

90, 1933

No 42 of 1933.

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In the Privy Council

ON APPEAL FROM THE COURT OF APPEAL FOR
BRITISH COLUMBIA

BETWEEN :

THE MOUNT ROYAL ASSURANCE COMPANY,
(Defendants) Appellants,

AND:
CAMERON LUMBER COMPANY LIMITED,
(Plaintiff) Respondent,

10 (AND SIX CONSOLIDATED ACTIONS)

CASE FOR THE RESPONDENT

- RECORD
1. This is an appeal from a judgment of the Court of Appeal for British Columbia, affirming, by a majority, the judgment of the Supreme Court of British Columbia, entered upon the verdict of a special jury. p. 239. p. 223. p. 217.
 2. The action was brought upon seven policies of insurance, issued by the seven Defendants, insuring the Plaintiff against loss by fire in respect of its fixed charges and expenses. p. 7.
 3. The Plaintiff carried on the business of lumber manufacture at its mill in the City of Victoria. p. 7.
 4. And on the 25th of February, 1931, a fire occurred at the Plaintiff's plant, which burnt the sawmill, lath mill, wharf and other buildings, thereby causing a suspension of the Plaintiff's business. p. 8.
 5. The seven policies, on foot at the time of the fire, were identical in effect. p. 244.
 6. Each policy insured the Plaintiff to the following effect, viz., that if the buildings occupied by the Plaintiff as a lumber-manufacturing plant, or the machinery or equipment contained

p. 244.
p. 245.

RESPONDENT'S CASE.

RECORD

therein should be destroyed or damaged by fire, so as to necessitate a total or partial suspension of business, the Plaintiff should be indemnified for the actual loss sustained, consisting of such fixed charges and expenses as must necessarily continue during a total or partial suspension of business, but to the extent only that such fixed charges and expenses would have been earned, had no fire occurred.

p. 8,
line 37.

7. The Plaintiff's annual fixed charges and expenses amounted to \$31,157.05, and as the Plaintiff alleged that it would have taken ten months to rebuild, its loss, in this respect, was \$124.62 per day for 250 days. 10

p. 9,
line 8.

8. As, however, the Plaintiff was only insured, by the terms of the policies, to the extent of \$120.00 a day, the insured daily loss came to 120/250 of \$120.00 or \$115.56 per day, claimed for 250 days.

p. 19,
line 16.

9. The amount of the fixed charges and expenses was admitted by the Defendants, but the length of time required for rebuilding and the fact that the fixed charges and expenses would have been earned were disputed, and submitted to the jury.

p. 217,
line 36.
p. 217,
line 42.

10. The jury allowed the Plaintiff 221 days for rebuilding, instead of the 250 days claimed, and found that the Plaintiff would have earned only a portion of its fixed charges and expenses, viz., \$111.67 per day, instead of the \$124.62 per day claimed. The jury accepted the Defendant's methods of calculation as the basis of its verdict changing only the inventory prices and the amount allowed for depreciation. 20

p. 220,
line 22.

11. The learned trial judge at first ordered judgment to be entered for the Defendants, but subsequently ordered judgment to be entered for the Plaintiff according to the verdict.

p. 221,
p. 222,
line 30.p. 226,
line 10.

12. The Defendants appealed to the Court of Appeal on the grounds, amongst others, that the jury had adopted an incorrect figure for the price of the inventories or stock-in-trade, and had not allowed a sufficient amount for depreciation. 30

p. 226,
line 20.p. 226,
line 10.

13. In their notice of appeal, the Defendants asserted that the learned trial judge should have charged the jury that the correct figure for pricing inventories was a matter of law, but on the hearing of the appeal, the alternative position was taken by the Defendants that there was no evidence to support the jury's finding.

p. 226,
line 14.

14. It would, indeed, seem remarkable that there should be any principle of law, prescribing at what figure a trader should 40

price his stock-in-trade, and it is submitted that this must necessarily be a pure question of fact, and one peculiarly fitted for determination by a jury of business men. RECORD

15. It is, of course, the case that the figure by which the quantity of a dealer's stock-in-trade is to be multiplied is an important item in any computation of profits or losses, but the whole matter of setting up balance sheets and profit and loss accounts is of a purely conventional nature, and, it is submitted, the Courts have steadily declined to interfere with the methods of business men, provided that those methods are reasonable and honest.

16. In this case, the jury has adopted the figure used, for this purpose, by the Plaintiff, for many years, in company with practically every other lumber company in the Province.

17. The alternative method pressed upon the jury by the Defendants really consists of a fiction of accountancy originated by the Defendants' accountant, Mr. Barrett-Lennard, without, it is submitted, any basis in fact or reason.

18. Unless, therefore, the question is one of law, then, since there was conflicting evidence submitted to the jury, it is a little difficult to understand why the jury should not have been entitled to accept what must have seemed to it a reasonable and honest method of preparing a profit and loss statement.

19. It may perhaps be permitted to commence with Mr. Barrett-Lennard's admissions as to the nature of his system:

"Q. Now I want to direct your attention to this average cost of lumber that you have been talking about, that is \$19. Is this correct, that figure represents the result of adding together all the expenses of manufacture in one month, increased by such costs of purchased lumber as are incurred after that lumber reaches the dock of the Cameron Lumber Company, divided by the total number of feet of logs put through the Cameron Mill; isn't that right? A. That is right, yes.

