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ARCHIBALD and JAMES ROBERTSON & Co.
JOHN LAIRD,

Appellants ;
Respondent.

ROBERTSON
& CO.
v.
LAIRD.

House of Lords, 8th March 1796.

INSURANCE—ALTERATION OF VOYAGE.—Policy from Virginia to Rotterdam, with liberty to call at a port in England, only entitles to call at a port in England that may be within the due course of the voyage to Rotterdam, and not at any port in England, or at a port there which may be out of the due course of the voyage. The vessel having sailed from Virginia direct for Hull. Held this to be a different voyage from that insured.

The Messrs. Gemmell & Co. having sent their vessel, 'Fanny,' from Greenock to Virginia for a cargo of tobacco, they insured the voyage from Virginia with the appellants by the following order:—"Gentlemen, You will please insure in my favour, or whoever it may concern, £2000 ster. on tobacco on board the 'Fanny,' at and from her lading ports in Virginia to Rotterdam, with liberty to call at a port in *England*, premium £2. 5s. per cent., valuing the tobacco at £10 sterling per hogshead." The appellants opened a policy of insurance, in which the risk is described in the following words: "Beginning the said adventure upon the said tobacco from the loading on board the 'Fanny' at her ports in Virginia, say in loading ports in Virginia, and to continue and endure until she shall arrive at *Rotterdam*, with leave to call at a port in *England*, and until the tobacco be there safely landed." Of this policy, the respondent Laird, underwrote £200 on account of his constituents, Messrs. Ritchie of Glasgow.

At the time this insurance was effected, it was not quite certain what kind of tobacco could be procured. The Dutch market was chiefly in view, for which the Rappahannock tobacco was suitable; but thereafter, having received advice that the Rappahannock kind could not be got, and that the cargo would consist of 112 hogsheads from York river, which is of a richer quality, and more suited to the English market, and 100 hhds. of Rappahannock, Messrs. Gemmell & Co. wrote the underwriters:—"Gentlemen,—By a letter I received yesterday from Virginia, it appears that my friends intended to send the 'Fanny' from Rappahannock river to York river, there to take on board part of the cargo of tobacco; and in that event she will proceed to Hull,

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“ in England, there to discharge her cargo. To this, I sup-
 “ pose, the underwriters have no objection, and I wish the
 “ tobacco shipped in the York river to be valued at £13
 “ per hogshead. If the underwriters agree to this, please
 “ indorse the same on the back of the policy, for them to
 “ sign it; and you will please to insure £400 for these to-
 “ baccos, at 45s. per cent. as above.”

The appellants agreed to this, and underwrote the follow-
 ing indorsement, in order to be signed by all the under-
 writers:—“ *Greenock, 8th January 1789*, Mr. Gemmell hav-
 “ ing been advised by his friends in Virginia that they in-
 “ tended sending the within-mentioned brig ‘Fanny’ from
 “ the Rappahannock river to York river, there to take on
 “ board part of her cargo of tobaccos, and in that event the
 “ ‘Fanny’ will proceed to Hull in *England*, there to de-
 “ liver her cargo, and not to Rotterdam; should the ‘Fanny’
 “ therefore go to York river, we, the underwriters, on the
 “ within-mentioned tobacco, agree to stand the risk to Hull
 “ the same as if she were to proceed to Rotterdam; and we
 “ also agree to the York river tobacco being valued at £13
 “ per hogshead.” The policy was sent by Messrs. Robertson,
 the appellants, to the respondent, Laird, that he might
 sign the indorsement. Their clerk called on him several
 times, but found him not in. After reading it over he car-
 ried it away. One of the appellants finding it lying on their
 desk, put it aside, imagining it was all signed. They had
 met Laird on the street, and spoken to him about it. He
 did not object to sign; but merely observed that the former
 premium was too low. It was never signed by him.

The “Fanny” sailed on her voyage to Hull, and while on
 the coast of Newfoundland, and still in the same tract she
 must have taken, if she had sailed for Rotterdam, she was
 lost.

Messrs. Gemmell made their demand for the loss. Laird,
 the respondent, refused to pay the sum underwrote, on the
 ground of deviation from the voyage originally insured,
 which was from Virginia to Rotterdam. But the *appellants*,
 seeing that his not signing the policy arose from their *omis-*
sion in not *getting* it *signed*, paid the amount, and raised
 action against Laird for his proportion. They obtained
 decree in absence, which being suspended, the Lord Ordin-
 ary refused the bill, which being reclaimed against, the
 Court, on two petitions, adhered; but appeal being pre-
 sented to the House of Lords, this judgment was reversed;

“ and it was further ordered, that the cause be remitted
 “ back to the Court of Session in Scotland to pass the bill
 “ of suspension.”

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Accordingly the discussion was gone into, which was en-
 tirely confined to the import of the original policy, it being
 contended that liberty to call at a port in England, was
 liberty to discharge the cargo at Hull, and the Lord Ordin-
 ary, of this date, pronounced this interlocutor:—“ Having
 “ considered this condescendence with answers, and the
 “ whole cause, finds, that a voyage insured from Virginia to
 “ Rotterdam, with liberty to call at a port in England, does
 “ only entitle the insured to call at such ports on the *Eng-*
 “ *lish* coast as lie in the track of the voyage, but *not* at a
 “ port which is so much out of the natural course of the
 “ voyage as Hull is, and therefore, suspends the letters *sim-*
 “ *pliciter*, and decerns.” On two reclaiming petitions to
 the whole Court, they adhered.

