Indexed as:

Zavarovalna Skupnost Triglav (Insurance Community Triglav Ltd.) v. Terrasses Jewellers Inc.

Zavarovalna Skupnost Triglav (Insurance Community Triglav Ltd.), Appellant; and
Terrasses Jewellers Inc. and Bank of Montreal, Respondents;
and
Attorney General of Canada and Attorney General of Quebec, Interveners.

[1983] 1 S.C.R. 283

Supreme Court of Canada

File No.: 16980.

1982: December 14, 15 / 1983: March 1.

Present: Chief Justice Laskin and Dickson, Beetz, Estey, McIntyre, Chouinard and Wilson JJ.

ON APPEAL FROM THE FEDERAL COURT OF APPEAL

Constitutional law -- Marine insurance -- Whether section 22(2)(r) of Federal Court Act ultra vires -- Navigation and shipping -- Whether Canadian marine insurance law exists -- Constitution Act, 1867, s. 91(10) -- Federal Court Act, R.S.C. 1970 (2nd Supp.), c. 10, s. 22(2)(r).

Maritime law -- Courts -- Federal Court -- Jurisdiction ratione materiae -- Jurisdiction ratione personae -- Action based on marine insurance contract -- Federal Court, R.S.C. 1970 (2nd Supp.), c. 10, s. 22(2)(r).

Respondent, Terrasses Jewellers Inc., a Quebec company, bought the required interest in an insurance policy issued by appellant, a Yugoslav company. This marine insurance contract, concluded in Yugoslavia between appellant and another Yugoslav company, applied to property shipped from that country. The property was bought by respondent and transported by sea to Montreal, where it was found not to contain a jewellery case worth $1,100,000. Respondents

claimed this sum from appellant, which denied any liability. In its first judgment, the Federal Court Trial Division allowed respondents' application for leave to serve the action outside the country, and in its second, dismissed appellant's application to set aside service of the action and to dismiss the action for want of jurisdiction both ratione personae and ratione materiae. The Court of Appeal affirmed both judgments: hence this appeal, which challenges (1) the constitutionality of s. 22(2)(r) of the Federal Court Act and (2) the jurisdiction of the Federal Court over appellant.

The Federal Court has concurrent jurisdiction regarding an application based on a marine insurance policy in respect of s. 22(2)(r) of the Federal Court Act. First, ss. 22(2)(r) is valid federal legislation. Though strictly speaking marine insurance is a matter forming part of property and civil rights, it has nonetheless been assigned to Parliament as part of navigation and shipping, except as regards the part of this power which remains within provincial jurisdiction. It is not necessary for the purposes of this appeal to define the scope of provincial legislation and of the Civil Code in marine insurance. The latter, which preceded other forms of insurance by several centuries, originated as an integral part of maritime law. It is first and foremost a contract of maritime law, not an application of insurance to the maritime area. It is part of the maritime law over which s. 22 of the Act confers concurrent jurisdiction on the Federal Court. Second, Canadian marine insurance law exists and can be applied by the Federal Court.

The Federal Court of Appeal and the Trial Division held that the Federal Court had jurisdiction ratione personae in the case at bar. This Court has not been shown any error made by them that would justify its intervention to alter these concurrent findings.

Cases Cited

Tropwood A.G. v. Sivaco Wire & Nail Co., [1979] 2 S.C.R. 157; Antares Shipping Corp. v. The Ship "Capricorn", [1980] 1 S.C.R. 553; Associated Metals and Minerals Corp. v. The Ship "Evie W" and Aris Steamship Co., [1978] 2 F.C. 710; Aris Steamship Co. v. Associated Metals & Minerals Corp., [1980] 2 S.C.R. 322; MacMillan Bloedel Ltd. v. Canadian Stevedoring Co., [1969] 2 Ex. C.R. 375; Wire Rope Industries of Canada (1966) Ltd. v. B.C. Marine Shipbuilders Ltd., [1981] 1 S.C.R. 363; R. v. Canadian Vickers Ltd., [1980] 1 F.C. 366; McNamara Construction Western Ltd. v. The Queen, [1977] 2 S.C.R. 654; Quebec North Shore Paper Co. v. Canadian Pacific Ltd., [1977] 2 S.C.R. 1054; Green Forest Lumber Ltd. v. General Security Insurance Co., [1980] 1 S.C.R. 176; Daneau v. Laurent Gendron Ltée, [1964] 1 Lloyd's Rep. 220; Intermunicipal Realty & Development Corp. v. Gore Mutual Insurance Co., [1978] 2 F.C. 691; Construction Montcalm Inc. v. Minimum Wage Commission, [1979] 1 S.C.R. 754; Montreal City v. Montreal Harbour Commissioners; Tétreault v. Montreal Harbour Commissioners, [1926] A.C. 299; Citizens Insurance Co. of Canada v. Parsons (1881), 7 App. Cas. 96; Attorney-General for Canada v. Attorney-General for Alberta, [1916] 1 A.C. 588; Attorney-General for Ontario v. Reciprocal Insurers, [1924] A.C. 328; In re The Insurance Act of Canada, [1932] A.C. 41; Attorney-General for Canada v. Attorney-General for Ontario, [1937] A.C. 355; Reference as to Validity of Section 16 of the Special War Revenue Act, [1942] S.C.R. 429; Canadian Indemnity Co. v. Attorney-General of