Q. Now, that itself has no reference to any reality, has it? A. I would say yes.

Q. You would, eh? A. Yes.

Q. Let me point out this to you: in the first place your dividend does not include the cost, the price that you have paid for the purchased lumber, does it? A. No.

Q. And your divisor does not include the number of feet of lumber which have gone into that purchased lumber? A. Well, the logs have nothing to do with the purchase of lumber.

Q. Answer that question. A. Yes, it does not.

Q. That is right? A. Yes.

p. 144,
line 3 to
p. 145,
line 27.

Q. So that you still contend that the figure that I have suggested to you has real reference to the reality of things?

A. Yes, I say that it has.

Q. All right. Now that is one factor that you use. A factor which is simply the result of a mathematical calculation which does not include in the dividend the actual price that you paid for the purchased lumber, and does not include in the divisor the number of feet of logs which have gone into the lumber that you have purchased? A. That is right.

Q. That is right? A. Yes. 10

Q. Now that is your one factor. You apply that to the inventory, which I prefer to call the stock in the yard, do you not? A. Yes.

Q. Well now, your stock in the yard, in the first place, has not been manufactured in that month, has it? A. No.

Q. It has been manufactured over a period which extends into years; that is right? A. Yes.

Q. In addition, the money factor, the \$19, if it represented anything, would represent the completed cost of the manufactured article, wouldn't it? A. Yes. 20

Q. Whereas your inventory, or the stock in the yard, never consists of completely manufactured articles, does it? A. No; but it runs in the same proportions throughout.

Q. Now just stick to the one thing at a time. The stock in the yard is never completely manufactured, is it? A. No.

Q. What I said is right; that it is never completely manufactured? A. Yes. I simply amplified that.

Q. You may have different grades, dimensions and sizes in your stock in the yard, mayn't you? A. Yes.

Q. And Mr. Foster is correct, is he not, when he says 30 that the determination of the cost of the various grades, species and sizes has never been attempted? He is correct, isn't he? A. That is right, yes; of the various grades—he is speaking of various grades, not of an average.

Q. What is that? A. He is not speaking of an average.

Q. Never mind what he is not speaking about. Do you agree with what he says? A. Yes, I agree with what he says.

Q. What? A. I do, yes.

Q. Yes. Now, this stock in the yard may include lumber 40 which has only reached the first stage of manufacture, mayn't it? A. That is quite correct.

Q. It may in fact only have labour expended on it to the cost of \$2.50? A. Yes. I brought that out in the January statement.

Q. So that you employed a mythical factor of \$19 to another mythical factor of quantities, and you produced a certain contention; isn't that correct? A. I disagree with the mythical. RECORD

Q. You applied \$19 for the value of lumber in the yard?
A. Yes.

Q. Do you say this is any less arbitrary than taking the \$15? A. I certainly do.

Q. You do? A. Yes.

10 Q. Now you have taken the closing inventory at \$17.
A. Yes.

p. 167,
line 3 to
p. 167,
line 22.

Q. Notwithstanding the fact that some portion of that closing inventory will eventually have a further cost of manufacturing incurred to the extent of some \$3 and will be sold at \$47.70? A. I have applied the same principle in closing as in opening.

Q. Is not that right? A. Yes.

20 Q. And other portions of that stock in trade which you value \$17 will have extra cost in regard to some \$6 or \$7 a thousand and will be sold at some \$68.53? A. I have not seen any sold at that, but I will admit your argument.

Q. Have you not seen your December /31 statement, Do you see an item moulding \$68.53? A. Yes you sold 487 feet of moulding at \$68.53. The highest price for your lumber in December 1931 was \$85.98 for 2,000 ft. of cross-arms. No, I beg your pardon, \$90.76 for 487 ft. of cross-arms, and received on the same date only \$20.34 for commons.

30 Q. And have you worked out the different proportions in this closing inventory of October 31, 1931, on which you applied the price of \$17? A. No."

20. It is submitted that the utter unreality of this gentleman's system is apparent from these statements.

21. The Plaintiff not only bought logs and manufactured them in its mill, but it also bought lumber in all conditions of whole or partial manufacture.

40 22. For the purpose of preserving comparative records of its outlays from month to month, the Plaintiff added together the cost of manufacturing the logs which it bought, and the various costs incurred in respect of the purchased lumber after that had reached its dock: the Plaintiff then divided this total by the number of feet of logs which it had put through the mill, not including in that divisor the number of feet of logs which had been used in the manufacture of the lumber, which it had purchased.

23. Having found this figure in the Plaintiff's book, kept there for the purpose only of showing how the monthly expenditures compared with one another, Mr. Barrett-Lennard insisted on using this artificial figure with which to multiply the quantity of the stock in the yard, so as to charge the Plaintiff with the result of this calculation, as an item of expense incurred in earning its profit.

