

Case No. 5,225. GARDNER V. COLUMBIAN INS. CO.  
[2 Cranch, C. C. 550.]<sup>1</sup>

Circuit Court, District of Columbia.

April Term, 1825.

MARINE INSURANCE—OFFER OF ABANDONMENT—VALUED  
POLICY—EVIDENCE OF OVERVALUATION.

1. An offer to abandon the insured vessel, made as soon as the assured obtains the preliminary proofs of loss, to be laid before the underwriters, is not too late.
2. Upon a valued policy, evidence of overvaluation is not admissible unless in support of an allegation of fraud.

This was an action [by Eichard Gardner] upon a policy on the brig *Manufacturer*, at and from Rio to Santos, valued at \$3,200. The defendants, at the trial, contended that the vessel was fraudulently overvalued, and that the offer to abandon was too late. The policy was dated 20th November, 1821. The loss was known here on the 24th of November. On the 20th of December, the protest and offer to abandon were sent to the office of the defendants, and the offer to abandon was repeated in writing on the 23d of January. The master arrived in Philadelphia on the 12th of December. There was no evidence of the arrival of any authentic proof previous to that date.

THE COURT (THRUSTON, Circuit Judge, absent) said the offer to abandon was not too late. They also said that evidence of overvaluation could be given only in support of the allegation of fraud. That overvaluation is not, per se, evidence of fraud, but was a circumstance proper for the consideration of the jury in considering the question of fraud; and that if they should find that the vessel was fraudulently overvalued, the plaintiff could not recover, even the value of the property, for the fraud would invalidate the contract altogether. Verdict for the plaintiff, \$3,200.

{See Case No. 5,224.}

<sup>1</sup> [Reported by Hon. William Cranch, Chief Judge.]