,' is to proceed thither directly, and not to admit unnecessary delay from any other object.

The clause in a policy, of 'a vessel being safely moored,' means according to usage of the place.

Having received advice of the safe arrival of the ship at Newfoundland, Marshall and Company opened a policy at Greenock, 'on ship and freight, at and from Newfoundland, until she arrives at her port or ports of discharge in the West Indies, and is there twenty-four hours safely moored; and the risk on the freight to continue until the cargo is there safely discharged; after the rate of one guinea and a half per L. 100 Sterling, and one guinea per L. 100 additional, if the ship shall proceed to Jamaica.'

They likewise opened another policy at Glasgow, 'on the ship; also on fish per said ship, at and from Newfoundland, until the ship shall arrive at a market in the West Indies, with liberty to proceed to Jamaica, and there be safely moored, and said fish landed, at two guineas per cent. with one per cent. additional, if the vessel shall proceed to Jamaica.'

The ship arrived safe at Barbadoes, where, and at some neighbouring islands, her cargo of fish was disposed of. But no freight offering, the master, according to his instructions, immediately pursued his voyage to Morant Bay in Jamaica, without taking time to unload and sell the coals, which otherwise he could have done. Having reached Morant Bay, the vessel was there moored with three anchors. The master, as directed, left her, to go to Kingston and Manchineal for the requisite information; and two days afterwards he returned.

No 22. being desired by the correspondents to wait farther advice concerning the place where the freight was to be obtained. In the mean time, and after the ship had continued moored in the Bay for seven days, she was wrecked in a hurricane.

The insured brought an action for recovery of the loss, before the Admiralty-court, which was afterwards removed into the Court of Session; when it was

Pleaded for the defenders; *1st*, In the style of the policies, especially the Glasgow one, Jamaica is contrasted with the West Indies; and thus, when the vessel was insured to a market in the West Indies, with liberty to proceed to Jamaica, not a market in this island, but a port merely, was meant. Besides,

2dly, A market might have been had in Morant Bay, as well as at the other islands, if that had been the immediate object of the voyage. It was a freight, and not a market, which was the object, and hence proceeded the delay during which the loss happened. But it was to a market, and not till a freight could be obtained, that the ship was insured; and therefore the insurers are not answerable for a loss occasioned by the pursuit of an object with which they have no concern.

Answered; *1st*, In the language of merchants, as well as of geographers, Jamaica, though none of the Caribbees, is an island in the West Indies; and therefore the above criticism is inadmissible.

2dly, The ship lay at Morant Bay till a proper market, suitable to the intention of the voyage, could be procured; and when lost, she had not arrived at such market, or at the port of discharge. But,

3dly, She was not even 'safely moored,' by which is to be understood moored in a harbour.

Replied; The vessel was moored with three anchors, in the same manner as other ships of her burden usually are in that Bay.

The cause was reported by the Lord Ordinary. The Court seemed to be chiefly moved by the second argument used for the underwriters; and therefore, the cause having been brought into Court by suspension of the Admiral's decree, which was in favour of the pursuers,

'THE LORDS sustained the reasons of suspension, and suspended the letters *simpliciter*.'

To this judgment the Court adhered, on advising a reclaiming petition and answers.

Reporter, *Lord Monboddo*.

Act. Lord Advocate, *W. Craig*.

Alt. *MacLaurin, Blair, J. Millar, jun.*

Clerk, *Home*.

S.

Fol. Dic. v. 3. p. 330. Fac. Col. No 293. p. 451.