

§ 144. *What may be recovered under a valued policy.*

A valued policy proper involves an agreement by which a fixed value is substituted for an actual one. What is the force of such an agreement? In modern France the insurer under it cannot be debarred from the right to prove less value, or less loss. Boudousquie, No. 146, calls a clause containing an agreement to hold absolutely to the value stated in the policy a most abusive one. In England the writers were and are not clear. Marshall (after Lord Mansfield) stating that the value inserted in a valued policy is "in the nature of liquidated damages," goes on to say that the effect of the valuation is such that "it fixes the amount of the interest of the insured in the same manner as if the insurer were to admit it at a trial." Is not this going too far? We know what liquidated damages are. We know also the force of an admission at a trial, and that it estops a party from making proof at the same trial contrary to his admission. Marshall afterwards says that the value in such a policy ought only to be taken as *prima facie* evidence of the amount of the interest of the insured, "for though the value is admitted by the insurer, yet as he admits it upon the mere representation of the insured, if he find that this was fallacious, that it was factitious and only a cover for a wager, it cannot be supposed that he is so far concluded by his admission as not to be at liberty to dispute the value. Valuation is rather the fixation of a maximum, says Angell. Bell (Comm.) says that a valued policy as much as admits the amount put in hazard, which unless challengeable as fraudulent, or exceptionable as a wager, will be held conclusive in the case of total loss.

McNair v. Coulter was a Scotch case appealed to the House of Lords. The insured had a policy upon a ship and cargo "valued at £1,000, without further account." The House of Lords held this to be a valued policy. The Court of Session had held the insured entitled only to part of the £1,000, equal to the damage proved to have been sustained by the loss of the ship. The House of Lords reversed the judgment, and McNair got the

£1,000 less a trifling sum, value of what had been recovered of the subjects insured.¹ Fraud was pleaded and was pretty apparent, yet the House of Lords held the valuation in the policy conclusive on both parties. Lord Kenyon expressed himself strongly against opening valued policies, particularly where fraud was not shown.²

§ 145. *Valued policies in the Province of Quebec.*

Article 2575 of the Civil Code of Lower Canada allows special valuation to be conclusive. The value must be established, it says, after fire, according to the policy conditions and the general rules of proof, "unless there is a special valuation in the policy."³

In Lower Canada, as in old France, the value stated in a valued policy is only presumed fair and just until the contrary be proved. The insurers are free to prove less value, though opposing to a plaintiff's demand only a plea of exaggerated or too large demand. Under this system, in case of total loss of a thing insured by a valued policy made in good faith, the insured may sue to recover the sum insured, and the defendant may content himself with pleading less value than that of the policy. The plaintiff would be at first bound only to exhibit the policy, but proofs of less value, made by the defendant, could not be disregarded. Emerigon was not for favoring insurers making bargains by valued policies; he was against listening to them when urging fraud, after a loss, and offering proofs by witnesses only, or experts. (Tom. 1, p. 280, quarto, by Boulay Paty.)

If A procure one insurance from B by valued policy, insuring £600 on ship valued at £6,000, and subsequently make another insurance for £6,000, valuing ship at £8,000, and total loss happen, and ship be worth £8,000; let A collect first his £600 and subsequently his £6,000, making in all £6,600. But if he first collect his £6,000, I cannot see right by him to ask his £600; for between him and B, insurer for £600, there has been agreement that, on all occasions, between

¹ 6 Brown's Cases in Parliament.

² 2 East, 114.

³ 1 Bell, Comm., 542-3 cited.