[Fac. Coll. vol. xiii. p. 7, et Mor. p. 11962]

JAMES SMITH, Manager for the Leith Glass Work Company, JAMES TOD, Merchant in Borrowstounness, & Others, Underwriters, *Appellants;*

JOHN YELTON, Merchant in Kincardine, JAMES OGILVIE, Shipmaster there, and ROBERT STEIN, Farmer in Loanside, Owners of the Ship Diana of Kincardine, *Respondents.*

House of Lords, 21st July 1806.

INSURANCE—INSURABLE INTEREST.—A policy of insurance was effected on the salvage arising to a ship and owners, from the recapture of a vessel. She was, in a short time, captured back again by the enemy; and the questions were, 1. Whether the salvage due, on recapture of a vessel, was a valid insurable interest? and, 2. Whether the terms of the written policy, without any specification of the commencement and termination of the risk, and proper description of the subject insured, was valid? The Judge Admiral and the Court of Session, held that there was an insurable interest. In the House of Lords, the policy was held to be void and null, as not containing a sufficient description.

John Yelton, merchant in Kincardine, and part owner of the ship Diana of that port, and one of the pursuers in this action, employed Mr. Robert Allan, insurance broker in Edinburgh, to effect an insurance for £800, on the ship Diana, on a voyage from the Firth of Forth to the Baltic, which was accordingly effected. June 1797. July 5, 1797.

A few weeks thereafter, Mr. Yelton wrote Mr. Allan, informing him that "the Diana has got safe over, and has "retaken the Lady Bruce of Newcastle, said worth, with "cargo, £2600; and, although I have no particular advice "from Captain Ogilvie, yet as I am pretty certain that one-"third will at least come to the recaptors, I judge proper to "request you to cover £800 on said ship and cargo, for in-"terest of owners of Diana; for premium of such, debit my "account, advice of which you may send per bearer, who "is to be in Edinburgh till four o'clock evening."

To this letter Mr. Allan returned the following answer:—

"I wrote you last post, and have since your favour of the July 6, 1797.
"same date, ordering me to insure £800 on the supposed
"salvage of the Lady Bruce of Newcastle, retaken and
"carried into Norway, due to the Diana. I have only been

1806.

SMITH, &c. v. YELTON, &c.

" able to get £400 done, at £8. 8s. per cent.	£33	12	0
" Policy 2s. 6d.—Duty 10s. . .	0	12	6
" At debit of the owners of the Diana,	£34	4	6

" I annex the underwriters' names; and, from what I can " learn, that it is as much as you can cover on the chance of " salvage.

" £100 J. Smith.
" £100 J. Tod.
" £100 H. Smith.
" £50 A. Wood.
" £50 A. Ross.
" In all, £400."

The policy was in the common form, but without any of the accustomed blanks being filled up, except, 1st. The name of the assured, viz. " John Yelton of Kincardine, for the " owners of the Diana, Ogilvie." 2d. " The premium eight " guineas per cent."; and, 3d. " The date and place where " the policy was executed, viz. 5th July 1797, Edinburgh." At the foot of the policy was the following memorandum: " The insurance is declared to be upon the supposed sal- " vage due to the Diana, Captain Ogilvie, on the Lady " Bruce of Newcastle, retaken and carried into Norway."

Within three days thereafter, Mr. Yelton wrote Mr. Allan, informing him that the Lady Bruce had again been captured; and soon thereafter raised action before the Admiralty Court upon the policy.

In defence, it was stated that the pursuers had here no insurable interest. If they had, then they were bound to show the letters of marque, authorizing the Diana to make capture or reprisals on the enemy. The policy is an open policy—the subject or interest insured is " the supposed " salvage due to the Diana." There is neither the name of the place from whence the ship is to proceed, nor the port to which she is bound, and for which she is to sail, nor the time at which the risk begins and the same is to end, expressed therein.

The Judge Admiral ordered the pursuers (respondents) to produce evidence of the facts, and also the policy.

May 24, 1798. Thereafter he pronounced this interlocutor:—" Finds the " pursuers, by the recapture of the ship called the Lady " Bruce, have qualified a legal insurable interest for the sal-

" vage due upon the recapture of the said ship ; and, before " farther answer, allows the defenders (*i. e.* the now appel- " lants) to see the object as they shall be advised to the " evidence adduced of the recapture, and also of the said " ship the Lady Bruce being again captured by a Dutch " privateer, and allows the pursuers (*i. e.* the now respond- " ents) to see and answer the objection when lodged." He afterwards held the defenders as confessed upon the fact of recapture by the Diana, and allowed a condescendence of Aug. 16, 1799. the salvage that might be equitably due to her. He afterwards held them as confessed as to the value of the Lady Bruce, and decerned. Nov. 1, 1799.

A bill of suspension being brought to the Court of Session, the Lords, on full argument, found the letters orderly Nov. 19, 1801. proceeded on, and decerned.*

Against these interlocutors the present appeal was brought to the House of Lords.