24. The stock in the yard, however, never consists of completely manufactured articles: every stage in the process of manufacture is to be found, from lumber which has only cost \$2.50 so far. 10

25. What Mr. Barrett-Lennard was in search of was a figure, which would represent the cost of manufacture of the stock of lumber in the yard.

26. What he found was an arbitrary figure, which did not represent the actual cost of production of any single commodity, and he arbitrarily applied it to a stock of lumber in every stage of manufacture.

27. The result of this calculation is what Mr. Barrett-Lennard charged the Plaintiff with, at the opening of the period. 20

28. When Mr. Barrett-Lennard came to credit the Plaintiff with the value of the stock of lumber at the close of the accounting period, his method was still more remarkable.

29. He selected an arbitrary figure of \$17, by which he multiplied the number of feet of lumber on hand, entirely heedless of the fact that, by a small additional expenditure, some portion of this stock would be sold for \$47.70, \$68.53, \$85.98, or \$90.76 per thousand feet.

30. In preparing his profit and loss account, therefore, Mr. Barrett-Lennard commenced by charging the Plaintiff with an expense, which it had never incurred, and ended by failing to credit the Plaintiff with the returns in money, which it eventually actually realized. 30

31. This witness was of course entirely unable to refer to any lumber company which kept its books by any such method.

32. On the other hand, the method adopted by the Plaintiff was practically universal in this Province:

“Q. You know Mr. A. P. Foster? A. I do.

Q. He is a very skilled and experienced accountant, is he not? A. He is my partner, yes. 40

Q. Particularly versed in the matter of lumber manufacturing companies? A. Yes.

Q. Do you know a publication called the Canadian Chartered Accountant? A. Yes.

10 Q. I will read you a passage, and I would like to hear what you say about it. 'The valuation of lumber inventories for accounting purposes involves a difficult problem, owing to the fluctuations in grades and species at the close of accounting periods. The percentage of clears, or high priced lumber, may be higher at one accounting period than at another causing a wide fluctuation in the real inventory value. Where a fixed unit price is used year in and year out as the basis for inventory valuation, the statement of profit and loss will not reflect the effect of variations in real inventory values, nor would it do so in those instances, where the average cost of lumber produced is used as the basis. So far as I know, there is no exact method of valuing lumber inventories for accounting purposes because determination of the cost of the various grades, species and sizes has never been attempted. This is too large a subject to be embarked upon in this article. The best guide in this respect is to be consistent in the method of inventory pricing and to be satisfied always that market value has not been exceeded.' Do you agree with that? A. I agree with it entirely, yes. I would like to make a remark in that connection.

20

Q. Now that is an article by Mr. Foster.

Mr. Bull: He says he wants to say something on it. A. Yes, I would like to make a remark on it.

30 Mr. Mayers: Go ahead. A. Mr. Foster, as I notice, is speaking there of a period of years. I quite agree with him. Insofar as the presentation of the accounts of a lumber company over ten years are concerned, a price of \$15 or \$20, or some price that is not higher than market, might be all right. But in this particular instance we are attempting to discover what would have been the result of a partnership of the insurance company and the Cameron Lumber Company from the end of March, 1931. And I contend, or submit, that you cannot discover what profit has been made on any article, I don't care whether it is lumber, or hats, or anything else that we deal in, unless you know what the cost is and what the selling price is. If your selling price is higher than your cost you have made a profit, and if your selling price is lower than your cost you have made a loss.

40

Q. Have you finished? A. Yes.

Q. Is this a correct statement, taking the inventory at an arbitrary value is a conservative method, and one employed

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by practically all the lumber companies for the purposes of bookkeeping? A. That is correct, yes. Again I submit that my remark in connection with the other applies.

p. 143,
line 43 to
p. 144,
line 2.

Q. So you agree with me that the uniform method of pricing inventories has been adopted by practically all the lumber manufacturing companies in British Columbia, and that the Chemainus Mill has for years valued its inventories at a fixed value, and the B.C. Fir and Cedar Company has valued its inventory at \$18; you agree with that? A. Yes."

33. These eccentric views of Mr. Barrett-Lennard were such, it is submitted, as any jury, familiar with the methods of lumber manufacture in this Province, must have rejected. 10

34. They were repeated in a more emphatic form, a little later:

p. 145,
line 39 to
line 42.

"Q. Well, is this correct, the mill cannot tell what the profits of the operation of any particular period will be until or unless they have disposed of the total production of that period? A. That is quite correct."

35. One root of the fallacies which afflicted Mr. Barrett-Lennard is, it is submitted, his failure to recognize or remember the meaning of the phrase in the policies, that due consideration should be given "to the experience of the business before the fire and the probable experience thereafter." 20

p. 245,
line 31.

36. His view obviously was that the effect of the fire was to bring about a complete break in the chain of continuity of the Plaintiff's experience.

37. While eventually driven to concede that the Plaintiff's method was honest and reasonable for all the ordinary purposes of bookkeeping in the case of a lumber-manufacturing plant, he reiterated untiringly his assertion that the period after a fire was to be treated entirely differently from any ordinary period or part of a period, where no fire occurred. 30

p. 148,
line 11.

