We regard the case as one of mere deviation. It is essentially of that character. In that class of cases, the law annuls the contract as to the future, and forfeits the premium to the underwriter. Here equity must follow the law. We cannot apply a different rule.

DECREE AFFIRMED.

EQUITABLE INSURANCE COMPANY *v.* HEARNE.

Where a party proposed to insurers to insure his vessel on a "voyage from Liverpool *to Cuba* and to Europe *via* Falmouth," at a rate named, and the company offered to insure at a somewhat higher rate, saying, "It is worth something, you know, to cover the risk *at the port of loading* in Cuba," *held* that it was implied that "the port of loading" might be different from the port of discharge, and where the assured accepted this offer, and told the insurer to insure "at and from Liverpool *to Cuba* and to Europe *via* a market port," &c., *held* further, that a policy which insured "to port *of discharge* in Cuba, and to Europe *via* a market port," &c., did not conform to the contract, and was to be reformed so as to do so.

APPEAL from the Circuit Court for the District of Massachusetts.

The controversy in this case grew out of a contract of insurance upon the same charter-party as in the preceding case, though here the insurance was by a different company from the insurance there. The present case was thus:

On the 2d of May, 1866, Hearne addressed a letter to the Equitable Insurance Company as follows:

"Insure $4000 on the charter-party of the bark Maria Henry, valued at $16,000, if you will not charge me more than 3 per cent.; voyage from Liverpool to Cuba, and to Europe *via* Falmouth, for orders where to discharge. She will take her registered tonnage of coal."

On the 4th of the same month the company replied:

"We cannot write the charter of the bark Maria Henry at your rate, viz., 3 per cent., including coals, from Liverpool to

Cuba. Our rate will be 4 per cent. for the voyage, to include coals."

On the 7th of the month Hearne answered, arguing against the rate proposed, and offered "3 per cent., or 4 per cent., 1½ per cent. to be returned if no loss."

On the day following the company responded:

"We will write upon the charter of the bark Maria Henry as proposed by you—Europe to Cuba and back to Europe—at 3½ per cent. net. *It is worth something, you know, to cover the risk at the port of loading in Cuba.*"

On the next day Hearne wrote:

"I accept your proposition in reference to the insurance of the bark Maria Henry. Please insure $4000, at 3½ per cent., on the charter valued at $16,000, at and from Liverpool to Cuba, and to Europe *via* a market port, for orders where to discharge."

The contract, as expressed in the policy, was for—

"Four thousand dollars on charter of bark Maria Henry, at and from Liverpool to port of discharge in Cuba, and at and thence to port of advice and discharge in Europe."

The facts of the case were the same in all respects, down to the close of the litigation at law between the parties, inclusive, as those in the case immediately preceding, where the controversy was with the other company. That case is referred to for the particulars. Hearne having been defeated in his action at law, filed this bill for the reformation of the contract, as stated in the policy. The Circuit Court decreed in his favor. The company brought the case here for review.

Mr. J. C. Dodge, for the appellant; Mr. Walter Curtis, contra.

Mr. Justice SWAYNE, having stated the case, delivered the opinion of the court.

It is not denied that the correspondence between the parties constituted a preliminary agreement. Such clearly was

its effect. The policy was intended to put the contract in a more full and formal shape. The assured was bound to read the letters of the company in reply to his own with care. It is to be presumed he did so. He had a right to assume that the policy would accurately conform to the agreement thus made, and to rest confidently in that belief. It is not probable that he scanned the policy with the same vigilance as the letters of the company. They tended to prevent such scrutiny, and, if it were necessary, threw him off his guard.

The principles upon which a court of equity will exercise the jurisdiction invoked by the appellee were considered in the case which precedes this. What was there said need not be repeated. In this case Hearne's proposition to the company was to insure upon the charter, "voyage from Liverpool to Cuba, and to Europe *viâ* Falmouth." The company's response, as before stated, was: We will insure "as proposed by you—Europe to Cuba—at 3½ per cent. It is worth something, you know, to cover the risk at port of loading in Cuba." This is the language of the parties, and it is the essence of the correspondence. Suppose the language of these sentences had been incorporated in the policy in this form: This company hereby insures $4000 *upon the charter of the bark Maria Henry, as proposed* by the assured, from "*Europe to Cuba and back to Europe, at 3½ per cent. net,*" —the premium is enhanced "*to cover the risk at port of loading in Cuba,*"—what would have been the legal result? Can it be doubted that the policy would be held to cover alike the voyage to a port of discharge in Cuba, a voyage thence, if necessary, to a port of loading in Cuba, and a voyage from the latter to Europe? The "port of loading" is the only one mentioned in the letter. It seems to have been uppermost in the mind of the writer. The risk is referred to as a distinct and separate one. The implication is that the port might be one other than the port of unloading. The right to go to both rests upon the same foundation, and it is not more clear as to one than the other. What is implied is as effectual as what is expressed. The intent of the parties, as

manifested, is the contract. Upon any other construction the important language as to "the port of loading" would be insensible and without effect. No other interpretation, we think, can reasonably be given to it.

In *Dickey* v. *The Baltimore Insurance Co.*,* the policy insured the vessel upon a voyage "from New York to Barbadoes, and at and from thence to the Island of Trinidad, *and at and from Trinidad* back to New York." This court held that the words "at and from" protected the vessel in sailing from one port to another in Trinidad to take in a part of her cargo. Marshall, Chief Justice, said: "It is the settled doctrine of the courts of England that insurance *at and from an island*, such as those in the West Indies, generally insures the vessel while coasting from port to port for the purpose of the voyage insured." He refers to *Bond* v. *Nutt*,† and to *Thellusson* v. *Fergusson*.‡ The case of *Cruikshank* v. *Jansen*§ is to the same effect. These authorities fully sustain the proposition laid down. We are not aware that their authority has been questioned. They show the just liberality of construction which obtains where contracts of insurance are involved.

In this controversy the clear terms of the preliminary agreement warranted the court below in overruling the departure from it found in the policy.

We have examined the case only in the light of its own inherent facts. We have not found it necessary to consider the usage alleged to exist at Liverpool touching voyages in the trade from that port to Cuba. It seems clear to us that the judgment below does not need further support. We, therefore, forbear to remark upon that subject.

DECREE AFFIRMED.

* 7 Cranch, 327.
‡ 1 Douglas, 361.
† 2 Cowper, 601.
§ 2 Taunton, 301.