

Frederick Clifford

**A History of Private Bill
Legislation, Volume 2. Part 2**

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to any provision against nautical risks. The first revival of commerce during the middle ages leaves no trace of insurance. It is mentioned neither in the laws of Oleron nor the "Consolato del Mare," maritime codes supposed to have been drawn up during the twelfth and thirteenth centuries. These were southern codes, mainly for use by traders in the Mediterranean States. In the laws of Wisby, made about the beginning of the fourteenth century, bottomry is briefly noticed. Wisby, a Baltic town situate in the isle of Gothland, and now utterly decayed, was then a rich and prominent member of the great Hanseatic League. Subsequent ordinances passed by this league at Lubeck, Bruges, and elsewhere treat fully of bottomry, and regulate its practice, with a view to prevent those frauds, "and even wicked crimes,"¹ by which in all ages the acknowledged benefits of marine insurance have unhappily been abused.

Laws of
Wisby.

Hanseatic
League.

In the middle ages, and subsequently, persons of condition voyaging by sea in the Mediterranean often took out policies under which insurers guaranteed to pay a sum sufficient to ransom them if they were taken by corsairs. Agents in seaport towns frequented by pirates, whether Christians or Turks, were intermediaries under this system.²

Personal
insurances
against
capture by
pirates.

¹ *Recessus civitatum Hanseaticarum*. See, in an early "Recessus" of Lubeck, a chapter on bottomry (*bödemerey*), quoted in Martin's *History of Lloyd's*, 1870, p. 5. As one method of checking frauds, the *Marine Code of Barcelona*, A.D. 1435, limited insurances on foreign vessels freighted there to one-half, and on native vessels to three-fourths their value. The word insurance, understood and clearly described in the modern sense, first occurs in an old historical work, the *Chronicles of Flanders*, which says that, on the request of inhabitants of Bruges, the Count of Flanders, in the year 1310, permitted the establishment there of

a Chamber of Assurance, by means of which merchants, on paying a stipulated percentage, could insure their goods from sea-risks, and enacted laws and regulations which both assurers and assured were bound to observe. At this time Bruges was the centre of an immense commerce, and might fitly be chosen for the home of such an institution. The statement in these *Chronicles*, however, is not free from doubt. (*Ib.*, pp. 6, 7.)

² In the "*Guidon de la Mer*," a French work of authority, supposed to have been published at the end of the sixteenth century, this form of insurance is described. Seamen or other travellers too poor to insure

First marine
insurances in
England.

In England the earliest insurances of ships and goods were made by Hanseatic merchants, who, from the reign of Edward the Confessor to that of Elizabeth, a period of more than five centuries, by purchase or through policy, enjoyed special privileges in London and other ports, and monopolized almost the entire commerce of this country in staple commodities.¹ Their great warehouses and dwellings, rigidly secluded by walls and gates, for safety of property and secrecy of trade, were built on the river-side, at a site now occupied by the Cannon Street railway station. This was Gilhaldal Teutonicorum, the German Guildhall, otherwise the Stapelhof or staple-house and yard, by corruption familiarly known as the Steel-yard.²

The Steelyard
merchants.

As English commerce developed, there arose a corresponding jealousy of these aliens' privileges. Queen Elizabeth and her advisers, chiefly at the instance of Sir Thomas Gresham, then acting as Royal agent in Flanders, first laid heavy duties on all imports and exports of Hanse merchants, and

against captivity were either left to languish in servitude or released by charitable donations and bequests, and by "God's pence," contributed by merchants and others in boxes placed outside the door of each greffier, or insurance registrar, and in other public places of resort. (Martin, pp. 41-4.)

¹ As far back as the time of Ethelred II. (A.D. 979-1016) "the Emperor's men," as these German merchants were then and long after called, coming with many ships to Billingsgate, were held "worthy of good laws," in return for certain tolls and gifts to the royal exchequer. They were free of many imposts and burthens resting upon native industry; they paid fixed customs duties, instead of being subjected to numberless vexatious tolls and extortions placed in the way of general commerce; they had

liberty to ship their goods in whatever bottom they liked; they were under a separate jurisdiction, and were governed by their own self-elected rulers. In nearly every respect these members of the Hanseatic League in England formed a state within a state. (Ib., pp. 8, 9.)

