CANADIAN MARITIME LAW UPDATE: 1999

RICHARD F. SOUTHCOTT*
Stewart Mckelvey Stirling Scales
P.O. Box 997
1959 Upper Water Street, Suite 900
Halifax, Nova Scotia, B3J 2X2
Telephone: (902) 420-3304
Facsimile: (902) 420-1417

I.

INTRODUCTION

This paper reviews jurisprudential developments in Canadian maritime law during 1999, derived principally from decisions of the Federal Court of Canada. It will form the basis of an article to be published in the Journal of Maritime Law and Commerce later this year. Similar Canadian Maritime Law Updates have appeared in the Journal annually or bi-annually since 1992.

II.

JURISDICTION

Thiery Van Dooselaere v. *Holt Cargo Systems Inc.*[1]

This decision of the Federal Court of Appeal arose from the efforts of the appellant Belgian bankruptcy trustees to prevent the Federal Court of Canada from exercising jurisdiction over the proceeds of sale of the vessel "Brussel". The trustees argued that

the ship happened to be at the time. The respondent's claim had a real and substantial connection with maritime law which the respondent could legitimately expect would apply to the adjudication of its claim. The trustees' appeal was accordingly dismissed.

Trade Arbed Inc. v. *Tolles Limited.*[3]

The plaintiff contracted with the owner of the ship "Ideal", the defendant Tolles Limited, for the carriage of a cargo of used steel axles from Kerch to Newark under a Gencon charterparty. Pursuant to the terms of the charterparty, the defendant Ronly Holdings UK Limited undertook to guarantee the performance of the charterparty by Tolles. The vessel experienced engine difficulties after leaving Kerch and was detained in Malta, such that the plaintiff chartered another vessel to carry its cargo to destination at significant cost. The plaintiff commenced pursuit of its claim against Tolles and Ronly by way of arbitration in New York pursuant to the terms of the charterparty but proceeded to effect the arrest in the Federal Court of Canada of a cargo belonging to the guarantor Ronly, which cargo had also been carried on the "Ideal" to the point of her breakdown and thereafter upon another vessel.

Counsel representing the defendant cargo applied to set aside the arrest on the basis that the cargo was not the subject of the

courts of Korea. The claim was for compensation for damages arising out of the defendants' carriage of a cargo of fish from Bangladesh to New York. The cargo was inspected on arrival in New York and the evidence relating to the state of the fish and their unsuitability for human consumption would come from New York witnesses, although the accident that allegedly gave rise to the damage occurred in France. The plaintiffs were the Bangladesh shipper and the Ontario receiver, and the *in personam* defendant Hyundai was a Korean company, with offices around the world, including three offices in Canada. It was clear that Korean law did not apply to the matter in dispute, which was most likely governed by the law of the United States. However, there was a Korean jurisdiction clause in the bill of lading.

The prothonotary had applied the English decision in *The "Eleftheira"*[6] in identifying the factors to be considered in determining whether there was a sufficiently strong cause to depart from the forum identified in the bill of lading. The prothonotary had considered that the plaintiffs would be seriously inconvenienced by having to sue in Korea but concluded that this was not sufficient in itself to justify departing from the jurisdiction clause. Also taken into account by the prothonotary were that the Korean system of justice would not deny the plaintiffs a fair trial, that Canada was not the country where the evidence was situated, and that it could not be said that the defendants were merely seeking a procedural advantage.

The court held that it had discretion whether to grant the stay but that, in exercising that discretion, it must be convinced that a strong case existed not to follow a choice of jurisdiction clause that had been agreed between the parties. The court agreed with the plaintiffs that there was an ambiguity created by the law and jurisdiction clause and the clause that referred to the Canadian legislation, which is perhaps somewhat surprising as the latter clause referred only to a choice of law and not to a choice of jurisdiction. Concluding that other factors militated against the stay, as there was little connection between the facts of the case and Germany and as most of the evidence was to be found in the province of Quebec, the court dismissed the defendants' application.

