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## WHEN A SHIP SAILS.

The risk assumed in underwriting a vessel necessarily varies so much with the season of the year that the time of the vessel's sailing becomes an essential factor of the contract. It is customary, therefore, to insert in the policy a warranty to govern this matter, by restricting the vessel to sailing before or after a specified date or during a certain part of the year. The premiums can thus be proportioned to the chances of loss. This warranty of the time of sailing has presented many nice questions both of law and fact; indeed, within the last few months a case was decided in England (*Sea Insurance Company v. Blogg*, [1898.] 1 Q. B. 27), involving a careful examination of the subject.

The rule is stated in various forms by the authorities :

“If a ship, warranted ‘to sail’ on or before a given day, quits her moorings on or before the day limited, being then perfectly ready to proceed on her sea voyage, and removes, though only to a short distance, with the *bona fide* intention of at once prosecuting such voyage, that is a sailing within the meaning of the warranty, although she may subsequently be detained till after the limited day by some unforeseen

delay. If, on the other hand, the ship, at the time she quits her moorings and sets sail, is not in a state of complete preparation for her sea voyage, and is not *bona fide* intended to proceed directly and immediately upon it, this is not a compliance with the warranty. In short, in order to satisfy a general warranty to sail, there must be a *bona fide* commencement of the voyage insured on or before the given day :” *Arnould on Insurance*, 610.

“ A vessel has ‘ sailed’ the moment she is unmoored and got under way, in complete preparation for the voyage, with the purpose of proceeding to sea without further delay at the port of departure :” 1 *Phillips on Insurance*, § 610.

When the port of departure is inland, this author treats it as including “ any places that can be considered parts or branches of, or appendages to, the port named, and auxiliary to its navigation.”

*Joyce on Insurance* does not formulate a rule, but quotes from the cases cited herein.

The rule has been stated also in several decisions :

“ To constitute a sailing under this warranty, the vessel at the time of sailing must be, in the contemplation of the captain, at absolute and entire liberty to proceed to her port of delivery in a mathematical line if it were possible :” *Per* Lord Mansfield, in *Thellusson v. Staples*, 1 Doug. 366n. (1780).

“ It is clear that a warranty to *sail*, without the word *from*, is not complied with by the vessel’s raising her anchor, getting under sail and moving onwards, unless at the time of the performance of these acts she has everything ready for the performance of the voyage, and such acts are done as the commencement of it, nothing remaining to be done afterwards :” *Per* Abbott C. J., in *Lang v. Anderdon*, 3 B. & C. 495 (1824). (*Arnould on Insurance* ascribes this erroneously to Lord Tenterden.)

“ The general principle of the decisions is this : That if a ship quits her moorings and removes though only to a short distance, being perfectly ready to proceed upon her voyage, and is by some subsequent occurrence detained, that is, nevertheless, a sailing ; but it is otherwise if, at the time when

she quits her moorings and hoists her sails, she is not in a condition for completing her sea voyage." *Per* Lord Tenterden, C. J., in *Pittegrew v. Pringle*, 3 B. & Ad. 514 (1832).

An analysis of the rule shows that three conditions must be fulfilled :

1. The ship must be ready ;
2. The ship must move forward ;
3. The forward movement must be *bona fide* with the intention to proceed immediately on the voyage.

These will be examined in turn.

I. The requirement that the ship shall be ready for the voyage has not always been applied with the same degree of strictness. The English courts apparently interpret the rule to mean that all the preparations must be complete for the whole voyage and not merely for the first part of it, unless the voyage be distinctly severable ; in this country, the preparations not immediately required have in some instances been postponed without affecting the result. It is hardly sufficient, therefore, to say that the ship must be "sea-worthy;" that term is "used and understood to state that the ship is in a condition, in all respects, to render it reasonably safe where it happens to be at any particular time referred to, whether in a dock, in a harbor, in a river, or traversing the ocean:" *Gibson v. Small*, L. R. 4 H. L. C. 417 (1853), *per* Lord Campbell ; in other words, it "expresses a relation between the state of the ship and the perils it has to meet in the situation it is in:" *Id. per* Erle, J. "Readiness," as defined in England, is not a variable term in this way ; it implies full preparation *ab initio* for the voyage.

