pass to Richard Wallack, under the decree of the 21st of January 1823, before referred to, but is yet outstanding in the heir-at-law of Boyd.

The decree of the court below must, for these errors, be reversed, and the cause is to be remanded to that court for further proceedings to be had therein, in conformity with the principles before stated.

DECREE.—This cause came on, &c.: On consideration whereof, it is the opinion of this court, that there is error in the said decree, in requiring any act to be performed by Richard Wallack, before he was made a party to the said suit, by regular proceedings against him, according to the course and practice of a court of chancery, and had either answered the bill making him such a party, or the same had been taken for confessed against him; and that the said decree is also erroneous, in dismissing the bill of the plaintiff in the court below; and also, in not decreeing the said Nicholas L. Queen and Eleanor Queen his wife, the defendants in the said suit, to
*150] release to the *appellant, James Greenleaf, all their right and title to the property directed by the said decree to be conveyed to him by the said Richard Wallack; for which errors, it is now by this court decreed and ordered, that the said decree be reversed and annulled, and that the cause be remanded to the court below, to be there proceeded in according to law, and in conformity with the principles stated in this decree.

---

*151] *BENJAMIN BUCK and THOMAS HEDRICH *v.* CHESAPEAKE INSURANCE COMPANY.

Marine insurance.—Policy.—Interest.

To affirm, that "in policies for whom it may concern," there can be no undue concealment as to the parties interested in the property to be insured, is obviously going much too far; since the underwriter has an unquestionable right to be informed, if he makes the inquiry. The assured may be silent, it is true, if he will; and let the premium be charged accordingly; but if the inquiry, when made, should be responded to by information, contrary to the verity of the case, this obviously gives a conventional signification to the terms of the policy, which may differ from the known and received signification in ordinary cases. p. 159.

A policy "for whom it may concern," will, in ordinary cases, cover belligerent property.[1] p. 160.

A knowledge of the state of the world, of the allegiance of particular countries, of the risks and embarassments affecting their commerce, of the the course and incidents of the trade on which they insure, and of the established import of the terms used in their contracts, must necessarily be imputed to underwriters.[2] p. 160.

The term *interest*, as used in an application for insurance, does not necessarily imply *property* in the subject of insurance.[3] p. 163.

The master of a vessel to whom property shipped on board the vessel under his command is to be consigned, in the absence of proof, that the owner of the property had not given authority to order insurance, has an insurable interest in the property on board his vessel; and this interest is sufficient to authorize the recovery of a loss, on the policy. p. 163.

As to the effect of certain instructions in a letter relative to insurance, and circumstances connected with the same, constituting a representation, to vitiate a policy, made under the authority and directions of the letter. p. 163.

This case came before the court, upon a division of opinion of the

---

[1] Hodgson *v.* Marine Ins. Co., 5 Cranch 100; Straas *v.* Marine Ins. Co., 1 Cr. C. C. 343.

[2] Hazard *v.* New England Marine Ins. Co., 8 Pet. 557. And see Clarke *v.* Manufacturers' Ins. Co., 8 How. 249.

[3] See Hooper *v.* Robinson, 98 U. S. 538.

judges of the Circuit Court of the United States for the district of Maryland.

The action was brought upon two policies of insurance, upon a cargo of sugar, on board the brig Columbia, in the name of the plaintiffs, for the use of Daniel Fitch, who was an American citizen, a sea-captain, sailing out of the port of Baltimore, and the owner and commander of the Columbia; and of Gregorio Medina, of Ponce, in the island of Porto Rico. The plaintiffs were the agents of Daniel Fitch, and by two distinct orders, under different dates, had policies effected, upon their application, by the Chesapeake Insurance Company.

The amount of the separate interests of Captain Fitch and G. Medina, was shown by the following statement, which was admitted to be correct:

*The entire cargo embraced in the two policies, was	$8413 75 [*152
All marked F, in the bill of lading, belonging to Captain Fitch, viz., thirteen hogsheads, five tierces and ninety-two barrels of sugar, amounting to	2076 75
Add charges	198 50
Amount of the absolute and legal or equitable property of Captain Fitch,	2275 25
The residue belonging to G. Medina, the legal title to which, was in Captain Fitch, amounting to	5610 65
Add charges	527 85
	8413 75
Amount of the two policies	8000 00
Not covered	413 75

The Columbia, with her cargo, sailed from Porto Rico for Baltimore; the cargo consigned to Captain Fitch, and documented as such; G. Medina being on board of the vessel, on a visit to the United States. Both vessel and cargo were totally lost, near Norfolk, by the perils of the sea.