² Ib., pp. 1, 2. The Steelyard merchants lived like inmates of a monastery, in separate cells, built only for single men, and ate in common. No inmate was allowed to marry, nor even to hold intercourse with or visit any person of the other sex, and a breach of this rule, however slight, was followed by immediate expulsion, if not by severe penalties. At a fixed hour in the evening the gates were closed against all comers. The community was governed by a master, or alderman, two assessors, and nine common councilmen, annually chosen on New Year's Eve. (Ib., p. 8.)

when retaliating imposts on English traders were levied by the League, and severer measures threatened, Elizabeth, in 1578, abolished all exclusive privileges possessed by the Hanse merchants, and in 1597 expelled them from the kingdom. The Lombards, who settled here in the thirteenth century, to avoid internecine strife at home, combined marine insurance with their trade of lending money at interest, acting as the Pope's agents by sales of "pardons,"¹ and remittances of ecclesiastical revenues to Rome. Their wealth and enterprise gave them great advantages; they were Royal bankers and money-lenders, receiving protection and encouragement in return; they farmed the customs in some towns, or had these assigned to them as security for Crown debts. Profiting by their teaching and that of their rivals of the Steelyard, English merchants in the fifteenth and sixteenth centuries began to hold their own in commerce, and there are records of insurances effected by Sir Thomas Gresham in 1560 upon cargoes of gunpowder and armour shipped by him from the Low Countries to England.

Expulsion of the Hanse merchants, 1597.

The Lombards as marine insurers.

In 1601, four years after the Hanse traders were expelled, an Act was passed "concerning matters of assurance among merchants,"² founded upon the practice among German insurers, and intended to furnish an easy method for settling differences arising in this business. In its recitals, full according to custom, at a period when the reasons for legislation could nowhere else be so conveniently published, the practice of marine insurance, even in England, is referred to as of high antiquity:—

First statute concerning assurances among merchants, A.D. 1601.

"Whereas it ever hath been the policy of this realm by all good means to comfort and encourage the merchant, thereby to advance and increase the general wealth of the realm, her Majesty's customs, and strength of shipping, which considera-

Policy of State to encourage merchant ventures.

¹ Stow calls them "the Pope's merchants," and says they "had good markets here for their wafer cakes, sanctified at Rome, their pardons, &c."

² 43 Eliz. c. 12. It is given in its original quaint spelling 4 Stat. Realm, 978-9.

Usage of
assurance
time out of
mind.

tion is now the more requisite because trade and traffic is not at this present so open as at other times it hath been :

“And whereas it hath been time out of mind an usage amongst merchants, both of this realm and of foreign nations, when they make any great adventure (specially into remote parts) to give some consideration of money to other persons (who commonly are in no small number) to have from them assurance made of their goods, merchandizes, ships, and things adventured, or some part thereof, at such rates and in such sort as the parties assurers and the parties assured can agree, which course of assurance is commonly termed a policy¹ of assurance, by means of which policies of assurance it cometh to pass upon the loss or perishing of any ship there followeth not the undoing of any man, but the loss lighteth rather easily upon many than heavily upon few, and rather upon them that adventure not than those that do adventure, whereby all merchants, especially the younger sort, are allured to venture more willingly and more freely :²

Disputes
heretofore
settled by
Court of Mer-
chants.

“And whereas heretofore such assurers have used to stand so justly and precisely upon their credits that few or no controversies have risen thereupon, and if any have grown the same have from time to time been ended and ordered by certain grave and discreet merchants, appointed by the Lord Mayor of the City of London, as men by reason of their experience fittest to understand and speedily to decide those causes, until of late years divers persons have withdrawn themselves from that arbitrary course,³ and have sought to draw the parties assured to seek their moneys of every several assurer, by suits commenced in her Majesty's courts, to their great charges and delays.”

