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Notes and Comments

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I. *Jurisdiction*

As in 1978, the jurisdiction of the Federal Court of Canada was the major problem litigated upon in the Courts or at least the major problem reported in 1979.[1] The number of jurisdiction cases was nevertheless less than in 1978 when almost half the reported judgments concerned themselves with whether or not the Federal Court had jurisdiction. The reduction in jurisdiction cases was perhaps due to the approach taken by the Supreme Court of Canada in *Tropwood A.G.* v. *Sivaco*[2] and the efforts of the Federal Court of Appeal to distinguish *Quebec North Shore Paper* v. *C.P. Ltd.*[3] and *McNamara Construction* v. *The Queen*[4]. Certainly the strict guidelines of the two foregoing judgments were interpreted very broadly in 1979 and in some cases seem to have even been set aside. In this way the jurisdiction of the Federal Court has been clarified and widened.

1) *Tropwood A.G.* v. *Sivaco*
[1979] 2 S.C.R. 157; (1980), 99 D.L.R. (3d) 235; (1979), 26 N.R. 313 (S.C.C.)

The Supreme Court of Canada enlarged its previous narrow definition of jurisdiction of the Federal Court of Canada and held that the Court had jurisdiction over a claim for damage to goods carried by sea into a Canadian port from France. Because of the decisions in *Quebec North Shore*[5] and *McNamara Construction*[6] the court was compelled to seek out a body of federal law upon which its jurisdiction could be exercised. According to s.2 of the Federal

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1. The judgments referred to in this article are those reported in the various law reports during the calendar year 1979.
2. [1979] 2 S.C.R. 157.
3. [1977] 2 S.C.R. 1054.
4. [1977] 2 S.C.R. 654.
5. *Supra*, note 3.
6. *Supra*, note 4.

Court Act, "Canadian Maritime Law" incorporates the law that was administered by the Exchequer Court "by virtue of the Admiralty Act or any other statute." The Supreme Court relied upon the words "any other statute" to resurrect the repealed Admiralty Act of 1891. The effect of s.4 of the 1891 Act was to bring such claims within the purview of the Exchequer Court of Canada.

Having concluded the claim under consideration was one within the scope of admiralty law as it was incorporated into the law of Canada by the 1891 Act, the Court next had to decide whether the claim fell within the scope of federal power in relation to navigation and shipping. The Water Carriage of Goods Act, a recognized federal statute, only applies to outward shipments from Canada and was not applicable in the case at hand. Nevertheless it was held that "The relationship between carriers of goods by ship and shippers or owners or consignees of such goods is one upon which Parliament is entitled to legislate. . ."[7]

In light of the Supreme Court's reasoning in this case, it is suggested that the Court actually took *Quebec North Shore*[8] to mean only that the claim must fall within the scope of federal power in relation to navigation and shipping, and that it is not essential that a federal law apply in the case in question.

2) The following case was decided subsequent to the Supreme Court decision in Tropwood v. *Sivaco (above).*
Bensol Customs Brokers Ltd. v. Air Canada,
[1979] 2 F.C. 575; (1980), 99 D.L.R. (3d) 623, (Fed. C.A.)
[1979] 1 F.C. 167; (1978), 87 D.L.R. (3d) 613.

The Federal Court of Appeal reversing Walsh J., held that the Federal Court had jurisdiction to hear a claim for loss of goods carried by air from London, England to Montreal. Pratte J., with whom Le Dain J. and Hyde D.J. were in basic agreement, reasoned that s.23 of the Federal Court Act stated two conditions which must be met in order that a claim be within the jurisdiction of the Federal Court. The two conditions being:[9]

(1) the claim must be made "under an Act of the Parliament of Canada or otherwise;" and

7. *Tropwood A.G.* v. *Sivaco* (1980), 99 D.L.R. (3d) 235 at p. 242.
8. *Supra,* note 3.
9. *Bensol Customs Brokers Ltd.* v. *Air Canada* (1980), 99 D.L.R. (3d) 623 at p. 625 and 626.

(2) it must be related to a matter coming within any of the classes of subjects specified in the latter part of s.23 (i.e. within one of: aeronautics, and works and undertakings connecting a province with any other province or extending beyond the limits of a province).

The appellants were found to have met the first condition as they claimed under the Carriage by Air Act which was incorporated into the law of Canada in 1955. It was not considered detrimental to the appellants case that they also claimed tortious liability of the respondents even though it is arguable that the Carriage by Air Act did not supersede tortious liability. According to Pratte J. even if the latter were accurate it would not affect the jurisdiction of the Court to hear and decide the claim based on the Carriage by Air Act.