British Columbia, [1977] 2 S.C.R. 504, referred to.

APPEAL from two judgments of the Federal Court of Appeal affirming two judgments of the Trial Division. Appeal dismissed.

Roland Chauvin, Q.C. and Claude Bédard, for the appellant.
Gerald P. Barry, for the respondents.
Raynold Langlois and John G. O'Connor, for the intervener the Attorney General of Canada.
Jean-K. Samson and Odette Laverdière, for the intervener the Attorney General of Quebec.

Solicitors for the appellant: Desjardins, Ducharme, Desjardins & Bourque, Montreal.
Solicitors for the respondents: McMaster, Meighen, Montreal.
Solicitor for the intervener the Attorney General of Canada: R. Tassé, Ottawa.
Solicitors for the intervener the Attorney General of Quebec: Jean-K. Samson and Odette Laverdière, Ste-Foy.

English version of the judgment of the Court delivered by

CHOUINARD J.:-- This appeal is from two judgments of the Federal Court of Appeal, dated February 3, 1982, which affirmed two judgments of the Trial Division.

The appeal challenges the constitutionality of s. 22 of the Federal Court Act, R.S.C. 1970, (2nd Supp.), c. 10, as amended, and in particular para. (r) of subs. (2), which gives the Trial Division of the Federal Court concurrent jurisdiction with the provincial courts over any claim arising out of or in connection with a contract of marine insurance.

The action also challenges the jurisdiction of the Federal Court over appellant, a Yugoslav company, in connection with a contract of marine insurance made in Yugoslavia between it and a Yugoslav insured, concerning goods shipped from Yugoslavia. Appellant stated that it has no assets or offices in Canada, that it does no business here and that, except for the purpose of receiving notice of a loss as provided in the contract, it has no representative here.

Respondents Terrasses Jewellers Inc. and the Bank of Montreal, which was subrogated in its rights and remedies, filed in the Federal Court a claim against appellant under the insurance policy issued by the latter.

The facts on which respondents based their claim are summarized by appellant as follows.

[TRANSLATION] Respondent Terrasses Jewellers Inc., a Quebec company, bought the required interest in an insurance policy issued by appellant, a Yugoslav company, to another Yugoslav company, Zlaterne Celje, or order.

This insurance policy applied to various property, namely 11 cases of items in crystal and one case of jewellery in gold, silver and platinum.

This property was purchased by respondent Terrasses Jewellers Inc. from Zlaterne Celje.

The property was placed in a container for transport from Celje, Yugoslavia, to a warehouse in Montreal, including transportation on the vessel "PRISTINA" from the port of Koper in Yugoslavia to the port of Montreal.

The policy guaranteed against various risks during this transportation, including theft and non-delivery.

The policy assigned an agreed value of U.S. $845,543.00 to the property.

The container was opened on arrival at a warehouse in Montreal, and found not to contain the jewellery case.

Respondent Terrasses Jewellers Inc. gave verbal and written notice to the Montreal agents designated in the policy (Hayes, Stuart & Co. Ltd.) and produced the documents they were asked to provide.

The value of the jewellery items (a part of the agreed value for insurance purposes) was U.S. $815,843.00, or Can. $1,100,000.00

Appellant denied liability under the insurance policy.

Respondents filed an application for leave to serve the action outside the country (ex juris). Appellant filed an application to set aside service of the action on its agents in Montreal and to dismiss the action for want of jurisdiction both ratione personae and ratione materiae.

In his first judgment, the trial judge allowed respondents' application, and in his second he dismissed that of appellant. These are the two judgments which were affirmed by the judgments a quo.

