

THE MARINE ORDINANCES OF LOUIS XIV.

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While the French historians have employed themselves in tracing the commercial prosperity of their nation, at the conclusion of the seventeenth, and opening of the eighteenth centuries, to these ordinances, the civilians and lawyers of every period which has followed their promulgation, have avowed the greatest admiration of their wisdom and their justice. To the genius of Colbert, the celebrated minister of Louis XIV, France is indebted for this excellent code. Desirous of establishing the commerce of his country on a basis which nothing could successfully assail, he selected a masterly hand to compile and arrange these laws, from the prevailing maritime regulations of France and other states, and from the experience of the most respectable commercial men of his country. To these regulations which, having formed a part of the maritime code of Europe, had been acknowledged as authority by all, were added others which were considered as peculiarly necessary for the trade of France. The ordinances thus formed, were published by the French king in 1681, and have since enjoyed an uncontrolled authority over the commerce of the country for which they were intended, and have obtained the respect of every maritime state.

To the testimony in favour of this collection, which has so often been given by the most celebrated jurists of Europe, I can add that of a gentleman of distinguished legal acquirements, who has been recently selected, with the approbation of his country, to occupy the first judicial situation in the state of Pennsylvania. In the case of *Morgan & Price v. The Insurance Company of North America*, decided by the supreme court of this state in January, 1807, Chief Justice Tilghman, having referred to one of the articles of these ordinances, thus expressed himself: "They and the commentaries on them, have been received with great respect in the courts both of England and the United States, not as conveying any authority in themselves, but as evidence of the general marine law. When they are contradicted by judicial decisions in our own country they are not to be regarded: but on points which have not been decided, they are worthy of great consideration." The commentaries on these ordinances by Valin, we have reluctantly consented to omit, and the design of this work necessarily excludes from it, those articles in the ordinances which are local in their nature, or are confined to the regulation of the courts or the offices of the admiralty of France. Those only have been selected, which are founded on the general principles of maritime law, and which are thought peculiarly entitled to the notice of every commercial lawyer.

MARINERS AND SHIPS.

TITLE FIRST.

Of the Captain, Master and Patron.¹

I. No person shall be capable of being received captain, master, or patron of a ship, till he has navigated five years, and has been publicly examined in navigation, and judged capable by two ancient masters, in presence of the officers of the admiralty, and of the professor of hydrography, if any be in the place.²

II. We forbid all mariners to sail in quality of masters, and all owners to constitute any in their ships, before they be received in the aforesaid manner, under pain of three hundred livres, to be paid by each offender.³

III. However, such as are already masters shall not be obliged to undergo any examination.

IV. Such as have been received pilots, and have navigated two years in that quality, may be constituted masters without any examination, and without any act of the court of admiralty.

V. The master shall chuse the ship's company, and hire the pilots, mates, mariners and sailors; but he shall advise with his owners when at the port of their residence.

VI. In places where there are hospitals of poor boys, the masters shall be obliged to chuse amongst them their ship-boys.

VII. The master who shall entice away a mariner from another master, shall be fined in one hundred livres, applicable one half

¹ In France those who command vessels of war, or merchant ships destined on long voyages, are called "captains"; masters or patrons are those who command vessels employed in the coasting trade.

² A professor of hydrography is appointed to teach navigation and the sciences immediately connected with it, in all the considerable sea ports in France. His school is open to every one, and formerly each hospital sent two or three boys, annually, to be instructed in the sciences taught by him. Book 1, tit. 8.

³ Laws of the Hanse Towns, art. 15.

to the admiral, and the other half to the first master, who may take the mariner back again if he pleases.⁴

VIII. A master must take care before he puts to sea, that the ship be right ballasted and laded, and well provided with anchors and tackle, and all things necessary for the voyage.

IX. He shall be answerable for all the goods laded aboard his ship, which he shall be obliged to deliver according to the bills of lading.

X. He shall be obliged to keep a book or register, quoted and flourished on every leaf by one of his principal owners, in which he shall insert the day that he was constituted master, the names of the officers and mariners of his company, the rates and conditions of their engagement, the payments he makes them, what he receives and expends for the use of the ship, and generally every thing that concerns the functions of his employment, or of which he has to render any account, or any demand to make.

XI. If, with the master's consent, there is a clerk established in the ship, to take an account of all such things, the master shall be exempt from it.

XII. No master shall lade any goods upon the ship's deck, without the order or consent of his merchants, under pain of being answerable for all the damage that may happen.

XIII. Masters shall be obliged, under pain of an arbitrary fine, to be aboard their ships themselves when they go out of any port, harbour or river.

XIV. No master, patron, pilot, nor mariner, shall be arrested for a civil debt, being a shipboard to put to sea, except it be for debts contracted for the voyage.

XV. The master, before he sets sail, shall take the advice of the pilot, mate, and other principal men of the ship's company.⁵

XVI. He shall be obliged before he puts to sea to give into the admiralty office, of the place of his departure, the names, surnames, and dwelling-places of his company, passengers, and persons engaged for the West Indies, and to declare at his return such as he has brought back again, and the places where he left the others.

XVII. He shall not, while in the place where his owners reside, cause the ship to be refitted, buy sails, ropes, or other things for the ship, nor take up money for that account upon the ship, without their consent, under pain of paying the same himself.⁶

XVIII. However, if with the owner's consent, a ship be freighted, and any of them refuses to contribute towards the necessary charges for fitting out the ship; in that case

the master may take up money for bottomry for the account and upon the parts of the refusers, within four and twenty hours after he has sent them a summons in writing to furnish their proportions.⁷

XIX. He may likewise, during the voyage, take up money upon the ship, either for refitting, victuals, or other necessities, or may pawn some of the rigging, or sell some goods of his lading, upon condition to pay for them at the rate that the rest shall be sold; all which must not be done without the advice of the mate and pilot, who shall write down in the journal the necessity of such borrowing of money, or selling of goods, and the manner how the money was laid out: but the master shall not in any case have power to sell the ship, without a special procuration from the owners.⁸

XX. If any master, without necessity, takes up money upon the ship or rigging, sells goods, pawns the tackle, or states in his accounts false and supposed averages and expenses, he shall pay what he takes up himself, be declared unworthy of being a master, and banished from his ordinary place of residence.

XXI. Masters hired to make a voyage shall be obliged to accomplish it, under pain of making good the damages and losses to the owners and merchants; and to be proceeded against extraordinary if that happens.

XXII. They may, with the advice of the mate and pilot, cause to be ducked or put in the hold, and inflict such sort of punishments upon drunken and disobedient seamen, or upon such as abuse their comrades, or commit such other faults and offences during the voyage.⁹

XXIII. And such as shall be guilty of murder, assassination, blasphemy, or other capital crimes committed at sea, the masters, mates and quarter-masters, shall be obliged under the entire penalty of one hundred livres, to inform against them, to seize their persons, and make the necessary proceedings for instituting process, in order to deliver the criminal into the hands of the officers of the admiralty, at the place of the lading or unlading of the ships within our kingdom.¹⁰

XXIV. We forbid all masters, under pain of exemplary punishment, to enter, except in cases of necessity, into any foreign port; and in case they be forced into any by tempest or pirates, they shall put to sea again with the first conveniency.¹¹

XXV. We enjoin all captains and masters, making long voyages, to assemble every day at noon, and oftener if necessary, the mates and pilots, and other expert persons,

⁷ Laws of the Hanse Towns, arts. 11, 59.

