THE LORD ORDINARY pronounced this interlocutor: 'in respect it is neither proved, nor offered to be proved, that the ship was lost in a voyage different from that prescribed in the policy, finds the defenders liable for the insured values.' No 19.

A reclaiming petition having been presented, to which answers were given in, 'THE LORDS adhered to the interlocutor of the LORD ORDINARY;' as they again did, on advising a second reclaiming petition and answers.

Lord Ordinary, *Braxfield.* Act. *Ross.* Alt. *Rolland.* Clerk, *Home.*

S. *Fol. Dic. v.* 3. *p.* 329. *Fac. Col. No* 339. *p.* 520.

1790. *November* 16.

ARCHIBALD and JAMES ROBERTSON *against* JOHN LAIRD.

No 20.
A ship was insured from Virginia to Rotterdam, with liberty to call at a port in England. Found, that the port must be in the line of the voyage, or not materially out of the direct course.

LAIRD, at the request of Archibald and James Robertson, insurance-brokers, underwrote, along with other insurers of Greenock, a policy as follows, viz. 'On tobacco, from the loading on board the Fanny, at her ports in Virginia, 'say her 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.'

The owner afterwards intimated to the brokers, his having lately received a letter, from which it appeared probable, that instead of Rotterdam, the vessel would proceed to Hull in England, and there discharge her cargo; directing them at the same time, if the underwriters agreed to the alteration, to get them to subscribe an indorsement on the policy to that effect.

Such an indorsement was accordingly subscribed by the other underwriters, but not by Mr Laird.

The vessel was actually cleared out for Hull, and in the course of her voyage to that port she was wrecked.

The brokers, having paid to the owner the sum insured by Laird, with respect to whom they had not fulfilled the direction given to them, brought an action against him for re-payment.

Pleaded for the defender; The vessel was lost on a voyage, not to Rotterdam, according to the terms of the policy, but to Hull, a port that it did not comprehend. It bore, indeed, 'leave to call at a port in England;' but liberty to call at a port can only be understood of one situated in the line of the voyage. In the present case, this liberty might apply to some port in the English Channel, such as Plymouth, Falmouth, or Dover, all of which lie in the course from America to Holland, and at the last of which it is usual for vessels on this voyage to call, in order to get pilots for the Dutch coast; but it could never comprehend the port of Hull, which is so remote from the navigation. If not confined to the course of the voyage, no other limit could be set to such an al-

No 20. lowance; and a ship insured to one port, with liberty to call at another, might have her voyage ever so much altered and prolonged, contrary to the meaning of the insurer.

No case similar to the present seems to have been decided either in this country or in England. In the courts of Amsterdam, however, two instances of this kind occurred, as mentioned by Bynkershoek; in which judgment was given agreeably to what has been now maintained. *Quæst. Jur. priv. lib.* 4. *cap.* 3. 8. Millar on Insurance, p. 437.

Answered; No such criterion can be resorted to for explaining the clause in question; because, strictly speaking, there is not any port in England, more than in the West Indies, that lies in the course of this navigation. If, however, the liberty here granted had been to call at a port in the West Indies, such a stipulation, it must be admitted, would, when so qualified, have become inextricable and nugatory. The liberty, therefore, in question, must be that of calling at any port within the bounds specified.

The question came before the Court by a bill of suspension, presented by Mr Laird, of a decree of the Judge-Admiral against him. It was reported on memorials; after which, agreeably to the opinion of the Court, which seemed to be, that the expression in dispute should be construed to mean any port in England, at the discretion of the insured or of the shipmaster, which would not occasion an unreasonable deviation from the plan of the voyage,

The Lord Ordinary refused the bill.

The cause having been again advised by the Court, on a reclaiming petition and answers,

The Lords adhered to the Lord Ordinary's interlocutor.

Reporter, *Lord Stonefield.* Act. *John Clerk.* Alt. *Rolland, Jo. Millar.* Clerk, *Sinclair.*

*** This case was appealed:

The House of Lords, 20th April 1791, 'Ordered, That the interlocutors complained of be reversed, and the cause remitted back to the Court of Session, to pass the bill of suspension.'

1793. *June* 25.—The facts which gave rise to this question are already stated, 16th Nov. 1790. From that report, it appears, that the Court refused the bill of suspension presented by Mr Laird.

Against this judgment, Mr Laird appealed to the House of Peers, where the interlocutor was reversed, and the cause remitted back, with an order to pass the bill.

This having been accordingly done, the grounds of suspension came to be discussed before the Lord Ordinary, who "found, that a voyage insured from Virginia to Rotterdam, with liberty to call at a port in England, does only en-

title the insured to call at such ports on the English 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 suspended the letters *simpliciter*."

No 20.

The pursuer preferred a reclaiming petition, which was refused. A second having been presented, answers were ordered, which were followed with replies and duplies.

At advising the cause, the Judges considered the voyage to be entirely altered, and therefore held the policy to be vacated. Upon that ground, they unanimously "adhered to the Lord Ordinary's interlocutor," suspending the letters.

Lord Ordinary, *Justice-Clerk.* Act. *Sir W. Miller. John Clerk.*
Alt. *Rolland, John Millar.* Clerk, *Menzies.*

R. D. *Fol. Dic. v.* 3. *p.* 329. *Fac. Col. No* 147. *p.* 295. & *No* 65. *p.* 142.

SECT. IV.

Conditions of the Policy strictly interpreted.

1786. *June* 27.

ROBERT DUNMORE and COMPANY *against* RICHARD ALLAN and Others.

No 21.
A ship warranted to sail with convoy, though she did not sail till several days after the convoy, overtook it, and a few weeks afterwards was separated from the fleet in a gale, and was finally taken by the enemy. The Court found the policy null.

INSURANCE was made at Glasgow, in August 1782, on the cargo of the ship Commerce, bound from Jamaica to the river Clyde; the ship being warranted to sail with convoy, with liberty to join at the place of rendezvous.

The convoy sailed from Bluefields, which was the place of rendezvous, on 25th July. But the ship Commerce did not leave its port of loading till 27th; nor did it reach Bluefields till 29th. It came up with the convoy on 20th August, the master having then received sailing orders from the Admiral. After this it continued with the fleet till 17th September, when, after being separated in a gale of wind, it was taken by the enemy.

In an action for the insured values, Robert Dunmore and Company, the owners,

Pleaded; If the risk has been described by an insurance-contract in special terms, it admits undoubtedly of the most limited interpretation. And hence, where it has been stipulated, as is usual in the English policies, 'That the ship 'shall *depart* with convoy from the place of rendezvous,' it would seem necessary, in order to effectuate the insurance, that the voyage should be *commenced*,