In *Risdale v. Newnham*, 3 M. & S. 456 (1815), the policy was on freights and goods *per* a ship *at and from* Portneuf to London, warranted *to sail on or before* October 28th. The ship was duly loaded at Portneuf, and on October 26th dropped down the river about thirty miles to Quebec, with a crew adequate for the purpose. At Quebec she obtained her clearance papers, which could not have been obtained at Portneuf, and shipped a crew for the ocean voyage. A delay in making out the papers detained her until after the 28th.

Lord Ellenborough held that while the policy had undoubtedly attached at Portneuf, it must be taken distributively. Dropping down the river without a full crew was only preparatory and there was a breach of the warranty as the ship did not sail on or before the day limited, having her clearances and fully equipped for the voyage. This is the leading case in England. A case similar in its facts is *Forshaw v. Chabert*, 3 B. & B. 158 (1821), where a ship, whose proper complement was ten men, sailed from Cuba for Liverpool with a crew of ten, of whom eight were engaged for Liverpool and two for Jamaica. She touched at Jamaica to replace the two men, and was subsequently lost on her way to Liverpool. The court held the ship was not seaworthy at the time of leaving Cuba. This case will serve as an illustration of the rigor of the rule governing seaworthiness, and the rule governing readiness is as severe.

*Pitfgrew v. Pringle*, 3 B. & Ad. 514 (1832), has already been cited. The warranty was that the ship should not *sail after the first of September*. The depth of water on the harbor bar prevented her going out with more than fifteen of the fifty tons of ballast requisite for the voyage, so that the remaining thirty-five tons were carried in lighters, to be shipped after reaching deep water. She crossed the bar on the morning of the 1st, intending to take the ballast aboard that day, but struck heavily enough to require an examination to learn if she were damaged. This caused a delay of several days in another port. Lord Tenterden held it was not a "sailing"—"if, at the time a ship quits her moorings and hoists her sails, she is not in a condition for completing her sea voyage." It was no answer that the ship could not have crossed the bar with the ballast aboard, for, *per* Littledale, J., "it was the plaintiff's business to put himself in such a situation as to be sure of completing his ballast in the proper time." The other point in the case—that by the terms of the policy "the time of clearing at the custom house [is] to be deemed the time of sailing, provided the ship is then ready for sea,"—is not material to the present discussion.

This case was relied on, two years later, in *Graham v. Barras*,

5 B. & Ad. 1011 (1834), where the ship was under charter from Dublin to St. Andrews and was warranted in the policy not to *sail after the first* of September. She cleared on August 31st. A full crew had been engaged but was not actually on board either then or when she dropped down the river from Dublin to the Pigeon Hole on September 1st. There she anchored during the afternoon and the crew came aboard; she proceeded to sea at 3.30 A. M. the next day. The facts, it will be noted, differ from those of *Risdale v. Newnham* in that the ship had obtained her clearance papers and engaged her crew before moving; the court, nevertheless, held without hesitation that she had not sailed as warranted. The policy contained a clause similar to that in *Pittegrew v. Pringle*, providing for a constructive sailing as of the time of clearing, but the court was of the opinion that it had not been complied with, since the ship was not "then ready for sea."

These cases are thus stated at length, as they are the leading English authorities. They are cited in nearly all the subsequent cases on the point, whether arising under a policy of insurance or a charter-party, for the rule as to these is the same: *Thompson v. Gillespy*, 5 E. & B. 209 (1855).