Nor was it detrimental to the appellants case that the real plaintiff was the insurance company who had been subrogated to the rights of the owners of the goods. In effect the claim was made both under the Carriage by Air Act and under the law governing subrogation. On this point Pratte J. reasoned that the appellants action need not be based *exclusively* on a Canadian Act. In this manner Pratte J. has widened the rigid strictures of the earlier cases of *Quebec North Shore*[10] and *McNamara Const.*[11]

The extent to which Pratte J. actually widened these strictures is uncertain as he implied that the court could not hear a tort claim since it was not based on a Canadian Act while on the latter point he was certain that the Court could hear a claim based both on a Canadian Act and on the law governing subrogation.

With regard to these two latter points, Le Dain J. would appear to have gone further than Pratte J. in that he did not distinguish between a claim based on the law of tort and one based on the law of subrogation. Le Dain J. reasoned that the *Quebec North Shore*[12] and *McNamara Const.*[13] cases did not suggest that a claim must be based solely on federal law. He considered it inevitable that claims will arise in which rights and obligations of the parties will be determined partly by federal and partly by provincial law. In particular Le Dain J. stated that "it should be sufficient . . . if the rights and obligations of the parties are to be determined to some material extent by federal law. It should not be necessary that the

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10. *Supra,* note 3.
11. *Supra,* note 4.
12. *Supra,* note 3.

cause of action be one created by federal law so long as it is one affected by it."[14]

As to the second requirement of s.23 (see above) Pratte J. had little difficulty in concluding that the respondent operated an undertaking that extended beyond the limits of a Province and that the damage occurred in the course of the operation of that undertaking.

With regard to this second condition Le Dain J. agreed that reasoning of Pratte J. was sufficient to decide the case but went on to say that the language of s.23 contemplates matters falling within specific and established areas of federal legislative competence and he deplored any narrow or technical interpretation of those matters.

While the narrower position of Pratte J. stands as the ratio of this case, one can see that taken together the expansions suggested by Le Dain J. lead independently to the same conclusion as was reached in the Supreme Court in *Tropwood* v. *Sivaco*[15] namely that the claim fall within the scope of federal competence.

[Reversed by the Supreme Court, [1980] 30 N.R. 104]

The following cases were decided prior to Tropwood v. *Sivaco*[16].

3) *Hawker Industries Ltd. v. Santa Maria Shipowning & Trading Co., S.A., [1979]* 1.F.C. 183 (Fed. C.A.)

Jackett C.J. speaking for the Federal Court of Appeal held that the Federal Court has jurisdiction to hear a claim for breach of a contract to repair a ship which had been disabled at sea.

As Jackett C.J. understood *Quebec North Shore*[17] and *McNamara Const.*[18] the only question was whether the claim was founded upon:

(a) provincial law, in which case it does not fall within "laws of Canada" and would be beyond the jurisdiction of the Trial Division, or[19]

(b) federal law, in which case it would fall within the "laws of

13. *Supra,* note 4.
14. *Bensol Customs Brokers Ltd.* v. *Air Canada* (1980), 99 D.L.R. (3d) 623 at p. 630.
15. *Supra,* note 2.
16. *Ibid.*
17. *Supra,* note 3.
18. *Supra,* note 4.
19. *Hawker Industries Ltd.* v. *Santa Maria Shipowning & Trading Co. S.A.,* [1979] 1 F.C. 183 at p. 186.

> Canada'' and Parliament could confer jurisdiction on the Trial division.[20]

Jackett C.J. went on to conclude in effect that there is and has always been in England a body of Admiralty law, that such law which was incorporated into Canadian law and amended by legislation and is ''federal'' and not provincial law and jurisdiction can be conferred by Parliament under section 101 of the British North America Act.

Jackett C.J. did not follow the test laid down in the Supreme Court cases. True the Supreme Court cases decided that there must be existing federal law in order that the Federal court have jurisdiction but the Supreme Court in *McNamara Const.*[21] explicitly frowned upon the approach which Jackett C.J. in effect adopted in the *Hawker Industries*[22] case. As was said by Laskin C.J. in *McNamara Const.*, ''The common law rule that the Crown may sue in any Court having jurisdiction in the particular matter, developed in a unitary England and has no unlimited application to federal Canada where legislative and executive power are distributed between the central and provincial levels of legislature. . .''[23]

4) *The ''Capricorn'' v. Antares Shipping Corp.* (1979), 88 D.L.R. (3d) 28 (Fed. C.A.)

