Marine Insurance and the Vancouver Local Agent

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Paper Read Before the Vancouver Insurance Club—First Instalment—Valuation, Proximate Cause, Wear and Tear, Average.

The subject of my paper tonight is Marine Insurance from the point of view of a local agent in Vancouver, and in dealing with it it is not my intention to consider in any way what may be called the details of an agency business, as, for example, the question of rates, competition, reinsurance, or, in fact, any of the everyday troubles which an agent has to settle with his principal. I am going to assume that all agents are in the happy position of being able to quote on practically any line they like, and of accepting any line that is offered to them, without the necessity of worrying over such trivial matters as the reinsurance market and whether the business is profitable or not. I am simply going to confine myself to the consideration of the conditions of the policies which the agent will meet with in everyday business, and the claims that are likely to arise thereon, and in connection with this I would like to add one word of explanation. Marine Insurance is a very large and a very complicated subject. It has given birth to countless text books, and it would be quite possible to speak for two hours on one branch, say, the question of General Average, and then only touch the fringe of the subject. It is, therefore, quite impossible in the space of an hour to attempt to give any comprehensive idea of all the principles and conditions by which Marine Insurance is governed. I can only put before you, as it were, a number of skeletons, leaving those of you who feel so disposed to build up those skeletons, and, with the aid of text books and the study of legal decisions, to clothe them in their proper form.

The natural sequence to adopt in this paper would be first of all to consider the forms of policies, and, secondly, the claims which are likely to arise; but it occurs to me that possibly by placing the cart before the horse, and taking up the question of claims first, it would lead to a more intelligent understanding of the terms of the policies when they come to be discussed.

Valuation.

Passing mention was made in the last paper of the question of valuation, but as it is a point upon which fire and marine insurance are essentially different, it may be worth while to consider it tonight a little more fully. For all practical purposes, and certainly so far as agents in Vancouver are concerned, all marine policies are what are known as valued policies; that is to say that the valuation of the interest to be insured is distinctly stated in the policy. This valuation is binding on all parties, and is conclusive for the purposes of the contract so that it cannot be reopened except in the case of fraud. The mere fact of an over valuation, even to a large extent, so long as it is bona fide, will not effect the validity of the policy. This has been decided in the Courts in the following cases: "A policy was effected for twelve months to cover a trading adventure to Africa and back—on the ship, valued at £2,000, and on the cargo, valued at £11,000, or £13,000 in all. African cargoes vary so much in value that it is difficult to fix the valuation beforehand. In the case under review, the ship sailed on the homeward voyage with a full and complete cargo, not exceeding £3,500 in value, and both ship and cargo were totally lost. The underwriters were held liable for the full amount insured. In another case, a ship was insured under a time policy, in which her value was declared to be £8,000. At the time the policy was made, but unknown to the parties, the ship had been injured in a storm to so great an extent that the cost of repairs would have exceeded her repaired value. In an action against the underwriters (the ship having been totally lost during the currency of the policy), it was held that the policy had attached, notwithstanding the previous injury to the ship; and that, there being no fraud, the policy value was conclusive between the parties."

From the above it will be seen that the principle of valuation acts somewhat to the prejudice of the underwriter, but it also acts to his advantage in certain cases. A ship of the actual value of £9,000, but insured for £6,000 and valued in the policy at that amount, was sunk in collision, whereupon the underwriters settled the claim for total loss. Proceedings were afterwards taken against the other ship and the sum of £5,000 was recovered as damages. The owners of the insured ship, for which the underwriters paid a total loss, sought to retain a proportion of these proceeds, namely, one-third, on the grounds that the vessel in reality was only two-thirds insured, but it was held that the underwriters were entitled to the whole of the amount recoverable without reduction on the principle that the valuation, as shown in the policy, was conclusive, and they having paid a total loss became "ipso facto" owners of all that remained of the ship and any rights of recovery which the original owners possessed.

