

## POPLESTON V. KITCHEN.

[3 Wash. C. C. 138.]<sup>1</sup>

Circuit Court, D. Pennsylvania. April Term, 1812.

## MARINE INSURANCE—SEAWORTHINESS—IMPLIED WARRANTY.

The assured is not bound to communicate the age of the vessel, or where she was built, unless required so to do. It is enough, if he is prepared to vindicate his implied warranty, as to the seaworthiness of the vessel, in case it is questioned.

Actions, on two policies, on vessel and cargo. The defence was—1. That the vessel was built in New-England, and thirteen years of age, which circumstances were not communicated to the under writers; and 2. That the plaintiff had not shown that the vessel was sufficiently found and manned, although the jury should be satisfied that the body of the vessel was seaworthy for the voyage.

WASHINGTON, Circuit Justice, stated, that the plaintiff was not bound to communicate the age of the vessel, or where built, unless they had been asked of him. It is enough, if he is prepared to vindicate his implied warranty, as to the seaworthiness of the vessel, in case it be questioned. The court left it to the jury to say, whether, upon the evidence, she was seaworthy at the time the voyage commenced, there being very slight evidence, if any, to the contrary. Verdict for plaintiff.

NOTE. Seaworthiness, which includes being sufficiently found and manned, is to be presumed; it is an implied warranty, which must be established, if impeached, but not otherwise. Marshall, Ins. (Condy's Ed.) 159, 165a, note 16.

<sup>1</sup> [Originally published from the MSS. of Hon. Bushrod Washington, Associate Justice of Supreme

Court of the United States, under the supervision of  
Richard Peters, Jr., Esq.]

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

through a contribution from [Google](#). 