38. And, as a natural corollary to this view, Mr. Barrett-Lennard was in fact insisting on the Plaintiff's abandoning its own system of accountancy, of which alone it had any experience, and adopting his new system, devised for the occasion, with the result, of course, of opening an avenue of escape to the Defendants.

p. 149,
line 1.

39. When, however, these remarkable aspects of his contentions were at last borne in upon his consciousness, Mr. Barrett-Lennard fell back upon the suggestion that the statement prepared by or for the Plaintiff should be fair. 40

p. 149,
line 34.

40. This is a suggestion, in which the Plaintiff can heartily concur. And who can be a better arbiter of what is fair in circumstances of this nature than a jury of local men of business and industry? RECORD

41. This was, in effect, the result of the evidence for the Defendants.

42. The Plaintiff, on its part, adduced the following testimony. Its secretary said:

10 “Q. You heard Mr. Bull’s views on the question of inventories. Will you tell me something about those? A. Well, we have always carried our inventory at a fixed value of \$15 a thousand. That has been the policy of the Company ever since I have been with them; and prior to that, I believe. My opinion of a fixed inventory rate is that it is the only, or the best way of determining a company’s position over a period of years, or even any time. Mr. Bull indicated that an inventory should be taken at cost figure, I have forgotten what it was, but it seems to me that it does not make any difference whether an inventory, if you start off at the beginning of the year with an inventory value of \$15 and you finish up with an inventory value of \$15, so long as that \$15 is not below the market price at which you can sell your product—

20 The Court: Not above? A. I mean, not above the market price at which you can sell your product, that you have a fair sample of what your operation has been during the year.

30 Mr. Mayers: What exactly do you mean when you speak of an inventory? A. It is the stock in trade, in this particular case consisting of lumber and wood products of various kinds—boxes.

Q. Is it practical and possible to find out the cost of production of the stock as it stands at any particular time?

A. No, sir.

Q. Just explain why? A. Well, an inventory is a stock that has accumulated during the year, manufactured, it might be piled there for use on future orders, or on contracts which you may have on hand.

40 Q. Are the different dimensions of lumber manufactured at the same cost? A. Oh, nobody could go into a yard and pile it in a specified pile or number of piles of lumber and state definitely what they cost.

Q. Just explain that to me a little more fully. There are various dimensions of lumber, are there not? A. Yes, there are various dimensions of lumber.

p. 57,
line 2 to
p. 57,
line 36.

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p. 58,
line 25 to
p. 60,
line 27.

Mr. Mayers: Are these different descriptions and dimensions of lumber manufactured at different costs? A. Oh, yes. The larger items do not cost as much to manufacture as smaller items, which are re-manufactured, into mouldings, and stuff of that nature.

Q. Is it practically possible, and does anyone do it, to keep a system of costs of accounting on each piece or pile of lumber? A. I don't think anybody does. I think it would be a very expensive procedure, and would be probably prohibitive.

Q. Has the price placed on the inventories any bearing on the profit or loss for any particular period, provided that you keep a consistent price? A. No, I don't think so; for the simple reason, you have an inventory at the beginning of the year, \$15, and you find that you finish up at the end of the year at the same inventory value, the production costs during the one period are absorbed, and all accounts are paid in connection with it; the inventory which you have at the end of the year is nothing more or less than an asset.

Q. Just a clear asset? A. Just a clear asset, yes.

Q. That is, you have paid out or taken into your account during the year all the costs of manufacturing that particular stock in the year? A. All the costs in connection with that are paid for.

Q. And how many years would there be during which a stock at the end of any particular year has been accumulated? A. Oh, inventory in the yard will accumulate, it will probably be an accumulation of three or four years.

Q. How about your particular stock, say at the end of 1930, or at the end of 1931? A. Well, at the end of 1930 there would be very little difference in the type of inventory. During the latter part of 1930 we purchased a great deal of cross-arm material, which cost us somewhere in the neighbourhood of \$30 a thousand, which is piled in our yards; but taken into our records at \$15 a thousand. Together with the actual cost of the product, the purchase price, there is the cost of unloading it off cars or lighters at our dock, and piling it up in the yard, which is also absorbed in our ordinary expense during the year. This stock goes into the yard, and is accumulated on these various contracts which we enter into, such as cross-arms, door stock, and boxes. We have got to carry a large supply of box lumber in our stocks, which are piled up in the yard for our trade; that stock is manufactured in the mill, and manufactured into small sizes, which costs us more for that reason. But it is piled up and carried on inventory at \$15, but it is sold to our box plant later on at I think \$21, or \$20.

Q. At the end of 1931, for instance, over what period of years had that stock been accumulating? A. At the end of 1931 we had stock in our yard that had been accumulating for I should say three years anyway. I might also say we are faced with, take our cross-arm business and our box contracts, door stock business, which is more or less seasonable, depending entirely on conditions which call for these requirements from time to time. For instance, just recently they had a storm at Calgary, which took 10,000 cross-arms, which they wanted shipped immediately. We have to carry the stock to take care of those orders. And there is not much difficulty about the price which we get for that stock when required in that sort of a time.

Q. Now, then, at the end of each year, having absorbed all the costs of manufacture, you have this clear asset in the shape of a stock of lumber; that is right? A. Yes, sir.

