

*MORGAN *v.* CALLENDER.

Appellate jurisdiction.

An appeal lies from the district court of the United States, for the territory of Orleans, to this court.

APPEAL from the District Court of the United States for the territory of Orleans, in a suit in equity.

That court was established by the act of congress, of 26th March 1804, § 8 (1 U. S. Stat. 285), and has a jurisdiction similar to that given to the district court of the United States for the district of Kentucky.

THIS COURT was of opinion, that an appeal lies from that court to this ; but that in this case, the court below had not jurisdiction, because it did not appear that the parties were citizens of different states, nor aliens, &c., so as to give them a right to litigate in the courts of the United States.

ALEXANDER *v.* BALTIMORE INSURANCE COMPANY.

Marine insurance.—Abandonment.

A policy upon a ship, is an insurance of the ship *for* the voyage, not an insurance on the ship *and* the voyage. The underwriters undertake for the ability of the ship to perform the voyage, not that she shall perform it, at all events.

The loss of the voyage as to the cargo, is not a loss of the voyage as to the ship.¹

If, at the time of an offer to abandon, the ship be in possession of the master, in good condition, and at full liberty to proceed on the voyage, the loss of the cargo will not authorize the owner of the vessel to recover as for a total loss of the vessel.

ERROR to the Circuit Court for the district of Maryland. The CHIEF JUSTICE, in delivering the opinion of the court, stated the material facts, found by the special verdict, to be as follows, viz :

This action was brought against the underwriters, to recover the amount of a policy insuring the ship John and Henry, from Charleston to Port Republican, or one other port in the Bite of Leogane. On the 2d of October 1803, the John and Henry, while prosecuting her voyage, was seized by a French privateer, and carried into the port of Mole St. Nicholas, where the cargo *was taken by M. de Noailles, the French commandant, for the use of the garrison. On the same day, the master of the vessel received a written engagement from M. de Noailles to pay for the cargo, in coffee, after which the vessel was unladen. The master remained at the Mole, in expectation of receiving payment, until the 29th of October, when he sailed in the John and Henry, for Cape Frangois, with an order on that place for payment in coffee. On the 4th of November, she was seized by a British squadron, then blockading Cape Frangois, and condemned as prize. Cape Frangois is not in the route to Port Republican, nor to any port in the Bite of Leogane ; nor in the route to return from Mole St. Nicholas to the United States. The abandonment was made in December, on account of the capture by the French privateer. The declaration claimed the amount of the policy, in consequence of that capture. The judgment of the court below was for the defendant. [*371

¹ Hinton *v.* Phoenix Ins. Co., 1 W. C. C. 400.