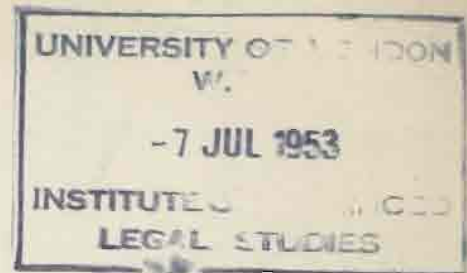


20574

**In the Privy Council**



ON APPEAL FROM THE COURT OF APPEAL FOR  
BRITISH COLUMBIA

BETWEEN:

CANADA RICE MILLS LIMITED

(Plaintiff) APPELLANT,

AND:

THE UNION MARINE AND GENERAL  
INSURANCE COMPANY LIMITED

(Defendant) RESPONDENT.

---

---

**RECORD OF PROCEEDINGS**

---

---

WALSH, BULL, HOUSSER, TUPPER, RAY & CARROLL,  
Solicitors for the (Plaintiff) Appellant:  
ALFRED BULL, ESQ., K. C., Counsel.

MESSRS. CHARLES RUSSELL & CO.  
37 Norfolk Street, London W.C. 2, Agents.

MESSRS. BOURNE & DESBRISAY,  
Solicitors for the (Defendant) Respondent:

MESSRS. GARD LYELL & CO.  
Leith House, 47 Gresham St., London E.C. 2,  
Agents.

INSTITUTE OF ADVANCED  
LEGAL STUDIES,  
25, RUSSELL SQUARE,  
LONDON,  
W.C.1.

# In the Privy Council

ON APPEAL FROM THE COURT OF APPEAL FOR  
BRITISH COLUMBIA

BETWEEN:

CANADA RICE MILLS LIMITED

(Plaintiff) APPELLANT,

AND:

THE UNION MARINE AND GENERAL  
INSURANCE COMPANY LIMITED

(Defendant) RESPONDENT.

## RECORD OF PROCEEDINGS

### INDEX OF REFERENCE

No.	Description of Document	Date	Page
	IN THE SUPREME COURT OF BRITISH COLUMBIA		
	<b>PART I.— PLEADINGS</b>		
1	Amended Statement of Claim - - - -	Sept. 1, 1937 - -	1
2	Amended Statement of Defence - - - -	Sept. 16, 1937 - -	3
3	Defendant's Demand for Particulars of State- ment of Claim - - - - - - - - - -	Feb. 23, 1938 - -	5
4	Particulars Pursuant to Demand - - - -	Mar. 15, 1938 - -	6
	<b>PROCEEDINGS AT TRIAL PLAINTIFF'S EVIDENCE</b>		
	Discussion at Trial - - - - - - - - - -		8



No.	Description of Document	Date	Page
PLAINTIFF'S EVIDENCE (Continued)			
5	Mr. Nene:		
	Examination - - - - -	Dec. 24, 1937 - -	19
	Cross-Examination - - - - -		19
6	The Honourable Somerset Butler:		
	Examination - - - - -	Dec. 24 - Dec. 28,	20
	Cross-Examination - - - - -	1937 - - - - -	26
	Re-Examination - - - - -		42
7	Krishna Adhar:		
	Examination - - - - -	Dec. 28, 1937 - -	43
	Cross-Examination - - - - -		44
	Re-Examination - - - - -		46
8	Hardeo Tewari:		
	Examination - - - - -	Dec. 28, 1937 - -	47
	Cross-Examination - - - - -		48
	Re-Examination - - - - -		49
9	Triyogi:		
	Examination - - - - -	Dec. 28, 1937 - -	50
	Cross-Examination - - - - -		50
10	Captain R. P. R. Taylor:		
	Examination - - - - -	Dec. 29, 1937 - -	51
	Cross-Examination - - - - -		51
11	Ba Ohn:		
	Examination - - - - -	Dec. 29, 1937 - -	54
	Cross-Examination - - - - -		55
	Re-Examination - - - - -		56
12	Jal Munchershaw Rustrum-frama:		
	Examination - - - - -	Dec. 29, 1937 - -	57
	Cross-Examination - - - - -		59
	Re-Examination - - - - -		64
13	S. A. Ispahany:		
	Examination - - - - -	Dec. 29, 1937 - -	64
	Cross-Examination - - - - -		66
	Re-Examination - - - - -		69

No.	Description of Document	Date	Page
PLAINTIFF'S EVIDENCE (Continued)			
14	C. E. de Jordan:		
	Examination - - - - -	Dec. 30, 1937 - -	69
	Cross-Examination - - - - -		75
	Re-Examination - - - - -		89
15	The Honourable Somerset Butler, re-called:		
	Examination - - - - -	Dec. 31, 1937 - -	90
16	William Dick McLaren:		
	Examination - - - - -	May 20, 1938 - -	91
	Cross-Examination - - - - -		97
17	Archibald C. Reed:		
	Examination - - - - -	May 20, 1938 - -	102
	Cross-Examination - - - - -		105
18	Norman Lee Lauchland:		
	Examination - - - - -	May 20, 1938 - -	115
	Cross-Examination - - - - -		132
19	Jacob Fred Sachs:		
	Examination - - - - -	May 26, 1938 - -	181
	Cross-Examination - - - - -		185
20	William Walter Simpson:		
	Examination - - - - -	May 26, 1938 - -	195
	Cross-Examination - - - - -		197
21	Kenneth Oscar Bell:		
	Examination - - - - -	May 26, 1938 - -	199
	Cross-Examination - - - - -		200
22	Duncan Gavin:		
	Examination - - - - -	May 26, 1938 - -	202
	Cross-Examination - - - - -		216
23	Interrogatories and Answers thereto administered to Officer of the Defendant Company	May 13, 1938 - -	232
24	Gardner Smith Eldridge:		
	Examination - - - - -	May 26, 1938 - -	234
	Cross-Examination - - - - -		237

No.	Description of Document	Date	Page
<b>PLAINTIFF'S EVIDENCE (Continued)</b>			
25	Walter Caulfield McPhee:		
	Examination - - - - -	May 26, 1938 - -	247
	Cross-Examination - - - - -		248
	Re-Examination - - - - -		249
26	Edwin John Jardine:		
	Examination - - - - -	May 26, 1938 - -	250
	Cross-Examination - - - - -		251
	Re-Examination - - - - -		252
<b>DEFENDANT'S EVIDENCE</b>			
27	Extracts from Examination for Discovery of Duncan Gavin put in by Defendant - -	Mar. 28, 1938 - -	255
28	Adam Brown Watson:		
	Examination - - - - -	May 27, 1938 - -	256
	Cross-Examination - - - - -		269
	Re-Examination - - - - -		289
29	Norman Leslie Armstrong:		
	Examination - - - - -	May 27, 1938 - -	289
	Cross-Examination - - - - -		295
30	Arthur Phipps Cotterell:		
	Examination - - - - -	Dec. 31, 1937 - -	311
	Cross-Examination - - - - -		321
	Re-Examination - - - - -		329
	Re-Cross-Examination - - - - -		330
	Re-Examination - - - - -		331
31	Fred Harrison H. Parks:		
	Examination - - - - -	May 27, 1938 - -	331
32	Extracts from Examination for Discovery of Norman Lee Lauchland put in by Defend- ant - - - - -	May 14, 1938 - -	334
33	Robert L. Morton:		
	Examination - - - - -	May 30, 1938 - -	335
	Cross-Examination - - - - -		339

No.	Description of Document	Date	Page
<b>REBUTTAL</b>			
34	Gardner Smith Eldridge, re-called in re- buttal		
	Examination - - - - -	May 30, 1938 - -	340
	Cross-Examination - - - - -		342
35	Draft questions for Jury submitted by Coun- sel for Plaintiff - - - - -	May 30, 1938 - -	343
36	Draft questions for Jury submitted by Coun- sel for Defendant - - - - -	May 30, 1938 - -	344
37	Draft questions prepared by Trial Judge - -	May 30, 1938 - -	345
	Discussion of questions for Jury - - - - -		346
38	Address to Jury, Robertson, J. - - - - -	May 31, 1938 - -	358
39	Verdict of Jury - - - - -	May 31, 1938 - -	371
	Motion for judgment - - - - -	May 31, 1938 - -	372
40	Judgment - - - - -	May 31, 1938 - -	386
41	Notice of Appeal - - - - -	Sept. 6, 1938 - -	387
<b>IN THE COURT OF APPEAL</b>			
Reasons for Judgment:			
42	Martin, C.J.B.C. - - - - -	Feb. 1, 1939 - -	391
43	McQuarrie, J.A. - - - - -	Feb. 1, 1939 - -	392
44	Sloan, J.A. - - - - -	Feb. 1, 1939 - -	399
45	Judgment - - - - -	Feb. 1, 1939 - -	409
46	Conditional Order for leave to appeal - -	March 7, 1939 - -	410
47	Certificate of Registrar as to security - -	March 25, 1939 - -	411
48	Final Order for leave to appeal - - - - -	March 29, 1939 - -	412

No.	Description of Document	Date	Page
PART II.— EXHIBITS:			
P.1	Policy of Insurance, less non-material parts as agreed between Counsel - - - -	Dec. 19, 1929 - -	413
P.2	Extract from Record of Import Shipments under policy - - - - -	May 28, 1936 - -	418
P.3	Certificate of Insurance less part omitted by consent of Counsel - - - - -	June 4, 1936 - -	420
P.4	Invoice No. 143, Blackwood Ralli & Co. - -	Apr. 27, 1936 - -	471
P.5	Letter, Macaulay, Nicolls, Maitland & Co. to Canada Rice Mills Ltd. - - - - -	March 17, 1936 - -	416
P.6	Agreement between Solicitors re Log Book of "Segundo" - - - - -	May 3, 1938 - -	422
P.7	Translation of Log Book of "Segundo" - -	Apr. 12 to June 3, 1936 - -	423
P.8	Report of Capt. Slater, Port Warden, New Westminster, B.C. - - - - -	June 13, 1936 - -	472
P.9	Max. and Min. Temperatures recorded at the Port Observatory, Rangoon,—Omitted - -	Jan. to Apr. 1936, Jan. to April 1937 - -	491
P.10	Relative Humidity recorded at Port Observatory, Rangoon,—Omitted - - - - -	Jan. to Apr. 1936, Jan. to Apr. 1937 - -	491
P.11	Certificate giving Record of Rain during month of April 1936, Rangoon Port Observatory—Omitted - - - - -		491
P.12	Morrison & Company's Survey Reports Nos. 156 and 157 - - - - -	Apr. 25, 1936 - -	469
P.13	Requests from Blackwood Ralli & Co. to Morrison & Co. for surveys—Omitted - - -	Feb. 27, 1936 Apr. 25, 1936 - -	491
P.14	Letter from Blackwood Ralli & Co. to Plaintiff certifying re gunnies—Omitted - -	Apr. 27, 1936 - -	491
P.15	Plan of M.S. "Segundo"—Omitted - - -		491
P.16	Extract from notebook of Hardeo Tewari Omitted - - - - -		491
P.17	Certificates of Capt. R. P. R. Taylor, Port of Rangoon - - - - -	April 20 - 24, 1936 - -	466
P.18	Extracts from Stock Register Blackwood Ralli—Omitted - - - - -	Feb. 25-26, 1936 & Apr. 13, 1936 - -	492
P.19	Statements from R. R. Khan—Omitted - -	Feb. 27, 1936 - -	492



No.	Description of Document	Date	Page
EXHIBITS (Continued):			
P.20	Morrison & Co. Shipping Chits—Omitted -	Apr. 14 - 20, 1936 -	492
P.21	Extract from R. R. Khan's Order Book — Omitted - - - - -		492
P.22	Extract from Blackwood Ralli's Shipment Position Book—Omitted - - - - -		492
P.23	Milling Records of Canada Rice Mills Ltd. —Omitted - - - - -	May 29, 1936 to May 31, 1937 - -	492
P.24	Claim of Canada Rice Mills Ltd. - - - -	June 23, 1936 - -	487
P.25	Second claim of Canada Rice Mills Ltd. - -	Sept. 23, 1936 - -	488
P.26	Third claim of Canada Rice Mills Ltd. - -		489
P.27	Sample rice from "A.L.Z."—Omitted - - -		492
P.28	Sample rice from 163—Omitted - - - -		492
P.29	Sample rice from 163—Omitted - - - -		492
P.30	Sample rice from brown rice—Omitted - -		493
P.31-a	Sample rice from outside bag (163)—Omitted		493
P.31-b	Sample rice from centre bag (163)—Omitted		493
P.32	Sample rice from "A.L.Z."—Omitted - -		493
D.33	Anglo Canadian Shipping Co. Freight Con- tract 105—Omitted - - - - -	Feb. 27, 1936 - -	493
D.34	Cable, Canada Rice Mills Ltd. to Jackson Son & Co. - - - - -	Mar. 9, 1936 - -	477
D.35	Cable, Canada Rice Mills Ltd. to Jackson Son & Co. - - - - -	June 8, 1936 - -	482
D.36	Letter, Canada Rice Mills Ltd. to Jackson Son & Co. - - - - -	June 12, 1936 - -	483
D.37	Cable, Canada Rice Mills Ltd. to Jackson Son & Co. - - - - -	Sept. 11, 1936 - -	485
D.38	Letter, Canada Rice Mills Ltd. to Jackson Son & Co. - - - - -	Oct. 7, 1936 - -	485
D.39	Cable, Canada Rice Mills Ltd. to Jackson Son & Co. - - - - -	Dec. 4, 1936 - -	486
D.40	Letter, Canada Rice Mills Ltd. to Jackson Son & Co. - - - - -	July 25, 1936 - -	483
D.41	Letter, Canada Rice Mills Ltd. to Jackson Son & Co. - - - - -	March 23, 1936 - -	478

No.	Description of Document	Date	Page
EXHIBITS (Continued):			
D.42	Letter, Canada Rice Mills Ltd. to Jackson Son & Co. - - - - -	Apr. 6, 1936 - -	479
P.43	Statement prepared by Canada Rice Mills Ltd. re damage claim - - - - -		490
P.44	Letter, Macaulay Nicolls Maitland & Company Ltd. to Union Marine Ins. Co. Ltd. -	June 6, 1936 - -	481
D.45	Extract from correspondence of witness Cotterell - - - - -	Apr. 4 - May 13, 1936 - - -	479
D.46	Annual Report for 1936 of Department of Agriculture, Burma,—Omitted - - -		493
D.47	Annual Report for 1937 of Department of Agriculture, Burma,—Omitted - - -		493
P.48	Statements of Agricultural Department showing estimates of rice production—Omitted		493
D.49	Invoice, Macaulay, Nicolls, Maitland & Company Ltd. to Canada Rice Mills Ltd. - -	June 5, 1936 - -	421

IN THE SUPREME COURT  
OF BRITISH COLUMBIA

---

---

BETWEEN:

CANADA RICE MILLS LIMITED

Plaintiff

and

THE UNION MARINE AND GENERAL  
INSURANCE COMPANY LIMITED

Defendant

---

---

RECORD OF PROCEEDINGS

---

---

No. 1.

Amended Statement of Claim

Writ issued the 23rd day of July 1937.

1. The Plaintiff is a Company duly incorporated under the Laws of the Province of British Columbia, having its head office at 343 Railway Avenue in the City of Vancouver in the Province of British Columbia.

2. The Defendant is an extra-provincial company incorporated under the laws of Great Britain and carrying on business in the Province of British Columbia, at 425 Howe Street, Van-  
10 cover aforesaid.

*In the  
Supreme  
Court of  
British  
Columbia.*

---

No. 1.  
Amended  
Statement  
of Claim,  
September  
1st, 1937.

*In the  
Supreme  
Court of  
British  
Columbia.*

Amended  
Statement  
of Claim,  
September  
1st, 1937.  
—continued.

3. The Plaintiff was interested under a certain open marine policy of insurance dated at Vancouver aforesaid the 19th day of December 1929 and numbered 1703 and subscribed by the Defendant, whereby the Defendant insured inter alia shipments of general merchandise consisting principally of rice, rice meal and rattan, and including freight, consigned to others for the account of the Plaintiff to cover and attach on all goods shipped or at risk of the Plaintiff on or after January 1, 1930, and to cover 100 per cent interest on all shipments, not to exceed, however, by any one vessel at any one time the sum of \$75,000.00 unless otherwise es- 10  
pecially agreed.

4. On or about the 23rd day of April, 1936, Messrs. Blackwood, Ralli & Company Limited, of Rangoon, Burma, shipped in the vessel "Segundo" for a voyage at and from Rangoon aforesaid to Canada Rice Mills Dock, Fraser River, B. C. 7500 bags special quality Rangoon Loonzain rice and consigned by bill of lading bearing that date unto the order of The Royal Bank of Canada and for the account and at the risk of the Plaintiff.

5. The said shipment was part of a larger shipment by said vessel, the value whereof amounted, with freight, to the sum of 20  
\$191,992.00 and by agreement with the Defendant made on or about the 17th day of March 1936 or alternatively the 28th day of May, 1936, the whole of the said shipment was held covered under the said policy.

6. Declaration of the said shipment was made to the Defendant prior to the 17th day of March 1936, and a premium of \$138.59 was paid by the Plaintiff to the Defendant in respect of the said shipment under the said policy, such premium being at and after the rate of 40c per \$100.00.

7. The value of the said shipment was declared, including 30  
freight, at \$30,798.00.

8. By the said policy the said shipment was insured against loss by inter alia perils of the sea and by the said policy all shipments shipped under deck were insured warranted free from particular average under 3 per cent. on each package.

9. The said Steamship bearing the said shipment sailed from Rangoon on the 24th day of April 1936, and arrived at the Canada Rice Mills Dock in the Fraser River in British Columbia on the 28th day of May 1936. During the said voyage the said steamship encountered heavy seas, rains and weather amounting 40  
to a whole gale and by reason of such heavy seas, rains and weather it was necessary to batten down all hatches and ventilators.



10. As a result thereof, the said shipment was damaged by sweat and heat and alternatively by moisture and the Plaintiff has suffered loss thereby exceeding 3 per cent on each package.

11. The gross sound value of the said shipment at Canada Rice Mills Dock, Fraser River, B.C. was \$28,748.35; the gross damaged value of said shipment was \$21,211.68; the Plaintiff has thereby suffered damage in the sum of \$8071.64, being the measure of indemnity for the loss as provided by the Marine Insurance Act, R.S.B.C. 1936, Chapter 134.

10 WHEREFORE THE PLAINTIFF CLAIMS against the Defendant the sum of \$8071.64 and the costs of this action.

Place of Trial: Vancouver, B.C.

Delivered this 1st day of September, A.D. 1937.

“W. W. WALSH,”  
Plaintiff's Solicitor.

This Statement of Claim is delivered by Walter William Walsh, of the firm of Walsh, Bull, Housser, Tupper, Ray and Carroll, whose place of business and address for service is Suite 1500, The Royal Bank Building, Vancouver, B.C.

*In the  
Supreme  
Court of  
British  
Columbia.*

No. 1.  
Amended  
Statement  
of Claim,  
September  
1st, 1937.

—continued.

---

No. 2.

20

**Amended Statement of Defence**

1. The Defendant admits the allegations contained in Paragraph 1 of the Statement of Claim.

2. The Defendant admits the allegations contained in Paragraph 2 of the Statement of Claim.

3. The Defendant admits the allegations contained in Paragraph 3 of the Statement of Claim.

4. The Defendant does not admit but denies each and every allegation contained in Paragraph 4 of the Statement of Claim.

5. The Defendant does not admit but denies each and every  
30 allegation contained in Paragraph 5 of the Statement of Claim.

6. The Defendant does not admit but denies each and every allegation contained in Paragraph 6 of the Statement of Claim.

7. The Defendant does not admit but denies each and every allegation contained in Paragraph 7 of the Statement of Claim.

No. 2.  
Amended  
Statement  
of Defence,  
September  
16th, 1937.



*In the  
Supreme  
Court of  
British  
Columbia.*

No. 2.  
Amended  
Statement  
of Defence,  
September  
16th, 1937.

—continued.

8. In the alternative and in further defence to Paragraphs 5, 6 and 7 of the Statement of Claim, the Defendant says that if a shipment of rice on board the vessel "Segundo" was held covered by a policy of insurance referred to in Paragraph 3 of the Statement of Claim, the goods insured were a shipment of 50,600 bags of brown rice of a value of \$191,992.00 as appears from Certificate of Insurance No. 6768 issued by the Defendant, to which the Defendant will crave leave to refer on the trial of this action.

9. The Defendant admits the allegations contained in Paragraph 8 of the Statement of Claim except that it repeats Paragraph 8 of the Statement of Defence and says that the shipment insured was as therein alleged. 10

10. The Defendant admits that the vessel "Segundo" sailed from Rangoon and arrived at the Canada Rice Mills' Dock on the dates alleged in Paragraph 9 of the Statement of Claim. As to the balance of the allegations contained in the said Paragraph 9, the Defendant does not admit but denies each and every allegation contained therein.

11. The Defendant does not admit but denies each and every allegation contained in Paragraph 10 of the Statement of Claim and specifically denies that there was damage caused as therein alleged or at all; and specifically denies that the Plaintiff suffered loss as alleged or at all, or alternatively if it suffered loss (which is not admitted but denied) that such loss exceeded 3% on each package. 20

11-A. The Defendant does not admit but denies each and every allegation contained in Paragraph 11 of the Statement of Claim and specifically denies that the Plaintiff suffered damage as therein alleged or at all. 30

12. In further defence to the whole of the Statement of Claim herein the Defendant says that if the Plaintiff suffered loss as alleged (which this Defendant does not admit but denies) the loss was not by the perils insured against.

13. The Statement of Claim discloses no cause of action.

DATED at Vancouver, B.C. this 16th day of September, A.D. 1937.

Amended by the Order of the Honourable Mr. Justice Manson made the 16th day of May, A.D. 1938.

“Bourne & DesBrisay”  
Solicitors for the Defendant.

To the Plaintiff,  
And to W. W. Walsh, Esq.,  
Solicitor for the Plaintiff.

This Statement of Defence was filed by Messrs. Bourne & DesBrisay, Barristers and Solicitors, whose place of business and  
10 address for service is 309 Royal Bank Building, 675 Hastings Street West, Vancouver, B.C.

*In the  
Supreme  
Court of  
British  
Columbia.*

No. 2.  
Amended  
Statement  
of Defence,  
September  
16th, 1937.  
—continued.

---

**No. 3.**

**Demand for Particulars**

The Defendant demands further and better particulars of the Statement of Claim herein as follows:—

1. The date or dates of the day or days on which the vessel referred to in Paragraph 9 of the Statement of Claim encountered a whole gale as in the said Paragraph alleged, and the hours during which such whole gale continued.
- 20 2. The date or dates of the day or days on which all hatches and ventilators were battened down and the length of time during which the hatches and ventilators remained battened down on each such day.
3. Particulars of damage alleged in Paragraph 10 of the Statement of Claim as follows:—
  - (a) The number of packages damaged;
  - (b) The extent of damage to each package;
  - (c) The nature of the damage, showing clearly how the rice was affected by it;
  - 30 (d) Whether the whole of the rice in each package was damaged or part only, and, if the latter, the proportion of the rice in each package which was damaged and the part or parts of each package in which the damage occurred;
  - (e) The number of packages damaged by sweat and heat and the number of packages damaged by moisture.

AND TAKE NOTICE that unless particulars are delivered

No. 3.  
Demand for  
Particulars,  
February  
23rd, 1938.

*In the  
Supreme  
Court of  
British  
Columbia.*

within a reasonable time application will be made to the Court to compel delivery of the particulars.

DATED at Vancouver, B.C. this 23rd day of February, A.D. 1938.

“BOURNE & DESBRISAY,”

Solicitors for the Defendant.

No. 3.  
Demand for  
Particulars.  
February  
23rd, 1938.  
—continued.

To the Plaintiff;

And to Messrs. Walsh Bull, Housser, Tupper, Ray & Carroll,  
Solicitors for the Plaintiff.

---

No. 4.

Reply to Demand for Particulars

10

No. 4.  
Reply to  
Demand for  
Particulars,  
March 15th,  
1938.

In reply to the Demand for Particulars of the Defendant herein dated the 23rd day of February 1938, the Plaintiff says:

1. As to Paragraph 1 thereof, the Vessel referred to in Paragraph 9 of the Statement of Claim encountered a whole gale on the 10th day of May 1936 during the hours from 8 o'clock in the morning to 12 noon, and again on the 18th and 19th days of May 1936 from the hours of 12 midnight to 12 midnight on the 18th and 4 A.M. on the 19th of May, and from 5:30 P.M. on the 8th day of May to midnight on the 11th day of May encountered weather of gale force. 20

2. In reply to paragraph 2 of the Demand the Plaintiff says that all hatches and ventilators of the said Vessel were battened down:

On the 24th day of April 1936 from 3:20 P.M. until midnight.

On the whole of the 25th day of April.

On the 27th day of April from midnight to 8 P.M. and from 11 P.M. to midnight.

On the 28th day of April from midnight to 12 noon.

On the 30th day of April from 11:45 P.M. to midnight. 30

On the 1st day of May, from midnight to 5 A.M. and from 3:40 P.M. to 7:30 P.M.

8th day of May, from 5:30 P.M. to midnight.

9th day of May, on the whole day.

10th day of May, on the whole day.

11th day of May, from midnight to 1 A.M. when the ventilator covers were removed, and until 1 P.M. when the hatches were removed for airing.



15th day of May from 5 P.M. to midnight.

16th day of May from midnight to 4 A.M. and from 4 P.M. to midnight.

17th day of May from midnight to 10:30 A.M.

18th day of May intermittent ventilation through ventilators only, no hatch ventilation.

19th day of May, no hatch ventilation.

24th day of May from 11:15 until midnight all ventilation was cut off.

10 25th day of May from midnight to 1 P.M. and from 10:15 P.M. until midnight.

26th day of May from midnight to 7:15 p.m.

3. In answer to paragraph 3 of the Demand for Particulars the Plaintiff says, as to

(a) 7500.

(b) Each package was damaged more than 3 per cent. The exact extent of damage cannot be ascertained but the whole shipment was damaged 26.216 per cent.

20 (c) The nature of the Damage was discoloration and complete removal of the outer skin of the damaged grains was impossible. The damage was confined principally to the outside of the bags and in all cases to the outside of the individual grain.

(d) In 41½ tons of the shipment of 750 tons the whole of the rice in each package was more or less damaged, much greater damage occurring to the grains on outside of the bags. On the remainder the outside portion was damaged. An exact answer cannot be given because it is and was impossible to mill each bag separately.

30 (e) The claim of damage by sweat and heat or by moisture is made in the alternative and the number of packages damaged by sweat and heat is therefore 7500, and alternatively the number of packages damaged by moisture is 7500.

DATED at Vancouver, B.C. this 15th day of March, A.D. 1938.

“W. W. WALSH,”  
Solicitor for the Plaintiff.