On the motion for leave to serve ex juris, the outcome of the appeal will depend on the reply given to the question of the Court's jurisdiction. It goes without saying that if the Federal Court does not have jurisdiction the judgment authorizing service must be quashed. If it does, the judgment must be upheld. It will not be necessary to say anything further on this point.

It also goes without saying that if appellant is correct on the question of jurisdiction ratione materiae, it will not be necessary to deal with jurisdiction ratione personae. Otherwise, this must be dealt with.

Jurisdiction ratione materiae and the Constitutional Question

The constitutional question is stated as follows:

> Is paragraph (r) of sub-section (2) of Section 22 of the Federal Court Act (R.S.C. 1970 c. 10, 2nd Supp., and Amendments) conferring upon the Trial Division of the Federal Court jurisdiction with respect to "any claim arising out of or in connection with a contract of marine insurance" ultra-vires and without effect on the grounds that marine insurance and more particularly the rights and obligations of the parties to and under contracts of marine insurance are outside the jurisdiction of the Parliament of Canada and consequently that there can be no "laws of Canada" to govern the matter in accordance with the provisions of Section 101 of the British North America Act, 1867?

If a negative answer is given to this question, appellant submitted a second question:

> [TRANSLATION] Does Canadian marine insurance law exist, that can be applied by the Federal Court?

Subsection (1) of s. 22 of the Federal Court Act, and subs. (2) together with its para. (r), provide:

> 22. (1) The Trial Division has concurrent original jurisdiction as well between subject and subject as otherwise, in all cases in which a claim for relief is made or a remedy is sought under or by virtue of Canadian maritime law or any other law of Canada relating to any matter coming within the class of subject of navigation and shipping, except to the extent that jurisdiction has been otherwise specially assigned.

> (2) Without limiting the generality of subsection (1), it is hereby declared for greater certainty that the Trial Division has jurisdiction with respect to any claim or question arising out of one or more of the following:
>
> . . .
>
> (r) any claim arising out of or in connection with a contract of marine insurance;

Additionally, section 42 of this Act reads:

> 42. Canadian maritime law as it was immediately before the 1st day of June 1971 continues subject to such changes therein as may be made by this or any other Act.

The phrase "Canadian maritime law" is defined in s. 2 of the Act:

> "Canadian maritime law" means the law that was administered by the Exchequer Court of Canada on its Admiralty side by virtue of the Admiralty Act or any other statute, or that would have been so administered if that Court had had, on its Admiralty side, unlimited jurisdiction in relation to maritime and admiralty matters, as that law has been altered by this or any other Act of the Parliament of Canada;

A common principle emerges from the points and arguments presented by the parties and the interveners, namely that the only provision of the Constitution Act, 1867 which could confer jurisdiction on Parliament in matters of marine insurance is subs. 10 of s. 91, navigation and shipping.

Respondents also relied on subs. 2 of s. 91, the regulation of trade and commerce, but without presenting arguments in support of this source of authority which, in my opinion, can safely be disregarded.

The phrase "navigation and shipping" must be given a wide interpretation: Montreal City v. Montreal Harbour Commissioners; Tétreault v. Montreal Harbour Commissioners, [1926] A.C. 299, at pp. 312-13.

To this power must be added that over interprovincial and international maritime transport, under subs. 13 of s. 91 and subs. 10 of s. 92. These powers constitute the basis of Parliament's jurisdiction over maritime law reflected in the Federal Court Act.

The provinces also have jurisdiction over maritime law under subs. 10 of s. 92.

Ontario (Marine Insurance Act, R.S.O. 1980, c. 255), Quebec (arts. 2606 to 2692 C.C.), New

Brunswick (Marine Insurance Act, R.S.N.B. 1973, c. M-1), British Columbia (Insurance (Marine) Act, R.S.B.C. 1979, c. 203), Manitoba (The Marine Insurance Act, R.S.M. 1970, c. M40) and Nova Scotia (Insurance Act, R.S.N.S. 1967, c. 148, ss. 184 to 273) have legislation on marine insurance. However, it is not necessary for the purposes of this appeal to define the scope of this provincial legislation and of the Civil Code. In the case at bar, the policy was issued in Yugoslavia and relates to goods purchased in Yugoslavia and then shipped to Montreal and delivered there, and appellant's arguments that marine insurance is a matter for provincial jurisdiction are based not on subs. 10 of s. 92, but on subs. 13: property and civil rights.

In Tropwood A.G. v. Sivaco Wire & Nail Co., [1979] 2 S.C.R. 157, Laskin C.J. wrote for the Court, at p. 160:

> Admittedly, it was open to the Parliament of Canada to establish a federal Court, pursuant to s. 101 of the British North America Act, to administer its maritime law concurrently with provincial superior courts.

