Supreme Court of Canada

Merchants Marine Ins. Co. *v.* Barss (1888) 15 SCR 185

Date: 1888-06-14

The Merchants Marine Insurance Co. (Defendants)

Appellants

And

Howard Barss and LeBaron Vaughan (Plaintiffs)

Respondents

1888: Feb. 27; 1888: June 14.

Present—Sir W. J. Ritchie C.J. and Strong, Fournier, Taschereau and Gwynne JJ.

ON APPEAL FROM THE SUPREME COURT OF NEW BRUNSWICK.

Marine insurance—Insurable interest—Not disclosed when policy issued—Notice of abandonment—Authority of agent.

The part owner of a vessel may insure the shares of other owners with his own, without disclosing the interest really insured, under a policy issued to himself insuring the vessel "for whom it may concern."

An agent effecting insurance under authority for that purpose only, may, in case of loss, give notice of abandonment to the underwriters without any other, or special authority.

Appeal from a decision of the Supreme Court of New Brunswick[[1]](#footnote-2), refusing to set aside the verdict for the plaintiff and order a nonsuit pursuant to leave reserved.

The facts of this case are simple. Barss & Co., a Liverpool firm, cabled to one Vaughan, in St. John, N. B., to insure for them $3,500 on the barque "Landseer." Under this authority Vaughan applied for the insurance, and the application asked for insurance "on our account" by H. Barss & Co. The policy was made out stating that the insurance was "for whom it may concern." A loss having occurred a claim was made under the policy by H. Barss & Co. and several others who were shown to be interested in the vessel. The company resisted payment on the ground that only the interest of Barss & Co. was insured. Whereupon the policy was sued on by all the owners and

(Mr. Justice Henry was present at the argument but died before judgment was delivered.)

[Page 186]

on the trial a verdict was entered for the plaintiffs with leave reserved to the defendants to move for a nonsuit, or to reduce the verdict to an amount agreed upon as representing the interest of Barss & Co. The verdict was sustained by the Supreme Court of New Brunswick, and the defendants appealed to the Supreme Court of Canada.

*Weldon* Q. C. and *C. A. Palmer* for the appellants. There was no authority in Vaughan to insure anything but the interest of Barss & Co. Any authority that Barss & Co. may have had over the interest of the other owners cannot be held to govern the action of Vaughan.

Further, there was no constructive total loss. The only evidence of loss is that of the captain, and his evidence is mostly inadmissible as it refers to the proofs of loss which are not evidence of the facts contained in them.

Lastly the notice of abandonment was insufficient. Only the person having authority to insure can abandon, and only the person having authority to transfer the property can insure. The test is whether, independently of the Merchants' Shipping Act, Vaughan could have given a bill of sale of the interest of the owners other than Barss & Co.

The cases of *Stewart* v. *The Greenock Marine Ins. Co.[[2]](#footnote-3)*; *Kaltenbach* v. *Mackenzie[[3]](#footnote-4)*; *Jardine* v. *Leathley[[4]](#footnote-5)*. were cited

*Forbes* for the respondents cited Brown's Parliamentary Cases, Tomlins, 204. *McManus* v. *Etna Ins. Co.[[5]](#footnote-6)*; *Currie* v. *Bombay Ins. Co.[[6]](#footnote-7)*; *Patapsco Ins. Co.* v. *Southgate[[7]](#footnote-8)*; *Hunt* v. *Royal Ass. Co.[[8]](#footnote-9)*; *Rankin* v. *Potter[[9]](#footnote-10)*.

[Page 187]

Sir W. J. RITCHIE C. J.—I think there was sufficient evidence to warrant the jury in finding that there was a constructive total loss; that as agent for the assured H. Vaughan had a right to give notice of abandonment; and I think the notice so given was sufficient to convey to the underwriters the intention of the assured to abandon; that defendants having, by their policy, insured the vessel "on account of whom it may concern" it was open to the plaintiffs to show an insurable interest and for whose benefit the insurance was effected, the intention of the party directing the insurance determining whose interest the policy protects; and independently of the direct evidence in this case that twenty shares were intended to be insured would seem to appear very clearly from the amount insured, $3,500 on a valuation of $10,000. If the insurance was only on eight shares instead of twenty it would have amounted to only some $1,222 and they would have been paying premiums on $2,278 which they never could have received in case of loss—a most unlikely and unreasonable thing for business men to do—and it was, no doubt, seeing this would be the case that the agent of the company insured "on account of whom it may concern" to enable the plaintiffs, in case of loss, to declare the intent and cover all the interest the insured represented and intended to insure, without requiring him to disclose what that interest was at the time of effecting the insurance.

The fact of the agent of the insured departing from the words of the application, and using language of a more extended character, would seem to show that the interest was not to be confined to the shares standing in the name of Barss & Co. but was intended to cover all the interest they represented.

As to the claim to have a reduction of freight said

[Page 188]

to have been received by the assured and alleged to belong to the owners, the defendants not having furnished any means of ascertaining the amount, if any, so received there is no amount that can be deducted in this action.

STRONG J.—I concur in all respects in the full and very able judgment delivered by Mr. Justice Palmer in the court below.

FOURNIER, TASCHEREAU and GWYNNE JJ. concurred in dismissing the appeal.

Appeal dismissed with costs.

Solicitors for appellants: Weldon, McLean & Devlin.

Solicitor for respondents: J. G. Forbes.

1. 26 N. B. Rep. 339. [↑](#footnote-ref-2)
2. 2 H. L. Cas. 159. [↑](#footnote-ref-3)
3. 3 C. P. D. 467. [↑](#footnote-ref-4)
4. 3 B. & S. 700. [↑](#footnote-ref-5)
5. 6 All. (N. B.) 314. [↑](#footnote-ref-6)
6. L. R. 3 P. C. 72. [↑](#footnote-ref-7)
7. 5 Peters 604. [↑](#footnote-ref-8)
8. 5 M. & S. 47. [↑](#footnote-ref-9)
9. L. R. 6 H. L. 83. [↑](#footnote-ref-10)