⁸ Laws of Wisbuy, art. 45; Laws of the Hanse Towns, art. 60.

⁹ Laws of Oleron, art. 15.

¹⁰ Laws of the Hanse Towns, art. 30.

¹¹ Laws of Wisbuy, art. 53.

⁴ Laws of the Hanse Towns, art. 48.

⁵ Laws of Oleron, art. 2; Laws of Wisbuy, art. 14.

⁶ Laws of the Hanse Towns, arts. 3, 4.

and to confer with them about the latitudes taken, the courses made, and to be made, and about their calculations.

XXVI. They shall not abandon their ships during the voyage, notwithstanding any danger, without the advice of the most expert officers and mariners; and in that case, they shall be obliged to carry off with them the money and the most precious goods they have on board, under pain of answering for it themselves, and of personal punishment.

XXVII. If the effects so taken out of the ship be lost by any accident, the master shall be free from any danger.

XXVIII. The masters and patrons who sail in partnership with other owners, shall have no separate dealings for their own particular account, under pain of confiscation of their goods for the benefit of the other partners.

XXIX. They shall not borrow for their voyages any more money than what is necessary for their lading, under pain of being deprived of their places, and their share in the profits.

XXX. They shall be obliged, under the like penalty, to give before their departure, to the proprietors of the ship, a signed account of the quality and price of the goods they have aboard, and of the sums of money borrowed by them, together with the names and dwelling places of the lenders.

XXXI. If the common stock of provisions fail at sea, the master may compel such as have any in particular to deliver them up for the use of all, subject to the payment of the price thereof.

XXXII. No master shall sell the provisions of his ship, nor divert and conceal them, under pain of bodily punishment.¹²

XXXIII. They may however, with the advice and consent of the officers, sell to ships found in necessity at sea, provided they have enough remaining for their own voyage, and render an account thereof to the owners.¹³

XXXIV. At the return of the voyage, the victuals and ammunitions shall be remitted by the master into the hands of the owners.¹⁴

XXXV. If the master steer a false course, commit any robbery, or suffer any to be committed in his ship, or fraudulently give way to any alienation or confiscation of ship or goods, he shall be punished corporally.

XXXVI. A master being convicted of having delivered to the enemy, or maliciously run his ship aground, shall be punished with death.

¹² Laws of the Hanse Towns, art. 9.

¹³ Laws of the Hanse Towns, art. 9.

¹⁴ Laws of the Hanse Towns, art. 10.

TITLE SECOND.

Of the Mate.

I. The mate shall take care of the fitting out of the vessel, and before they put to sea, shall examine whether it be sufficiently provided with ropes, pulleys, sails, and other rigging necessary for the voyage.

II. At the departure he shall see the anchor hoisted; and during the voyage, he shall visit once a day all the tackle high and low; and if he observes any thing amiss, shall acquaint the master.

III. He shall execute in the vessel, and cause to be executed, day and night, the orders of the master.

IV. Arriving at a port he shall cause the cables and anchors to be prepared, and shall have the care and management of the sails and yards, and moorings of the ship.

V. In case of the absence or sickness of the master, the mate shall command in his place.

TITLE THIRD.

Of Seamen.¹⁵

I. The seamen shall be obliged to appear at the days and places appointed, to take aboard the provisions, rig out the ship, and set sail.¹⁶

II. A seaman hired for a voyage must not leave the ship, without a discharge in writing, till the voyage is ended, and the ship moored at the key and unladed.¹⁷

III. If a seaman leaves a master without a discharge in writing before the voyage is begun, he may be taken up and imprisoned wherever he can be found, and compelled to restore what he has received, and serve out the time for which he had engaged himself for nothing; and if he leaves the ship after the voyage is begun, he may be punished corporally.¹⁸

IV. However, if after the arrival and unlading of a ship at the intended port, the master, instead of returning, takes a freight to go elsewhere, the seamen may leave him if they please, except it be otherwise provided by their agreement.

V. After the ship is laded, the seamen shall not go ashore without leave from the master, under pain of five livres for the first fault: and may be punished corporally if they commit a second.¹⁹

VI. We forbid the mariners and seamen to take any bread or victuals, or draw any

¹⁵ Un matelot est un homme de mer qui a acquis une expérience suffisante au fait la manœuvre d'un vaisseau. Valin, Com. tom. 1, p. 509.

¹⁶ Laws of the Hanse Towns, art. 18.

¹⁷ Laws of Wisbuy, art. 63; Laws of the Hanse Towns, art. 24.

¹⁸ Laws of Wisbuy, art. 1; Laws of the Hanse Towns, art. 43.

¹⁹ Laws of Oleron, art. 5; Laws of Wisbuy, art. 17.

drink without the permission of the master or steward, under pain of the loss of one month's wages, and of a greater punishment if the fault deserves it.²⁰

VII. The seamen or other that spoils the drink, destroys the bread, makes the ship leaky, excites a sedition to break the voyage, or strikes the master having arms in his hand, shall be punished with death.²¹

VIII. Any seaman sleeping in his post or upon the watch, shall be put in irons during fifteen days; and any of the company finding one asleep, and not acquainting the master therewith, shall pay five livres.²²

IX. Any mariner abandoning the master, and the defence of the ship in time of battle, shall be punished corporally.

TITLE FOURTH.

Of the Owners of Ships.

I. All our subjects, of any quality or condition whatsoever, may cause ships to be built or bought, fit them out for themselves, freight them to others, and drive a trade at sea by themselves, or by persons interposed; by which gentlemen shall not be reputed to do any act derogatory to their quality, provided they sell nothing by retail.

II. ²³ The owners of ship shall be answerable for the deeds of the master; but shall be discharged, abandoning their ship and freight.

III. However, the owners of armed ships shall not be answerable for their crimes and piracies committed at sea by the crews of their ships, any further than for the sums for which they may have given security, except it appear that they are partakers or accomplices in the crimes.

IV. The owners of ships may dismiss the master, reimbursing him, if he requires it, for his part in the ship, according to the estimation of understanding persons.²⁴

V. In every thing concerning the common interest of the owners, the opinion of the greater number shall prevail; and the number shall be computed according to the shares that every man has in the ship.²⁵

VI. No person may constrain his partner to proceed to the sale of a ship, except the opinions of the owners be equally different about the undertaking of any voyage.²⁶

²⁰ Laws of the Hanse Towns, art. 9.

²¹ Laws of Wisbuy, art. 24; Laws of Oleron, art. 12.

²² Laws of the Hanse Towns, art. 25; Id. art. 37.

²³ The better to oblige owners of ships to be diligent and careful in providing themselves with honest masters, it is by this article declared, that they shall be answerable for the behaviour of the masters they put in their ships, for any sum not exceeding the value of their ships, and of their freight. See Valin, Com. tom. 1, p. 568.

²⁴ Laws of the Hanse Towns, art. 14.

²⁵ See Valin, Com. tom. 1, p. 575.