Joint legal
and lay Com-
mission to
decide insur-
ance causes.

From the operative clauses which follow, we learn that at this period there was in the City of London an office or chamber for the registry of marine insurance policies. The statute proceeded to constitute a special Commission to hear and determine insurance causes. This Commission, renewed yearly, consisted of the Judge of the Court of Ad-

¹ From the Italian *polizza*, a promise. Italian merchants practised insurance at an early date, and Martin (p. 27) quotes evidence of policies current between London and Venice and Pisa, A.D. 1400—1512.

² Cf. Lord Keeper Bacon's speech on opening Queen Elizabeth's first Parliament:—"Doth not the wise merchant, in every adventure of danger, give part to have the rest assured?"—1 Parl. Hist., 641.

³ Mode of arbitration.

miralty, the Recorder of London, two doctors of civil law, two common lawyers, and eight "grave and discreet merchants," who were empowered to proceed "in a brief and summary course," and "without formalities of pleading." In its constitution and jurisdiction, this Court seems to have been founded on the insurance laws of the Hanseatic League.¹ Its numerous members made the new tribunal unwieldy; a still stronger objection probably was the appeal allowed from its decrees to Chancery. Its powers, too, were defective, and suitors were delayed in obtaining remedies, as the Commissioners could not enforce their orders against ships or goods. New powers were given to them in 1662,² and the number of members was reduced, but the Courts of common law did not favour a tribunal composed in part of laymen, and did much by their decisions to curtail its jurisdiction.³

As may be supposed, the earliest English insurers did not confine their attention to this branch of business only, but were merchants and bankers, who "underwrote" lives as well as ships. As commerce expanded, and marine insurance became more common, it was also carried on at the coffee houses set up in London during the reign of Charles II., and frequented by merchants and captains of vessels.⁴ Here sales of ships and cargo were made "by candle," freights were arranged, commercial news was sought, and business transacted. There were also marine insurance offices in the Royal Exchange. Among the underwriters were men of insufficient means, through whose failure insurers sometimes could not recover in case of loss. These failures were especially

Underwriting
at coffee-
houses.

Failures of
underwriters.

¹ Martin, p. 14.

² 14 Chas. II. c. 23.

³ Both 43 Eliz. and 14 Chas. II. were repealed by the Statute Law Revision Act, 1863.

⁴ Lloyd's coffee-house, then in Tower Street, afterwards removed to Lombard Street, is first mentioned

in 1668. Soon after 1770, the underwriters and brokers, united under the name of Lloyd's, removed to Pope's Head Alley, and, in a few years, to their present quarters in the Royal Exchange. (Martin, pp. 59, 120.)

numerous during the war with France in 1693, among persons who had insured vessels against capture.

Relief Bill,
A.D. 1693.

A Bill was therefore promoted in the House of Commons, apparently without much justification, to enable these "merchant insurers the better to satisfy their creditors."¹ It was opposed by sundry merchants of London, creditors for large sums, whose petition was referred to a Committee on the Bill. This Committee consisted of thirty-seven nominated members, with Sir Samuel Barnardiston at their head, to whom were added "all members who are merchants, and all that serve for seaports."² Among the defaulters who thus sought relief was Daniel Foe, merchant,³ who represented "that having sustained divers losses by insurances since the war with France, and having met and proposed to his creditors a means for their satisfaction, some few of them will not come into those proposals;" therefore he asked that his name might be inserted in the Bill.⁴ The Commons passed this measure, but it was summarily rejected by the Upper House before commitment.⁵

Daniel Defoe.

Projects for
marine in-
surance com-
panies.

These failures among underwriters were cited, a few years afterwards, as reasons for establishing one or more companies, whose joint capital would save insurers from loss. In 1718-19, some previous applications having been made in vain, Lord Onslow and others petitioned his Majesty in Council to grant them a charter enabling them to insure ships and merchandize at sea; and Lord Chetwynd headed another party of merchants in praying for a similar privilege. These petitions were referred, in the usual course, to

¹ 11 Com. Journ. 25, A.D. 1693.

