that the letter of the 16th of March 1801, contains a contract, binding John Innes Clarke to perform the whole contract of Greene & Barker with Carrington, a part of which was to pay five-ninth parts of the debt contracted on account of the Abigail and her cargo, with George Smith & Co.; consequently, the plaintiffs in error were responsible to Carrington so far as Greene & Barker were responsible.

It has been contended, for the plaintiffs in error, that a considerable part of the debt to George Smith & Co. (the premium of insurance on a return-voyage to Hamburg), was incurred in consequence of the gross negligence of Carrington, in not countermanding the order for insurance, as soon as he determined to change the voyage. For this sum, it is contended, Greene & Barker could not have been liable to Carrington, and consequently, it cannot be recovered from John Innes Clarke.

One of the judges is of opinion, that the question of negligence is, in this case, a point of law, Carrington having been a copartner with Greene & Barker, and therefore, proper for the decision of the court; others think that the judge has left that question with the jury. In summing up the evidence, the judge says, "the defendants say, that for his (Carrington's) neglect in not giving such timely notice (of the change of the voyage), he ought himself to pay the whole of the premium. Of this, you will judge." This explicit declaration, is considered as not being overruled by the concluding part of the charge.

If the fact of negligence was left to the jury, they have decided it in the negative, and the question whether a partner would in such a case be responsible to his copartners, for negligence in failing to countermand an order for insurance, does not arise in the cause.

On that part of the charge which states John Innes Clarke to be responsible to Carrington to the amount of the money he had received, there is no difference of *opinion in the court. It is, however, unnecessary to state the reasoning on which this opinion is founded, since the construction given to the letter of the 16th of March 1801, decides the cause. [*327

It is the opinion of the court, that there is no error, and that the judgment be affirmed.

Judgment affirmed.

Dickey *v.* Baltimore Insurance Company. (*a*)

Marine insurance.

A policy of insurance on a vessel, "at and from" an island, protects her in sailing from port to port of the island, to take in a cargo.[1]

Error to the Circuit Court for the district of Maryland, in an action on a policy of insurance upon the ship Fabius, "at and from New York to Barbadoes, and at and from thence to Trinidad, and at and from Trinidad, back to New York."

The ship proceeded to Barbadoes, and from thence to the port of Spain,

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(*a*) February 13th, 1813. Present, all the judges, except Todd, J.

[1] See Equitable Ins. Co. *v.* Hearne, 20 Wall. 497.

in the island of Trinidad, being the only port of entry in the island. Having taken in part of her return-cargo, she sailed from thence for Port Hyslop, in the same island, for the residue. In the way, she was lost by the dangers of the seas. On the trial below, the opinion of the court was in favor of the defendants, and the plaintiff took his bill of exceptions, and brought the case up by writ of error.

Harper, for the plaintiff in error, stated, that the only question was, whether the terms "at and from Trinidad," authorized the ship to sail from one port of the island to another port of the same island, to complete her *328] cargo? *To show that she was so authorized, he relied on the case of *Bond* v. *Nutt*, Cowp. 601, and *Thellusson* v. *Fergusson*, 1 Doug. 346; Marshall 255, 257 (Boston ed.).

Pinkney, Attorney-General, contrà.—The opinion of the court below was founded upon the reason of the thing, and upon the idea that the late English cases were not authority. The vessel was not within the policy, while sailing from port to port in the island. She was lost on the high seas, and was not protected by the policy, unless she was justified by some usage of trade: but no such usage was proved. In the case of *Bond* v. *Nutt*, the vessel was a general ship, and the usage of the trade was to take goods for several different ports in the island of Jamaica. That island has many ports of entry—Trinidad has only one. There is no case in which a vessel has been permitted to depart from a port, and return to it again, under such a policy. She was not literally at the island. Analogy is against the doctrine, and so is the reason of the thing.

Harper, in reply.—In the cases cited by Marshall, there is no allusion to the course or usage of the trade. Nor does the court lay any stress upon the fact, that there were many ports of entry in Jamaica. Although there was only one port of entry in Trinidad, yet there were other ports at which they might, in fact, take in a cargo.

February 17th, 1813. Marshall, Ch. J., delivered the opinion of the court, as follows:—This action was brought on a policy, insuring the Fabius, at and from New York to Barbadoes, and at and from thence to the island of Trinidad, and at and from Trinidad, back to New York. The Fabius arrived at the port of Spain, in the island of Trinidad, on the 21st of October, in the year 1806, where she remained until the 5th of December, when she sailed, under a special license from the proper authorities, for Fort *329] Hyslop, another port in the island, for the purpose of procuring *and taking in a part of her return-cargo, and with a view of returning to the port of Spain, that being the only port in the island of Trinidad at which vessels, arriving from other places, were permitted to enter, or from which those destined on foreign voyages were permitted to clear. While on her voyage to Fort Hyslop, the Fabius was lost by the danger of the seas; and the question is, whether this loss is within the policy?