²⁶ Valin, Com. tom. 1, p. 584. See, also, the case of Willings v. Blight, Case No. 17,765.

TITLE FIFTH.

Of Ships and Vessels.

I. All ships and vessels shall be reputed personalty, and shall not be subject to redemptions,²⁷ nor to pay any duties to the lords of manors.

II. All vessels however, shall be liable for the debts of the seller, until they have made a voyage under the name, and at the risque of the new acquirer, except they have been sold by adjudication.²⁸

III. The sale of a ship in voyage, or under a private contract, shall not in any manner be prejudicial to the creditors of the seller.

IV. All ships shall be guaged immediately after they are perfected, by the viewers or overseers of the trade or mystery of carpenters; who shall give an attestation of the burthen of the ship, which shall be registered in the admiralty office.

V. To discover and regulate the burthen and capacity of a ship, the hold shall be measured at the rate of two and forty foot cube for the sea ton.

VI. The officers of the admiralty shall be obliged under pain of interdiction of their offices, to take every year, in the month of December, an account of all the ships belonging to the inhabitants of their jurisdiction; which shall contain their burthen, age, quality and shape, with the names of the owners; all which they shall send to the secretary of state, who has the management of the marine affairs of that department.²⁹

²⁷ The word which I here render "redemption," is in the original "retrait lignager," and implies a power inherent in an heir to revoke some grant, or redeem something mortgaged by his predecessors; to which sort of redemption ships are declared by this law not to be subject.

²⁸ The design of making ships sold privately, liable for the debts of the last owner, until they have made a voyage at the risk, and under the name of the new acquirer, is only to prevent the sham sales of ships frequently made only to defraud the creditors of the seller; which certainly is a very just and commendable constitution.

²⁹ The injunction in the last article upon the officers of the admiralty, to take a yearly account of the shipping belonging to the places of their residence, and others within the district of their courts, in order to send it to the proper secretary of state, is a very convincing proof of the regular and excellent methods observed by the French court for the improvement of navigation; which if (by the account brought in once a year) they find to decay in any place of the kingdom, diligent enquiry is made into the cause of this fact, and all manner of impediments by which the prosperity of their shipping has been obstructed, are carefully removed. Nor is this the only advantage attending their diligence and exactness in such matters; for, by those yearly lists, the French king knows, within the number of 100 men or less, how many mariners and seamen, foreigners as well as natives, there are within the extent of his dominions; and he likewise knows what number are abroad in long voyages, when they may reasonably be expected back again, and where they are to arrive, and consequently when and where they may be serviceable to him.

MARITIME CONTRACTS.**TITLE FIRST.****Of Charter Parties and Freightage of Ships.**

I. All articles for freightage of ships shall be reduced into writing, and agreed to by the merchants that freight, and the master or owners of the ships freighted.

II. The master shall observe the orders of his owners, when he freights the ship at the place of their residence.³⁰

III. The charter party shall contain the name and burthen of the vessel, the names of the master and freighters, the place and time of the lading and unlading, the freight, the time the vessel is to stay at the respective ports, and the conventions about demurrage; to which the parties may add such other conditions as they please.

IV. The time of the lading and unlading the goods shall be regulated according to the custom of the respective ports, except it be determined by the charter party.

V. If a ship be freighted by the month, and the time of the freight be not regulated by the charter party, it shall only commence from the day that the ship shall sail.

VI. He who after having received a summons in writing to fulfil the contract refuses it, or delays it, shall make good all the loss and damage.

VII. But if before the departure of the ship, there should happen an embargo, occasioned by war, reprisals, or otherwise, with the country whither the ship is bound, the charter party shall be dissolved, without any damages or charges for either party, and the merchant shall pay the charges of lading and unlading his goods: but if the difference be with one another, the charter party shall be valid in all its points.

VIII. If the ports be only shut, and the vessel stopped by force for a time, the charter party shall still be valid, and the master and merchant shall be reciprocally obliged to expect the opening of the ports and the liberty of the ships, without any pretensions for damages on either side.

IX. However the merchant may at his own charge unload his goods during the embargo, or shutting up of the port, upon condition either to load them again, or indemnify the master.

X. The master shall be obliged, during the voyage, to have aboard the charter party, and the other necessary deeds concerning his lading.

XI. The ship, rigging and tackle, and the freight and goods laded, shall be respectively affected by the conventions of the charter party.

TITLE SECOND.**Of Bills of Loading.**

I. All bills of loading for goods put aboard a ship, shall be signed by the master or the clerk of the ship.

II. All bills of loading shall contain the quality, quantity, and mark of the goods, the names of the persons that lade them, and of those to whom they are consigned, the places of departure and unloading, the names of the master and the ship, and the value of the freight.

III. All bills of loading shall be triple, one shall remain in the hands of the lader, another shall be sent to the person to whom the goods are to be consigned, and the third shall be left in the hands of the master or clerk.

IV. The merchants shall be obliged within four and twenty hours after the goods are laded, to present the bills of loading to be signed by the masters, and to give them the acquittances and discharges for the customs of their goods, under pain of paying the damages of the retardment.

V. Factors and others, receiving goods expressed in bills of loading, or charter parties, shall be obliged to give a receipt thereof to the masters upon their demanding it, under pain of all expenses, damages and losses, and those of the retardment as well as others.

VI. In case of any diversity in bills of loading taken for the same goods, that which shall be in the hands of the master shall be authentic, if filled up by the merchant or his factor; and that which is in the hands of the merchant shall be good, if filled up by the captain.

TITLE THIRD.**Of Freight.**

I. The freight of ships shall be regulated by the charter party or bill of lading, whether the ships be freighted in whole or in part, for the voyage, or by the month, expressing the burden by the ton, the quintal, by parts, or any other way.

II. If a vessel be hired, and the freighter does not put her full loading aboard, the master shall not take aboard any other goods without his consent nor without rendering him an account of the freight.

III. A merchant not loading the quantity of goods mentioned by the charter party, shall notwithstanding pay the freight as if he had done it; and if he loads any more, he shall pay freight for them.

IV. A master that declares his vessel to be of greater burden than she is, shall sustain the damages thereby happening to the merchant.

V. It shall not be reputed an error in the declaration of the ship's burden, if the difference does not exceed one fortieth part.

VI. If the vessel be laded by parts, or by the quintal, or by the ton, a merchant being desirous to take out his goods before her departure, may do it at his own charge, paying half freight.

VII. A master may likewise unlade and lay down upon the shore any goods found in his ship, and put on board there without his

³⁰ Laws of the Hanse Towns, art. 58.

knowledge, or take freight at the highest rate that any goods of that quality pay.

VIII. A merchant unloading his goods during a voyage, shall nevertheless pay the whole freight, except he be obliged to unload them by the deed of the master.

IX. If a ship is stopped in her course, or at the port of her unloading, by the deed of the merchant that freights her, or if she, after having been freighted outward and inward, is forced to return empty, the damages of the retardment, and the whole freight shall be, notwithstanding, due to the master.

X. The master shall be likewise answerable for the damages of the freighter, if according to the judgment of intelligent persons, a vessel is stopped in her course, or at a port, by the deed of the master.

