GARDNER v. COLUMBIAN INS. CO.

Case No. 5,224.

{2 Cranch, C. C. 473.}[1]

Circuit Court, District of Columbia. May Term, 1824.

MARINE INSURANCE—VALUED POLICY—COST—CONSTRUCTION.

1. In an action upon a valued policy on a cargo, the defendants will not be permitted to give evidence of its actual cost.
2. The policy was on a voyage "at and from Rio Janeiro to Santos, and two ports in South America, and at and from either of them to a port of discharge in the West Indies, or Europe, or the United States," upon goods "at and from Rio Janeiro," "until they shall be safely landed at Santos, &c, &c," "valued at the sum insured," (viz. $3500,) "on her cargo of salt, and on the proceeds, as interest may appear." These words do not justify an inference, on the part of the underwriters, that the goods were to be laden on board at Rio Janeiro.
3. The cargo was lost between Rio Janeiro and Santos, and the plaintiff recovered for the loss, although the cargo was laden at Cadiz.

This was an action {by Richard Gardner} upon a policy for $3,500, on a cargo of salt in the brig Manufactor. The terms of the policy are stated above in the marginal note.

Mr. Taylor, for defendants, contended, that, by the terms of the policy, the salt was to be taken on board at Rio Janeiro, whereas it was laden on board at Cadiz, in Spain; which fact was not disclosed to the underwriters; and that this was a material misrepresentation, which vacated the policy. He also con tended, and offered evidence to prove that the cargo cost, at Cadiz, only $450, whereas it was valued in the policy at $3,300; and that this was so gross an over valuation as to authorize the defendants in considering it as an open policy.

But the court (nem. con.) refused to admit evidence of the actual value at. Cadiz.

As to the first misrepresentation, Mr. Taylor cited Marsh. Ins., 321, 322; Murray v. Columbian Ins. Co. of N. Y., 11 Johns. 302.

Mr. Mason, for plaintiff, contended that the words of the policy did not imply that the salt was to be taken on board at Bio Janeiro; and every person trading to that port knows that salt cannot be taken on board there, by an American ship, and carried to Santos, which would be a prohibited coasting trade. The defendants were bound to know the laws and usages of the trade. Bell v. Hobson, 3 Camp. 272, 10 East. 241; Phil. Ins. 169.

THE COURT (nem. con.) was of opinion that the words of the policy did not justify an inference on the part of the defendants that the goods were to be laden on board at Rio Janeiro, and that the salt was covered by this policy, although not laden, nor bulk broken, at Rio.

{See Case No. 5,225.}

[1] {Reported by Hon. William Cranch, Chief Judge.}