

1931

*Nov. 9

1932

*Mar. 15

OBALSKI CHIBOUGAMAU MINING COMPANY

v.

AERO INSURANCE COMPANY

ON APPEAL FROM THE COURT OF KING'S BENCH, APPEAL SIDE,
PROVINCE OF QUEBEC

*Insurance company—Aerial navigation—Seaplane—Accident—Warranty—
Licence—Aeronautics Act, R.S.C., 1927, c. 3—Air Regulations, 1920,
Art. 3.*

APPEAL by the plaintiff appellant from the decision of the Court of King's Bench, appeal side, Province of Quebec (1), reversing the judgment of the Superior Court, Duclos J. (2), and dismissing the appellant's action.

The action was brought by the appellant upon a contract of insurance to recover the total loss of a seaplane. On the 29th of May, 1929, the appellant company took out a policy of insurance with the respondent company insuring a seaplane for \$19,650, ten per cent deducted, against certain specified perils. On July 13, 1929, the managing

*PRESENT at hearing of the appeal: Duff, Newcombe, Rinfret, Lamont and Cannon JJ., Newcombe J. took no part in the judgment, as he died before the delivery thereof.

(1) (1931) Q.R. 51 K.B. 145.

(2) (1931) Q.R. 51 K.B. 140, at
146.

director of the appellant company, a pilot and a mechanic flew the machine to Lac Ouimet, some 65 miles from Montreal, and there decided to land. In attempting to land, the machine was wrecked and totally destroyed. The appellant company made a claim for the full amount of the insurance, less ten per cent deductible and the cost of salvage. The respondent company denied any liability under its policy on the ground that the flight which resulted in the loss of the plane had been made contrary to government regulations, which fact constituted a direct violation of the warranties contained in the policy, and on the further ground that the aircraft was not airworthy.

The trial judge held that the appellant company had established its claim to the extent of \$14,185; but that judgment was unanimously reversed by the appellate court and the action was dismissed.

After hearing the arguments of counsel, the Court reserved judgment, and on a subsequent day delivered judgment, dismissing the appeal with costs.

Appeal dismissed with costs.

H. N. Chauvin, K.C., and J. C. Lamothe, K.C., for the appellant.

Gregor Barclay K.C. and Miller Hyde for the respondent.

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