

POLLOCK ET AL. V. DONALDSON.

[3 Dall. 510.]¹

Circuit Court, D. Pennsylvania. April Term, 1799.

MARINE INSURANCE—CONSTRUCTION OF
POLICY—RIGHT TO PREMIUMS.

[A vessel laden at Hamburgh for Philadelphia was seized on her voyage by a French privateer, and carried into Dunkirk, where the cargo was permitted to be sold for the benefit of the owner. She then took on a small cargo, and sailed for Hamburgh, but was taken by a British privateer and carried to Falmouth, where she suffered an average loss of £90. Having been discharged, she returned to Hamburgh, took another cargo, and finally arrived at Philadelphia. On the date of the original loading at Hamburgh, the cargo was insured under a policy containing these provisions: "In port and at sea, and at all times and places, for the space of six callender months," etc. "The said goods and merchandizes, for so much as concerns the assured and assurers in this policy, are and shall be valued as interest shall appear." It being shown, by the evidence of an experienced insurance broker that under such policies it was the general usage of merchants that the underwriters should receive premiums only to the amount of their risks, the court adopted this construction, and therefore held that the underwriters could recover the stipulated premium, not upon the original cargo for the whole voyage, but only upon the different cargoes for the time they were respectively on board, deducting the amount of the average loss.]

This was an action brought by the underwriters, to recover a premium of 15 per cent. on a policy of insurance, upon the cargo of the brig Pilgrim. The policy was dated the 17th of November, 1794, and contained the following clauses; "namely, "lost or not lost, in port and at sea, and at all times and places, for the space of six callender months, 946 from the 8th day of September, 1794, to the 8th day of March, 1795, &C," "beginning the adventure upon the said goods and merchandizes from the loading thereof on

board the said vessel, the 8th of September, 1794, and so shall continue and endure until the 8th of March, 1795, and continue at the same rate of premium, until her next arrival at Philadelphia, &c.” “The said goods and merchandizes for so much as concerns the assured and assurers in this policy, are and shall be valued as interest shall appear.” “The vessel and cargo warranted American property.”

The facts were these: The brig was loaded at Hamburgh, on the 8th of September, 1794, with a cargo valued at 5,333 dollars, and sailed for the port of Philadelphia. On her passage, about the 14th of September, she was stopped by a French privateer and carried into Dunkirk, where the supercargo was permitted to sell the cargo, and to receive the proceeds on account of the owner. She then took on board a small cargo, valued at about 1,500 dollars, and in the beginning of October sailed from Dunkirk, bound to Hamburgh, but was taken on the passage by a British privateer, and carried into Falmouth, where an average loss was suffered, to the amount of £90 sterling. After a few days' detention and examination, the brig was discharged, pursued her course to Hamburgh, and arrived there towards the end of October. Having discharged her lading at Hamburgh, she took on board another cargo to the amount of 2,500 dollars; and sailed from that port in December, bound to Philadelphia; and arrived here in February, 1795. The cause was tried by a special jury; when the plaintiffs contended, that they were entitled to the premium of 15 per cent. on the first cargo shipped at Hamburgh, valued at 5,333 dollars, under the words of the policy, insuring “in port and at sea, and at all times and places, for the space of six calendar months, &c,” without regard to any change, or diminution, of the value of the cargo, during the term of the insurance. But the defendant insisted, that those words were controlled by the provision, that the cargo should be valued “as

interest shall appear;" and as he, in case of a loss, would only have been entitled to recover an indemnity, coextensive with the value of the cargo actually lost, the underwriters could not recover a premium for more than the amount of their risque.

The testimony of Mr. Isaac Wharton, an experienced insurance broker, proved that the defendant's construction of the policy was conformable to the general sense and usage of merchants, and it was accordingly adopted by the court and jury; the verdict allowing the premium of 15 per cent, upon the value of the different cargoes, for the time that they were respectively on board the brig, and deducting the amount of the average loss.

¹ [Reported by A. J. Dallas, Esq.]

This volume of American Law was transcribed for use
on the Internet

through a contribution from [Google](#). 