

unearthing some vague conspiracy which is hinted at, for the presence or absence of this element will not affect the legal situation as it is now made manifest.

It remains but to dispose of the costs incurred thus far, which should be paid by the petitioner, and as to the rest of the proceedings, and of the undisposed of conspiracy, to give no costs, while the whole petition is dismissed.

MACMAHON, J., concurred.

Province of Nova Scotia.

SUPREME COURT.

Full Court]

[Feb. 4.

MCLEOD v. THE INSURANCE CO. OF NORTH AMERICA.

Marine insurance—Policies on hull and freight—Cost of repairs—Constructive total loss—Notice of abandonment—Acts working acceptance—Estoppel—Authority of master—Revoked by arrival of special agent—Misdirection and mistake of trial judge—Substantial wrong or miscarriage—O. 37 r. 6—Rejection of evidence—Special Jury—Opinion deferred to—Sue and labour clause.

Plaintiff's vessel while on a voyage from Trinidad to Vineyard Haven encountered heavy weather and put into St. Thomas, W.I., in a damaged condition. Notice of abandonment was given to the insurers on hull and freight all of whom replied declining to accept. By direction of the agent for the insurers the cargo was taken out and stored and the vessel put upon the slip for the purpose of being repaired and carrying the cargo forward to its destination. After repairs were made the vessel was taken off the slip, and a portion of the cargo reloaded, when it was discovered that the vessel was leaking and that it would be necessary to again remove the cargo and place the vessel on the slip for further repairs. The cost of the repairs up to this time, without including work which remained to be done and could not be done at St. Thomas, was upwards of \$4,000, while the vessel was valued at only \$6,000. The parties who had made the repairs, in order to preserve their lien, refused to allow the cargo to be taken out a second time, and, in default of payment, proceedings were taken against the ship and cargo under which they were finally sold.

The jury found in answer to questions submitted that the vessel was repaired by the underwriters; that the repairs were not sufficient; and that the vessel was sold under the lien for such repairs. Also that the agent of the insurers, by his acts, prevented plaintiff from dealing with the vessel in respect to repairs as he otherwise would have done. Also that each of the