The question thus arises of whether marine insurance is part of this maritime law.

Appellant submitted, in brief, that in order for any economic activity to be regarded as forming part of navigation and shipping, it will not suffice for that activity to be connected therewith and in some way related thereto, it must form a part of navigation and shipping, must constitute one component and must not involve work or undertakings of a local nature. An insurance contract, appellant submitted, is a contract of a financial nature which has its own definition and rules. Insurance contracts in general fall within the jurisdiction of provincial legislatures. Marine insurance does not form a part of the activities of navigation and shipping: though applied to these activities, it remains a part of insurance.

The Attorney General of Quebec, intervening in support of appellant, submitted first that marine insurance falls within the provincial jurisdiction over civil rights and property in the province. It is, he said, essentially a matter of insurance, a matter which has long been recognized as falling within provincial jurisdiction, and the latter covers any insurance contract, whether land or marine in nature, on persons or property, individual or collective. The Attorney General of Quebec added that his position is even stronger in the case at bar as the latter does not involve the liability of the marine carrier: rather, it is a case which concerns the respective rights and duties resulting from a contract of marine insurance between an insurer and the consignee of goods.

The Attorney General of Quebec submitted, secondly, that a contract of marine insurance, and especially s. 22(2)(r) of the Federal Court Act, are not within the federal jurisdiction over navigation or over interprovincial and international maritime transportation undertakings. He stated, inter alia:

> [TRANSLATION] In the view of the Attorney General of Quebec, the federal powers over navigation (s. 91(10)) and over interprovincial and

> international marine carriers (s. 92(10)(a) and (b)) do not authorize the federal Parliament to legislate with respect to insurance contracts.
>
> The federal jurisdiction over navigation and shipping in s. 91(10) has not been precisely defined by the courts. However, it may be regarded as applying essentially to the technical aspects of navigation, intra-provincial as well as interprovincial and international. Thus, the regulation of marine traffic and conditions of seaworthiness, all measures justified by the necessities of navigation, are undoubtedly matters falling within s. 91(10). That is not the case, however, with contracts of marine insurance which essentially and substantially concern only questions of civil rights.

Relying on Construction Montcalm Inc. v. Minimum Wage Commission, [1979] 1 S.C.R. 754, the Attorney General of Quebec concluded:

> [TRANSLATION] In the view of the Attorney General of Quebec, the marine insurance contract constitutes a matter far removed from navigation and is not an integral part thereof, in contrast with contracts of a marine nature such as contracts for the carriage of goods.

Respondents, on the other hand, argued that, under the insurance policy at issue, their claim is not a matter concerning "Civil Rights in the Province". They further stated that while in general insurance within a province falls within the scope of provincial jurisdiction, Parliament may none-the-less legislate regarding civil contracts, including insurance, which relate to matters within its jurisdiction. Marine insurance constitutes a vital part of the business of navigation, both for the owner of the vessel and for persons having an interest in the cargo. The jurisdiction of the Federal Court extends to all matters of admiralty and maritime law, and is not limited to matters covered by the power over navigation and shipping. Marine insurance is a maritime matter, and as such subject to the admiralty jurisdiction of the Federal Court. Finally, marine insurance claims are an admiralty matter.

The Attorney General of Canada, intervening in support of respondents, submitted that marine insurance is part of maritime law. Maritime law, including marine insurance, falls within the scope of navigation and shipping. Though marine insurance must be regarded as a matter forming part of property and civil rights, it has nonetheless been assigned to Parliament as part of navigation and shipping, except as regards the part of this power which remains within provincial jurisdiction.

In my opinion, the Attorney General of Canada is correct in regarding marine insurance as a matter falling within property and civil rights, strictly speaking, but one which has nonetheless been assigned to Parliament as a part of navigation and shipping. The same is true, for example, of bills of exchange and promissory notes, which form part of property and civil rights, but jurisdiction over which was assigned to Parliament by subs. 18 of s. 91 of the Constitution Act, 1867.

Provincial jurisdiction over insurance matters has been recognized by a number of decisions of this Court and of the Privy Council:

--Citizens Insurance Co. of Canada v. Parsons (1881), 7 App. Cas. 96;

--Attorney-General for Canada v. Attorney-General for Alberta, [1916] 1 A.C. 588;

--Attorney-General for Ontario v. Reciprocal Insurers, [1924] A.C. 328;

--In re The Insurance Act of Canada, [1932] A.C. 41;

--Attorney-General for Canada v. Attorney-General for Ontario, [1937] A.C. 355;

--Reference as to Validity of Section 16 of the Special War Revenue Act, [1942] S.C.R. 429;

--Canadian Indemnity Co. v. Attorney-General of British Columbia, [1977] 2 S.C.R. 504.