Itochu Canada Ltd. v. *Ship "Fu Ning Hai"*.[8]

In another motion for a stay of proceedings in the Federal Court of Canada, based upon a choice of foreign jurisdiction clause in a bill of lading, the court again exercised its jurisdiction against acceding to the choice of the Korean courts and, based upon the specific facts involved, declined to order the stay. The action involved corrosion damage to steel pipe and tubing which had been carried from Pohang, Korea to New Westminster, British Columbia. The choice of jurisdiction clause was found in the bill of lading issued by the charterer Hyundai Merchant Marine Co. Ltd., which applied for the stay of proceedings. However, both the

Barzelex Inc. v. *Ship "Ebn Al Waleed"*.[9]

In this case, the Federal Court was called upon to consider the application of the Hague Rules, as enacted under the laws of Turkey, to a cargo claim resulting from the carriage of goods by sea from Turkey to Canada. The decision, which related to the appropriate method of calculating the applicable package limitation figure, turned upon expert evidence as to the manner in which Turkey had enacted the provisions of the Brussels Convention in its domestic law.

An interesting component of the decision is the manner in which the court addressed an argument, advanced through the evidence of the plaintiffs' expert on Turkish law, that the Turkish courts occasionally attempt to mitigate the severity of the application of the limit of liability by holding that, where there is a statement of the nature and the quality of the goods in the bill of lading, such statement is equivalent to a statement of the value of the goods, such that the limit of liability would not apply. The defendants' expert expressed the opinion that this was bad law. The court agreed with the defendants' position, but not as a finding of fact as to the correctness of this proposition under Turkish law. Rather, the court concluded that this was a question of determining the proper interpretation of the Hague Rules themselves. Remarking that those Rules constituted an international code, the court stated that the interpretation

transported the plaintiff's equipment by sea only from Anvers to Montreal and from there transported it by rail to Seattle. The court accepted the plaintiffs' position that this constituted an unreasonable deviation, which had been intended by the defendants and which was beyond the scope of that encompassed by a deviation clause contained in the bill of lading. The court concluded that the carrier accordingly lost the protection of the contract of carriage, including the jurisdiction clause, and denied the motion for a stay.

This decision, granted by the prothonotary, was appealed to a judge of the Federal Court, Trial Division, who concluded that the prothonotary had not erred in the exercise of his discretion. The appeal was accordingly dismissed.[11]

Belships (Far East) Shipping (Pte.) Ltd. v. *Canadian Pacific Forrest Products Ltd.*[12]

The trial decision in this case[13] has been previously reviewed.[14] The plaintiff shipper sought to recover damages from the owners and charterers of the vessel "Beltimber" when a portion of its deck cargo of lumber was lost overboard during carriage from Nanaimo, British Columbia to Antwerp. The trial judge held on the evidence that the loss of the cargo was attributable to negligence on the part of the defendants, in that the stowage was not in accordance with accepted practices, the ship's crew did not

The trial court held that the defendants were common carriers and as such were liable for the acts of their servants regardless of whether they constituted negligence, as a carrier assumes the obligation to deliver the cargo, which it has agreed to carry, in the condition in which it was taken on board and is strictly liable at common law for any loss or damage. Given this ruling and the fact that the terms of the bill of lading made reference to "negligence" in other clauses, but not in the limitation of liability provision itself, the court held that this clause did not protect the defendants against liability to the plaintiff.

The Federal Court of Appeal agreed with the trial judge's analysis and result, which it considered to be supported further by its conclusion that a carrier by sea is at common law also exposed to another potential basis for liability beyond that of negligence, being the carrier's implied undertaking of seaworthiness. The defendants' appeal was accordingly dismissed.

Voest-Alpine Stahl Linz GmbH v. *Federal Pacific Ltd.*[15]

The plaintiff cargo interests brought an action for damage to their cargo of galvanized steel coils against defendants Federal Pacific Ltd., the owners of the vessel "Federal St. Clair" upon which the cargo had been carried, as well as against Fednav International Ltd., being the time charterer of the vessel. After analyzing the evidence and the burdens of proof provided for under

had no direct dealings with each other, dealing instead through the freight forwarder. Throughout the course of the relationship between the parties, Morlines forwarded invoices to Marine, which invoices were paid by Marine, and Marine provided its own invoices to IKO, such that IKO was not even aware of the actual freight rate being paid to Morlines. Morlines had never communicated to IKO any expectation that the latter would ultimately be responsible for its bills. Neither had IKO expressed such a willingness to Morlines. Only after it became apparent that Marine did not have the ability to pay Morlines did Morlines seek payment from IKO directly.

