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In the Queen's Bench.

APPEAL SIDE.

BENJAMIN GRANT,

(Plaintiff in the Court below.)

APPELLANT.

AND

THE AETNA INSURANCE COMPANY,

(Defendants in the Court below.)

RESPONDENTS.

CASE OF THE RESPONDENTS.

This was an action for the recovery of \$4000 insured by a Fire Policy, dated 30th July 1858, on the steamer Malakoff. The insurance was distributed as follows:—\$2400 on the hull and cabins; \$1200 on the engines and boilers; \$400 on the tackle and furniture. The vessel was further insured in the "Home" Insurance Company for the same amount and the same manner as with the defendants, and in the "Equitable" Insurance Company, on the hull and cabin, \$2400; on the engine alone, \$1600. The fire took place on the night of the 25th of June 1859. The vessel was consumed with the exception of the engines and boilers and a portion of her hull. As the allegations of the declaration are particularly adverted to in the Remarks of the honorable Judge who rendered the judgment appealed from, which are given at length in the Appendix, it is unnecessary to repeat them here.

The Defendants pleaded (besides a *défense en droit*) seven distinct pleas.

1. That it was an express condition of the Policy that in case of difference touching any loss, such difference might and should be submitted to the judgment of arbitrators, indifferently chosen, whose award in writing should be binding; that differences had in fact arisen touching the loss in question in this cause, which the Defendants had been ready and willing, and then offered to submit to arbitration, but the Plaintiff had refused to do so: That the condition for submission to arbitration was a condition precedent and not having been complied with by Plaintiff, he had not at present any right of action. The conclusion of this plea is for the dismissal of the action unconditionally.

2. The second plea is the same as the first, but the conclusion is that the Plaintiff do submit the differences in question to arbitration and that in case of neglect or refusal so to do, and to name arbitrators in that behalf, the action be dismissed.

3. A clause of warranty on the face of the Policy by which it is stipulated as an essential condition that the "Malakoff" was to navigate from Hamilton to Quebec. That the boat did not so navigate, nor was it intended by Plaintiff that she should, he having not done what was necessary to fit her to navigate. That Plaintiff obtained the insurance fraudulently, representing, prior to obtaining it, that the vessel was to navigate as aforesaid, while in fact he intended to leave and did leave her in Tate's dock, where she then was and where she was exposed to greater risk from fire than if she had been navigating under the laws in force respecting steamboat inspection, and where she was burned.