However, marine insurance was not involved in any of these cases.

The only judgment with supporting reasons to which the Court was referred, and which bears directly on the point, is that of the Trial Division of the Federal Court in Intermunicipal Realty & Development Corp. v. Gore Mutual Insurance Co., [1978] 2 F.C. 691. For the purposes of the case at bar, that case dealt in part with an action against two insurance companies under two marine insurance policies. The Court held that it had jurisdiction to hear this action. In the course of his reasons Gibson J. stated, inter alia, at p. 694: "As to whether these policies are 'maritime contracts', apparently there is practically universal agreement".

This Court was further referred to its decision in Green Forest Lumber Ltd. v. General Security Insurance Co., [1980] 1 S.C.R. 176, affirming the Federal Court of Appeal and the Trial Division. This was undoubtedly an action based on a marine insurance policy, which was dismissed.

It appears, however, that at no stage was the jurisdiction of the Federal Court challenged. In my opinion this case, on which the Trial Division and the Federal Court of Appeal relied in the case at bar, is not in any way conclusive, since it does not rule on the question of the Federal Court's jurisdiction.

Respondents cited a judgment of the Exchequer Court for the Quebec Admiralty District, Daneau v. Laurent Gendron Ltée, [1964] 1 Lloyd's Rep. 220, which concerned a marine insurance policy, and in which the Court in fact ordered the insurer to compensate the insured. By an interlocutory judgment, the judge had first dismissed a preliminary objection to his jurisdiction, but without reasons.

Marine insurance, which preceded other forms of insurance by several centuries, originated as an integral part of maritime law.

It had its origin in bottomry and respondentia, which are defined as follows in art. 2693 of the Civil Code.

> 2693. Bottomry is a contract whereby the owner of a ship or his agent, in consideration of a sum of money loaned for the use of the ship, undertakes conditionally to repay the same with interest, and hypothecates the ship for the performance of his contract. The essential condition of the loan is that if the ship be lost by a fortuitous event or irresistible force, the lender shall lose his money; otherwise it is to be repaid with a certain profit for interest and risk.

In the Encyclopaedia Britannica, Macropaedia, 15th ed., 1981, vol. 9, under the heading "Insurance", it is stated at p. 657:

> Insurance in some form has been used as long as man has lived in historical society. So-called bottomry contracts were known to merchants of Babylon as early as 4000-3000 BC. Bottomry was also practiced by the Hindus in 600 BC, and was well understood in ancient Greece as early as the 4th century BC. Under a bottomry contract loans were granted to merchants with the provision that if the shipment was lost at sea the loan did not have to be repaid. The interest on the loan covered the insurance risk. Ancient Roman law recognized the bottomry contract in which an article of agreement was drawn up and funds were deposited with a money changer. Marine insurance became highly developed in the 15th century.
>
> In Rome there were also burial societies that paid funeral costs of their members out of monthly dues.

> The insurance contract also developed very early. It was known in ancient Greece and among other maritime nations in commercial contact with Greece.

In A Handbook to Marine Insurance, 5th ed., 1957, the writer Dover states at pp. 1 and 2:

> Of the origin of marine insurance, all that can be said with certainty is that it is "veiled in antiquity and lost in obscurity." The concept of protection against loss by maritime perils has been traced back to B.C. 215 ...

A little further o, at p. 2, he writes:

> On the above evidence, inter alia, inferences have been drawn that the origins of marine insurance go back at least two millenniums, and probably as far as to the great Levantine Empires, e.g., Rhodes. In support of the latter contention, the old Rhodian Law of general average is adduced as being so allied to marine insurance as to justify conclusions which are perhaps merely hypothetical and which are lacking in convincing corroborative evidence.
>
> Bottomry.
>
> It is certain, however, that bottomry (foenus nauticum), that is, an advance of money on the security of a vessel (not recoverable in the case of subsequent total loss of that vessel before arrival), was practised prior to A.D. 533.

Some writers even place the origin of bottomry as far back as 2250 B.C. At page 3, Dover mentions:

> In his Researches into the Origins of Marine Insurance, Professor C.F. Trenerry places the origin of bottomry as early as B.C. 2250. He states that methods of financing commercial activities indistinguishable from the practice of bottomry were employed by the Babylonians.

