the acknowledgment of one partner is evidence to revive the original cause of action against both, and that the acknowledgment made in this case by Clarke is sufficient for that purpose.

It has been frequently decided, that an acknowledgment of a debt barred by the statute of limitations, takes the case out of that statute, and revives the original cause of action. So far as decisions have gone on this point, principles may be considered as settled, and the court will not lightly unsettle them. But they have gone full as far as they ought to be carried, and this court is not inclined to extend them. The statute of limitations is entitled to the same respect with other statutes, and ought not to be explained away.

In this case, there is no promise, conditional or unconditional; but a simple acknowledgment. This acknowledgment goes to the original justice of the account; but this is not enough. The statute of limitations was not enacted to protect persons from claims, fictitious in their origin, but from ancient claims, whether well or ill founded, which may have been discharged, but the evidence of discharge may be lost. It is not, then, sufficient to take the case out of the act, that the claim should be proved or be acknowledged to have been originally just; the acknowledgment must go to the fact that it is still due. In the case at bar, the acknowledgment of John Clarke is, that he had not discharged the account presented to him, but he does not say, that it was not discharged. His partner may have paid it, without the knowledge of Clarke, and consequently, the declaration of Clarke that he had not himself paid it, and that he did not know whether his partner had paid it or not, is no proof that the debt remains due, and therefore, is not such an acknowledgment as will take the case out of the statute of limitations. There is no error, and the judgment is affirmed, with costs.

Judgment affirmed.

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*75] *Gracie *v.* Marine Insurance Company of Baltimore. (*a*)

Marine insurance.—Termination of risk.—Ransom.

A policy on goods, to be safely landed at Leghorn, is discharged, by landing them at the Lazaretto; that being the usage of the trade.[1]

Quære? Whether ransom can be recovered, where there is a warranty against particular average?

Error to the Circuit Court for the district of Maryland. The facts of the case, as stated by Marshall, Ch. J., in delivering the opinion of the court, were as follows:

This case arose on a policy of insurance, bearing date the 19th of June 1807, for $20,000, on the cargo of the ship Spartan, "at and from Baltimore to Leghorn," the risk to commence on the loading, and to continue "until the said goods shall be safely landed at Leghorn aforesaid." The policy contained, in the printed part, the usual stipulation that the assured, in case of loss, should labor, &c., for the preservation and recovery of the goods, to the expense of which the insurers would contribute according to the rate

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(*a*) February 18th, 1814. Absent, Washington, Justice.

[1] And see Rice *v.* Clendining, 3 Johns. Cas. 183.

of the sum insured; in the policy was inserted, in writing, the words "warranted free from particular average."

The vessel sailed from Baltimore, in June 1807, and on the 15th of August arrived in the port of Leghorn. According to the laws and usages of the place, ships arriving at that port, and their cargoes, were obliged to perform a quarantine of thirty days, before admission of the cargo, or of any person on board, into the city; the ships performing it in the port, the cargoes in a certain Lazaretto erected for that purpose on the shore of the port, about half a mile from the city. Some specified articles were excepted from this rule, but the cargo of the Spartan did not come within the exception. On the arrival in port of a vessel liable to quarantine, *the officers of government took possession of the cargo, and removed it [*76
in public lighters to the Lazaretto. Freight was earned upon the depositing of the cargo in the Lazaretto, but payment of it, though often made before, could not be enforced, until after the expiration of the quarantine, and until payment, the lien for the freight continued on the goods. The duties also accrued in the Lazaretto, and until they were paid, the goods could not be removed thence into the city. The goods remained in the custody of the officers of government, until the expiration of the quarantine, during the continuance of which, neither the master of the ship, nor the consignees, had any power to interfere with, or even see, them, but under a permit from the local authorities; such permits were commonly allowed the consignees, who might take samples, and sell by those samples, while the goods were performing quarantine. After quarantine was performed, and an order from the master obtained, the goods were received at the Lazaretto, by the owner or consignee, and transported, at his risk and expense, into the city. This transportation was most usually made by water; but there was a road along which light goods might be, and frequently were, carried. Even when goods were sold, during the quarantine, they were removed at the risk and charge of the vendors.

In conformity with these regulations, the cargo of the Spartan was placed in the Lazaretto. While it remained there, performing quarantine, a body of French troops took possession of the city, seized the Lazaretto, sequestered the goods there deposited, and refused to give them up, until a ransom, amounting to 53 per cent. on their estimated value, should be paid for them. This ransom the owners or consignees were compelled to pay, in order to obtain restitution of their goods. This action was brought to recover it from the underwriters.

Judgment was rendered in the circuit court for the defendants, which judgment was now brought before this court by a writ of error.