April 20, 1791.

Nov. 14, 1792.

Dec. 4, 1792.

Jan. 15, 1793.

Another reclaiming petition was presented. In this the
 appellants contended, that by the original policy the *Fanny*
 had liberty to call and discharge at Hull. That liberty to call
 at a port, was liberty to discharge the cargo at that port; and
 that a voyage insured to Rotterdam, with liberty to call at *a*
port in England, was liberty to call at any port in England,
 and consequently at Hull; and therefore, even on the import
 of the original policy, there was no deviation whatever.
 2. But even if there were, yet, under all the circumstances
 of the case, the respondent was equally bound by the in-
 dorsement as if he had actually subscribed it. The respon-
 dents maintained, that insurance on a voyage from Virginia
 to Rotterdam, with liberty to call at a port in *England*, did
 not mean liberty to call at the port of Hull, or at any port
 in England indefinitely, but only to call for advice, pilots,
 &c., at some one of the English ports in the channel, in the
 direct track from Virginia to Rotterdam; or, in other words,
 would import no more than a liberty to call at some port in
 England in the course of that voyage; that is, some port in
 the English channel, Plymouth, Falmouth, Dover, &c., at
 which last place, ships from America to Holland frequently
 and usually call, in order to get pilots for the coast of Hol-
 land. There being, therefore, a deviation from the voyage
 originally insured, he was not liable. And in regard to his
 being liable under the indorsement, as he never signed it,
 and never heard that he had been called on to sign it, there

1796. were no circumstances, and no principle to support such liability.

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July 11, ———

The Court still adhered.*

Against these interlocutors the present appeal was brought.

Pleaded for the Appellant.—By the policy in question the “Fanny” had liberty to call at a port in England. It is not disputed that liberty to call at a port, implies liberty to discharge at that port. It consequently follows from this, that a voyage insured from Virginia to Rotterdam, with liberty to call at a port in England, gives leave to carry the cargo either to England or to Rotterdam. This agrees with the views of parties at the time of insurance. The quality of the tobacco to be shipped was not then ascertained, and the vessel’s alternate destination either to the one port or the other, depended upon the quality of tobacco that could be procured for shipment in the Virginia market, and accordingly the policy was made out to meet either event. The policy was therefore an alternative policy, and there would have been no use for applying for the indorsement, had it not been that the assured wished to change the value of the tobacco from £10 per hogshead to £13, in consequence of a higher priced tobacco being shipped. A ship loaded with tobacco by act of parliament, can call at no port without discharging her cargo there, which further strengthens the respondents’ proposition, that a vessel insured from Virginia to Rotterdam, with liberty to call at a port in England, must necessarily mean any port in England at which the tobacco could by law be imported, and that the leave to call must not only mean some of these tobacco ports, but also to discharge there her cargo. Besides, the vessel being lost when in the direct course both for Hull and for Rotterdam, and be-

* Opinions of Judges :

LORD PRESIDENT CAMPBELL.—“This is clearly a different voyage. The Hovering laws (act 25 Geo., c. lxxxii., § 48) cannot affect the question. Besides, there is no relevant fact offered to be proved, and the new policy was never agreed to. It is not a case of deviation, but of alteration.”

LORD SWINTON.—“It is a case of alteration. Even a shortening of the voyage is an alteration. There may be less preparation, difference in provisions, &c.”

LORD CRAIG.—“I think the interlocutor right. It was a different voyage altogether.”

fore she had reached the dividing point, the insured ought to recover.

Pleaded for the Respondent.—The voyage in which the vessel was lost, was different from that described in the policy. According to the policy, the vessel was to proceed from Virginia, on a voyage to Rotterdam, which was there mentioned as the port of delivery; but she actually cleared out, and was proceeding, not to Rotterdam, but to Hull, as the port of delivery, when she was lost. The voyage, therefore, was changed, and unless it can be maintained that the two voyages were substantially the same, there is no ground for holding the respondent liable, as the deviation entirely frees him. And if he is not bound by the original policy signed by him, it follows that he is not bound by the indorsement, which was never signed by him, and which described a different voyage. The fact of the insured obtaining this indorsement, was the strongest evidence of their understanding as to the voyage, and of its being a deviation, else why apply for leave to call at Hull and discharge there, if he believed he had liberty already by the original policy to call there? A voyage from Virginia to Rotterdam, with liberty to call at a port in England, means only a port in the usual course of the voyage insured, and cannot be construed to mean a port entirely out of that course, but such a port only in England as the ship may pass direct on her course from Virginia to Rotterdam, of which there were several, and one tobacco port (Cowes). That liberty to call at a port in England, is not a leave co-extensive with liberty to call at any port in England, the former expression being more limited, and the latter general, and therefore, there being deviation, the respondent is free.

After hearing counsel, it was

Ordered and adjudged that the interlocutors be affirmed.

For Appellants, *Sir J. Scott, Wm. Grant.*

For Respondent, *T. Erskine, W. Adam.*

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