The Federal Court of Appeal defined the jurisdiction of the Federal Court by a reasoning, not directly contrary to the Supreme Court in *Quebec North Shore*[24]

The Court of Appeal noted that sections 2 and 42 of the Federal Court Act define an existing federal law over which the Federal Court has jurisdiction. This law is the law formerly administered by the Exchequer Court on its Admiralty side and also the law that the Court would have administered had it had unlimited jurisdiction. The foregoing jurisdiction in turn is part of Canadian maritime law. Le Dain J. in a very detailed survey of the development of Canadian maritime law thus provides a most useful definition of the Federal Court jurisdiction in Admiralty.

In consequence in the case at hand the Court of Appeal held that the Federal Court did not have jurisdiction to hear a claim for

20. *Ibid.*
21. *Supra*, note 4.
22. [1979] 1 F.C. 183.
23. *McNamara Const.* v. *The Queen*, [1977] 2 S.C.R. 654 at p. 660.
24. *Supra*, note 3.

specific performance of a contract of sale of a ship because it did not fall within Canadian Maritime Law.

5) *Benson Bros. Shipbuilding Co. (1960) Ltd.* v. *Mark Fishing Co.*
(1979), 89 D.L.R. (3d) 527 (Fed. C.A.)

The Federal Court was held to have jurisdiction to hear a claim for building a ship whether or not the ship was under arrest. The argument was similar to that presented in *The "Capricorn"* v. *Antares Shipping Corp.*[25] The Federal Court Act, at s.2 defines Canadian maritime law to include all the law that was administered by the Exchequer Court of Canada on its admiralty side or would have been administered if the Court had had unlimited jurisdiction. The Exchequer Court did have jurisdiction under the Admiralty Act, 1934 to hear claims for building a ship provided the ship were under an arrest. In the case at hand the ship was not under arrest, however this did not matter as the previous limitation is irrelevant where the admiralty court has unlimited jurisdiction.

6) *United Nations v. Atlantic Seaways Corp.*
(1979), 28 N.R. 207; (1980), 99 D.L.R. (3d) 609 (Fed. C.A.)
rev. [1978] 2 F.C. 510; [1979] A.M.C. 398

The Federal Court of Appeal reversed Gibson J. and held that the Federal Court of Canada has jurisdiction to hear a claim for damage to cargo carried from New Orleans to Yemen where the contract of carriage provided that the contract should be governed by Canadian law and should be tried in Canada by the Federal Court of Canada. The court held that once it is determined that a particular claim is one which falls within s. 22 of the Federal Court Act, the claim must be deemed to be one recognized by Canadian maritime law. The case at hand did fall within s.22 of the Federal Court Act, and being an *in personam* cargo action suffered no restrictions that bound an *in personam* collision case under section 43(4).

7) *Davie Shipbuilding Limited v. The Queen*
[1979] 2 F.C. 235 (Fed. Ct., Gibson J.)

A shipbuilder sued the Crown for whom it was building a ship and the Crown counterclaimed against the shipbuilder. A third party was

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25. (1979), 88 D.L.R. (3d) 28.

called into the case being the builder of the engines. It was held that the Court had jurisdiction over all matters and parties by applying the ancillary jurisdiction concept. According to this concept where the main action in the proceedings is within the jurisdiction of the Court, issues which are really ancilliary to the main subject matter are also within the courts jurisdiction. According to Rand J. in *The "Sparrows Point"* v. *Greater Vancouver Water District*[26] the concept is based upon considerations of convenience and justice which imply that a claimant may prosecute in a single cause of action all remedies to which he is entitled. This concept eliminates the possibility of different results being determined in different courts.

8) *Santa Marina Shipping Co. S.A.* v. *Lunham & Moore Ltd.*, [1979] 1 F.C. 24 (Fed. Ct., Dubé J.)

Held that Canadian maritime law from time immemorial has encompassed a claim relating to the use of a ship by charterparty and this is now found in para. 22(2) (i) of the Federal Court Act. Further that if the charterparty, by its terms, is to be construed according to English law then that law will be applied by the Canadian court. Thus the stricture in *Quebec North Shore Paper*[27] that a federal law apply is reduced to a condition that a federal law be applicable generally but not necessarily apply in the particular case.