In this country, apparently, the preparation need extend only to the immediate demand. Mr. Justice Story uses this language in *M'Lanahan v. Universal Ins. Co.*, 1 Pet. 170 (1828):—"There is no doubt, that every ship must, at the commencement of the voyage insured, possess all the qualities of seaworthiness, and be navigated by a competent master and crew. . . . The argument assumes, that the ship ought not to have got under way, or proceeded into the offing, until the master, and all the crew, necessary, not for that act, but for the entire voyage, were on board. . . . But we are far from being satisfied that the law has interposed any such positive rule, as the argument supposes. Seaworthiness in port, or for temporary purposes, such as mere change of position in harbor, or proceeding out of port, or lying in the offing, may be one thing; and seaworthiness for a whole voyage, quite another. . . . What is a competent crew for the voyage; at what time such crew should be on board; what is proper pilot

ground; what is the course and usage of trade in relation to the master and crew being on board, when the ship breaks ground for the voyage, are questions of fact, dependent upon nautical testimony; and are incapable of being solved by a court, without assuming to itself the province of a jury, and judicially relying on its own skill in maritime affairs." It is evident, too, from other parts of his opinion that he considered the ship had sailed as soon as she broke ground for the voyage. .

A stronger case is *Union Ins. Co. v. Tysen*, 3 Hill (N. Y.), 118 (1842). The policy read *if at sea*, but the court held that *being at sea* or *on a passage* and *sailing* were synonymous. The ship's preliminary clearances were made ready and a pilot and full crew engaged; of these only a part of the crew were taken aboard; when the ballast was aboard, she moved, before the day limited, a few lengths down a canal in the city of Rotterdam and anchored in the river to await a shift of wind. There she was detained by the adverse wind, but the court held she had sailed when she left her berth in the canal. "She was indeed to take her papers, her imprisoned seamen, her pilot, and a paper in exchange on arriving at Helvoetsluys [at the mouth of the river] preparatory to entering the broad sea. But all these were matters of course, and just as much at the master's pleasure as weighing anchor or unfurling the sails. . . . That the vessel has moved on the prosecution of the voyage, whether in the sea, or an arm of the sea, enables us to say she is on her passage, and exposed to the perils of such passage. This vessel had sailed."

When the voyage is clearly severable, there is no doubt that the preparation required varies with the needs of the successive stages. Thus a voyage from Lyons to the Black Sea includes the navigation of the Rhone to Marseilles and that of the Mediterranean thence to the Black Sea. The conditions of the river navigation are such that a ship fully equipped for the sea cannot cross the shoals or go under the bridges. It was held, therefore, in *Bouillon v. Lupton*, 15 C. B. n. s. 113 (1863), to be an implied term of a policy on a ship undertaking such a voyage, that her equipment shall be appropriate

to each stage of the voyage, and that due time shall be allowed at the end of each stage to prepare for the next. The ship "sails," consequently, within the meaning of the warranty, when she first proceeds on the voyage as a whole, and not when she enters upon the stage requiring the greatest preparation.

The present writer ventures to think that the English rule is often unduly harsh in its operation, and that it might well, at times, be modified by analogy to the doctrine of *Bouillon v. Lupton*. When clearance papers cannot be obtained where the insurance attaches or ballast cannot be carried over the harbor bar, no injustice would seem to result from considering the voyage begun with the first forward movement. If the papers are not gotten or the ballast shipped with all reasonable promptness, the delay works a deviation and avoids the insurance. The peril of crossing the bar forms part of the risks assumed, and damage resulting from it, as in *Pittegrew v. Pringle*, should not, apparently, result in avoiding a policy which had already attached. This view has the support of Judge Story's opinion in *M'Lanahan v. Ins. Co.*, as the necessary result of his language. The great advantage of the English rule is that it presents less room for dispute. The ship is either ready for the voyage or she is not ready, and this is, in general, a question easily determined. We must remember, however, that often, as in *Graham v. Barras*, no sensible delay or actual damage results from the temporary lack of complete readiness, so that the breach of the warranty is purely a technical defence.

II. The second requirement is that the ship shall move forward on her voyage. It is apparently immaterial how far she moves, but as Alderson, B., points out in *Cochrane v. Fisher*, 2. C. & M. 581 (1834), "the distance may be important with regard to the question of *bona fides*." This subject of the *bona fides* will be considered at length under the head of Intention. The distinction appears to be that dropping down the river, however far, to obtain papers or crew, or moving about the port to load, will be regarded as only preparatory to the voyage. Once all is ready, the least free advance, in-

tended for such, constitutes a sailing, even if it be immediately arrested.