*_Harper_, for the plaintiff in error, contended, 1st. That the landing at the Lazaretto was not a landing in safety at Leghorn, within [*77
the meaning of the policy. 2d. That the plaintiff was not prevented, by the warranty against particular average, from recovering the amount of the ransom paid.

1. The goods were not landed in safety at Leghorn. They were landed at the Lazaretto, which is no part of the city of Leghorn. The landing contemplated by the policy was at the city; the place where the goods were to find a market; and not merely a landing at the port. The voyage,

as to the ship, might terminate at the port, but the goods were to go to the city, and be landed in safety. After having performed quarantine at the Lazaretto, they were to be reshipped into lighters and carried to the city.

But if the landing at the Lazaretto be a landing at Leghorn, yet they were not landed in safety, within the meaning of the policy. It is natural to suppose, that the parties meant such a landing as would put the cargo into the possession and under the control of the consignee. But while it was at the Lazaretto, it was subject to the orders of the master, not of the consignee. It was still liable for freight, and although it is said to be part of the usage of the trade, that the freight is earned, by the delivery at the Lazaretto, yet it is not payable, until the termination of the quarantine. The Lazaretto is a mere substitute for the ship, as a place in which to perform the quarantine. If it had remained on board the vessel, it would unquestionably have been at the risk of the underwriters. The landing was for their benefit, inasmuch as the goods were safer on shore than in the ship.

The seizure was a detention of princes, and until the goods were ransomed, they were lost. *Waples* v. *Eames*, 2 Str. 1243; *Pelly* v. *Royal Exchange Assurance Co.*, 1 Burr. 341.

*78] 2. Notwithstanding the warranty against particular *average, the plaintiff may recover upon the clause of the policy authorizing him to labor and travel for the preservation of the property, to the expense whereof the underwriters promise to contribute, according to the rate of the sum insured. The ransom was an expense incurred to save the residue, and prevent a total loss, for which the underwriters would have been liable.

Jones and *Pinkney*, contrà.—1. The voyage was ended by the landing of the goods at the Lazaretto. The policy is satisfied, if they are landed at the port of Leghorn. When the name of a place is used in a policy, it means the port; although Leghorn is a city, yet the port is also called Leghorn. When a place is named as the *terminus* of the voyage, it means the usual place to which ships come to unlade. It does not always mean the *caput portus*. It sometimes means the house of general receipt. Doubtful expressions are to be construed in favor of the underwriters. *Tierney* v. *Etherington*, cited by Lord Mansfield, in the Bank-saul case of *Pelly* v. *Royal Exchange Assurance Co.*, 1 Burr. 348; Hargrave's Law Tracts 46; Hale's Treatise de Portibus Maris, ch. 2, p. 56. The termination of the voyage, in fact and in law, is the landing of the goods at the usual place of landing, at the ultimate port of destination, according to the usage of that trade. The usage of the trade is all important; the parties are bound to know it; it forms part of their contract; it may control and modify a warranty, and illustrate the termination of the voyage. The case states that the freight was earned by delivery at the Lazaretto; the duties had accrued to the Etrurian government; the transportation from thence to the city would have been at the risk and expense of the consignee or the owner. It was also a place where the goods might be sold by samples: All these circumstances show that the voyage was ended. The general rule is, that if the assured undertake to transport the goods, the underwriters are discharged. *Sparrow* v. *Caruthers*, 2 Str. 1236; 1 Marsh. 165, 249; *Rucker* v. *London Assurance Co.*, Ibid. 166, 253; *Hurry* v. *Royal Exch. Assurance Co.*, Ibid. 167, 254. The lien for the freight depends either upon the agreement of the

parties or the municipal law of the place; it does not affect the question respecting the *termination of the voyage. In the cases of *Tierney* v. *Etherington* and *Pelly* v. *Royal Exchange Assurance Co.*, the [*79 voyage confessedly was not terminated. The government of Leghorn receives the cargo at the Lazaretto, as the agent of the owner or consignee, and holds it for his benefit; it is entered on the books of the Lazaretto in the name of the ship, the master and the consignee, if known.

The policy was never construed to undertake that the consignee should have the unlimited control over the cargo, after it was landed. But in this case it was under his control; not absolute, but modified by the municipal government of the place. The government had a right so to modify it. Thus, in London, some goods must be deposited in the king's warehouse. So also, in France, the Emperor took it into his head to turn merchant and monopolize all the tobacco, and ordered it to be stored in his warehouses. In all countries, the power of the consignee is in a certain degree modified. He had a power to take samples and sell by them.