XI. If a master is obliged to cause his ship to be refitted during a voyage, the freighter shall be obliged either to wait or pay the whole freight; and if the ship cannot be rigged out, the master shall forthwith hire another; and if none can be found, he shall only be paid in proportion to the part he has performed on the voyage.

XII. However, if the merchant prove that when the ship put to sea she was unfit for sailing, the master shall lose his freight, and pay the other damages and losses.

XIII. The master shall be paid the freight of goods thrown overboard for the common safety, out of the contribution.

XIV. Freight shall likewise be due for goods that the merchant may have been forced to sell for victuals, refitting, and other pressing necessities, an account being kept by him of their value, according as the rest are sold at the place of unloading.

XV. If there happens an interdiction of commerce with any country to which a vessel is bound, and in her course, so that she returns with her loading, there shall only be due to the master the freight for going thither, even though the ship be freighted to go and come.

XVI. If a vessel, in the course of her voyage, be arrested by a supreme power, there shall be no freight due for the time of their detention, if freighted by the month; nor no augmentation, if freighted by the voyage; but the food and wages of the seamen, during the detention, shall be reputed average.

XVII. In case the person mentioned in any bill of loading refuse to accept the goods, the master, by the authority of the judges, may cause some to be sold for the payment of his freight, and deposit the rest in a warehouse.

XVIII. No freight shall be due for goods lost by shipwreck, or taken by pirates or enemies; and in that case, the master shall be obliged to restore what has been advanced to him, except there be some agreement to the contrary.

XIX. If the ship and goods be ransomed, the master shall be paid his freight to the

place where they were taken; and he shall be paid his whole freight if he conduct them to the place agreed to, he contributing towards the ransom.

XX. The contribution for the ransom shall be made according to the current price of the goods at the place of their unloading, deducting the charges, and upon the total of the ship and freight, deducting the victuals made use of, and the money advanced to the seamen; who shall likewise contribute towards the discharge of the freight, in proportion of what shall remain due to them of their wages.

XXI. The master shall likewise be paid the freight of goods saved from shipwreck, he conducting them to the place appointed.

XXII. If he cannot find a ship to carry thither the goods preserved, he shall only be paid his freight in proportion to what he has performed of the voyage.

XXIII. The master shall not detain the goods in his ship for default of the payment of his freight, but at the time of unloading, he may hinder them from being carried away, or cause them to be seized in the hoys or lighters.

XXIV. The master shall be preferred for his freight upon the goods of his lading, as long as they are in the ship, in lighters, or upon the quay; and he shall likewise be preferred wherever the goods may be, within fifteen days after the delivery, provided they are not passed into the possession of a third person.

XXV. Merchants may not oblige masters to take for their freight goods that are fallen in price, or that are spoiled or damaged by their own fault, or by accident.

XXVI. However, if goods contained in casks, such as wine, oil, honey, and other liquors, have leaked so much that the casks are empty, or almost empty, the merchants that laded them, may abandon them to the master for the freight.

XXVII. We forbid all brokers and others to cause, underhand, more freight to be paid for goods than is expressed in the first contract or charter party, under pain of one hundred livres, and a severer punishment if they deserve it.

XXVIII. However, the freighter of a whole ship that has not completed her lading, may take in other goods to make it up, and apply the freight to his own use.

TITLE FOURTH.

Of the Contracts and Wages of Seamen.

I. All agreements between masters and their seamen, shall be reduced into a writing, which shall contain all the conditions, whether they engage themselves by the month, or for the voyage; whether by the profit or freight; if otherwise, the seamen's oath shall be believed.

II. The seamen shall not load any goods

upon their own account, under pretence of portage,³¹ nor otherwise, without paying the freight, except it be mentioned in their agreement.

III. If by the fault of the owners, masters or merchants, a voyage be broke before the departure of the ship, the seamen hired for the voyage shall be paid for the time taken up in rigging and equipping the ship, and have one fourth of their wages; and those engaged by the month, shall be paid in proportion, regard being had to the ordinary length of the voyage: but if the voyage be broke after it is begun, the seamen hired for the voyage shall be paid their whole wages, and those hired by the month what is due to them for the time they have already served, and for that which will be necessary for returning to the place from whence the ship departed; and both shall be paid for their maintenance till they arrive there.

IV. In case of a prohibition of trade, with the place to which the ship is bound, before the voyage begins, there shall be no wages due to the seamen of either sort; who shall only be paid for the time spent in fitting out the ship: and if such prohibition happens during the voyage, they shall only be paid in proportion to the time they have served.

V. If the ship be stopped by a sovereign order before the voyage be begun, there shall be nothing due to the seamen, but their wages for fitting out the ship; but if it is during the course of the voyage, those engaged by the month shall have half wages during the detention of the ship, and those engaged by the voyage shall be paid according to their agreement.

VI. If the voyage be prolonged, the wages of the seamen hired by the voyage shall be augmented proportionably,³² and if they voluntarily unlade in a nearer port than that mentioned in the agreement, their wages notwithstanding shall not be diminished: but if they are hired by the month, they shall be in both cases paid for the time they serve.³³

VII. And as for the seamen and others going by the profit or freight, they shall not pretend any wages for equipping or damages, if the voyage be broke, retarded or prolonged by a superior power, whether before or after the departure of the ship; but if the breaking, retarding or prolonging of the voyage, happens by the fault of the freighters, the seamen shall have share in the costs and damages allowed the master, who, as well as the owners shall pay damages to the seamen, if they be the cause of the hindrance.

VIII. In case the ship be taken, or suffer

shipwreck, and ship and goods be entirely lost, the seamen shall pretend to no wages; but they shall not however be obliged to restore what has been advanced to them.

IX. If some part of the ship be preserved, the seamen shall be paid the wages that are due to them out of the wreck they have preserved; and if there be only goods saved, the seamen, even those that are engaged by the freight, shall be paid their wages by the master, proportionably to the freight he receives; and whatever way they be hired, they shall be over and above paid for the time they are employed in saving the wreck and goods.³⁴

X. If a master dismiss a mariner without a sufficient cause before the voyage is begun, he must pay him one third of his wages; and if after the voyage is begun, he shall pay him his whole wages, together with his charges for returning to the place of his departure; nor shall he state that to the account of his owners.³⁵

XI. If a seaman be wounded in the service of a ship, or fall sick during the voyage, he shall be paid his wages, and treated at the charge of the ship, and if he be wounded in fighting against enemies or pirates, he shall be cured at the charge of ship and cargo.^{36 37}

XII. But if being on shore without leave, he be there wounded, he shall not be dressed at the charge of the ship, nor of the loading; and he may be dismissed, without pretending to any more than the wages that are due to him.³⁸

XIII. The heirs of a seaman hired by the month, and dying in the voyage, shall be paid his wages until the day of his decease.³⁹

XIV. The half of the wages of a seaman hired by the voyage shall be due to his heirs if he dies outward bound, and the whole if he dies in the way home: and if he sailed by the profit or freight, his heirs shall enjoy his full share, if the voyage be begun before his death.⁴⁰

XV. The wages of a seaman killed in defending the ship shall be entirely paid as if he had served all the voyage; provided the ship arrives safe at a good harbour.

