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Contributions to the History of Insurance, and of the Theory of Life Contingencies, with a Restoration of the Grand Pensionary De Wit's Treatise on Life Annuities. By FREDERICK HENDRIKS, ESQ., *Actuary of the Globe Insurance Company.*

(§ 1.) THE origin and progress of the principles of insurance are subjects, which not only call for the endeavour to elicit and clear from seeming contradictions such records of the insurer's calling as are blended with the remote history of mercantile customs and laws, but which likewise particularly suggest the necessity of *some essay to connect those rude outlines* with the more advanced stage of the theory, in its immediate alliance with the sciences of applied probabilities and political or social arithmetic.

The question "Whether insurance was known to the ancients?" has received no small degree of attention on the part of several of the most distinguished jurists and commercial historians; and scattered notices may be followed in their works through a period of more than two centuries back from the present time. Of earlier writers, Malynes, Loccenius, Grotius, and Puffendorf are now frequently seen to be referred to or quoted as having held that there are distinct traces of the practice of marine insurance to be inferred from Roman history; whilst, on the other hand, Cleirac, and others, can be adduced as supporting a contrary argument. Amongst the more recent (two of them being living authorities), Émerigon, Boucher, and Duer give an affirmative answer to the above question; but Beckmann, Park, and McCulloch consider that the facts adduced do not warrant that view. Those who have personally experienced the difficulty of obtaining an approach to a general survey of these opposed opinions, will at once agree as to the utility of an attempt, imperfect though it be, to present something

of the kind in a combined form; and its necessity will be the more apparent, when it is noticed that some of the before-mentioned writers are of so eminent a character as standards of reference, that the differences alluded to are apt to be unknown to many persons on account of the absence of such a collective view, and which is not to be found in any of the prefaces to treatises on insurance matters. I am far from assuming that the present paper will supply this want; I can only venture to entertain the hope of its affording some assistance to those who are qualified to undertake the task in the way in which it should be done, but which I do not pretend to have arrived at. It will be seen, further on, that one of the main objects which have induced me to offer the following remarks is, the opportunity of suggesting a new theory which will harmonize and connect what I take to be the true ancient form of insurance, with its mediæval, and also with its more modern and perfect, development. This programme may appear uninviting; but at least, even if the first two points remain unestablished, there is the reserve of the last one, in reference to which I cannot but think that the *restoration of the Grand Pensionary De Wit's Treatise* (which has been as good as lost for nearly 180 years) will be satisfactory to the student of commercial history, whilst it will not fail to be interesting to those whose attention is directed to the consideration of the origin and progress of the doctrine of life contingencies and vital statistics.

All the elaborate discussion, as well as the disputed criticism, upon the question of the knowledge of insurance possessed by the Romans, has generally turned upon the different deductions arrived at from the consideration of a few brief passages in the classics, which have given rise to a very wide range of various opinions.

The necessary limits of these pages will not admit of a full account being given of the details of the controversy, but a statement of its more remarkable features is essential to the objects here proposed.

(§ 2.) We gather from the narrative of Livy, that, about two years after the battle of Cannæ, letters were received by the government of the Roman Republic, earnestly enforcing the imperative need of supplies of clothing and corn being sent to the army in Spain. Owing to the great existing burdens upon a heavily taxed community, for the actual and threatening expenses of the Punic war, it was agreed that, instead of oppressing the people with fresh impositions, the prætor should present himself to the popular assembly, and exhort the publicans (or farmers of the public reve-

nues) to advance sums of money, and to enter into contracts to supply what was necessary to the Spanish army. A day was therefore named on which the prætor would receive tenders for these contracts; and on this arriving the appeal was successful, and three companies of nineteen individuals came forward as contractors, but requested exemption from military service during that employment, *and that the state should bear all losses of the supplies they shipped, which might arise either from the enemies' attacks or from the force of storms.* The Republic consented; and it is stated that the engagements were properly fulfilled, and the supplies furnished. Honesty on the part of those who were thus guaranteed, or *assured against marine risks,* was not, however, maintained. It appears that the state continued to take upon itself the responsibility for losses. Two farmers of the revenues (one of whom was named Posthumius) not only fabricated false statements of shipwrecks, but purposely sank the old and shattered vessels in which it was their plan to freight goods of little value, taking up the crew in boats ready at hand for the purpose, and then giving fictitious returns of the value of the cargo. The senate, for some two years, had been informed of this; but did not interfere, from assumed unwillingness to offend a body on whom they were somewhat dependent. The people at length became indignant, and demanded the imposition of a fine on Posthumius, whose fellow offender had been taken prisoner by the Carthaginians. Posthumius was connected with a tribune of the people, and endeavoured to procure his interposition, but without success. A very serious disorder and riot ensued. The tribunes appointed a day for Posthumius to be tried capitally; bail was accepted; the accused, however, was not forthcoming; and the senate resolved that if he did not appear by a given day he should be adjudged an exile, with the penalties of confiscation and interdict of the rights of citizenship. What ultimately occurred is lost to observation; but the importance of the contract of guarantee is clearly and fully expressed.

The next passage to be referred to is in Cicero's Epistles. On the occasion of the victory Cicero gained in Cilicia, and after which he proceeded to Rome, and waited in vain under its walls for the accustomed triumphal procession he was entitled to, he wrote, before setting out, to his friend Caninius Sallust, mentioning *that he expected to obtain at Laodicæa guaranteers of all the public booty, so that there might be security to himself and the commonwealth against any hazard from its carriage.*

The remaining quotation is from Suetonius, in the life of Clau-

dius, where it is stated that the emperor, at the time of a great famine, *took upon himself any losses, or damage, which might arise to the merchants' ships from storms,* and that this was done in order to encourage the merchants to accelerate the needful importation of corn.

The passages in Livy and Suetonius were regarded by Beckmann as indicative of a simple promise of indemnification; but, on the ground of the necessity of a premium being paid to constitute an insurance, he agreed with Langenbeck in not considering such a contract to be thereby implied. On the other hand, and in consonance with the views of the great majority of earlier writers, Émerigon* considered that they afforded distinct traces of the practice of marine insurance by the Romans, although in an uncultivated form. M. Pardessus, in his great work, the *Collection des Lois Maritimes, &c.*, enters most elaborately into the legal interpretation of the classical references.† I have only space to refer to his concluding observations:—"This was assuredly arriving as near as possible to the contract of insurance, as it is now understood. But we must not conceal from ourselves that these texts do not mention any leading agreement by which one of the contractors, in consideration of a premium, *pretium periculi*, which is given or promised to him by the other party to the contract, enters into an agreement to make good the loss which fortuitous events may occasion to the latter's property."

Judge Park, in the introduction to his work, commented on the passage from Livy in the following terms:—

"With all deference to so great a name [Émerigon is here referred to], this seems to bear no resemblance to the contract of insurance, for it is nothing more than every well-regulated state is bound to do by the ties of natural justice. It is equitable and right, that those, who in times of public danger appropriate their private wealth to the advancement of the public

* *Traité des Assurances et des Contrats à la Grosse. Par M. Balthazard-Marie Émerigon, Avocat au Parlement de Provence, ancien Conseiller au Siége de l'Amirauté de Marseille.* 2 vols. 4to. Marseille, 1783.

There is a later edition, with considerable additions by Boulay-Paty, Rennes, 1827; and an English version appeared last year (1850) under the title of "A Treatise on Insurances by Balthazard-Marie Émerigon. Translated from the French, with an Introduction and Notes, by Samuel Meredith, Esq."

† *Collection de Lois Maritimes antérieures au XVIII^ème^ siècle, dédiée au Roi. Par J. M. Pardessus, Conseiller à la Cour de Cassation, Professeur de Droit Commercial à la Faculté de Paris, Chevalier de l'ordre royal Saint-Michel, Officier de la Légion d'Honneur. Paris: Imprimé par autorisation du Roi, à l'imprimerie Royale.* 6 vols. 4to., 1828, 1831, 1834, 1837, 1839, and 1845.

A reimpression, without the introduction to the first volume, was in course of publication in 1847, under the title of *Us et Coutumes de la Mer, ou Collection des Usages Maritimes des peuples de l'antiquité et du moyen âge. Par J. M. Pardessus, Membre de l'Institut, Académie des Inscriptions et Belles-Lettres.*

service, should be reimbursed from the purse of the state for the private losses they may sustain. This indeed is the rule of conduct between man and man; for when one man purchases goods of another to be sent abroad, was it ever supposed that the seller was to run the risk of the voyage; or that, if the goods perished, he was never to be paid? If such a doctrine were to prevail in any country, the state could only be supplied with necessaries in time of war by means of extortion, rapine, and violence."

Dr. Duer, in a work published a few years ago at New York,* has supported the view which Émerigon took, and observes,—

"An attentive examination has constrained me to believe that this eminently cautious writer was not mistaken in the import or bearing of the authorities on which he relied. As it appears to me, they more than substantiate the truth of his assertion, and exhibit, not merely traces of insurance, but the contract itself, in an unusual, it is true, yet in a perfect form."