It is said also, that the goods were to be landed at the place of market. But if the place of market means the place where the goods may be sold, and where they are under the control of the consignee, the Lazaretto was that place. The Lazaretto was an appendage to Leghorn, as the *Pirœum* was to Athens. Suppose, the voyage had been from Carthage to Athens, landing at the *Pirœum* would have terminated the voyage. So would a voyage from the West Indies to London terminate at the West-India dock; yet something must be previously done by a consignee, at the dock, before he can have the complete control over the goods in the warehouses of the dock company. So, in the port of Baltimore, some goods must be delivered at the Lazaretto. And if a cargo should be delivered at Fell's Point (which is out of the city), under a policy on a voyage to Baltimore, the policy would be discharged. The cargo would have been brought to its market.

In the case of *Waples* v. *Eames*, the ship was not 24 hours moored in good safety: there was no opportunity to unlade. But here, the goods were actually unladen. *In the *Bank-saul case*, there was no ques- [*80 tion whether the voyage was ended; The ship was *in itinere;* the only question was, whether, by the usage of the trade, the goods might be unladen for safe-keeping, while the vessel was repairing.

2. It was only a partial loss, which is excepted from the policy by the manuscript warranty against particular average; which means partial loss. Although it would have been a total loss, if abandonment had been offered, while the goods were detained, yet as no such offer was made, it is now only a partial loss. Those parts of the policy which are in manuscript are to be particularly regarded, as they control the printed form. 1 Marsh. 229, 305; Park 4, 5, 60; 4 East 130. Ransom is only a partial loss. It was never considered as coming under the clause of laboring and travelling for the interest of all concerned. If it can come under that clause, then that clause is so far repealed by the express manuscript warranty, that the underwriters shall not be liable for a partial loss. If the French general had taken a part of the goods, there could have been no question that the underwriters would not have been liable; the ransom represents the part which might have been so taken. The clause respecting the expenses of labor and travel was first introduced in 1741, to remove a doubt whether the insured could so labor

and travel, without losing his right to abandon; but he is not bound to labor and travel, nor to ransom. 1 Marsh. 234, 488; 3 Burr. 1734; 2 Doug. 610.

But if the underwriters are liable under that clause of the policy, they are only liable in the proportion which the loss bears to the amount saved.

Harper, in reply.—1. The first point depends upon the usage of the trade. We say, that the usage merely substitutes the Lazaretto for the
*81] ship; like the cases of the store-ship, at Gibralter, *and the Bank-saul, at Canton. The principle of all these cases is substitution. The goods were not in the power of the consignee; he could only make an executory contract; he had no more power over the goods than if they had been upon the ocean.

The lien for the freight continues until the end of the quarantine, when it is to be paid, and not before, because the master has not until then done all that the contract requires.

2. It is said, that the exception of partial loss operates upon every part of the policy; not merely upon its general provisions, but upon every particuar provision, however contradictory it may be to that exception. But the two clauses, viz., the engagement to pay for labor and travel, and the warranty against partial losses, may stand together. The latter means warranted free from all partial losses, except such as arise from labor and travel for the preservation of the goods. The blanks in the printed form of the clause respecting labor and travel were filled in manuscript, as well as the warranty against particular average, and therefore, are to be equally regarded. That circumstance also shows that the parties intended that both clauses should stand, and have effect. The ransom was as much the means of saving the underwriters from a total loss, as if it had been strictly labor and travel.

February 19th, 1814. MARSHALL, Ch. J., after stating the case, delivered the opinion of the court, as follows:—The plaintiff in error contends, 1st. That the placing of the goods in the Lazaretto, was not "a landing in safety at Leghorn," and a termination of the voyage. 2d. If the loss happened during the continuance of the risk, the plaintiff is not prevented from recovering, by the warranty in the policy against particular average.

In support of his first point, he contends that "Leghorn," in the policy,
*82] means the city and not the port of Leghorn. *2d. That the Lazaretto being substituted for the ship, for the greater safety of the goods, their situation, as it respects all parties, while performing quarantine in the Lazaretto, is precisely the same as if performing quarantine in the ship. This argument is supposed to be much strengthened by the facts, that freight cannot be demanded until quarantine is performed, and that the lien for the freight continues after the landing of the goods. 3d. That a landing in safety must be such a landing as places the goods at the disposal of the owner or consignee.

However true it may be, in general, that when we speak of Leghorn, we speak of the city which bears that name, it does not follow, that the same meaning is attached to the word when used in a policy. The insurance is "at and from Baltimore to Leghorn." Now, if, as is admitted, Baltimore means the port of Baltimore, it would seem not unreasonable to suppose

that, in the same instrument, Leghorn means the port of Leghorn—the place which is the ultimate destination of the vessel on board which the goods are laden. The voyage is understood to be terminated, when the vessel arrives at her port of destination, and has been moored there in safety for twenty-four hours.

But it will be conceded, that the termination of the voyage as to the ship, does not necessarily terminate the risk on the goods. This risk may continue, when the voyage as to the ship is ended. Its duration depends on the intention of the parties, and this intention must be found in their contract.

