

effected in the district of H. and vicinity on condition that plaintiffs would give their best services as might be desired from time to time, etc. Plaintiffs assisted defendant to obtain a contract with the city of H. for the purchase of one of their engines, to be constructed according to specifications attached, provided the engine when completed should undergo certain tests to the satisfaction of persons to be appointed by the city for that purpose.

The engine when completed failed to undergo the stipulated tests and was not accepted.

*Held*, that plaintiffs, notwithstanding, were entitled to their commission.

*J. J. Ritchie*, K.C., and *Tighe*, for appellant. *Allison*, for respondents.

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Full Court.]

[Dec. 14, 1907.

RICHARD SS. CO. v. CHINA MUTUAL INS. CO.

*Marine insurance—Prohibited waters—Breach of warranty.*

A policy of insurance issued by the defendant company on the plaintiff steamer "Richard" covered the steamer from July 6th, 1905, to July 6th, 1906. By a clause in the policy, the steamer was prohibited from using certain waters including Cape Breton, between December 1st and May 1st, but by a clause written in on the face of the policy, permission was given to use Cape Breton ports until January 1st, 1906. The steamer left Halifax in ballast on 31st December, 1905, for Port Hastings, in the Island of Cape Breton, and arrived there January 1, 1906. She took in a cargo of coal on January 2nd, and left for Yarmouth on the 3rd, having been prevented by the condition of the weather from leaving sooner.

*Held*, affirming the judgment of the trial judge, that the use of the Cape Breton port after January 1st, was a breach of a plain term in the policy and a breach of warranty that avoided the policy.

*Burchell* for appellant. *MacIlreith*, for respondent.