It, therefore, follows from the above that the valuation in the policy is the basis on which all claims are settled, and if the assured has not covered himself by insurance for the whole amount of the valuation as expressed, he is his own insurer to the extent of any deficiency, and consequently has to stand a proportion of any loss which may attach thereto.

Proximate Cause.

It is a settled principle of insurance law that the proximate and not the remote cause of a loss is to be looked at in order to determine the underwriters' liability.

A proximate cause may be defined as the agency by which an effect is directly produced. Thus, if a vessel founder in a gale, the proximate cause of her foundering is a peril of the sea. A remote cause is one which operates indirectly. For example, if a vessel during a gale of wind is driven against another vessel, which is on fire, and takes fire herself and becomes a total loss, the remote cause of the loss is a peril of the sea, whilst the proximate cause is fire.

In the case of Pink v. Fleming, the Master of the Rolls said: "The question, which is the proximate cause of a loss, can only arise where there has been a succession of causes. When a result has been brought about by two causes, you must, in Marine Insurance Law, look only to the nearest cause, although the result would, no doubt, not have happened without the remote cause."

The maxim as to Proximate Cause as applied to practice has a twofold operation—partly to limit and partly to enlarge the underwriter's responsibility. A good example of the first was the case of cargo which was insured under an ordinary policy containing the free of capture and seizure clause, which provided that underwriters were not to be liable for loss by capture, seizure, detention, or the consequences of hostile operations. Civil war prevailed at the time in the United States and the Confederates, who were in possession of North Carolina, put out a very important light which had been long established on Cape Hatteras with the object of destroying the shipping of the northern States. The ship in question looked for the light when she reached the proper latitude, and as she did not pick it up lost her bearings and subsequently went ashore and became a total loss. Underwriters refused to admit liability on the grounds that the loss was attributable to the consequences of hostilities which was a risk not covered by the policy, but it was held on trial that the proximate cause of the loss was a peril of the sea and that underwriters were, therefore, liable, although the probabilities were that had the light in question not been put out the loss would not have occurred.

Another case of interest was the case of tobacco and hides being shipped in the same hold. Heavy weather was encountered, as a consequence of which the hides were damaged by salt water. The smell from these hides spread into the tobacco and rendered it useless. It was held that although in point of fact the tobacco had never been in contact with salt water, a peril of the sea was the proximate cause of the damage both to the sides and to the tobacco and there was consequently a claim under the policy.

On the other hand, in the case of Pink v. Fleming, mentioned above, a cargo of oranges was insured under the Fpa clause, which among other things warrants the underwriters free from liability for damage unless said damage is consequent on a collision with another ship. The vessel was in collision during the voyage and had to put into port for repairs, to effect which it was necessary to discharge the fruit into lighters, and owing partly to the extra handling and partly to their perishable nature, the oranges were considerably damaged, and a claim was made upon the underwriters for this damage as being the consequence of the collision. The Court, however, held that the loss was not recoverable "on the ground that the handling of the fruit was the proximate cause of the loss, though no doubt the cause of the handling was the necessary repairs and the cause of putting into port for repairs was the collision."

Wear and Tear.

A word may here be said regarding the question of wear and tear. This term covers that ordinary deterioration of a vessel's hull which is incidental to her employment in navigation and exposure to the usual action of the elements, and is not recoverable as a peril of the sea. In the case of new vessels and of all vessels during the first few years of their existence, assuming that they are well kept and regularly docked for inspection, the amount of wear and tear is not a very serious factor. In the case of older vessels, however, the situation is different, and in the event of damage, underwriters when paying the cost of repairs, which in many instances require the substitution of new articles for old, would be giving the assured more than an indemnity, and would in effect be covering the ordinary deterioration of the hull. In order to offset this a clause is inserted in the policies which provides that in the event of particular average, one-third is to be deducted from the cost of repairs. This is, admittedly, a rough and ready rule and in some instances it works a hardship on the owners. It has, however, been in adoption for a considerable time and will doubtless continue to be used until some better method is devised.

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