Dr. Duer then comments on the opinions entertained by Judge Park; and, after a lengthened argument, expressed, if we may be permitted the remark, with a degree of conviction and fairness which cannot fail to challenge the respect of his readers, he adds,—

"Upon the whole, the conclusion seems hardly to be doubtful that, on the occasions mentioned by Livy and Suetonius, the merchants were the owners of the cargoes to be transported, and in each case were to continue so during the voyage and until its termination. The government, therefore, in each case, and in the strict and proper sense of the term, was the insurer of the merchant. It assumed on itself the whole risks of each voyage, in consideration of the benefit the public would derive from its successful completion. The objection that no premium was paid, seems hypercritical, and is easily answered. The government received a premium in the benefit resulting to the public, and the merchants paid a premium in a reduction from the price they would otherwise have received," &c. &c.

Dr. Duer intimates that, in his judgment, the passage before referred to from Cicero's Epistles has (as several writers have noticed) more applicability to the origin of bills of exchange than of the insurance contract. M. Pardessus, on the contrary, considers that it undoubtedly refers to the latter, observing particularly on the force of the expression it includes respecting the risk, or danger of *carriage* to be secured against. The American jurist further remarks on the other quotations, that

"These historical facts, while they prove an insurance by the government, are not sufficient to prove that marine insurance was known as a private contract; but as they clearly show the reluctance of merchants to embark

* "A Lecture on the Law of Representations in Marine Insurance, with Notes and Illustrations; and a Preliminary Lecture on the question whether Marine Insurance was known to the Ancients. By John Duer, LL.D., Counsellor at Law." 8vo. New York, 1844.

their property in voyages of hazard without the assurance of an indemnity, they render it probable that, when tempted by the expectation of high profits, they engaged in similar voyages, in which the government had no interest. It was in a contract with individuals that they were accustomed to seek the desired indemnity."

His conclusions upon the general question are as follow :—

"Whether marine assurance was known to the ancients must still remain a question of mere probability. That it can ever be decided by positive evidence we have little reason to expect. In supporting the affirmative of this question, it is a presumption only I have sought to establish. I have meant only to affirm, and have endeavoured to prove, that this presumption is fair, reasonable, and consistent, and that its force is scarcely weakened, far less is it annulled, by the hostile arguments that have been arrayed against it."

(§ 3.) Enough has now been adduced in evidence of the diversity of opinion on the subjects under consideration; and such a position is worse than unsatisfactory, as it leads to much perplexity, and gives no clue to the connecting theory before urged as necessary. Without it we should have to take the earliest appearance of insurance contracts in modern Europe as a new discovery, or result of the *intuitive* progressive requirements of commercial enterprise. But did not these requirements exist in the trading communities of Rome, Greece, and other nations of antiquity? Because the Romans, for instance, were not what is termed a commercial people, are we thence to infer that the contract of insurance-indemnity was beyond the wants or the reach of their merchants? or was their trade with distant nations either so insignificant, or their merchants and navigators so timid, as some writers would have us believe? If even such an objection applied to Rome, it would not stand good in the case of other contemporaneous states who were great in commerce, as, for example, Rhodes, Carthage, or Alexandria; for here there was ample exigency for some form of marine insurance. It has often been matter of regret that, amongst the remnants of ancient literature, the chronicles of the old mercantile emporiums have not been preserved, which would have cleared up all that is obscure in the history of their trade; but in this, as with regard to innumerable other particulars, it becomes but too obvious that the conquerors of old times had the lamentable weakness of suppressing the annals of the conquered.

The non-existence in ancient times of the theory of probabilities as a *science*, or as anything beyond a philosophical idea of the weight of testimony, cannot be accepted as a reason for the unlike-

lihood of the early practice of insurance. The lawyers who have mentioned this point of probabilities in connection with marine insurance, have apparently attached undue importance to it, seeing that in early ages the numerical expression of chance was unknown, and then, as subsequently, the refinements of the science were, *from the nature of circumstances,* practically inapplicable to the estimate of sea-risks, in which custom or observation of very rough average results was the basis of operation. The theory which we shall now have to propose for the reader's adoption or rejection is the following:—*That the contract of nautical interest or loan on bottomry, or respondentia, was used from very remote ages by the Greeks, Romans, and other nations, as their ordinary insurance contract, which end it perfectly answered; and that eventually it formed the traditionary groundwork on which arose the superstructure of the insurance system of modern Europe.*

(§ 4.) Whilst the Roman law, as well as what remains of Athenian jurisprudence, is amply instructive on the subject of maritime interest, its silence respecting insurance, in the more recent sense of the term, has been not unfrequently assumed to afford proof that the latter contract was unknown, or was too great a refinement for the times to have admitted. But this proposition, too, is at issue on its simple merits, and the contrary side has not been without a supporter to enforce, in opposition to the above, that it cannot be held that such an argument has much weight as respects a stipulation or contract evidently framed to meet local and special wants and usages by the consent and agreement of merchants themselves, precedent to, or even instead of, positive enactments. However this may be, we willingly turn from what is problematical to the undeniable and admitted fact, that the contracts of insurance and loan on maritime interest present great features of resemblance. But further than this, let us inquire whether the *latter* might not have been in reality the *best form of insurance* which the *ancients* could have adopted, and consequently the practical form of the contract which they elected to employ in their trade. Here, we must not shrink from the minuter details of the subject, as without them it will not be understood. The laborious studies of the continental jurists present in their results an interesting *précis* of all that has been written upon the ancient laws of interest in the Pandects, Digest, and other great collections. From these, and from collateral sources, may be learnt, not only the high importance attached to a well-defined legislation upon the loan on maritime risk, but also the complete form in which it subsisted and

was enforced for the benefit and security of both parties to the contract, as being essential to commerce, and a desirable employment of money, at a period when interest as a source of revenue was needful for the wants of merchants and private individuals as well as those of the professional banker and usurer. And because, on the grounds of the risk incurred, the rate of interest *on maritime adventure*, down to the time of Justinian, and uninterruptedly in Greece, was *unlimited*, it was doubtless much more remunerative in that state of society in which any increase of capital by ordinary usance was a difficult process under the most favourable conditions. This explains what is recorded of fathers of families seeking such transactions as good investments, and of the patricians—who scorned trade in the abstract—availing themselves of this method of obtaining a high legalized interest, which moreover presented a charm to their speculative idiosyncrasies. The merchant and banker must also have been ready to employ their spare capital in the business. The elder Cato took care not to neglect such operations; and if a more general proof be requisite, there cannot be a stronger than the lines of that familiar ode where, in praising the advantages of rural retirement, the Roman poet depicts the happy individual "*solutus omni fœnore*," one of the first blessings of which freedom from interest is described as being, that he does not then "*fear the angry sea.*"

The Roman and Athenian legislations on nautical interest are identical in principle; and although it has been the opinion of several writers that the Rhodians took the initiative in this and other *sea*-laws, that must remain mere matter of conjecture, as the genuine laws of the latter nation are lost, and there would be much stronger grounds for referring the practice back to the earlier Oriental commercial nations, among whom the probability that it prevailed is stronger than it might at first appear. Sir William Jones and the Hon. Mountstuart Elphinstone expressly mention the loan on bottomry as practised by the nations of India in remote ages; and the text of that portion of the Institutes of Menu which treats on sea-laws, and on which the comment warrants the above inference, is extant.

In Rome and Greece the loan on maritime interest was ostensibly used for several purposes; viz., for providing the means of freighting the vessel, for paying its current expenses on the voyage, or for investment in the objects of trade at the ports where it touched, or to which it was bound; and the security to the lender was either the vessel itself, or, in technical language, its bottom,—hence the modern term of loan on bottomry; or otherwise the

cargo alone, or the ship and cargo together, with or without other property, were made responsible security; and hence the supplementary modern phraseology of "loan on respondentia," for the advance upon the cargo guaranteed by the borrower's personal *responsibility*.

(§ 5.) In all these contracts, the risk of not arriving at the place of destination was and is at the lender's hazard: if no arrival, then no interest nor capital being the understanding; and the relative positions and safeguards of debtor and creditor were clearly laid down, and appear to have been admirably suited to their purpose. Boucher observed, in 1806, that the formula of the bottomry contract, then used in France, was absolutely the same as that of the Greeks, to be found in Demosthenes; and that as Demosthenes flourished about the year 350 before our era, it affords an example of a commercial formula employed without variation for a period of nearly 2157 years! In this author's *Institutions au Droit Maritime*, the formula of the French brokers was quoted side by side with that of Demosthenes, showing that there was strictly no difference between the two. The latter formula, or policy as it may be termed, is from the oration against Lacritus; and, in the absence of an English translation at hand, the reader will not perhaps object to the following substitute, which I offer from the French version of M. Pardessus. I have annexed to it, in a parallel column, the form of an English bottomry bill, as quoted in McCulloch's *Dictionary of Commerce*:—

"Androcles of Sphettœ, and Nausicrates of Carystus, have lent to Artemon and to Apollodorus of Phaselis, three thousand drachmæ of silver upon a cargo to be conveyed from Athens to Mende or to Scione, thence to the Bosphorus, and, if they please, along the left coast, as far as the Borysthenes, to return to Athens.