The cases already cited illustrate this: In *Pittegrew v. Pringle* and *Graham v. Barras*, the forward movement was arrested before complete sea-readiness and was not resumed in time; the ship moved five or six lengths in *Union Insurance Co. v. Tysen*, being sufficiently ready, and was held to have sailed. Similarly, in *Wood v. Smith*, L. R. 5 P. C. 451 (1874), a ship which left her dock and anchored in the Mersey to go out with the morning's tide was held to be proceeding to sea at the time she left the dock; "the anchoring was not a discontinuance of her progress to the sea, but an act proper and reasonable to be done in the course of it." But the advance must be free. In *Nelson v. Salvador*, Mood. & Malk. 309 (1829), the ship was riding to two anchors when she was ready to break ground on the day limited. One anchor was weighed, some sails set, and the other anchor-chain hove in about thirty fathoms. A heavy swell then came into the bay, making the captain stay where he was until the day following, lest he be wrecked in getting out. Lord Tenderden nonsuited the plaintiff on the ground that there had been a breach of the warranty, although the ship had advanced thirty fathoms. Had the second anchor been weighed, or the heaving on the chain been for the purpose of working the ship forward so as to attempt a departure, it would seem there must have been a recovery, as in *Cochrane v. Fisher*.

*Arnould on Insurance* has thus stated the rule on the authority of Lord Mansfield's opinion in *Bond v. Nutt*, 2 Cowp. 607 (1777):

"If, however, the ship has broken ground on her sea voyage, and once got fairly under sail for her place of destination on or before the day limited in the warranty, though she may have gone ever so little way, and afterwards put back from stress of weather, or apprehension of an enemy in sight, or be stopped by an embargo, or be in any way afterwards involuntarily detained, yet, as there was a beginning to sail on the voyage insured on or before the day, the warranty will be held to have been complied with."

In *Lang v. Anderdon*, 3 B. & C. 495 (1824), the warranty was *to sail from* Demerara by a certain day. (This warranty is more stringent than *to sail*, as it imports actual departure.) The ship on the day limited proceeded two miles down the river to its mouth and two miles further towards a shoal lying in her course. There she anchored until the tide served on the following day. Apparently the captain must have known he could go but four miles that day, yet the ship was held to have *sailed from* Demerara, as she was clear of the port, and *a fortiori* she had *sailed* on her voyage. A stronger case is *Cochrane v. Fisher*, 2. C. & M. 581 (1834); 1 C. M. & R. 809 (1835), already mentioned. The master warped his ship down the stream a half-mile on August 15th, the day limited, well knowing that the head-wind would prevent his going to sea. The ship grounded and lay there until the next day, when she was warped still further, and at last got away with a favorable wind. No sails were set while the ship was being warped. The court held that the case turned solely on the master's intention, and that being shown on a new trial, judgment for the plaintiff was affirmed on the ground "that the facts clearly showed that the ship was in the prosecution of her voyage on the 15th of August, having on that day made a movement, though in the river, for the purpose of proceeding to sea, and over the sea, to North America." Accordingly, in *Sea Ins. Co. v. Blogg* [1898], 1 Q. B. 27, the court considered nothing but the question of intention, although the movement was only from the wharf out into the stream to a position where there might be an advantage of a few minutes in going to sea. Further progress was not possible at the time by reason of the harbor regulations.

*Nelson v. Salvador* is equally an authority to show that mere readiness and intention, without more, will not constitute a "sailing," although the ship's starting on the voyage be prevented by a peril which would justify a recovery were damage incurred through it or, similarly, if it be prevented by an inevitable and extraordinary restraint, not excepted in the policy: *Hore v. Whitmore*, 2 Cowp. 784 (1778). This conclusion would seem to be the necessary result of the cases