² *Ib.* 38.

³ This was the well-known author of Robinson Crusoe, who signed his name indifferently Foe and Defoe. He failed as a city merchant in 1692, for 17,000*l.* His biographers do not notice his losses as a marine insurer. Although he did not obtain the sta-

tutory relief for which he petitioned, his creditors accepted a composition; and, to his honour, he afterwards paid them in full. These experiences led him to write upon defects in the bankruptcy laws.

⁴ 11 Com. Journ. p. 87.

⁵ 15 Lords' Journ. 390; March 10, 1693.

the Attorney-General, Sir Nicholas Lechmere, for his report, and he heard counsel in his chambers for and against the grant.¹ Lower rates, additional security, and more effectual means of recovering sums assured were reasons urged in favour of chartered companies. On the other side, underwriters in London and Bristol declared that such companies were not required, and would lead to monopoly, and other evils. They also urged the advantages of competition, the benefits arising from individual supervision in such a business, and the probability that chartered bodies would be more ready to contest claims than individuals were, because "corporations have no sense of shame."

Lord Onslow, who had been Speaker of the House of Commons in 1708,² was one of the chief supporters of this project. Against him no charge was brought, but so many scandals were rife affecting persons in high places during the speculative mania of this period, that the House of Commons appointed a Committee to examine into "subscriptions for fisheries, insurances, annuities for lives, and all other projects carried on by subscriptions in and about the cities of London and Westminster." Before this Committee the Solicitor-General, Sir William Thompson, charged Sir Nicholas Lechmere with receiving large sums of money, "contrary to his duty as Attorney-General," from some of the persons who had solicited charters.³ Sir William Thompson informed the Committee "that there were public biddings for charters, as if at an auction, in the Attorney-General's chambers, between some of the persons concerned;" and to encourage offers from these persons, the Attorney-General's chief clerk told them "that the other side had

Charges of
corruption
against
Attorney-
General
Lechmere,
A.D. 1720.

¹ The proceedings at the Attorney-General's chambers began at six o'clock in the evening and lasted till ten or eleven. An account of these proceedings, and of fees paid to the Attorney-General, and to counsel,

is given in 19 Com. Journ. 306.

² Uncle of the more celebrated Speaker Onslow, who acted in that capacity from 1727 to 1761, and was then created Viscount Cranley.

³ 19 Com. Journ. 305.

given handsomely." After hearing evidence, the Committee pronounced these charges "malicious, false, scandalous, and utterly groundless," further declaring "that the Right Honourable Nicholas Lechmere, Esquire, has discharged his trust in the matters referred to him by his Majesty in Council with honour and integrity."¹

Offer by companies to make good deficit in civil list.

Both projects would undoubtedly have been rejected but for the anxiety of George I. to supply certain arrears in his civil list, which had been left unprovided for in 1720. Probably the noblemen interested in the two companies received a hint that necessities of State might prove their opportunity. They accordingly offered to meet the deficit by a payment of no less than 600,000*l.* in return for charters, with statutory sanction.² As they were able to offer satisfactory evidence of solvency, their proposal was accepted, and Mr. Aislabie, Chancellor of the Exchequer,³ brought to the House of Commons the following Royal message:—

Royal message.

"His Majesty having received several petitions from great numbers of the most eminent merchants of the City of London, humbly praying he would be graciously pleased to grant them his letters patent for erecting corporations to insure ships and merchandize, and the said merchants having offered to advance and pay a considerable sum of money for his Majesty's use in case they may obtain letters patent accordingly; his Majesty being of opinion that erecting two such corporations, exclusive only of all other corporations and societies for assuring of ships and merchandize, under proper restrictions and regulations, may be of great advantage and security to the trade and commerce of the kingdom, is willing and desirous to be strengthened by the advice and assistance of this House in a matter of this nature and importance. He, therefore, hopes for their ready concurrence to secure and confirm the privileges his Majesty shall grant to such corporations, and to enable him to discharge the debts

¹ 19 Com. Journ. 310. Throughout this record the two projects are described, one as "commonly called Lord Onslow's," the other as "Lord Chetwynd's insurance."