The court concluded that the course of dealings between the parties was such that Morlines had induced IKO to believe that Marine was authorized to receive freight payments on its behalf and that it was in fact the expectation of both IKO and Morlines that IKO's payments would be made to Marine. On this basis, the court concluded that IKO's payments to Marine had discharged its obligations to Morlines, and Morlines' action was dismissed.

Kanematsu Gmbh v. *Acadia Ship Brokers Limited et al.*[19]

The plaintiff Kanematsu sought summary judgment against the defendant charterers of the vessel M.V. "Lark" for inducing the vessel's owners, Bulklark Shipping Company, to breach their contractual obligations to Kanematsu by discharging and delivering a cargo of steel billets without requiring the presentation of the

than the defendant charterers. No authority was cited for the proposition that a party that induces a ship owner to wrongfully part with possession of cargo is itself liable to the cargo owners.

Kodak v. *Racine Terminal (Montreal) Ltd.*[20]

The plaintiff Kodak applied for summary judgment against the defendant stevedoring company, Racine Terminal (Montreal) Ltd., in connection with damages caused by the defendant to a shipment of photographic paper during discharge at Montreal. The defendant argued that it was protected by the package limitation clause contained in the bill of lading which governed the contract of carriage between the plaintiff and the carrier, Orient Overseas Container Lines (UK) Ltd. ("OOCL"), on the basis of a Himalaya clause which purported to extend this limitation to terminal operators and stevedores.

The court relied upon the decision of the House of Lords in *Scruttons Ltd.* v. *Midland Silicones*[21] which provided that a Himalaya clause was effective only if the carrier had authority from the stevedores to contract for such protection on their behalf. The court granted summary judgment in favour of Kodak after concluding that no such authority existed.

A great deal of the court's analysis dealt with the issue as to whether the requisite authority, which was contained in a

"Sceptre Squamish" which was owned by Fraser River and, at the time of the loss, was on charter to Can-Dive and left unattended in a storm. At trial, Can-Dive was held liable for Fraser River's losses. On appeal, Can-Dive did not challenge the finding that the loss resulted from its negligence but contended that, in the context of this claim, which was a subrogated action by Fraser River's insurer, its liability was precluded by a waiver of subrogation clause in Fraser River's policy. Pursuant to this clause of the policy, the insurer agreed to waive any right of subrogation against the charterer of the vessel.

In response to this defence, the plaintiff's counsel argued that, as there was no privity of contract between Can-Dive and the insurer, Can-Dive was not able to take advantage of the waiver of subrogation clause. The plaintiff also relied upon an agreement executed between Fraser River and its underwriters subsequent to the loss, pursuant to which Fraser River agreed to waive any right to enforce the waiver of subrogation clause as it applied to Can-Dive. The trial judge had accepted these arguments and granted judgment against Can-Dive.

The British Columbia Court of Appeal[22] considered the common law development of the principle of privity of contract, its application to the law of insurance, and exceptions to the principle. It concluded that one of the established exceptions to the doctrine of privity was the ability of a third party to take

the common law doctrine of privity of contract, where a third party could establish that the parties to the contract intended the relevant provision to confer a benefit upon the third party. In order to extend the benefit of the contractual provision to the actions of a third party beneficiary, the actions must come within the scope of the agreement between the initial contracting parties.

The court concluded, on the plain reading of the insurance policy, that Fraser River and its insurer had intended to confer the benefit of a waiver of subrogation upon charterers such as Can-Dive. It rejected the argument that this benefit could only be enforced by Fraser River on Can-Dive's behalf, as the wording of the relevant provision did not support this conclusion. It was also clear that the actions of Can-Dive, for which it sought to escape liability, were the activities contemplated by the insurance contract. The court rejected Fraser River's argument that its agreement with the insurer to pursue legal action against Can-Dive nonetheless effectively deleted the third party benefit from the contract, holding that, once the loss had occurred, Can-Dive's rights crystalized into an actual benefit. It then became for all intents and purposes a party to the initial contract for the limited purpose of relying upon the waiver of subrogation clause. It was no longer available to Fraser River to delete this protection through further negotiation with the insurer.

this particular risk was not sufficiently likely or foreseeable that the plaintiff could be characterized as having shown willful misconduct or having courted the risk. Nor did the court accept that the damage constituted wear and tear or gradual deterioration, which exclusion applied to the gradual process of deterioration which would be expected to occur in normal circumstances, not the circumstances demonstrated in this case.

