pleaded, judgment must be rendered, on the first count, in favor of the plaintiff.

THE JUDGMENT of the court was as follows: This cause came on to be heard, on the transcript of the record, and was argued by counsel; on consideration whereof, the court is of opinion, that there is error in the judgment of the circuit court in overruling the demurrer to the first plea, so far as the same is pleaded in bar of the first count in the declaration, and that there is error in overruling the demurrer to the second plea; wherefore, it is considered by this court, that the judgment of the circuit court be reversed and annulled, and that the cause be remanded to the circuit court, with directions to sustain the demurrer to the first plea, so far as the same is pleaded in bar of the first count, in the plaintiff's declaration, and also to sustain the demurrer to the second plea, and to render *judgment in favor of the plaintiff on his said first count, and to award a writ of inquiry of damages.(a) [*267

SKILLERN'S Executors *v.* MAY'S Executors.

Jurisdiction.

It is too late to question the jurisdiction of the circuit court, after the cause has been sent back by mandate.

THIS was a case certified from the Circuit Court for the district of Kentucky, the judges of that court being divided in opinion.

The former decree of the court below had been reversed in this court, and the cause "remanded for further proceedings to be had therein, in order that an equal and just partition of the 2500 acres of land, mentioned in the assignment of the 6th of March 1785, be made between the legal representatives of the said George Skillern and the said John May." (4 Cr. 141.)

The cause being before the court below upon the mandate, the question occurred which is stated in the following certificate, viz: "In this case a final decree had been pronounced, and by writ of error removed to the supreme court, who reversed the decree, and after the cause was sent back to this court, it was discovered to be a cause not within the jurisdiction of the court; but a question arose, whether it can now be dismissed for want of jurisdiction, after the supreme court had acted thereon. The opinion of the judges of this court being opposed on this question, it is ordered, "that the same be adjourned to the supreme court for their decision," &c.

THIS COURT, after consideration, directed the following opinion to be certified to the court below, viz: * "It appearing that the merits of this cause had been finally decided in this court, and that its mandate required only the execution of its decree, it is the opinion of this court, that [*268

(a) After the opinion was given, *C. Lee* moved for a direction to the court below to allow a plea of *non assumpsit*. The court said, they had never given directions respecting amendments, but had left that question to the court below. This court cannot now undertake to say, whether the court below would be justified in granting leave to amend.

the circuit court is bound to carry that decree into execution, although the jurisdiction of that court be not alleged in the pleadings."[1]

Chesapeake Insurance Company *v.* Stark.

Marine insurance.—Abandonment.—Authority of agent.—Special verdict.

The agent who makes insurance for his principal, has authority to abandon, without a formal letter of attorney.

The informality of a deed of cession is unimportant, because, if the abandonment be unexceptionable, the property vests immediately in the underwriters, and the deed is not essential to the right of either party.

If the abandonment be legal, it puts the underwriters completely in the place of the assured, and the agent of the assured becomes the agent of the underwriters.

A special verdict is defective, which does not find whether the abandonment was in reasonable time.[2]

What is reasonable time of abandonment, is a question compounded of fact and law, which must be found by a jury, under the direction of the court.[3]

Error to the Circuit Court of the district of Maryland, in an action of covenant, upon a policy of insurance upon goods on board the ship Minerva, from Philadelphia to Laguayra, and back to Philadelphia. The cause was tried upon the issue of *non infregit conventionem*, and the jury found a special verdict, stating the following facts :

On the 5th of March 1807, Christian Dannenberg, as agent of the plaintiff, who was a citizen of Pennsylvania, shipped for Laguayra, on account, and at the sole risk, of the plaintiff, sundry goods, being American property, and regularly documented as such, to the value of $8700 and upwards, on board the ship Minerva, and consigned them to William Parker, supercargo on board. On the 12th of March, she sailed with the goods from Philadelphia for Laguayra.

On the 21st of March, Charles G. Boerstler, for the plaintiff, effected an insurance with the Chesapeake Insurance Company, who are citizens of the state of Maryland, upon the goods, to the amount of $8700, by the policy mentioned in the declaration, which was executed under the common seal of the company.

On the outward voyage, she was captured by a British privateer, and carried into Curaçoa. On the 29th of April 1807, the master made a protest. On the 13th *of June 1807, the ship and goods being still in possession of the captors, at Curaçoa, and there detained by them, the said Charles G. Boerstler, "for the plaintiff," abandoned to the Chesapeake Insurance Company, the goods shipped by Dannenberg for the plaintiff, by a letter to the president and directors of the Chesapeake Insurance Company, the defendants, in the words and figures following :

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"Baltimore, June 13, 1807.

"President and Directors of the Chesapeake Insurance Company,

"Gentlemen :—Having this morning received a letter from Mr. C. Dan-

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[1] S. P. Livingston *v.* Story, 12 Pet. 339; Sibbald *v.* United States, Id. 488; Chaires *v.* United States, 3 How. 611; Whyte *v.* Gibbes, 20 Id. 541.

[2] See Prentice *v.* Zane, 8 How. 470.

[3] Maryland Ins. Co. *v.* Ruden, *post*, p. 338; Livingston *v.* Maryland Ins. Co., 7 Cr. 506; Duncan *v.* Koch, Wall. C. C. 33.