To the Defendant,  
40 and to Messrs. Bourne & DesBrisay, its Solicitors.

This Reply is given by Walter William Walsh of the firm of Walsh, Bull, Housser, Tupper, Ray & Carroll, whose place of business and address for service is 1500 The Royal Bank Building, Vancouver, B.C.

In the  
Supreme  
Court of  
British  
Columbia.

Reply to  
Demand for  
Particulars,  
March 15th,  
1938.

—continued.

In the  
Supreme  
Court of  
British  
Columbia.

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

CANADA RICE MILLS LIMITED,

Plaintiff,

AND:

THE UNION MARINE AND GENERAL INSURANCE  
COMPANY LTD.,

Defendant.

Proceedings  
at Trial,  
May 19th,  
1938.

Before the HONOURABLE MR. JUSTICE ROBERTSON 10  
and a Special Jury.

Vancouver, B.C., May 19, 1938, 11 a.m.

MR. ALFRED BULL, K.C. and MR. C. C. I. MERRITT ap-  
pearing for the Plaintiff.

MR. H. A. BOURNE and MR. A. C. DESBRISAY appear-  
ing for the Defendant.

The Jury were empanelled and sworn.

Mr. Bull opened the Plaintiff's case.

THE COURT: I would suggest that if you can agree on  
questions to be submitted, and if there are any cases you would 20  
like to draw my attention to, I would like to have them before.  
I am going to adjourn until a quarter past two. Gentlemen, you  
must not discuss this case with anybody. You discuss it only in  
the jury room. My advice is, do not discuss it outside the jury  
room, and do not allow anybody to talk to you about it.

(COURT THEREUPON ADJOURNED UNTIL 2.15 P.M.)

2.15 P.M.

(COURT RESUMED PURSUANT TO ADJOURNMENT)

MR. BULL: My lord, I wish to put in the policy as an ex-  
hibit. There are a great many endorsements on it, and I do not 30  
think it is necessary at this stage to read them, except to point  
out that it is a marine policy, and clause 6 has been amended.  
It says "Clause No. 6 of the within policy of insurance is hereby  
amended to read and cover as follows, and not as originally writ-  
ten: "Valued at amount of invoice plus 10 per cent, including  
prepaid freight or freight for which the assured may be liable  
'Vessel lost or not lost', under the terms of the 'Bill of Lading'."  
And so on. One of the other clauses I may refer to, and that is  
the Warranty Clause, No. 10; "Warranted free from particular



average under 3 per cent on each package—" that is the warranty that applies to this case.

DOCUMENT REFERRED TO MARKED EXHIBIT No. 1

I will put in the record of import shipments at the page only of May 28th, 1936, date of bill of lading April 18th, name of vessel "Segundo"; to be insured from Rangoon to Canada Rice Dock, Fraser River, and the following entries giving the tons and the particulars of the rice. One of the questions is as to the third item of 7500 bags of brown rice, \$24,623.52, and then the freight is added, bringing it up to the total of \$30,798.00.

10 MR. BOURNE: My learned friend, I suppose, will call witnesses to establish that.

MR. BULL: It bears the signature of the agent. I will undertake to do that by Mr. Gavin. Is there any question about it?

MR. BOURNE: Not for the moment. Are you referring to only the 7500 bags?

MR. BULL: The entry includes the whole shipment.

THE COURT: Is there any objection?

20 MR. BOURNE: So long as the information goes in with reference to the whole shipment.

MR. BULL: It is all here. "Certificate No. 6768, June 4th, 1936, Macaulay, Nicolls Maitland & Company Limited, per E. Landon".

BOOK REFERRED TO MARKED EXHIBIT No. 2

Now the certificate referred to in the last exhibit is dated the 4th of June. It is on a form of the Union Marine & General Insurance Company Limited, and is headed "Certificate of Insurance". "This is to certify that on the 28th day of May, 1936, this company insured under policy No. 1703 for Canada Rice Mills Limited, the sum of \$191,992. on 50,600 bags brown rice, shipped on board the M.S. "Segundo" from Rangoon to Canada Rice Dock, Fraser River, B.C. Loss, if any, payable to the assured or order", and "Including war risk".

DOCUMENT REFERRED TO MARKED EXHIBIT No. 3

I would like to put in the bill of lading if my friend hasn't any objection to it going in.

MR. BOURNE: I do not see how the bill of lading is material in this case. After all, it is a contract of insurance and the policy and the certificate bear on it.

40 MR. BULL: If my learned friend objects, I cannot force it in, at this stage, at any rate.

Now the next document is the invoice covering 750 tons. I will undertake to prove this by Mr. Gavin. It is "invoice No.

*In the  
Supreme  
Court of  
British  
Columbia.*

Proceedings  
at Trial,  
May 19th,  
1938.

—continued.

*In the  
Supreme  
Court of  
British  
Columbia.*

Proceedings  
at Trial,  
May 19th,  
1938.  
—continued.

143, Blackwood Ralli & Co. Limited, P.O. Box No. 828, Rangoon. By Order of Messrs. The International Rice Co. Ltd., London; Shipped per S.S. "Segundo"; bound for Canada Rice Dock, Fraser River, B.C., for account and risk of Messrs. The Canada Rice Mills Limited, Vancouver, B.C." It refers to the Interco Brose. "7500 bags (singles) Special quality Rangoon Loonzain as per sample Brose containing not more than 15% broken 1935/36 crop F.O.B. Rangoon", and gives the number of bags, 1822 and 5678, the first lot 224 lbs. nett, the second lot 2201½ lbs. net.

**INVOICE REFERRED TO MARKED EXHIBIT No. 4 10**

And the interim covering letter of March 17th, 1936, of Macaulay, Nicolls, Maitland & Co. Limited, which I will read.

**LETTER READ AND MARKED EXHIBIT No. 5**

I would like to put in the agreement between the solicitors, my lord, dated the 3rd of May, and signed by both solicitors.

**AGREEMENT READ AND MARKED EXHIBIT No. 6**

Now my lord, I want to put in the translation of the log, pursuant to that last agreement. I don't know whether my friend wants to have the original log put in.

**MR. DESBRISAY:** The position in regard to the original 20 log is this, and I have spoken to Mr. Merritt. Mr. Sidney Smith, the solicitor for the ship owners had the log sent here, and does not want it put in. There may be certain reasons for that. We can have the particular references put in.

**THE COURT:** Is that satisfactory to you, Mr. Bull?

**MR. BULL:** Yes, my lord.

**THE COURT:** Have you got a copy?

**MR. BULL:** That is the translation.

**TRANSLATION OF LOG MARKED EXHIBIT No. 7**

**MR. BULL:** I wish to put in the report certified by the Port 30 Warden at New Westminster.

**MR. BOURNE:** I object to that report going in as not being evidence.

**THE COURT:** At the moment it strikes me that this would be admissible at common law on proof that it was kept as a public register, and to avoid the necessity of bringing the records here, it provides for a certificate which on being proved you are in the same position as if you had the books here. It will be marked as an exhibit, but will not be read.

**CERTIFICATE REFERRED TO MARKED EXHIBIT No. 8 40**

**MR. BULL:** Now the commission evidence at Rangoon. Gentlemen of the jury, this evidence was taken in Rangoon in



December last, on a commission sent out from the Supreme Court here to Mr. C. A. Soorma, a barrister at law, who was appointed the commissioner. Mr. C. N. Paget appeared for the plaintiff, and Mr. G. Horrocks appeared for the defendant.

THE COURT: Does the order provide for any proof of the absences of the witness?

MR. MERRITT: No, without proof of the absence.

MR. BULL: The first witness is Mr. Nene. (Reads).

10 "Q. Do you keep records of the daily temperatures . . . and, is it a correct record? A. Yes."  
I have the original exhibit here, my lord.

#### METEOROLOGICAL REPORT MARKED EXHIBIT No. 9

On the 13th of April the maximum was 97.3, and the minimum was 77.7. On the 23rd the maximum was 90.0 and the minimum 77.5. In the intervening dates it varied, and on the 15th it was as high as 100.7. I will put that in.

"Q. Have you prepared another chart . . . . (Chart handed to witness). A. Yes."

20 I need not read the whole of that. On April 13th the humidity was 59. On the 23rd it was 92. During the intervening days it varied from 46 to 92 on the 23rd.

#### HUMIDITY CHART MARKED EXHIBIT No. 10

"Q. Is that also a correct record . . . . A. Normal."

The cross-examination is very short. I will read that.

(Reads cross-examination).

(Exhibit B-1 was put in by consent). That was produced by the same witness.

#### CERTIFICATE PRODUCED MARKED EXHIBIT No. 11

30 I take it those are percentages of the rainfall for the period indicated.

THE COURT: That is put in by consent.

MR. BULL: The next witness is the Honourable Somerset Butler, Managing director of Messrs Blackwood Ralli & Company. He was sworn and examined by Mr. Paget. (Reading).

"Q. Mr. Butler, are you the managing director . . . . (Page 4 to page 9) . . . . originals that have been sent to London".

40 MR. DESBRISAY: At this point I should make an objection. These certificates are apparently made by some other man than the witness. Apparently there was correspondence between this Morrison & Company and the witness' firm that is to be produced subsequently, and I submit that it is not possibly evidence against the defendant in this case, and should not be admitted. Apparently it went in without objection from the solicitor or

*In the  
Supreme  
Court of  
British  
Columbia.*

Proceedings  
at Trial,  
May 19th,  
1938.

—continued.

In the  
Supreme  
Court of  
British  
Columbia.

Proceedings  
at Trial,  
May 19th,  
1938.

—continued.

counsel who attended on behalf of the defendant on the commission. I submit that that fact cannot make evidence what is not, by any possible stretch of the imagination evidence.

MR. BULL: Now those are the two certificates.

#### TWO CERTIFICATES MARKED EXHIBIT No. 12

The next question,

“Q. Do you produce the correspondence that passed . . . and marked as Exhibits E to E-5.”

MR. DESBRISAY: The same objection, my lord. I simply want my objection noted, my lord. 10

THE COURT: Yes.

MR. BULL: I think I need only read the skeleton.

THE COURT: Just a moment. Are these admissible? These are not declarations in the course of duty.

MR. BULL: No, my lord, but on the ground there was no objection.

THE COURT: These are what?

MR. BULL: These are requests made by Blackwood Ralli & Co. Limited and sent to Morrison & Co. They are requests for surveys which preceded the certificates which we have. 20

THE COURT: All right, I will admit them subject to objection.

MR. BULL: I think I need only read one. It is headed “Memorandum from Blackwood Ralli & Co. Limited to Morrison & Co., Rangoon”, and dated the 27th of February 1936. “Dear Sirs, We shall thank you to send your man to draw samples of rice and weight for survey from the lots as per particulars stated below”, and then it gives the marking 163, and this particular one refers to 7500 bags. There are five of them, marked E to E-5 on the Commission. They are all signed for or on behalf of Black- 30 wood Ralli & Co. Limited and Exhibit E-5 is in fact different. That is a letter from Blackwood Ralli & Co. Limited to Messrs. Morrison & Co., Rangoon. “Please send us your usual survey certificates and sealed samples (4 sealed and 1 unsealed) for the following and oblige”.

And that includes the Intero Brose, so I suppose they might all be marked separately.

THE COURT: Pin them together and put them in as one exhibit.

#### FIVE CERTIFICATES AND ONE LETTER REFERRED TO 40 MARKED EXHIBIT 13.

MR. BULL: “Q. Am I right in thinking . . . (Page 9, 10 and middle of page 11) . . . in all cases”.

MR. DESBRISAY: I object to this answer, and wish the objection noted.



MR. BULL: There was no objection made on the Commission.

MR. DESBRISAY: I appreciate that. There is nothing to indicate he knew anything about this except from hearsay.

MR. BULL: He is speaking generally about rice arriving in a heated condition. He is qualified to do so, and it was not objected to.

MR. DESBRISAY: I appreciate that.

10 MR. BULL: Experienced Counsel are there to take objection to things like that.

THE COURT: All right. I am admitting it on the same grounds. The question having been asked and no objection was made.

MR. BULL: "A. In all cases I have known . . . A. Yes, Exhibit 'F'."

Now, before my learned friend reads the cross-examination I would ask leave to call a short witness to prove the plan of the vessel. Oh, I forgot. That document which was marked Exhibit F on the Commission I now tender.

20 DOCUMENT MARKED EXHIBIT No. 14

MR. BULL: I have asked my friend to admit this, but he has not done so.

MR. DESBRISAY: I told my friend I was quite prepared to admit it, as long as I had a chance to show it to the surveyor, and if he says it is all right, I will admit it. He is rushing this on without any necessity. I told him we would admit it if we could. It was produced here about two o'clock for the first time.

30 MR. BULL: I want it now, so that certain witnesses who are to be called as experts can familiarize themselves with it. I understood my learned friend was going to ask his surveyor right after lunch.

MR. DESBRISAY: I phoned for him to come here, but he is not here yet.

MR. BULL: I brought Mr. Davies up here because I understood my friend was not going to admit it.

MR. DESBRISAY: I think we can admit it, only we would like an opportunity to submit it to the surveyor.

MR. BULL: Watson, I understand, has been here for an hour,

40 THE COURT: Go on and call your witness, Mr. Bull.

MR. BULL: My friend says that we are rushing this thing on, so I let him go.

MR. DESBRISAY: We admit it.

PLAN OF M.S. "SEGUNDO" MARKED EXHIBIT No. 15

MR. BULL: I presume my friend will read the cross-examination.

*In the  
Supreme  
Court of  
British  
Columbia.*

Proceedings  
at Trial,  
May 19th,  
1938.

—continued.



In the  
Supreme  
Court of  
British  
Columbia.

Proceedings  
at Trial,  
May 19th,  
1938.  
—continued.

MR. DESBRISAY: "Q. When you refer to your previous experience . . . (to middle of page 17) ascribed to that of discontinued ventilation en route".

MR. BULL: That should be discontinued.

MR. DESBRISAY: The copy I have, the word "discontinued" instead of discontinued. That is a word which has been written in by our agent in Rangoon.

(Continues reading pages 17, 18, 19, 20, down to) "2300 bags of the 163 were stowed on top of Interco Brose A.L.Z."

THE COURT: 2300? 10

MR. DESBRISAY: On top of 1000 bags—

THE COURT: Is it agreed that should be in there?

MR. DESBRISAY: On top of 1000 bags of Interco Brose." Those words were written into the copy sent to me.

THE COURT: They are not in my original. It does not make any difference.

MR. BULL: It is correct the 2300 bags were stowed on top of the Interco Brose.

THE COURT: But 1000 bags is not in my copy.

MR. DESBRISAY: That has been written into the copy I 20 have.

THE COURT: It is not in the original.

MR. DESBRISAY: I do not think there is any contention that the 163 were not stowed on top of the Interco Brose. "A. Were they stowed at the top of the hold . . . over some of the other marks".

THE COURT: "Under the A.L.Z."

MR. DESBRISAY: They have made a slip apparently, because that does not agree with the other. It is the reverse, as a matter of fact, my lord. 30

THE COURT: I will have to take it as it is in my record.

MR. BULL: My lord, there is a stowage plan which my friend agrees to, which will go with this.

MR. DESBRISAY: The stowage plan shows the A.L.Z was stowed under and the other on top.

THE COURT: Gentlemen of the jury, you will have the stowage plan, and you will be able to take it from that.

MR. DESBRISAY: I will read it as it should be.

"Q. The 163 were stowed over the A.L.Z. . . . (reading to middle of page 22) lesser weight than that contracted." 40 I think the word "for" should be there.

"This, to my mind . . . (reading to middle of page 35).

MR. BULL: There is a short re-examination by Mr. Paget:

"Q. Mr. Butler, I should like to be quite clear . . . I want to show you an extract from a log book—"

.Of course, that is not going in, my lord, in view of the agreement.

“Q. Will you also look at this extract from a protest”.

MR. DESBRISAY: I do not know, my lord. He is giving the extracts from the log.

MR. BULL: They are not going in.

THE COURT: He is referring to the log book.

MR. DESBRISAY: But my friend is reading this question.

“Will you also look at this extract from a protest, or further extract from the log, marked H, and tell me whether you see in the fourth paragraph anything that might account for the damage.”

10

Our agreement is that there is to be no evidence other than contents of the log introduced into the record, and therefore this should not be read.

THE COURT: Is that the agreement?

MR. BULL: Yes, my lord.

THE COURT: Then you had better strike out all references to the log.

20

MR. BULL: I take it then “Extract from the log book is shown the witness and marked Exhibit “G”, anything before that is all right.

MR. DESBRISAY: I submit it should not be referred to.

MR. BULL: I am saying that the questions from G should go out.

THE COURT: I think the question preceding that should go out too.

MR. BULL: I do not mind, although I do not think there is anything there which is in breach of the agreement. However, it does not matter.

THE COURT: Then it goes out down to “To your mind, is it a proper thing to open up all the hatches and ventilators suddenly.”

30

MR. BULL: “Q. To your mind is it a proper thing . . . heated from excessive moisture content”.

That finishes that witness. It happens to be half past four. There is not much sense going on with another witness.

THE COURT: Will you finish tomorrow?

MR. BULL: No, I don't think there is any chance of finishing tomorrow.

THE COURT: Half past ten.

40

(COURT ADJOURNED AT 4.32 P.M. UNTIL 10.30 A.M.  
MAY 20th, 1938).

May 20th, 1938, 10.34 a.m.

(COURT MET PURSUANT TO ADJOURNMENT)

May 20th,  
1938.

THE COURT: Well I do not want to hear Mr. Bull. Under the common law public registers are admissible as set out in

*In the  
Supreme  
Court of  
British  
Columbia.*

Proceedings  
at Trial,  
May 19th,  
1938.

—continued.



In the  
Supreme  
Court of  
British  
Columbia.

Proceedings  
at Trial,  
May 20th,  
1938.

—continued.

Phipson, Seventh Edition, page 328. "At common law, public registers are admissible (but not generally conclusive) proof of the facts recorded therein when the book is required by law to be kept for public information or reference; and the entry has been made promptly, and by the proper officer."

In this connection Section 611 of the Canada Shipping Act says that the Port Warden shall, at the request of any person interested, proceed to investigate on board any ship for the purpose of examining the condition and stowage of her cargo, and if there are any goods damaged on board said ship, shall inquire, examine and ascertain the cause of such damage, and make a memorandum thereof in full on the books of his office. 10

In the case of *Sturla vs. Frectia*, 5 A.C. page 643, Lord Blackburn says, speaking of an objection that was taken there against the admissibility of public documents, "It must be a public document, and it must be made by a public officer. I understand a public document there to mean a document that is made for the purpose of the public making use of it, and being able to refer to it." Then he goes on on the same page to give the reason why public documents are admissible in evidence. He refers to a case of *Irish Society vs. Bishop of Derry*, and Baron Parke's judgment in that case, where Baron Parke said, (Reading). Well that is the reason for the rule at common law. Then we have here, as I said, the duty under the Statute of the Port Warden to make certain examinations on request, and enter a memorandum in full in the books of his office; and then 631 says, "All certificates issued under the hand of the Port Warden, (Reading section). 20

I think that clearly means there that properly made under the certificate it is evidence.

MR. BOURNE: My lord, so it will be clear on the notes, the portion that is struck out is in that part of the first sentence contained in the paragraph on the third page of the report which commences with this, "During the hatch survey." These words after the word "Sweat" to the end of that sentence are struck out. 30

THE COURT: Well I would suggest, so there will be no difficulty, as you have a copy in your hand, that that part struck out in your copy can be handed to the jury when they consider their verdict. Better be careful about that, because if the document goes to them in its original state you will have that, you see, which was agreed should be eliminated. 40

MR. BOURNE: Yes, my lord.

THE COURT: Mr. Bull, did you say you had direct authority on that?

MR. BULL: I say, my lord, a document such as this is said to be referred to under that same rule in Halsbury, Vol. 13,

page 665, under the head of Public Surveys. (Reading). And then he referred to that case your lordship cited.

THE COURT: Yes, the Irish Society..

MR. BULL: Shall I go on with this Commission evidence my lord? The second witness is Krishna; the interpreter being sworn in Hindustani. (Reading).

MR. DESBRISAY: (Reading cross-examination).

MR. BULL: Then re-examination. (Reading). The next witness is Hardeo Tewari. (Reading).

10 MR. DESBRISAY: (Reading cross-examination). "Witness' notebook is admitted by consent."

THE COURT: That will be Exhibit 16.

MR. BULL: Re-examination (Reading).

#### NOTEBOOK MARKED EXHIBIT No. 16

MR. BULL: I will go on with the Commission, my lord. The next witness is Tryogi. Examination in chief. (Reading).

MR. DESBRISAY: (Reading cross-examination).

MR. BULL: The next witness is Captain R. P. R. Taylor. (Reading). Certificates put in. They are all put in, my lord—  
20 dated Rangoon, 24th April, this particular one. That is what I am reading. (Reading).

#### DOCUMENT MARKED EXHIBIT No. 17

MR. BULL: (Continuing reading of Commission evidence).

MR. DESBRISAY: (Reading cross-examination).

MR. BULL: The first two questions I don't think should go in in re-examination.

MR. DESBRISAY: No.

MR. BULL: The next is proper.

30 THE COURT: Exhibits G and H will not go in, but the balance of that question is based on what is in now without objection, is it not?

MR. BULL: Yes, that is, of course, he is referring to something there that should not go in.

THE COURT: Well that question will go out—question and answer.

MR. BULL: That should go out, yes.

THE COURT: That is out; and the next one—

40 MR. BULL: Is not intelligible without the first, except the answer. (Reading). "You are liable to get bad weather—that is referring to a voyage to North America; "You are liable to get bad weather".

*In the  
Supreme  
Court of  
British  
Columbia.*

Proceedings  
at Trial,  
May 20th,  
1938.

—continued.



In the  
Supreme  
Court of  
British  
Columbia.

Proceedings  
at Trial,  
May 20th,  
1938.

—continued.

THE COURT: That means nothing without the question. And the next question refers to the exhibit which does not go in.  
MR. DESBRISAY: I don't think any of the re-examination.

THE COURT: All your re-examination had better all be left out.

MR. BULL: I think the last question is based on the extract from the log, which is not in, so I don't suppose any of that should go in.

THE COURT: No, I think the whole of the re-examination is out.

MR. BULL: Now the next witness is Ba Ohm (Reading). "Witness produces extract from stock register". I don't think there is anything in this at the present time, my lord, to present to the jury.

THE COURT: All right, that will not go in. Do you want this to go in?

MR. BULL: Oh yes.

THE COURT: All right.

DOCUMENT MARKED EXHIBIT No. 18

20

MR. DESBRISAY: (Reading cross-examination).

MR. BULL: Re-examination (Reading). The next witness is Jal Munchershaw Rustrumframa. (Reading).

MR. DESBRISAY: Reading cross-examination.

MR. BULL: Re-examination. (Reading). The next witness is Sa Ispahany. (Reading).

This first statement gives the number of bags and marks and so on. There are several pages of this. I think that might go in as one exhibit.

DOCUMENTS MARKED EXHIBIT No. 19

30

MR. BULL: And these are the forms of Morrison & Company, headed "Shipping sample", giving the name of the miller with the milling and its quality, the number of bags, the date, the steamer, and the name "Durwan", these might all go in—

THE COURT: What are they in the examination, are they shipping chits?

MR. BULL: These are shipping chits.

THE COURT: That is shed AA and FF.

MR. BULL: Well I think they might go in as one, my lord.

THE COURT: That will be Exhibit 20.

40

DOCUMENTS REFERRED TO MARKED EXHIBIT No. 20

MR. BULL: And the last question (Reading).

MR. DESBRISAY: (Reading cross-examination). I imagine that word "Not" is "now". "When you say and part of it was heated"—(Reading).

MR. BULL: Now, re-examination (Reading). The next witness, Mr. C. E. DeJordan. (Reading).

MR. DESBRISAY: (Reading cross-examination).

MR. BULL: Re-examination. (Reading).

Now, my lord, there is only one short recalled witness—Mr. Butler, and that finishes the commission evidence on behalf of the plaintiff, so I might as well read that. (Reading).

That is the close of the plaintiff's case on Commission. There are two exhibits to be put in.

10 THE COURT: Extracts.

MR. BULL: Extracts, yes. I had better put them in separately. Khan's order will be Exhibit 21.

DOCUMENT MARKED EXHIBIT No. 21

SECOND EXTRACT MARKED EXHIBIT No. 22

MR. C. A. SOORMA (Barrister-at-Law) the Commissioner sworn.

MR. C. N. PAGET for the Plaintiff.

MR. C. HORROCKS for the Defendant.

MR. NENE, Meteorological Observer, Rangoon Port Commissioners.

20 EXAMINATION-IN-CHIEF BY MR. PAGET:

Q. Do you keep records of the daily temperature on behalf of the Port Commissioners? A. Yes.

Q. Have you prepared a chart showing the daily maximum and minimum temperatures for the years 1936 and 1937 from the 27th January to the 24th April? A. Yes.

Q. Is this the chart? (Chart handed to witness). A. This is the chart prepared by me. (Exhibit A).

Q. And, is it a correct record? A. Yes.

30 Q. Have you prepared another chart showing the average daily humidity for the same periods? A. Yes.

Q. Is this that Chart? (Chart handed to witness). A. Yes. (Exhibit B).

Q. Is that also a correct record? A. Yes.

Q. Those months—February-March-April—they are normally the driest part of the year? A. Yes.

Q. And can you tell us were those normal years as regards temperature and humidity for that period—February to April? A. 1937 was a little hotter than normal.

Q. 1936? A. Normal.

40 CROSS-EXAMINATION BY MR. HORROCKS:

Q. The records which you have prepared relate to observations which you have taken in Rangoon? A. Yes.

*In the  
Supreme  
Court of  
British  
Columbia.*

Proceedings  
at Trial,  
May 20th,  
1938.

—continued.

Plaintiff's  
Evidence.  
No. 5.  
Mr. Nene.  
Examina-  
tion,  
December  
24th, 1937.

Cross-Ex-  
amination,



In the  
Supreme  
Court of  
British  
Columbia.

Plaintiff's  
Evidence.

No. 5.  
Mr. Nene.  
Cross-Ex-  
amination,  
December  
24th, 1937.

—continued.

Q. You have no knowledge of temperatures or humidity figures for districts other than Rangoon? A. No, I have no personal knowledge but the Director of the Burma Meteorological Department would be able to supply figures other than those for Rangoon.

Q. Do you know of your own knowledge that towards the end of March 1937 and the early part of April 1937 thunder showers were prevalent? A. Unless I see the records I would not be in a position to say.

Q. And the Mango showers which customarily precede the monsoon broke in or about April 1937? A. I cannot say. The figures in Exs. A and B appear to me to be normal.

