shipowners and mariners to the effect that, by the usage of the shipping trade, a loading port on the west coast of South America specified in the policy would include the Guano Islands lying off the coast. The jury found for the plaintiff.

Held, affirming the judgment of the Supreme Court of New Brunswick, that the policy must be construed to mean what would be understood by shippers, shipowners, and underwriters, and the jury having based their verdict on evidence of what such understanding would be, their finding could not be disturbed.

Appeal dismissed with costs.

Straton for the appellants.

Weldon, Q.C., for the respondent.

FIRE INSURANCE.

(*By the late Mr. Justice Mackay.*)

CHAPTER V.

THE POLICY.

[Continued from p. 248.]

§ 151. *Effect of valuation in the United States.*

In the United States the rule that, in the absence of fraud, the valuation is conclusive on both parties, and that neither can introduce evidence to show that it differs from the amount really at risk, has been applied, says Shaw, to valued policies against fire in the case of *Harris* v. *Eagle Ins. Co.*[1] But this seems to be open to question. In that case 380 kegs of manufactured tobacco, worth $9,600, were insured by the policy. The value was held fixed, so that, 157 of the kegs having been burnt, the insured was paid a proportional sum for them. But in this very case the value was disputed, though fraud was not pleaded. The tobacco had been manufactured by the plaintiff, and the insurer wanted to pay only its prime cost,[2] cost of manufacturing, and a reasonable allowance for plaintiff's time and the use of his money. Had the policy been a common open one Harris would have recovered as much as he did: he only got the real value of his goods lost. True, the policy was held a valued one.

The cases of *Akin* v. *Mississippi M. & F. Ins. Co.* and *Hodgson* v. *Marine Ins. Co.* favor the valuations in valued policies. In the former case the insured had obtained insurance on barrels of flour by a valued marine policy for $5,000. They were totally lost, and he recovered $5,000, the insurers in vain urging that the cost of them was less, and that there had been fraud in the valuation.

Yet if a statute (as that of Wisconsin) order to the contrary, the statute cannot be derogated from; *e. g.* where a statute says, in case of total loss the values shall be those insured. This cannot by a clause of the policy be derogated from.[1]

§ 152. *Valued policies in France.*

Judge Thompson says that in France almost all policies are valued.[2] This is true in one sense, and not in another. The things insured are valued. The Code de Commerce orders it, but all the French policies that I have seen have a special clause in them that the sum insured can never be taken as conclusive value of the things insured, but that the insured shall be bound to justify the value (which, I am inclined to think in Lower Canada, in the case of valued policies, he need not do at first:—See Civil Code, Art. 2575). Upon the point of value, even in the absence of a special clause such as that just mentioned, valued policies in France cannot conclude the insurers.[3] Of course they bind the insured, who can never recover beyond the value put upon any subject insured; and so it is in England.[4] Art. 1965 Code Napoléon, prohibits gambling, and valued policies are treated as such, where sought to be worked for gain beyond *valeur vénale*.

[1] 5 Johns.

[2] As the insurance company wanted to do in Quinn's case, *ante*.

[1] *Reilly* v. *Franklin Ins. Co. of St. Louis*, 28 Am. Rep. p. 552 (A.D. 1877). The value, in case of total loss, is fixed by the statute of 1874 at the amount insured, and cannot be derogated from. So a policy clause, fixing the value to be the marketable value at the time of the loss, cannot be held a derogation from the statute, which cannot be derogated from, says the Court.

[2] 5 Johns R. p. 373.

[3] In France valuation is good, but not if it exceed reasonable limits. Alauzet.

[4] *Irving* v. *Richardson*, *post*.