

going there for orders never entered the harbour, and that the insured vessel was within the port according to a Royal Surveyor's chart furnished to navigators.

Held, affirming the decision of the Supreme Court of New Brunswick (33 N. B. Rep. 105), that the words "at and from Sydney" meant at and from the first arrival of the ship; that she was at Sydney within the terms of the policy; and that the policy had attached when she attempted to put about for St. John.

Appeal dismissed with costs.

Currey, Q.C., for the appellant.

Pugsley, Q.C., for the respondents.

18 Feb., 1896.

New Brunswick.]

MOWAT V. THE BOSTON MARINE INSURANCE CO.

Marine insurance—Goods shipped and insured in bulk—Loss of portion—Total or partial loss—Contract of insurance—Construction.

M. shipped on a schooner a cargo of railway ties for a voyage from Gaspé to Boston, and a policy of insurance on the cargo provided that "the insurers shall not be liable for any claim for damage on.....lumber.....but liable for a total loss of a part if amounting to five per cent on the whole aggregate value of such articles." A certificate given by the agents of the insurers when the insurance was effected had on the margin the following memorandum in red ink: "Free from partial loss unless caused by stranding, sinking, burning, or collision with another vessel and amounting to ten per cent." On the voyage a part of the cargo was swept off the vessel during a storm, the value of which M. claimed under the policy.

Held, reversing the decision of the Supreme Court of New Brunswick (33 N. B. Rep. 109), Taschereau, J., dissenting, that M. was entitled to recover; that though by the law of insurance the loss would only have been partial, the insurers, by the policy, had agreed to treat it as a total loss; and that the memorandum on the certificate did not alter the terms of the policy, the words "free from partial loss" referring not to a partial loss in the abstract, applicable to a policy in the ordinary form, but to such a loss according to the contract embodied in the policy.