"The borrowers shall pay interest at the rate of 225 per 1000; but if they do not pass from the Black Sea to the Temple (of the Argonauts) until after the setting of Arcturus, they shall pay 300 interest per 1000. They pledge, for the sum lent, three thousand jars of Mendean wine, which they shall convey from Mende, or from Scione, on board a ship of twenty oars, of which Hyblesius is Captain. They neither owe nor shall borrow anything from anybody upon the wine appropriated to this loan.

"To all Men to whom these Presents shall come. I, A. B., of *Bengal*, mariner, part-owner and master of the ship called the *Exeter*, of the burthen of five hundred tons and upwards, now riding at anchor in *Table Bay*, at the *Cape of Good Hope*, send greeting:

"Whereas I the said A. B., part-owner and master of the aforesaid ship called the *Exeter*, now in prosecution of a voyage from *Bengal* to the port of *London*, having put into Table Bay for the purpose of procuring provision and other supplies necessary for the continuation and performance of the voyage aforesaid, am at this time necessitated to take up, upon the adventure of the said ship called the *Exeter*, the sum of *one thousand pounds* sterling moneys of *Great Britain*, for setting the said ship to sea, and furnishing her with provisions

"They shall bring back to Athens, on board the same ship, the goods which they shall have bought with the price of this wine; and when they arrive there, they shall pay to the lenders, by virtue of the present deed, the stipulated sum within twenty days, reckoning from the day on which they enter the port of Athens, without other deduction than the losses or jettisons agreed to by the general consent of the passengers, or those which they may have experienced from (the attacks of) enemies. With such single exception, they shall pay the whole, and shall deliver to the creditors, free of any charge, the goods appropriated, until such time as they shall have paid in full the interest and the principal stipulated by the present deed.

"If this sum be not paid within the defined term, the creditors may cause these goods to be sold; and if their proceeds therefrom do not amount to the sum which is promised to them by the present deed, they may demand the difference from Artemon, and from Apollodorus, either from one of the two, or from both together; and may seize their property on land or on sea, in whatever place it may be, as if they had been condemned, and that the execution of a sentence of the tribunals were in question.

"If the borrowers do not load on return into the Black Sea; or if, remaining in the Hellespont ten days after the Dog-star, they discharge their merchandise in a country where the Athenians cannot carry out the sale of the pledges which have been given them, — when they return to Athens, they must pay interest upon their debt, at the rate of the preceding year. If any considerable accident occur to the ship whereon the merchandise is loaded, the right of the creditors shall be limited to the goods which have escaped it. With all these stipulations, nothing can invalidate the present deed."

and necessaries for the said voyage, which sum C. D., of the *Cape of Good Hope*, master-attendant, hath at my request lent unto me and supplied me with, at the rate of *twelve hundred and twenty pounds* sterling for the said *one thousand pounds*, being at the rate of *one hundred and twenty-two pounds* for every *hundred pounds* advanced as aforesaid, during the voyage of the said ship from *Table Bay* to *London:* Now know ye that I, the said A. B., by these presents, do, for me, my executors, and administrators, covenant and grant to and with the said C. D., that the said ship shall, with the first convoy which shall offer for *England* after the date of these presents, sail and depart for the port of *London*, there to finish the voyage aforesaid. And I the said A. B., in consideration of the sum of *one thousand pounds* sterling, to me in hand paid by the said C. D., at and before the sealing and delivering of these presents, do hereby bind myself, my heirs, executors, and administrators, my goods and chattels, and particularly the said ship, the tackle and apparel of the same, and also the freight of the said ship, which is or shall become due for the aforesaid voyage from *Bengal* to the port of *London*, to pay unto the said C. D., his executors, administrators, or assigns, the sum of *twelve hundred and twenty pounds* of lawful British money, within thirty days next after the safe arrival of the said ship at the port of *London* from the said intended voyage.

"And I the said A. B., do for me, my executors and administrators, covenant and grant to and with the said C. D., his executors and administrators, by these presents, that I the said A. B., at the time of sealing and delivering of these presents, am a true and lawful part-owner and master of the said ship, and have power and authority to charge and engage the said ship with her freight as aforesaid; and that the said ship with her

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NOTE.—Mr. Robert Whiston, Fellow of Trinity College, Cambridge, in an article on the *Fœnus Nauticum* of the ancients, calls the place above referred to as the Temple, "Hierum, a port of Bithynia, close to the Thracian Bosphorus;" and refers the first limitation as to date to the "20th of September or thereabouts, when the navigation began to be dangerous." Respecting the dread of navigation in the winter, and at its approach, there are numberless proofs in the classics, and a more familiar one may be found in the Acts of the Apostles xxvii. 9, 12, and xxviii. 11.

freight shall, at all times after the said voyage, be liable and chargeable for the payment of the said *twelve hundred and twenty pounds*, according to the true intent and meaning of these presents.

"And lastly, it is hereby declared and agreed by and between the said parties to these presents, that in case the said ship shall be lost, miscarry, or be cast away before her arrival at the said port of *London* from the said intended voyage, that then the payment of the said *twelve hundred and twenty pounds* shall not be demanded or be recoverable by the said C. D., his executors, administrators, or assigns, but shall cease and determine, and the loss thereby be wholly borne and sustained by the said C. D., his executors and administrators, and that then and from henceforth every act, matter, and thing herein mentioned on the part and behalf of the said A. B., shall be void, any thing herein contained to the contrary notwithstanding.

"In witness whereof, the parties have interchangeably set their hands and seals to four bonds of this tenor and date, one of which being paid, the others to be null and void.

"At the *Cape of Good Hope*, this day of in the year of our Lord

"A. B. (*L. S.*)

"Witness."

(§ 6.) The similarity throughout of the nature and principles of the preceding ancient and modern forms of contract, is too obvious to require a recapitulation of their particulars. All that our present inquiry will require is, that we should put the question to ourselves, Whether under these circumstances the ancients had ordinary need of any other form of insurance? On every consideration, does not the contract which they made use of seem completely suitable to the wants of their commerce? To the borrower, or assured, it supplied a trading capital, and a policy of assurance, without doubt or danger, as the sum assured was in his own hands, exigible in the event of a fair claim arising. To the lender, or assurer, it gave, as has been before remarked, a profitable investment, over which, mercantile usage, if not statute law, afforded a proper control, by public registry of the transaction, power to appoint a supercargo, and strict enforcement of other stipulations in his favour. I think it will be agreed, that the pecuniary terms of such contracts could not have offered an impediment to their habitual use by the merchant of those days. The premium (as we here term the profit beyond the ordinary rate of interest) was computed according to the time occupied by the journey; and in the Justinian Code, this *extra rate* on nautical risk was limited to 6 per cent. per annum above the ordinary rate on loan. Before the promulgation of that code the nautical interest was unlimited, as in Greece; and although the terms in the example from Demosthenes may at first sight appear comparatively high, it will not be so when viewed with reference to the very high ordinary rate of interest which prevailed at the period in Athens. The premium-

system of marine insurance could hardly have been desirable for any reason, when the merchant could habitually obtain advances in the above form, on nautical interest; for even assuming that his capital was large, and that the *loan* was consequently a burden, there was the ancient method of banking to relieve him, and he could reinvest its amount with the *argentarius*, who allowed interest on the deposit at the common rate,—*thus reducing the merchant's or shipper's outlay to the bare differential interest or premium of insurance.* In special cases, the loan might have been unattainable on such terms as the merchant could afford to pay; and the quotations from Livy and Suetonius seem to refer to analogous instances, when the seas were covered with hostile fleets, or when the winter season, so much dreaded by the navigators of old, had set in. The ordinary loan or maritime interest could not then be procured, and the government was therefore obliged to become the underwriter of the sea-risk. And in certain other exceptional cases of peculiar or prolonged hazard, the *wager system* of insurance must have been in use, as in the contract mentioned in the Digest:—"If such a ship arrives from Asia, I will give you such a sum; if it does not arrive, you will give me such a sum."