Q. The figures to which you have been referring are relative humidity figures? A. Yes.

Q. And, you have not submitted figures for rainfall? A. No, I was not asked to submit figures for rainfall.

Q. Are records kept of rainfall before the monsoon proper breaks? A. Yes, throughout the year.

No. 6.  
Honourable  
Somerset  
Butler.  
Examina-  
tion,

THE HON'BLE SOMERSET BUTLER (Managing Director Messrs. Blackwood Ralli & Company Limited) duly sworn according to the Directions contained in the Writ of Commission.

#### EXAMINATION-IN-CHIEF BY MR. PAGET:

Q. Mr. Butler, are you the Managing Director of Messrs. Blackwood Ralli & Company Limited of Rangoon? A. Yes.

Q. Now, do you remember a shipment of rice to the Canada Rice Mills in April 1936? A. I do.

Q. Was that a concern of Blackwood Ralli & Company Limited? A. Certain parcels of rice were shipped to the Canada Rice Mills in the S.S. "Segundo" by Blackwood Ralli & Company Limited.

Q. Well, while we are about it, can you give us the exact quantity? A. There were two parcels, one comprising 7500 bags and the other comprising 15600 bags.

Q. In tons, that would be? A. Normally it would be 750 tons and 1560 tons but it was not so in this case. The exact quantity of tons I cannot give you off hand.

Q. Have you read the statement of claim in this suit? A. I am not sure whether I have.

Q. Just look at it now and tell me is that 7500 bags the same parcel as that which is referred to in paragraph 4 of the plaint? A. I can only presume that it is but as the specification is not according to the survey certificates and invoices I cannot be absolutely certain.

Q. Well at all events 7500 bags plus a larger quantity was



shipped by the "Segundo" to Vancouver in April 1936? A. Yes.

Q. And your Company were the Shippers? A. My Company were the Shippers.

Q. Now, before we come to the details of the shipment will you just give us any general information regarding the different Seasons. What is the normal paddy-growing season? A. It of course varies in different parts of Burma but generally speaking paddy is sold as soon as the fields have been prepared after the monsoon sets in. The growing season takes place from about the middle of June, harvesting commences from November but the main harvesting season is December. The full weight of the paddy crop does not come on to the market before early January. Do you wish me to say about rice conditions?

Q. Yes, please. A. In the ordinary way it is not considered safe to ship to any distant destination before the second half of January at the earliest. It is preferable if possible to avoid January shipment on account of the fact that the moisture content is presumably high and the paddy has not had sufficient time to dry out. From February onwards it is considered perfectly safe to ship rice grown in the previous year. By "onwards" I mean at any time after February.

Q. The monsoon eases off in what month? A. It begins to ease off in September but shipments made during the monsoon are considered to be safe.

Q. And milling commences in what month? A. Milling commences before January but for shipments to distant ports it would be unwise to buy rice milled before about the 10th of January. I am talking of in a normal year.

Q. Well, what sort of a month is April for shipment? A. April is considered to be as good a month if not better than any month during the year as one would expect rice to have a lower moisture content during this month than at any other time.

Q. Now, will you tell us where the 7500 bags came from? A. Part of it, as far as I remember 6478 bags, were milled at R. R. Khan Rice & Trading Company Limited mill at Mayetwa.

Q. How far is that from Rangoon—approximately? A. I don't know.

Q. And the balance? A. The balance 986 bags from the Prom Line district from where it was railed to our Moolla godown at Pazundaung, Rangoon from where it was shipped on board the "Segundo". 36 bags were bought by us from a godown situated in Keighley Street, Rangoon.

Q. Just to complete this parcel? A. Yes.

Q. Can you give me the date of milling of the 6478 bags? A. Milling commenced on the 4th March 1936 and finished about the 12th or 13th of March.

*In the  
Supreme  
Court of  
British  
Columbia.*

Plaintiff's  
Evidence.  
No. 6.  
Honourable  
Somerset  
Butler.

Examina-  
tion,  
December  
24th, 1937.

—continued.

*In the  
Supreme  
Court of  
British  
Columbia.*

Plaintiff's  
Evidence.  
No. 6.  
Honourable  
Somerset  
Butler.  
Examina-  
tion,  
December  
24th, 1937.  
—continued.

Q. And the Prome line parcel when was that milled? A. To the best of my knowledge it was milled on the 27th January 1936 but I could not swear to this as rice, when it is milled, comes down to Moolla godown and is shipped from stock. It might be therefore that stocks of the same quality which are stacked together become mixed at the time of shipment.

Q. Actually, what was the quality? The whole 6478 bags I think were all of the same quality. Correct me if I am wrong.

A. It was superior quality of Sugandi (Emata grain) known to the Canada Rice Mills as "Brose".

Q. Have you made enquiries as to what the grain actually was? A. I have seen the grain. 10

Q. Can you tell us what the grain actually was? A. The 6478 bags was a field Amagyi, probably originating from pure government seed. As regards the balance 986 and 36 bags I cannot swear to the quality but it was very similar to the 6478 bags.

Q. When Blackwood Rallis purchased rice for shipment, is it customary for them to take any precautions to see that they get rice up to specification? A. It is.

Q. What precautions? A. After rice is bought, the seller 20 in due time submits what is known as a milling notice detailing where and at what time milling will take place. It is Blackwood Ralli's practise to send to the mill gunnies and twine and one or two Rice Supervisors who are present throughout the milling. Delivery is taken ex hopper (chute) and it is their job to watch the rice as it comes from the chute, drawing samples which they examine continuously in order to see that the quality is fully up to specification. Apart from the actual grain they are expected to see that the percentage of red grains is not abnormal, the percentage of paddy is within that allowed under the contract and 30 the quality and condition generally is fair average for the season. As far as reds and brokens are concerned, actual hand tests are made to ascertain the percentage in the rice. Quality and condition can be judged by the eye but in order to satisfy themselves they hand-mill loonzain into white rice in case there may be damaged grains which are not acceptable when the rice is in the form of Loonzain. By loonzain I refer to brown rice.

Q. Did you have Supervisors at R. R. Khan's mill at Mayetwa for the 6478 bags? A. Yes.

Q. Can you give me their names? A. Gaya Sukul and 40 Kisundai.

Q. Are they here now? A. Kisundai is—Gaya Sukul is away in India.

Q. Were these men fully qualified to do that work? A. In my opinion they were fully qualified otherwise they would not have been employed.



Q. You say samples were taken by these Supervisors. What do they do with them? A. Samples are sent by them to my office every day during the time of milling representing the average quality milled during the day. These are examined by the Department concerned and very often by myself personally when, if it is considered they are not fully up to specification, the miller is directly approached and the rice rejected.

Q. Who was in charge of that Department in your office in 1936? A. Mr. C. deJordan.

10 Q. Is he a man of experience? A. I should say of very great experience.

Q. Have you got the samples still of this particular shipment? A. No. As far as I can recollect they were sent to London at the time the first query was made as to the quality on arrival.

Q. Did you at any time see the samples yourself? A. I did when intimation came from London that there was a query as to the quality. The samples referred to were those drawn at the time of shipment by Messrs. Morrison & Company, Surveyors.

20 Q. Perhaps you will explain now how Messrs. Morrison & Company came into it. A. Under most rice contracts made for shipment from Burma the Suppliers contract to supply a survey certificate issued by an independent European concern certifying the quality, condition and weight at the time of shipment. For this purpose Blackwood Ralli & Company Limited employed Morrison & Company.

Q. Mr. C. H. Shaw was the Proprietor of Morrison & Company? A. That is so.

30 A. Yes,—the extent I don't know.

Q. And unfortunately he died about 2 or 3 weeks ago? A. That is so.

Q. I think you have the certificates for the shipment? A. I have.

(Certificates handed over. Exhibits C and D are copies of the originals that have been sent to London).

Q. Do you produce the correspondence that passed between you and Morrison & Company at the time? A. Yes.

40 Q. Who signed those letters? Were they all signed by the same person? A. The requests for survey are signed by an Assistant of Messrs. Blackwood Ralli & Company Limited, namely, Mirza Abbas.

(The documents produced by the witness are put in and marked as Exhibits E to E5).

Q. Am I right in thinking from the letter dated the 27th February that Morrison & Company not only sampled the rice

*In the  
Supreme  
Court of  
British  
Columbia.*

Plaintiff's  
Evidence.

No. 6.

Honourable  
Somerset  
Butler.

Examina-  
tion,

December  
24th, 1937.

—continued.



In the  
Supreme  
Court of  
British  
Columbia.

Plaintiff's  
Evidence.  
No. 6.  
Honourable  
Somerset  
Butler.  
Examina-  
tion,  
December  
24th, 1937.  
—continued.

at the time of shipment but also sampled it at the time of milling? A. The memorandum dated the 27th February was an instruction to Morrison & Company to sample and survey 6500 bags (actually 6478 bags) at the time of milling and it will be noticed that the date of milling was commenced is mentioned in the memorandum.

Q. Are you familiar with the late Mr. Shaw's signature?

A. Of Morrison & Company, yes. Personal signature, no.

Q. Is that his signature on behalf of his firm on Exhibits C and D? A. Yes.

Q. Now, you have told us that you actually saw the shipment samples yourself. I want you to give us your opinion of them. A. In my opinion they were fully up to the specifications sold in every particular.

Q. With regard to moisture, has it been the practice to test the moisture content of shipment samples? A. No. It is not the general practice in the rice trade to test the moisture content at any time.

Q. From the appearance of the samples, can you form an opinion as to whether there was undue moisture? A. If the moisture content was very excessive, yes.

Q. What would you expect to see if the moisture content was excessive? A. At the beginning of the season before rice has dried out it has a soft feel but, incidentally, your next witness (Mr. deJordan) has much more experience than I have and could give a better opinion. If the rice has become heated or damaged through excessive moisture content or contact with water it is easily discernible as there will be either a general yellow appearance in the white rice or isolated yellower grains.

Q. You used the expression "white rice" are you still talking of what is referred to as "brown rice" by the Canada Rice Mills? A. In brown rice such damage might not be discernible but as in almost every case brown rice is re-milled into white rice the test is made from the white rice either hand-milled or milled in a sampling mill.

Q. And that is done in Rangoon for each shipment? A. That is done at the time of milling at the mill also in Blackwood Ralli's office and again at the time of shipment. I am differentiating between rice which has a high moisture content but is undamaged and would dry out in the normal way and remain undamaged and rice which has become heated through some cause at the time when it had a high moisture content.

Q. Was there anything abnormal about the samples which you saw? A. Nothing at all.

Q. How would you describe the 1936 crop? A. To the best of my recollection it was a normal year from the point of view of

weather conditions during the grain and harvesting period and also during the time the rice was milled and shipped.

Q. This year—1937—have you made any tests for moisture? A. Yes, in the case of rice destined for the Canada Rice Mills at their request.

Q. Tell us the result of those tests, will you? A. Without looking at my records, to the best of my knowledge 8%.

Q. And was that rice of the same quality? A. For rice of very similar quality but not actually bought from the same party.

10 Q. Was it shipped more or less at the same time of the year? A. Yes, more or less it was shipped in two steamers, one of which sailed during April 1937 and the other during May 1937.

Q. Did you have any other complaint in the 1936 season apart from the complaint received from the Canada Rice Mills?

A. Yes, but to the best of my recollection no complaint was received regarding the condition of the rice on arrival at its destination.

Q. In your experience what is the cause of complaints that rice has arrived at destination in a heated condition? A. In all 20 cases I have known where complaints have been received on this score it has been found that at some period during a voyage rough weather has been experienced and hatches have had to be battened down and ventilators closed. It is my opinion that in each case the cause can be ascribed to lack of continuous ventilation en route.

Q. Have you shipped the same quality of rice on other occasions? Sugandi type grain— A. On many occasions very similar types of rice have been shipped. On one occasion the records of Blackwood Ralli & Co's predecessors (Messrs. Blackwood, 30 Blackwood & Company) show that the same quality bought from the same seller was shipped during March 1934 to the Canada Rice Mills.

Q. Was there any complaint about that? A. As far as I know, none, but I was not in Rangoon at the time. I also know that in the "Segundo" there was shipped a parcel of 750 tons of a quality supposed to be identical with the one with which we are dealing and it was bought by my London principals direct from R. R. Khan. As far as I know no complaint was raised.

Q. And where did that parcel go to? A. To the Canada 40 Rice Mills in the "Segundo".

Q. Did you also have a Supervisor at the time of milling of the Prome line parcel? A. Yes.

Q. Can you tell us his name? A. No, I cannot. I have not got a record of it.

*In the  
Supreme  
Court of  
British  
Columbia.*

Plaintiff's  
Evidence.

No. 6.  
Honourable  
Somerset  
Butler.

Examina-  
tion,  
December  
24th, 1937.

—continued.



In the  
Supreme  
Court of  
British  
Columbia.

Plaintiff's  
Evidence.

No. 6.

Honourable  
Somerset  
Butler.

Examina-  
tion,  
December  
24th, 1937.

—continued.

Cross-Ex-  
amination,

Q. Is he going to be called as a witness? A. I don't think so. I cannot remember.

(List of witnesses handed to witness. Witness after referring to the list of witnesses says that Hardeo was the Supervisor.)

Q. Do you produce a copy of your certificate that the gunnies used for the 7500 bags were new gunnies? A. Yes. (Exhibit F).

#### CROSS-EXAMINATION BY MR. HORROCKS:

Q. When you refer to your previous experience with regard to loonzain quality similar to that in question in the proceedings, do you mean that it was loonzain Rangoon special quality or do you refer to the type of the loonzain? A. I refer to the grain known as Sugandi (Emata). 10

Q. Can you give me an idea of the number of Emata grains now being grown experimentally and otherwise? A. Experimentally, no, but they are considerable.

Q. Might they run into several hundreds? A. Oh, no.

Q. Not including the experimental grains? A. I should say certainly not. I take it that you mean including experimental grains. 20

Q. Even including? A. I say certainly not.

Q. It is a fact, is it not, that grains are raised experimentally and put on to the market? A. Yes, grains are raised experimentally by the Government farms and seed paddy is distributed by such farms.

Q. And, when you refer to your previous experience of similar quality rice, you mean it was of the Sugandi type? A. That's right.

Q. Have you any idea at all what particular type of Sugandi it was? A. Yes, it was what is known as Amagyi type grain. 30

Q. What do you understand by "Amagyi type"? A. It is a grain that is somewhat fatter than other Sugandi grains.

Q. Of Amagyi grains, are there several varieties? A. Yes.

Q. Are you able to say of which variety of Amagyi grain the rice of which you had previous experience was? A. I am not quite sure what you are referring to by "previous experience".

Q. You have been examined as to whether you have had previous experience of grain similar to the Sugandi which you shipped on the "Segundo". You told me that that rice of which you have had previous experience was Amagyi. You told me there were several kinds of Amagyi grain. Can you tell me what kind of Amagyi grain this was of which you have had previous experience? A. No. Amagyi grain is so similar. 40



Q. Can you identify the kind of Amagyi grain which was shipped on the "Segundo"? A. No. The difference between the types of Amagyi grain vary so slightly, on one occasion because they happen to come from different districts and furthermore specific experimental grains of the Amagyi type grown by Government also vary on occasion very slightly.

Q. Then, may I take it that both with regard to the Amagyi shipped on the "Segundo" by yourselves and also the Amagyi of which you have had previous experience, you are unable to say  
10 what type of Amagyi grain they were? A. That is so because unless it consists of pure grain supplied by the Government Experimental farm it has no identifiable name or number.

Q. May I take it also that you are quite unable to identify it by its appearance or by any of the tests to which you submitted it? A. I understand you to mean: can I identify it as an Amagyi grain?

Q. As a particular type of Amagyi grain. A. No, quite unable, because it was not a Government grain.

Q. Are you able to identify the precise type of grain otherwise than as Sugandi in any instance unless you know it is a  
20 specific parcel of Government grain? A. No, but if shown a parcel of Sugandi it would in some cases be possible to say that it is probably such and such a grain.

Q. And your conclusion in such a case would be principally upon the appearance of the grain? A. Exactly.

Q. Appearance and dimensions? A. Yes.

Q. So that with regard to the parcel to which you have referred which was bought from R. R. Khan and shipped during March 1934 to the Canada Rice Mills, you are unable from your  
30 personal knowledge to say more than that it was Sugandi grain? A. From my personal knowledge, that is so.

Q. From a reference to the documents, can you say anything more than that it was Sugandi grain? A. I can say that it was supposed to be when it was bought the same grain grown in the same fields and identical in all respects to that shipped in the "Segundo".

Q. You know that for the purpose of identification the Agricultural Department of the Government label grains with letters of the alphabet and numbers, for instance x16/72? A. Yes.

Q. When you say that it was supposed to be the identical  
40 grain, do you mean identical in the sense that it had the same alphabetical denomination and numerical denomination? A. It had no denomination at that time but probably originated from a seed which had some alphabetical and numerical denomination.

Q. With regard to the parcel of 986 bags which you obtained from the Prome District, can you identify the nature of

*In the  
Supreme  
Court of  
British  
Columbia.*

Plaintiff's  
Evidence.  
No. 6.  
Honourable  
Somerset  
Butler.  
Cross-Ex-  
amination,  
December  
24th, 1937.

*—continued.*

In the  
Supreme  
Court of  
British  
Columbia.

Plaintiff's  
Evidence.  
No. 6.  
Honourable  
Somerset  
Butler.  
Cross-Ex-  
amination,  
December  
24th, 1937.  
—continued.

that grain otherwise than by reference to Amagyi? A. No.

Q. What kind of grain was the parcel of 36 bags which was bought from Keighley Street? A. I never saw it but it must have been a type of Amagyi.

Q. Have you any records to show what kind it was? A. None.

Q. Under what description was this parcel of 6478 bags bought? A. To the best of my knowledge Field Amagyi selected grain but the quality was well known to us and whatever description might have been attached to it, these vary considerably, 10 the seller knew exactly what grain we required when the contract was entered into.

Q. Have you got the contract? A. I have got the contract but not here.

Q. This parcel was sold to the Canada Rice Mills under the designation of "Interco-Brose 163"? A. No, 163 is purely a mark put on by us to show the mill from which the rice originated and has no bearing on the quality or description of the rice. This number appears on all rice bought by us and milled at R. R. Khan Mayetwa Rice Mill. 20

Q. In the copy of the extract of the Bills of Lading which I have in my instructions this parcel is referred to as "Interco-Brose 163". How was this parcel of rice described in your sale of it to the Plaintiffs? A. No sale was made by us to the Plaintiffs.

Q. When you say "by us", do you mean by your Rangoon Office? A. The sale was made by us to our London Associates and the contract as far as the Canada Rice Mills were concerned was entered into between themselves and the International Rice Company who are our London Associates. 30

Q. So far as you know was this rice sold to the Plaintiffs under the same description or under a similar description to that by which it was bought by yourselves? A. As far as I know it was sold under the name "Brose" which was purely a fancy name to designate the quality we were buying under which it would not be known in this market.

Q. The Survey Reports, Exhibits C and D, refer to "Special quality Rangoon Loonzain as per sample brose"? A. That is so.

Q. Was this parcel of 6478 bags bought by you as per sample? A. No. 40

Q. Do the words "as per sample brose" appearing in Exhibits C and D refer to samples submitted by you or by your London Associates to the Plaintiffs? A. By our London Associates to the Plaintiffs.

Q. Would these be samples prepared from milling operations or the samples you took at the time of shipment? A. These



samples must have been submitted by us here earlier in the season from the same crop as that shipped.

Q. 1935-36 crop? A. Exactly—those were shipped in 1936, but I would have to look at my records to make certain of that.

Q. Are you inclined to think that the sample which you submitted for this purpose was taken by you after you had bought the grain from R. R. Khan? A. No, certainly not. I am basing my evidence on what is mentioned in the Survey Reports, Exhibits C and D.

10 Q. Now then, how was the parcel of 986 bags bought by you? A. Without referring to records I cannot answer that question.

Q. Am I to understand that the 6478 and 986 bags are the bags covered by Exhibit C and D? A. Yes.

Q. And so, basing your evidence on Exhibits C and D, would you say that they were sold to the Plaintiffs as per sample? A. Yes.

20 Q. You stated quite generally that in your experience when complaints have been lodged that rice shipped by you had arrived in a heated condition it was your opinion that in each case the cause can be ascribed to that of discontinued ventilation en route? A. That's right.

Q. Can you give me particulars of the condition obtaining on any single voyage in respect of which you had such a complaint? A. Exact conditions, no, without referring to extracts of log books and such like.

30 Q. And those, I take it, are not immediately available? A. Evidence as to the conditions appertaining are in one case, which I have in mind, available. This was a shipment made at the end of January this year in a steamer which at the time was considered by us to be unsuitable as a rice carrier particularly for a shipment so early in the season. The voyage was from Rangoon to Gdynia, Poland, and in the course of that voyage severe weather was experienced and certain parts of the cargo outturned in a damaged condition due to heating.

Q. Can you tell us how many days of bad weather were experienced on that voyage? A. Off hand, no.

40 Q. Three to four days of bad weather would be fairly normal on a voyage to Poland, would it not? A. Yes, one would expect so particularly at that time of the year.

Q. And do you consider that four days of bad weather on a voyage from Rangoon to Vancouver are abnormal? A. That, I don't know.

Q. Have you any reason to think that they are abnormal? A. I should say yes, but I have little or no experience of weather conditions.

*In the  
Supreme  
Court of  
British  
Columbia.*

—  
Plaintiff's  
Evidence.

—  
No. 6.  
Honourable  
Somerset  
Butler,  
Cross-Ex-  
amination  
December  
24th, 1937.

—continued.



*In the  
Supreme  
Court of  
British  
Columbia.*

Plaintiff's  
Evidence.

No. 6.

Honourable  
Somerset  
Butler.

Cross-Ex-  
amination,  
December  
24th, 1937.

*—continued.*

Q. Towards the end of April or the beginning of May, might you not get the four days' voyage between Rangoon and Calcutta quite rough? A. It would be most unlikely.

Q. Is it most unlikely to experience bad weather at that time of the year in the four days' voyage from Rangoon to Calcutta? A. The end of April and beginning of May, yes, but in any event bad weather at the beginning of a voyage even of considerable duration would not have the same effect as far as heating is concerned as it would if the rice had been in the holds of a steamer for some time. 10

Q. In this case the vessel left Rangoon on the 24th April and bad weather was experienced for four days, on and from the 8th of May. Did you know that? A. No. I want to know when the vessel arrived.

Q. The vessel arrived in Vancouver on May 28th so that in this case the bad weather occurred in the early part of the voyage? A. I don't agree.

Q. Would you expect that if the rice had been unheated and dry at the time it was shipped it would have become heated by the 8th of May when the bad weather occurred? A. That is a question that cannot be answered without conditions on board the steamer at the time being known. 20

Q. I think you may take it that the ventilation and storage in this case were excellent. Assuming that they were, are you able to answer my question? A. Heating would certainly not take place by the 8th of May but as the hatches were closed from that date it would be supposed that it would commence to take place from that date.

Q. Then, if heating had not taken place by the 8th and if normal ventilation was restored after an interruption of four days, would you expect this damage to have been caused by the interruption of four days only? A. Certainly if "normal" ventilation was restored after four days it would be a very dangerous procedure. When holds have to be closed, hatches and ventilators have to be closed during a period of rough weather, they have to be opened up very gradually otherwise damage is certain to occur. 30

Q. Is it your view that the restriction of ventilation for four days only would cause excessive heating to the paddy? A. That depends on the nature of the holds and general atmospheric temperature at the time. 40

Q. According to my instructions the paddy, loonzain, was stored in the block system. Is that the normal and customary method of storage? A. Yes, quite.

Q. In Nos. 2 and 3 hatchways there was approximately 8 feet of space between the deck head and upper tier of bags. The

cargo was stowed in four blocks with 18" to 20" spaces clear from the forward and aft bulkheads. There were eight 12" x 12" vertical trunk ventilators and customary rice ventilators built through the stowage. They were built both fore and aft. These were spaced between every 4th tier of bags vertically and every 5th tier of bags horizontally; all led to the large trunk ventilators and to the air channels between the blocks of cargo and at the bulkheads. Assuming that method of stowage, would you expect that parcel of rice to have become excessively heated in four days? A. Heating cannot be said to be completed during the time of rough weather. It originates from such time and will probably develop thereafter regardless of ventilation.

10

Q. Am I right in thinking that mere temperature will not cause damage to rice? A. You are.

Q. And that unless rice be moist, rise of temperature will not cause damage? A. A rise of temperature in itself will certainly not cause damage.

20

Q. If the ventilation of this rice was restricted for four days only and proper ventilation were thereafter given would you expect the damage to be so severe as is claimed in this case? (Mr. Paget objects to this question on the grounds that the question is not in accordance with the facts of the case). A. The only answer which I can make to that question is that I have no knowledge as to the extent of the damage.

Q. Assuming that this particular parcel of rice, 7500, showed a 20% yellow discolouration, would you expect that amount of damage to have been caused through restricted ventilation? A. My lack of experience of outturn of rice after completion of the voyage makes me quite unable to answer that question.

30

Q. This parcel of loonzain, 7500 bags, was shipped in the same holds as your L. N.A. Selected, Steel Loonzain Kalagyi and R. R. Khan's Intereo Brose A. L. Z. With your knowledge of the behaviour of rice, do you consider it strange that only this one parcel of rice should have shown such a degree of damage? A. Not at all.

Q. Will you give your reasons why this parcel of rice alone should have sustained such a considerable degree of damage? A. It depends on what part of the hold the parcel was stowed

40 Q. I can help you there. The 163 parcel was stowed at the aft end of No. 2 hold and at the fore end of No. 3 hold, that is, immediately forward and immediately aft of the engine room bulkheads. A. In my opinion it was a most likely place for heating to take place.

Q. 2300 bags of the 163 were stowed on top of 1000 bags of Intereo-Brose A. L. Z. A. Were they stowed at the top of the hold?

*In the  
Supreme  
Court of  
British  
Columbia.*

Plaintiff's  
Evidence.  
No. 6.  
Honourable  
Somerset  
Butler.  
Cross-Ex-  
amination,  
December  
24th, 1937.

*—continued.*



In the  
Supreme  
Court of  
British  
Columbia.

Plaintiff's  
Evidence.

No. 6.  
Honourable  
Somerset  
Butler.  
Cross-Ex-  
amination,  
December  
24th, 1937.

—continued.

Q. The 163 were stowed over the A. L. Z. and under some of the other marks. A. The bags at the top of the hold if heating takes place are liable to get damaged through condensation from the roof of the hold. Again bags near the bottom of the hold are more liable to heating as obviously the ventilation cannot be so good.

Q. Wouldn't you have expected therefore that the 1000 bags of Interco-brose A. L.Z. which were stowed beneath and the rice of other marks stowed on top of the loonzain in question would have become damaged? A. Without an exact picture of the stowage it is impossible to answer that question. 10

Q. Well then, can you give me any reason why if the restriction of ventilation damaged the loonzain stored in the middle, the loonzain stowed immediately above and immediately below should not be damaged? A. In a general case, no.

