Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Grant v. *the Ætna Insurance Company, from the Court of Queen's Bench of the Province of Lower Canada; delivered 5th July*, 1862.

Present:

LORD KINGSDOWN.
JUDGE OF THE ADMIRALTY COURT.
SIR EDWARD RYAN.

ON the 30th July, 1858, the Appellant effected an insurance with the Respondents on the steam-boat "Malakoff," by which the Company engaged to assure the Appellant against loss by fire to the steam-boat for twelve months to the extent of 1,000*l*.

The policy of insurance described the "Malakoff" "as now lying in Tait's Dock, Montreal, and intended to navigate the St. Lawrence and lakes from Hamilton to Quebec, principally as a freight boat, and to be laid up for winter in a place approved by the Company, who will not be liable for explosion either by steam or gunpowder."

The steam-boat never left Tait's Wharf, and was burnt there on the 25th June, 1859.

An action was brought by the Appellant in the Superior Court of Lower Canada to recover damages upon the policy. The case was tried by a jury, and a verdict found for the Plaintiff.

An application by way of motion was made to the Court by the Defendants on the 20th February, 1860, that judgment *non obstante veredicto* might be entered for the Defendants, and that the Plaintiff's action might be dismissed with costs.

On the 31st March, 1860, the Superior Court made an order to this effect.

The Plaintiff appealed against this order to the

Court of Queen's Bench in Canada, when it was affirmed, the Chief Justice dissenting from the majority of the Judges.

The case now comes before us on appeal to Her Majesty in Council from these several orders. The judgments in the Courts below proceeded on the ground that the words which we have read from the policy contained a warranty that the steam-boat should navigate the St. Lawrence and the lakes in the manner there described; and that, as in fact, she never left Tait's Dock, the policy became void.

It was contended before us, in a very able argument, that the words referred to contained no warranty; but that if they did the warranty extended only to this—that an intention to employ the ship in the manner described was *bonâ fide* entertained by the insured when the policy was effected.

It was argued that this would be the meaning of the words if they were merely representations, according to several authorities cited; and it was argued that though the effect of a warranty was very different from that of a representation, the meaning of the words used must be the same, whether they were found in or out of the policy.

Their Lordships are of opinion that the question depends entirely on the meaning to be attached to these words. If they import an agreement that the ship shall navigate in the manner described in the policy—then being an engagement contained in the policy—they must be considered as a warranty, and the engagement not having been performed, whether the engagement was material or not material, the insurers are discharged.

But their Lordships think that this is not the true meaning of the words used. They consider that the clause in question amounts only to this: The assured says, my ship is now lying in Tait's Dock; I mean to remove her for the purpose of navigation in the manner described, and if I do the policy shall still be in force; but in that case I engage to lay her up in winter in a place to be approved by the Company.

This construction, which implies no contract to navigate, seems to their Lordships the natural meaning of the words used, and imputes a reasonable intention to the parties to the policy.

Their Lordships must, therefore, advise Her

Majesty to reverse the judgments complained of, and to direct that the Defendants' motion be dismissed, and that the Appellant's costs of the motion in the Superior Court, and of the appeal to the Queen's Bench, and of the appeal to Her Majesty in Council, be paid to him by the Respondents.

It is unnecessary to pronounce any decision on a point raised in the argument, viz., that it is not competent to a Defendant in a suit to make a motion for judgment *non obstante veredicto*. Such appears to be the rule in England, but the practice in jury trials in Lower Canada differs in many and important respects from that which prevails in this country. Their Lordships are always indisposed to interfere with the judgment of a Colonial Court on a question of its forms and practice.

It appears that, besides the motion of which we are now disposing, two other motions were made by the Respondents in the Superior Court, one in arrest of judgment, and the other for a new trial. Neither of those motions is before us, and we do not express any opinion upon them, or intend to affect the rights either of the Appellant or Respondents in respect of them. They will stand in the same situation as if the Queen's Bench had made the order upon this motion, which we think that it ought to have made. To prevent any misconstruction upon this point, which, however, we do not think likely, we shall advise Her Majesty to add to the order which we have already suggested, a declaration "that this order is not intended in any manner to prejudice the rights either of the Appellant or Respondents with respect to any other proceedings which have taken place, or may take place in the cause."