(§ 7.) Let us proceed to inquire how the foregoing particulars influence or connect the scattered elements of the subsequent history of insurance. Our projected theory involves the following out of the manner in which the contract of nautical interest appears to have been handed down to succeeding ages; and on this point the remains of ancient jurisprudence constitute all that can be referred to. The restriction of the rate of maritime interest to 12 per cent. per annum, by the promulgation of the Justinian Code, in the year 529, must have thrown an immediate difficulty in the way of the underwriter's business; for he could scarcely have ventured on it with a reasonable chance of success at such reduced terms; besides which, on the division of the Empire, its Eastern section must have afforded but little scope for the steady course of mercantile operations. In Italy there was more hope of a prosperous future to the merchants under its Gothic rulers, whose administration was, relatively speaking, favourable to enterprise. In the Eastern Empire, Justinian's laws were in force, but the case was different in the Western Empire. There the barbarian hordes, by whom it had been constructed, adopted the language and laws of the Romans, with such *modifications* as suited their purpose: and although the knowledge of the Justinian Code was never entirely lost, and in particular cites—in Pisa, for instance—was continued as the basis

of legislation, nevertheless the merchants must soon have felt the undesirability of accepting marine risks on bottomry at 12 per cent. of *annual* interest, in times like those, when navigators were exposed not only to the dangers of seamanship without a compass, but also to hostile encounters with the rival vessels of various barbarian tribes. It has been affirmed that the codes known under the titles of the Edict of King Theodoric, and of the Breviary of Anianus, promulgated by Alaric the Second to the Visigoths of Gaul, may be taken as a fair example of the maritime laws, by which it is probable that the provinces of the Western Empire were governed from the Fifth to about the Twelfth Century, when local usages began to be introduced, to be superseded in their turn by statutes or customs compiled with the sanction of public authority. In the matter of nautical interest, or loans on bottomry, the following remarkable notice occurs in one of these codes :—"Money is called *pecunia trajectitia* when embarked on board ship, to be conveyed beyond the sea; and, as the creditor bears the maritime risk, he may lend this money at as high a rate as he pleases." In the West, the underwriters were thus unfettered in their operations as regards the rate of remuneration, but in the Eastern Empire, during the dark ages, there was not much commerce which called for the contract against sea-risk; and therefore we see that, in the Ninth to the Twelfth Centuries, the body of laws compiled under the title of the Basilica, repeated almost in full the stipulations of the Justinian Code respecting marine risks, and, contrary to the Western Code above mentioned, restricted the annual rate of nautical interest to 12 per cent.

(§ 8.) In the first half of the Middle Ages, the commerce of European nations had dwindled to very narrow limits, and, such as it was, had passed in a great measure into the hands of the Saracens. Venice, Amalfi, Pisa, and Genoa, had however obtained a certain commercial independence, which was of service to the liberties of Europe, as it enabled these communities to oppose the attempts made by the Saracens to gain a greater footing than hitherto, and thus a check was given to their apparently overwhelming progress. The Caliphs who ruled in Spain set the example of fitting out large vessels for the interchange and purchase of the merchandise of the East; and such cities as Amalfi and Pisa could at that time only emulate their enterprise in an inferior degree. But towards the end of the Tenth Century, the Moorish grasp in Europe was beginning to be weakened, and the Italians then laid the foundations of a much more extended commerce with

the Levantine and Oriental nations in general. The papal hierarchy had long been enforcing the saving grace of pilgrimages to Palestine, and these created the necessity for an increased maritime communication and trade. At length, in the Eleventh Century, enthusiasm towards the Holy Land attained its culminating point in the preaching of the *Crusades,* and that event, projected by man with very different views, was, under Providence, the initiative of all that has since been great in the extension of the civilizing principles of maritime discovery and commerce. Its bearing on the subject of insurance is simply, that it raised those principles, as regards the Italian cities, to a magnitude unexampled in previous times; and, with this sudden and signally-increased mercantile importance, there was a concomitant advancement in arts and manufactures, and *capital ran into entirely new channels.*

(§ 9.) From the latter effect, the loan on maritime interest or bottomry must have been obtainable with much greater difficulty, —if, in fact, it was not practically almost out of the merchant's reach,—when the capitalist thus had substantial inducements to become himself a ship-owner or adventurer, rather than invest sums at nautical interest, on which at best his profits were limited. Probability may here be strengthened almost into certainty, by the record that not only in Italy, but in other European states, there ensued a prevailing custom of part-ownerships, or subdivisions of sea-risks between associated individuals or companies, and between freighters as well as owners of ships, all which particularly appears in several chronicles and annals of the period. Such a species of reciprocal insurance was far too limited in its means of operation to remain unamended: the large interests must have found a difficulty in combining with the small,—the correspondent at a distance would have been left without security, when obliged to load in vessels not within the convention,—and in many other ways inconvenience was liable to arise. Even on the score of etiquette there would be reasons to prompt a modification of the system, for the merchants of the higher class must in such times have experienced a disinclination to embark in a kind of joint adventure, when their only object was to procure an assured guarantee against sea-risk.

There were other causes which could not fail to injure the carrying on of the business of maritime loans in the middle ages. These were the judgments and excommunications for taking *any interest* upon money lent, which the great fathers and councils of the Romish Church thought proper to inflict. It would be a

tedious office to repeat how from age to age its dogmatic teaching on this score was unflinchingly the same, or how even to the latest periods the precise reversal of these sentences has not taken place; but it should be noted that, in the earlier ages, the question of "ceasing gain," or "accruing loss," as the schoolmen have it, was not so accurately defined as when at later periods theologians exceptionally sanctioned the allowance of interest in the case of maritime loans. The line of demarcation was at first too slight for the merchant or capitalist to venture on contracts of the latter kind without some misgiving about the persecution they might entail, or the misrepresentations which calumny might invent. It is very unlikely, if not impossible, that the *exact date* when, from the causes before explained, the loan contract underwent the modification into the premium system of insurance, can ever be more than approximatively ascertained.

(§ 10.) It is particularly to be remarked that Pisa, which was in a great measure governed by the ancient Roman law, and which gloried in the possession of an original manuscript of the Justinian Code, obtained at the siege of Amalfi, is the place which we are to look to as presenting the first records of the practical application of the premium of insurance in mediæval Europe. The particulars are to be found in the work of a Florentine merchant, by name Giovanni di Antonio da Uzzano, whose writings are considered by their editor to refer to the year 1400, or before that time.* The work is not easily to be met with, and as its few details on premiums of insurance are of the highest importance, I avail my-

* The work is entitled "*Della Decima e di varie altre Gravezze imposte dal Comune di Firenze, della Moneta e della Mercatura di Fiorentini fino al Secolo XVI.*" It comprises 4 4to volumes, published at "*Lisbona e Lucca*, 1765, 1766." The third volume contains "*La Pratica della Mercatura*," by Francisco Balducci Pegolotti, edited from a manuscript in the Library of the Marquis Riccardi at Florence; and in the fourth volume is given the treatise bearing the same title, by Giovanni di Antonio da Uzzano, edited from a manuscript belonging to Dr. Canini of Florence. In the second volume (p. 78), Signor Sarchi (the editor) observes, "*Due cose mi sembrano in questi Trattati assai degne di particolare osservazione, l'una comune ad amendue* e si è l'uso delle sicurtà, *che si facevono, e si premiavono fin d'allora per il trasporto delle Mercanzie;* l'altra particolare ad un solo, cioè che la pratica de Cambi." And, further on, the following important particulars are given respecting Giovanni da Uzzano, and the date to which his treatise may be referred:—"*Era egli figlio di Bernardo da Uzzano, che aveva esercitata la Mercatura, e fù ricco negoziante in Pisa, dove non sò per qualle accidente mancò di credito, e falli, come viene indicato dalla portata fatta da suoi creditori agli Uffiziali del Catasto nel Quartiere San Croce. Gonfalone Bue. Doveva egli essere nel* 1442, *allorche dice di avere scritto il suo libbro in età di anni* 21 *non completi, conforme apparisce dalla portata fatta dal Padre al Catasto del* 1427. (*Quartiere S. Spirito Gonfalone Scala. N.* 100.) Dubiterei perciò, che non fusse veramente l'autore del' Trattato, ma piuttosto il Copista o al più il Collettore delle Notizie gia scritte da altri, *e tanto più ne dubito dall'avere osservato, e la data di alcuni provvedimenti, che si dicono emanati, allora che si scrive dal nostro Giovanni, quando sono anteriori di parecchi anni, e di alcune conti di Mercanti, che son fatti molto innanzi, che Egli nascesse.*"

self of the opportunity to submit them to the reader. Not only are they curious as regards the general history of trade, but they are further interesting as pointing out our own metropolis, with the great trading emporium of Bruges, as places where insurance was practised, and that not cursorily, but with the exactitude which betokens an existing established usage of early date. In his specification of the method and conditions of the importation of *wool* from London (*Londra d'Inghilterra*), Uzzano states—"And for *Marine Insurance* from London to Pisa the rate is always from 12 to 15 per cent. on the value, and sometimes more, according to the dangers apprehended, either from pirates or other sources." And further on, in his account of the conditions of Bruges (*Bruggia di Fiandri*), our author observes:—"For carriage coming by land as far as Milan, 6 florins per cent. of weight; and coming by sea, 6 florins per sack of 250 pounds conveyed to Pisa; for *Marine Insurance*, 12 to 15 florins per cent. according to the season; and for *Insurance by Land*, 6 to 8 florins per cent."

Uzzano also mentions a circumstance which is in favour of the supposition that the Italians were the first nation who made enactments on the modern system of insurance, although the precise form may be lost. Referring to some regulations issued at Florence on the 22nd of November, 1408, he states that "*the ordinance* which forbids the insurance of foreigners, should not hold good so far as respects merchandise exported to or imported from Pisa."