Were this a case of the first impression—were it to be decided for the first time, on the intention of the parties, to be collected solely from the words of the contract, some contrariety of opinion might undoubtedly be looked for, and it is uncertain, what might be the opinion of the court. Strictly speaking, a vessel is not at an island, while sailing from one port to

another of the same island; yet it is difficult to resist the persuasion, that something more is meant by an insurance at and from an island, than by an insurance at and from a port. The words, at and from an island, and at and from a port, are not synonymous, and yet, in effect, the same meaning would often be given to them, if the privilege of sailing from one port to another, for the purpose of completing the cargo, should not be granted by the policy. An insurance to an island may terminate at the first port, and the expression may be adopted from the uncertainty at what port the vessel insured may first arrive; but it seems difficult to put any other construction on an insurance, at and from an island, or to assign any other motive for the risk being so described, than that it is a license to use the different ports of the island, for the purpose of obtaining the return-cargo.

This particular policy furnishes strong reason for this construction. It is difficult to read it, without feeling a conviction that the intention of the contract was to insure the whole voyage from and to New York, and to have the liberty of the islands of Barbadoes and Trinidad. There being but one port in the island of Trinidad, at which a vessel was permitted to enter or clear, takes away every inducement for inserting in the policy the words, at and from the island of Trinidad, rather than the words at and from the port of Spain, in the island of Trinidad, unless those words secure the liberty of going to other *ports, for the purpose of completing the cargo, and of returning to the port of Spain, to clear out for New York. [*330

But the words of this policy are not now to receive their first construction. In *Camden* v. *Cowly*, mentioned 1 Marshall 166, a ship was insured from London to Jamaica, generally, and by a subsequent policy, she was insured at and from Jamaica to London. The ship having touched and stayed for some days at one port of Jamaica, was lost, in coasting the island; but before she had delivered all her outward cargo at the other ports of the island. In an action on the homeward policy, the claim of the insured on the underwriters was resisted, not on the principle that the words "at and from" did not imply a permission to use all the ports of the island, not on the principle that sailing from one port to another was a deviation, but on the principle that the risk on the outward policy had not terminated, and that, consequently, the risk on the homeward policy had not commenced when the loss happened. A verdict was found against the underwriters, and a new trial was refused.

In *Bond* v. *Nutt*, the insurance was made on a ship, at and from Jamaica to London, warranted to sail before the first of August 1776. The ship sailed from St. Anns, in Jamaica, on the 26th of July, for Bluefields, also in Jamaica, in order to join a convoy there. She was detained at Bluefields by an embargo, until the 6th of August, when she sailed with the convoy, but being separated from it, was captured. On this policy, a verdict was given in favor of the underwriters, under the direction of Lord Mansfield, and a motion for a new trial was resisted on two grounds. 1st. That a departure from St. Anns, was not a departure from Jamaica. 2d. That going to Bluefields was a deviation, that being out of the course of the voyage from St. Anns to London. *After great consideration, the court was unanimously of opinion in favor of the motion. Lord Mansfield, in giving his opinion, said, "as neither party knew from what part of the [*331

island the ship would sail, they used the words, at and from Jamaica, which protected her in going from port to port, till she sailed." He also said, "had the insurance been at and from St. Anns," the going round the island to Bluefields, would have been a deviation."

In *Thellusson* v. *Fergusson*, an insurance was made "at and from Guadaloupe to Havre, warranted to sail on or before the 31st December." The vessel took in her cargo at Point Petre, in Guadaloupe, and for the purpose of obtaining convoy, sailed on the 24th of October, to Basseterre, where there is no port, but only an open road. She was there detained till the 10th of January, when she sailed with convoy, but was captured on the return-voyage. The plaintiffs obtained a verdict. A motion was made for a new trial, which was refused. Lord MANSFIELD said, "under an insurance" at and from such a place as Guadaloupe, or Jamaica, the word "at" comprises the whole island, and under that word, the ship is protected in going from port to port, round the coast of the island. The underwriters not being satisfied with this decision, another action was afterwards brought on the same policy against Staples, also an underwriter: but upon that action, the only point insisted on, was that the vessel had not sailed by the stipulated day.

It appears, then, to be the settled doctrine of the courts of England, that an insurance "at and from an island" such as those in the West Indies, generally, insures the vessel while coasting from port to port of the island, for the purpose of the voyage insured. It is dangerous to change a settled construction on policies of insurance.

It is the opinion of this court, that the circuit court erred, in not giving
*332] the instruction prayed for by the *counsel for the plaintiff, and that the judgment be reversed, and the case remanded to that court with directions, to give the instructions prayed for by the plaintiffs, as stated in the bill of exceptions filed in the cause.

Judgment reversed.

MARINE INSURANCE COMPANY OF ALEXANDRIA *v.* HODGSON.

Marine insurance.— Valued policy.—Misrepresentation. (*a*)

Upon an action on a valued policy, if a misrepresentation of the age and tonnage of the vessel, whereby the underwriters were induced to agree to a high valuation, be a defence, it is at law, and not in equity.

THIS was an appeal from the decree of the Circuit Court for the district of Columbia, sitting at Alexandria, in a suit in equity, brought by the Marine Insurance Company of Alexandria against Hodgson, to enjoin so much of a judgment at law, obtained by the latter against the former, as exceeded the value of the brig Hope, as found by the jury in a special verdict upon a valued policy. [1]

It was contended in the bill, that the age and tonnage of the vessel was misrepresented, and that such misrepresentation induced the complainants to value the ship at $10,000, when in fact she was worth only $3300, as speci-

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(*a*) February 15th, 1813. Present, all the judges, except TODD, J.

[1] See 5 Cr. 100, and 6 Id. 206.