The court accordingly rejected the defences advanced by the insurers and, holding that there was no issue of fact which required a trial for its resolution, granted a motion by the plaintiff for summary judgment in its favour.

VI.

CHARTERPARTIES

Sail Labrador Ltd. v. *Ship "Challenge One"*[25].

The trial decision in this case[26] and the decision of the Federal Court of Appeal[27] have both been previously reviewed.[28] The plaintiff, Sail Labrador, was the bareboat charterer of the vessel "Challenge One". The charterparty contained an option to purchase the vessel at the end of the five year term, which was contingent upon performance by Sail Labrador of all its obligations under the charterparty. Sail Labrador attempted to exercise this option at

In a unanimous decision, the Federal Court of Appeal overturned the decision. The court held that the trial judge had improperly applied the de minimis rule, which is a rule of interpretation and accordingly should be used to determine whether a breach has been committed, not to qualify a breach as being minimal. When it applies, it does so on the basis that the parties have implicitly agreed, with respect to certain obligations, that substantial performance will be deemed tantamount to strict performance. However, as the trial judge had found that a breach had been committed, he could not invoke the de minimis rule to conclude that the breach was so negligible as not to constitute a breach.

The Court of Appeal similarly concluded that the doctrine of "spent breach" could only be invoked to soften the requirement for strict compliance with conditions precedent, such that the holder of an option to purchase could seek enforcement thereof, if the wording of the option and of the entire agreement supported the interpretation that it was sufficient that all conditions be fulfilled by the time the option was exercised rather than at the time they were initially supposed to be fulfilled. As this contract and option did not support such an interpretation, Sail Labrador's failure to strictly comply with all its obligations under the charterparty permitted Navimar to cancel the option.

In addressing the alleged breach related to provision of the log books, the court referred to the de minimis principle that had been analyzed by both the Federal Court, Trial Division and the Court of Appeal. While it preferred the conclusions of the trial judge as to how the de minimis principle should be applied, the Supreme Court disagreed that it should be applied in this case. Rather, it concluded that there had been no breach of the obligation in the charterparty to make the vessel's log books available to Navimar. The court noted that the obligation applied to the log books themselves, not to copies thereof. Given that the provisions of the *Canada Shipping Act*[29] required that the log books remain on board the vessel, the court concluded that Sail Labrador's obligation consisted only of making the logs available to owners when they attended on board the vessel, of which obligation there had been no breach.

VII.

MORTGAGES AND LIENS

Fraser Shipyard and Industrial Centre Ltd. v. *Expedient Maritime Company Limited*.[30]

A lengthy decision addressing the priorities of competing claims against the proceeds of sale of the vessel "Atlantis Two", this case is most notable for its treatment of various claims that

However, more interesting is the court's determination as to how the various maritime liens established upon this evidence were to be ranked. The court concluded that, under American law, claimants which had supplied necessaries, prior to the registration of a preferred mortgage, obtained a preferred maritime lien which would rank ahead of the mortgage. Claimants which had supplied necessaries after the mortgage registration obtained a non-preferred maritime lien, which would rank after the mortgage. An exception to this ordering appeared to apply to certain foreign mortgages, which ranked behind non-preferred maritime liens. However, the court relied upon the decision of the Supreme Court of Canada in *The "Ioannis Daskalelis"*[31] which held that the appropriate analysis was to determine the nature of the right afforded by American law but to then place it in the Canadian priorities framework. On this basis, the court concluded that all claims which were afforded the status of maritime liens under American law would rank ahead of the mortgages

One of the American maritime lien claimants also asserted claims and maritime liens against sister ships of the "Atlantis Two" and argued that the right of sister ship arrest conferred by section 43 (8) of the *Federal Court Act*[32] entitled it to assert this claim with maritime lien status against the "Atlantis Two". The court rejected this argument, holding that the maritime lien was a substantive right against a given ship which the Canadian legislation did not transfer to sister ships.

obvious injustice and a plainly unjust result. It concluded on the evidence that, without the Fraser Shipyard work, the ship would in all likelihood have been sold for little more than scrap value. Instead it sold for an amount which, were no adjustment made to priorities, would go to the benefit of American necessaries suppliers, some of whom had slept on their claims for months or years, and to the mortgagee which, while not displaying a culpable lack of action, could have been more diligent in protecting itself in its overall dealings with its customer. The court did not accept that Fraser Shipyard's work had increased the sale price of the vessel by the full amount of the yard's claim but, based upon expert ship brokers' evidence, concluded that its value had increased by 25% or $220,000. The court accordingly allowed Fraser Shipyard $220,000 of its claim, to stand *pari passu* with the American lien claimants.

