

berately adopted the captain's version as his own so as to amount to confession, he would be bound by it; but a parrot-like repetition of the captain's narrative has not the characteristics of an *aveu*, and no one reading this protest can suppose the assured has any personal knowledge of what he is speaking of. His protest amounts to this, the captain says so, and no more. The captain does say it, but it does not follow it was true. In addition to this the Bersimis occurrence is an after-thought. The plea, special as to the kind of unseaworthiness complained of, is silent as to this accident. The defendants say "your vessel was rotten." It is now suggested that she was damaged by running on a rock. It is, moreover, a clumsily made argument. We heard nothing of all this at the bar. If then, the schooner were sea-worthy on leaving Mingan, the risk began, and to escape from liability for the loss the defendants must show either gross negligence or direct fault on the part of the assured, to relieve the insurer. In England it has been a question whether when unseaworthiness supervenes, the owners are bound to repair, if it be possible; and the opinion of the judges seems to have been that in order to free the insurer, the conduct of the owners must amount to gross negligence, so as to constitute fraud or fault. Now, can it be said that there was such negligence on the part of Leduc? It is proved that the vessel was twice overhauled, and the last time so repaired as to be pronounced perfectly seaworthy, at a cost of \$1,000. It is true, within a day and a half the vessel again sprung a leak, and was abandoned by the crew and lost. If the voyage had begun at Cow Bay, and if there had been no evidence of tempestuous weather, we might have presumed fairly enough that she was unseaworthy at the commencement of the voyage. But the positive proof of the storm that prevailed for days, rebuts even this presumption.

We have, therefore, no proof of unseaworthiness at the commencement of the voyage, no evidence of negligence when the unseaworthiness supervened, and the presumption that she was unseaworthy on leaving Sydney is fully rebutted, even if it were ground, in absence of fault on the part of the insured, to relieve the insurer.

Again, I think there is no evidence to show that the schooner was improperly loaded.

There remains, then, only the question of the amount of loss, and first, were these two insurances or one? Secondly, is the loss of freight proved? With regard to the first question, I think that there was not a double insurance, but an insurance on one voyage, with a mere partition as to the risk. Therefore, as the voyage had begun, the risk attached, if there was anything to insure; but it does not appear there was any positive contract, or any specific cargo, on which the insurer could properly rely for the second portion of the voyage. This point could have been made perfectly clear by the appellant, if the fact he now contends for were true. I think, therefore, that he should only recover for the freight from Cow Bay to Recollet, that is for \$500 and costs.

Sir A. A. DORION, C. J., said the majority of the Court were of opinion that it was proved that the vessel was unseaworthy when she left Mingan. If she had been seaworthy then, it would not matter at what point she had become unseaworthy, the guarantee of seaworthiness applying to the place where the voyage commenced, that is at Mingan. It was a rule that a vessel starting on a round voyage must be in such a state of seaworthiness that she does not require any repairs, unless the repairs be necessitated by storms or inevitable accident. If a vessel be in such a state as to require repairs soon after commencing the voyage, the *onus* is on the insured to show that she was seaworthy when she started, and the insured cannot recover if there be no evidence of damage after the voyage commenced. The vessel in this case started from Mingan; there was no proof that she met with any storm between Mingan and Cow Bay. So her sinking condition after leaving Cow Bay raised the presumption that she was unseaworthy when she left Mingan. There was no storm between Mingan and Cow Bay, and yet as soon as she loaded at Cow Bay she began to sink. The *onus* clearly was on the insured to establish that she was seaworthy when she left Mingan, but he had not proved that. In addition, there was the statement of the captain of the vessel, who was now dead. The captain, after going back to the Magdalen Islands, made a protest as to the reason why he abandoned the ship, and this was signed by him, and by the mate and one of the seamen. The protest did not speak of any