Pegolotti (whose treatise is of an earlier date than Uzzano's, being written before the year 1350) refers to the insurance contract "*a rischio de mare e di genti,*" in speaking of the rights of the Florentine brokers.

Respecting the date of the practice of insurance at Pisa, M. Pardessus quotes an unedited document of the year 1318, the *Breve Portus Calleritani*, enacted by the Pisan Republic for its then dependent Port of Cagliari in Sardinia. The word *sigurare*, taken in connection with the remainder of the text, is supposed to refer to the contract of insurance. (Vide *Collection des Lois Maritimes*, vol. iv. p. 566.) In his sixth volume, published in 1845, the same learned author mentions that the contract of reciprocal insurance was known in Portugal as early as the second half of the Fourteenth Century, according to a chronicle of King Ferdinand, who reigned from 1367 to 1383; and that *Souza* (*Priviléges*, tom. i. p. 355) refers to King Edward (of Portugal) writing in his instructions from Lisbon, of 10 September, 1436, that the merchant vessels of the English, which had been chartered for the Tangier's expedi-

tion had not been insured, owing to the fault of their proprietors, —whilst those of the Portuguese, even of the Royal Navy, were insured.

(§ 11.) But we must even extend our horizon.—Of the cities on the Mediterranean out of Italy, none held a more exalted position than Barcelona. Its extensive commercial relations with all parts of the world created an absolute necessity for the contract of insurance; and it is satisfactory to observe, that amongst the numerous valuable historical documents which the zeal of its antiquaries has preserved, there remain no less than five ordinances on insurance. The first of these dates from 1435, and its text, from the original manuscript in Catalonian, has been published by Capmany.* Before entering on the consideration of these and other circumstances which have led some writers to attribute the invention, or first revival, of insurance to the Spaniards, we should observe, that the mere etymology of the term "policy of insurance," ascribed by others as a reason for the view in favour of the latter nation, does not appear of any importance, for even if such an appeal to a derivation could be held conclusive (which it clearly is not), the Italian claim would prevail; and upon this point we should call to notice that, about two centuries ago, *Cleirac* did not omit to notice this subject in his accustomed lively style.† He observes that "policy is an Italian or Lombard term, *polizza*, and means a breviat or short note, — *breve scrittura in piccola carta*,—perchance derived from the Latin *pollicitatio*, whence the word *poulet*, a love-letter; and that in the Levantine Sea the term

* The annexed specimen, containing the publication and first article of the ordinance, will afford a good example of its style:—

"Die Lunæ xxi., mensis Novembris, anno à Nativitate Domini millesimo quadringentesimo tricesimo quinto, Salvator Roviredéch, præco Civitatis Barchinonæ, retulit se fecisse per loca solita Civitatis Barchinonæ præconizationem sequentem. *Ara Ojats.*

"1. *Per manament del honorable Mossen Guillém de Sentcliment Cavaller Vaguér de Barcelona, è del honorable en Matheu Dezvall Batle de la dita Ciutat; có es, de cascuns d'ells tant com se pertangue á llur juridicció: ordonaren los Consellers è Prohomens de la dita Ciutat per extirpar totes fraus è dans, questions, è debats ques poguessen seguir en la dita Ciutat per rahó de assegurar navilis è altres fustes, è per assegurar mercaderies, robes, è havers; è axi per sguard dels assegurats: que d'aqui avant navilis ó altres fustes, qui no sien de vassals del Senyor Rey, ne cambis donats à risch de tals navilis ó fustes, no puxen esser assegurats en Barcelona en tot ne en part en alguna manera. E si será contrafet, tals seguretats, no puxen aprofitar als assegurats, ne per aquelles á pagar puxen esser convenguts los asseguradors en juy ne fora juy; ans sien gonyats los preus de tals seguretats.*" (Colleccion Diplomatica. Capm. ii. 383.) The title of the work is *Memorias Historicas sobre la Marina, Comercio, y Artes de la Antigua Ciudad de Barcelona. Publicadas por disposicion y a expensas de la Real Junta y Consulado de Comercio de la misma Ciudad; y dispuestes por* D. Antonio de Capmany, y de Monpalau (*Individuo de la Real Academia de Historia, y de la de Buenas Lettres de Sevilla. Secretario Perpetuo de la Real Academia de la Historia.*) 4 vols. 4to. 1 and 2, Madrid, 1779; 3 and 4, Madrid, 1792.

† The passage appears in his notes to *Le Guidon utile et nécessaire pour ceux qui font Marchandise, et qui mettent à la Mer.*

had passed and was current to express all promises and contracts, particularly in respect to naval matters, *armare per via de polisse*, &c., as says Agostino Giustiniano, in his *History of Genoa*," &c.

Capmany, a Barcelonese, was naturally disposed to take credit for the ancient merchants of his native city as the first promoters of insurance. But the mere evidence of early ordinances unsupported by other facts or deductions is unsatisfactory, and unfortunately this distinguished man has not had his maturer judgment on the point duly represented by those who have quoted him. His great work is quoted by Beckmann and McPherson as consisting of only *two* volumes (Madrid, 1779), and the first and second volumes alone are referred to by Mr. McCulloch; whilst the work is in *four* volumes, the third and fourth having been printed at Madrid in 1792. I quote the following notice from Mr. McCulloch's *Dictionary of Commerce*, and at full length, as it is material to the course of this inquiry:—

"Beckmann seems to have thought that the practice of insurance originated in Italy, in the latter part of the Fifteenth or the early part of the Sixteenth Century (*History of Inventions*, vol. i., art. 'Insurance'). But the learned Spanish antiquary, Don Antonio de Capmany, has given, in his very valuable publication on the History and Commerce of Barcelona, (*Memorias Historicas sobre la Marina, &c. de Barcelona*, tomo ii., p. 383,) an ordinance relative to insurance, issued by the magistrates of that city in 1435; whereas the earliest Italian law on the subject is nearly a century later, being dated in 1523. It is however exceedingly unlikely, had insurance been as early practised in Italy as in Catalonia, that the former should have been so much behind the latter in subjecting it to any fixed rules; and it is still more unlikely that the practice should have escaped, as is the case, all mention by any previous Italian writer. We therefore agree entirely in Capmany's opinion, that, until some authentic evidence to the contrary be produced, Barcelona should be regarded as the birth-place of this most useful and beautiful application of the doctrine of chances." (Tomo i., p. 237.)

Undoubtedly Capmany had in the year 1779 expressed his opinion, that, until more ancient documents were forthcoming, Barcelona must be considered as the first place in Europe where the new contract of insurance was known. But between that date and 1792, when he published his third and fourth volumes, he met with the works of Pegolotti and Uzzano, which had in fact been edited in 1765-6, and which threw great light on many objects of his research. As respects the Barcelonese practice of insurance, his views were directly modified, and he thus expresses himself (see tom. iii., p. 271):—

"In the first volume of these memoirs (p. 237) *the antiquity of*

the policy of insurance in Barcelona was sufficiently proved, as well as its establishment under good regulations by the municipal magistracy, at a period before any other town of Europe had noticed it by any public instrument. Nevertheless, however *near* they might be, insurances could not have been in use in the year 1401, because in the privilege of King Martin, which enlarged the jurisdiction of the consulate of this city, questions respecting partnerships, exchanges, and other contracts are specified, without mention being made of insurances. The first notice which the Barcelonese present of this branch, is the ordinance of 1435, from the preamble of which it is gathered that, already before that time, policies of insurance were known and made use of there under the public authority. It is true that Uzzano (*Prattica della Mercatura*, p. 96), speaking of the Excise of Pisa (Gabela di Pisa) of 1419, supposes, that an order which forbids making insurances for foreigners is not intended to apply to the merchandise, exported or imported, of that city. This regulation proves that insurances were already in use, and that they were the first attempts in such agreements, as is manifested by the timidity and limitation whereby this advantage was restricted solely to the objects of commerce of that people; moreover, it appears that it had not been made a general branch of mercantile speculation, to which it subsequently extended itself. This practice of insurance, limited to the articles peculiar to the traffic of Tuscany, continued in 1442, as writes Uzzano, who, speaking in his Treatise (p. 119) of the means and conditions of conveying the wools of England to Pisa, for the manufactures of Florence, says, relating to the expenses, That for the sea-insurance from London to the port referred to, it was usual to pay from 12 to 15 florins per cent. of the value, and on some occasions more, according to the dangers which were apprehended, either from pirates or other causes. He states (p. 128), that the same rate was paid for the sea-insurance of wools proceeding from Bruges to Pisa, and from 6 to 8 per cent. for the insurance by land as far as Milan. This premium appears exorbitant, when compared with that which is wont to be charged in our days; and more so, if one considers that from Collioure to Leghorn the charge for a cargo of wools is now $\frac{1}{6}$ per cent. For such profits as the former, on the part of the assurers, we must suppose either great risks, or a very limited number of persons monopolizing or undertaking this kind of business. But as neither Uzzano nor any other Italian writer adduces an ordinance, or any consular or municipal regulation upon the rules and conditions of this new species of contract anterior to the

Barcelonese ordinance of 1435, the latter should be reputed as the first instrument of legislation known up to that period in Europe. From its context, however, it may be inferred with what precautions and reserve they were at the same time undertaken, both in Barcelona and Pisa, the insurance of foreigners being always reduced to a less proportion (*than that of natives*) of the total value of the cargo, and similarly with the restrictions wherewith the government bound the hands of the insurers, as well respecting the values of the objects insured, as the persons, and distances of their destinations, or circumstances of their abode; as may be seen in the later ordinances of 1458 and 1484, the one superseding the other. In the last ordinances, more enlargement and freedom may be discovered than in the first; and the use and practice of these contracts went on accordingly extending themselves, experience instructing the government and the speculators, &c. &c."

