Law Report.

AN IMPORTANT MARINE CASE.—We have already given the substance of the judgment in the case of the Quebec Marine Insurance Co. against the Commercial Bank of Canada; it was heard on 20th of April last, in the Council Chambers, Whitehall, London, before Lord Penzance, Sir William Erle, and Lord Justice Gifford, members of the Judicial Committee of the Privy Council, Lord Penzance delivered judgment as follows:—

This is an Appeal from the Court of Queen's Bench in Canada, and the question to be determined is whether or not the appellants, who are the underwriters upon a policy of insurance, are, in the events that have happened, liable for the loss of the vessel insured by that policy. The policy was a policy effected upon a printed form, which was intended, as appears by many of its details, to have formed a policy for river and what might be called inland navigation; but the risk and duration of the policy, as expressed upon the face of it, were at and from Montreal to Halifax in Nova Scotia, and it therefore appears to their Lordships to be practically a sea policy as well as a river policy. The vessel was warranted to sail on or before the 21st of November, 1864, and within the period mentioned in the policy that vessel, *The West*, left Montreal and proceeded down the river towards the sea. In due time she arrived at Quebec, and from Quebec she pursued her voyage, and, very shortly after she found herself in salt water, the boiler of the vessel, which had at the time of her starting on her voyage a defect in it, became unmanageable. The defect which originally existed was increased, probably by the increased pressure arising from the vessel being in salt water, but from whatever cause the fact is undoubted, that the boiler, owing to the original defect, became then unmanageable. It would not work perfectly, and the vessel was obliged to put into a neighbouring place to have the defect remedied before she could proceed on her voyage. The defect was remedied, but a considerable delay occurred before the voyage was resumed. The vessel was retarded partly by the state of the tides, and partly by the time necessarily consumed in repairing the existing defect; but eventually she sailed again; she met with bad weather and was lost. The question is, whether the underwriters in these circumstances are responsible for the loss that has occurred.

The underwriters defend themselves upon the ground that the vessel was not sea-worthy for her voyage when she sailed, and they point to this defect in the boiler which undoubtedly asserted and established itself as a cause of unseaworthiness as soon as the vessel was in salt water. This defence the underwriters undoubtedly did put forward in very plain language, as it seems to their plea or *defens au fouds en droit*, and, it may be remarked in passing, that although it has been argued that the present appellants did not intend to rely upon that defence, yet that does not come to have been questioned in either of the Courts in Canada, and that the defence was raised, and that it was properly raised seems to have been taken for granted by every body, including the two learned judges who have delivered the judgments upon the subject in the courts below.

Now it is undoubted that the vessel, from the fact of the boiler being in the state in which it was found to be in salt water, was not fit to encounter the seas; and for that reason, and that reason alone, she put in to repair. Well, then, can it be said that the vessel sailed in a seaworthy state? The general proposition is not denied, that in voyage policies there is an implication by law of a warrant of sea-worthiness, and it is not contended that the vessel was sea-worthy when she found herself in salt water; but has been suggested that there is a different degree of sea-worthiness according to the different stage or portion of the voyage which the vesssl successively has to pass through, and the difficulties she has to encounter, and no doubt the proposition is quite true. The cases of *Dixon* and Saddler, and the other cases which have been cited, leave it beyond doubt that there is sea-worthiness for the port, sea-worthiness in some cases for the river, and sea-worthiness in some cases, as in a case that has been put forward of a whaling voyage, for some definite, well recognized and perfectly understood stage of the voyage. This principle has been sanctioned by various decisions, but it has been equally well decided that the vessel, in case where these several stages of navigation involve the necessity of a different equipment or state of sea-worthiness, must be sea-worthy at the commencement of each of these stages.

It is said that the fact that the vessel may have a sea-worthiness at one portion of the voyage, which is not enough to encounter the perils of the subsequent stage of the voyage—the fact that that is recognized as portion of the obligation cast upon the owner, shows that there must have been an opportunity to find that further equipment which some subsequent stage of the voyage requires, and no doubt it is so. But that equipment must, if the warrant of sea-worthiness is to be complied with, be furnished before the vessel enters upon that subsequent stage of the voyage which is supposed to require the further equipment.

Now, in this case, supposing there were any