The circumstances attending the insurance, and the facts out of which the controversy arose, were as follows: On the 6th of May 1822, the plaintiff presented to the office the following order—

"Insurance is wanted against all risks, for account of whom it may concern; 3000 dollars on the brig Columbia, Daniel Fitch, master, and on cargo 6000 dollars, as interest may appear, at and from Ponce, Porto Rico, to Baltimore; by a letter from Captain Fitch, dated 19th April, he says, he expects to sail about 5th to 10th of May, that the brig is in good order, perfectly tight and seaworthy—what premium?"

1¼ per cent. (written on the order, by the office.)

"Accepted— Buck & Hedrick."

A policy was executed on the same day, on cargo, $6000, insuring Buck & Hedrick, "for whom it may concern." The perils insured against are, "of the seas, men of war, fire, enemies, pirates, rovers, thieves, letters of marque, arrests, taking at sea, restraints of princes; and all other perils, losses and misfortunes, for which assurers are legally accountable." No inquiry was made by the office for the letter of 19th April, alluded to in the

above order; nor was any warranty or representation of any kind made or asked for, in regard to said cargo, but the office executed the said policy on such order.

*153] *On the 24th May, Buck & Hedrick made application for further insurance on cargo; and the following letter from Captain Fitch, dated 27th April, was presented to the office, with an order written on the back of said letter; and a like policy was executed for "whom it may concern," without any inquiry for the said letter of 19th April, and for the same premium.

"Ponce, April 27th, 1822.

"Messrs. Buck & Hedrick:

"Gentlemen:—I wrote you a few days ago, by the brig Osprey, Captain Perkins, direct from Baltimore, requesting you to have insurance done for me, on the brig Columbia and her cargo, owned and commanded by me, to sail from this for Baltimore, about 5th to 10th May, with a cargo of sugar. When I wrote to you by the Osprey, I could not say what amount of cargo to have insured for me; I now think, I shall have on board about 130,000 lbs. valued at 8000 dollars, which amount I wish you to have insured for me, at as low a premium as you can. I wish you to understand, that the above sum of 8000 dollars, is not in addition to that mentioned in my last. The whole amount I want insured, is 8000 dollars on cargo, and 3000 dollars on the vessel and freight. She is in perfect good order, tight in every part, built in New Jersey, in 1814, and well found. Your attention to the above, will oblige your obedient servant, Daniel Fitch."

On the back of this letter was written the following: "What will 2000 dollars be insured at, agreeable to within letter, on cargo, of which you have 6000 dollars insured some time since? Buck & Hedrick.

"1¼ per cent." "Agreed—as interest may appear.

Buck & Hedrick."

Buck and Hedrick applied to the defendant for payment on said policies, and all the papers to prove the distinct interests of Medina and Fitch were shown; but the office declined to pay either, on the ground that said policy covered no one but Fitch, and that the letter of 27th April was a representation that the whole cargo was Captain Fitch's, and therefore, affected both policies.

The plaintiff, on the trial, prayed the court to charge the jury:

1. That as the policies of insurance in this case, purport to insure the plaintiff "for whom it might concern;" they are not bound to prove, that at the time of effecting said insurance, or any other time, they disclosed to

*154] the defendants, that Spanish *property was intended to be covered by said insurance; and that in policies of such description, there can be no undue concealment as to the parties interested in the property to be insured.

2. That if the jury believed the policy of 6th May 1822, was founded on the order of the same date, the said policy being "for whom it may concern," does cover belligerent as well as neutral property.

3. That if the jury believed that the policy, dated 24th May 1822, was founded on the letter of 27th April 1822, and the order written therein, the

policy being "for whom it may concern," does cover belligerent as well as neutral property.

4. That if the said Daniel Fitch, at the date of said policies, was legal and equitable owner of a part of the cargo insured, and the legal, though not equitable, owner of the residue; the policies "for whom it may concern," do cover the entire cargo; and said Daniel Fitch is competent in law to recover the whole, in his own name, though the belligerent character of a part of the said cargo was not disclosed, at the time of effecting said policies of insurance.

5. That the court instruct the jury, that the letter of 27th April 1822, with the order written thereon, do not in law amount to a representation, that the property to be insured, was the sole property of Daniel Fitch, or that the whole, or any part thereof, was not belligerent.

Upon these several prayers, numbered in the record, 1, 2, 3, 5 and 6, the judges of the circuit court differed in opinion, and certified the same to this court.

The cause was argued by *Hoffman* and *Mayer*, for the plaintiffs; and by *Wirt*, Attorney-General, and *Meredith*, for the defendants.