The difference between the above and Capmany's *former* views is too plain to be mistaken; but Beckmann does not appear to have been fully acquainted with any of them, at least as far as they relate to insurance. I think we may venture on this conclusion, notwithstanding that, in the last English edition of that well-known author, the editors, Drs. Francis and Griffith, have appended the following note to his account of the origin of insurance:—

"Had McCulloch consulted the Treatise on Bills of Exchange, given in a subsequent part of the work, he would have found that Beckmann, in noticing the curious memoirs of Capmany, with which he had *then* become acquainted, distinctly mentions "An ordinance of the year 1458 respecting insurance, which required that underwritings should be done in the presence of a notary, and declared *polices o scriptores privades* to be null and void."

But the context should be looked to; and it will be perceived that Beckmann's remarks, in his Treatise on *Bills of Exchange*, warrant an inference that he was *un*acquainted with Capmany's work.

"For this important information I am indebted (says Beckmann) to *Von Martens*, who found it in a history, written in Spanish, of the maritime trade and other branches of commerce at Barcelona, taken entirely from the archives of that city, and accompanied with documents from the same source, which abound with matter highly interesting."

And then, in a note, "the ordinance of 1458," respecting the notarial office in insurance transactions, is mentioned without so much as a reference to the first ordinance of 1435, which was the *leading and most important feature* of Capmany's researches as far as regards *insurance*. And Beckmann's oversight of the Spanish

ordinances is the more distinct, when we perceive him, on the subject of the Florentine ordinance of 1523, quoting "the scarce book, *Us et Coutumes de la Mer*, the author of which, in the preface, calls himself Cleirac," without observing that Cleirac was further acquainted with the Barcelonese ordinance of 1484, and quoted it in his notes to the *Guidon*, included in the *Us et Coutumes*.

Beckmann, besides this, overlooked the notices on the subject of insurance in Pegolotti and Uzzano, which would have given him much aid in his inquiries respecting the Italian practice of insurance, and would have shown him the necessity of assigning to it an earlier date than he has done. The omission is the more to be regretted, as we must take it to be purely accidental, Beckmann having mentioned that the work *Della Decima, &c.* (which embodies the writings of the above authors), contained nothing on the subject; whilst in reality it does contain that which is most important.

(§ 12.) We cannot obtain a stronger indication of the untenability of the argument, that dates of first legislation are convincing testimony of dates of first practice of insurance, than the respective dates in our own country. It has before been seen that the regulations of Pisa (or rather of the Florentines on behalf of that city) quote the premium of marine insurance for wools imported from *London*. In the middle of the Sixteenth Century insurance *continued* to be a common practice here, and the headquarters of the business were in *Lombard Street*, which had long been the residence of the Italian merchants and bankers. The Lord Keeper Bacon, in his speech on opening Queen Elizabeth's first Parliament in 1558, used these words:—"*Doth not the wise merchant in every adventure of danger, give part to have the rest assured?*" But the first English *statute* on assurance did not appear until 1601. Its preamble is interesting and instructive; I have accordingly annexed it, and the reader will immediately perceive that it carries its own evidence of what has been remarked respecting the anterior *practice* of assurance for (to use its own words) "tyme out of minde."

"*An acte concerninge matters of assurances amongste merchantes.*

"Whereas it ever hathe bene the policie of this realme by all good meanes to comforte and encourage the merchante, therebie to advance and increase the generall wealth of the realme, her Majestie's customes, and the strength of shippinge, which consideracion is nowe the more requisite, because trade and traffique is not at this presente soe open as at other tymes it hathe been.

"And whereas it hathe bene tyme out of mynde an usage amongste merchantes, both of this realme and of forraine nacyons, when they make any greate adventure (speciallie into remote partes), to give some consideracion of money to other persons (which commonlie are in no small number), to have from them assurance made of their goodes, merchandizes, ships, and things adventured, or some parts thereof, at such rates, and in such sorte as the parties assurers and the parties assured can agree, whiche course of dealinge is commonly termed a policie of assurance; by means of which policies of assurance it cometh to passe, upon the losse or perishinge of any shippe, there followethe not the undoinge of any man, but the losse lightethe rather easilie upon many, than heavilie upon fewe, and rather upon them that adventure not, than those that doe adventure; whereby all merchantes, speciallie the younger sorte, are allured to venture more willinglie and more freelie," &c. &c. (*Vide* Statutes of the Realm, 43rd Elizabeth, chap. 12, 27 Sept. to 19 Dec., 1601.)

(§ 13.) No mention of the premium system of insurance is made in the mediæval codes of sea-laws. It has been proved that the supposition of its existence in the *Roole d' Oleron* is unfounded; neither is it mentioned in the *Consolat de Mar*, although there are decided traces in the latter of the loan or contract of bottomry. (*Vide* its chapters numbered 122 and 239).* The mention of the *Policy* of Assurance, alleged to exist in certain ancient regulations, is more difficult to place in its proper light; but with the aid of the industry which has been devoted to the restoration of this and other muniments of sea-laws by the continental jurists, and particularly by M. Pardessus, there remains no reason to doubt that accidental circumstances have here led to contradictions, which might at first sight seem well founded. It appears that a remote antiquity, extending back to the Ninth Century, was assigned by German and Northern writers to the Wisby

* Vide *Consulat de la Mer, ou Pandectes du Droit Commercial et Maritime, faisant loi en Espagne, en Italie, à Marseille et en Angleterre, et consulté partout ailleurs comme raison écrite: Traduit du Catalan en Français d'après l'Edition originale de Barcelonne, de l'an* 1494; *Dédié à Monseigneur le Prince Cambacères, Archi-Chancelier de l'Empire. Par* P. B. Boucher, *Professeur de Droit Commercial et Maritime à l'Académie de Législation, &c. &c.* 2 vols. 8vo. Paris, 1808.

In this work Boucher inserted a Prospectus, stating his intention to publish two other volumes containing the Catalonian Text of the *Consolat*, with a glossary, notes, and illustrations. These however never appeared, which is the more to be regretted, as his first two volumes give an earnest of the interesting manner in which he could have treated all the details of his subject.

The ordinance of 1484 is not included in De Capmany, but forms an appendix to that important compilation, the *Consolat de Mar*. It would only be just to the Barcelonese if the latter were always quoted by that name, instead of by the more usual Italian term of *Il Consolato del Mare*. The appendix seems to have often been mistaken for a treatise on *Insurance*, although it consists of nothing more than the 25 Chapters of the "*Ordinacions de Consellers de Barcelona darrerament fetes sobre les seguretats maritimes.*" There was ample cause for this and other misapprehensions respecting the complete work, and Valin and other jurists were repeatedly complaining of the want of the original text, and were not even correctly informed as to the language it appeared in. In fact, it was lost to the

Code. Selden, in his *Treatise on the Jurisdiction of the Sea,* had entered into a controversy with the French writers on the subject of English claims to the promulgation of the *Rule of Oleron.* Amongst other matters, he had to urge reasons against a priority of date being given to the laws of Wisby. Particularly relying on the statement in Magnus, to the effect that Wisby before the year 1266 was unwalled, and had been erected into a town only at that date, Selden thence concluded that previously it was a place of too little importance to have an individual legislation. M. Pardessus notices that, although this reasoning has been adopted by Cleirac, and by different French and other authors who have copied it, it does not appear to him to be satisfactory, because, before being raised to the privileges of the towns in the country on which it was dependent, and before being fortified, Wisby might for a length of time have been a port much resorted to by navigators.