XVI. Seamen taken in ships and made slaves, shall pretend nothing against the

³⁴ Laws of Oleron, art. 3; Laws of the Hanse Towns, art. 24.

³⁵ Laws of the Hanse Towns, arts. 41, 42; Laws of Wisbuy, art. 3.

³⁶ Laws of Wisbuy, arts. 18, 19; Laws of the Hanse Towns, arts. 39, 45; Laws of Oleron, arts. 1, 6, 7; Valin, Com. tom. 1, p. 721.

³⁷ "Treated" and "cured" are varied translations of the word "panse" in the original, and should in both places be "cured," which is the true meaning of "panse."

³⁸ Laws of Wisbuy, art. 18; Laws of the Hanse Towns, art. 39.

³⁹ Laws of Oleron, art. 7; Laws of Wisbuy, art. 19; Laws of the Hanse Towns, art. 45.

⁴⁰ Cleirac, p. 34.

³¹ By portage is here meant the privilege generally allowed the seamen in France, to carry a venture for their own account.

³² The first part of this article, has relation only to contracts with mariners for the voyage.

³³ Laws of Oleron, art. 19; Laws of Wisbuy, art. 2.

masters, owners, or merchants for their ransom.

XVII. But if any of them, being sent out for the service of the ship, be taken ashore, or at sea, his ransom shall be paid at the expenses of the ship; and if he was sent out for the service of ship and cargo, his ransom shall be paid by both, if they arrive happily at a good port: however the whole shall not exceed three hundred livres besides his wages.⁴¹

XVIII. The master, immediately after the arrival of the ship, shall take care to regulate the sums appointed for the ransom of captives, and the money shall be deposited in the hands of the principal owner, who shall be obliged forthwith to apply it to that use, under pain of four times the value to be paid by him, for the benefit of the seamen that are in servitude.

XIX. The ship and freight shall be specially liable for the seamen's wages.

XX. The seamen's wages shall not contribute towards any average, except it be for the ransom of the ship.

XXI. What is ordained in this title for the wages and ransom of the seamen, and dressing and treating of the sick, shall take place for the officers and all others belonging to the ship.

TITLE FIFTH.

Of Contracts of Bottomry, etc.⁴²

I. All contracts of bottomry may be made either by a public notary, or under a private signature.

II. Money may be given upon the body and keel of the ship, and upon her rigging and tackle, munitions and provisions, jointly or separately, and upon all, or any part of her loading, for one whole voyage, or a time limited.

III. We forbid all persons to take up, upon their ships or goods on board thereof, more than their real value, under pain of being obliged in case of fraud, to pay the whole sums, notwithstanding the vessel should be lost or taken.

IV. We also forbid, under the like penalty, to take up any money upon the freight for the voyage to be made, or upon the profit expected on the lading, or even upon the seamen's wages; except it be in the presence and with the consent of the master, and under one half of the aforesaid wages.

V. We moreover forbid all persons to advance any money to seamen upon their wages and voyages in that manner, except it be in the presence and with the consent of the master, under pain of confiscations of the sums lent, and a fine of fifty livres.

VI. The masters shall be answerable in their names, for the total of the sums taken up by the seamen with their consent, except

they exceed one half of their wages, and that notwithstanding the loss or taking of the ship.

VII. The ship, her rigging and tackle, munitions and provisions, and even the freight, shall be by privilege affected for the payment of the principal and interest of money given upon the body and keel of the ship, for the necessities of the voyage, and the lading.⁴³

VIII. Such as give money upon bottomry to a master without the consent of the owners, if they live in the place, shall have no security nor privilege upon the ship, any further than the part that the master may have in the ship and freight, though the money was borrowed for rigging the ship, or for buying provisions.⁴⁴

IX. However, the parts of such of the owners as refuse to furnish their proportions for fitting out the vessel, shall be affected for the money lent to the master for the equipment and provisions of the ship.⁴⁵

X. Creditors for money formerly due for such things, shall not come in competition with those that have actually lent for the last voyage.⁴⁶

XI. All contracts of bottomry shall become void by the entire loss of the effects upon which the money was lent, if that happens by casualty, and within the times and places therein expressed.

XII. Nothing shall be reputed a casualty that is occasioned by the defects of the things themselves, or by the fault of the owners, master or merchants, except it be otherwise provided by the contract.

XIII. If the time of the risk be not regulated by the contract, it shall last as to the ship, her rigging, tackle and provisions, from the day she sets sail till she arrives at her intended port, and is moored at the quay; and as to the goods, it shall last from the moment they are laded on board the ship or lighter to be carried thither, till they be unladed and ashore.⁴⁷

XIV. A person loading goods and taking up money upon them on bottomry, shall not be acquitted by the loss of the ship and lading, unless he makes it appear that he had there, upon his own account, effects to the value of the sum so borrowed.

XV. However, if the person that has taken money upon bottomry, makes it appear that he could not load goods to the value of the sum so borrowed, the contract, in case of loss, shall be diminished in proportion to the value of the effects loaded, and shall only subsist for the overplus; of which the borrower shall pay the interest, according to the current price of the place where the contract is made, till the actual

⁴³ Laws of Wisbuy, art. 45.

⁴⁴ Laws of the Hanse Towns, art. 58.

⁴⁵ Laws of the Hanse Towns, arts. 11, 59.

⁴⁶ La Guidon de la Mer, c. 19, arts. 2, 3.

⁴⁷ Cleirac, p. 381.

⁴¹ Valin, Com. tom. 1, p. 749.

⁴² Valin, Com. tom. 2, p. 1.

payment of the principal: and if the ship arrives in safety, there shall be due only the interest, and not the maritime profit of the overplus of the effects put aboard.

XVI. Lenders of money on bottomry, shall contribute towards gross averages, such as redemptions, compositions, ejections, masts and ropes, cut for the common safety of ship and goods; but not for the simple averages, or particular damages that may happen, except there intervene some agreement to the contrary.

XVII. However, in case of shipwreck, the contracts of bottomry shall be reduced to the value of the effects that are saved.

XVIII. If there be a contract of bottomry, and insurance upon the same loading, the lender shall be preferred to the insurers upon the effects preserved from shipwreck, for his capital, and no further.⁴⁸

TITLE SIXTH.

Of Insurances.

I. We allow all our subjects, as well as strangers, to insure, and cause to be insured, within the extent of our dominions, the ships, goods and effects, which shall be transported by sea or by navigable rivers; and we allow the insurers to stipulate a price, for which they will take the peril upon them.

II. The contract called "Policy of Insurance," shall be reduced into writing, and may be done under private signature.

III. The policy shall contain the name and dwelling place of the insured, his quality, whether of owner or factor, the effects upon which insurance is made, the name of the ship and master, that of the place where the goods are loaded, and from whence the ship departs, and that whither the ship is bound, and where the goods are to be unloaded; and also the names of all the places where the ship is to touch, the time that the risk is to begin and end, the sums insured, the premium or cost of the insurance, the submission of the parties to arbitrators in case of contestation; and generally all other conditions which they shall stipulate between them.