The *plaintiffs'* counsel contended: 1. A policy for whom it may concern, covers all possible persons and all possible interests, belligerent as well as neutral. *Hodgson* v. *Marine Insurance Company*, 5 Cranch 100. The doctrine has been so settled in France, England, New York, Massachusetts, &c. Phil. on Ins. 57–63, 107; 2 Magens 211; 2 Emerigon 460; Ord. Hanse Towns, tit. 1, § 4; 1 Emerigon, ch. 2, § 4, ch. 11, § 4; 2 Dane's Abr. 127; 1 Marsh. on Ins. 306, 215, in notes; Norris's Peake 246–8; Johns. Dig. 274, § 41, 43; 280, § 108; *Barnwell* v. *Church*, 1 Caines 217, 229, 237, 238, 243; *Murray* v. *United Ins. Co.*, 2 Johns. Cas. 168; *Skidmore* v. *Desdoity*, Ibid. 77; *Elting* v. *Scott*, 2 Johns. 157, 163; *Goix* v. *Knox*, 1 Johns. Cas. 337; 1 Marsh. on Ins. 306, 310; *Lawrence* v. *Sebor*, 2 Caines 203; *Hagedorn* v. *Oliverson*, 2 Maule & Selw. 485; *Steinback* v. *Rhinelander*, 3 Johns. Cas. 269; *Vandenheuvel* v. *United Ins. Co.*, 2 Caines *Cas. 217, 269, and 2 Johns. Cas. 127, 451; 5 Cranch 100, 109; *Seamans* v. *Loring*, 1 Mason 128, 125, 136. [*155

Was there a concealment of belligerent interest? Concealment can only have reference to the contract between the parties; non-disclosure is not concealment; and the party charging it must show fraudulent intention. As to the words, "lawful goods and merchandise," the parties refer to municipal sanctions only, and not to foreign circumstances. 1 Johns. Cas. 77, 120, 487.

Upon the doctrine of concealment, non-disclosure, or misrepresentation; the following positions were assumed, and claimed to be sustained by the authorities cited. 1. That no disclosure of anything within the essential nature of the policy, could be necessary—and consequently, that no undue concealment can be predicated, either as to the persons interested, or their country. 2. That there has been neither a representation, nor a misrepresentation, in regard to the cargo insured. 3. That the first policy stands upon nothing but the order of 6th May, in which order no one feature of a representation of neutrality is to be found, but the very reverse. 4. That the letter, on which the second policy, viz., for $2000, was effected, contains

no such representation, in regard to the cargo then to be insured—and if it did, it was strictly true, as Daniel Fitch's absolute interest amounted to $2275.25. 5. That this letter, if a representation at all, as to the neutrality of the cargo covered by this second policy, can in no way affect, by a retroactive energy, the antecedently executed policy. 6. That the office, having neglected to make those inquiries, which, under the circumstances of the case, the law imposed on it, cannot now transfer to the insured, the effect of an obligation to disclose, voluntarily, what would have been willingly communicated, had the office, at that time, deemed it of consequence to inquire after. 7. That Daniel Fitch, being the consignee and trustee of the whole of Medina's interest, with full authority to insure, and having the custody of the entire cargo, laden on board of his vessel, had an insurable interest in the whole; and might, had he seen fit so to do, have truly represented the whole as his own, for the purpose of effecting insurance. Phil. on Ins., and authorities, 64, 94; Ibid. 86, 89; Johns. Dig. 284, § 143, 144, 146, 147–53; Whart. Dig. 319, § 23, 30, 32; Phil. on Ins. 87; 7 Cranch 506; 1 Caines 75, 492; 2 Johns. Cas. 487; 1 Ibid. 1; 2 Ibid. 77, 120; 1 Caines Cas. xxv; 2 Johns. 130; *Anth. N. P. 83; Phil. 69, 90; 4 East *156] 590; *Dennis* v. *Ludlow*, 1 Caines 111, 217; *Long* v. *Bolton*, 2 Bos. & Pul. 209; *Boyd* v. *Dubois*, 3 Camp. 133, 312; 13 Co. 61, 267; 9 East 283, 292; 1 Camp. 116–18; 1 Maule & Selw. 35; *Long* v. *Duff*, 2 Bos. & Pul. 209; Phil. 101; Marsh. 473, note; *Brown* v. *Shaw*, 1 Caines 489; *Depeyster* v. *Gardiner*, Ibid. 492; *Fort* v. *Lee*, 3 Taunt. 381.

2. It was the duty of the insurers to inquire into the state of things, at the time of the contract, and there was no representation of a sole neutral interest. The insured asks to be insured against "all risks;" and it was, therefore, the duty of the office, to inquire what risks were intended to be covered.