However this may be, Émerigon took a different ground of argument (which, it is observed, would be more decisive if it were founded in fact). It is to the effect that Article 67 of the Laws of Wisby relates to the contract of insurance; and reasoning as if this *were the fact,* he deduced the consequence that the compilation could not be so ancient as the authors cited had supposed, or, in other words, that from the circumstance of the contract of insurance being mentioned in the Wisby Laws, and not in those of Oleron, the latter must be assumed as the more ancient of the two. M. Pardessus remarks on this—"Émerigon is mistaken on a matter of fact, because he has made use of the inexact translation of Cleirac." And that the article in question does not say a word respecting insurance, the following being its faithful translation :—

public, except in the versions made from defective sources by two Italian translators, in 1566 and 1599, and into French and Dutch in 1577 and 1704, until Capmany and Boucher produced translations into Spanish and French, the latter from the *editio princeps* (with a date) of 1494. One would need considerable bibliographical courage to search for so extreme a rarity as that edition seems to be; whether any of the later Catalonian editions are as scarce I know not, but the inference to be gathered from accounts of the unsuccessful attempts of old writers to obtain them, is certainly in that direction. The reader who wishes to learn more on the subject of the *Consolat,* had better refer to Boucher, Pardessus, and Stevens,—but Brunet will give him the fullest information on the Barcelonese editions. If this note were not already so long, I should make no excuse for even adding to the gossip on the latter subject, and mentioning that I have a later Barcelona edition than those which Brunet describes. It is from the press of *Mestre* Carles Amoros, *provensal* (litt. goth.), and the Colophon bears the date of 1540. Amongst other woodcut ornaments it includes a very graphic representation of the effecting of a policy in the presence of the public authority. The notary is the central figure at the official table, the insuring party and the underwriter are on his right and left, with three witnesses on each side, and facing the table are three subordinates or clerks, one of whom appears to be reading the policy aloud for the notarial cognizance required by the terms of the ordinance.

*"Si le patron est obligé de se porter caution dans l'intérêt du navire, l'armateur sera tenu de garantir le patron."**

Now, it is perfectly clear that the same accident occurred to Judge Park, of relying on the version of Cleirac, whom he cites in his marginal references prefixed to the following important passage of his own work on Insurances (See p. 30, Seventh Edition) :—

"If their laws (*i. e.* those of Wisby) had been prior to those of Oleron, we should have found in the latter some regulations respecting insurances; because a copyist never would have omitted so material a branch of commercial legislation; the *laws of Wisby* (Art. 66) *having expressly mentioned insurances*, and provided, that if the merchant obliged the master to *insure the ship*, the merchant shall be obliged to *insure the master's life* against the hazards of the sea."

Let the preceding be compared with the original words of Cleirac. That author quotes Article 66 (called Article 67 in some versions) as follows, and prints the commentary in the same type as the text :—

"LXVI. Si le maistre est contraint de bailler caution au bourgeois pour le navire: le bourgeois sera pareillement tenu bailler caution pour la vie du maistre.

"C'est à dire, que contre les hazards de la mer et la mort il ne peut échoir de requisition raisonnable à bailler caution regulièrement, le bourgeois doit risquer son bien et le maistre sa liberté et sa vie, bien y peut estre fait polisse d'asseurance."—*Guidon*, chap. xvi., art. 5.

All this was quite sufficient to mislead those who had no opportunity of seeing the original text, and were content to take easily available versions as correct. For a remedy to this evil our thanks are due to M. Pardessus, who took the trouble of carefully collating various manuscripts and printed copies of the Wisby Laws; and the result of his researches was the discovery, that the above article No. 66 (or 67, as it is sometimes numbered) is *not* to be found in

* M. Pardessus hits the nail on the head with the following remarks:—"*Il est aisé de voir qu'il ne s'agit que de l'obligation d'un commettant ou préposant d'indemniser son commis ou préposé de toutes les obligations contractées par celui-ci pour l'exécution de sa préposition. Je mets donc ces argumens de coté, &c.*"

I have referred to the earliest translation I can find, and it fully bears out the above views. Gerard Malynes, in his well-known work, published at London in 1622, 1656, 1686, includes a version of the Wisby Laws, "rendered into English for the use of Navigates, by C. Miege." Art. 66, there appears as follows:—"If the master be forced to give the owner security for the ship, the owner on the other side (to balance the business) ought to give security for the master's life."

M. Pardessus' restoration of the *original Low German Text* is from the Greifswalde MS. of 1541. The corresponding article is there "De LXVII. Beleuijnghe, Item. Weer ijdt Sake dat de Schijpper, scholde Borge setten vor dat Schijppe, so weer de Reder schuldich Borgen tho setten vor des Schijppers Lijff." And this agrees with the Dutch of the Amsterdam Ordinances, (Art. 31,) "Waer't sake dat de Schipper soude Borge setten voor dat Schip; soo ware de Reeder schuldig Borge te setten voor des Schippers Lijf."

the earliest known printed edition of 1505, nor in manuscript copies of 1533 and 1537; *whilst it appears for the first time*, in a MS. dated 1541, in the possession of the University of Greifswalde, and consequently would seem to be an interpolation or addition of about that date, and therefore not to belong to the real laws of Wisby.

(§ 14.) The objects in view in the present inquiry require little further notice on the subject of *marine* insurance, with the exception of an attempt to examine what degree of credibility we are justified in assigning to two other asserted facts in the early practice of insurance. The first is the invention of insurance being ascribed to the Jews. Park's observations on this subject are as follow:—

"It has been asserted by writers of the French nation, that insurance dates its origin in the year 1182, and that it was introduced by the *Jews*, who were banished from France about that period, and who took that method to facilitate and secure the removal of their effects. They proceed to say, that the *Lombards*, who were not idle spectators of this contrivance, adopted it, and in a short time improved it considerably. It is not very necessary to inquire into this fact, nor indeed are there materials to enable us to do so; but it is observable that the President *Montesquieu* mentions that the Jews, upon this occasion, invented bills of exchange, but does not say a syllable of policies of insurance."

As a specimen of the opinions above referred to by Sir James, we annex the following from the Commercial Section of the great French *Encyclopédie* (vol. i., 1789), and which repeats in substance the views of *Savary* on the same point:—

"L'origine des *assurances* vient des Juifs: ils en furent les inventeurs, lorsqu'ils furent chassés de France, en l'anneé 1182, sous le règne de Philippe-Auguste. Ils s'en servirent alors pour faciliter le transport de leurs effets. Ils en renouvellèrent l'usage en 1321, sous Philippe-le-Long, qu'ils furent encore chassés du royaume."

The subject is worthy of some investigation, and the indication of the sources whence the suggestion has sprung up may be useful. It seems to take its origin from the writings of Giovanni Villani, a Florentine historian, who flourished about the year 1310; and some of our readers can perhaps turn to the passage in his *Universal History*. Cleirac was the chief promoter of the idea amongst our Gallic neighbours.* He indulged in a violent polemic

* *Les Us et Coutumes de la Mer. Divisées en trois parties.* I. *De la Navigation.* II. *Du Commerce Naval et Contrats Maritimes.* III. *De la Jurisdiction de la Marine. Avec un Traitté des Termes de Marine, &c.* 4to. *Bourdeaux*, 1661. The dedication of this volume to the Queen of France is signed by *Estienne Cleirac*, its author and compiler.

I have seen the above edition, but my own Copy is the Rouen reprint of 1671, at which date some of the Rouen booksellers had obtained the privilege of its publication. It

against the Jews and Lombards, in connection with this subject. It is difficult to imagine why, in opening his attack, he could not, *motu proprio*, assent to the truism, that "banking and insurances, when honourably conducted, and under upright and legal ordinances, are highly useful and serviceable to trade," without shifting its responsibility upon the theologians, *Thomas de Vico, Cardinal Cajetan*, and *Navarrus*. A knowledge of the antecedents of Cleirac's career might perhaps dispel the doubt; but there may be some explanation in the circumstance that his *Us et Coutumes de la Mer* was written in a great measure for a public who would approve of this part of the subject being treated in orthodox style; and certainly, in the space of six pages, Cleirac exhausts such a volley of vituperation against the Jews, Lombards, Guelphs, Ghibelins, and Caursini,—quoting against them canons, decretals, Dante's *Inferno*, Matthew Paris's *Chronicle of England*, &c. &c., that the force of language could go no further. Notwithstanding this, there is much information and instruction, as a key to the more elaborate discussions on the subject of interest, in writings of his time. If I am not mistaken, there is in certain passages a subtle vein of satire, for, in mentioning the approval of banking and insurance, he says, "suivant *même* le dire du Cardinal Cajetan," &c.; and elsewhere he has several remarks on the Lombard usurers, "who were privileged by the court of Rome to make harder dealings than the persecuted Jews."

It is not at all unlikely that the Jews were really amongst the earliest *revivers* of the practice of insurance; but as to their exclusive modification of it into the *premium* system, it is doubtful why that is to be supposed; and considering the alleged date of 1182, it is more probable that the emigration or exile referred to was carried out through Italian or Spanish co-religionists chartering vessels for them by the loan on bottomry, advancing the money on

agrees with the Bourdeaux impression, except that, instead of Cleirac's dedication, the booksellers have inserted their own to the President Pellot, and have continued the marine ordinances to 1670 inclusive. The explanation of marine terms, appended as a portion of the work, has a separate title page, and, dated 1670, is stated to be the third edition. This Note occurs:—"Cet échantillon d'explication des Termes de Marine partit en l'an 1634, en *qualité d'Avancoureur pour prendre langue sur le passage que la collection des* Us et Coutumes de la Mer, *se disposoient de faire.*"

The first issue of the *Us et Coutumes*, according to the date sometimes assigned to the work, would seem to have appeared in 1647. I regret the absence of information respecting Cleirac himself: his writings are of that interesting character, that curiosity may be well directed in searching out a few particulars respecting their author. Some reader, who has the time, may perhaps pursue the matter further.