heretofore cited ; several of them go expressly on the ground that the ship actually moved forward, and the reasoning is such as to indicate that the converse of the proposition then considered must be true. *Philips on Insurance*, § 773, however, treats the point as doubtful. It regards *Nelson v. Salvador* as conflicting with the cases we shall discuss more at length under the head of Intention, where the insurance was "at and from" an island, with a warranty to sail by a given day. Such policies, it has been held, give the right to go from port to port, to trade, etc., before the earliest day on which the ship may sail ; but the ship *sails* from the first port if she leaves it in full readiness and only touches at the second port to join convoy, etc. ; it is therefore immaterial, under the construction put upon such policies, whether the vessel is detained at the *second* port by an embargo or not, when she touches there, for the voyage is treated as already begun. In other words, it is one from the first port, *via* the second, to the *terminus ad quem*. The present writer is consequently unable to agree with *Philips on Insurance* in considering this class of cases, *Lang v. Anderdon* and *Cochrane v. Fisher* as mutually inconsistent. The learned author thus states his conclusions from these cases :

"The preceding cases will not, I think, all concur in any one general proposition, and that which seems to come nearest to reconciling them with each other is, that,

"If the risk has previously commenced under the policy, and the vessel is wholly ready to depart by the time warranted, so far as the fitting out, loading, manning, and clearing out, and all other preparations and preliminaries to the actual departure, depending upon the assured, are fully completed, and nothing hinders her sailing but some peril insured against by the policy, or which, if it had occurred at any subsequent stage of the voyage would not have discharged the underwriters, the warranty to sail is complied with, unless a different construction is expressly indicated by the policy. Some of the preceding cases come distinctly within this proposition.

"But if the risk is to commence only at the sailing of the ship, and the assured is responsible for, and the underwriter

free from, all preceding risks, perils, and losses, then the warranty is not complied with unless she actually sails within the time warranted."

This, it is submitted with all respect to such an authority, is to mis-construe the cases of the "at and from" type. At the least, it over-looks Lord Mansfield's language in *Bond v. Nutt*:—

"It is a question of fact whether [the ship] sailed from Jamaica before the first of August. There is no latitude, no equity, no construction that can supply the place of that fact. Certainly, if she had been detained at St. Anne's [her port of lading] beyond that day, though by proper reasons—as for necessary repairs, tempestuous weather, to avoid an enemy, etc.—the insurance on the voyage home would have been at an end."

III. The subject of Intention has necessarily been touched upon in the preceding sections. An intention to sail, as has been stated, is an essential element of "sailing." "There is no authority for the proposition that there could be a 'sailing,' as required by the policy, without a clear intention on the part of the master to proceed directly on his voyage:" *Per Mathew, J., in Sea Insurance Company v. Blogg.*

The only noteworthy authorities even apparently in conflict with this are the definitions of Lord Tenterden in *Pittegrew v. Pringle*, and of Baron Parke in *Roelandts v. Harrison*, 25 Eng. L. & E. 470 (1854). Lord Tenterden speaks of a vessel as sailing "if she quits her moorings and removes only to a short distance, being *perfectly ready to proceed upon her voyage.*" This language is evidently used with reference to the facts of the case before the court. What was done by the master was with the admitted intent of sailing, but the advance was small and the ship not yet ready for sea. The learned judge, therefore, has not referred to a matter not in issue, and the defendant's argument in *Sea Insurance Co. v. Blogg*, based upon this definition is fallacious.

Baron Parke, similarly, was distinguishing between "sailing" and "final sailing," in reference to a ship lost on her way out, when he said that "the sailing is determined to be that

period of time when the vessel breaks ground, being at that time fully fit for sea, having the cargo on board which she intends to carry, with a competent crew, and having permission to leave by having the custom-house clearances on board."

The intention must, of course, be *bona fide*, else there would be a fraud on the warranty, but it does not follow that the desire to comply with the warranty may not be a motive uniting with a desire to get away. This appears most clearly in *Cochrane v. Fisher*, where the desire to comply with the warranty was so manifest and the circumstances of the case so unusual that the reality of any other motive seemed to the court very doubtful. A new trial was ordered for the jury to pass upon the question, and recovery was permitted upon the jury's finding that the captain in fact intended to place his ship in a more advantageous position for departure, although he knew that he could not actually get away at that time. Of course, as Alderson, B., pointed out, the improvement in position is a test of the *bona fides* of the movement. This must be the thought underlying Mathew, J.'s, language in *Sea Insurance Co. v. Blogg*, when he said that "any obstacle which was foreseen, and which would cause delay in getting the vessel to sea, would postpone the time of sailing until the obstacle was removed"—*i. e.*, if there can be no real gain, there can be no real intention to depart when the master breaks ground as though for the voyage.

