

Fell Court.]

[Jan. 15.

MCLEOD v. THE INSURANCE CO. OF NORTH AMERICA.

Marine insurance—Policy on hull and freight—Acceptance of abandonment—Admission of right to recover—Duty of company undertaking to repair—Owner prejudiced by—Right of owner to inspect work—"Boston clause"—Construction—Evidence—Matters peculiarly for jury—Authority of master and consignee superseded by arrival of special agent—Proofs of loss—Right of court to supply finding—Substantial wrong or miscarriage must be shown—O. 37, R. 6.

The brigantine "Hattie Louise," owned by plaintiff and insured by the defendant companies under policies on the hull and freight, left Trinidad for Vineyard Haven with a cargo of molasses. Shortly after leaving port she encountered heavy weather, and put into the port of St. Thomas, W. I., in a leaky condition.

A survey was called which resulted in the cargo being ordered to be discharged and stored, and the vessel placed upon the slip for repairs, but before anything was done under the surveyors' report, J. B., an agent of the defendant companies, and W. H. B., the plaintiff's agent, arrived at St. Thomas by the same vessel, and several interviews took place with a view to determining what course should be pursued. This resulted in a disagreement, the plaintiff's agent insisting that the cargo should be trans-shipped, and the vessel taken to a northern port, after making temporary repairs, while the agent for the insurers insisted upon the vessel being permanently repaired at St. Thomas, and carrying her own cargo forward. Notice of abandonment was given on December 28th by letter addressed to the defendant companies. In consequence of the failure on the part of the agents to come to an agreement, the plaintiff's agent withdrew from the project of repairing the vessel, and the work of effecting repairs was proceeded with by the defendant's agent. After the vessel was taken off the slip and the cargo reloaded, it was found that the vessel was still leaking badly, and was unseaworthy, and that it would be necessary to again discharge the cargo. At this time the disbursement account had run up to \$4,014.48, and the vessel, which was valued in the first instance at \$6,000, had not been re-metaled or re-classed. An attempt was made to raise money on bottomry, but failed on account of the leaky condition of the vessel, and as the consignees refused to allow the cargo to be discharged a second time, until the claims were paid, she was finally sold under process to recover the claims. The policies contained what is known as the "Boston clause," under which it is stipulated that "the acts of the assured or insurers in recovering, saving, and preserving the property insured, in case of disaster, shall not be considered a waiver or acceptance of the abandonment." The jury found among other things that there was an acceptance of the abandonment.

Held, 1. The underwriters having intervened for the purpose of making permanent repairs the repairs must be thorough and made within a reasonable time; otherwise they must be held to have accepted the abandonment.