Cleirac's name becomes more aristocratically "*De Cleyrac*" in the *Déclaration du Roy portant réglement sur le fait de la navigation, &c.*, and dated 1 February, 1650. This signature is affixed by him in the quality of Admiralty Advocate at Bourdeaux, and next in office in the absence of the Lieutenant-General.

maritime interest, or even borrowing it from others on those terms. And that the Jews could not fail to be acquainted with the nature of such loans, is evident, from the fact of their extensive communications with distant lands; and independently of this, had a knowledge of the Roman or Grecian legislation been necessary to this kind of contract, it would not have been wanting; for, besides the commercial influence and traditionary usages of the Jews in Italy, where rich members of their society had settled for commercial purposes many centuries before, it should not be forgotten, that they had attained in Spain the first position in literature and science,—a circumstance which brought within their acquaintance more of the example and practice of earlier ages, than was then familiar to the strictly European nations, or than was embraced in the literature known to the monks, the only other guardians of classical learning in the dark ages.

(§ 15.) Having thus separately noticed the preceding question, because it does not rest on such precise information as the others, we proceed to submit a few notes on the supposed traces of marine insurance as practised in Flanders in the Fourteenth Century. This subject seems to have been first referred to by M. Pardessus, in the second volume of his *Collection de Lois Maritimes*, where he gave a translation of the original from the Chronicle of Flanders. It may be thus rendered into English:—"At the request of the inhabitants of Bruges, in 1310, he (the Count of Flanders) permitted the establishment in this town of a Chamber of Insurances, by which the merchants were enabled to insure their merchandise exposed to the risk of the sea, or other hazards, for the consideration of a few pence per cent., as is practised to the present day. But in order that so useful an establishment to the merchants might not be dissolved as soon as founded, he enacted various laws and forms, which the insurers as well as the merchants were bound to conform to."

M. Pardessus was unsuccessful in his researches to discover the laws or regulations which the historian refers to, and observed: "We might suppose that insurances by premiums were in use at Bruges in 1310, if the Chronicle of Flanders deserved our entire confidence. But is a chronicle, which does not appear to have been written by a contemporaneous hand, of unchallengeable authority, when no other document justifies its enunciations? By what singular circumstance did it happen, that the regulation assumed to have been given, in 1310, by a Count of Flanders to the Chamber of Assurance at Bruges, fell into forgetfulness by a people

who, during and since the Fourteenth Century, have never ceased to devote themselves to commerce? If the contract of insurance was known at Bruges in 1310, to such an extent as to have attracted the attention of the legislator, why is there no trace to be found of it in the maritime usages of the Southern or Northern Netherlands, which I have published? Limiting myself to bringing forward these doubts, I should remark, that the first law promulgated upon insurances in Flanders is of the year 1537."

In M. Pardessus' fourth volume, published several years after the second, a passage occurs, which shows how materially his as-above expressed opinion was modified. It is the more necessary to mention this, as the only notice I can find of the subject in an English work, is the repetition of his first conclusion, which became thus *amended*:—"I should then, in good faith, acknowledge that I expressed myself in too absolute a manner, when (in vol. ii.) I rejected the idea that insurances were known at Bruges in 1310. I continue to think that the Chronicle of Flanders, the only work which contains this assertion, is too modern to inspire confidence. But the author had perhaps some traditions, which should incite the *savans* of Flanders to make researches. If, as it does not appear to me possible to doubt, a document of 1318 testifies that insurances were known at Pisa,—if they are mentioned in the work of Pegolotti relating to the commerce of Florence, and compiled in the first half of the Fourteenth Century,—if Uzzano, in his *Treatise on Commerce*, compiled in 1400, speaks expressly of the insurances made at Florence (Pisa) for London and for Bruges, it is natural to suppose that their usage was even more ancient, because these documents infer a known and existing state of things."

In the concluding volume (Paris, 1845), there appears a still greater variation from his first views. In relating the ancient Portuguese practice of freighters and owners joining in a kind of reciprocal insurance to provide indemnity against sea-risk, he says, "Seeing that these documents belong to the second half of the Fourteenth Century, and that at this epoch Portugal had very habitual commercial intercourse with Flanders, one may think that I was wrong (in previous volumes) to consider improbable the assertion of the author of the great Chronicle of Flanders, respecting the existence of the Chamber of Insurance at Bruges, in 1310; and I *admit, that the improbability which had struck me, now appears to me diminished.* Nevertheless, I must say, that the law attributed to the Count of Flanders is unknown to the present time; besides which, the Chronicle speaks of a system of premium-insur-

ance, whilst the institution of King Ferdinand for Portugal was a mutual insurance."

I have translated the above passages in full, with the view of promoting some inquiry on the subject. The mite of information I can add is but of little importance. I submit it, however, for the reader's consideration. First, it seems to me plain that Bruges was pre-eminently a city whose trade required some regulations on marine insurance, such as those referred to. Its ancient political arising from a vastly spread commercial industry is perfectly well known. It is sufficient to recall the fact—that, in the Fourteenth Century, its ships were reckoned by thousands, and its traders by tens of thousands. In Uzzano's Treatise we see the Bruges premium definitely cited. The municipal arrangements of that city were not of such a class as would remain behind the most enlightened of the period, nor was its mercantile community too proud to learn the systems of others, as is evidenced (to give but one instance) by the missives addressed to the Barcelonese on the subject of the form and particulars of bills of exchange. And its usage of the contract of nautical interest (which throughout this inquiry we have taken to be the primitive form of insurance) cannot be doubted; and the philologist will even trace our common expression for that contract, "the loan on bottomry," in the Flemish word "*bomerie.*" (Compare Cleirac, *Contracts Maritimes*, p. 276:—"Ce contract est communément nommé *Bomerie* ou *prest à la grosse ou haute aventure. Bomé,* en langage Flaman, signifie la quille du navire; *Bomerie,* quille équipée et garnie.") The circumstance of the laws or regulations on insurance said to have been enacted by the Count Robert, not being preserved to the present time, does not interfere with the probability of their having existed. Through the obliging assistance of a friend, I have had the opportunity of learning that in the Flemish collection of ordinances (*Placcaet Boecken van Vlaenderen, &c.,* 5 vols. in 9, *Ghendt,* 1639, 1763), there are but nine ordinances remaining of the period between 1152 and 1401; and it is fair to suppose that enactments for particular towns must have been more liable to be lost than the ordinances just referred to, which would in many instances have been multiplied by manuscript copies for the various communities.

Nor is it at all clear that we are justified in concluding that the passage in question from the Chronicle of Flanders is *not* by an ancient hand. There is ground for believing the contrary, and that the burden of proof should belong to those who assert the negative. The title of the original is easy enough to be interpreted, "Chronicle of Flanders, beginning from the year 621 to

the end of the year 1725, all gathered from ancient writings, by M. D. and F. R." 3 vols. folio. Bruges, 1736. An exceedingly long list of the authors of these "ancient writings" is given at the commencement, including some scores of names of those whose labours are in print, and many whose works are only in manuscripts of ancient date. The passage under date 1310, referring to the Chamber of Insurance, is incorporated in the body of the Chronicle precisely in the same manner as are all the other facts it contains, viz., without precise reference to the individual authority or authorities; and the words in parenthesis, which compare the mode of insurance to what "is practised to the present day" (*gelijk nog in't gebruyk is*), may legitimately be ascribed to Messrs. M. D. and F. R., the compilers of the collected Chronicle in 1735. This is evidently the only part of the original on which any opinion could be based, that the authority for the body of the quotation is not ancient; unless, indeed, the texts of the writings from which the Chronicle is gathered were all searched through, which, perhaps, I need not say, would be a Quixotic adventure. It occurs to me that the five words were introduced in explanation, precisely for a like reason that the editors in the same passage explained the word "*versekeraers*" (*anglicè*, insurers), by inserting after it, as a modernization, "*assuradeurs genaemt*," and in the marginal index, after the word "*versekeringe*" (insurance), the corresponding term "*assurancie*."

I leave the question in the hands of the philologists, with the faint hope of their enlightening us as to the respective dates when the two terms were introduced. They might thereby settle the doubt, and add an illustration to Mr. Babbage's distinction between the words insurance and assurance; which distinction, however, the Insurance or Assurance interests find too difficult to carry out, being *obliged* to use the words promiscuously.

After the period to which we have now brought down these outlines of the remote practice of marine insurance, its history becomes entirely mixed up with that of commercial polity, legislative enactments, and progress. The details and methods of operation descend nearly in their olden forms, allowance being of course made for the correcter application of experience and observation to the tariffs of premium than could heretofore have been attained. It would be easy to compile a very extensive list of the marine insurance ordinances of the different European states, from the Fifteenth to the present Century, but, as before remarked, these would not alone point out the dates of introduction of this branch of enterprise.

(*To be concluded in our next Number.*)