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for the ransom of the ship and the rest of the cargo. No doubt can be entertained but that, if he had resisted their demands in this respect, they would have destroyed the whole concern:—4. If this be not a general average, the words of the memorandum will be objected, by which corn is warranted free from average, unless general, or the ship be stranded: but the true meaning of the memorandum must be confined to that sort of damage which is naturally incident to the commodities there referred to, which, being of a perishable nature, are liable to a peculiar species of deterioration not common to other articles. It never could be intended to apply to such a loss as this, happening by irresistible force, which might have occurred to any other merchandise whatever. The reason of the distinction does not apply, which was to prevent disputes in these articles, subject to heat and putrefaction. Whether the damage happened by any of the casualties of the voyage insured against, or from the innate qualities of the commodities themselves? The true construction of the memorandum is, that if there be a total loss of the commodity there mentioned, it may be recovered as a partial loss on the whole cargo: but even if the Court should be of a different opinion, still the plaintiffs are entitled to recover upon this policy for the 10 tons, which were actually lost by the stranding, and which is directly within the words of the memorandum; and therefore they ought not to be turned round by the form of the declaration. They are also entitled, upon the general count, for all the money paid, in order to preserve the rest of the cargo, and to enable the ship to proceed on the voyage.

Bearcroft and Baldwin, contrà, were stopped by the Court.

[787] Lord Kenyon, Ch.J.—There is some novelty in this case: and I wish that the plaintiffs could have recovered in this form of action, because they certainly may in another, as to part of the loss. That which happened in this case does not fall within the meaning of "arrests, restraints, and detainments of Kings, princes, and people." The meaning of the word "people," may be discovered here by the accompanying words: noscitur à sociis; it means "the ruling power of the country;" but I think that this loss falls within a capture by pirates: and if a particular average could have been recovered upon this policy, the plaintiffs might have recovered upon the count, stating the loss to have happened by piracy: but this being a policy upon corn, the memorandum states that the underwriter will not be liable for any average, unless general, or the ship be stranded; and I am of opinion that this is not a general average; because the whole adventure was never in jeopardy. There is no pretence to say that the persons who took the corn intended any injury to the ship, or to any other part of the cargo but the corn, which they wanted, in order to prevent their suffering in a time of scarcity. Therefore the plaintiffs could never have called on the rest of the owners to contribute their proportion, as upon a general average. On the meaning of the memorandum I have no doubt. The articles there enumerated are of a perishable nature: as it might be difficult to ascertain whether their being damaged arose from any accident, or from the nature of the articles themselves, this memorandum is inserted in all policies, to prevent disputes; and by it the underwriters expressly provide that they will not pay any average on these articles, unless it be general, or the ship be stranded. When a ship is stranded, then the underwriters agree to ascribe the loss to the stranding, as being the most probable occasion of the damage, though that fact cannot always be ascertained. Therefore here all the damage done to the cargo thrown overboard may be ascribed to the stranding; but the objection is, that the declaration imputes the loss to another cause. I do not say whether or not there was any moment when the insured might have abandoned: but in fact they did not abandon; and there was a total loss; for the cargo produced three-fourths of its real value, and the ship performed her voyage. On the whole, it appears to me that the plaintiffs are entitled to recover for part of this damage, though they cannot recover in this form of action.

[788] Buller, J.—With respect to the objection, that this does not fall within the reason of the memorandum, there are only two instances in which the owner may recover an average loss on the articles there enumerated; either where the average is general, or where the loss arises from the stranding of the vessel. Now this cannot be said to be a general average, for the reasons already given; and as to the other instance of stranding, the plaintiffs are entitled to recover for any loss occasioned to the cargo, in consequence of the stranding, provided it be a direct and immediate consequence of the stranding: but they cannot recover for that which was taken by

the mob; for that was not the consequence of the stranding, but, on the contrary, the stranding was occasioned by the mob coming on board for the corn. The rioters took possession of the ship in order to get at the cargo: but this loss cannot be ascribed to the stranding. Suppose the mob had taken out 100 quarters of corn before the ship had been stranded, and had used no threat to destroy the whole, if that were not delivered to them, it is clear that the underwriters would not be liable. Then the fact of their taking the corn after she was stranded, is as much unconnected with that circumstance as if it had been taken before: but the loss which happened to that part of the cargo, which was thrown overboard, being ascribable to the stranding, and being a direct and immediate consequence of the peril insured against, might have been recovered, had there been any count in the declaration applicable to a loss by stranding. There is no pretence to say that this was a total loss, for the reasons given by my Lord; and with regard to the passage from Park on Insurance, it has been very properly corrected in the second edition. Neither can I agree with the construction put at the Bar upon the word "people"; it means "the supreme power;" "the power of the country," whatever it may be. This appears clear from another part of the policy; for where the underwriters insure against the wrongful acts of individuals, they describe them by the names of "pirates, rogues, thieves:" then having stated all the individual persons, against whose acts they engage, they mention other risks, those occasioned by the acts of "kings, princes, and people, of what nation, condition, or quality soever." Those words therefore must apply to nations," in their collective capacity.