In his Droit maritime, 4th ed., 1953, at vol. 3, Title II, under the heading "L'Assurance Maritime", p. 329, Ripert writes, at p. 333:

> [TRANSLATION] 2347. The origin of marine insurance.--Marine insurance is the only type of insurance that was known to our old law. The nineteenth Century witnessed an astonishing proliferation of types of insurance. Some date back to the early years of the nineteenth century and near the end of the eighteenth; others are of recent creation. Whatever their date of origin, all these types of insurance are many years junior to marine insurance. At a time

> when men accepted misfortune without attempting to protect themselves against such disasters as fire or accident, shipowners and merchants, perpetually subject to the risk of their vessels being destroyed and their goods swallowed up at sea, had looked for some means of protecting themselves against a hostile fate. In the fifteenth century, prosperous marine commerce gave rise to a regular practice of insurance.

In Holdsworth, A History of English Law, vol. VIII, we read at p. 274:

The Origin of the Contract of Marine Insurance

> Insurance has been defined as a contract by which one party (the insurer) in consideration of a premium, undertakes to indemnify another (the insured) against loss. The researches of M. Bensa have proved that the earliest variety of this contract was the contract of marine insurance; that as a separate and independent contract it dates from the early years of the fourteenth century; and that it was evolved, like many other of our modern mercantile institutions, in the commercial cities of Italy.

In Halsbury's Laws of England, 4th ed., vol. 25, the author states at p. 9, para. 1:

> 1. Development and sources of insurance law. The concept of insurance, in England as elsewhere, arose out of the mercantile adventure of transporting goods across the sea, the adventure consisting in early times of the enormous fortune to be made if the project turned out to be successful, as contrasted with the disastrous loss, even ruin, which resulted if the project foundered amid the perils of the seas.

The writers consider that Colbert's Ordonnance sur la Marine, 1681, constitutes a true codification of the maritime law of that time, and is the basis for the maritime law adopted and subsequently developed both by England and by France and the other continental countries. The codifiers of the Civil Code of Lower Canada, who drafted the provisions relating to maritime law, wrote in their Seventh Report, 1865, at p. 224:

> [The Colbert ordinance] has in a great measure furnished the principles of marine law to a large portion of the continent and is the chief basis upon which the courts in England, by a series of decisions confirmed and aided by careful legislation, have built up the present system.

The table of contents of the Ordonnance sur la Marine contains in Book Three, under the heading "Des contrats maritimes", Title VI: "Des assusrances".

In Title Two of Book One, which defines the jurisdiction of the judges of Admiralty, their

powers are stated in s. II to extend to [TRANSLATION] "all actions arising ... out of policies of insurance, obligations of bottomry or respondentia, and in general all contracts concerning maritime trade, [...]".

In an article titled "La Législation maritime canadienne et le Code civil québécois", (1968) 14 McGill L.J. 26, commenting on the work of the codifiers, Professor Jean Pineau writes at p. 31:

> [TRANSLATION] The same was true for everything concerning Title Three, regarding "affreightment" [chartering]; as the rules were identical in all maritime countries, the codifiers relied on the Colbert ordinance and the solutions derived from that ordinance by British legal theory and precedent. This was facilitated as they were dealing with customs embodied in legislation, and the latter was in most cases supplementary in nature. Chartering was therefore a matter dealt with just as it had been at the time of the codification. This assessment also applies to the carriage of passengers, and to marine insurance which is the subject of Chapter II of Title Five.

On the same page, he adds the following footnote:

> [TRANSLATION] 27. It should be noted that we do not propose to analyse the provisions relating to marine insurance, as in view of the importance of this area a special study would be necessary, and this would go beyond our objective here. We will simply mention that insurance originated in a marine context and that its ancestor is the contract of bottomry;

The same note continues:

> [TRANSLATION] this is why we are amazed to see the codifiers devote Title VI to this institution, which had already disappeared in their time. However, great attention was given to questions of insurance and a considerable effort of synthesis led the Commissioners to prepare a text which, though complex, was very up to date on the eve of Confederation.

This text which was "very up to date on the eve of Confederation" embodies certain characteristics peculiar to marine insurance, which make the latter an integral part of maritime law. An illustration of this is provided by abandonment, which is not found in the other forms of insurance. According to art. 2663 C.C.:

> 2663. The insured may make an abandonment to the insurer of the thing insured in all cases of its constructive loss and may thereupon recover as for a total loss. Without abandonment he is entitled in such cases to recover as for a partial loss only.

