them, the ship is to be held of the value of £6,000 and no more; and A, having received that, is without interest as against B. *Bonsfield* v. *Barnes*[1] I cannot approve, though Bonsfield might have recovered his whole £6,600 by merely suing firstly Barnes, before touching the £6,000, amount of his (Bonsfield's) other insurance. But I do approve *Bruce* v. *Jones*.[2]

§ 146. *Decisions on the subject of valued policies in England.*

The case of *Tobin* v. *Harford*, in the Exchequer Chamber (A. D. 1864), was an appeal against a decision of the Court of Common Pleas, which ordered a verdict for the plaintiff to be set aside and entered for the defendant. The action was brought by a merchant against an underwriter, on an insurance of cargo on a valued policy. The policy was for all times, at all seasons, with whatever cargo, with leave to discharge or otherwise at all or any ports on the coast of Africa at a certain sum of £8,000. It was contended that in the absence of fraud there could be no objection to this contract, and that the underwriter was liable for the £8,000. The decision in favor of the defendant was, however, affirmed. "Suppose only two muskets of cargo," said Chief Baron Pollock.

Barker v. *Janson* [3] was a case of valued policy. A ship valued at £8,000 was insured for £6,000, and was not worth half. The ship was totally lost. No fraud or wagering was proved. The verdict was given for £6,000, and this was maintained by the Court.

In *North of England Iron S. S. Ins. Assn.* v. *Armstrong* [4] it was held that a valued policy means that, for all purposes, the value shall be held to be the sum named—no more, no less,—as between insurers and insured. So, if a ship valued at £6,000 be insured, and totally lost; and having been worth £9,000, that sum is recovered against another ship by name of damages for sinking the insured one, the £9,000 must go to the insurers; who only paid £6,000.

[1] 4 Camp. 229.
[2] 9 Jur, 628, (A. D. 1863.)
[3] Common Pleas, England, January, 1868.
[4] Law Rep. 5 Q. B. (A.D. 1870).

§ 147. *Where value is stated in good faith.*

The general rule is that the claim cannot exceed the amount of the loss; but the parties may agree upon an arbitrary value; and in the absence of fraud this will be the measure of the liability of the insurers.[1] It was held by Lord Mansfield in *Da Costa* v. *Frith* [2] that where a valued policy has been obtained in a fair way, and without fraud or misrepresentation, the insurer having so agreed, is concluded from disputing it.

In a case of *Alsop* v. *Commercial Insurance Co.*, decided by Story, J., it was held, if the plaintiff expected more goods than in reality were shipped, and valued his profits accordingly, then the insured, though the policy be a valued one, is only entitled to recover *pro ratâ*, according to the proportion between actual shipments and the expected or supposed ones. It was also held in the same case that a designed gross overvaluation is a constructive fraud and avoids the policy; and a trivial interest will not save the policy; nor will a substantial interest where intent to defraud is clear. Gross overvaluation, if suggested as a question of fraud, is solely for the jury.[3]

[1] Bunyon, p. 15; *Irving* v. *Manning*, 6 C. B.; *Bonsfield* v. *Barnes*, 4 Campb. Yet, says Bunyon, valued policies are very rare. The *onus*, even where values are in list of things insured, is on the insured to prove loss by values. (*Ib.* p. 15.)

[2] 4 Burr.

[3] In marine insurance, by valued policies, more than the actual value can be recovered, and over-insurance is facilitated. Mr. G. S. Gibb, in an article in the Law Magazine for February, 1876, complains that no checks exist, by law, upon over-insurance. Insurers ought, he says, to be allowed to *open* the policy. The case of *Lucena* v. *Crawford*, he remarks, contains the best exposition of the nature of marine insurance. The value of a ship—what she could be sold for at the time of the loss—he considers the fair and proper limit of the insurer's liability. Yet a ship may be worth more than her selling value, he says. As in the case of the *The African S. S. Co.* v. *Swanzy*, 25 L. J. Ch. 870; *Grainger* v. *Martin*, 31 L. J. Q. B. 186; 4 B. & S. Exch. Chamber. In this case the insurance was for £16,000 on a ship valued at £17,000. She was damaged and abandoned. The ship had cost £20,000. What could such a ship be built for and brought to a person, may be nearer the proper value than the selling price. *Irving* v. *Manning*, 6 C. B.; 1 H. of L. cases; the parties may agree to value by way of liquidated damages.