Q. In this particular case? A. I say without a view of the exact stowage, it is not possible to answer.

Q. Under any circumstances, can you give an answer why the loonzain stowed immediately above and immediately below should not be damaged? A. It does happen time and time again that only certain rice stowed in certain parts of a hold are damaged and others are arrived in a sound condition. 20

Q. Would you lightly ascribe the damage in those circumstances to restriction of ventilation only? A. Yes, I know of no other reason.

Q. Let me suggest another reason. If the paddy which ultimately showed damage was an earlier crop or was more moist or had been damaged at some stage during its time of stowage as paddy or during its time of stowage as loonzain, those circumstances might have accounted for the damage of which you claim to have had experience. A. In this instance I do not consider that any of those suggestions could have been the cause of such damage taking into account the time the rice was milled, the weather conditions during the period from the time it was milled to the time it was shipped and the actual time of shipment. 30

Q. Is not your inability to account for the lack of damage to the loonzain stowed immediately above based upon the assumption that the 163 loonzain was perfect in every respect? A. I have no knowledge of the conditions of the other parcels on arrival but my answers are on the assumption that the parcel marked 163 was sound in every respect. 40

Q. Would you agree with me that the more likely cause of this parcel of loonzain only being damaged would be that at some time it had become wetter than the parcels of loonzain which surrounded it? A. In the first place, I take it that there was no damage whatsoever to any other parcel or that there was no claim



in respect of damage?

Q. There was no appreciable damage to the others. A. The word "appreciable" to my mind is to be qualified.

Q. I understand that some of the paddy which immediately touched the sacks in which 163 was packed showed damage. The contiguous sacks were damaged. That is to be expected. Apart from that we will assume that the adjacent paddy was not damaged. Now, even making that assumption, would you agree that the most likely cause of the damage to the loonzain lot, 163, was that at some stage it had become much wetter than the loonzain surrounding it? A. There is no evidence that I know to show that at any stage except possibly during the period it was growing that it became wetter than any normal grain and unless by some means it absorbed considerably excessive moisture during the period from the time it was milled to the time it was shipped I cannot see how it could possibly have contained excessive moisture at the time of shipment. I cannot give evidence as to moisture content.

Q. Wouldn't it obviously have contained more moisture if it had not dried out as much as the loonzain which was adjacent to it? A. Of course; but in this particular case it was in store for a comparatively long period between the time of milling and shipment which would indicate that it had dried out more adequately than if it had been milled and shipped at substantially the same time, and going further than this it will be noticed from the Survey Report that some bags were shipped with a lesser weight than that contracted. This to my mind is a very definite indication that during that period the loss in weight was due to evaporation of moisture content and the loss in weight shown is what one would expect to find from any rice stored for that length of period under similar and normal conditions.

Q. Wouldn't the whole point turn upon the manner in which it had been stored during that rather lengthy period? A. Yes, it is quite possible for rice to become heated but as such it would be quite obvious at the time of shipment.

Q. I suggest that there may be damage caused by heating which in the early stages is not noticeable? A. No, I cannot agree with that.

Q. Then in order that there may be no doubt, I understand you to say that the moment damage by heating has occurred, it is immediately apparent? A. Well, it depends on what you call "immediately".

Q. Will you explain what you mean? A. Heating naturally takes a little time to develop but if such heating had taken place in this instance (and, incidentally heating in mills godowns, in the form of rice stored in bags, is an almost unheard of thing

In the  
Supreme  
Court of  
British  
Columbia.

Plaintiff's  
Evidence.

No. 6.  
Honourable  
Somerset  
Butler.  
Cross-Ex-  
amination,  
December  
24th, 1937.

—continued.

*In the  
Supreme  
Court of  
British  
Columbia.*

Plaintiff's  
Evidence.

No. 6.

Honourable  
Somerset  
Butler.  
Cross-Ex-  
amination,  
December  
24th, 1937.

—continued.

but not impossible)—it would have certainly become apparent between the time it was loaded into the cargo boats at the mill and the time of arrival at the steamer. In giving this opinion I am basing myself on the extent of the damage suggested.

Q. 20%? A. Yes.

Q. This paddy you say was harvested in December? A. To the best of my knowledge, yes.

Q. And all paddy harvested at that time is fairly wet? A. At the time of harvesting, yes.

Q. And this paddy was stored in the godowns from Decem- 10  
ber until March? A. The larger portion, yes.

Q. During that time there was ample opportunity for damage by heating to have occurred? A. Certainly, if it was stored originally in a wet condition but had such heating occurred it would have been quite obvious at the time of milling.

Q. Wouldn't that depend upon the degree of heating which had occurred? A. Obviously, but heating which took place at that time would not develop after the rice was milled. By that I mean that if damage is caused by heating and the rice or paddy is then dried out, no further damage will develop. 20

Q. Do you know where the process of heating begins?—  
What portion of the grain? A. No.

Q. I am instructed that heating commences at the germ end. A. Quite possible, I have no knowledge of that.

Q. Do you know whether the germ end is completely removed in the process of milling paddy into loonzain? A. It depends on what you refer to when you refer to the "germ end".

Q. Don't you know what the germ end is? A. I know what I think you are referring to. In this grain there is left at one end of the grain a slight cavity known as the seed cavity but my biological knowledge of rice is limited. 30

Q. If that germ end were not removed in the process of milling the paddy into loonzain and if the process of heating started in that germ end, would you agree that it would be possible for a process of heating which had begun prior to that, to continue after milling? A. I haven't the slightest idea.

Q. Do you agree that in some circumstances the same paddy grown in different districts exhibits different characteristics? A. Yes.

Q. Would you agree to this extent, that the characteristics 40  
differ as to their liability to turn yellow? A. Yes.

Q. And as to their power of resisting the combination of heating and moisture? A. Yes.

Q. And that by a visual examination of samples it would be impossible to tell which of two apparently similar loonzains would better resist that combination of heating moisture? A.



Quite impossible, unless one showed definite indications of excessive moisture.

Q. I understand that until you were requested so to do by the Plaintiffs you never made any mechanical tests as to the moisture content of the loonzain which you shipped. A. None at all.

Q. Did you employ any means to discover the moisture content other than visual examination of the loonzain? A. None.

10 Q. In other words, unless visual signs of damage caused by excessive moisture were present, you would conclude that there was no excessive moisture? A. Exactly.

Q. I take it it is common ground that when loonzain has become damaged by heat, it shows a yellow discolouration? A. Yes.

Q. Is that a surface discolouration or a discolouration which goes right through the grain? A. I believe it permeates the grain.

20 Q. I am instructed in this case that some of the grains showed the discolouration through the whole grain but others only showed a discolouration on the surface. The Plaintiffs are claiming in respect of the discolouration which showed only on the surface. Do you know of any circumstances other than heating which would cause yellow discolouration? A. Yes, grain which after maturity and after being harvested at any period has laid even for a short period in water.

Q. Does that give a yellow discolouration on the skin of the grain or does the yellow discolouration permeate right through the grain? A. I don't know.

Q. At any rate that cause of discolouration is one of the kinds of what we call "country damage"? A. Yes.

30 Q. Another possibility of damage is that the bags of paddy or loonzain could have lain on the ground—floor damage? A. Paddy is stored loose: It is stored in a heap.

Q. If bags of loonzain lie on a damp surface are they not liable to what is known as floor damage? A. Of course floor damage is easily detectable as compared with other damage in that it would be found that it permeates the bag from the bottom to a varying degree and to a varying degree from just outside.

Q. Not in the centre of the bag? A. Not in the centre of the bag, certainly not on the top of the bag.

40 Q. Well, do you suggest that damage caused by heating goes right through the bag? A. Not necessarily but my experience of heating is very limited.

Q. I take it that the centre of the bag is the worst ventilated part of the bag? A. Of course.

Q. And that the probability of damage by heating is greatest at the centre of the bag and not at the side? A. I imagine heating originates on the side.

*In the  
Supreme  
Court of  
British  
Columbia.*

Plaintiff's  
Evidence.

No. 6.  
Honourable  
Somerset  
Butler.

Cross-Ex-  
amination,  
December  
24th, 1937.

—continued.



In the  
Supreme  
Court of  
British  
Columbia.  
—  
Plaintiff's  
Evidence.  
—  
No. 6.  
Honourable  
Somerset  
Butler.  
Cross-Ex-  
amination,  
December  
24th, 1937.  
—continued.

Q. Do you know that, of the bags of 163 examined by the Plaintiffs, none of them showed damage in the centre of the bag?

A. I don't see how that fact can possibly be stated.

Q. I am relying on a statement made by your purchasers.

A. How would you be able to get to the centre of the bag to see?

Q. Samples were taken and it was found that some of the bags were damaged and some of them were not but that in every case damage was at the side of the bag and not in the middle of the bag. A. But that might be due to condensation from the outside where heating takes place. A great proportion of the damage is not due to the actual heating itself but the condensation of moisture caused by heating. 10

Q. The process to which you have referred would be one of condensation on a cold surface? A. Yes.

Q. So that one would expect a certain amount of condensation to occur on the roof of the hold? A. Oh yes, of course.

Q. Would you agree that one would expect the most condensation to appear on the roof of the hold where the most heating occurred to the rice? A. I should imagine so, yes.

Q. If in this case the damage were caused in that way, would you not expect the bags stowed at the top of the pile to be most damaged? A. You would certainly expect damage on top of the pile but in the normal way such bags are protected by mats but I do not know the conditions appertaining in the hold of a steamer when heating takes place. 20

Q. I have previously referred to the disposition of the 163 loonzain in the 2nd and 3rd holds and also this disposition with reference to other loonzain. Do you consider it probable having regard to the fact that only the outside portion of the bags were damaged that this damage was caused on board? A. If the stowage of those bags precluded any possibility of condensation of moisture reaching the surface of the bags it would appear probable it was not caused on board. I am presuming that your surmise is correct. 30

Q. Now, floor damage has this very noticeable result, that the outercovering of the loonzain becomes hard and difficult in milling into white rice. A. I have no idea.

Q. Did you yourself see the samples taken at the time of milling paddy into loonzain? A. It is my usual practice to see samples but I cannot possibly swear to it. 40

Q. Certain samples were submitted to London at the time the first query was raised in this case? A. The Surveyors shipment samples.

Q. You saw those samples? A. Oh, yes.

Q. What system do you employ in the preparation of sam-

ples of white rices? What milling process do you employ? A. What is known as the ordinary hand-milling process which consists of placing the rice in a length of hose pipe and beating it on any convenient object. We also have an electric sampling mill in the office which is sometimes used.

*In the  
Supreme  
Court of  
British  
Columbia.*

10 Q. Did you use this electric sampling mill to prepare the paddy in respect of which the complaint was made? A. At the time of milling and shipment I should think not but it was certainly used at the time the shipment samples were being inspected after the complaint was made.

Plaintiff's  
Evidence.

Q. Was this parcel of 163 paddy sold free from yellow grains? Was it a term of the contract that it should be free of the other grains? A. I don't think so. That stipulation is very seldom made in a contract for rice shipped before the monsoons as any shipment containing yellow grains at that time of the year in a normal season, such as 1936, would not be considered fair average quality.

No. 6.  
Honourable  
Somerset  
Butler.  
Cross-Ex-  
amination  
December  
24th, 1937.

—continued.

Q. By that you mean containing yellow grains at the time of shipment? A. Yes.

20 Q. Does the term "free from yellow grains" mean free from country damage or free from yellow grains, no matter how they are caused? A. Free from yellow grains no matter how they are caused but it is usually insinuated free from country grain.

Q. Did you or your London Associates pay a claim of the Canada Rice Mills in respect of this parcel of paddy? A. I don't think so.

(EVIDENCE NOT CONCLUDED)

CROSS-EXAMINATION OF THE HON'BLE SOMERSET  
30 BUTLER BY MR. HORROCKS RESUMED ON THE 28th DE-  
CEMBER 1937

December  
28th, 1937.

(Witness reminded that he is still on oath)

Q. At the last hearing I suggested that the 163 loonzain was stowed under the A.L.Z. and over some of the other marks. That was inaccurate. The 163 was stowed over the A.L.Z. and under some of the other marks. Does that make any difference at all to your evidence? A. None.

Q. I was asking you whether you or your Company had paid a claim which the Plaintiffs made in respect of this parcel 163



In the  
Supreme  
Court of  
British  
Columbia.

Plaintiff's  
Evidence.

No. 6.  
Honourable  
Somerset  
Butler.

Cross-Ex-  
amination,  
December  
28th, 1937.

—continued.

loonzain. You said "I don't think so". Have you had an opportunity for considering, since you were last examined, whether that claim was made or paid? A. As far as I remember a claim was made but, to the best of my recollection, it was withdrawn and no payment was made.

Q. Can you tell me what the basis of the claim was? A. The presence of yellow grains.

Q. Can you give me the amount of the claim? A. I don't think any figure was mentioned but questions of payment are dealt with in London and we should not necessarily get full particulars of it here. 10

Q. Have you any idea whether the claim was in the region of \$1000? A. As I said to the best of my recollection no figure was ever brought up and in any event claims are usually on the basis of so much per hundredweight.

Q. Do you remember swearing an affidavit on the 24th March 1937 in this connection? A. Yes.

Q. That affidavit was headed:

"IN THE MATTER OF milling and shipping 648 tons of  
"Special Quality Rangoon Loonzain Rice, shipped in bags 20  
"marked INTERCO BROSE — 163 and 102 tons marked IN-  
"TERCO BROSE — 102 from mills in Burma in or about  
"April 1936 to the Canada Rice Mills Ltd., Vancouver, B. C."

A. Yes.

Q. The 648 tons to which you refer are, I think the parcel of 6478 bags of rice from R. R. Khan's mill at Mayetwa? A. Yes, that's right.

Q. The 103 tons of rice was that which was conveyed from the Prome Line? A. Yes, that's right.

Q. On the 21st April, 1937, you swore a further affidavit? 30

A. Yes.

Q. In which you say in paragraph 5 that the rice marked No. 163 was loaded previously to the said rejected 400 tons, but between the time the two lots of cargo were loaded the hatches were open and the ventilators working? A. That is so.

Q. Was a parcel of 400 tons actually loaded on the "Segundo" and rejected? A. No, that parcel of 400 tons never came to Rangoon.

Q. When you say that the hatches were open and the ventilators working, what hatches and ventilators are you referring to? A. All hatches in which cargo was being loaded. 40

Q. On the "Segundo"? A. Yes.

Q. But in the same paragraph of the affidavit you say that the rice marked 163 was loaded previously to the said rejected



400 tons. Don't you mean that it was loaded on board before the 400 tons was loaded on board? (Witness is shown relevant paragraph of the affidavit.) A. I mean that the rice marked 163 was loaded on board before the 400 tons which replaced the rice rejected at the time of milling in the Delta was loaded.

*In the  
Supreme  
Court of  
British  
Columbia.*

Q. The 400 tons which were rejected were Amagyi grains?  
A. No.

Plaintiff's  
Evidence.

Q. How many tons did you buy from R. R. Khan to make up this particular parcel? A. 650.

No. 6.

10 Q. And how did the 400 tons come into the picture? A. It was a portion of a parcel of Delta Ngasein grain shipped in the same steamer.

Honourable  
Somerset  
Butler.

Q. Was that parcel Interco N.L.A. Selected Delta? A. Yes.

Cross-Ex-  
amination,  
December  
28th, 1937.

Q. The rejection was due to inferior quality, such as excessive brokens, paddy or reds? A. Yes and only came to the notice of the ship's officers on account of consequent delay in loading due to it having to be re-milled.

—continued.

Q. Was there a delay of some days? A. I cannot remember.

20 Q. In the ordinary course would there have been a delay of any say five days? A. It is very seldom that there is a delay of any sort and for the ship to be held up for five days purely for this cause would be abnormal.

Q. Have you any reason to think that the ship was not held up five days? A. I can't remember.

Q. With regard to this parcel of 400 tons which was rejected, in your affidavit you state that it was not rejected on account of excessive moisture content? A. That is so.

Q. Here again I presume no sort of mechanical test by instrument was made to ascertain the moisture content? A. No.

30 Q. When you speak of the precautions taken by your firm to insure that rice was up to specification, I presume you are referring to the instructions given to your employees and your Agents? A. That is so.

Q. Do you or do they keep any record of the tests or examinations which they make? A. Yes.

40 Q. What sort of records are kept? A. As samples are examined, notes are made by the Supervisors in a rough note book indicating the time the examination was made, the number of bags milled up to that time and the percentage of brokens, paddy and reds found from tests made.

Q. What tests are made by them other than to ascertain the amount of brokens, paddy and reds? A. White rice samples are prepared.

Q. Are these white rice samples prepared by the hand mill

In the  
Supreme  
Court of  
British  
Columbia.  
—  
Plaintiff's  
Evidence.  
—  
No. 6.  
Honourable  
Somerset  
Butler.  
Cross-Ex-  
amination,  
December  
28th, 1937.  
—continued.

which you described? A. Yes.

Q. Is that the only kind of test which is made at the mill?

A. Yes.

Q. Do you know of a defect in rice known as "Sun-crack"?

A. Yes.

Q. That will account for excessive broken? A. Yes.

Q. Sugandi rice is perhaps more liable to sun-crack than other types of rice? A. Yes, that is so.

Q. I take it when you refer to white rice samples being up to standard you found no apparent indication of the sun-crack? 10

A. One cannot say that because sun-cracks are almost always in evidence to a varying degree.

Q. In Sugandi? A. Yes.

Q. And sun-crack is caused, is it not, by allowing the moist rice to dry in the open sun? A. That is right.

Q. Have you any experience of the milling side of the rice business? A. Very little.

Q. Have you any practical experience? A. None.

Q. You are familiar with the type of grain known as Kalagyi? A. Yes. 20

Q. And there was a shipment of 2000 tons by Steel Bros., in the same ship—20,000 bags? A. Was there?

Q. Yes, do you know that Kalagyi is considered to be not a good rice for carrying any length of distance? A. That is so.

Q. Do you know that it is particularly susceptible to heating? A. It is.

Q. It is particularly susceptible to yellow discolouration? A. From heating?

Q. From heating or from other causes. A. From heating, yes. 30

Q. Kalagyi was stowed in No. 4 hatch in which hatch Intereco-brose was also stowed. If the ventilation had been the cause of the damage to Intereco-brose, would you not have expected similar damage to show in the Kalagyi? A. Not necessarily.

Q. Bearing in mind the nature and the amount of damage shown in the Intereco-brose, wouldn't you have expected the Kalagyi to be subsequently damaged if it were due to lack of ventilation? A. If it were said that the Intereco-brose in itself became damaged from internal excessive heating, it would appear likely that Kalagyi would also have become damaged to some extent unless it were stowed so that it would obtain very much more ventilation than the Intereco-brose but you have indicated to me that the damage to the Intereco-brose was not from internal heating in itself. 40

Q. What I indicated to you was that the damage to the Intereco-brose was found to have occurred near the outside of the



bag and not in the inside of the bag. Does that indicate to you that the damage to 163 was not caused by internal heating? A. In itself, yes.

Q. Does the absence of damage in the middle of the bag afford a strong indication that there was no internal heating?

A. It would definitely to my mind indicate to some extent that there was no internal heating.

Q. Would you agree that Amagyi is a much better carrier than Kalagyi? A. It is a better carrier.

10 Q. Under what circumstances, apart from less favourable ventilation, would you expect damage to occur to the Interco-brose but not to the Kalagyi grain stowed in the same hold? A. If the Kalagyi was stowed at the top of a hold well covered by mats and Amagyi was stowed in parts of the hold which did not receive sound ventilation or where it would be more exposed to damage from condensation, one could readily expect the Kalagyi to carry without showing the same damage.

20 Q. When rice becomes very heated, is there not usually found a pronounced stench? A. I have had no personal experience of that but one would expect in an extreme case certainly some smell.

Q. And by that you mean rather more than a slight musty odour? A. Oh yes.

Q. In the circumstances of this case does it occur to you to be a possibility that this Interco-brose was in a condition that it was not able to withstand the voyage at the time it was shipped?

A. In the circumstances of this case the Interco-brose was to my mind in a condition to withstand any normal voyage and was to my mind in as equally good condition as other rice loaded.

30 Q. In expressing that opinion I take it you are basing your view upon the satisfactory samples which were taken before shipment rather than upon the fact that only this parcel of rice showed damage at its destination? A. I am basing my previous answer on the condition as shown by the usual test and also by the general conditions under which it was milled, stored and shipped and also the weather conditions appertaining at the time

40 Q. You suggested that this parcel of Interco-brose might not have had as favourable ventilation as the Kalagyi, can you suggest any other reason why it and not the Kalagyi should have sustained damage? A. Yes, it is possible that the heating could be general throughout all the cargo but not sufficient to show signs of damage and one parcel might suffer through condensation where other parcels in the same hold were immune but this answer is a general surmise and is not necessarily alluding to the parcels in question.

*In the  
Supreme  
Court of  
British  
Columbia.*

Plaintiff's  
Evidence.

No. 6.

Honourable  
Somerset  
Butler.

Cross-Ex-  
amination,  
December  
28th, 1937.

—continued.



## RE-EXAMINATION BY MR. PAGET:

*In the  
Supreme  
Court of  
British  
Columbia.*

Plaintiff's  
Evidence.

No. 6.

Honourable  
Somerset  
Butler.  
Re-Exam-  
ination,  
December  
28th, 1937.

Q. Mr. Butler, I should like to be quite clear what are the advantages of these white rice samples which are taken at the time of milling. A. The purpose of taking such white rice samples is in order to get a more accurate view as to the condition of the rice and in order to make certain that no heating such as to cause damage has previously occurred and also to see that there are no damaged grains in the rice.

Q. How would previous heating be indicated? A. By the rice generally being somewhat off-colour. 10

Q. The 900 bags included in this shipment which came from the Promé Railway line, that was stored in your mill godown?

A. Yes.

Q. Was there any possibility of various bags having become moist while they were stored in your godown? A. None at all.

Q. The season was then what? A. Quite normal.

Q. Was it the wet season or the dry season, or what? A. It was during the driest part of the year.

Q. To your mind is it a proper thing to open up all the 20 hatches and ventilators suddenly? (Mr. Horrocks objects to the question in that form.)

Q. If the hatches were opened suddenly, would that be a correct procedure, after they had been closed for four days? A. After rough weather has been experienced, when hatches and ventilators have to be closed, it is very important that they should be opened up gradually so that the temperature in the hold can be brought gradually to the temperature of the air outside. If hatches and ventilators are opened suddenly, much greater condensation would take place. 30

Q. Particularly after a fall in the temperature? A. Particularly after a fall in the temperature or when the temperature of the air is considerably lower than the temperature in the hold.

Q. In answer to my learned friend you have said that the damage to the bags was not due to internal heating in itself. I just want to be quite clear what you had in mind when you gave that answer. A. I suggested that if the damage was only to the rice on the outside of the bags or in close proximity to the gunny and there was no sign of damage to the rice in the centre of the bags, it would appear that the damage was not caused by the 40 rice itself becoming heated from excessive moisture content.

J. S. KAPADIA, High Court Gujerati and Hindustani Interpreter duly affirmed according to the Directions contained in

the Writ of Commission.  
 KRISHNA ADHAR duly affirmed according to the Directions  
 contained in the Writ of Commission.

*In the  
 Supreme  
 Court of  
 British  
 Columbia.*

EXAMINATION-IN-CHIEF BY MR. PAGET:

- Q. Last year, were you employed by Blackwood Ralli & Company Limited? A. Yes.
- Q. What was your work? A. I was working there as a Rice passer.
- 10 Q. Do you know R. R. Khan's Rice Mill at Mayetwa? A. Yes, I do.
- Q. Have you ever been there on behalf of Blackwood Ralli & Company Limited? A. Yes I have been.
- Q. And, do you remember when that was? A. I went there about the 28th or 29th of February 1936 and I think the milling commenced about the 2nd or 3rd of April.
- Q. The month after February is not April. Do you mean April or the month following February? A. Yes, the milling commenced in the month following February.
- 20 Q. Was the miller milling rice for Blackwood Ralli & Company Limited? A. After I had gone there the miller commenced milling.
- Q. For Blackwood Ralli & Company Limited? A. Yes.
- Q. Tell us what you had to do. A. The milling commenced on the first day and as I did not approve of the rice that was being milled I sent a letter from there to the Jemadar. Thereupon the Jemadar sent me a reply not to create any trouble at the mill, that he would speak to the master in Rangoon and the master would do everything proper. Then from the second day the miller began to give me good rice. I do not know if the miller
- 30 received a letter from Rangoon or not.
- Q. Did you test this rice? A. Yes.
- Q. Tell us what you actually did. A. I put the loonzain rice in small bags which were usually received and then after beating the rice I examined it. I am talking of the first day milling and in the rice which I received I found small yellow grains. I showed this rice to the miller and he took it back and then from the second day he began to give me good rice.
- Q. Did you continue with your tests? A. Yes, every day I tested the rice and used to send samples.
- 40 Q. To the Company? A. Yes.
- Q. And how often do you test each day? A. About 8, 10 or 12 times in a day I tested the rice.
- Q. After the first day, were the samples which you took satisfactory? A. Yes, the samples taken after the first day were satisfactory.

Plaintiff's  
 Evidence.

No. 7.  
 Krishna  
 Adhar.  
 Examination,  
 December  
 28th, 1937.



In the  
Supreme  
Court of  
British  
Columbia.

Plaintiff's  
Evidence.

No. 7.  
Krishna  
Adhar.  
Examina-  
tion,  
December  
28th, 1937.

—continued.

Q. What were the grains like? A. The grains were all white and not damaged.

Q. Tell us, were the grains soft or hard? A. They were hard.

Q. Moist or dry? A. Dry.

Q. This process you describe of beating the rice in bags, does that give you white rice samples? A. Yes, this process makes the rice white.

Q. And gives you samples of white rice? A. That is so.

Q. After the milling what became of this rice? A. After 10 the milling was over I came away.

Q. What happened to the rice? Did you see it bagged? A. After the milling the rice was put into bags.

Q. Do you know how those bags were marked? A. On the top the words "Intereo 163" were marked but what was marked below, I do not know.

(Witness gives the words "Intereo 163" in English)

Q. The bags were Blackwood Ralli & Company's bags? A. Yes.

Q. How many years experience have you had as a tester of 20 rice? A. I worked at Messrs. Dawn & Company for about one year and after that I began to do this job. I have got experience as rice tester for 5 or 6 years.

Q. You are no longer in Blackwood Ralli & Company's employ. A. No.

Q. Who are you working for now? A. At present I am working with Messrs. Morrison & Company—when the Son re-opens the office I shall work again.

Cross-Ex-  
amination

#### CROSS-EXAMINATION BY MR. HORROCKS:

Q. Have you been continuously testing rice for 5 to 6 years? 30  
A. I worked for one year in Messrs. Dawn & Company as Peon. During the remainder 4 years I was doing survey work at Dawn & Company and doing other work outside also.