Authorities cited as to the general nature of representation: Marsh. on Ins. 450–1; Phil. on Ins. 80; 6 Cranch 274–81; 7 Ibid. 507, 535, 536, 541; Phil. on Ins. 84; 14 Mass. 152; 1 Marsh. on Ins. 459; Phil. on Ins. 109–10; *Pawson* v. *Watson*, Cowp. 785, s. c. Marsh. on Ins. 459; *Bize* v. *Fletcher*, 1 Doug. 271; s. c. Marsh. on Ins. 459; Phil. on Ins. 106; *Alsop* v. *Coit*, 12 Mass. 40, s. c. Phil. on Ins. 110; *Ross* v. *Bradshaw*, 1 W. Bl. W. 312; s. c. Phil. on Ins. 110; Whart. Dig., p. 380, § 28, 30, 31, 32; *Hubbard* v. *Glover*, 3 Camp. 312; *Clapham* v. *Colozare*, Ibid. 382; *Dawson* v. *Atty*, 7 East 357; *Hodgson* v. *Maryland Insurance Co.*, 5 Cranch 100; *Livingston and Gilchrist* v. *Maryland Insurance Co.*, 6 Ibid. 274; 7 Ibid. 507; *Vandenhuevel* v. *United Insurance Co.*, 2 Caines Cas. 257, 267–82; 1 Doug. 305.

Authorities cited as to the duty of underwriters, to make inquiries: 1 Marsh. on Ins. 397, 474–5; Phil. on Ins. 84, 108–9; 2 Dall. 274; 2 Yeates 178; *Fort* v. *Lee*, 3 Taunt. 381; Phil. on Ins. 105; 14 East 479; Whart. Dig. 319, § 23; 1 Camp. 383; Phil. on Ins. 63; *Davis* v. *Boardman*, 12 Mass. 80; *Boyd* v. *Dubois*, 3 Camp. 133; *Duplanty* v. *Commercial Ins. Co.*, Anth. N. P. 157; *Livingston and Gilchrist* v. *Maryland Ins. Co.*, 7 Cranch 508, 536, 538, 547.

3. That even if the letter of 27th April had asserted, that Daniel Fitch owned the cargo, it was (so far as the doctrine of representation is concerned) substantially true; he being the legal owner, as trustee and

consignee of Medina's part, and as such, competent to sustain any action for that part of the cargo, and also to represent, though, perhaps, not to warrant it, as his. Phil. on Ins. 41, 42, 60; *Rind* v. *Wilkinson*, 2 Taunt. 237; *Joseph* v. *Knox*, 3 Camp. 320; 3 Wheat. Selw. 774–5, and note; *McAndrew* v. *Bell*, 5 Bos. & Pul. 373; *Lucena* v. *Crawford*, 1 Esp. 323; 3 Bos. & Pul. 75; Phil. on Ins. 58; Marsh. on Ins. 104–18; *Routh* v. *Thompson*, 11 East 428; *Ludlow* *v. *Browne*, 1 Johns. 15; *Caruthers* v. *Sheddon*, 6 Taunt. 14. [*157

4. That even admitting the letter of 27th April to be a gross misrepresentation, it can, in no way, effect either policy. Not the first policy, because that policy was founded solely on the order of 6th May, and was executed several weeks before the letter of 27th April was in the country. Not the second policy, because, as respects that portion of the cargo, covered by the $2000 policy, the letter was strictly true, Fitch's interest exceeding that amount. 1 Marsh. on Ins. 445–6; 2 Wheat. Selw. 750, note 41; Phil. on Ins. 80, 81, 84, 85; *Marsden* v. *Reid*, 3 East 572; *Dawson* v. *Atty*, 7 Ibid. 367; *Bell* v. *Carstairs*, 2 Camp. 543; *Forrester* v. *Pigou*, 1 Maule & Selw. 14; *Brine* v. *Featherstone*, 4 Taunt. 871; *Elting* v. *Scott*, 2 Johns. 157, 162.

On the part of the plaintiff, it was also urged, that the policy of the 6th of May was not to be connected with that of the 24th May; no representation was made whatever, when the first policy was entered into.

The insurance on the property on board the Columbia, was properly made under the authority and order of Daniel Fitch; who, as master of the brig, and in the relation which existed between him and Mr. Medina, had a right to order the same. Even gratuitous insurances are not *void*, but *voidable*. The tests of such insurances, are, was the premium secure, and had the party a right to abandon? The cases cited by the defendant's counsel, do not impugn these principles, but sustain them.