One of the American necessaries claimants, Mega Marine Services Ltd., which had not been paid for the supply of two engine cylinder heads, was denied maritime lien status for its claim on the basis that the parts were not "furnished to a vessel" as required by American law. The evidence established merely that the cylinder heads were supplied FOB Houston, the "Atlantis Two" not having been at Houston at the time, and that the invoices were addressed to the master of the "Atlantis Two" and its owners. However, this portion alone of the prothonotary's decision was appealed to a judge of the Federal Court, Trial Division, who

Newfoundland Court of Appeal in September of 1996. Ulybel was itself subsequently convicted, but only $50,000 of the value of the vessel was ordered forfeited to the Crown, in conjunction with fines Ulybel was ordered to pay totalling $120,000.

In the meantime, civil actions had been commenced against the vessel and Ulybel by Clearwater Fine Foods Incorporated, which alleged a mortgage interest in the vessel, and by Carlos and Mario Neves, two American investors who claimed entitlement to a 49% ownership interest in the vessel in return for money they had provided to Mr. Pratas for the purchase and refit of the vessel. In December of 1996, after its forfeiture of the vessel had been set aside by the Newfoundland Court of Appeal, the Crown sought and was granted intervenor status in the Federal Court action brought by Messrs. Neves and applied to have the vessel sold in order to bring an end to the maintenance and preservation costs that the Crown had been incurring since the vessel's seizure in 1994. The vessel was sold in May of 1997 for the sum of $605,000.

The court heard argument on behalf of Messrs. Neves, Clearwater, the Crown and Ulybel, asserting their competing claims against the proceeds of sale of the vessel. Messrs. Neves claimed 49% of the sale proceeds, Clearwater claimed $125,000 plus interest in respect of its mortgage, and the Crown claimed the $50,000 amount forfeited, the $125,000 fine imposed following the conviction of Ulybel and approximately $360,000 incurred by the

maintaining its value during this period. However, the Court rejected this claim on the part of the Crown in its entirety. It first pointed to section 71.1(1) of the *Fisheries Act*[36] which provided that, where a person is convicted of an offence under the *Fisheries Act*, the provincial court which enters the conviction has the jurisdiction to order the person to compensate the Crown for costs incurred in the seizure, storage or disposition of anything seized under the Act by means of which the offence was committed. Ulybel argued on this basis that the Crown should have sought such compensation in the context of the prosecution in the Newfoundland provincial court rather than in the Federal Court proceedings. The Crown argued in response that neither of the terms "seizure" or "storage" employed in this subsection could be read to refer to the long term custody of a ship. The court rejected this argument and agreed that this component of the Crown's claim should have been pursued before the Newfoundland provincial court.

However, the court further concluded that, even leaving aside the application of section 71.1(1), it would not have been appropriate to characterize the Crown's expenses as incurred *in custodia legis*, so as to afford them priority commensurate to that of marshal's expenses, because the Crown did not find itself responsible for managing the care of the "Kristina Logos" because of the arrest of the ship in the Federal Court. Such duty fell to it because of its seizure of the vessel under the *Fisheries Act* and the obligations imposed upon the Crown by that statute as a result

had been unpaid for certain electronic equipment installed upon the vessel.

Shearwater claimed a possessory lien, pursuant to which it sought recovery in priority to the bank of not only its unpaid repair bills but also substantial storage charges incurred while the vessel remained under arrest. The bank did not dispute Shearwater's entitlement to its unpaid repair bill pursuant to its possessory lien but opposed the recovery of storage charges. The bank referred to authority for the proposition that storage charges incurred merely in an effort to protect a possessory lien, rather than being inherent to the work performed under contract, were not recoverable as part of a possessory lien. Shearwater argued that the work order signed by owners provided for the payment of storage charges and accordingly that they were properly claimable pursuant to the lien. The court accepted the bank's position, rejecting Shearwater's interpretation of the contract, which the court held contemplated only storage charges accruing while the work was underway.