II. *Questions of Procedure*

The Federal Court Rules[28] have been in existence for more than ten years. They have been amended innumerable times and are slowly being understood. Judgments relating to questions of procedure are now fewer in number and usually give rise to questions of substance rather than of technique.

1) *Bright Star Steamship Co.* v. *The "Lorna P"*, [1979] 2 F.C. 435; (1980), 100 D.L.R. (3d) 575; (1979), 29 N.R. 24 (Fed. C.A.)

Two ships collided and one was arrested. Bail was provided by the arrested vessel whose owner then took suit in counterclaim against

26. [1951] S.C.R. 396.
27. *Supra*, note 3.
28. Made under s. 46 of the Federal Court Act R.S.C. 1970 c. 10 (2nd Supp.).

the first vessel. It was held that the owner of the arrested vessel could not demand security as a matter of course from the other ship because it had by that time left the jurisdiction. Also the Trial Division no longer has power that it possessed under s.22 of the former Admiralty Act R.S.C. 1970, c.A-1 to force a plaintiff in an action for damages resulting from a collision to file security for a counter claim of the defendant.

2) *Saint John Shipbuilding & Dry Dock Ltd.* v. *Kingsland Marine et al. (Scol Eminent)*
(1979), 24 N.R. 377 (Fed. C.A.)

The Federal Court of Appeal held that a ruling of a trial judge of the Federal Court on the admissibility of evidence could not be appealed. Statutory jurisdiction to hear an appeal from the trial division is derived from sections 27 and 28 of the Federal Court Act. An appeal lies from any final judgements, any judgement on a question of law determined before a trial, or any interlocutory judgement. None of these conditions were met in the case at hand.

3) *May & Baker (Canada) Ltd.* v. *Motor Tanker "Oak"*
(1979), 89 D.L.R. (3d) 692 (Fed. C.A.)

Two extensions of time to serve the writ were obtained from the Federal Court although the defendant was available for service. Service was eventually made and then after the defendant appeared conditionally the Federal Court refused a motion of the defendant that the extention of time to serve the writ had been granted without sufficient reasons. The Federal Court of Appeal reversed the court of first instance because insufficient reason was given for not serving within the time fixed by the Rules. According to Jackett C.J., "where the defendant was available for service and the plaintiff was not inhibited from serving or induced by the defendant not to serve, it is almost impossible to think of a 'sufficient reason' for not serving within the time fixed for serving."[29]

4) *Lido Industrial Products* v. *Teledyne Industries Inc.*
(1979), 91 D.L.R. (3d) 81 (Fed. C.A.)

A witness who is out of the county cannot be compelled to appear in court prior to trial and as the witness in question was not necessarily

29. *May & Baker (Canada) Ltd.* v. *Motor Tanker "Oak"* (1979), 89 D.L.R. (3d) 692 at p. 694.

under the control of the defendant, the defence is not subject to being struck out. (This was a patent case but it is useful in Admiralty matters.)

5) *Newfoundland Steamships Ltd. et al.* v. *Canada Steamship Lines, Ltd. et al.*,
[1979] 1 F.C. 393; (1979), 90 D.L.R. (3d) 79 (Fed. Ct., Walsh J.)

Walsh J. permitted an amendment of a statement of claim after prescription so that a more detailed list of plaintiffs who owned cargo could be substituted for those originally described as "those persons interested in cargo laden on board the ship Fort St. Louis when she caught fire at the Port of Montreal". "New parties" were not added in light of the original general description; the addition was merely a precision. The amount claimed was unchanged and no prejudice would be suffered by defendants. The Court also noted that by section 38 of the Federal Court Act the delays for suit are fixed by the law of the Province where the cause of action arose.
[Reversed on appeal, [1980] 2 F.C. 134 (Fed. C.A.)]

6) *Orient Leasing Co. Ltd.* v. *The "Kosei Maru"*,
[1979] 1.F.C. 670 (Fed. Ct., Marceau J.)

Marceau J. permitted an action *in rem* to enforce a Japanese ship sales contract and a Japanese ship mortgage. The Court refused to adopt an original interpretation of Japanese law which would have run contrary to all existing Japanese law on the matter.

III. *Carriage of Goods Judgments*

A number of excellent carriage of goods by sea judgments were rendered during 1979 which enrich Canadian case law on the question.

1) *Amjay Cordage Limited* c. *The Margarita*,
[1979] 28 N.R. 265 (Fed. C.A.)