Meredith and *Wirt*, Attorney-General, for the defendants.—The letter of the 27th April was a representation of neutral property; and it is insisted, that the terms "for whom it may concern," may be limited by a representation, and the case before the court: the representation was not true. It is admitted, that the stipulations in a policy, may be enlarged by a representation, and if enlarged, why not restricted? *Urquhart* v. *Bernard*, 1 Taunt. 450. As to a representation and its effect, the following cases were cited; *Seamans* v. *Loring*, 1 Mason 136; 2 Johns. 157, 163; 2 Caines 203; 2 Johns. Cas. 451, 173.

The representation having been made a resident owner, was, in effect, a warranty of neutrality. Phil. on Ins. 82; 6 Mass. 220; 2 Johns. Cas. 451, 173. A representation must correspond with the facts represented, and must be as favorable to the insurers, as if it had been literally true. Phil. on Ins. 102; 2 Johns. Cas. 168; 6 Mass. 212. No case has been cited by the counsel for the plaintiffs, where the cover of property by fraud was protected. Here, *the cover was false, and intended to protect the property of Medina, a belligerent. [*158

Captain Fitch had not an insurable interest in the property of Medina, and as an agent, he was guilty of misrepresentation. *Lucena* v. *Crawford*, 5 Bos. & Pul. 323; 11 East 434. The first policy exhausted the whole of

Captain Fitch's interest in the property, and left nothing for the second policy; and the second could not operate, there being a clause against prior insurances in the policy. False lights were held out to the underwriters by the letter, and while they supposed they undertook a peace risk, they had assumed a war risk.

The insured are bound to show, that the property insured was intended to be insured by the policy; and there is no evidence of any authority given by Medina to Fitch, to cause the insurance to be made, or that the same was made for him. Phil. on Ins. 57–61; 3 Johns. Cas. 269. As to an adoption of policy, it must be done by the person for whom the insurance was intended. 2 Maule & Selw. 485; 1 Mason 136.

Johnson, Justice, delivered the opinion of the court.—This cause comes up from the circuit court for the Maryland District, on a difference of opinion.

The suit below was instituted on two policies of insurance, the one for $6000, the other for $2000, upon the brig Columbia, Daniel Fitch, master, at and from the Spanish island of Porto Rico, to Baltimore, for whom it may concern. Buck & Hedrick were the agents of Fitch, and the policies were made in their name. The first policy was executed on the 6th of May 1822, and stands unimpeached by any circumstances occuring at the time of its execution. But when application was made for the second policy, which was on the 24th of May, the agents laid before the underwriters a letter, dated Ponce, April 27th, 1822, to this effect:—

"Messrs. Buck & Hedrick:—I wrote you a few days ago, by the brig Osprey, Captain Perkins, direct for Baltimore, requesting you to have insurance done for me on the brig Columbia, and her cargo, owned and commanded by me, to sail from this for Baltimore, about 5th to 10th of May, with a cargo of sugar. When I wrote you by the Osprey, I could not say, what amount of cargo to have insured for me. I now think, I shall have on board about 130,000 pounds, valued at $8000, which amount I wish you to have insured for me," &c. The rest has no material bearing upon the cause. On the back of this letter was written the following inquiry: *"What will
*159] $2000 be insured at, agreeable to within letter, on cargo, of which you have $6000 insured some time since? Buck & Hedrick."

The vessel and cargo were totally lost by the perils of the sea; and the interest proved at the trial, consisted of above $2000, the property of Fitch, and above $6000, the property of G. Medina, a Spanish subject, of Porto Rico, at that time affected with the character of a belligerent. The whole cargo was consigned to Daniel Fitch, and documented as his—Medina himself being on board, on the voyage.

The order of insurance, on which the policy of 6th May was effected, was in the following words: "Insurance is wanted against all risks, for account of whom it may concern, $3000 on the brig Columbia, Daniel Fitch, master, and on cargo, $6000, as interest may appear, at and from Ponce, Porto Rico, to Baltimore; a letter from Captain Fitch, dated 19th April, says, he expects to sail about 5th to 10th of May; that the brig is in good order, perfectly tight and sea-worthy. What premium?" Both policies, it appears, were done at a premium of $1\frac{1}{4}$, and on neither occasion was the letter of the 19th April called for by the office, nor was any warranty or

representation of any kind made or asked for, respecting the cargo, beyond what was voluntarily made, and has been stated.

