

accident to the ship. The captain afterwards came to Montreal, and made an additional declaration before notary, in which it was alleged that after loading at Cow Bay they found that the vessel was sinking, and they put into Sydney and had the vessel repaired. This protest, containing a statement that the vessel went on a rock at Bersimis, was adopted and produced by the owner of the vessel himself, the present appellant. The only question was where was Bersimis? Was it after the risk attached or not? Of course, if it was after the risk had attached, the insured could recover. But if Bersimis was before they came to Mingan, then the damage was suffered before the risk attached, and the vessel being then unseaworthy, the insured could not recover. Now it is well known that Bersimis is a place on the north shore, before you come to Mingan. It was therefore for the owner, appellant, to show that the vessel was seaworthy when she left Mingan; but instead of doing that, he had established that damage was suffered before she touched at Mingan. Even without the protest of the captain and its adoption by plaintiff there was enough to confirm the judgment. But taking also into account the protest, there could be no doubt that the judgment was correct, and must be confirmed; but not on the points stated in the judgment below, viz., first that the preliminary proof was not furnished to the company; and, secondly, that the vessel had become unseaworthy in consequence of imprudence in making changes at Sydney. The majority of the Court put the judgment upon the ground that the vessel was not seaworthy when she left Mingan, and therefore the policy did not attach.

The judgment is as follows:—

"The Court, etc.

"Considering that the schooner "Providence," mentioned in the policy of insurance on which this action is brought, was not seaworthy when she left Mingan, the place of departure for the voyage, the freight of which was insured by the said policy;

"And considering that owing to the unseaworthiness of the said schooner at the time she left the said port of Mingan, the respondents have incurred no liability on the said policy for the loss of freight claimed by the said appellant;

"And considering that for the above reasons, there is no error in the judgment rendered by

the Superior Court sitting at Montreal, on the 4th of May, 1878;

"This Court doth confirm the said judgment," &c. Ramsay and Tessier, JJ., dissenting.

Judgment confirmed.

*Beique & Choquet* for appellant.

*S. Bethune, Q. C.*, counsel.

*E. Carter, Q. C.*, for respondent.

#### CIRCUIT COURT.

MONTREAL, March 27, 1880.

PREVOST V. JACKSON.

*Preliminary Pleas—Waiver.*

The defendant pleaded a declinatory exception, an exception *à la forme*, a special answer, and a general denegation.

Plaintiff moved to dismiss the exceptions, urging that the preliminary pleas had been waived by filing pleas to the merits.

JETTE, J., held that filing pleas to the merits is not a waiver of the exceptions where, as in this case, there is a special reservation by defendant of his preliminary pleas. Motion rejected.

*Duhamel* for plaintiff.

*Lambe* for defendant.

#### CIRCUIT COURT.

MONTREAL, April 12, 1880.

BACHLAW V. COOPER et vir.

*Liability of wife—Bread delivered at the common domicile for the use of the family.*

The plaintiff sued for the price of bread supplied to defendant, *séparée de biens*. It was admitted that the bread was "delivered to the female defendant at her domicile, to wit, the joint domicile of the defendants;" that the price was reasonable; that the bread was consumed by the defendants and their children; that the male defendant was insolvent and unable to provide his wife and children with the necessaries of life.

*W. S. Walker*, for defendant, cited *Hudon & Marceau*, 1 Legal News, p. 603, as governing the case. The bread was charged to the husband, who had been sued for the price in a previous action.

CARON, J., followed the decision of the Court of Appeal in the case cited by defendant, and dismissed the action on the ground that credit

*J. & W. Bates* for plaintiff.

*W. S. Walker* for defendant.