Q. Now, supposing prices go down, are you bound to sell that stock? A. No, not necessarily.

Q. What do you do? A. Well, in some cases we just hold the stock until the market goes up. If we feel that the market is not in such a condition that we can sell that stock, we prefer to go ahead and carry on our operation in a general way, and sell the stock from our production.

Q. From your new production. A. Not increase our inventories, just leave our inventories as they are.

Q. Over a long period of years it is a question whether your prices which you get for the production equal the cost that you have been put to in the various years, no doubt? A. Oh, we never have been able to—I mean, we never have had to sell it at less than our cost. If we had been doing that over a series of years I imagine the Cameron Lumber Company would not be in existence.

Q. I think you told me that this system of accounting which we have adopted for this trial has been the system in use by this company for how long? A. Ever since I was in the company—it has been in existence since '21, any way, to my knowledge.

Q. That is you have taken your inventories at a fixed price? A. Yes.

Q. Maintaining that price consistently at the end of each current year? And saying that your fixed price does not exceed your logging price? A. Never at any time.

Q. If you were to change your system as Mr. Bull suggests, would that form a true picture of your condition for any one year? A. No, because if we had adopted that condition generally, why we would have in some years very large

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profits due to the fact that our inventory price was too low, or very heavy losses, due to the fact that we were carrying the prices too high.

Q. Is this method you have adopted unusual or unique?

A. I think it is uniform throughout the lumber business, as far as I have ever known.

p. 67,
line 3 to
p. 67,
line 17.

Q. Now we have the quantity you have at the end of 1931, and you say it is impossible to value that at the cost of production, because it might have been manufactured over a period of years, and you would not know what basic prices or cost of production to attach to it. A. No, here is the explanation: That stock in the yard would have cost us \$20 to manufacture. We start off at the beginning of the year on an inventory. We go along through the year and produce lumber. In many cases it cost us \$40 to produce the lumber, in many cases it only cost us \$6—that lumber taken right through the periods in that year. 2 inch block dimensions, for instance, all they do is take off the chains, pile it in the yard. That is a cheap operation. Laths, etc., cost us more because it comes through our planing machines and our kilns. Therefore you cannot put any production price on any specific item of the inventory. 10 20

p. 68,
line 20 to
p. 68,
line 32.

Mr. Bull: Well, was there anything in that opening inventory of March 1st, 1931, that cost less than \$19.00 per thousand to produce—we must stick to averages. A. Well, our rough dimensions in the yard cost us less than that.

Q. That is getting away from the point. Your system is taking average cost. A. In our inventory we don't take the average cost.

Q. In your records you do. A. We keep to average cost of production during the year which absorbs all our costs which is power and shipping and running machines. 30

Q. You are not prepared to answer that? A. I could not pick out any specific item from memory and say how much it had cost.

p. 69,
line 14 to
p. 69,
line 31.

Q. All right, we will leave it. Now, I think you said that if you adopted any other system than fixing an arbitrary value on your inventory, in some years you would show a huge profit, and perhaps another year a huge loss. You said that? A. Yes, by adopting the pricing value. 40

Q. You mean that? A. Yes.

Q. Is not that the very thing I have been contending—it shows the true position? A. The average price over a period of years.

Q. No, the cost of production. A. Well, how do you know what your cost of production is going to be? If you

started out with an inventory for \$20 for the year, you start off in a year not knowing what conditions will be like during the year, the prices would probably go down under \$15.00 and you would take quite a loss. If the selling average went up to \$30.00 you take quite a profit, but if you strike an average for a period of years, the average is accepted by all accounting systems and the Government Accountant. Seems quite correct.” RECORD

43. Mr. J. T. Taylor said:

10 “Q. What is your occupation? A. Lumber accountant.
Q. How long have you practiced that profession? A. About seventeen years.

p. 77,
line 32 to
p. 78,
line 10.

Q. What mills have you worked for? A. I was with the Genoa Bay Lumber Company for three years; the Sidney Lumber Company for about ten; and I have been with the Canadian Puget Sound Lumber Company here for four years.

Q. The Genoa Bay Lumber Company also belongs to the Camerons, does it not? A. Well, as far as my recollection is they had an interest in it.

20 Q. Yes. I want you to tell me what has been your practice with regard to placing a value in the inventories. A. Ever since I have been in the lumber business the lumber inventory has always been taken at a fixed value; the same value at the end as at the beginning of the period.

Q. Yes. And have you any regard as to the relative size of the price that you put on the inventory and the market price? A. No. It has been, really no difference has been made while I have been in the business. The price has been kept fixed right along, irrespective of any market value.

30 Q. And that is the case with the three mills that you have mentioned, is it? A. Yes.”

44. The vice-president of the Plaintiff said:

“Q. Then I presume you agree with my idea about inventories, do you? A. What?

p. 87,
line 30 to
p. 88,
line 28.