The first instruction on which the court below divided, was prayed for by the plaintiffs, in these words: "That as the policies of insurance in this case purport to insure the plaintiffs 'for whom it might concern,' they are not bound to prove, that at the time of effecting the insurance, or any other time, they disclosed to the defendants, that Spanish property was intended to be covered by the insurance; and that in policies of such description, there can be no undue concealment as to the parties interested in the property to be be insured." Dangerous as it always is, in a court of justice, to generalize in the propositions which it decides, it is peculiarly so, in questions arising on policies of insurance. The present proposition is obviously couched in terms too general to admit of an answer in the affirmative, without restriction or modification. And as courts of justice are not bound to modify or fashion the instructions moved for by counsel, so as to bring them within the rules of law, if this cause had come up on a writ of error to the judgment of the court below, for refusing the instruction as prayed; it would be difficult to say, that in the terms in which it is presented, the court was bound to give this instruction.

To affirm, "that in policies of such description, there can be no undue concealment as to the parties interested in the *property to be insured," is obviously going much too far; since the underwriter has [*160 an unquestionable right to be informed, if he makes inquiry; the assured may be silent, it is true, if he will, and let the premium be charged accordingly; but if the inquiry then made should be responded to, with information contrary to the verity of the case, this obviously gives a conventional signification to the terms of the policy; which may differ materially from the known and received signification in ordinary cases. He, for instance, who should insure "for whom it may concern," under an express assurance, that there is no belligerent interest in the cargo, could not, upon any principle, be held to have made assurance upon belligerent interest. This is no more than the application of the general principle, that insurance is a contract of good faith, and is void, whenever imposition is practised.

That a policy "for whom it may concern," will, in ordinary cases, cover belligerent property, has been fully conceded in argument. Nor is it contested, that previous representation will be sunk or absorbed, or put out of the contract, where the policy is executed in obvious inconsistency with those representations. But the ground here insisted on for defendants, is, that the letter of April 27th, was a representation that the whole cargo was Captain Fitch's, and that it thereby operated as an imposition upon the underwriters, and as such, avoids both policies; or that it affixes a conventional meaning to the phrase, in these policies, which limits its ordinary import.

Is there anything in the case, sufficient to except these policies from the ordinary import and effect of the phrase "for whom it may concern?" We are of opinion, there is not. Whatever turn of expression may be given to the question, or in whatever aspect it may be presented, it is obviously, at last, no more than the simple question, have these underwriters been entrapped, or imposed upon, or seduced into a contract, of the force, extent or incidents of which, a competent understanding cannot be imputed to

them? A knowledge of the state of the world, of the allegiance of particular countries, of the risks and embarrassments affecting their commerce, of the course and incidents of the trade on which they insure, and the established import of the terms used in their contract; must necessarily be imputed to underwriters. According to a distinguished English jurist, Lord MANSFIELD, in *Pelly* v. *Royal Exchange, &c.*, 1 Burr. 341, "the insurer, at the time of underwriting, has under his consideration the nature of the voyage, and the usual manner of conducting it. And what is usually done by *161] such a ship, with such a cargo, on such a voyage, is *understood to be referred to by every policy." Hence, when a neutral, carrying on a trade from a belligerent to a neutral country, asks for insurance '*for whom it may concern*,' it is an awakening circumstance. No underwriter can be ignorant of the practice of neutrals to cover belligerent property, under neutral names, or of the precautions ordinarily resorted to, that the cover may escape detection. The cloak must be thrown over the whole transaction, and in no part is it more necessary, than in the correspondence by other vessels, so often overhauled by an enemy, for the very purpose of detecting covers on other cargoes. Letters, thus intercepted, have often been the ground-work of condemnation in admiralty courts; and underwriters, to whom the extension of trade is always beneficial, must and do connive at the practice, in silence. They ask no questions, propose their premiums, and the contract is as well understood, as the most thorough explanation can make it.

There is nothing in the letter in evidence, calculated to mislead an insurer of ordinary vigilance, but what was fully explained away, by concomitant circumstances. It is true, that in the letter Fitch writes, to have insurance done for him, on "the brig Columbia and her cargo;" that he cannot say, what amount of cargo to have insured for him. Yet, when the offer was submitted, it was indorsed on the back of this letter, and expressly declared to be upon the same cargo, of "which you have $6000 insured, some time since." The insurance alluded to, was made "for whom it may concern," and this second policy is expressed in the same terms. Here, then, was a neutral, professing himself to be owner of a cargo, consisting of produce of the hostile island, on a voyage, having for its object, to find a market for that produce, most unnecessarily, if himself the real owner; or if there were no owners but neutrals; most unwisely subjecting himself, or them, to an increase of premium, which could not but result from such an offer. This was a circumstance calculated to produce inquiry. The defendants had a right to make what inquiries they pleased, as to the real character of the cargo; and if they did not make those inquiries, the law imputes to them the use of the phrase, "for whom it may concern," in its ordinary effect and signification. We are, therefore, of opinion, that this instruction, if so modified as to be confined to the case before the court, ought to have been given.