Stryker's position was that the bank was unjustly enriched as the equipment that it had supplied to the vessel enhanced the purchase price obtained for the vessel, notwithstanding that the vessel owners had agreed that Stryker was free to remove the electronic equipment from the boat. While the court expressed sympathy with Stryker's plight, it ruled that Stryker was an

The court observed that, pursuant to the provisions of the *Commercial Arbitration Act*[39] it was obliged to refer to the parties to arbitration if an agreement between the parties to arbitrate could be shown. The plaintiff argued that the failure to insert the date of a particular charterparty in the bill of lading meant that the arbitration clause had not been effectively incorporated. However, the court disagreed with this contention, concluding that the language of the bill of lading, which purported to incorporate the charterparty and its arbitration clause, would have been effective in so doing even without any reference at all to the particular charterparty on the overleaf side of the bill of lading. It accordingly ruled that Thysson, being the holder of a bill of lading which specifically incorporated the arbitration clause, was bound by same, and the action was stayed in favour of London arbitration.

Frontier International Shipping Corporation v. *Ship "Tavros"*.[40]

This motion was decided in the context of a Federal Court action initiated by the plaintiff charterer in order to obtain security for an arbitration award which the plaintiff was seeking in an existing arbitration proceeding between the plaintiff and the defendant owners of the vessel "Tavros" in New York. Having arrested the "Tavros" in the Federal Court action and obtained security by way of a bank guarantee, the plaintiff moved to stay its own Federal Court action in favour of the New York arbitration.

defendant not just security for such costs but the actual costs. This decision was appealed to a judge of the Federal Court, Trial Division[41], who clearly read the prothonotary's decision as a determination as to final entitlement to costs, notwithstanding that the action had not been adjudicated on its merits. The court also noted that the prothonotary had characterized the ward of costs as an "interim measure of protection" pursuant to Article IX of the Commercial Arbitration Code, incorporated as a schedule into the Canadian *Commercial Arbitration Act*[42], which characterization the court rejected. The prothonotary's order was accordingly set aside.

IX.

PRACTICE

Riva Stahl GmbH v. *Combined Atlantic Carriers GmbH*.[43]

The decision of the motions judge in this case[44] has been previously reviewed[45]. Representatives of the plaintiffs' cargo insurers were pursuing a claim against the owners and charterers of the "Bergen Sea" and, as the applicable one year limitation period for commencement of a formal action approached, they requested an extension of time from representatives of both defendants' liability insurers. Both insurers agreed to such an extension, conditioned upon each other granting a "similar extension".

The plaintiffs appealed the dismissal of their action, but the Federal Court of Appeal agreed with the decision and reasoning of the court below and dismissed the appeal.

*B.C.L. (Oxon). Associated with Stewart McKelvey Stirling Scales (Halifax, Nova Scotia).

1. 239 N.R. 114 (F.C.A. 1999).
2. 127 F.T.R. 244 (T.D. 1997), reviewed at 29 J. Mar. L. & Com. at 424.
3. T-639-99, Fed. Ct. T.D., October 20, 1999 (unreported).
4. R.S.C. 1985, c.F-7.
5. T-1571-99, Fed. Ct. T.D., December 10, 1999 (unreported).
6. [1969] 1 Lloyd's L.R. 337.
7. T-469-99, Fed. Ct. T.D., June 9, 1999 (unreported).
8. T-1102-98, Fed. Ct. T.D., August 17, 1999 (unreported).
9. T-38-96, Fed. Ct. T.D., November 29, 1999 (unreported).
10. T-98-98, Fed. Ct. T.D., September 22, 1999 (unreported).
11. T-98-98, Fed. Ct. T.D., December 21, 1999 (unreported).
12. A-406-96, F.C.A., June 10, 1999 (unreported).
13. 111 F.T.R. 11 (T.D. 1996).
14. 28 J. Mar. L. & Com. at 483.
15. T-1296-95, Fed. Ct. T.D., August 31, 1999 (unreported).
16. [1951] S.C.R. 852.
17. 131 F.T.R. 241 (T.D. 1997).
18. T-2522-96, Fed. Ct. T.D., December 7, 1999 (unreported).

41. T-1640-99, Fed. Ct. T.D., December 23, 1999 (unreported).

42. R.S.C. 1985, c.17 (2d Supp.).

43. 243 N.R. 183 (F.C.A. 1999).

44. 131 F.T.R. 231 (T.D. 1997).

45. 29 J. Mar. L. & Com. at 430.