Here the Federal Court of Appeal confirmed that the true measure of damages in cargo claims is the market value of sound twine (the cargo in question) at the port of delivery less the amount which was recovered or might reasonably have been recovered on resale of the damaged cargo.

2) *Marubeni America Corp.* v. *Mitsui O.S.K. Lines Ltd.*, [1979] 2 F.C. 283; (1979), 96 D.L.R. (3d) 518 (Fed. Ct., Marceau J.)

The Himalaya clause in an ocean bill of lading was held to be valid under the common law but not as a "stipulation pour autrui" under the Civil Code of Quebec. In consequence a terminal operator in Montreal could rely on the Himalaya clause for loss of goods after discharge and as there was no evidence of "faute lourde" the terminal operator was not responsible.

3) *Coutinho, Caro & Co. (Canada) Ltd.* v. *The "ERMUA"*, [1979] 2 F.C. 528 (Fed. Ct., Walsh J.)

Walsh J. held that each lift composed of steel angles strapped together was a single package although the bill of lading described the number of lifts and pieces. The stamp "said to contain indicated number of pieces" marked on the bill of lading, however, did not relieve the carrier of the prima facie presumption against it that the shipment was as so described and that the lifts contained the number of angles stipulated on the bill of lading.

4) *Captain* v. *Far Eastern Steamship Co.* (1980), 97 D.L.R. (3d) 250 (B.C. S.C., MacDonald J.)

MacDonald J. of the B.C. Supreme Court upheld a number of basic principles of carriage by sea. Firstly, the bill of lading is only evidence of the contract of carriage, albeit important evidence. Secondly that even if the bill of lading is issued later, then its terms and conditions still form part of the contract. Thirdly, it is a fundamental breach of the contract to leave non-waterproofed lifts in the open subject to the rain during transshipment. In consequence the carrier could not rely on the exclusion of liability clauses in the bill of lading.

5) *Atlantic Consolidated Foods Ltd.* v. *The "Doroty"*, [1979] 1 F.C. 283; [1978] E.T. L. 550 (Fed. Ct., Dubé J.) [Affirmed on appeal, January 23, 1980, unreported as yet]

Cargo was damaged in a voyage from Taboga, a Pacific island off Panama to St. Andrews N.B. Canada. The Court correctly held that it was not sufficient for the carrier to exercise due diligence to make the refrigeration equipment sound at the beginning of the voyage.

Rather the absolute obligation under the Hague Rules was to "properly and carefully" care for the goods subject to the exceptions to the Rules. The Court added with reason that the Hague Rules have precedence over the clauses of the bill of lading.

6) *Couvreur Verdun Inc.* v. *March Shipping Ltd,*
[1978] C.S. 227 (Superior Court of Quebec, Gratton J.)

Gratton J. of the Quebec Superior Court held that the agent of the carrier was not responsible to the cargo owner for damage to cargo. It was clear from the advice note and the bill of lading that the agent was not the carrier but only the agent.

7) *Quebec Liquor Corp.* v. *"Dart Europe"*
[1979] A.M.C. 2382 (Fed. Ct., Dubé J.)

Containers holding fibre board cases of gin were carried by sea from Southampton England to Halifax N.S. and thence by rail to Montreal. Nearly 700 cases were stolen from two containers in the railway's storage yard. The defendant was allowed to rely on its limitation clauses because its security was not grossly negligent. Dubé J. found that it was the intention of the parties to consider the individual cases to constitute packages and not the containers. If the loss had taken place in the ocean carrier's hands the per package limitation would have been £100 per case but the railroad tariff was held applicable which has a limit of $10,000.00 Canadian per container.

8) *Westcoast Food Brokers Ltd.* v. *"The Hoyanger"*,
[1979] 2 Lloyd's Rep. 79 (Fed. Ct. Addy J.)
(Upheld in appeal, [1980] A.M.C. 2193)

A cargo of apples was unfit for the 45 day voyage from Buenos Aires to Vancouver, B.C. and the carrier in issuing a clean bill of lading had hired an expert who erroneously applied Argentine standards which did not contemplate such a long voyage. The judgment relieved the carrier from responsibility because a carrier is under no obligation to hire an expert at all but is only obliged to declare "The apparent order and conditions of the goods" by Article III (i) (c) of the Hague Rules.

IV. *Maritime Liens*

Canadian case law on maritime liens is extremely limited and this is

unfortunate as most of the substantive law on liens is found only in the common law. Two judgments were reported in 1979 which are of interest.