Again by way of illustration, art. 2383 C.C. creates a privilege on ships for the payment of premiums of insurance upon the ship for the last voyage; and art. 2385 C.C. creates a privilege on the cargo for premiums of insurance on the things insured.

In his Traité du droit commercial maritime No. 29, Bonnecasse, as cited by counsel for the respondents in their factum, describes and explains the close and indissoluble link between chartering and insurance:

> [TRANSLATION] Marine insurance is an institution without which maritime trade and navigation would be almost inconceivable; we would go so far as to say that in the absence of insurance it would be meaningless to speak of the ownership of vessels and their operation. In view of the large sums committed by participants in an ocean voyage and the frequency and seriousness of maritime risks, the merchant shipping industry would be at an end, and with it sea transportation, if persons engaging in them felt they were threatened without compensation with loss of the ship and of the cargo. That in brief accounts for the close and indissoluble link between chartering and insurance; and for the dependence of a prosperous maritime trade on an effective insurance system.

Many other writers were cited but it is not necessary to refer to them all.

It is wrong in my opinion to treat marine insurance in the same way as the other forms of insurance which are derived from it, and from which it would be distinguishable only by its object, a maritime venture. It is also incorrect to say that marine insurance does not form part of the activities of navigation and shipping, and that, although applied to activities of this nature, it remains a part of insurance.

Marine insurance is first and foremost a contract of maritime law. It is not an application of insurance to the maritime area. Rather, it is the other forms of insurance which are applications to other areas of principles borrowed from marine insurance.

I am of the opinion that marine insurance is part of the maritime law over which s. 22 of the Federal Court Act confers concurrent jurisdiction on that Court. It is not necessary to determine what other courts may have jurisdiction concurrent with the Federal Court, nor to determine the scope of their jurisdiction. I am further of the opinion that marine insurance is contained within the power of Parliament over navigation and shipping, and that accordingly a negative answer must be given to the constitutional question.

However, appellant further argued that no Canadian law regarding marine insurance exists, so that if the Federal Court does have jurisdiction, it has no law to administer, and accordingly should not decide the matter. It contended that there is no applicable federal legislation over which Parliament can give the Federal Court jurisdiction. See McNamara Construction Western Ltd. v. The Queen, [1977] 2 S.C.R. 654, and Quebec North Shore Paper Co. v. Canadian Pacific Ltd.,

[1977] 2 S.C.R. 1054.

This question of the existence and scope of Canadian maritime law has been the subject of elaborate analyses in several decisions of the Exchequer Court, the Federal Court and this Court. To date, the jurisdiction of the Federal Court under s. 22(1) of the Federal Court Act, and in particular over the claims referred to in the paragraphs of s. 22(2), indicated in the list that follows, has been confirmed by the cases cited:

> --(a) any claim as to title, possession or ownership of a ship or any part interest therein or with respect to the proceeds of sale of a ship or any part interest therein; Antares Shipping Corp. v. The Ship "Capricorn", [1980] 1 S.C.R. 553.
>
> --(d) any claim for damage or for loss of life or personal injury caused by a ship either in collision or otherwise;
> MacMillan Bloedel Ltd. v. Canadian Stevedoring Co., [1969] 2 Ex.C.R. 375; this decision preceded the Federal Court Act, but it concerns a claim of the type now covered by this paragraph.
>
> --(e) any claim for damage sustained by, or for loss of, a ship including, without restricting the generality of the foregoing, damage to or loss of the cargo or equipment of or any property in or on or being loaded on or off a ship;
> Tropwood (supra).
>
> --(h) any claim for loss of or damage to goods carried in or on a ship including, without restricting the generality of the foregoing, loss of or damage to passengers' baggage or personal effects; Tropwood (supra).
>
> --(i) any claim arising out of any agreement relating to the carriage of goods in or on a ship or to the use or hire of a ship whether by charter party or otherwise; Tropwood (supra); Associated Metals and Minerals Corp. v. The Ship "Evie W" and Aris Steamship Co., [1978] 2 F.C. 710; Aris Steamship Co. v. Associated Metals & Minerals Corp., [1980] 2 S.C.R. 322.

> --(m) any claim in respect of goods, materials or services wherever supplied to a ship for her operation or maintenance including, without restricting the generality of the foregoing, claims in respect of stevedoring and lighterage; Wire Rope Industries of Canada (1966) Ltd. v. B.C. Marine Shipbuilders Ltd., [1981] 1 S.C.R. 363.
>
> --(n) any claim arising out of a contract relating to the construction, repair or equipping of a ship; R. v. Canadian Vickers Ltd., [1980] 1 F.C. 366; Wire Rope (supra).