Q. You must have tested thousands of parcels of rice? A. Yes, I have tested thousands of samples.

Q. When were you first asked to give evidence in this connection? A. It is now 15 or 20 days I came to know that I will have to give evidence in this matter.

Q. Until you were told that you would have to give evi-  
dence in this matter, did you have occasion to reflect what the 40  
condition of this particular consignment of rice was? A. Yes, I remembered very well this incident that took place in the mill.

Q. From the date when you took the samples to the time when you were asked to give evidence, did anybody mention this particular rice or did you have any occasion to consider its qual-

ity? A. I had no occasion to remember about this incident from the day that I took the samples until the day I was told to give evidence in the matter.

Q. In your experience of 6 years there must have been many occasions when the rice contained yellow grains after milling? A. Yes, during this period of six years I had seen yellow grains in rice. Sometimes we get yellow grains, sometimes we get white rice.

Q. There must have been many occasions? A. Yes. There  
10 were many occasions and when the samples were bad I rejected them.

Q. Then there must have been many occasions when you have rejected rice on that ground? A. Yes and for that very purpose the Master sent us to see the rice.

Q. What was your employment before you joined Dawn & Company? A. After I came from India I began to work at Dawn & Company.

Q. What was your employment in India? A. I was doing cultivation work.

Q. You were a Cultivator? A. Yes.  
20

Q. What was your wage as a Cultivator? A. I worked my own fields.

Q. What did you make out of it? A. I used to work for my father and brother and other elders of the family.

Q. What was your wage at Dawn & Company? A. In the beginning I started work at Dawn & Company on a salary of Rs 10/— because they said that my father had worked there before and then when the burra-sahib came he gave me Rs 15/— and then my pay was increased to Rs 16/— and when the Jemadar  
30 went to India I worked in his place as Jemadar on a salary of Rs 18/—.

Q. What was your salary at Blackwood Ralli & Company? A. The first month I worked on a salary of Rs 22/— and then I began to work for daily wages.

Q. Why did you leave Blackwood Ralli & Company? A. I was told that the business was slack and I was promised work again the next year if business improved.

Q. Did you remain at Mayetwa during the whole time this consignment of rice was being milled? A. Yes.

Q. Was the rice milled during the day and during the night?  
40 A. Yes and sometimes during the day time when the mill was not in working order, milling stopped.

Q. Did you sleep on the mill premises? A. I was given a place in the mill compound and I used to stay there and prepare my meals and after taking my meals I used again to supervise the mill. I never slept in the night.

*In the  
Supreme  
Court of  
British  
Columbia.*

Plaintiff's  
Evidence.

No. 7.  
Krishna  
Adhar.  
Cross-Ex-  
amination  
December  
28th, 1937.

—continued.



In the  
Supreme  
Court of  
British  
Columbia.

Plaintiff's  
Evidence.

No. 7.  
Krishna  
Adhar.  
Cross-Ex-  
amination,  
December  
28th, 1937.

—continued.

Q. You have told us that you took samples 8, 10 or 12 times a day? A. Yes.

Q. How many days were occupied in the milling of this particular consignment? A. About 6 or 7 days.

Q. After milling, was the loonzain put into bags? A. After the milling was over I stayed there for a few days and came away. When the milling goes on the rice is put into bags immediately and then the bags are stitched and put into the godown and when another milling goes on, we go back to our places.

Q. Have you any idea how many bags of loonzain there were in this particular consignment? A. When I was there I saw 6500 bags being milled.

Q. How many of those bags did you test? A. Every hour I used to take the rice that was coming out from the pipe and sometimes I used to take samples from the bags.

Q. Was anybody else assisting you with this sampling? A. So long as I was there on duty I used to take samples personally but there was another durwan of my Company also with me.

Q. What was his name? A. His name was Gaya Sukul.

Q. I suppose that Gaya Sukul was not testing the loonzain while you were there testing? A. Gaya Sukul looked after the milling of another quality of rice and for that purpose he went there.

Q. You were the only man who tested this particular consignment of Interco 163? A. Yes.

Q. Did you make any written record of the tests you made? A. Yes, I made a note. I have not got the book with me.

Q. Is the book in existence? A. It is not in existence. It is misplaced or it may have been eaten up by rats or white ants.

Re-Exam-  
ination

RE-EXAMINATION BY MR. PAGET:

30

Q. When you were employed by Dawn & Company, what had you to do? A. I already stated I worked for one year at Dawn & Company as Peon and thereafter I used to go to the mill and bring samples.

Q. You brought the samples to the office? A. Yes.

Q. Did you see the samples? A. If I brought loonzain rice I used to take out the paddy from it and I used to see if there was any red grain in the loonzain rice and after putting in the bag I used to beat the rice and when the rice became white I showed it to my master.

40

Q. And you saw your Master examine it? A. Yes.

HARDEO TEWARI duly affirmed according to the Directions contained in the Writ of Commission.

*In the  
Supreme  
Court of  
British  
Columbia.*

EXAMINATION-IN-CHIEF BY MR. PAGET:

- Q. Last year, 1936, how were you employed? A. In 1936 I was working at Blackwood Ralli & Company Limited.
- Q. What did you have to do? A. I was doing rice work.
- Q. Did you ever go to Nattalin? A. Yes, I have been.
- Q. For what purpose? A. To see and pass rice.
- Q. Rice for Blackwood Ralli & Company Limited? A. Yes.
- 10 Q. Do you remember how many bags there were and what sort of rice it was? A. The rice was Sugandi loonzain.
- Q. How many bags?  
(Witness refers to his pocket book to refresh his memory).
- A. In all 5755 bags.
- Q. Can you tell us how these bags were marked of the rice which had been milled? A. Interco S. L. 102.
- Q. And, after milling, what became of these bags? A. These bags were taken to Blackwood Ralli & Company's godown near the Moolla siding at Pazundaung (East Rangoon).
- 20 Q. At the time of milling did you have anything to do? A. As the rice was being milled I had to write a report about the broken rice and the red grains and then I made the rice white and these samples were sent to the office.
- Q. How do you make the rice white? A. The rice is first put into long narrow bags and then we strike the rice and make it white.
- Q. What was the quality of the rice which you got by taking these samples? A. I got good quality.
- Q. Was there anything wrong with it at all? A. No, I did
- 30 not find anything wrong with it.
- Q. Do you know the difference between dry grains and wet grains? A. The dry grain generally is hard but the wet grain is soft.
- Q. Were these grains dry or wet? A. I got dry grains.
- Q. How many years have you been doing this work, testing rice? A. 9 years.
- Q. Where did you learn it? A. At first I worked at A. Gordhandass & Company and for 9 years I worked at Blackwoods. At first the firm was running under the name "Blackwood Blackwood & Company" and for the past 3 or 4 years it is running under the name of "Blackwood Ralli & Company".
- 40 Q. In your note book which you have there, what do you record? A. I make a note of the rice that is being milled, the quantity of broken rice and I make entries giving the full report

Plaintiff's  
Evidence.

No. 8.

Hardeo  
Tewari.  
Examina-  
tion,  
December  
28th, 1937.



In the  
Supreme  
Court of  
British  
Columbia.

Plaintiff's  
Evidence.

No. 8.  
Hardeo  
Tewari.  
Examina-  
tion,  
December  
28th, 1937.  
—continued.

Cross-Ex-  
amination,

as I work there for about one hour or two hours and then send the report to my master.

Q. How often do you take samples? A. As the milling goes on I see the rice every hour because I remain there the whole time. Every half an hour I look at the rice and after looking at the proportion of the paddy and broken rice I go and speak to the miller if the milling is good or bad.

#### CROSS-EXAMINATION BY MR. HORROCKS:

Q. As soon as you have taken your sample you go back to the miller and speak about it to him? A. First I refer the matter to the Tindal who remains on the spot and then sometimes the matter is referred to the Godown Master. 10

Q. The Tindal is a servant of the miller? A. Yes.

Q. When you have gone to the miller or when you have gone to write your report, whatever it may be, after half an hour you come back and take another sample? A. As soon as I complain to the miller he will say "all right I will give you good milling" and immediately I come and take another sample.

Q. Did you get milling which was not to your satisfaction in this case? A. Sometimes I used to get 10 or 12 bags which were not milled properly and then when I referred the matter to the miller he would take the bags back. 20

Q. Are you talking of this consignment of Interco S. L. 102? A. Yes, I am speaking of this consignment because this work has been done by me.

Q. After taking your sample, would you go away and then come back again after half an hour's time to take the next sample?

A. I will go to the Godown Master who remains in the compound and after reporting the matter to him I will immediately come back and take another sample. 30

Q. Would it take you half an hour to go to the Godown Master? A. I will first refer the matter to the Tindal and if he makes everything proper then I won't go to the Godown Master otherwise I would go to the Godown Master and I would come back within ten or fifteen minutes.

Q. And would you be away 10 or 15 minutes perhaps writing your report? A. I will take about half an hour to do my separation work.

Q. You have referred in your evidence to having made reports which you gave to your Master, how long does it take you to write up those reports? A. I would take about 10 or 15 minutes in preparing my report and then I will send the report along with the sample to the office. 40

Q. And that report you would write after having separated

the broken from the paddy and made the tests? A. Yes, after separation I make the report.

Q. And your separation takes about half an hour? A. Yes, I will take about half an hour to do my separation work.

Q. When you were testing Interco S. L. 102 was there any other servant of Blackwood Ralli & Company with you? A. There was no other servant of Blackwood Ralli & Company there when I tested this rice.

10 Q. Did you actually see the bags of Interco S. L. 102 in the Railway waggons? A. Yes, I myself got these bags loaded into the waggons.

Q. Was there any sort of covering on the floor of the waggon? A. Nothing.

Q. Where were the bags stored at the mill immediately before they were put into the waggon? What part of the mill were they stored? A. If the Railway waggon is available then the bags are immediately taken there otherwise they are stored in the godown.

20 Q. What sort of a floor has the godown? A. The godown has a wooden floor.

(Mr. Horrocks examines the witness' pocket book).

Q. The entries purport to show that you made the tests every hour and that you entered the percentages of paddy, red grains and broken grains. A. Yes.

Q. And it also shows the number of bags turned out since the last test was made? A. Yes that is so.

Q. And taking the average it shows that about 30 bags were turned out per hour. A. Sometimes 28 and sometimes 30.

30 (Witness' note book is admitted in evidence by consent and the relevant page is marked as Exhibit J)

#### RE-EXAMINATION BY MR. PAGET:

Q. You said the floor of the godown was made of wood,— what sort of wood? A. The floor is wooden in order that the paddy or rice may not decay.

Q. Is it customary to rest the bags of rice on bamboo sticks or bamboo matting? A. The miller makes all arrangements possible and for protection from rats and dampness the floor is sometimes made of wood and sometimes of bamboo sticks, and sometimes bamboo matting is also kept on the floor.

40 Q. At Nattalin it was of wood? A. At one place the flooring was wooden and at another place it was made of cement.

Q. I suppose you cannot tell us exactly how far Nattalin is away from Rangoon? A. No.

In the  
Supreme  
Court of  
British  
Columbia.

Plaintiff's  
Evidence.

No. 8.

Hardeo

Tewari.

Cross-Ex-

amination,

December

28th, 1937.

—continued.

Re-Exam-  
ination



*In the  
Supreme  
Court of  
British  
Columbia.*

Plaintiff's  
Evidence.

No. 9.  
Triyogi  
Examina-  
tion,  
December  
28th, 1937.

TRIYOGI duly affirmed according to the Directions contained in the Writ of Commission.

EXAMINATION-IN-CHIEF BY MR. PAGET:

Q. In 1936 were you a Rice Surveyor employed by Messrs. Blackwood Ralli & Company? A. Yes, Rice passer or Rice Sircar.

Q. And do you remember going to a godown in Keighley Street that year? A. Yes.

Q. For what purpose? A. To bring samples.

Q. Of how many bags, do you remember? A. About 36 or 10 38 bags.

Q. Can you tell me what month that was in, in 1936? A. This was in the month of April.

Q. Did you examine the samples yourself? A. I drew the sample from the bags and I personally examined them.

Q. What were the samples like? A. It was good quality.

Q. How can you tell the difference between good and bad quality? A. When I drew the sample I saw it was good quality. There was a proper percentage of paddy, broken rice and red grains. That's why I say it was good quality. 20

Q. Can you tell whether the rice samples are damp,—contain moisture? If the samples contain moisture, can you tell from the appearance? A. Yes, by looking at the sample I could say whether there was moisture.

Q. What would you see? A. That sample will smell and if the grains are taken in the hand they will get crushed soon and besides it is a little yellow in colour.

Q. Was there anything wrong in the samples you took from these 36 bags? A. There was nothing wrong with this sample

Q. Did you give the samples to anybody? A. I brought it 30 to the office.

Q. And how many years have you been doing this work? A. For the past 7 or 8 years in Blackwood Ralli & Company.

Q. Previously. A. Prior to that also I did rice work for a short time in Mogul Street.

Cross-Ex-  
amination

CROSS-EXAMINATION BY MR. HORROCKS:

Q. In your long experience you must have tested many thousand parcels of rice? A. Yes.

Q. When were you first asked or told that you would be required to give evidence in this case? A. About 10 or 15 days 40 ago I came to know that I would be required to give evidence in this case.

Q. From the time you went to Keighley Street until 10 or

15 days ago, did you have any occasion to consider what quality this particular rice was? A. No, I had no occasion.

Q. Did you make any written record of your examination of this particular parcel of rice? A. I did not make a note of this but I take the sample and straight away I come to the office.

Q. With the sample? A. Yes with the sample.

*In the  
Supreme  
Court of  
British  
Columbia.*

Plaintiff's  
Evidence.

CAPTAIN R. P. R. TAYLOR, duly sworn according to the Directions contained in the Writ of Commission.

No. 9.  
Triyogi.  
Cross-Ex-  
amination,  
December  
28th, 1937.

EXAMINATION-IN-CHIEF BY MR. PAGET:

10 Q. Captain Taylor, I think you are Lloyds Surveyor for the Port of Rangoon? A. Yes.

Q. Were you asked to attend on board the S.S. "Segundo" in April 1936 when she was loading up? A. I was.

Q. For what purpose? A. To supervise the stowage and ventilation of parcels of rice.

Q. And, were you asked to give certificates that the stowage, dunnage and ventilation was proper? A. Yes.

Q. And did you give those certificates? A. I did.

20 Q. Have you got copies of them? A. I have copies of all certificates issued.

Q. (Referring to copies). I see Captain Taylor, the printed part of these certificates has been left out. How does it read? A. It reads:

No. 10.  
Captain  
R. P. R.  
Taylor.  
Examina-  
tion,  
December  
29th, 1937.

THIS IS TO CERTIFY THAT THE UNDERSIGNED  
". . . . . did at the request of . . . . ."

Q. These certificates are correct? A. Yes.  
(Certificates produced by witness are put in and marked as Exhibits K to P).

30 Q. In your opinion was the cargo properly stowed? A. It was.

Q. How much ventilation was there provided? A. Varying between 10 or 12% throughout the ship.

Q. Is that customary for voyages from Rangoon to North America? A. It is.

CROSS-EXAMINATION BY MR. HORROCKS:

Cross-Ex-  
amination

Q. Would you consider that four days of stormy weather between Rangoon and Vancouver is in any way abnormal? A. It is not abnormal for that time of the year.

40 Q. Can you remember off-hand in what holds these various parcels of rice were stowed? A. I couldn't remember.

Q. Do you remember whether there was in each of the



*In the  
Supreme  
Court of  
British  
Columbia.*

Plaintiff's  
Evidence.

No. 10.  
Captain  
R. P. R.  
Taylor.  
Cross-Ex-  
amination,  
December  
29th, 1937.  
—continued.

holds ample head room between the top tier of bags and the deck hatch? A. Yes, in all holds I consider there was sufficient space for adequate ventilation.

Q. Do you consider that the rice stowed about the middle was adequately ventilated? A. Yes.

Q. Do you consider that this rice was adequately dunnaged? A. Yes.

Q. The "Segundo" is a motor ship? A. Yes.

Q. Are the holds immediately aft and forward of the engine room bulkheads in a motorship much warmer than similar holds in a steam vessel? A. Not necessarily. In certain cases they are,—in other cases they are not. 10

Q. Considering the build of this ship, do you consider they were or they were not likely to be hotter than such holds in an ordinary steamship? A. As I have no knowledge of the ventilation of the engine room I cannot possibly say in this case.

Q. May I take it that from your inspection of the ship there was nothing which led you to suppose that these holds would be hotter than such holds in an ordinary steamship? A. Well, are you specifying any one hold? 20

Q. The holds immediately forward and immediately aft of the engine bulkheads. A. The hold abaft the engine room bulkheads in a steamship is always cooler than the hold forward of the engine room due to the boilers or boiler compartment being in the fore part.

Q. In a motor ship there is no boiler? A. Not at sea.

Q. Speaking quite generally, would you expect the holds immediately forward and immediately aft of the engine room bulkheads in a motor ship to be cooler than similar holds in a steamship? A. My previous answer covered that. 30

Q. We were talking about it being any hotter. I want to know whether you would expect it to be cooler? A. It all depends on the build of the ship.

Q. What parts of this hold were dunnaged? A. All parts of the hold with which the bags would come in contact.

Q. And were the bags adequately protected by matting and dunnage wherever they might become damaged by condensation? A. That is a difficult question. Condensation might occur through the lines of ventilation. As far as the exterior of the cargo block is concerned it would be adequately protected. 40

Q. Is it customary to put any sort of matting or dunnage round about the ventilation? A. Only at the base of the ventilators.

Q. Do you mean vertical ventilators? A. You might at the ship's permanent ventilators.

Q. Is it possible for condensation to take place on horizon-

tal ventilators? A. It is possible.

Q. Is it likely in your experience? A. I have found it, yes.

Q. And, do you protect these in any way? A. No, if we were to we would spoil the purpose of ventilation.

Q. Where do you expect to get the most condensation, at the top of the cargo, at the middle or at the bottom? A. Do you mean if you leave the ventilators open?

Q. In any circumstances? A. Round the skin of the ship.

10 Q. And if the ventilators have been closed for any reason, where would you expect the most condensation—in the upper part of the cargo, the middle or the lower? A. You mean while the ventilators are closed?

Q. You can say while the ventilators have been closed and also while they have been open. A. While the ventilators were closed it is impossible to state. After the ventilators have been opened it may occur anywhere due to the rush of air entering the hold.

20 Q. And such condensation as might have occurred during the time the ventilators were closed would rapidly be dried by the passage of air? A. Not necessarily.

Q. Probably? A. If it is not a damp air that is coming in.

Q. But, would you expect the condensation to be very quickly removed with the flow of air? A. I don't say fairly quickly removed. It should certainly lessen.

Q. If there were signs of condensation on the skin when the vessel arrived at its destination, would you expect that any condensation which had occurred on the ventilators would still be in existence at that time? A. It should be in evidence on the bags.

30 Q. Not on the ventilators? A. The ventilators will dry up as they are wood.

Q. Have you any experience of cargoes of rice sweating? A. I know nothing about the condition of the grain, whether it sweats or not.

Q. No,—but taken in the form of a cargo of grain? A. You would expect a certain amount of sweating in the hold.

Q. In any hold? A. Yes.

40 Q. In this case it is alleged that one parcel only of five parcels of grain shipped by this vessel was substantially damaged. That particular parcel of grain was stowed above grain which was substantially undamaged and below grain which was substantially undamaged. In your opinion is it likely that the damage which was shown in the rice stowed in the middle should have been caused by anything which happened on board? A. It is possible.

Q. Is it likely? That's my question. A. It is impossible

*In the  
Supreme  
Court of  
British  
Columbia.*

Plaintiff's  
Evidence.

No. 10.

Captain

R. P. R.

Taylor.

Cross-Ex-

amination

December

29th, 1937.

—continued.



*In the  
Supreme  
Court of  
British  
Columbia.*

Plaintiff's  
Evidence.

No. 10.  
Captain  
R. P. R.  
Taylor.  
Cross-Ex-  
amination,  
December  
29th, 1937.

to say as the ship has been battened down.

Q. If the damage were due to restricted ventilation wouldn't you have expected other parcels of the cargo to have been damaged? A. Yes, if it were due to restricted ventilation.

Q. If the damage had been caused by heating, would you expect other parcels of rice to have been damaged? A. Yes but that comes back to condensation again. The heating of the bags is more rapid if there has been condensation.

Q. If condensation had occurred so as to damage the rice in question, can you suggest any reason why condensation should not have occurred in other parts of the stowage so as to damage other parts of the cargo? A. No. 10

Q. In other words, if there were condensation in the ventilators, you would have expected that condensation to be fairly general throughout the stowage. A. That comes back to the vessel's holds again, we do not know the circulation of air in a hold that is battened down.

Q. In that state of ignorance, wouldn't you expect a cause which produces condensation in one part of the ventilating system also to cause condensation in another part of the ventilating system? A. Generally speaking I would expect it. 20

BA OHN duly affirmed according to the Directions contained in the Writ of Commission.

EXAMINATION-IN-CHIEF BY MR. PAGET:

No. 11.  
Ba Ohn.  
Examina-  
tion,  
December  
29th, 1937.

Q. Is your name Maung Ba Ohn or simply Ba Ohn? A. Maung Ba Ohn.

Q. What is your employment? A. I am a Godown keeper.

Q. For whom? A. For Messrs. Blackwood Ralli & Company Limited.

Q. Which godown? A. Ally Moolla Godown. 30

Q. That is at Pazundaung, East Rangoon? A. Lower Pazundaung, East Rangoon.

Q. And, as Godown keeper, what do you have to do? A. I unload all the rice which arrives at the godown.

Q. Do you ever take samples of rice? A. Yes.

Q. Do you keep a book? A. Yes.

Q. Have you any record of a shipment of rice marked "Interco-Brose" in the year 1936? A. Yes.

Q. Will you point to that in your book?

(Witness is referred to page dated the 30th April 1936) 40

What does this page show with regard to the "Segundo"? A. It shows that I shipped 986 bags by the S. S. "Segundo".

Q. And how were those bags marked? A. These were marked only in a corner "102".

Q. Can you tell us from your book where those 986 bags came from? A. They were part of 1000 bags shown in the first column.

Q. Can you trace those 1000 bags in your book? A. 530 bags arrived on the 25th February.

Q. From where? A. From Nattalin.

Q. How do you know they arrived from Nattalin? A. I say that because the number 102 generally comes from Nattalin.

10 Q. Now, the remainder? A. The remainder 450 bags arrived on the 26th February.

Q. From where? A. From the same place.

Q. Have you any record of another 20 bags? A. Yes, 20 bags arrived on the 29th February.

Q. Did you at any time sample these bags? A. Yes, I sampled each and every bag.

Q. When? A. Whenever they arrived by trucks, I drew samples.

Q. And what do you do with these samples? A. I send them to the Head Office.

20 Q. When the bags were shipped on the "Segundo" were they sampled? A. Yes.

Q. Who did that? A. My assistant.

Q. And what was done with the samples? A. They were sent to the office.

Q. Did you yourself at any time see the samples? A. Yes, always.

Q. How many years experience in the rice trade have you had? A. About 25 years.

30 Q. Tell us what the condition of these samples was? A. These were dry—in good condition.

Q. Was there any sign of moisture or dampness? A. No.

Q. If the rice is damp, does it show? Can you see it? A. Yes I can see it.

Q. How? A. The colour is changed. It becomes darker.

Q. Is your godown at Pazundaung quite dry? A. Yes, it is quite dry.

(Witness produces relevant extracts from the Daily Stock Register. They are marked as Exhibits Q, R and S).

#### CROSS-EXAMINATION BY MR. HORROCKS:

40 Q. You told us that when the bags arrive by trucks, you took samples of them? A. Yes.

Q. Did you take samples in the ordinary way by inserting a pike?

(A pike is an instrument for taking samples and resembles the spiked lower half of a metal tube). You insert the pike into the

*In the  
Supreme  
Court of  
British  
Columbia.*

Plaintiff's  
Evidence.

No. 11.

Ba Ohn.

Examina-  
tion

December  
29th, 1937.

—continued.

Cross-Ex-  
amination.



In the  
Supreme  
Court of  
British  
Columbia.

Plaintiff's  
Evidence.

No. 11.  
Ba Ohn.  
Cross-Ex-  
amination  
December  
29th, 1937.  
—continued.

bag of rice draw it out and then you have this tubeful of grains?

A. Yes.

Q. Did you take one sample from each bag? A. Yes, one sample from each and every bag.

Q. That was the only method you adopted of sampling? A. Yes.

Q. Now, you have told us that when the rice was sent to the ship your Assistant took samples, do you remember? A. Yes, and the Superintendent as well.

Q. Do you mean they took two samples each time? A. No, 10 one. One man was there while the other took samples.

Q. Did you see them taking the samples? A. Yes.

Q. Who took the samples? A. One of my assistants.

Q. What was the Assistant's name? A. Maung Ba Tha.

Q. And did he take the samples with a pike? A. Yes.

Q. And that was the only way in which he took samples?

A. Yes.

Q. That is the usual way of sampling in Rangoon, isn't it?

A. Yes.

Q. Did you merely look at the rice which you got in the pike or did you do something with it? A. At the time of taking samples, I used to see the rice.

Q. Loonzain is brown in colour, isn't it? A. Yes.

Q. You used to see it. Now what do you do with it when you finish looking at it? A. I send it to the Head Office.

Q. And when you say that the samples which you took were quite all right, all you mean is that you did not see any black grains? A. No Black grains.

Q. You mean that you saw no black grains? A. No black grains.

Q. Of the rice shipped on the "Segundo" in April 1936 had you anything to do with rice other than the rice marked 102? A. No.

Q. That particular parcel of rice had the corner mark 102? A. Yes.

Re-Exam-  
ination,

#### RE-EXAMINATION BY MR. PAGET:

Q. At the time of shipment was anything done to the rice in your godown? A. Yes, I have to weigh all the bags to see that the weight is not short.

Q. Just tell me how that is done? A. I cut open the bags at the mouth and I fill them with the rice necessary to make it 224 lbs. net.

Q. And the process of doing that you have got 980 bags out of the 1000 bags? A. 986 bags.

30

JAL MUNCHERSHAW RUSTRUMFRAMA duly affirmed according to the Directions contained in the Writ of Commission.

*In the  
Supreme  
Court of  
British  
Columbia.*

EXAMINATION-IN-CHIEF BY MR. PAGET:

Q. Mr. Rustrumframa, are you the Manager of Messrs. R. R. Khan Rice Mills & Trading Company Limited? A. Yes.

Q. And you have a mill at Mayetwa? A. Yes.

Q. Can you tell us how far that is from Rangoon? A. I think about 60 miles.

Q. In which direction,—the Delta? A. The Delta side.

10 Q. In 1936 did you mill rice for Messrs. Blackwood Ralli & Company Limited? A. Yes.

Q. And do you remember how that rice was marked? A. No, I don't remember. They have taken several parcels of rice from us.