IV. Goods loaded in Europe for the ports of the Levant, the coasts of Africa, and other parts of the world, may be insured upon any ship whatsoever, without naming either the master or the ship, provided the name of the person to whom they are consigned be expressed in the policy.

V. If the policy does not regulate the time of the risk, they shall be regulated as are the contracts of bottomry, by the thirteenth article of title fifth.⁴⁹

VI. The premium, or cost of the insurance, shall be entirely paid at the signing of the policy; but if the insurance be made upon goods both out and home, and the vessel having arrived at the intended port do not return,

the insurers shall restore one third of the premium, except there be a stipulation to the contrary.

VII. Insurances may be made upon the body and keel of the ship, empty or laded, before or during the voyage; upon the provisions and upon the goods, jointly or separately laded on board of any ship, armed or unarmed, alone or in company, for the going out or coming home, for a whole voyage, or a time limited.

VIII. If the insurance be made upon the body and keel of the ship, her rigging, tackle, munitions and provisions, or upon any portion thereof, the estimation shall be made in the policy; allowing the insurer, in case of fraud, to oblige the concerned to proceed to a new estimation.

IX. All navigators, passengers, and others, may insure the liberty of their persons; and in that case the policies shall contain the name, country, residence, age and quality of the person that insures himself; the name of the ship, of the port from whence she sails, and that of her last departure; the sum to be paid in case of being taken, as well for the ransom as the charges of returning; to whom the money shall be paid, and under what penalty.

X. We forbid all insurances upon the lives of any person.

XI. However, such as redeem captives may insure the lives of those they redeem, and the price of the redemption; which the insurers shall be obliged to pay, if the person redeemed is taken again, or killed, or drowned in his return, or if he perish by any other means but by a natural death.

XII. Women, may lawfully engage themselves, and alienate their patrimonial estates, for the redemption of their husbands.

XIII. Any person, who, upon the wife's refusal, and by the authority of justice, lends money for the ransom of the husband shall be preferred to the wife upon the husband's estate, except for the restitution of her patrimony.

XIV. Minors may, likewise, with the advice of their relations, contract such obligations for ransoming their fathers from captivity, without any possibility of revocation.

XV. The owners nor masters of ships shall not insure beforehand the freight of their ships; the merchants, the profit they expect by their goods; nor the seamen, their wages.

XVI. We forbid all persons borrowing money upon bottomry to insure it, under pain of the insurance being void, and corporal punishment.

XVII. We likewise forbid, under the same penalty, the lenders upon bottomry to insure the profit of the sums lent.

XVIII. The insured shall still run the hazard of the tenth part of the effects they lade, except there be a positive clause in the policy, declaring that they mean to insure the whole.

XIX. And if the insured be in the ship, or if they be the owners, they shall nevertheless

⁴⁸ See Valin, Com. tom. 2, p. 20.

⁴⁹ See ante, p. 1210.

less run the risk of one tenth, though they declare that they mean to insure the whole.

XX. The insurers may re-insure with others the effects they may have insured, and the insured may likewise cause to be insured the premium of the insurance, and the solvency of the insurers.

XXI. The premiums of the re-insurance may be smaller or greater than those of the insurance.

XXII. We forbid to cause to be insured, or re-insured, any effects beyond their value, by one or several policies, under pain of nullity of the insurance and confiscation of the goods.

XXIII. However, if there happens to be made without fraud, a policy exceeding the value of the effects laded, it shall subsist for the value of the goods: and in case of loss, the insurers shall be bound, every one for the sum by him insured, and likewise to restore the overplus of the premium, retaining only a half per cent.

XXIV. And if there happen to be several policies likewise made without fraud, and the first contains the value of the goods laded, it shall subsist alone, and the other insurers shall not be bound in the insurance, but shall render the premium, retaining only a half per cent.

XXV. In case the first policy does not amount to the value of the effects laded, the insurers of the second shall be answerable for the overplus; and if there be effects laded to the value of the insurance, in case of the loss of some part of them, it shall be paid by the insurers there mentioned at so much per ⁵⁰ livre of the sums they are concerned in.

XXVI. All losses and damages happening at sea by tempest, shipwreck, running aground or aboard of other ships, changing of course of the voyage or course of the ship, ejection, fire, taking, rifling, detention by princes' declarations of war, reprisals, and generally by all other maritime accidents, shall be at the risk of the insurers.

XXVII. However, if the changing of the course, voyage or ship, happens by the order of the insured, without the consent of the insurers, they shall be discharged from the risk; which shall likewise take place in all other losses and damages happening by the fault of the insured; nor shall the insurers be obliged to restore the premium, if the time of their bearing the risk be begun.

XXVIII. Nor shall the insurers be obliged to bear the losses and damages happening to ships and goods by the fault of the master and mariners, except that by the policy they be engaged for the barratry of the master.

XXIX. The wastes, diminutions, and losses, happening by the proper defects of the goods, shall not fall upon the insurers.

XXX. Nor shall they be concerned in the

pilotage, lodemanage, duties of passports, searchings, declarations, anchorage, or in any others imposed upon ships or goods.

XXXI. The goods subject to leakage shall be expressed in the policy; if not, the insurers shall not be answerable for damages befalling them by tempest, except the insurance be made upon returns from foreign countries.

XXXII. If the insurance on goods be made separately by several ships mentioned, and the whole loading be put in one, the insurer shall only run the risk of the sum insured upon the ship in which the goods are loaded, even though all the ships together should perish; and he shall restore the premium of the overplus, retaining only a half per cent.

XXXIII. When the masters and patrons have liberty to touch at several ports, the insurers shall not run the hazard of the effects which shall be ashore, though they be intended for the loading they have insured, and the ship be in the port to take them aboard; except there be an express clause for it in the policy.

XXXIV. If the insurance be made for a limited time, without expressing the voyage, the insurer shall be discharged after the expiration of the time, and the insured may cause the goods to be insured again.

XXXV. But if the voyage be expressed in the policy, the insurer shall run the hazard of the whole voyage; upon condition however, that if it exceeds the limited time, the premium shall be augmented in proportion: nor shall the insurer be obliged to restore any thing, if the voyage be sooner ended.

XXXVI. The insurers shall be discharged from the risk, without losing the premium, if the insured, without their consent, send the ship to a place farther distant than that mentioned in the policy, though in the same course: but the insurance shall have its full effect, if the voyage be only shortened.

XXXVII. If the voyage be entirely broke before the departure of the ship, though by the fault of the insured, the insurance shall remain null; and the insurers shall restore the premium, all but a half per cent.

XXXVIII. We declare void all insurances made after the loss or arrival of the effects insured, if the insured knew, or could know of the loss, or the insurer of the arrival, before the signing of the policy.

XXXIX. The insured shall be presumed to have known of the loss, and the insurer of the arrival of the effects insured, if it be found that the news might have been brought from the place of the loss or arrival of the ship, to that of the signing of the policy, after either of these happened, and before the signing; allowing a league and a half per hour, without the prejudice of such other proofs as may be brought.

XL. However, if the insurance be made upon good or bad news, it shall subsist; except it be made appear, by other proofs than that of the league and half per hour, that the

⁵⁰ The French, in making computations, reckon so much per livre, as we do per cent.

insured knew of the loss, or the insurer of the arrival of the ship, before the signing of the insurance.