Grose, J. declared himself of the same opinion.

Rule absolute (*a*)[1].

[789] ELLIOTT *against* THE DUKE OF NORFOLK. Friday, June 22d, 1792. If a mob riotously and by force demolish a gaol, by which the debtors escape, the sheriff or gaoler is answerable to the creditors for their escape.

This was an action upon the case against the defendant, as chief bailiff of the liberty of Hallamshire, for permitting J. Grayson, a prisoner in execution, at the suit of the plaintiff, to escape. The defendant pleaded, that a little before the escape in the declaration mentioned, after the last day of July, in the year 1715, to wit, on the 27th day of July 1791, at Sheffield, in the county of York, divers persons unlawfully, riotously, and tumultuously assembled together, to the disturbance of the public peace; and being so assembled, then and there unlawfully and feloniously, with force (the said force then and there being so great and violent that the defendant could not resist the same) without the licence and against the will of the defendant (and although the defendant then and there did as much as in his power lay to prevent the same) in part demolished a certain dwelling-house of the defendant (the same then and there being the prison of the defendant, as such chief bailiff as aforesaid, situate and being at Sheffield, &c.) in which said dwelling-house and prison the defendant then and there had the said J. Grayson in his custody, for the cause in the declaration in that behalf mentioned; and thereupon then and there unlawfully, feloniously, and with force (the said force then and there also being so great and violent, that the defendant could not resist the same) without the licence and against the will of the defendant (and although the defendant then and there did as much as in his power lay to prevent the same) rescued the said Joseph out of the said custody of the defendant; by reason whereof the said Joseph then and there, without the licence and against the will of the defendant (and although the defendant then and there did as much as in his power lay to prevent the same) escaped out of the custody of the defendant, and fled to places to the defendant unknown, &c.

To this plea there was a general demurrer.

Wood, in support of the demurrer, after stating the general principle, that sheriffs and gaolers are answerable in all cases for the escape of prisoners, except it be occasioned by the act of God, or the King's enemies, was stopped by the Court.

Lambe, contrà. The principle on which sheriffs are responsible, is not applicable to this case. In *Southcote's case* (*a*)[2], **[790]** it is said, "If traitors break a prison, it

(*a*)[1] Vid. *Burnett* v. *Kennington*, post, 7 vol. 210. *Wilson* v. *Smith*, 3 Burr. 1550.
(*a*)[2] 4 Rep. 84 b.

shall not discharge the gaoler; otherwise of the King's enemies of another kingdom; for in the one case he may have his remedy and recompence, and in the other not." But here the defendant has no remedy over; the civil remedy being merged in the felony by the Riot-Act, stat. 1 Geo. 1, st. 2, c. 5, s. 4. Nor can the statutes (*a*) which were passed after the riots in London, in 1780, be deemed conclusive against this defendant as to his liability in such a case as the present, because they had other objects in view besides the indemnity of the marshal, &c. But

The Court said, that the current of authorities was against the defendant; and that the statutes which were made immediately after the riots in 1780, to indemnify the marshal, evinced the opinion of the Legislature upon the subject. They also hinted that the Riot-Act had substituted another remedy against the hundred (*b*), in lieu of that which it took away against the rioters themselves.

Judgment for the plaintiff.

CRESPIGNY *against* WITTENOOM AND ANOTHER. Friday, June 22nd, 1792. If an annuity be granted in consideration of the grantee's giving up his business to the grantor, it need not be registered under the 17 Geo. 3, c. 26. [5 T. R. 639. 4 East, 197. 1 Taunt. 356.]

This was an action of covenant on articles of agreement, between the plaintiff of the first part, the defendant Wittenoom of the second, and the defendant Crespigny the Younger of the third part; dated in June, 1788. By those articles (which recited certain articles of copartnership) dated in August, 1786, between the plaintiff and the defendant Wittenoom; by which it was agreed, that the business of the copartnership (as proctors) should be carried on in the name of Wittenoom only, until the defendant Crespigny the Younger, should be admitted a proctor; after which the same should be carried on in the names of the two defendants, it being intended, and thereby agreed, that Crespigny the Younger should become a partner in equal degree with Wittenoom; and which also recited, that Crespigny the Younger had been lately admitted a proctor; and that the plaintiff was desirous to quit and give up the business upon the defendants' paying the plaintiff the clear annual sum of 400l. it was covenanted and agreed, that in consideration of the **[791]** plaintiff's giving up the business to the defendants, they would pay him the clear annual sum of 400l. during his life, by quarterly payments, and also the further sum of 37l. 10s. every three months during the joint lives of the plaintiff and Mary Green, widow of J. Green, who was a late partner with the plaintiff. The declaration, after stating the above, assigned a breach in non-payment.