Q. Do you remember a shipment in the month of April 1936? A. Shipment made by whom?

Q. Blackwood Ralli & Company Limited. In connection with this matter did you make an affidavit in the month of April this year? A. Yes.

20 Q. And in that affidavit you referred to rice marked "Interco-Brose 163"? A. Yes, I remember that.

Q. Now, do you remember when that rice was milled? A. I am not certain.

Q. From what paddy was that rice milled? A. We call it Field Amagyi paddy.

Q. Where was it grown? A. In the Delta District.

Q. Have you on other occasions supplied milling for Messrs. Blackwood Ralli & Company Limited from the same paddy? A. I think so.

30 Q. And when is that Field Amagyi harvested, in what month? A. I can't say.

Q. Approximately, what month? A. I cannot say when it is harvested but it is reaped and we receive it usually during January and sometimes at the beginning of February.

Q. And I suppose you have godowns for storage? A. Yes.

Q. What sort of godowns? A. Mill godowns—corrugated iron roofing etc.

40 Q. In your experience of paddy which is received by you in the month of January, will it have dried out by the month of March when it is milled? A. Oh yes.

Q. May I take it that your weather is much the same as it is in Rangoon at that time of the year? A. This year the weather is very peculiar.

Q. May I take it that in the months of February and March

Plaintiff's  
Evidence.

No. 12.  
Jal Munch-  
ershaw Rus-  
trumframa.  
Examina-  
tion,  
December  
29th, 1937.



In the  
Supreme  
Court of  
British  
Columbia.

Plaintiff's  
Evidence.

No. 12.  
Jal Munch-  
ershaw Rus-  
trumframa.  
Examina-  
tion  
December  
29th, 1937.  
—continued.

the weather is much the same as it is in Rangoon? A. Very likely.

Q. We have had in evidence that it is the dry season here. What sort of season is it at Mayetwa? A. The same.

Q. When this Interco-Brose 163 rice was milled at your mills in what condition was it? A. It was milled and shipped in good condition.

Q. Tell us what reasons you have for saying that. A. In the first place when the rice is milled if it is not in good condition the buyers themselves will not under any circumstances accept the rice. 10

Q. Any other reason? Did you yourself examine it? A. Usually we ourselves examine the samples in office of the rice that is milled in our mills.

Q. It has been suggested that this rice was in a heated condition at the time you gave delivery. Do you consider it was? A. No, it was in good condition.

Q. If it was heated or damaged, would the outturn show it? A. Yes, there would be many broken. If it is heated the rice would break much. Its colour would also be changed. 20

Q. What colour would it become? A. Yellow.

Q. Have you found this type of paddy satisfactory? A. Yes.

Q. How long have you known it? A. Ever since we have been using it, for so many years.

Q. Approximately how many years? A. I have been Manager in this office since 1932.

Q. May I take it that even before that your Company has milled this paddy? A. They may have, but I cannot say.

Q. Besides the rice marked Interco-Brose 163, did you ship on the "Segundo" in April 1936 other parcels of the same quality? A. We may have shipped but I don't remember. 30

Q. Let me refer you to certain certificates which have been put in.

(Witness is shown Exhibits L, M and N)

You see you shipped by the same steamer 750 tons marked A.L.Z.? A. Yes.

Q. Can you tell us what quality that was? What I want to know is whether it came from the same paddy as the Interco-Brose 163? A. In the certificates the quality is not given. Unless I see the invoice appertaining to this I can't say. 40

Q. What is the meaning of the word "brose"? What is that used for? A. That is a mark asked for by the International Trading Company to put on—the word "Brose".

Q. Do you use that mark for any particular quality of paddy? A. The buyers tell us whatever marks they like and we give

them. Very likely, believe it is of the same kind of paddy.

Q. If it were the same, would it come from the same fields?

A. Yes.

Q. Would your office have records to show whether it was the same? A. Yes.

Q. Are those records available in Rangoon? A. No, not for the present.

10 Q. Well, Mr. Rustrumframa, assuming that those parcels, 750 tons of the Intercq-Brose 163 were milled from the same paddy, would you expect that at the time of shipment the two parcels would be in the same condition? A. Yes.

Q. Would there be likely to be any difference in the moisture content? A. No.

CROSS-EXAMINATION BY MR. HORROCKS:

Q. When you told Mr. Paget that you would expect the two parcels to be in the same condition at the time of shipment, you are of course assuming that they were subjected to precisely the same conditions from the time of milling to the time of shipment?

A. Yes.

20 Q. And that I presume of your own knowledge you cannot say whether they were or were not subjected to the same conditions? A. I presume the same.

Q. But you don't know of your own knowledge? A. I cannot say that of my own knowledge. I have not personally seen but I have reason to believe that they were in the same condition because it was milled from one and the same paddy, in the same mill, and looked after by my own mill people, and they were brought in my own cargo boats from Mayetwa to Rangoon. I cannot say anything was wrong with the parcels after it was

30 put on board the steamer.

Q. In other words from start to finish all you know about this particular parcel of paddy is what other people have told you? You were not present when it was milled? Were you or were not present when it was milled? A. I was not personally present but my mill people were present.

Q. Were you present when it was bagged? A. No.

Q. Were you present when it was put into the cargo boats? A. No.

Q. Were you present when it arrived in Rangoon? A. No.

40 Q. Were you present when it was shipped on the "Segundo"? A. No.

Q. Amagyi is a general term to denote an Emata or Sugandi grain with a broad shoulder? A. Not necessarily. The word "Amagyi" is used for one class of Sugandi paddy. There is another class of Sugandi paddy also known as Yagyawa. The paddy

*In the  
Supreme  
Court of  
British  
Columbia.*

Plaintiff's  
Evidence.

No. 12.  
Jal Munch-  
ershaw Rus-  
trumframa.  
Examina-  
tion  
December  
29th, 1937.  
—continued.

Cross-Ex-  
amination



*In the  
Supreme  
Court of  
British  
Columbia.*

Plaintiff's  
Evidence.

No. 12.  
Jal Munch-  
ershaw Rus-  
trumframa.  
Cross-Ex-  
amination,  
December  
29th, 1937.  
—continued.

from which this parcel was shipped was of Field Amagyi, quite a different grain from the usual class of Emata or Amagyi obtainable in the Prome District.

Q. Do you know whether an attempt has been made to grow this kind of Amagyi in Prome? A. I am not certain.

Q. Do you think it was? A. Possibly but I have no knowledge.

Q. We have had it in evidence that this probably originated from a Government seed. Do you know whether this is so? A. It may be so. I cannot say with certainty. 10

Q. Have you any idea what kind of seed grain this originated from? A. No.

Q. I suggest that the word "Amagyi" is used to denote a type of Sugandi Grain? A. Yes.

Q. With a broad shoulder—and that the name "Amagyi" covers more than one grain of that type. Would you be prepared to differ from that view? A. It all depends upon the place where it is grown.

Q. Let us take the Delta. We will confine ourselves to the Delta. A. In the Delta there is only one kind of Amagyi which we call "Field Amagyi". 20

Q. In 1935-36 was that substantially the only kind of Sugandi grain grown in the Delta? A. There may have been at that time but I have no knowledge.

Q. Was it not the principal kind of Sugandi grain grown in the Delta in that season? A. Yes.

Q. And I suggest that since 1935 another specie of Amagyi grain, similar in appearance to that grown in 1935-36 has been adopted. Do you know anything about that? Of the same shape and size, actually a different seed. A. I cannot say that. 30

Q. And I suggest that the type of Emata grown in the Delta in 1935-36 was discontinued on account of a tendency which that grain had to carry or to keep badly? A. No.

Q. You don't know anything about it? A. It is not discontinued.

Q. Is there a gentleman R. R. Khan in your firm now? A. He has gone to the Districts, he is not here.

Q. He is still associated with your firm? A. Yes.

Q. Is he a large land owner? A. Yes.

Q. Am I right in thinking that he is the principal paddy producer in the Delta—the largest man in the Delta? A. There may have been others but I am not sure. He is one of the largest. 40

Q. Has he been using his endeavours to produce a good type of Sugandi grain? A. I believe so.

Q. Do you know whether the seed from which this paddy is grown is Government seed? A. I heard so.

- Q. And, do you believe it was? A. Yes.
- Q. And, do you remember whether it was called A26/3? A. I don't know.
- Q. Do you know what Emata seed is now being used in the Delta? A. No.
- Q. Do you know anything about American rice characteristics? A. No.
- Q. Have you ever heard of "Blue Rose" grain? A. Yes, I have heard.
- 10 Q. That is an American rice, is it not? A. May have been. I am not sure.
- Q. Wasn't the Sugandi paddy grown in the Delta similar to the American Blue Rose? A. I heard it was similar.
- Q. When this paddy was received by you, where was it put? A. In the godown.
- Q. How many godowns are there? A. There are many godowns.
- Q. And is the paddy piled in a heap in the godown in the customary way? A. Usually.
- 20 Q. In reply to Mr. Paget you said you thought you received it during January or the beginning of February? A. Usually this grain arrives in the early part of the season. That's why I said that.
- Q. It is grain which matures early, is it not? A. I think so.
- Q. In the affidavit which you affirmed on the 21st April of this year, you say that the paddy which was used was harvested during the second half of December. Do you think that is probably right? A. May have been, I cannot say.
- 30 Q. At the time you affirmed that affidavit I take it you then believed it was harvested in the middle of December? A. Yes.
- Q. Did you verify that before swearing the affidavit? A. No.
- Q. And as soon as you receive it you put it into the godown? A. Yes.
- Q. And then it is brought in by the bullock carts? A. No, by boats—paddy gigs.
- Q. Are these riverside godowns that you have? A. Yes.
- 40 Q. Have you seen all these godowns? A. Yes.
- Q. Am I right in thinking that the usual method of storage is to put matting over an earthen floor? A. Yes.
- Q. Was that the system in these godowns? A. Yes. Over the earth there is a layer of paddy husks and over that mattings are provided.
- Q. And the paddy is heaped on to the mats? A. Yes.

*In the  
Supreme  
Court of  
British  
Columbia.*

*Plaintiff's  
Evidence.*

*No. 12.  
Jal Munch-  
ershaw Rus-  
trumframa.  
Cross-Ex-  
amination  
December  
29th, 1937.  
—continued.*



In the  
Supreme  
Court of  
British  
Columbia.

Plaintiff's  
Evidence.

No. 12.  
Jal Munch-  
ershaw Rus-  
trumframa.  
Cross-Ex-  
amination  
December  
29th, 1937.

—continued.

Q. The godowns are not built up above the ground I take it. They are ground level? A. Yes.

Q. Are they built up from the ground? A. Not high up.

Q. They have the earth floor. A. There is a thick layer of 1 to 1½ feet of husk.

Q. And I take it that you, like all other millers, experience the trouble of rats in your godown? A. Yes.

Q. Naturally. And you put this floor preparation down, do you not, partly at any rate in order to minimize the chances of water being pushed up through the rat holes? That is one of the reasons why you put it there? A. May be but the chief reason is that the paddy may not get damp or heated from the ground. 10

Q. At what time does the monsoon break in the Mayetwa District? A. Same as in Rangoon.

Q. In May? A. Yes, sometimes it is late.

Q. And before the monsoon breaks, do you get what we call the Mango showers? A. Usually.

Q. Can you tell me whether at the beginning of April 1936 thunder showers were prevalent? A. I cannot say that.

Q. Would it be at all surprising if they were? A. I would not be surprised. There may have been thunder showers. I cannot say. 20

Q. It is the custom of the trade, is it not, when the paddy has been milled into Loonzain, it then lies at the buyer's risk? A. Yes.

Q. You are not concerned with the storage of the loonzain after it has been milled? A. The millers are supposed to take reasonable care of goods which are stored in the godown although we are not responsible for fire risk or anything like that.

Q. And although you were not there, you think your mill people would do that? A. Yes. 30

Q. Now, you have told me that usually you yourself examined the rice which is milled in your mills? A. The rice after being milled,—samples are sent to our office in Rangoon.

Q. That is the usual practice? A. Yes.

Q. Can you say positively that you examined samples of this milling? A. Yes.

Q. What makes you certain about it? A. Because it is my usual practice always to examine samples of the milling of my own mill. 40

Q. I take it you have not got records immediately available of your examination of these samples? A. No.

Q. Loonzain is a light brown or khaki colour, isn't it? A. Yes.

Q. Now you said in answer to my learned friend that if the rice had become heated or damp, the outturn would be affected

and you said there was one way in which you could tell whether it had been affected or not viz: the colour would be changed to a yellow. Are you referring to white rice particularly? A. Yes.

Q. It would not show in the loonzain? A. It would not show in the loonzain. But in order to show whether there is any damage or not in loonzain rice a hand-beaten sample is made from that loonzain of white rice. According to this practice we can know whether the loonzain contains any damage or not, after examining the white rice.

Q. All kinds of Sugandi rice are apt to break in milling? A. Why all kinds? Some kinds may, others may not.

Q. I suggest that all kinds of Sugandi are liable to break? A. Not necessarily.

Q. Do you agree that Sugandi rice is particularly apt to suffer from sun-crack? A. Not necessarily. It may. It is just like other kinds of grain.

Q. I am suggesting that Sugandi is particularly apt to suffer from sun-crack? A. I don't think so.

20 Q. Would you agree that damaged rice, whether from sun-crack or from heating, is apt to show an excessive amount of brokens? A. Yes.

Q. Would you agree therefore that in preparing the white rice samples damaged grains might be broken? A. Yes, but not all.

Q. On that account might not the damaged grains escape detection? A. The only way of detecting damage in loonzain is to make it into white rice.

30 Q. I take it when you prepare the white rice samples you are concerned to see whether you get many brokens, whether you get a good white rice sample and whether there are any reds? A. Yes.

Q. If you get good white rice, whole grains, and a normal percentage of brokens, do you take particular note of the colour of the brokens? A. No.

Q. Are the bags weighed immediately after milling the paddy into loonzain? A. Yes.

40 Q. If a loss in weight occurs between the time they weigh at the mill and the time when they are brought to be shipped, would you be inclined to think that that weight was due to evaporation of moisture content? A. Yes.

Q. Might that evaporation which took place after it left the mill and before it was shipped, be due to heating? A. It may be.

*In the  
Supreme  
Court of  
British  
Columbia.*

Plaintiff's  
Evidence.

No. 12.  
Jal Munch-  
ershaw Rus-  
trumframa.  
Cross-Ex-  
amination.  
December  
29th, 1937.  
—continued.



In the  
Supreme  
Court of  
British  
Columbia.

Plaintiff's  
Evidence.

No. 12.  
Jal Munch-  
ershaw Rus-  
trumframa.  
Cross-Ex-  
amination  
December  
29th, 1937.

Re-Exam-  
ination,

Q. Do you know a kind of damage known as "Floor Damage" in loonzain rice? A. After the paddy has been milled into loonzain?

Q. After the paddy has been milled into loonzain. What do you mean by "Floor Damage"? A. Bags which are damaged right at the bottom.

Q. Only at the bottom where the bag is laid on the floor? A. Sometimes owing to heat it may become damaged.

Q. That damage might also be caused, might it not, by a bag touching the wet tarpaulin of a cargo boat? A. It might. 10

Q. If a bag has been damaged in that way, either by contact with a moist floor or by touching the wet tarpaulin of the cargo boat, and it is then stored with other bags, do you agree that heating is likely to set up? A. Yes, it might.

#### RE-EXAMINATION BY MR. PAGET:

Q. Mr. Rustrumframa, you have been asked about Field Amagyi. Do the R. R. Khan mills grow that themselves? A. Yes, not R. R. Khan Mills but our Managing Director Khan Bahadur Rahim Khan.

Q. And is that the Field Amagyi which your mills mill? A. 20 Yes, most of it.

Q. Can you tell me whether evaporation between the time of milling and shipment is a normal occurrence? My learned friend asked you about evaporation between the time of milling and shipment. In your experience is that a normal occurrence? A. Usually at the beginning of the season it is normal.

Q. Have you had any personal experience of rice bags heating? A. Yes.

Q. Have you known of instances of bags becoming heated when stored in godowns? A. Yes. 30

Q. You told us you were not at the mill at the time of milling. Where are you yourself normally engaged? A. I am usually in the Rangoon Office, here, not at the mills.

S. A. ISPAHANY, duly affirmed according to the Directions contained in the Writ of Commission.

#### EXAMINATION-IN-CHIEF BY MR. PAGET:

Q. Mr. Ispahany, were you employed by Morrison & Company last year? A. I was employed at Morrison & Company.

Q. In what capacity? A. I was there for 2½ years looking after rice. 40

Q. Who was the Proprietor of Morrison & Company? A. Mr. Shaw.

Q. Mr. C. H. Shaw who died recently? A. Yes.

No. 13.  
S. A.  
Ispahany.  
Examina-  
tion,  
December  
29th, 1937.

Q. 'Looking after rice'—what does that mean? A. I attend the mill and the shipping and survey rice at the mill at the time of shipment to see what percentage of brokens and reds there are.

Q. And besides brokens and reds, what else? A. I see whether it contains damage.

Q. To see whether any part is in a damaged condition? A. Yes. I see the brokens and the reds and then make a white rice sample of the loonzain to see whether it contains damage.

10 Q. Have you seen Exhibit E before? A. Yes.

Q. On receipt of Exhibit E what did Morrison & Co. do? A. We sent our durwan to the mill to attend to the milling.

Q. To which mill? A. R. R. Khan's mill.

Q. To watch the milling? A. Yes, the durwan was there to watch the milling.

Q. And, did you receive samples? A. Yes, we received samples every day.

Q. Who from? A. From the durwan.

20 Q. Did those samples pass through your hands? A. They passed through my hands as well as Mr. Shaw's.

Q. How many years experience have you had of this work? A. Five years.

Q. Tell us what the samples were like. A. The samples were quite all right. They did not contain damage at the time of milling.

Q. And was there any sign of moisture or heating? A. From what I could see it was not heated. The grain was rather hard.

30 Q. Are these Morrison & Co's certificates, Exhibits C and D, for rice which was milled at R. R. Khan's mill? A. Yes.

Q. Who signed these certificates? A. Mr. Shaw signed them.

Q. Did you make any record at the time of sampling? A. Yes, I made a record in my book.

(Witness refers to his Survey book)

Q. These records show the result of the survey? A. Yes.

Q. At the time of shipment was anything done? A. Yes, again I saw samples.

40 Q. How were those samples taken? A. My durwan went to the steamer and drew samples from every cargo boat.

Q. And are Mr. Shaw's certificates, Exhibits C and D, based upon the result of the survey at the time of shipment? A. Yes.

Q. Did Mr. Shaw personally supervise your work when you were surveying? A. Yes, he always supervised my work.

Q. Has it been the practice in Rangoon to take tests for moisture content of shipment samples? A. I don't know about

*In the  
Supreme  
Court of  
British  
Columbia.*

Plaintiff's  
Evidence.

No. 13.

S. A.

Ispahany.

Examina-

tion,

December

29th, 1937.

—continued.



In the  
Supreme  
Court of  
British  
Columbia.

Plaintiff's  
Evidence.

No. 13.  
S. A.

Ispahany.  
Examina-  
tion,

December  
29th, 1937.

—continued.

others but we don't send the samples for chemical examination. I cannot really tell you the percentage of moisture. We just see.

Q. What do you mean by "we just see"? A. We just see whether the grain is hard or not.

Q. In your opinion was any part of this shipment in a damaged condition? A. No, it was not in a damaged condition.

Q. Was any part of it in a heated condition? A. No.

Q. Did any part of it show moisture? A. From what I could see there was no moisture.

Q. When your durwan went to the cargo boats to take 10 samples did he bring back anything in writing? A. He brought back certain shipment chits.

Q. Are these the chits which refer to the rice referred to as "R. R. Khan Interco Brose"? A. This is from the steamer, not from the mill.

Q. It was the same shipment as was marked Interco-Brose? A. Yes it is. The shipment was from R. R. Khan.

(By consent copies from the Survey Register referred to by the witness have gone in and have been marked as Exhibits T, U, V, W, X and Y. 20

The Shipping chits referred to by the witness have been put in and marked as Exhibits Z, A.A. to F.F.)

Q. Have you compared these copies, Exhibits T to Y with your book and are you satisfied they are correct copies? A. Yes.

#### CROSS-EXAMINATION BY MR. HORROCKS:

Q. The durwan did not obtain Exhibits Z to FF from the cargo boat, did he? A. Yes, he did.

Q. Under what circumstances are these chits given? A. This is a record we keep.

Q. Under what circumstances are they given? A. To see 30 whether the durwan goes on board and at the same time he writes a chit and brings it to the office.

Q. When the durwan goes on board the cargo boat he is given these chits which he furnishes to the office? A. Yes.

Q. Each of them is numbered 245? A. No, that is my number.

Q. Is that the number of this notice which you received from Blackwood Ralli & Company? A. Yes, I mark a chit and in Blackwood's chit I give the same number as I mark on mine.

Q. Do you mean that the number of these chits, 245, relate 40 to the numbers of Messrs. Blackwood Ralli & Company's notice to Surveyors? A. Yes.

Q. Is that right? A. When I get a chit from Blackwood Rallis I put a number. It is my number. It is not Blackwood Rallis number. When I get the request to survey from Messrs.

Cross-Ex-  
amination,

Blackwood Ralli & Company I put a number on to it.

Q. And that number you put on the chits which the durwan returns to you when he brings the sample? A. Yes.

Q. Do the figures in the column, Weight, lbs, gross, refer to bags which have been weighed or to what do they refer? A. These bags have been weighed at the time of milling, then again they are weighed on the steamer.

Q. Are these figures in Exs. Z to FF shipment weights of bags which were weighed? A. Yes.

10 Q. And from the number of weights shown in these chits, can we ascertain the number of bags which you weighed at the time of shipment. A. Yes. If you count them you will know the number of them.

Q. Exhibit Z relates to five of the bags which you weighed? A. Yes.

Q. Roughly show that you weighed about between 40 and 50 bags? A. By counting the number of weights shown on these chits you will know exactly how many bags were weighed.

20 Q. And the weights shown in these exhibits, Z to FF, are the shipping weights shown in Exhibits T to Y? A. Yes.

Q. In other words when you get these chits from the durwan you transfer the weights shown in your Survey Book? A. Yes.

Q. The extracts from which are Exhibits T to Y? A. Yes.

Q. In Exhibit X the milling weights are not shown. Have you any explanation to offer? A. Yes, I don't think the durwan had a chit from the mill.

Q. Does this entry in milling notice No. 40 relate to 3000 bags of Intero Brose? A. It does.

30 Q. Am I to understand that the milling weights of the bags referred to in Exhibit X are to be ascertained from a reference to other documents? A. In Exhibit X no milling weights are shown. The durwan came together with the samples. He did not write a chit.

Q. In respect of the parcel of 3000 bags referred to in Exhibit X, do you mean to say that you did not get the milling weights from the durwan at the mill? A. No, I did not get them.

Q. Did anybody get them? A. The durwan must have got them.

40 Q. They were not forwarded to Morrison & Company? A. No, I did not get them.

Q. You personally of course did not attend the mill, you did not weigh at the time of milling, you merely relied upon information handed to you by others? A. Yes.

Q. With the exception of Exhibit X each of the Exhibits T

*In the  
Supreme  
Court of  
British  
Columbia.*

Plaintiff's  
Evidence.

No. 13.

S. A.

Ispahany.

Cross-Ex-

amination,

December

29th, 1937.

—continued.



*In the  
Supreme  
Court of  
British  
Columbia.*  
—  
Plaintiff's  
Evidence.  
—  
No. 13.  
S. A.  
Ispahany.  
Cross-Ex-  
amination,  
December  
29th, 1937.  
—continued.

to Y shows a decrease from the milling weight to the shipping weight? A. The shipping weights are less.

Q. In each case they are less? A. Yes, the shipping weights are less.

Q. Now, were you present with the durwan when he took samples from the bags in the cargo boat? A. No, I was not.

Q. So you don't know from how many bags he took samples? A. No, I cannot tell.

Q. What did he use for taking samples? A. A steel pike.

Q. How were the white rice samples prepared? A. We 10  
put the loonzain in a white canvas bag and then beat it upon a hard object.

Q. And did you yourself do the beating? A. No the durwans did it but I was present.

Q. Then I take it you examined the white rice prepared?  
A. Yes.

Q. What did you do, take a handful of it from the white canvas bag? A. No, we put the whole lot from the bag on to a tray.

Q. Now, just tell me carefully what you looked for to see 20  
whether that sample was up to specification. A. Yes, and to see whether it contains damaged or off-coloured grain.

Q. And also the amount of brokens? A. You cannot say brokens because it is a hand-beaten sample. Naturally brokens must be more in a hand-beaten process.

Q. Do you particularly notice the brokens, the amount of them? A. The brokens we see separate when the loonzain sample is there we see the number of brokens.

Q. When you prepared the white rice sample did you take a note of the brokens not only with regard to the amount but 30  
with regard to the colour of the brokens? A. We see the colour of the brokens.

Q. Do you find the white rice broken or is it in the form of broken loonzain? A. The brokens also turn white together with the rice.

Q. You get white brokens and white whole grains? A. Yes.

Q. And I understand you to say that you did not notice any yellow grains at all? A. No yellow grains, no damage, it was quite all right.

Q. Not one single yellow grain? A. No. 40

Q. Do you remember any other shipment sample where you never got one yellow grain? A. There are various other shipments.

Q. Do you remember one other shipment sample in which you failed to detect a single yellow grain? A. Yes there were

several other shipments and most of them went away without a single yellow grain.

Q. When you say you don't make chemical analysis for moisture content, I understand it to be customary in the trade not to take a chemical analysis? A. Yes but we never used to do.

Q. And when you say that you saw no signs of damage from moisture content you mean that you detected no visual signs. A. I saw the samples. They were quite hard and dry.

10 Q. When you say that no part of it was heated or damaged, you mean that you could not see any damage? You mean to say "Judging by what I saw it was not damaged"? A. Yes, by what I saw.

#### RE-EXAMINATION BY MR. PAGET:

Q. I just want to be clear how you obtain your percentage of brokens. Do you do that before or after you pound up the loonzain to make white rice? A. Before.

Q. You ascertain the percentage of brokens from the loonzain? A. Yes.

20 Q. Does Exhibit FF cover the 986 bags ex Moolla Godown Pazundaung? A. Yes.

Q. The details of those 986 bags are not entered in your Survey book? A. No, I do not enter the Moolla Godown in my book at all. I have a separate file for Moolla Godown.

MR. C. E. deJORDAN duly sworn according to the Directions contained in the Writ of Commission.

#### EXAMINATION-IN-CHIEF BY MR. PAGET:

Q. What is your full name Mr. deJordan? A. Claude deJordan.

30 Q. Mr. deJordan, have you had much experience in the rice trade in Burma? A. Over 32 years.

Q. Just tell us how you have been engaged during that time? A. In the beginning I was a Paddy Broker, then I got into Steel Bros., and was placed in charge of their Kemmendine mill for three years, then I was transferred from the Kemmendine Mill and placed in charge of the Parboiled Rice Department and I resigned in 1927. Again in 1927 I was engaged by Blackwood Blackwood & Company to look after their milling, deliveries and shipments of rice and rice products.