XXI. In case of proof against the insured, he shall be obliged to restore to the insurer what he has received, and pay him double the premium; and if there be proof against the insurer, he shall be likewise condemned to the restitution of the premium, and to pay the double to the insured.

XLII. When the insured receives advice of the loss of the ships or goods insured, of the detention thereof by any prince, and other accidents in which the insurers are concerned; he shall be obliged to cause it forthwith to be signified unto them, or to the person that has signed the policy for them, with protestation to make his abandonment in time of place.

XLIII. However, the insured, instead of protestation, may at the same time make his abandonment, and summons the insurers to pay the sums insured, within the time specified in the policy.

XLIV. If the time of payment be not specified in the policy, the insurers shall be obliged to pay the insurance within three months after the signification.

XLV. In case of shipwreck, or running aground, the insured may endeavour to recover the shipwrecked effects, without prejudice of the abandonment, which he may make in time and place; and of the reimbursement of his charges, as to which his affirmation shall be believed, to the value of the effects preserved.

XLVI. An abandonment shall not be made but in case of being taken, wrecked, run aground, stopped by a prince, or the entire loss of the goods insured; and all other damages shall only be reputed average, and shall be regulated between the insurers and insured, in proportion to their concerns.

XLVII. No person can make an abandonment of one part, retaining the other; nor any demand for average, except it exceed one per cent.

XLVIII. Abandonments, and all demands for the execution of a policy, shall be made to the insurers within six weeks after the news of losses happened upon the coasts of the same province where the insurance is made; and for those that happen in another province of our kingdom, within three months; upon the coasts of England, Flanders and Holland, four months; upon those of Spain, Italy, Portugal, Barbary, Muscovy and Norway, one year; and upon the coasts of America, Brazil, Guinea, and other remote countries, two years; and that time being expired, the insurers shall not be heard in their demands.

XLIX. In case of a ship's being detained by any prince, the abandonment shall not be made until six months afterwards, if the ship be stopped in Europe or Barbary; and a year in remoter countries; reckoning from the day that that was signified to the insurers: and in that case, the exception against the insurers

mentioned in the precedent article, shall only commence from the day that they may have begun to act therein.

L. However, if the goods so stopped be perishable, the abandonment may be made after six weeks, if they be stopped in Europe or Barbary; and after three months, if in a remoter country; counting from the day that the stoppage was signified to the insurers.

LI. The insured shall be obliged during these delays to use their utmost endeavours to get the arrest taken off the effects that are detained; and the insurers may do it themselves, if they please.

LII. If a vessel be detained by our order, in any port of our kingdom, before the voyage be begun; the insured may not, because of that arrest, abandon his effects to the insurer.

LIII. The insured shall be obliged, in making his abandonment, to declare all the insurances that he has caused to be made, and the money taken on bottomry upon the effects insured; under pain of being deprived of the benefit of the insurances.

LIV. If the insured conceals any insurances or contracts of bottomry, which, with these he declares, exceed the value of the effects insured, he shall be deprived of the benefit of the insurances, and obliged to pay the sums borrowed, notwithstanding the loss or taking of the vessel.

LV. And if he sues for payment of the sums insured beyond the value of his effects, he shall further be punished exemplarily.

LVI. The insurers of the loading shall not be obliged to pay the sums by them insured, beyond the value of the effects of which the insured proves the loading and the loss.

LVII. The evidences⁵¹ of the loading, and loss of the effects insured, shall be signified to the insurers immediately after the abandonment, and before they be sued for payment of the sums insured.

LVIII. However if the insured receives no news of his ship, he may, after the expiration of one year (reckoning from the day of departure) for the ordinary voyages, and after two years for long voyages, make his abandonment to the insurers; and demand payment, without any necessity of an attestation for certifying the loss.

LIX. Voyages from France into Muscovy, Greenland, Canada, Newfoundland, and other coasts and islands of America, to the Green Cape and coasts of Guinea, and all other places beyond the tropic, shall be reputed long voyages.

LX. After the abandonment is declared, the effects insured shall belong to the insurer; who must not, under pretence of the returning of the vessel, delay to pay the sums insured.

LXI. The insurer may bring what proofs he can against the validity of the attesta-

⁵¹ By those are meant bills of loading, and other necessary certificates, papers and writings.

tions; but shall nevertheless be condemned by provisions to pay the sums insured; security being given him by those to whom he pays them.

LXII. A master causing goods loaded on board his own ship for his own account to be insured, shall be obliged, in case of the loss thereof, to prove the buying of them, and to produce a bill of loading signed by the clerk and the pilot.

LXIII. All mariners and others, who shall bring goods from foreign countries upon which they have caused insurance to be made in France, shall be obliged to leave a bill of lading in the hands of the French consul or his chancellor, if there be any in the place where the goods are loaded; and if otherwise, in the hands of some eminent merchant of the French nation.

LXIV. The value of the goods shall be proved by books or invoices; if otherwise, the estimation thereof shall be made according to the current price at the place and time that they were loaded: included all duties and charges in getting them abroad; except the value be expressed in the policy.

LXV. If insurance be made upon returns from a country where traders only carry on by barter, the returns shall be made according to the value of the goods given in exchange for them, including the charges of their transportation.

LXVI. In case of capture the insured may redeem their effects without the order of the insurers, if they cannot give them advice thereof; but they must afterwards inform them by writing of the composition they have made.

LXVII. The insurers may take the composition for their benefit, in proportion to their concerns; and in that case they shall be obliged forthwith to make their declaration, to contribute actually towards the payment of the ransom, and to run the hazard of the return; or otherwise to pay the sums by them insured, without having any pretensions upon the ransomed effects.

LXVIII. We forbid all makers of policies, clerks of the chambers of insurance, notaries, brokers and others, to cause to be signed any policies where any blank is left, under pain of all damages and charges; and likewise to draw up any in which they themselves are concerned directly or indirectly by themselves, or by persons interposed; or to take any cession of right from the insured, under pain of five hundred livres for the first time, and deprivation of their employments in case of a relapse; which penalties shall not be in any manner moderated.

LXIX. We likewise enjoin them under the like penalties, to have a register quoted and flourished on every leaf by the lieutenant of the admiralty, and therein to record the policies they draw up.

LXX. When the policy contains a submission to arbitration, and one of the parties desire to go before the arbitrators before

any contest happens, the other party shall be obliged to consent; or if otherwise, the judge shall name for the refuser.

LXXI. Within eight days after the nomination of the arbitrators, the parties shall deliver the deeds and writing into their hands; and within the eight days following, they shall pronounce sentence thereupon.

LXXII. The decisions of arbitrators shall be confirmed in the court of admiralty, within the jurisdiction of which they are pronounced: and we forbid the judge, under that pretence, to take any knowledge of the cause, under pain of nullity, and all the charges, costs and damages of the parties.

LXXIII. Appeals from decisions by arbitrators' sentences and confirmations, shall be carried before our courts of parliament, and shall not be received until the penalty expressed in the clause of submission be paid.

LXXIV. The sentences of arbitrators may be executed, notwithstanding the appeals; security being given before the judges who confirm them.

TITLE SEVENTH.