The second prayer, amounting only to an affirmative of the general proposition, as relates to the policy of the 6th May, we are of opinion, ought to have been given.

*162] The third prayer, having the same bearing upon the policy *of the 24th May, we are of opinion, for the reasons expressed in the first prayer, ought also to have been given.

By the fifth prayer, the plaintiffs ask of the court to instruct the jury, "that if the said Daniel Fitch, at the time of said policies, was legal and equitable owner of part of the cargo insured; and the legal, though not equitable owner of the residue, policies, 'for whom it may concern,' do cover the entire cargo; and said Fitch is competent, in law, to recover the whole, in his own name, though the belligerent character of a part of said cargo, was not disclosed, at the time of effecting said policies." The language in which this prayer is couched, obviously imports two propositions: 1st. That a policy, "for whom it may concern," will cover the whole cargo, though the assured had only the legal, without the equitable interest in part, and a legal and equitable interest in the residue; and 2d. That Daniel Fitch is competent, in law, to recover the whole, in his own name, though the belligerent character of part was not disclosed, when the policies were executed. It is a very great objection to this prayer, that the language used is too general and abstracted; and not adapted to the case, with that studied precision which the law requires; thereby rendering it scarcely possible for the court to meet it with a simple, positive or affirmative answer. To the first of the two propositions, it may be further objected, that it is difficult to perceive, how it came to be introduced into the cause. Abstracted from the effect of belligerent interest in the cargo, the defence admits, that the policy covers all other interests, whether legal or equitable. And with regard to the second, it is not easy to perceive, why the court should be called upon to charge the jury, that Daniel Fitch was competent, in law, to recover the whole, in his own name, when the suit is, in fact, prosecuted in the name of the agents; and they count upon the interests of both Medina and Fitch.

But the cause has been argued, upon the assumption, that this prayer brings up the question of insurable interest in Fitch, by whose instructions, Buck & Hedrick effected this insurance; and as it is better to follow out the concessions of counsel than to let the cause come up here again, upon this point, we will consider that question as being raised by this, in connection with the other prayers.

And here, we think, the facts make up a clear case of insurable interest. The only doubt, probably, arises from one of the most prolific grounds of uncertainty on many subjects, viz., the use of terms, originally unaptly selected, but now rendered legitimate, by use. It is only necessary to inspect a few cases *on this doctrine, to be satisfied, that the term [*163
interest, as used in an application for insurance, does not necessarily imply *property*, in the subject of insurance. In the case of *Craufurd* v. *Hunter*, 8 T. R. 13, the plaintiffs were commissioners appointed by the crown, under an act of parliament, to superintend the transportation, &c., of Dutch vessels, seized in time of peace, without any present designation for whom—whether to be held in trust, for the original owners, the crown, or the captor. The vessel had been carried into St. Helena; and the policy was effected, with a view to her safe transportation, from that island, to England; and after much consideration, it was adjudged, that this was a good insurable interest, and the plaintiffs recovered. The same point was afterwards decided, in *Lucena* v. *Crawford*, 3 Bos. & Pul. 75, on a writ of error, to the exchequer, after three arguments, and great deliberation; yet the seizures were made before declaration of war; and the interest of the

plaintiffs amounted to nothing but a power over the subject, with a claim by *quantum meruit*, for their services.

Putting down the present case, therefore, to its lowest grade of insurable interest, it is equal to that of the plaintiffs, in the two cases alluded to ; for Daniel Fitch was, at least, the agent or trustee of Medina, to transport his goods from Porto Rico, to a market, and to secure them from the chances of capture and loss. But this case is stronger than the English cases cited, for, by the act of Medina himself, Fitch was exhibited to the world, clothed with all the national documents, which evidence an absolute property ; and, for many purposes, the real owner would have been estopped to deny it. We will instance the payment of duties ; for which, either as owner or consignee, our laws held Fitch absolutely liable. We have, therefore, no doubt of the sufficiency of the insurable interest, in this case.

The last prayer, on which the court below divided, is in these terms : "That the court instruct the jury, that the letter of the 27th April 1822, with the order written thereon, do not, in law, amount to a representation, that the property to be insured, was the sole property of Daniel Fitch ; or that the whole, or any part thereof, was not belligerent." We have already expressed our opinion, on the proposition here presented. It is to be regretted, that this prayer also is so defective in precision. But it was obviously intended, and so argued, to be confined to a representation, which would vitiate the policy. With relation to the first policy, we are all of opinion, that it was unaffected by the letter specified ; and *with regard to
*164] the second policy, whatever might have been the effect of this letter, had it stood alone, yet, taken in connection with the concomitant circumstances, it was not fatal to the contract.