Some very interesting cases have arisen under policies "at and from" an island, with a warranty to sail by a certain day. As this form of insurance gives liberty to go from port to port to trade or to wait for convoy before the time of sailing (*Cruikshank v. Janson*, 2 Taunt. 301 (1809) and cases *infra*), the question was presented whether the captain had intended to *sail* from the first port without doing more than touch for some proper purpose, *not further preparation*, at the second. Sometimes the second port was not in the direct course, which led to a defence on the ground of deviation, as in *Thellusson v. Fergusson*, Doug. 360 (1780), but this was not tenable. Lord Mansfield's opinion on the main point was as follows in *Bond v.*

*Nutt*: "We are satisfied that the voyage from Jamaica to England began from St. Anne's. On sailing, the ship had no object but to make the best of her way to England; she touched at Bluefields only as being the safest way she could take . . . The great distinction (and on which we found our opinion) is, that she left St. Anne's for England, with her cargo, papers, master, etc., on board, and did not sail to Bluefields as a distinct port. If she had gone there for any purpose independent of the immediate prosecution of her voyage—as for instance, to take in water, letters, or even to wait for convoy, none being there—that would have made a great difference. There would then have been a coasting voyage to Bluefields, and another from thence to England."

The question came up in various forms from time to time; in *Earle v. Harris*, Doug. 357 (1780), the master went to Bluefields for convoy, knowing an embargo had been announced but believing it would be raised and the convoy allowed to sail that day; in *Thellusson v. Fergusson* and *Thellusson v. Staples*, Doug. 366 n. (1780), (actions on the same policy) the ship was held at Basseterre by a special order of the Governor, having touched there to join convoy and also, as required by her clearance papers, to get the Governor's despatches; in *Wright v. Shiffner*, 11 East, 515 (1809), the policy was "from *Surinam and all or any* of the West India Islands," and the ship sailed from Surinam before the day limited, but touched after it at one of the West India Islands to join convoy; the court in all these cases looked to the master's intention to determine the real date of sailing.

The master must of course adhere to his original intention, else it cannot avail him. Thus, in *Vezian v. Grant*, 1 Marsh. on Ins. 353 (1779), the ship was insured at and from Martinique to Havre with leave to touch at Guadaloupe, "warranted to sail after January 12th." She went to Guadaloupe before January 12th, intending to return, but finding there a full cargo, she proceeded to Havre. Had she returned, her departure on the intermediate voyage to Guadaloupe would not have been held a sailing for Havre, but her failure to return converted it into such a sailing and avoided the policy.

There seem to be comparatively few cases in this country on the subject of a ship's sailing. *M'Lanahan v. Universal Insurance Co.* and *Union Insurance Co. v. Tysen* have already been cited.

The Supreme Court of the United States has held, in *Dickey v. Baltimore Insurance Co.*, 7 Cr. 327 (1813), on the authority of *Bond v. Nutt* and *Thellusson v. Staples*, that a policy "at and from" an island gives leave to trade from port to port before the day of sailing, and the opinion of Marshall, C. J., makes it clear that the rule as to the port of sailing would be followed also.

Of the other cases, *Dennis v. Ludlow*, 2 Caines (N. Y.) 111 (1804), is one of the strongest. It appeared there that the ship dropped down the stream in readiness for sea and then waited sixteen days for the captain to recover fully from a fever. Kent, C. J., held the ship had not sailed when she left the port, as the captain did not intend to go to sea at that time. *Bowen v. Merchants' Insurance Co.*, 20 Pick. 275 (1838), is the converse of this and is to the same effect.