Of Averages.⁵²

I. All extraordinary charges for the ships and their lading jointly or separately, and all damages which shall befall them from the time of their loading and departure, till their arrival and unloading, shall be reputed average.

II. The extraordinary charges for the ship alone, or for the goods alone, and the damage befalling either in particular, shall be simple and particular averages, and the extraordinary charges paid, and damages suffered for the common good and safety of ship and goods, shall be gross and common averages.

III. The simple averages shall be borne and paid by the owner of the thing that suffers the damages, or occasions the charge; but the gross or common averages shall fall upon the ship and goods at so much per livre, in proportion to their value.

IV. The loss of cables, anchors, sails, masts, and ropes, occasioned by tempest or any maritime accident, and damage, happening to the ship by the fault of the master or company, by neglecting to shut close the hatches, moor the ship, providing good tackle and ropes, or otherwise are simple averages, and shall be borne by the master, ship and freight.⁵³

V. Damages happening to goods by their own defects, tempest, being taken, shipwrecked, or run aground; the charges paid for preserving them, and the duties, impositions, and customs, are likewise simple averages, at the cost of their owners.

VI. Things given by composition to pirates, for ransom of the ship and loading; those that are cast into the sea, masts or cables broke or cut, anchors and other effects aban-

⁵² Valin, Com. tom. 2, p. 158.

⁵³ Laws of Wisbuy, art. 12.

done for the common safety, damage done to goods remaining in the ship by throwing over others; the dressing and treating seamen wounded in the defence of the ship, and the charges of lightening to enter into a port or river, or to get a ship afloat, shall be gross or common averages.

VII. The maintenance and hire of the seamen of a ship detained by a sovereign prince's order, shall likewise be reputed gross averages, if the ship be hired by the month; but if by the voyage, they shall be borne by the ship only, as simple averages.

VIII. The lodemanage, towage, and pilotage for entering into, or going out of a river are petty averages, one third to be paid by the ship, and the other two by the goods.⁵⁴

IX. The dues for the passport, search, declaration, anchorage, buoys, and sea marks, shall not be reputed averages, but shall be paid by the master.

X. In case of ships running aboard each other, the damage shall be equally sustained by those that have suffered and done it, whether during the course, in a road, or in a harbour.⁵⁵

XI. But if the damage be occasioned by either of the masters, it shall be repaired by him.⁵⁶

TITLE EIGHTH.

Of Ejections and Contributions.

I. If by tempest, or being chased by enemies or pirates, the master believes himself obliged to throw overboard part of his lading, to cut or force his masts, or leave his anchors; he must take the advice of the merchants, and principal men of the ship's company.⁵⁷

II. If they differ in their opinions, that of the master and ship's company shall prevail.

III. The utensils of the ship, and other things that are least necessary, heaviest, and of least value, shall be thrown overboard first, and afterwards the goods between decks: however, all must be done by the order of the captain, with the advice of the ship's company.

IV. The clerk, or such other person as performs his function, shall insert the deliberation in his book, as soon as possible; and shall cause it to be signed by those that voted, or otherwise shall mention the reason why they did not sign; and shall take as exact an account as he can of the goods thrown overboard or damaged.

V. At the first port where the ship touches, the master shall declare before the judge of the admiralty, if any be; and if none, before the ordinary judge, the reason of the ejection, or the cutting or forcing of his masts, or leaving of his anchors. and if it is in a

foreign country he arrives, he shall make that declaration before the French consul.

VI. The master shall take care to make the account of the losses and damages, at the place where the ship is unloaded; and the goods cast away, and those that are preserved, shall be esteemed according to the current price thereof, at the said place.⁵⁸

VII. The reparation for the payment of losses and damages, shall be made upon the goods lost and preserved, and upon the half of the ship and freight, at so much per livre, according to their value.⁵⁹

VIII. The better to judge of the quality of effects thrown overboard, the bills of loading and invoices, if there be any, shall be produced.

IX. If the quality of goods be misrepresented by bills of loading, and they be found to be of greater value than they were said to be by the merchant that laded them, they shall contribute, if saved, in proportion to their real value; but if lost, shall only be paid according to the bills of loading.

X. And if on the other hand, the goods are found to be of a meaner quality, and be preserved; they shall notwithstanding contribute according to the declaration: and if they be cast away or damaged, they shall only be paid according to their value.

XI. The munitions and provisions, and seamen's clothes and wages, shall not contribute towards the ejection; but such things as are cast away shall be paid by contribution, out of the other effects.

XII. Effects for which there is no bill of loading, shall not be paid, though thrown overboard; but if they are saved, they shall nevertheless contribute.⁶⁰

XIII. There shall no contribution be demanded for payments of such effects as were upon the deck, if they be thrown overboard, or damaged by the ejection; allowing the owner his recourse against the master: however, if they are preserved they shall contribute.

XIV. Nor shall any contribution be made, for damage befallen the ship, except it be done of purpose to facilitate the ejection.

XV. If the ejection does not save the ship, there shall be no contribution; and the goods that are saved from shipwreck, shall not be in any measure liable to pay the loss or damage of those that have been thrown away or spoiled.

XVI. But if the ship being once preserved by the ejection, continuing her course, comes afterwards to be lost, the effects that are preserved, shall contribute towards the ejection, according to their value, in the condi-

⁵⁴ Laws of Wisbuy, arts. 44, 56, 59, 60.

⁵⁵ Laws of Oleron, art. 14; Laws of Wisbuy, arts. 26, 50, 67, 70.

⁵⁶ Laws of Wisbuy, arts. 28, 51; Laws of Oleron, art. 15; Valin, Com. tom. 1, p. 188.

⁵⁷ Laws of Oleron, arts. 8, 9; Laws of Wisbuy, arts. 20, 21, 38.

⁵⁸ Laws of Oleron, art. 8; Laws of Wisbuy, art. 39.

⁵⁹ By the eighth article of the Laws of Oleron, the master may contribute for his ship or for his freight, as he pleases.

⁶⁰ Laws of Oleron, art. 8; Laws of Wisbuy, art. 43.

tion they shall be in, charges being first deducted.

XVII. The effects cast away shall not contribute in any case, towards the payment of damages, happening after the ejection, to the goods that are preserved; nor the goods to the payment of the ship, if lost or broken.

XVIII. However, if the ship be opened by the determination of the chief men of the company, and of the merchant, if any be, to take out the goods; they shall in that case contribute for the reparation of the damage done to the ship, to take them out.

XIX. In case of the loss of goods put aboard of any bark for lightening of a ship entering into any river, reparation shall be made by the whole ship and loading.

XX. But if the vessel perish, with the rest

of its loading, no reparation shall be made by goods put out into barges, though they arrive safe at their port.

XXI. If the owners of any goods that ought to contribute, refuse to pay their proportion, the master may, for the security of the contribution, retain, or by the authority of justice, may sell goods, to the value of their said proportions.⁶¹

XXII. If after the reparation, the effects thrown overboard be recovered by the owners, they shall be obliged to restore to the master, and the others concerned, what they have received of the contribution, deducting for the damage caused to their goods by the ejection, and for the charges of recovering them.

⁶¹ Laws of Oleron, art. 9.