40 Q. At present I think you are doing business on your own? A. Yes, I left Blackwood Rallis last December and I am working on my own as a Rice Miller.

*In the  
Supreme  
Court of  
British  
Columbia.*

Plaintiff's  
Evidence.

No. 13.  
S. A.

Ispahany.  
Cross-Ex-  
amination  
December  
29th, 1937.

Re-Exam-  
ination

No. 14.  
C. E.  
deJordan.  
Examina-  
tion,  
December  
30th, 1937.



*In the  
Supreme  
Court of  
British  
Columbia.*

Plaintiff's  
Evidence.

No. 14.  
C. E.  
deJordan.  
Examina-  
tion,  
December  
30th, 1937  
—continued.

Q. During the War period did you have any special job? A. Yes, I was in charge of Steels' Mill at Kemmendine because there was a shortage of Europeans so they placed me in charge. I was there for three years. During the control time I was placed as Surveyor of all Government shipments of rice for two years.

Q. Was that Government appointment? A. It was a semi-Government appointment and the Customs at that time had instructions from the Government that no rice was to be shipped unless the Customs papers were accompanied by a certificate of quality from me. I was detailed for that job for two years. 10

Q. Who detailed you? A. Steels were the Agents, you see, and they recommended me to the Local Government.

Q. Are Steel Bros., & Co., Ltd., the largest Rice Millers in Burma? A. Yes.

Q. Now, do you remember the "Segundo" shipment of rice in April 1936? A. Yes.

Q. Were you then in charge of the Department concerned in the office of Messrs. Blackwood Ralli & Company? A. Yes.

Q. Do you remember what the shipment to the Canada Rice Mills consisted of? A. About 750 tons of Sugandi rice. 20

Q. Do you know where that came from? A. It came from R. R. Khan, Mayetwa.

Q. All of it? A. I think so, or some of it.

Q. Look at Exhibit Q which is a copy of the Moolla Godown Register— A. Part of it was shipped from Moolla godown, I remember now and I remember the number we put on the bags also,—102, I think, because it came from Nattalin.

Q. That was the number put on the bags from the Moolla Godown? A. Yes.

Q. By the way, how far is Rangoon from Nattalin? A. 30 About 85 miles.

Q. During the dry season, in Rangoon what is the weather normally like in Nattalin? A. Just the same as it is in Rangoon, perhaps warmer during the hot weather.

Q. Very well. Now, the portion which did not come from stock came from whose mill? A. From R. R. Khan's mill at Mayetwa.

Q. In connection with this shipment, did you have any work to do? A. Yes.

Q. What work? A. I had to send men there for milling 40 and watching the samples every day that were sent from the mill. Our durwans checked them to see that they were in order with regard to separation i.e. the percentage of brokens and to see that the rice was up to contract quality free from off-coloured or damaged grains.

Q. You are talking at the time of milling? A. At the time of milling, yes.

Q. At the time of shipment, did you have anything to do?  
A. Yes I had samples drawn and a white rice sample made from the loonzain.

Q. What is the purpose of these white rice samples? A. To see if the shipment was in order,—if the rice shipped was good.

Q. Did you also take samples from the portion that came ex stock? A. Yes.

10 Q. Very well, did you form an opinion as to the samples?  
A. Yes.

Q. Give us your opinion. A. My opinion was that at that time it was a good shipment free from damage. By "damage" I mean yellow grains—free from off-colour.

Q. Was there anything wrong with it at all in your opinion?  
A. Nothing in my opinion was wrong with it.

Q. It has been suggested that the shipment was either in a heated condition at the time of shipment or else contained undue moisture. A. It was not heated as far as I could have seen at  
20 the time because I am generally careful in the matter of these shipments and anything that would not be suitable for shipment would always be kept back, rejected.

Q. Would undue moisture or undue heating be apparent at the time of shipment? A. No, because at the time the shipment was made, it was about April and any undue moisture should have been absorbed by then. Considering the several processes that the paddy undergoes before it gets milled there should not be any reason to believe that there could have been any undue moisture in it.

30 Q. Now, let me take you through these processes. First of all? A. First of all there is the reaping.

Q. That is usually done in what month? A. At the end of December and the beginning of January.

Q. After the paddy is reaped, what happens to it? A. After it is reaped it is placed on the floor.

Q. By "floor" you mean? A. On the ground,—prepared for it.

Q. At that time of the year what is the state of the ground?

40 A. Dry,—and it is placed on the ground for a day or two and then it is threshed.

Q. Normally, at that time of the year, do you expect sunshine? A. Oh yes, and after it is threshed its winnowed.

Q. What is the effect of those processes? A. After it is reaped and placed on the floor it gets a chance to dry for two days or so and then it is threshed. The threshing also helps it to dry.

*In the  
Supreme  
Court of  
British  
Columbia.*

Plaintiff's  
Evidence.

No. 14.  
C. E.

deJordan.  
Examina-  
tion.

December  
30th, 1937

—continued.



*In the  
Supreme  
Court of  
British  
Columbia.*

Plaintiff's  
Evidence.

No. 14.  
C. E.  
deJordan.  
Examina-  
tion,  
December  
30th, 1937.  
—continued.

Q. Then in the next stages, that is winnowing? A. For the winnowing process a huge big scaffold is built and people get on top of the scaffold and let the paddy drop from the top and as it drops all the chaff and straw is blown away and the clean paddy falls to the ground. That is also a process of reducing the moisture in paddy, it makes it dry. When that is done it is heaped up in a big heap, the paddy heaped about 10 feet high and about 40 to 50 feet square and that remains there till a likely purchaser comes along. That remains there for 4 days, 5 days, a week or 10 days,—that gives it a chance of drying also. Then the purchaser comes along and buys it and then he starts carrying it in baskets and loading it into a boat. That enables the air to play on the paddy further and helps it to continue drying. Then the paddy is taken away to the millers godown and landed into the mill godown and that is carried by coolies in baskets and that gives it a further airing and it lies in the millers godown till such times as the rice is sold and the paddy from which rice is sold is milled. 10

Q. Do you know personally the R. R. Khan mill at Mayetwa? A. I have been there for weeks at a time. I know it it very well. 20

Q. Are the godowns suitable for the storage of paddy? A. I should think they are the most suitable godowns amongst the small mills. They are as good as the big millers godowns.

Q. We have been told that it is customary there to have a layer of paddy husk on the floor and above that matting and the paddy heaped on top of the matting? A. That's the usual way. Khan does it the same way. It is first the earth, the ground, then he puts river sand, the object being to prevent rats from getting at the paddy, then on top of the sand is a thick layer of paddy husks 1½ to 2 feet, that is to absorb any moisture from the ground and keep the godown floor absolutely moisture proof. 30

Q. And on top of the paddy husk was anything put? A. Thick bamboo flooring.

Q. That is in the form of mats? A. Matted,—yes mats.

Q. Now, will you look at Ex. T? You will find there is a difference between the milling weight and the shipping weight of bags contained in this shipment,—about 1%. A. That is usual.

Q. Can you ascribe any cause for this difference in weight? A. That is the usual shrinkage if rice is milled and kept for a 40 while.

Q. Now what was the quality of the rice which was shipped by the "Segundo"? A. From Mayetwa?

Q. I would like to know, both from Mayetwa and from your stock in the godown. A. From Mayetwa it was a special quality of rice known as Khan's Field Amagyi.

Q. During the period you were with Blackwoods have they on more than one occasion bought Field Amagyi from R. R. Khan's mills? A. Oh yes.

Q. To the best of your recollection have Blackwoods received complaints on any other shipments of this Field Amagyi? A. I don't think so because if they did I would have got it in the neck.

Q. Do you know a type of grain known as A26/3? A. Yes, that is a Government grain in the Delta.

10 Q. It has been suggested that that is an unsatisfactory grain. A. Yes, unsatisfactory from a milling point of view.

Q. What does that mean? A. That means it does not mill well. It is rather a soft grain,—produces more brokens.

Q. Has it a reputation of not carrying well on board ship? A. No. It has not that reputation.

Q. Have Messrs. Blackwood Ralli & Company made shipments of A26/3? A. They have.

Q. Where did they get it from? A. From Bassein and the Delta. Bassein would be in the Delta.

20 Q. And, as far as you know, have there been any complaints of heating of these shipments? A. No.

Q. Now, Field Amagyi, milled or purchased by you from R. R. Khan, where is that grown? A. That is grown in his own fields.

Q. Do you know the origin of that grain? A. The origin might be A26/3 or even might be a long grain that is produced on the Henzada side.

30 Q. The grain which you obtain from R. R. Khan's mill under the name of Field Amagyi, how does that compare as regards its characteristics with the characteristics of A26/3? A. With regard to its milling capabilities it compares far superior.

Q. Now, did samples of this shipment by the "Segundo" in April 1936 pass through your hands? A. Yes, every bit of it.

Q. Would you say that that was the grain known as A26/3? A. No.

40 Q. Why not? A. From the appearance of it. There is a difference between the general appearance of Field Amagyi grain and A26/3. Field Amagyi grain is a bolder looking grain and when made into white rice samples from loonzain it stands the beating into white rice very well while A26/3 does not stand the beating so well,—it turns into brokens and in general A26/3 looks to all appearances a weaker grain.

Q. Now, I would like to know about the portion of the shipment marked 102 which came from Blackwood Ralli's stock. Do you know what type that was? A. That was Amagyi.

*In the  
Supreme  
Court of  
British  
Columbia.*

Plaintiff's  
Evidence.

No. 14.

C. E.

deJordan.

Examina-

tion,

December

30th, 1937.

—continued.



In the  
Supreme  
Court of  
British  
Columbia.

Plaintiff's  
Evidence.

No. 14.  
C. E.  
deJordan.  
Examina-  
tion,  
December  
30th, 1937  
—continued.

Q. Would you say it was identical or different from R. R. Khan's? A. I should think it was just about the same.

Q. There would be a difference of roughly how many miles between the two places where they were respectively grown?

A. A little over 50 miles I think from Nattalin right across to Mayetwa, that is by river.

Q. Would it be possible for bags of rice, part of the shipment that was marked 102 to become heated while they were stored in your godown? A. No.

Q. Have you ever known rice bags to become heated while stored in your godown? A. Yes, if they are in storage for a long time, say for about 6 to 8 months of storage, they would show signs of off-colour and damage. 10

Q. Have you ever in your experience known rice stored in bags from January to April to become heated? A. No.

Q. If there had been undue moisture in the samples of this shipment to the Canada Rice Mills, samples which passed through your hands, would it have been apparent in the samples? A. There is a difference between the appearance of rice milled straight away after the paddy is reaped and if it had been milled two or three months later. There would have been that difference. 20

Q. Now, what is that difference? A. The difference when this rice was milled. I should say that the moisture content was normal by virtue of the various processes of handling and the time it was in the godown before it was milled. I should say that it was quite normal moisture content.

Q. My question was this. In answer to my question just now you said "there would be a difference between the appearance of samples of rice milled straight away after the paddy is reaped and if it had been milled two or three months later". What would the difference in appearance be? A. It would be damper in the beginning. 30

Q. I am talking about the samples. Would there be a difference in appearance? Suppose those were samples of rice which were unduly damp? A. No European miller ever buys rice in the month of December. That is due to the moisture.

Q. Yes, yes, but assuming for some reason or other this shipment, or part of this shipment was unduly damp, samples of which had passed through your hands, what would be the difference in appearance? A. I would have noticed it. 40

Q. What would you have noticed? A. I should have found the rice damp and should have rejected it because for long distance shipments damp rice will not keep. I should have rejected it if I thought it was abnormally damp or moist.

Q. From February onwards, when you receive rice from the

millar, would it be normal to receive rice in a moist condition?  
A. It would not be moist.

Q. Would it be normal for floor damage to occur to stock of rice stored in a godown at any time between February and April? A. No.

Q. At what time during the year is floor damage most likely to occur? A. During the monsoon time.

Q. That is the months of what? A. The months of July, August and September.

10 Q. Now, during the normal season, what percentage of rice milled between the months of January and April would have to be rejected on account of the presence of yellow or damaged grains?

A. No damage could occur in those months. It is not usual.

#### CROSS-EXAMINATION BY MR. HORROCKS:

Q. Mr. deJordan, you have not been present when any of the evidence has been recorded in this case? A. No, as a matter of fact I have been away from town. I just came in this morning.

20 Q. Have you discussed the evidence which has been given?  
A. No.

Q. You left Blackwood Ralli & Company last December?  
A. Yes.

Q. Have you discussed this matter since you left Blackwood Ralli & Company last December? A. No.

30 Q. Am I to understand that from the time you took these samples until today you had no occasion whatsoever to consider what their quality was? A. Oh yes. When I drew samples of the shipment and during the shipment I pronounced the quality to be good and as it is a part of my duty I had to inform my superior officer that everything was all right, and that is Mr. Butler.

Q. Will you now listen while the Stenographer reads my question and endeavour to give an answer to that?

(Question read by Stenographer)

A. It was only during the time of the shipment.

Q. From the time of shipment until this day you have had no occasion whatever to consider the quality of those samples?

A. No, to the best of my memory.

40 Q. These samples passed through your hands, did they not?  
A. Yes.

Q. In April 1936? A. Yes.

Q. Have you been engaged in the rice trade since December 1936 when you left Blackwood Ralli & Company? A. Yes.

Q. Frequently handling rice? A. Yes, milling rice.

Q. Of various types? A. Yes.

*In the  
Supreme  
Court of  
British  
Columbia.*

Plaintiff's  
Evidence.

No. 14.

C. E.  
deJordan.  
Examina-  
tion,

December  
30th, 1937.

Cross-Ex-  
amination,



In the  
Supreme  
Court of  
British  
Columbia.

Plaintiff's  
Evidence.

No. 14.  
C. E.  
deJordan.  
Cross-Ex-  
amination  
December  
30th, 1937.  
—continued.

Q. Have you had occasion to remember the type of this grain which was shipped by Blackwood Ralli & Company in the "Segundo" in April 1936? A. Yes, I know the grain very well.

Q. Have you had occasion to remember what type it was? A. I did not have any business in it so I could not remember,— in this particular Field Amagyi.

Q. From the time of shipment until today has there been any reason why you should particularly remember what the nature of this Field Amagyi was? A. Yes.

Q. What was it? A. Because I was always associated with 10 Khan's deliveries. I have been round to his fields.

Q. Is this since the date of shipment? A. No, prior to shipment.

Q. I am asking you what has happened since the date of shipment until today to enable you to recollect what kind of rice this was, what its characteristics were? A. Nothing at all. It is only what I remember at the time of shipment at the mill.

Q. Did you make any sort of record of the samples which you took? A. Yes, in my notes at the time of shipment.

Q. Have you got those notes with you? A. No, they are 20 the property of Blackwood Ralli & Company.

Q. Have you seen them since you took the shipment samples? A. No.

Q. You have told us that at the time of milling you sent men to obtain milling samples? A. To remain there, watch the milling and to send samples.

Q. Did you yourself go to Nattalin at that time? A. No.

Q. Did you yourself go to Mayetwa at that time? A. No.

Q. Do you happen to know whether thunder showers were prevalent at the beginning of April 1936? A. No, I don't remem- 30 ber. I think it was quite normal.

Q. In Rangoon? A. Yes in Rangoon.

Q. You are quite unable to speak of the conditions obtain- ing in Nattalin or Mayetwa? A. From the papers I saw nothing abnormal happened.

Q. Did you say you had looked at the papers? A. I do al- ways, yes.

Q. You look at the "Rangoon Gazette"? A. Yes.

Q. Are you quite satisfied with your recollection of look- ing at the Rangoon Gazette? A. There was nothing abnormal. 40 I am in close touch with millers in the Delta.

Q. I suggest to you that thunder showers were prevalent at the beginning of April 1936, that was at or about the time this rice came out from the districts. A. I disagree.

Q. What is your reason for disagreeing. Have you any knowledge of weather conditions then obtaining outside Rangoon,

and, if so, what was your knowledge? A. My knowledge was that nothing abnormal had taken place.

Q. In Rangoon? A. In Rangoon and the Districts.

Q. Upon what is your knowledge of conditions in the districts based? A. Upon information in the Rangoon Gazette and from people in general that I meet from the Delta, from the Prome Line, from the Mandalay Line and elsewhere.

10 Q. By that I understand you to say that because people did not tell you of there having been thunder showers or because you do not now recollect their having told you there were thunder showers, you believe the conditions were normal everywhere? A. Yes, because thunder showers at that time are unusual and if anything like that had taken place there would have been a great deal of talk about this in Mogul Street which I did not hear.

Q. In other words, because you did not hear, you believe that no such thunder storms occurred? A. Because I did not hear and because I felt at that time and I even feel now, as far as I can remember.

20 Q. If thunder storms had occurred, you would have expected the bottoms of cargo boats and the bottoms of Railway wagons to have become wet? A. No. They are well protected from the weather so far as that is concerned.

Q. But there would be no need to protect them from the weather if, as you say, thunder storms were quite abnormal at that time of the year? A. Yes, because you suggested that the bottoms of the boats and railway wagons would be affected if there was a thunder storm I said they are protected against that sort of thing.

30 Q. Have you ever been on the river and seen tarpaulins pulled over when the rain began? A. Yes, when the rain was in sight.

Q. In other words, you have always seen the tarpaulins carefully pulled over before the rain comes? A. Sometimes, just when a drizzle had started.

Q. And if a thunder storm suddenly broke out you will say you would not expect to find the bottom of a cargo boat damp? A. Not the bottom, might be the top.

40 Q. In your experience does water usually find the lowest level? A. Water does not get to the bottom of the boat unless the boat was opened for perhaps an hour or two when there was a very heavy shower on.

Q. Precisely. If thunder storms at that time of the year were unusual and if cargo boats were lying empty, can you suggest any reason why people should carefully cover them over with tarpaulins? A. You mean the empty boats?

*In the  
Supreme  
Court of  
British  
Columbia.*

Plaintiff's  
Evidence.

No. 14.

C. E.  
deJordan.  
Cross-Ex-  
amination,  
December  
30th, 1937.

—continued.



In the  
Supreme  
Court of  
British  
Columbia.

Plaintiff's  
Evidence.

No. 14.  
C. E.

deJordan.  
Cross-Ex-  
amination  
December  
30th, 1937.

—continued.

Q. I mean the empty boats, yes. A. Empty boats are covered just to keep the tarpaulin in good condition.

Q. Are you seriously suggesting that Mr. deJordan? A. Yes, because if it is heaped up in a corner, it deteriorates.

Q. I never suggested anything about heaping up in a corner. Is there any reason why the tarpaulin should not be neatly folded and stored in the proper place provided for it? A. Well, if the cargo is to remain in the boat—

Q. Mr. deJordan, I don't want to interrupt you but I was addressing your mind to an empty cargo boat and I shall be obliged if you will not concern yourself at this moment with a boat in which there is a cargo. A. An empty boat,—it just depends upon the whim of the tindal. 10

(Tindal is a man in charge of the cargo boat)

Q. Then, it all depends upon whether the man in charge of the cargo boat has a particular fancy to have the tarpaulin over the boat or not? A. Well, some boats do not have it, some have it. It prevents accidents by having the tarpaulin on. If they have a lot of little boys on board, by having the tarpaulin on if the boat is empty it prevents anybody from falling into the bottom but some boat tindals have it on, some don't. If you pay a visit to Kamakasit now you will see a number of empty boats and others open. 20

Q. In your experience do you see Railway waggons go about the country carefully covered with tarpaulin? A. No.

Q. If the bottom of a cargo boat or a Railway waggon were wet and bags of loonzain were placed in the cargo boats or the waggon as the case may be and then stored, would it in your opinion be possible for those bags to sustain floor damage? A. They won't sustain floor damage because the floor would not have been wet, it would sustain off-colour if the gunnies were not changed immediately. 30

(Question repeated).

A. Such wet bags cannot be stored because they would begin to smell very badly the moment they get water on to them.

Q. You say they cannot be stored or you would not expect them to be stored? A. Would not expect them to be stored.

(Question repeated for the third time).

A. They would be damaged no doubt but how there can be floor damage I don't know if the floor was not wet. 40

Q. Did you say if the floor was not wet? I must ask you not to fence with me Mr. deJordan. A. (Witness says "I don't quite understand what you want"). Question repeated for the fourth time).

A. Stored where? What I understand by floor damage is that when the floor is damp the first layer of bags on the floor

gets floor damaged, that is what we call floor damage, but if a bag happens to be wet at the bottom of a cargo boat or a railway waggon, it may so happen that that bag may be in the middle of a stack in which case I should not say it was floor-damaged.

Q. Why would you not say that was floor-damaged? A. Because what is commonly known to us in the rice trade is only such bags that are on the floor due to the dampness of the floor becomes damaged, we call them floor-damaged bags.

10 Q. And would it make any difference to the name by which the subsequent damage is known that the floor which was responsible for the damage should happen to have been the floor of a Railway waggon or of a cargo boat? A. Well, in that light, the floor of the cargo boat if it had water in it would damage the bags and the floor of a Railway waggon if it had water would damage the bags and in such a case perhaps there would be floor damage.

Q. I suggest there is no "perhaps" about it. I suggest that damage caused by a sack lying on a damp floor, whether it be the floor of a godown or of a Railway waggon or of a cargo boat is floor damage and is very well known in the trade as floor damage.

20 A. In that case it is floor damage.

Q. In cases of floor damage, do you not find that the damage arises at the side of the sack, not on the other side which has been away from it, not in the middle of the sack. If it be the fact that of all the bags of 163 Interco-Brose examined by the Plaintiffs damage was found on one side of the bag only and not on the other side nor in the middle of the sack, if those were the facts, would you expect the damage to be floor damage? A. It would be possible that it is floor damage in a case like that.

30 Q. Wouldn't it be probable that it was floor damage? A. But if a bag had a little water on top of it or any moisture that would also appear as though it is floor-damage because that part of the bag where the moisture got to would make the rice inside hard.

Q. If it be the fact that the damaged bags were so stowed in the ship as to preclude the possibility of them having been wet in the manner you suggested in your last answer would you be disposed to agree that the damage which I have indicated was floor damage caused before the bags were loaded on the ship? A. Such damage happens also in the case of the hatches sweating if they are not properly dunnaged and particularly if the cargo happens to be nearer the engine room.

40 Q. But I understand you to say that you would expect this rice to be perfectly dry when it was loaded? A. This cargo was. In the course of shipment of rice bags every bag is probed with a pipe for the purpose of getting a proper average of the whole

*In the  
Supreme  
Court of  
British  
Columbia.*

Plaintiff's  
Evidence.

No. 14.

C. E.  
deJordan.  
Cross-Ex-  
amination  
December  
30th, 1937.

—continued.



*In the  
Supreme  
Court of  
British  
Columbia.*

Plaintiff's  
Evidence.

No. 14.  
C. E.  
deJordan.  
Cross-Ex-  
amination,  
December  
30th, 1937  
—continued.

shipment and for the purpose of detecting any bag that through dampness of any kind might have become damaged.

Q. Is that qualification in answer to my previous question?

A. No, that was just to show you why I say that that cargo was shipped undamaged.

Q. If the rice were thoroughly dry when it was shipped it would not sweat? A. It is not the rice that sweats. It is the sides of the steamer that sweat, due to the heat.

Q. We have had it in evidence that the sides of the steamer were perfectly well damaged. Would you now be disposed to agree that this damage was floor damage and that it was not caused on the ship? A. As I am perfectly sure that these bags were to the best of my knowledge not floor damaged at the time they went into the ship I cannot explain how they became damaged afterwards. 10

Q. You would agree, would you not, that bags of rice the damage in which appears only on one side of the bag, have been damaged either by lying on a damp floor or by coming in contact say with a wet tarpaulin, they having been wet only on one side? A. Yes. 20

Q. If the bags were so stowed in the ship as to preclude the possibility of their having become wet in the ship would you agree that damage of that kind must have been caused before the bags were loaded in the ship? A. If you take away the possibility of the ship not being responsible for such damage, yes.

Q. That way of answering the question is so general as to make the answer useless.

(Mr. Paget states he considers it to be a perfectly good answer).

(Mr. Horrocks states he would like the question repeated).

(Mr. Paget objects to the question being repeated). 30

(Subject to the objection the question is repeated).

A. If the ship was not responsible, yes.

Q. One means by which bags of rice could be wetted in a ship would be condensation? A. Yes.

Q. Would you expect the most condensation to be at the top of the hold where the hot air rises? A. More at the bottom or at the middle.

Q. "Condensation" I am asking about. Where would you expect the most condensation. A. It will be right away from the top to the bottom. 40

Q. Is that caused by hot moist air coming in contact with the cold surface? Are you able to give an answer to that question? A. The hot air coming into contact with anything cold would naturally make that damp, moist.

Q. Don't you expect hot air to rise? A. Yes.

Q. And, therefore, would you not expect the most condensation on the roof of the hold? A. The roof of the hold is wood so there could not be any condensation there or any dampness there.

Q. Shall we say the top of the hold? A. The top of the sides of the hold, wherever it is metallic.

Q. Would you expect any condensation along the wooden ventilators? A. The dampness, yes.

10 Q. Would you expect any condensation along the wooden ventilators? A. I would expect dampness.

Q. Dampness from what cause? A. Dampness from the sweating.

Q. If you would expect dampness from the sweating on wooden ventilators, will you kindly explain to me why you would not expect it on wooden hatches? A. Because the ventilators have room for dampness to go through. It can travel through.

20 Q. But why should the dampness stay there if it does not stay on the wooden hatch top? A. I don't say that it stays on the ventilators, the ventilators form a passage for the dampness to go through.

Q. Is there any reason that you know of why the dampness should not pass to the wooden hatch top? A. It might pass but it might be absorbed at the same time by the wood.

Q. Might not the dampness which passes the ventilators be absorbed by the wood of the ventilators? A. A certain part of it, yes, the ventilators are hollow things.

Q. Have you ever known of damage caused through sweating along the ventilators? A. No, I have known of damage caused by the damp air going through the ventilators.

30 Q. What is your experience of that? A. My experience, is just because the ventilators being hollow things, the dampness goes through.

Q. What experience have you had of damage caused through moisture from ventilators?—the name of the ship, the date of the shipment, the name of the consignee—give me any particulars whatever. A. As far as my experience goes of shipping matters this sort of thing happens at times.

40 Q. Can you give me particulars of any single instance where it has happened? A. I don't think so because I have handled so many ships and I really could not give you the name of any particular ship.

Q. Can you give me any single particular which you remember? A. No, I am sorry.

Q. Can you give me the approximate date of any instance? A. No.

Q. Are you certain you have had an instance? A. I have

*In the  
Supreme  
Court of  
British  
Columbia.*

Plaintiff's  
Evidence.

No. 14.  
C. E.

deJordan.