40 Q. That \$15 is not a proper figure to use, because it does not show the true position? A. I want to say to you that I think that the fixed inventory value is about as good an inventory value as you can arrive at. That inventory value was arrived at—my brother made a trip to Ottawa, with our taxation department, I think it was in 1917 or 1918. We started out under the agreement with the Government on a fixed valuation at the beginning or end of the period. In 1918

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or '19 that was adopted. We adopted in this country a uniform cost account system in the lumber business; and an instructor came up to Vancouver, and we sent over our auditing department there, and they had lessons, and we all based out cost on the same uniform accounting system practically since. I don't know that all have, but a great many.

Q. No, Mr. Cameron, if the result in 1930 was in any way affected by these high price logs that you have mentioned which contributed to the losses in 1930, then you were bound to make that up and show an unwarranted profit in the next period, weren't you? A. Of course it works out over a period; no question about that. But the question of trying to arrive at a value for your inventory, Mr. Bull, on the actual cost of your inventory is practically an impossibility. 10

Q. Now, show me—

Mr. Mayers: Have you finished, witness? A. No, sir.

Mr. Bull: Go ahead. A. You can take, for instance, in our mill one day we will cut, in cutting spruce lumber, cants for manufacture into powder boxes for James Island, I can show you, in September, for instance, in cutting that we cut 20 201,000 in eight hours; the next day we cut of fir, and cutting into general stuff, dimensions or timbers or cross-arms, our cut will fall down to 140,000 feet; cutting Jap squares, where the biggest part of them go right over the deck in chunks from 12 to 24 inches in diameter, our cut will jump up to 180,000 feet again. Now when you stick say 250,000 feet of that stuff into the next alley with say a million feet of other stuff, it is pretty hard to get at there and see what the actual cost of production of those two items were. We also make strawberry boxes for the strawberry growers in Gordon Head; 30 that won't run throughout the year; but as the waste comes from our box factory, the foreman if he has nothing else to do he may go over there and make those boxes, make those strawberry boxes, make them up, and we don't sell them until the next spring, the next strawberry crop. Now, it is pretty hard to say just what the expenditure may have been on those items; we never try to keep it segregated; and we don't see how anybody can."

45. The Plaintiff's auditor said:

"Q. I want you first to discuss from the accountant's 40 point of view this question of the proper value to be placed on inventories. A. As far as inventories in the lumber business is concerned, it seems to be the most business-like, the most practical way to handle lumber inventories, so as to take

D. 94,
line 9 to
p. 94,
line 20.

care of your increases in lumber inventories and your decreases. It does not matter whether you are preparing information for your shareholders or for the Bank, or for the Income Tax, or for the Registrar of Companies; and in my opinion the fairest way to do it is to have a fixed inventory, provided of course there is some logic to it. Your fixed inventory should not exceed the realizable price for your lumber. RECORD

10 Q. Well, it is under the heading of total cost of manufacturing, including logs. This appears in the operating statement of February, 1931; and the figure is 19.01? A. Yes. I think in order to answer your question clearly I should explain that where that says cost of lumber manufactured, it is not strictly correct to say that that is the cost of the lumber that was actually manufactured in that month; because that contains items of expense in connection with lumber purchased. p. 97, line 24. to p. 97, line 43.

Q. You better have this before you. I think (handed witness). There is the statement which you audited, did you not, for the month of February, 1931? A. Yes.

20 Q. It gives the feet board measure? A. The feet board measure. I have another set of this.

Q. Will you just get it before you. You say it does not cover the lumber purchased, because that is under another heading lower down. A. It does not cover the lumber purchased, but it covers the expenses that have been incurred in connection with that, handling and moving around the yard, and otherwise disposing of lumber purchased. So that is really a misnomer, my lord, to call it the cost of manufacturing lumber during that month."

30 46. In view of this and other evidence to the like effect, it is submitted that it is a little difficult to contend that there was no evidence for the Plaintiff, which a jury could reasonably accept and act upon.

47. Moreover, Mr. Barrett-Lennard upon whom rests the whole weight of the Defendant's case, proved a quite remarkable witness.

48. He asserted that the profits of a period could not be ascertained unless and until the whole production of that period had been disposed of: which would, of course, render it very 40 difficult, if not impossible, ever to recover under this form of insurance. p. 145, line 40.

49. He refused, at first, to concede that the Plaintiff's system was an honest and reasonable one: he then modified his refusal by saying that it was unreasonable, though it might not p. 146, line 7.

RECORD

p. 148,
line 11.
p. 172,
line 9.

be dishonest: shortly afterwards he opined that it was reasonable and not necessarily dishonest. But it was not until he was himself recalled to reason by his own counsel that he disclaimed any intention of imputing dishonesty to the Plaintiff's method.

p. 154,
line 46.

50. He asserted that sales are of such a fluctuating nature and dependent upon so many conditions that it would be almost impossible to state whether the business done by a mill company after a fire, no matter what stock they might have had on hand or what was their capacity for producing stock, had been affected by the fire or not.

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p. 158,
line 41.

51. He admitted that according to his own methods of accountancy, consistently applied, the loss of \$7,000 which he had shown in the Plaintiff's operations for 1930 had not only not occurred, but that in reality, there should have been shown a profit of some \$11,000.

p. 157,
line 28.
p. 159,
line 32.
p. 162,
line 2.