1) *Tanguay* v. *Gulf-Brownsville Shipping Ltd.*
(1979), 91 D.L.R. (3d) 208 (Fed. Ct., Marceau J.)

Crew members had a valid claim and maritime lien against a ship for wages. Section 44 of the Canada Shipping Act,[30] however, does not give the Federal Court authority to prohibit transactions having to do with a ship or its transfer, because of a maritime lien. Section 44 is limited to those who have a "direct property right" in a ship and the Court held this was true of a maritime lien holder.

2) *Osborn Refrigerator Sales & Service Inc.*, v. *The "Atlantean I"*,
[1979] 2 F.C. 661; (1980), 100 D.L.R. (3d) 11 (Fed. Ct. Walsh J.)

This judgment clearly and painstakingly sets out the order of ranking of many maritime liens in Canada. The role of equity modifying those rules is also explained. The judgment along with Kierstead D.J. in *Comeau's Sea Foods* v. *The "Frank and Troy"*[31] gives Canadian recorded law two detailed recent judgments on maritime liens and their ranking.

V. *General Matters*

1) *Iron Mac Towing Ltd.* v. *North Arm Highlander*
(1979), 28 N.R. 348 (Fed C.A., Urie J.)

The Federal Court of Appeal upheld a judgment of $1,200.00 to a towing company which had rendered salvage services. The salvor and crew were at no time in danger and so the award was low.

2) *Pacific Pilotage Authority* v. *S.S. "Alaska"*
(1979), 28 N.R. 451 (Fed. C.A.)

The Pacific Pilotage Regulations calling for compulsory pilotage could be waived for ships registered in the U.S. and Canada. A Liberian ship would thus have had to take a pilot although constantly plying the waters in question. The Federal Court of

30. R.S.C. c. S-9.
31. [1971] F.C. 556.

Appeal upheld the trial court and ruled that the restriction as to place of registration of the ship was invalid as it did not relate to the Authority's mandate to establish an efficient pilotage system for the attainment of safety.

3) *Sabb Inc.* v. *Shipping Ltd.*,
[1979] 1 F.C. 461 (Fed. C.A., Pratte J. and Le Dain J.)

Stevedores were not permitted to claim unpaid money due for services rendered to various vessels from the agents of those vessels because the agents had always made it clear that they were merely agents and at no time undertook to be personally liable.

4) *Curits* v. *Jacques et al.*
(1979), 88 D.L.R. (3d) 112; (1978), 20 O.R. (2d) 552 (O.H.C., Steele J.)

Bodily injury was suffered by a passenger in one power boat which collided with another such boat on the inland waters of Ontario. The portionate fault rule of section 638 of the Canada Shipping Act applies to damage to ships and cargoes but not to injury to persons (relying on the Supreme Court of Canada in *Stein et al* v. *The Kathy K*[32]). Because the collision took place in inland waters, however, the Ontario Negligence Act[33] applied and the Court held it had authority to apportion fault which it did — 80% and 20% against the defendants. By the Ontario Negligence Act as well the defendants were jointly and severally liable to plaintiff.

5) *The "Steelton" (No. 2),*
[1979] 1 Lloyd's Rep. 431 (U.S. Dist. Ct., N.D. of Ohio)

A ship damaged a bridge in the Welland Canal in Canadian waters. The Federal Court (Addy J.) had held that plaintiffs whose business was affected by the blockage of the Seaway did not have a valid claim for such economic loss under Canadian law. Suit was then taken in an American Court which held that the *lex loci delicti* applied and that the ruling of Addy J. was the law of Canada most directly on the point and was binding on the American Court.

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32. [1976] 2 S.C.R. 802.
33. R.S.O. 1970 c. 296.

6) *Smith & Moxan* v. *Smith & Langley Flight Centre Limited* [1979] 4 W.W.R. 665; (1980), 101 D.L.R. (3d) 189 (B.C. S.C., Meredith J.)

Meredith J. of the B.C. Supreme Court held that salvage claims could be made for the rescue of vessels under s. 517 of the Canada Shipping Act[34] and to a lesser extent for aircraft by Section 514. Nevertheless section 514 applies to aircraft "over the sea or tidal waters and on or over the Great Lakes." Thus in the present case only the rules of land salvage applied because the aircraft overturned inland, over the waters of Harrison Lake, B.C.

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34. R.S.C. 1970 c. S-9.