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* Opinions of the Judges:—

LORD PRESIDENT CAMPBELL said :—" This is a question in insurance in regard to a recapture made by a private merchant vessel, without any letter of mark, and as to whether this be an insurable interest? This is a general and important question of law. The claim of salvage is founded on equity, though perhaps not in strict law. The broker, who acted for both parties, could not be ignorant of the nature of the interest nor of the premium paid. What is the practice here as to brokers being liable or not? Vide Addison *v.* Duguid, 23d May 1797, (Mor. p. 7079.) Espinasse, Nisi Prius Cases, p. 61 and 62. The claim of salvage is to be liberally interpreted. The obligation of recompense, where one man has bestowed labour and expense, or incurred risk in saving or recovering the goods of another, is one of those which, being formed on natural equity and reason, independent of any express covenant, is enforced by the laws of all civilized countries.—See Stair and Erskine. A claim, therefore, arises at common law from such an act, which, when the case occurs, must of course vest an insurable interest. Neither is it enough to say, that the claim can only be made effectual if the goods are in fact brought safe to hand, and that it ceases when, by any after occurrence, they are again lost : for, in the question of insurance, we must take circumstances as they stand, when the insurance and the risk of subsequent loss is the very thing insured against. Thus, suppose the capturing vessel had been provided with a letter of mark on board, or suppose the recapture had been made by a king's ship, the after loss of the subject would have been no objection to the insurance.

" Supposing the claim, in this case, to belong to the king, for want

1806.

SMITH, &c. v. YELTON, &c.

Pleaded by the Appellants.—The respondents had not such an interest in the subject matter of the insurance as is insurable by law; but the said insurance is null and void by 19 Geo. II. c. 37, which declares, that if "any person or "persons, bodies corporate or politic, on any ship or ships "belonging to his Majesty, or any of his subjects, or any "goods, merchandizes, or effects, laden or to be laden on "board of any such ship or ships, interest or no interest, or "without farther proof of interest than the policy; or by "way of gaming or wagering, or without benefit of salvage "to the assurer, and that every such insurance shall be null "and void to all intents and purposes." The policy is, besides, imperfect and inept, as it contains no description of the voyage, nor of the commencement or termination of the risk insured against. And the warranty that the ship was then in Norway at the time of the insurance appears not to have been true. Further, even supposing the policy attached, yet no more could be demanded than the propor-

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of the letter of mark, and that the salvage was to be considered as a droit of admiralty, still the question would remain, whether, out of the king's share, the actual salvers would not have a claim of recompense? and whether this is not an insurable interest? Suppose they had brought in an enemy's ship, this might have been claimed on behalf of the king as a droit of admiralty, but subject to the claim of recompense, which justly belongs to those who have been instrumental in acquiring this very interest for the king. But the insurers have no right to set up a question of this kind between the king and the captors. Palmer *v.* Hutton, 3d Feb. 1784. (Mor. 9509); case of the Orma Prizes. Who is entitled to say this is illegal? The most plausible argument is, that it remains in suspense till the ship is safely brought in; and then, if the king takes her, or if the owner appears, the claim of recompense arises. But still, why should not an eventual claim be insurable? It would not be a wagering policy."

LORD HERMAND.—"I think there is no legal claim of salvage here, and therefore no insurable interest. Recompense is given from liberality."

LORD CRAIG.—"I think the interlocutor is right on the statute; but still there is a claim of recompense; and I think that claim was insurable."

LORD MEADOWBANK.—"I am of the same opinion. Had the ship been brought in, perhaps the king might have claimed; but this would have been subject to the claim of salvage or recompense."

LORD BANNATYNE.—"This was not a lawful act (insuring such an interest.)"

tion, or actual interest that the owners of the Diana had in the salvage, bore to the sums assured, and not to the whole sum of £400 subscribed in the policy.

Pleaded for the Respondents.—That the recapture made by the vessel Diana was an act, not contrary to the law, and that, in consequence thereof, they did acquire a certain interest in the ship and cargo so recaptured, and which created, in a certain event, a contingent claim against the owners for a just and equitable remuneration. That the interest acquired by the respondents was of such a nature as entitled them to insure the same, against those risks which might occur to prevent them from obtaining the just remuneration for their risk and trouble; and that in no respect can the policy here entered into be considered as a gaming policy, struck at by the statute Geo. II.

After hearing counsel, it was

Ordered and adjudged as follows: The Lords find, That the terms in which the salvage is described in the policy of insurance, as the subject upon which the insurance is declared to have been made, are such in their construction, that the policy must be considered as inept and void; and find, that it is unnecessary to determine upon any question which it might have been necessary to decide, if the subject upon which the insurance is declared in the policy to have been made, had been described in other terms; and it is therefore ordered and adjudged that the cause be remitted to the Court of Session to review their interlocutors complained of, and to proceed consistent with this finding.

For Appellants, *M. Nolan, James Reddie.*

For Respondents, *William Adam, David Williamson.*