52. While disallowing from the credit side of the account certain items of what he called non-recurring revenue, he had failed to remove from the debit side items of non-recurring expenditures, with the result of falsifying his results.

p. 162,
line 8.
p. 181,
line 35.

53. Perhaps, however, the strongest instance is this. On re-examination Mr. Barrett-Lennard attempted to restore his position by suggesting that in the Plaintiff's books was to be found a tabulated calculation of the value of the stock in the yard based upon its costs of production. On further questioning, he admitted that the figures, which he had asserted to be the costs of production, might really be nothing but the estimated market values. And it was subsequently proved that this was so.

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p. 173,
line 44 to
p. 174,
line 23.p. 174,
line 18.p. 191,
line 23.

54. Finally, Mr. Barrett-Lennard proved so reckless in his statements that he entirely misled his own counsel as to a vital calculation in the jury's verdict, and caused that counsel, quite innocently, so to mislead the learned trial judge as to cause a temporary miscarriage of justice.

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p. 220,
line 21.
p. 221,
line 8.p. 226,
line 19.

55. The other subject of complaint by the Defendants is that the jury did not allow sufficient for depreciation.

p. 90,
line 12.p. 183,
line 5.
p. 191,
line 1
p. 157,
line 22.

56. In the first place, it was proved and not disputed that the Plaintiff's plant had been depreciated down to far below its value. Mr. Barrett-Lennard admitted that it was perfectly reasonable and honest for an individual or company to depreciate his or its plant to any extent considered necessary, and thereafter to cease depreciation. Indeed, it is impossible to see what reason

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or logic there can be in insisting that a plant, which is actually worth far more than its book value, should continue to suffer decrements of its valuation. RECORD

57. Nevertheless, Mr. Barrett-Lennard wished to charge the Plaintiff with a depreciation of \$29,184.16 for the year 1931. The jury charged the Plaintiff with the sum of \$13,120.00 for the year, and explained its reasons for doing so. p. 290, line 30.
p. 218, line 9.
p. 220, line 1.

58. It is submitted that any complaint there might be would come more appropriately from the Plaintiff.

10 59. With regard to the reasons for the judgment of the learned Chief Justice, His Lordship was in error as to the subject-matter of insurance, which was not profits but fixed charges. His Lordship was also not correct in his references to the basis for the use of the figure of \$15.00 for ascertaining the values of the opening and closing inventories. His Lordship seems also, it is respectfully submitted, not fully to have understood the only real controversy which remained after the verdict. There was never any doubt in anyone's mind at the trial as to what the respective contentions of the parties were. Each party asserted that his
20 method of calculation was the method and the only method of properly applying the language of the contract to the circumstances of the case. The learned Chief Justice failed to appreciate that the Defendant's suggested figure was not only just as arbitrary as the Plaintiff's figure, but was a grotesque distortion of what the Defendants chose to label it, viz., cost of operation. This very matter was debated in the presence of the jury: p. 227, line 12.
p. 227, line 30.
p. 228, line 25.

“Mr. Mayers: May I object to the third question, then, my lord? Your lordship has put the actual cost of production; now there is no such thing in my contention. p. 199, line 25 to
p. 200, line 19.

30 The Court: That is for you to argue.

Mr. Mayers: But how can they answer the question on the false basis?

The Court: I don't want to argue on it now, but it is suggested on the other side that the books show the actual costs of production.

40 Mr. Mayers: But, my lord, the whole contention is, on the one side, it was an actual cost of production, and the other side says it is not at all the cost of production: therefore that has to be submitted to the Jury, and not to be used as the basis of a question.

The Court: This is the way I intended to put it—you say I cannot get the actual cost of production, and I do not need to do so; that is your point?

Mr. Mayers: Yes.

RECORD

The Court: You take an arbitrary value of \$15, and you say this is the proper way to make it up; now the other side say that is not so at all. They take the actual production from your own books. And I think the Court of Appeal is entitled to know which of these views the Jury accepts.

Mr. Mayers: My point is to put it in some of these questions by taking as a basis the application of so-called actual costs.

The Court: Well, I would not see any harm in that.

Mr. Mayers: Because I do not wish for a moment to have that assertion as it were made the basis of a question. As the question reads at present;—

The Court: (Interrupting): I think the actual costs of production, as set up by the Plaintiff.

Mr. Mayers: As set up by the Defendant.

The Court: As set up by the Defendant; I think that would be all right.

Mr. Mayers: Yes.

Mr. Bull: It must not be taken that I am acquiescing in these alterations.

The Court: Oh, no. I would not change it now, I think, I might be in more trouble. I believe if these questions are answered the Court of Appeal will be able to apply the law. Possibly as your basis of computation, the actual costs of production as set out by the Defendant. All right, Mr. Bull.”

p. 204.

Moreover, in his charge, the learned trial judge, very emphatically, directed the jury's attention to the fact that this was an action on a contract, and that the Plaintiff must bring his case within the terms of the contract: this specific matter was the subject of a detailed instruction: the following paragraph raises the point of controversy: and the next two pages consist of a searching criticism of the Plaintiff's position. But that is not all: after the charge, there was a further discussion on this very subject:

p. 207,
line 36.
p. 208,
line 10.
pp 208
and 209.

p. 214,
line 19 to
line 31.

