Judgment of the Lords of the Judicial Committee of the Privy Council, on the Appeal of the Commercial Marine and Fire Insurance Company v. *the Namaqua Mining Company, from the Cape of Good Hope; delivered the 21st December*, 1861.

Present:

LORD WENSLEYDALE.
LORD KINGSDOWN.
LORD JUSTICE KNIGHT BRUCE.
SIR EDWARD RYAN.
LORD JUSTICE TURNER.

THE Respondents in this case sought to recover a total loss upon a policy for 4,000*l.* subscribed on behalf of the Defendants, an Insurance Company at the Cape of Good Hope, on copper ore, on a ship, the "Admiral Collingwood," at and from the anchorages off Hondeklip Bay and Port Nolloth to Swansea, to commence upon the loading on board the ship at and from the above ports.

The Respondents, under this policy, might have shipped what proportion of the copper ore they pleased at one anchorage or the other, probably the whole at one. They put on board at Hondeklip 154 tons. The vessel sailed to Port Nolloth with that quantity on board; arrived at Port Nolloth, there took on board the further quantity of 250 tons and sailed for Swansea; in the way thither she sank, and the copper ore was lost.

On the trial before the Judges of the Supreme Court of the Colony of the Cape of Good Hope, who are judges both of fact and law, witnesses were examined on both sides, and the Judges did not all take the same view of the evidence. The probability, their Lordships, on perusing that evidence, think is,

that the ship was seaworthy at Hondeklip, and when she arrived at Port Nolloth; but that she became unseaworthy when she was loaded with the additional copper at that place, and sailed with it for Swansea, the cargo being then too heavy for her. We think we may assume this to be the true state of the facts; and then follows the question, of novelty and some nicety, Are the assured entitled to recover for the loss of the whole cargo; or, if not, are they entitled to recover for the loss of the 154 tons shipped at Hondeklip?

Their Lordships have had great difficulty in coming to a conclusion upon it, but after much consideration agree that the Plaintiffs are entitled to recover for the latter, but for the latter only.

Some propositions in the doctrine of the implied warranty of seaworthiness, which form a part of every contract of marine insurance on voyages (for to time-policies it does not apply) are perfectly settled. They are laid down in the case of Dixon *v.* Sadler (5 M. and W. 414), in which I gave the judgment of the Court of Exchequer, with the concurrence of my brethren, founded on the principle laid down in several previous cases. (Busk *v.* R. E. Assurance Company, 2 B. and Ald. 73; Walker *v.* Maitland, 5 B. and Ald. 171; Holdsworth *v.* Wise, 7 B. and C. 794; Bishop *v.* Pentland, ibid., 219; Shore *v.* Bentall, ibid., 728, *note*.)

There is an implied warranty in every insurance of a ship, that the vessel shall be seaworthy, by which it is meant that she shall be in a fit state as to repairs, equipment, and crew, and in all other respects, to perform the voyage insured, and to encounter the ordinary perils at the time of sailing upon it. If the assurance attaches before the voyage commences, it is enough that the state of the ship be commensurate to the then risk; and if the voyage be such as to require a different complement of men, or state of equipment, in different parts of it, as if it was a voyage down a canal or river, and thence to and on the open sea, it is enough if the vessel be at each stage of the navigation in which the loss happens properly manned and equipped for it. But the assured makes no warranty to the underwriters that the vessel shall continue seaworthy, or that the master or crew shall do their duty during the voyage, and their negligence or misconduct is no defence to an

action on the policy, when the loss has been immediately occasioned by the perils insured against; and this principle prevents many nice and difficult inquiries, and causes a more complete indemnity to the assured, which is the object of the contract of assurance. Our law differs in this respect from the law of America, where the implied warranty extends to the conduct of the owner and crew during the whole voyage.

There is a warranty of a similar nature in an insurance upon goods with respect to the ship upon which they are loaded. Whether this warranty is to be qualified in the manner pointed out by Mr. Lush in his very able argument, it is not necessary to determine. He contended that when a shipment takes place in an intermediate open anchorage (not a port where there are means of repair), and in the course of a voyage from another terminus, all that the shipowner impliedly warrants to the shipper, and all that the shipper impliedly warrants to the assurer, as to the state of the ship, is that the ship was seaworthy at the commencement of the original voyage to the place of shipment. Whether this, which is a highly reasonable proposition, be correct or not, we need not inquire, because, upon the evidence, there appears no doubt that the ship was seaworthy at Hondeklip, where the first parcel of ore was put on board, as at the Cape.

What, then, is the commencement of the sea voyage in this case, which is to fix the time when the warranty is to attach, and when the vessel is to be fit in all respects for sea navigation? The Appellants contend that the words "at and from the anchorages off Hondeklip Bay and Port Nolloth to Swansea," are equivalent to "at and from the coast of Africa to Swansea," and that the sea voyage began at Port Nolloth; and it was likened to an insurance at and from the Island of Jamaica to England, in which it was said, the sea voyage would begin with the departure from the island; and the case of Bond *v.* Nutt, in Cowper's Reports, 601, was referred to as proof of that propotion.

Their Lordships think that such a construction cannot be put on these words, and the case of Bond *v.* Nutt is only an authority to show that the departure from the island was within the meaning of a

warranty to sail on or before a certain day, and not the commencement of a sea voyage within the meaning of a warranty of seaworthiness. The first voyage from port to port in the island, through the open sea, would answer that description.

The true construction of the words in question undoubtedly is, "at and from Hondeklip to Swansea, or at and from Hondeklip to Port Nolloth, and at and from that port to Swansea," as the power to ship at one or more of these places might be exercised (whether the places are to be taken in their order is immaterial to this inquiry). It seems to their Lordships, therefore, as there were undoubtedly two risks insured—one on the parcel of goods shipped at Hondeklip, another on those shipped at Port Nolloth—that the sea voyage may be considered as beginning at different times; with respect to the first parcel at Hondeklip, with respect to the second, at Port Nolloth. As to the first part, the implied warranty of seaworthiness being that the ship was in a proper state of repair and equipment, and sufficient for the carriage of the cargo then put on board, to Swansea, was certainly complied with. It could not be that there was an implied warranty that the ship *then* was in a fit state to carry all that might be put on board at Port Nolloth, so that if the ship should be lost before it arrived at Port Nolloth, with the goods then shipped on board, nothing would be recovered on the policy; for before the second shipment the vessel might have been put into a state fully sufficient to carry the whole cargo. The warranty being complied with at Hondeklip as to the 154 tons there put on board, the subsequent improper conduct of the master and crew in rendering the vessel unseaworthy at Port Nolloth cannot affect the right to recover *pro tanto*. The assured or their agents, though concerned in the shipment, probably knew nothing of the capacity of the ship to carry the goods they put on board; and the fault was that of the master and crew, which would not avoid the policy, nor would it if the shipping agents were parties, as the ship was immediately lost by the perils insured against (Redman *v.* Wilson, 14; Meeson and Welsby, 476).

Their Lordships therefore have come to the

conclusion that for the first shipment the assurers are entitled to recover.

But with respect to the second parcel, that shipped at Port Nolloth, the implied warranty that the ship should be there fit to carry the additional as well as the original cargo, was certainly, upon their Lordships' view of the evidence, not complied with, and therefore the Respondents cannot recover.

The pleadings do not appear to have been framed very accurately to raise this defence; but this objection has not been pressed upon their Lordships.

Therefore their Lordships, after much consideration, and not without some doubt, have determined to advise Her Majesty to affirm the Judgment as to the value of the 154 tons shipped at Hondeklip, and reverse it as to the residue.