In Antares Shipping (supra), Ritchie J., delivering the unanimous judgment of the Court, wrote at p. 559:

> With all respect, I am [...] of opinion that the provisions of s. 22(2)(a) of the Act constitute existing federal statutory law coming within the class of subject of navigation and shipping and expressly designed to confer jurisdiction on the Federal Court for claims of the kind here advanced by the appellant.

Then, after a review of the case law, and relying on the unanimous judgment of the Court given by Laskin C.J. in Tropwood (supra), Ritchie J. wrote at pp. 560-61:

> In the Tropwood case jurisdiction was found to reside in the trial division of the Federal Court by reason of the specific claims referred to in s. 22(2)(e), (h) and (i) of the Act by subs. 2(h) of which it is declared that the trial division has jurisdiction with respect to any claim or question arising out of
>
> (h) any claim for loss of or damage to goods carried in or on a ship including, without restricting the generality of the foregoing, loss of or damage to passengers' baggage or personal effects.
>
> The same reasoning leads me to the conclusion that the claim here being one as to the appellant's entitlement to possession of a ship, it is within the jurisdiction of the Federal Court pursuant to s. 22(2)(a).

In Aris Steamship (supra), in the Federal Court, Jackett C.J. wrote for the Court, at pp. 716-17:

> The nature and history of admiralty is not easy to define or relate. For

present purposes, I am happy to adopt the review thereof contained in the judgment of the Associate Chief Justice in The Queen v. Canadian Vickers Ltd., [1978] 2 F.C. 675, as supplemented by the additional material contained in the judgment of Gibson J. in Intermunicipal Realty & Development Corp. v. Gore Mutual Insurance Company, [1978] 2 F.C. 691.

Without being more precise and realizing that there are many aspects of admiralty law that are obscure, I am of opinion that the better view is

(a) that there is, in Canada, a body of substantive law known as admiralty law, the exact limits of which are uncertain but which clearly includes substantive law concerning contracts for the carriage of goods by sea;
(b) that admiralty law is the same throughout Canada and does not vary from one part of Canada to another according to where the cause of action arises;
(c) that admiralty law and the various bodies of "provincial" law concerning property and civil rights co-exist and overlap and, in some cases at least, the result of litigation concerning a dispute will differ depending on whether the one body of law or the other is invoked; and
(d) that admiralty law is not part of the ordinary municipal law of the various provinces of Canada and is subject to being "repealed, abolished or altered" by the Parliament of Canada.

I am further of the view that, if a Canadian statute was necessary to give Canada a body of admiralty law during the period, from 1934 to 1971, The Admiralty Act, 1934, must be read as having had that effect.

In this Court, the judgment was rendered by Ritchie J., who wrote at p. 324:

In the Court of Appeal Chief Justice Jackett found that there was jurisdiction in the Federal Court, and it is really not necessary in my opinion to explore the point further because the appeal was heard before Chief Justice Laskin had rendered the unanimous judgment of this Court in Tropwood A.G., and the Owners of the Vessel Tropwood v. Sivaco Wire & Nail Company and Atlantic Lines & Navigation Company, Inc., [1979] 2 S.C.R. 157, 99 D.L.R. (3d) 235, wherein he explored the recent cases dealing with the jurisdiction of the Federal Court and concluded his comments of s. 22 by saying (at p. 161):

> What is important to notice is that the heads of jurisdiction specified in s. 22(2) are nourished, so far as applicable law is concerned, by the ambit of Canadian maritime law or any other existing law of Canada relating to any matter coming within the class of navigation and shipping.

> In light of this judgment I am satisfied that Chief Justice Jackett reached the correct conclusion as to jurisdiction.

I likewise conclude that the Federal Court has jurisdiction regarding the application made in the case at bar over a marine insurance policy in respect of s. 22(2)(r) of the Federal Court Act, which confers on that Court concurrent jurisdiction over any claim arising out of or in connection with a contract of marine insurance.

Jurisdiction ratione personae

Both the Federal Court of Appeal and the Trial Division held that the Federal Court has jurisdiction ratione personae in the case at bar. In my view, this Court has not been shown any error made by them that would justify its intervention to alter these concurrent findings.

For these reasons, I would dismiss the appeal with costs to respondents. There will be no award of costs for or against the interveners.

Appeal dismissed with costs.