

1764. Trial, nor discharge the Defendant from Bail, without some appearance of oppression. *

The Lessee of RICHARDSON versus CAMPBELL.

PLAINTIFF supported his Title by a Patent dated in 1762. The Defendant produced Receipts from the Proprietary's Officers, with a Warrant from Mr. *Peters*, Secretary of the Land Office, several Years prior to Plaintiff's Patent, and proved upwards of twenty Years Possession; but the Plaintiff contending that the Receipts were only for Money paid on account of an adjacent Tract, and that there was some imposition on the Land Officer when the Warrant was granted; the Defendant produced a Witness to prove a parcel Declaration of Mr. *Thomas Penn* (when he was in the Country) that the Land in dispute was sold to Defendant.—This piece of Evidence was opposed by the Plaintiff, and refused BY THE COURT.

N. B. The Plaintiff could prove no imposition on the Officer, and the Court gave a Charge in favour of the Defendant, and the Plaintiff would not take the Verdict, but became nonsuit.

STORY and WHARTON versus AMOS STRETTELL.

SUR Policy of Insurance. The Captain's Protest in *Jamaica* under the Seal of a Notary Publick there, given in Evidence to prove the Capture, and not opposed.

Instructions from the Plaintiffs (Owners of the Vessel insured) to the Captain at the Time of his sailing, sworn by the Captain to be the only Instructions he had, were given in Evidence by the Plaintiffs, to prove they had given the Captain no Orders to buy the Vessel on their account in case of a capture and re-capture, slightly opposed by Defendants Council, and given up without debate.

The Defendant in this case underwrote an open Policy on the Vessel from *Philadelphia* to *Jamaica*, she was taken by the Enemy and retaken, and carried into *Jamaica*, where by Agreement between the Captain and Recaptors; without going into the Court of Admiralty, she was sold at public Sale for about one fourth of the Sum insured, and bought by the Captain for the former Owners, who afterwards acquiesced in the purchase, and now sued for the whole Sum insured as a total loss. The Sale was proved to be fair, and the Plaintiff's Council insisted that from the moment of the Capture, there was a total loss, and cited divers cases to shew, that if there be a Capture; though it be not such a one as by the Law of Nations would change the Property, yet it would be sufficient to charge Underwriters with a total Loss, and the Assured in many instances.—*Beauv. Lex Mer.* 268. *Coryngham* 225. 250. 300. 340.

* But see the *Hab. Corp.* Act § 3. Passed the 18th Feb. 1705.

On the Part of the Defendant it was insisted that he ought to pay no more on this Policy than the actual loss sustained by the Payment of Salvage and other Charges. That the Captain having set up the Vessel to sale without any Orders of the Court of Admiralty, and purchased her himself in behalf of the Owners, for about one fourth of the Sum insured, and this being acquiesced in by the Plaintiffs, there was no abandonment, and therefore but an average loss.

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THE COURT gave a charge in Favour of Defendant; and the Jury accordingly give the Plaintiffs a Verdict for so much only as they judged a compensation for Salvage, charges, and Loss of Time, on account of the capture.

September Term, 1764

WILLIAM ALLEN, Chief Justice.
 WILLIAM COLEMAN,
 ALEXANDER STEDMAN. } Justices.

KING'S Road. On confirmation of a Road by the Justices of *Chester* county, the Record was brought up by *Certiorari*; and it was moved to reverse the Judgment of confirmation, because the Justices below had refused to grant a Review, though petitioned thereto by a Person who complained he was aggrieved by the Roads running through his improved ground.—On argument, THE COURT reversed the Judgment for that reason, alledging that a Review, though not taken notice of in the Act of Assembly, had always been granted, and was now become a matter of right.

HUGH DAVEY *et ux.* *versus* PETER TURNER.

THIS Cause came before the Court for a determination on a special Verdict which found, That the Defendant's late Wife *Sarah*, before her Marriage, was seized of the Lands in question in fee; that after her Marriage, with the Defendant, she and her Husband joined in a conveyance to two Trustees and their Heirs, "*Habendum* to them and the Survivor of them and his Heirs for ever, in trust nevertheless to and for the proper Use and Behoof of the said *P. Turner* and *S.* his Wife, for and during their joint Lives, and from and after the Decease of either of them, then to and for the sole and proper Use and behoof of the Survivor of them and his or her Heirs for ever." That the said *P. Turner* and