That the ship's sailing should thus depend on the master's intention is clearly necessary, yet it is at the same time unfortunate. The question arises usually when the ship is lost and then the most important witness is often lost as well; in any event it makes a question, perhaps involving considerable sums of money, turn largely on the credibility of a witness deeply interested in the result. The burden of proof is of course on the insured to show *quo animo* the ship sailed before the days limited. The conditions, the clearances, etc., would all be corroborating circumstances, tending to throw light on the matter, but the master's own testimony may be the only direct evidence on the subject.

IV. It remains to consider such expressions as "to depart" and "to sail from." The first decided case appears to be *Moir v. Royal Exchange Assurance Co.*, 3 M. & S. 461 (1815), in the Court of King's Bench. The counsel for the defendant stated (6 Taunt. 243) that this company had changed the form of its policy, to avoid the construction put upon the word "sail." The new phrase was first before the court in

1787, when the plaintiff was non-suited on the merits without a consideration of this point. The plaintiff in *Moir v. Co.* proved that the ship had *sailed* but had been stopped by a change of wind on her way out of the harbor and detained beyond the day limited within the harbor's mouth. Lord Ellenborough non-suited him, holding the warranty meant the ship should be out of the port. A new action was then brought in the Common Pleas, and the argument made that the word "depart," in connection with the words "at and from Memel" must refer to "at Memel." Therefore as soon as the ship leaves the *caput portus*, the warranty is complied with and the relative term "depart" becomes equivalent to the absolute term "sail," in its effect. This did not prevail. The court followed the ruling of the Court of King's Bench, Gibbs, C. J., saying, "To sail is to sail on the voyage. To depart must be to depart from some particular place. . . . It cannot mean a departure from the town of Memel. I see not then what it can mean except a departure from the *port* of Memel." (6 Taunt. 243.)

In England, this rule is undoubted, but it is not construed with the same strictness in this country. For instance, the policy in *Nelson v. Sun Mutual Insurance Co.*, 71 N. Y. 453 (1877), was on "port-risk, in port of New York." The ship cleared and left her pier, in tow, ready for sea. She was injured after going but a short distance. The expert testimony was to the effect that the phrase "port-risk" "meant a risk upon a vessel while lying in port, and before she had taken her departure on another voyage." Upon this, the court held this ship "had taken her departure and begun her voyage." There is apparently a confusion of terms; the authorities referred to by the defendant (the court cites none) indicate that "sailing" was intended.

The words "sail from" are probably equivalent to "depart," as was argued in *Lang v. Anderdon*, 3 B. & C. 495 (1824). The policy was "at and from Demerara," with warranty "to sail from Demerara" by the first of August. The difficulty in the case arose from the fact that the town of Demerara is in the province of the same name and that a shoal outside the

river's mouth prevents large vessels from entering the river. The ship dropped down the river from the town in complete readiness on August 1st, but anchored over night within the shoal. As many vessels load outside the shoal, the contention was made that the ship had not *sailed from Demerara* in time. The court discussed the effect of the ship's ability to cross the shoal fully laden and based the decision on the ground that whatever might be the case with a ship of greater draft, this one was away from Demerara on August 1st on her voyage. This case is the converse of *Moir v. Royal Exchange Assurance Co.*, and the two have established an authoritative rule on the subject. The earlier case of *Thellusson v. Fergusson*, II. Doug. 369 (1777), cannot be given any weight on this point. The warranty was to *sail from Grenada* by the 1st of August. Lord Mansfield thus refers to the case in his opinion in *Bond v. Nutt*: "On the first of August she had just got under sail (having all her cargo and clearances on board), when an embargo was laid on and the captain told he would be fired upon from the fort if he proceeded. He therefore stopped and was detained beyond the day. I held this to be a departure."

The case, it will be seen, was tried before the argument in *Bond v. Nutt*, when the rule had as yet received little consideration. No distinction had then been suggested between "sail from" or "depart," so that Lord Mansfield's language has become inaccurate only through the latter decisions.

As a result of this review of the authorities, we have seen that the question of when a ship sails is dealt with by the Common Law alone. The cases on the subject have been decided by some of the most eminent of English judges, and most of the leading cases within a period of a very few years. In consequence, perhaps, of this, the development of the rules has been unusually symmetrical and complete.

*Erskine Hazard Dickson.*