On this point, a majority of the court would be understood to express the opinion, that this letter, connected with the order indorsed upon it, the previous insurance referred to, and considered in relation to the state of the world, and the nature, character and ordinary conduct of the voyage insured, was not such a representation, as, *per se*, vitiated the policy. And this opinion will be certified to the court below.

This cause came on, &c. : On consideration whereof, this court is of opinion : 1. That as the policies of insurance in this cause, purport to insure the plaintiffs "for whom it may concern," they are not bound to prove, that at the time of effecting the said insurance, or any other time, they disclosed to the defendant that Spanish property was intended to be covered by the said insurance, unless inquiries on the subject were propounded by the insurer, prior to the insurance : 2. That if the jury believe the policy of the 6th of May 1822, was founded on the order of the same date, the said policy being "for whom it may concern," does cover belligerent, as well as neutral interest : 3. That if the jury believe, that the policy dated 24th of May 1822, was founded on the letter of the 27th of April 1822, and the order written thereon, the policy being "for whom it may concern," does cover neutral, as well as belligerent property : 4. That if the said Daniel Fitch, at the time of the date of the said policies, was legal and equitable owner of part of the cargo insured, and legal, though not equitable, owner of the residue ; the policies, being "for whom it may concern," do cover the entire cargo; and that the said Fitch had a good insurable interest in the whole cargo;

and the plaintiffs, as his agents, are competent to recover the whole sum insured thereon, on proof of such legal and equitable interest in the said Fitch: 5. That the letter of the 27th of April 1824, whatever might be its effect, if taken alone, yet, taken in connection with the indorsement thereon, with the previous policy to which it refers, the actual state of the world, &c., and the nature of such transactions, is not such a representation as vitiates the policy. All which is ordered and adjudged by this court, to be certified to the said circuit court.

---

*Henry Wright, William Carothers, Robert Dennison, William Patton, Thomas Burman and James Robertson, Plaintiffs in error, *v.* The Lessee of Levi Hollingsworth and John Kaighn, Defendants in error. [*165

Practice in ejectment.

In an action of ejectment, in which, according to the provisions of the laws of Tennessee, the defendant was held to bail, the declaration stated two demises, one, by H. & K., citizens of Pennsylvania, and the other, the demise of B. & G., citizens of Massachusetts; the cause coming on for trial before a jury, the plaintiffs suffered a nonsuit, which was set aside; and the court, on motion of the plaintiffs, permitted the declaration to be amended, by adding a count on the demise of S., a citizen of Missouri; the parties went to trial, without any other pleading; and the jury found for the plaintiff, upon the third or new count, and a judgment was rendered in his favor.

The allowance and refusal of amendments in the pleadings, the granting and refusing of new trials, and most of the other incidental orders, made in the progress of a cause, before trial, are matters so peculiarly addressed to the sound discretion of the courts of original jurisdiction as to be fit for their decision only, under their own rules and modes of practice: this court has always declined interfering in such cases. p. 168.

After the filing of a new count to a declaration, the defendant, who, to the former counts, has pleaded the general issue, or any particular plea, may withdraw the same, and plead anew, either the general issue, or any further or other pleas, which his case may require; but he may if he pleases, abide by his plea already pleaded, and waive his right to pleading *de novo*, the failure to plead, and going to trial without objection, are held to be a waiver of his right to plead, and an election to abide by his plea; and if it, in terms, purports to go to the whole action, it is deemed sufficient to cover the whole declaration; and puts the plaintiff to the proof of his case, on the new, as well as on the old counts. p. 169.

Error to the Circuit Court of West Tennessee. This was an action of ejectment, commenced in the circuit court for the district of West Tennessee, in 1813, by the lessee of Levi Hollingsworth and John Kaighn, citizens of the state of Pennsylvania, against Henry Wright and others, the plaintiffs in error, and citizens of Tennessee.

The declaration set forth a demise from Hollingsworth and Kaighn to John Denn, the defendant in error. A notice was served on the tenants in possession, who, at June term 1813, appeared, and put in the plea of "not guilty." At June term 1817, after a jury had been sworn in the cause, the plaintiff suffered a nonsuit; which was afterwards set aside; and the plaintiff had leave to add a new count to his declaration, upon condition, that all the costs of the term should be paid by him, absolutely; and that he should pay all preceding costs, the same to be refunded, if he should ultimately succeed in the action. A new *count was then filed, in which was stated a lease from Benjamin Spencer, a citizen of Missouri. To this count [*166 no plea was filed; and at June term 1825, a trial was had, and a verdict and