“Mr. Mayers: Your Lordship has been speaking as if the cost of production is not disputed, and I want the Jury to be clear in understanding that it is for them to say whether their costs of production are real costs of production of anything, or the arbitrary figure.

The Court: All I have to say about that is that the Defendants were absolutely dependent on your own books; and the Jury can take Exhibit 8 and look at it.

Mr. Mayers: True, for our own purposes, we wanted to see the amounts that we had had to pay for a manufactured finished article, but that has no relation to any real part of the inventory as stock in the yards.

The Court: Well, I leave it to the Jury as it is.

Mr. Mayers: The way I would put it is this, my lord, it is quite true—

The Court: Take this, Gentlemen of the Jury, as if it came from me.

Mr. Mayers: It is quite true that this arbitrary figure of \$19 would be increased to higher arbitrary figures if you pursued the investigation into the preceding months; but that arbitrary figure, of \$19, or higher has no relation to any real cost of production of any piece if the inventory stock in trade as it stands.

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The Court: Well, the book is there, Gentlemen, containing all these statements; take it with you. See what it says, and see what it is; I have not looked at it."

It is humbly submitted that it is really difficult to suppose that, after all this, the jury could have been in any doubt as to what was the controversy, or what were the subjects for their consideration.

60. It is humbly submitted that the reasons for the judgment of Mr. Justice Macdonald could only be justified if the matter of inventory prices was a question of law, or if, it being a question of fact, there was no evidence to support the verdict. His Lordship appeared to recognize the function of the jury in the early part of his judgment. Indeed, who better than a jury can say whether the adoption of a particular method of bookkeeping leads to results which are "reasonably accurate." But His Lordship then falls into the error of thinking that the figures produced by the Defendants were actual "average costs of production:" and from that initial false step, it becomes easy to reach a wholly erroneous conclusion. It cannot be too strongly insisted that the figures put forward by the Defendants were entirely arbitrary: they did not represent the cost of production of a single stick of lumber. It is not a case of the jury choosing an inexact method against a precise method, but of choosing a practical method of universal adoption as against a method without any foundation whatever either in fact or practicality or common experience. The only logical conclusion, which could be drawn from this judgment is that the question ought never to have been submitted to the jury. But, while this course was once suggested to the learned trial judge, upon his rejection of it, the Defendant's counsel acquiesced in the submission to the jury of the questions as to the proper price to be assigned to the inventories and as to the proper amount to be allowed for depreciation: the following colloquy occurred when the questions were being considered:

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"The Court: I think it is a matter of mixed law and fact, the way the case stands now.

RECORD

p. 215,
line 41 to
p. 216,
line 6.p. 230,
line 32.
p. 231,
line 1.p. 232,
line 19.p. 238,
line 10.p. 198,
line 27.
p. 198,
line 35.p. 198,
line 25 to
line 43.

RECORD

Mr. Bull: I should have thought, my lord, that it was a question of absolute direction on one of two grounds, first, the question of law, and secondly on the evidence I am going to refer to—the evidence is all one way, in which case it would be equally a matter for a charge by your lordship.

The Court: Well, I would not take the responsibility of directing them specifically to find. The evidence is there, and I propose to review it for them.

Mr. Bull: Yes, my lord.

The Court: I would not say that they are bound to find. 10
They might not believe any of this evidence; they might not even believe the witnesses, or the whole of the evidence of any witness.

Mr. Bull: Except the Plaintiff would be bound by his own witnesses.

The Court: Well, I would not take those two questions away from them, I think.”

p. 231,
line 6.

61. Finally, as noticed by Mr. Justice Macdonald, there was an entirely independent method of proof, submitted by the Plaintiff, which, if accepted, would have justified the verdict. 20

62. It is, therefore, humbly submitted that this concurrent judgment of both Provincial Courts on questions of fact should not be disturbed for the following

REASONS

- (a) because no error of law has been committed by either of the Provincial Courts:
- (b) because the questions were submitted to the jury with the consent of both parties:
- (c) because there was evidence, which the jury was entitled to accept, and which would certainly support its findings. 30

All of which is respectfully submitted.

DATED at Vancouver, B. C., this 29th day of April, 1933.

“E. C. MAYERS,”

Counsel for Respondent.

A. R. McLEOD

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In the Privy Council

On Appeal from the Court of Appeal for
British Columbia

BETWEEN:

THE MOUNT ROYAL ASSURANCE
COMPANY, et al,
(Defendants) Appellants,

AND:

CAMERON LUMBER COMPANY
LIMITED,
(Plaintiff) Respondent,
(AND SIX CONSOLIDATED ACTIONS)

Case for Respondent

Messrs. Walsh, Bull, Housser, Tupper & Ray,
Solicitors for (Defendants) Appellants.
Alfred Bull, Esq., K.C., Counsel.

Messrs. Mayers, Locke, Lane & Johannson,
Solicitors for (Plaintiff) Respondent.
E. C. Mayers, Esq., K.C., Counsel

WHITE & LEONARD,
BANK BUILDINGS,
LUDGATE CIRCUS, E.C.