This brings us to consider the argument that the goods, while performing quarantine in the Lazaretto, remain at the risk of the insurer, in like manner as if performing quarantine in the ship. The words of the policy being "beginning the adventure on the said lawful goods and merchandises from and immediately following the lading thereof on board of said vessel at Baltimore aforesaid, and so shall continue and endure until the said goods and merchandises shall be safely landed at Leghorn aforesaid." The risk continues until the goods be safely landed, although the *voyage as to the ship, might be terminated previous to their landing. [*83

In ordinary cases, where the government does not interfere between the parties, this risk would continue, until the goods should be landed in safety at the usual place, and at the disposal of the consignee. If it were usual to receive goods at the Lazaretto, or at any other place on the shore of the port, it would be the duty of the owner or consignee to receive them there, and a landing at such place, it is admitted, would be a landing at Leghorn.

If, on the other hand, the goods, while performing quarantine, remained on board the ship, and could not be landed, it is not to be doubted, that they would remain at the risk of the insurer. How, then, it is asked, can the substitution of the Lazaretto for the ship alter this risk? A substitution made, not by the act of the parties, but of the government of the country? A substitution which does not alter the rights of the parties, since it leaves the lien of the master for his freight unimpared, and gives no power over the goods to the owner or consignee? A substitution beneficial to the insurer since it diminishes the risk on the goods?

Whatever might be the effect of this reasoning, if the establishment of the Lazaretto, and the laws of quarantine, had been of so recent a date, as not to have been in the contemplation of the parties to the contract, as to which the court gives no opinion, this cause may well be decided upon the usage found in this case, a usage of ancient date and of general notoriety. It existed, and was known to exist, when this contract was formed. When the parties stipulated, that the adventure should continue till the goods were landed in safety at Leghorn, they knew that the place of landing was the Lazaretto, and that the landing would be made under the direction and control of the local authority. This, then, must be considered as the landing contemplated in the policy. It is the landing which terminates the risk. Had the parties intended to continue the risk, during the continuance of the goods in the Lazaretto, they would have inserted, in the policy, words manifesting that intention. Instead of terminating the adventure on the landing, a *fact which they knew must take place at the Lazaretto, thirty days before the goods could be delivered to [*84

the owner or consignee, they would have continued it, till the goods should be landed in safety, and should perform their quarantine.

The court is of opinion, that under this policy, the goods in the Lazaretto were not at the risk of the underwriters, and consequently, that there is no error in the judgment of the circuit court. It is affirmed, with costs.

Judgment affirmed.

GRACIE *v.* MARYLAND INSURANCE COMPANY.

MARSHALL, Ch. J.—This case differs from that against the Marine Insurance Company of Baltimore only in one particular. A part of the cargo remained on board the ship, until the arrival of the French troops, when the departure of the vessel was prohibited by the general, and the ransom made. This circumstance does not, in the opinion of the court, vary the case; because, omitting all other considerations, the loss, within the risk, being on only a part of the cargo, is a partial loss, and is affected by the warranty against particular average loss. This judgment is also to be affirmed, with costs.

Judgment affirmed.

RICHARDS and others, assignees of MCKEAN, a bankrupt, *v.* MARYLAND INSURANCE COMPANY. (*a*)

Bankruptcy.—Statute of limitations.

Upon the death of an assignee under the bankrupt law of the United States, the right of action, for a debt due to the bankrupt, vested in the executor of the assignee.

If an executor do not cause himself to be made party to a suit, brought in the lifetime, and in the name, of the testator, and pending at his death, it is to be considered as a voluntary abandonment of the action, so as to exclude the executor from the equity of the exceptions to the statute of limitations.

Quære? Whether the commissioners of bankrupt had a right to appoint a second assignee, in case of the death of the first?

At common law, no action could be renewed by journey's accounts, in a case of voluntary abandonment.

ERROR to the Circuit Court for the district of Maryland, in an action of
*85] covenant, on a policy of insurance *under seal. The defendants pleaded the Maryland statute of limitation of twelve years (1715, ch. 23, § 6), which enacts, "that no specialty whatsoever, shall be good and pleadable, or admitted in evidence against any person or persons of this province, after the principal debtor or creditor have been both dead twelve years, or the debt or thing in action above twelve years standing," with a saving of five years in cases of infancy, &c.

The replication to this plea stated, in substance, the following facts: That the cause of action accrued on the 1st of May 1797; that McKean was declared a bankrupt, on the 19th of March 1801, his estate was duly assigned to Thomas Allibone, who, on the 6th of October 1806, instituted a suit on the policy, and died on the 1st of August 1809, whereby the suit was abated. That on the 11th of January 1810, the plaintiffs were, by the commis-

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(*a*) February 11th, 1814. Absent, WASHINGTON, Justice.