² 7 Parl. Hist. 648; 6 Geo. I. 1720.

³ Afterwards expelled from the House with other members for his share in the South Sea scheme.

of his civil government without burdening his people with any new aid or supply."¹

Leave was immediately asked to introduce a Bill "enabling his Majesty to grant letters of incorporation to the uses and purposes mentioned in his Majesty's most gracious message." This motion was carried, but not without protest from a respectable minority, the voting being 186 to 72.² Two days afterwards an ineffectual attempt was made to procure for the House some information respecting civil list deficiencies, by an address for an account of debts owing, and "of the arrears of civil list funds to pay the same." This motion was negatived by 146 votes to 47.³ The House next resolved to reply to the Royal message. They acknowledged it as "an instance of so much condescension as deserves the highest returns of duty and thankfulness." "It is a great satisfaction to your Commons," they added, "to see the honour and dignity of the Crown supported under the difficulties which the necessity of your Majesty's affairs may have occasioned, without laying the burden of any new aid or supply upon your people;" and they assured the Crown of their resolve "to render effectual your Majesty's gracious intentions for the ease, security, and welfare of your trading subjects."⁴

Bill introduced.

Reply to King's message.

After consideration, the House resolved to authorize in one Bill the two charters recommended by his Majesty, with general safeguards "to restrain the extravagant and unwarrantable practice of raising money, by voluntary subscriptions, for carrying on projects dangerous to the trade and subjects of this kingdom."⁵ On May 31, the measure was passed in this form by 123 to 22 votes, and the House of Lords sanctioned it without amendment.⁶ In its preamble, this Act⁷ Act of 1720.

¹ 19 Com. Journ. 355-6, May 4, 1720; 7 Parl. Hist. 648.

² 19 Com. Journ. 356.

³ Ib. 357.

⁴ Ib. 358.

⁵ Ib. 361.

⁶ 21 Lords' Journ. 350; June 7, 1720.

⁷ 6 Geo. I. c. 18.

Monopoly
given against
all other
marine in-
surance com-
panies.

set forth the expediency of constituting two companies, for reasons already cited—the failure of private insurers, and consequent “ruin and impoverishment of many merchants and traders, discouragement of adventures at sea, and great diminution in the trade, wealth, strength, and public revenues of this kingdom.” His Majesty was authorized to grant charters of incorporation to the two companies, excluding all other companies or associations for marine insurance, but saving the rights of private underwriters. These special privileges might be revoked upon three months’ notice, but any consideration money paid by the companies was, in this event, to be returned to them. After thirty years the Act might be repealed without this repayment if the privileges conferred were found “hurtful or inconvenient to the public;” and all such privileges were then to “remain suppressed for ever.”

Grant of
charters,
June, 1720.

In June, 1720, a fortnight after this Act received the Royal assent, charters were granted to the Royal Exchange Assurance Corporation, Lord Chetwynd’s venture, and the London Assurance Corporation, with which Lord Onslow was associated. In order, it would appear, to raise more easily the stipulated 600,000*l.*, which was to be paid into the Exchequer by instalments, each corporation, acting in concert, formed an affiliated body for “the insurance of houses and goods from fire.” These companies were incorporated by charter in April, 1721, under the same names as the parent corporations, but with distinct objects and organizations, and without any monopoly of fire insurance business; and they undertook to contribute one-half of the 600,000*l.* But evil days soon came upon all speculations planned, whether legitimately or corruptly, at this period. A special misfortune happened to the London Assurance Corporation. It underwrote a fleet of twelve Jamaica merchantmen, all of which were lost in October, 1720, and its 10*l.* stock, which had risen to 160*l.*, became