The defendants pleaded that the articles of agreement were made and executed after the passing of the statute 17 Geo. 3, c. 26: that no memorial of those articles was within twenty days of the execution thereof inrolled in the Court of Chancery, as that Act requires; and that therefore the articles were null and void. To this plea there was a general demurrer, and joinder.

Chambre for the demurrer. This case comes within the exception in the last clause of the Annuity Act, which provides against the extension of the Act to any "voluntary annuity granted without regard to pecuniary consideration." This indeed was not a voluntary annuity according to the most extensive signification of the term; but the words which follow, namely, "without regard to pecuniary consideration," shew the sense in which the word voluntary was intended to be used. And here no pecuniary consideration was given, the consideration being the relinquishment by the plaintiff of a lucrative business in favour of the defendants. That this is the true construction of the Act is apparent from the general scope and intention of it, which was to guard against the improvident acts of infants or necessitous persons, who were driven to make hard bargains for the sake of a present supply of money.

The Court said, they were inclined to hear the objections from the other side, to this memorial.

(*a*) 20 Geo. 3, c. 64. 21 Geo. 3, c. 1.

(*b*) It was suggested at the Bar, that the remedy given by the Riot-Act was ineffectual in this case, because the limited time for suing under it was passed; and that not owing to the laches of the defendant, who could not sue till a judgment recovered against him.

Shepherd, contrà, said, that the object of the Annuity Act was not so confined as had been represented. It is a general regulation "for registering the grants of life annuities;" and the preamble cannot controul the enacting part of the Act. Now the first section in terms extends to the grant of any annuity; and therefore this case must be included therein, unless it fall within any of the subsequent exceptions. Neither can it be urged that the object of the Act was only to secure the registering of annuities for pecuniary considerations, or, in the terms of the third clause, where the consideration was "in money only;" for there are many exceptions introduced into the Act which **[792]** would be altogether nugatory if that were the intention of the Legislature; amongst others, that in the fourth class for avoiding any annuity, where any part of the consideration shall be in goods; or "annuities given by will or marriage settlement, or for the advancement of a child," mentioned in the last clause, where there is no pecuniary consideration paid. Then if the construction of the Act be not confined to annuities where money only is paid, it must extend to all cases not particularly excepted; and this is not one of the exceptions; for the word voluntary must be taken as contradistinguished from consideration. If that be not so, and the construction on the other side be adopted, the word will be perfectly nugatory: for then, whether it be voluntary or for a valuable consideration, it will make no difference, provided that consideration be not pecuniary.—This would be to reject a sensible operative word from the Act, which cannot be permitted, and would be letting in great part of those very mischiefs against which the Act was principally intended to guard; for fraudulent annuities may still be granted on some supposed services or considerations other than money.

Lord Kenyon, Ch. J. -It is apparent from the preamble and the different clauses of the Act, that the Legislature did not intend that there should be any memorial of an annuity like the present. The preamble states the mischiefs of granting annuities for small considerations by improvident persons; and those mischiefs are guarded against by the several clauses in the Act, as far as human prudence can go. It is evident that the Act was intended as a check against hard bargains. The third clause expressly says that the consideration shall be paid in money only. The next section indeed says, that if any part of the consideration be paid in notes, and those notes be not afterwards paid, the Court may order the deeds securing the annuity to be cancelled. The Court therefore were bound by the positive words of the Act to declare that annuities, the consideration of which was paid in notes, must be registered pursuant to the Act. But, in both these cases the annuity is granted in consideration of something paid to the grantor; and no decision has extended the provisions of the first clause beyond these two cases. Here either the annuity was absolutely void, because not granted for either of the considerations mentioned in the third and fourth sections, and then no registry of it could make it good; or it was such an annuity as could not be registered according to the Act. But it is too much to say that the annuity is void in itself; and I **[793]** think that neither the spirit nor the words of the Act require that it should be registered. As to the argument, exceptio probat regulam, it seems to me that the anxiety of some members of the House induced them to insert the last clause, after the Act was first drawn; but I think that the first section could never have been extended to the cases mentioned in the last, if they had not been excepted.

Buller, J.—I agree that the preamble cannot controul the enacting part of a statute, which is expressed in clear and unambiguous terms. But if any doubt arise on the words of the enacting part, the preamble may be resorted to, to explain it. Now the general intention of the Legislature may be collected from the preamble, which recites "the pernicious practice of raising money by the sale of life annuities;" and the body of the Act is also confined to annuities granted in consideration of money or notes. By another clause too it is evident that the Act does not extend to this case. The seventh section prohibits brokers taking more than 10s. for every 100l. actually paid. It is impossible to suppose that the Legislature intended to prohibit a broker receiving any premium for his trouble in negotiating such annuity as the present; and yet his premium cannot be estimated according to the direction of that clause. With regard to the words in the excepting clause, "without regard to pecuniary consideration," I think they were added to shew the sense in which the word "voluntary" was before added; and that the meaning of that part of the clause is this, that any annuity