Cross-Ex-

amination

December

30th, 1937.

—continued.



*In the  
Supreme  
Court of  
British  
Columbia.*

Plaintiff's  
Evidence.

No. 14.  
C. E.  
deJordan.  
Cross-Ex-  
amination,  
December  
30th, 1937

—continued.

personally had no landing of cargo. I have always had the shipping of cargo.

(Question repeated)

A. My experience is confined to shipments and not to landing of cargo.

Q. Then, are you able to say whether in any instance damage has been caused by moisture passing along the ventilators?

A. I don't say that there is any concrete instance but I say that there is the possibility of such a thing happening.

Q. Will you explain why a moment or so ago you said you have had instances? A. I have had instances of shipments, not of landing of cargo. Such a thing could only be known from the landing of cargo, the damage.

Q. When you were giving us in detail the process through which paddy and rice passes from the time of harvesting to the time of shipment, I take it you were outlining the processes usually adopted? A. Yes, usually adopted. I may say it is always adopted,—the customary handling of paddy.

Q. But at any rate apart from taking shipment samples you were not present when any of those processes were adopted in this case? A. To the best of my recollection I think my Assistant went up there.

Q. You, personally, were not present? A. No, I was not personally present but I was present on the steamer, which is a part of my duty.

Q. And, so, you don't know precisely when this rice was harvested? A. Usually it is the last week of December and the first week of January,—the second half of December, the first week of January.

Q. I asked you whether you knew when this particular paddy was harvested, not when paddy is usually harvested. I take it you don't know? A. There is no particular time for this particular paddy. It has got to be harvested in the usual course, at the usual time.

Q. And I take it you do not know the date when this particular paddy was harvested? A. No.

Q. And until you received the samples you had no personal knowledge of what had happened? A. No.

Q. You were asked in your Examination-in-Chief about the loss in weight between the milling weight and the shipment weight, and when you were asked whether you could ascribe any cause for that loss in weight, you answered that it was the usual shrinkage if rice were kept for a while? A. Yes.

Q. Can you give me a better answer or a more complete answer than that? We know what it is but what is the cause of it? A. The cause is the moisture of the rice.

Q. The cause, is it not evaporation of the moisture? A. Yes, evaporation of the moisture, in other words.

Q. So that this rice must have been to some extent moist when it was milled otherwise it would not have lost weight at the time of shipment? A. Yes, the usual moisture.

Q. And, may I take it, that if there is no loss in weight it is an indication that there has been no evaporation of moisture?

A. No grain of any kind can be free of moisture.

10 Q. Even though it be bone dry, it loses weight? A. Yes.

Q. Can you tell me how it loses weight? A. Evaporation as you call it.

Q. Now, Mr. DeJordan, will you apply your mind to the question. If rice is bone dry, can it lose weight by evaporation of moisture? A. By "bone dry" I mean if rice is milled and kept for about eight months in storage I should then call it bone dry, and perhaps there would not be any further evaporation but the shortness of the bags may still continue owing to other causes.

20 Q. But if no loss of weight occurs, is it a fairly sure indication that there has been no evaporation of moisture? A. It is difficult for me to say. There would not be further evaporation if the rice is milled and stored for about 8 to 10 months but there are other causes that might cause shortness of weight, that is the scales jamming sometimes and leakage from the sides of the seams of the bag and if you mill today and weigh it again tomorrow one or two bags may be found to be short in weight. That is my experience.

Q. Mr. deJordan, will you listen carefully to the question. I am saying if there has been no loss in weight, is that a fair indication that there has been no evaporation of moisture content?

30 A. If the scales are perfect and the bag is perfect there would not be, I should say, any evaporation after the rice had been milled for eight months.

Q. In this case there is no question of rice having been milled for eight months or so. If between any two given dates no loss in weight occurs, would you agree that between those two dates there has been no loss of moisture content? A. If it is eight months in milling there would be no evaporation. It would be bone dry as you say.

40 Q. Let me put the question another way round. If there were no evaporation, would you expect the weight to remain the same? A. The rice trade is such a peculiar trade that it would be impossible for me to tell you that evaporation is the only cause of shortness of weight in bags. The coolie carrying it from the scale to the stack or perhaps a mere opening out on the side—

*In the  
Supreme  
Court of  
British  
Columbia.*

Plaintiff's  
Evidence.

No. 14.

C. E.

deJordan.

Cross-Ex-

amination,

December

30th, 1937.

—continued.



In the  
Supreme  
Court of  
British  
Columbia.

Plaintiff's  
Evidence.

No. 14.  
C. E.  
deJordan.  
Cross-Ex-  
amination  
December  
30th, 1937.  
—continued.

Q. Let me put it in still another way. If evaporation had occurred, would you expect there to be a loss in weight? A. Yes, if evaporation had occurred. I was referring to this question in the shape of loonzain and if loonzain was milled and kept for 8 months there would be no further evaporation.

Q. Will you take the case of loonzain milled in March? A. Yes.

Q. And shipped in April? A. Yes.

Q. The bags are weighed at the time of shipment? A. Yes.

Q. If a month after the date of shipment those bags are the same weight as they were at the time of shipment, would you agree that from the time of shipment, to the time when they were weighed a month later, there had been no evaporation of moisture. 10

A. Yes, there would be, I did not quite understand the question.

Q. Can you tell us how there could be evaporation of moisture without there being a loss in weight? A. Well you told me there would not be a loss in weight. I cannot answer an impossibility. There must be a loss in weight.

Q. Will you assume for the purpose of my question that there was no loss in weight? A. If I were to assume that there was no loss in weight, then there would be no evaporation. 20

Q. If a parcel of rice arrived at its destination extensively damaged by heating and sweating on board, would you expect it to have lost weight? A. Yes, I think it would lose in weight.

Q. There would be a substantial loss in weight? A. Not necessarily. There would be from the deterioration of the rice—there may be a loss in weight.

Q. Then, may we have it, a "noticeable" loss in weight? A. There would be a loss in weight if it is damaged and badly heated. 30

Q. And that loss in weight would show positively when the bags were weighed at destination? A. Yes.

Q. Now, I want to ask you a few questions about Amagyi. I suggest that Amagyi is the name given to a type of Sugandi paddy the grain of which has a broad shoulder. A. No. My knowledge of the name given to Amagyi is it is a Burmese name and "Amagyi" means female.

Q. Does it mean big female? A. Fat female.

Q. And I suggest that the natives call it fat female on account of the pronounced wide shoulder that it has? A. On account of the thickness of the grain. 40

Q. The term "Amagyi" is not properly restricted to any single specie of grain? A. It is restricted to the Sugandi types.

Q. But it is not restricted to a particular specie of grain. A. It is restricted to this particular specie of grain which is known as long grain or Sugandi.

Q. Of Sugandi there are many types and if three or four of those types were of the bold broad variety they would properly come within the term "Amagyi"? A. No there are only two types of Sugandi. One is a thin Sugandi which they call Pindaung and the other they call Amagyi, the fat grain.—So far the Sugandi grain is concerned these are the two types.

Q. Am I not right in thinking that paddy is divided roughly into about five types—Sugandi, Ngasein, Meedone and there are one or two others? A. Yes, Kalagyi, Laywetzin.

10 Q. Those are not all different kinds of rice, are they? A. Ngasein type is a different family to the Sugandi.

Q. Sugandi, Meedone, Kalagyi and Ngasein are four different types of rice, aren't they? A. Yes.

Q. Each of which comprises several distinct species of grain? A. Yes.

Q. Sugandi can conveniently be divided into two sub-heads,—Pindaung and Amagyi? A. Yes.

20 Q. Those are the two main subjects of Sugandi? And Amagyi itself properly covers a number of distinct species of grains the common characteristic of which is that they have a broad shoulder, fat grain? A. No, it is only looked upon as a fatter grain than the others.

Q. Than Pindaung? A. Than other varieties of the Sugandi type.

Q. Let me put it this way, that of different specific grains of the Sugandi type, those which have the broad shoulder are properly termed Amagyi? A. I hear of the broad shoulder for the first time.

30 Q. The fat grain? A. "Fat grain" is better. I am sorry that we have not got the Amagyi grain here, but both end in a taper.

Q. Will you assume that there are the following species of pure seed,—P.33/2, Q.15/7, Z.19/5 and M.10/3, all of which are of the Sugandi type and exhibit this fat characteristic. I want you to assume that. A. Oh, I see, yes.

Q. Would they all properly come within the description of Amagyi? A. They are all fat, alike, I should think they would become of the Amagyi description.

40 Q. Do you know that the bulk of the Sugandi grain grown in the Delta in January 1935-36 was of this A.26/3 type? A. A portion of it, yes.

Q. Only a portion of it you say? A. Government have given these seeds out to the cultivators and I don't know if the bulk would be that of other cultivators than Khan.

Q. Is Mayetwa in the Maubin District? A. No, it is in the Kyaiklat District, near Pyapon.

*In the  
Supreme  
Court of  
British  
Columbia.*

Plaintiff's  
Evidence.

No. 14.

C. E.

deJordan.

Cross-Ex-  
amination,

December  
30th, 1937

—continued.



*In the  
Supreme  
Court of  
British  
Columbia.*

Plaintiff's  
Evidence.

No. 14.  
C. E.  
deJordan.  
Cross-Ex-  
amination,  
December  
30th, 1937  
—continued.

Q. That is part of the Irrawaddy Circle? A. No, that is the Delta Circle. The Irrawaddy Circle would be the Prome Line.

Q. I suggest that Pyapon and Maubin are in the Irrawaddy Circle. A. As far as I know they are in the Delta District.

Q. Do you know whether A.26/3 was tried on the Prome side in the previous season and found to be unsatisfactory? A. I have never known it to be tried in the Prome section. They are only two types that have so far been tried in the Prome section and that is Government 28/6 and Government 28/8. 10

Q. What I am suggesting is that A.26/3 was tried first in the Prome section and it was there found to be unsatisfactory, that an attempt was then made to introduce it into the Irrawaddy Circle and that it was there discovered to be unsatisfactory and that it has since been almost entirely replaced by 28/6. A. I am not aware of that. 28/6 will not be an Amagyi type. 28/8 would be an Amagyi type.

Q. You have told us in your Examination-in-Chief that the origin of this Field Amagyi which was shipped might be A.26/3 or a long grain produced on the Henzada side? A. Yes. 20

Q. You agree that it was of a similar type to the A.26/3? A. It is a superior type to the A.26/3, the Henzada grain.

Q. You are not suggesting that it was 28/6? A. No, not 28/6 because 28/6 is a thinner grain.

Q. Do you suggest that the only respect in which A.26/3 proved unsatisfactory was that it did not mill well? A. Yes.

Q. By that you mean that it showed excessive percentage of brokens? A. Yes.

Q. I am suggesting also that A.26/3 was found not to carry well. A. Well, it is still being cultivated. 30

Q. I suggest that it showed a marked tendency to discolouration if it were kept for any length of time. A. We had shipped quite a lot of it ourselves, that is Blackwood Rallis, and we had no complaints of loss of colour.

Q. At what time did you ship quite a lot of this A.26/3? A. In 1934-35. 1934 I think.

Q. 1936 as well? A. Not to my knowledge.

Q. Am I right in thinking that one reason why excessive brokens occur in milling is that the grain has been subjected to sun crack? A. No, it is because the grain is softer. 40

Q. If grain has been subjected to sun crack, does it mill well? A. No, it won't mill well.

Q. It will break easily? A. Yes, it will break easily.

Q. Whether it is a softer grain or not? A. Yes.

Q. Sun crack is due, is it not, to the paddy having been left out in the sun to dry? A. Yes.

Q. If paddy is dried in the shade, there is a much less degree of sun crack? A. Yes.

Q. Am I right in thinking that rice which is damaged otherwise than by sun crack will break easily? A. Any damaged rice would break easily. In regard to sun cracks are you referring to paddy or to rice?

Q. I asked you Mr. deJordan whether if paddy were left out in the sun and allowed to dry in the sun, the loonzain would be subjected to sun crack and paddy dried in the shade would not be so subjected. A. But the sun crack, although it is called sun crack, is also if even dried in the shade due to the friction in the hullers.

Q. Are you suggesting that the damage which is known as sun crack is caused by the hulling process? A. By the hulling process, by the white rice cones, also due to the friction both in the hullers and in the cones.

Q. I am suggesting that if this rice had been damaged either by floor damage or by the sides of the bags becoming wet that damaged grains would easily break when you prepare the white rice samples? A. When floor damaged if you prepare the white rice the breakage won't be as much as it would be from wet rice dried over again and made into white rice.

Q. And therefore if white rice samples were prepared from sacks which had been floor damaged there is a probability that that damage might escape notice on account of the damaged grains being broken? A. No, no. Where will the broken disappear then? When you make a white rice sample you get the whole rice. Where is the broken?

Q. If the grains broke it would not be so easily transformed from loonzain into white rice? A. It would by the process of milling.

Q. It would not so easily transform from loonzain into white rice? A. There would be no difficulty in transforming except that the percentage of broken would be bigger.

Q. But the smaller grains would, I suggest, obviously not have the brown loonzain covering removed so easily as the whole grain? A. If the broken rice comes into the cones together with the whole rice?

Q. But you do not prepare your white rice samples in cones? A. Not for the purposes of examining rice.

Q. I am talking about your preparation of white rice samples before shipment. A. Well the broken go in together with the whole rice and by the process of beating the broken also become white. It is the friction in the canvas bag that causes the whiteness to the rice.

*In the  
Supreme  
Court of  
British  
Columbia.*

Plaintiff's  
Evidence.

No. 14.

C. E.

deJordan.  
Cross-Ex-  
amination,  
December  
30th, 1937.

—continued.



In the  
Supreme  
Court of  
British  
Columbia.

Plaintiff's  
Evidence.

No. 14.  
C. E.

deJordan.  
Cross-Ex-  
amination  
December  
30th, 1937.

—continued.

Q. I suggest that the broken grains do not whiten so easily as the whole grains? A. They seem to.

Q. What was the normal harvesting period for Field Amagyi? A. Just about the same as the ordinary Amagyi on the Prome line.

Q. In the Delta I am talking about. A. By the 15th of January at the latest.

Q. A.26/3 was an early maturing grain, was it not? A. Not that I know of. It took the same time.

Q. Would you think the middle of December a very early 10 time to harvest Field Amagyi? A. Field Amagyi won't be out but there is a type of grain that is an early maturing paddy that is nothing like the Amagyi type, it is a long grain, that is an early kind of grain.

Q. I am suggesting that A.26/3 was an early kind of type. A. Not to my knowledge.

Q. Do you know whether A.26/3 very closely resembles the American rice "Blue Rose"? A. I don't think it would.

Q. Would you agree that the foreign strains of rice when introduced into this country have a much shorter life period than 20 the native species? A. I don't know.

Q. I take it you were not present when the paddy from this parcel of Interco-Brose loonzain was prepared was stored in R. R. Khan's Godown? A. I was not present.

Q. And that you were not present when it was removed to the mill for milling? A. No, I was not present even then.

Q. And that therefore you have no personal knowledge of the manner in which the floor of the godown or godowns in which it was stored were covered? A. Judging from the rice, the floor must have been very good. 30

Q. When you say that it was not possible for the rice to become heated in your godown I presume you mean that if the rice was perfectly dry when it was brought in and also if it was not subjected to any moisture while it was in? A. Yes.

Q. If the bags had been wetted before they were brought in, would you agree that it would be possible for them to heat in your godown? A. Yes.

Q. And similarly when you state it would not be possible for rice which was stored in bags between January and April to become heated, you mean "provided that it had not become wet- 40 ted"? A. Yes.

Q. When you sampled the bags of loonzain in order to prepare the white rice samples, you used a pike? A. Yes.

Q. Were you present when this shipment was sampled? A. Yes, occasionally.

Q. Did you yourself take the sample from the bags? A. I

used to be in the habit of always probing the bags myself whenever I happened to be present at the time these bags came in either by boat or by rail.

Q. With regard to this particular shipment? A. All shipments.

Q. Do you now swear that you yourself took the samples from the bags of this particular shipment? A. Yes, because it was a particular shipment I was there. I was even on board the steamer.

10 Q. Why was it a particular shipment? A. Well, we look upon all shipments to Europe, Canada and the United States to be particular shipments because we know that this rice is to be milled into higher qualities at the other end and we generally give them the best we can.

Q. If the bags had been wetted a short time before you took the samples you would not expect them to show any discoloration? A. No,—but I should know them from the samples. If I made them into white rice I would know at once.

20 Q. How would you know at once? A. It would show signs of breakage (powder) which from experience I know that it is from wet rice.

Q. That is assuming of course that it has been wet sufficiently long to show signs? A. The moment water gets on the grain it affects the grain but if it is just on the gunny bag it would not.

#### RE-EXAMINATION BY MR. PAGET:

Q. Mr. deJordan you have been asked a lot of questions about condensation taking place in the holds of the ship, have you had any personal experience of examining cargo on arrival at destination? A. No.

30 Q. Now tell me, rice which comes down to Rangoon by rail, does it come in open waggons or closed waggons? A. Closed waggons.

Q. Do you mean waggons with a proper top? A. During the very sunny weather, it generally comes in open waggons.

40 Q. It has been suggested by my learned friend as I understand it for the first time in this case that these bags which were shipped on the "Segundo" or some of them must have sustained floor damage. If that was so, would it have been apparent at the time of shipment? A. Yes, as I mentioned, we probe every bag for an average sample of the shipment. In doing that we can easily find out any floor-damaged bags because the pipe would go through it would be hard.

Q. The rice would be hard if it suffered from the floor damage? A. Yes.

*In the  
Supreme  
Court of  
British  
Columbia.*

Plaintiff's  
Evidence.

No. 14.

C. E.

deJordan.

Cross-Ex-

amination

December

30th, 1937.

—continued.

Re-Exam-  
ination,



*In the  
Supreme  
Court of  
British  
Columbia.*

Plaintiff's  
Evidence.

No. 14.  
C. E.  
deJordan.  
Re-Exam-  
ination,  
December  
30th, 1937.  
—continued.

Q. And I think you told my learned friend that you yourself were actually present on the steamer at the time of this shipment?  
A. In most cases I am present and especially when special lots go along I make it my duty to go there. It is not going out of my way.

Q. Just tell me this. When were you first told that you would be required to give evidence in this case? A. I was written to. I was asked to come and see you.

Q. You were asked to come and see me you say. Did you come? A. Yes, I came and saw you. 10

Q. And was your statement taken? A. Yes.

Q. How long ago was that? A. About two weeks ago, I think.

BY CONSENT Exhibit B1 is put in in addition to Exhibit B. Extracts from the daily reports of the Meteorological Department, Poona, published in the Rangoon Gazette are put in by consent of both Counsel and marked as Defendants Exhibits 1 and 2.

THE HON'BLE SOMERSET BUTLER recalled by Mr. Paget and duly sworn according to the Directions contained in the Writ of Commission. 20

No. 15.  
Honourable  
Somerset  
Butler  
(recalled).  
Examina-  
tion,  
December  
30th, 1937

EXAMINATION-IN-CHIEF BY MR. PAGET:

Q. Have you brought with you Messrs. Blackwood Ralli & Company's shipment book? A. Yes.

Q. And also Messrs. R. R. Khan Rice Mills' Order Book? A. Yes.

Q. From those two books have you prepared a statement showing when the Brose shipment (163 and 102) left the mills and/or godown and arrived alongside the S. S. "Segundo"? A. The statement is at present in two sheets, one showing the date on which the rice left Khan's mill and in certain instances the dates they were transhipped into cargo boats in Rangoon,—the other showing the dates the cargo boats were put alongside the S.S. "Segundo" and the dates shipment was completed. In certain instances rice was brought down from Khan's mill in the steam barges which are not allowed directly alongside sea-going steamers and therefore the transhipment took place in Rangoon into cargo boats. 30

Q. So that the first cargo boat with this rice left R. R. Khan's mill on the 8th April 1936? A. It was loaded at Khan's mill on the 8th April 1936. 40

Q. And the loading was completed with the 36 odd bags by the 20th? A. That's right.

NO CROSS-EXAMINATION.

BY CONSENT extracts from R. R. Khan's Order Book and extracts from Blackwood Ralli & Company's Shipment Position Book have been put in and marked as Exhibits GG and HH.

*In the  
Supreme  
Court of  
British  
Columbia.*

WILLIAM DICK McLAREN, a witness called on behalf of the plaintiff, being first duly sworn, testified as follows:

Plaintiff's  
Evidence.

DIRECT EXAMINATION BY MR. BULL:

No. 16.

Q. Mr. McLaren, what is your occupation? A. Consulting Engineer, and naval architect.

William  
Dick  
McLaren.  
Examina-  
tion,  
May 20th,  
1938.

Q. What are your qualifications? A. Well, I am a college-  
10 bred shipbuilder and engineer. At one time I had charge of the  
engine design office of the Fairfield Company. Later I took  
charge of engineering work in other shipbuilding in Scotland at  
the end of the war. I operated a shipyard as engine director in  
Scotland. At the present time I do consulting work generally.  
I act for the British Corporation for Registry of Ships, and also  
the American Bureau of Shipbuilding. Do you wish anything  
further, sir?

Q. You are also Chairman of the Board of School Trustees.  
A. Well, I was, but I don't like to offer it as a technical qualifi-  
20 cation; but I will say that I am a member of the Institute of Civil  
Engineers—Structural Engineers and Naval Architects, which  
are technical qualifications.

Q. Do you know the tonnage of the Motor Ship "Segundo"?  
A. From what I have seen I think it is about 4000 tons, I be-  
lieve so, but I am merely going on what I have seen.

Q. There is one report gone in evidence there already which  
gives the tonnage I think as 4,440—something like that. That is  
only approximately. And you have seen the plan of the ship  
that has been put in as an exhibit. A. Well, I looked at it yester-  
30 day afternoon as it was left in here. That is the first time I saw  
it.

Q. That is Exhibit 15. That shows the plan of the arrange-  
ment of the cowl ventilators— A. Would it be quite in order  
that I should look at that plan?

Q. Yes. A. Yes, that is a photostat of a print.

Q. Yes. A. Just showing a few things, the engine and the  
boiler, yes.

Q. Yes. Will you state the primary purpose of the Sam-  
son posts? A. Yes, Samson posts are built into a ship for the  
40 purpose of carrying derricks. Very often you require derricks  
where there are no masts, and they built Samson posts which  
support the derricks. They are tubular construction.

Q. To what extent are they used for the purpose of ventila-  
tion? A. Well, they use them because they are there. The Sam-



*In the  
Supreme  
Court of  
British  
Columbia.*

Plaintiff's  
Evidence.

No. 16.  
William  
Dick  
McLaren.  
Examina-  
tion,  
May 20th,  
1938.

—continued.

son posts being tubular construction, have got to be fairly big in diameter, because of the work it has to do. Naturally it protrudes across from the hold, and because of its presence they make use of it as a ventilating trunk.

Q. Can you explain in respect to the induction and eduction of air? A. Well they are not much use for passing air, because they are made with a mushroom top, that is like a top storey, and that is more like a telephone line coming down, but because of that kind of construction which did not entrain the air very well, they provide for liberating the air, that is the usual construction. 10  
In rare occasions you see them with a cowl, but very rarely.

Q. Well, to what extent, if any, are they used for ventilation of a vessel, unless used in conjunction with cowl ventilators?

A. Oh, in this they would not be much use. They only provide escapement.

Q. Now to what extent should ventilation by means of cowl ventilators and Samson posts be supplemented through the hatch covers? A. Well what are you basing—

MR. DESBRISAY: Does this witness know anything about the carriage of cargo. He has built ships, but has he carried 20 cargo?

MR. BULL: Q. I take it you are now speaking of matters of which you have technical knowledge? A. Yes sir. As inspector for the British Corporation, and American Bureau, it is our duty to attend to the suitability of ships for carrying cargoes. It is our definite duty.

Q. Now do you remember the question. To what extent should ventilation by means of cowl ventilators and Samson posts be supplemented through the hatch covers? A. Well, the way I saw the conditions, I don't think there is any defect of having 30 too much ventilation, and masters usually open hatch covers when they can.

Q. What is the purpose of ventilation in respect to a cargo of grain? A. To what?

Q. What is the purpose of ventilation in respect to a cargo of grain, or a cargo of rice? A. I take it that the purpose of ventilation for anything of organic nature is to provide a free passage of air, and grain is of that nature that you have to ventilate it with regular changes of air.

Q. And can you state, in your opinion, what is the primary 40 condition to be observed in a proper system of ventilation? A. Well one should observe that there is proper circulation. If you merely make a few holes through, puncturing beam, that doesn't necessarily cause good ventilation. Your purpose is to try to get air in at one end and out of the other, with the inlet and the outlet as far apart as possible to provide the best circuit.

Q. Now I propose to question you, Mr. McLaren, for your opinion just based on certain facts in connection with the voyage of this "Segundo" from Rangoon on April 24th, 1936, to British Columbia via the North Pacific, and I want to read to you first certain extracts from the log, Exhibit 7. The first thing I direct your attention to is that on the 27th of April which is three days after she left, at about three o'clock—between one and four in the morning, there was merely a gentle breeze, cloudy, very dark and threatening. About three o'clock there is a note, put on ventilator covers on account unsettled weather. Now I think they were on for 20 hours continuously—

MR. BOURNE: There is no evidence of that. The log shows quite the contrary.

MR. BULL: I didn't hear the objection.

THE COURT: He says there is no evidence of your statement that the ventilators were on 20 hours.

MR. BULL: Well from 3 o'clock until 21 o'clock, isn't that—that is 20 hours, is it not?

Q. You understand how a ship's log is kept? A. I do, yes.

20 Q. Time is from 1 until 24. A. Yes.

Q. The first four hours would be from one o'clock to four. A. That is correct.

Q. Yes, we find at three o'clock in the morning, the Ventilator covers were put on on account of unsettled weather, and then at 20 o'clock, airing the holds until 23 o'clock, when ventilator covers put on account rain.

I would suggest that the log does show that the covers were on for 20 hours, and the ventilation was therefore interfered with. And then, more than that, on April 28th they were closed for 13 hours, that is from one o'clock in the morning until one o'clock in the afternoon. At that time under the head of "Direction and force of wind, Weather", I find there is a northerly gentle breeze, overcast sky, squally, rain, cloudy, rain. And I want to refer to later on in the voyage, May 8th, at 17 o'clock the wind was easterly and rough, fresh breeze, at 17 o'clock it was rough, at 19.30 o'clock, put covers on ventilators owing to rain, heavy head seas, some pitching, fresh breeze, overcast sky, very dark and threatening; at 21 o'clock, easterly, very rough, strong breeze, overcast sky, very dark and threatening, drizzle, much pitching, some spray over the forepart of the vessel. On the 9th the wind is described as No. 7 half a gale, heavy head seas, pitching and spray over decks and hatches. At six o'clock, half a gale, heavy head seas, pitching, spray over decks and hatches. At ten o'clock, fresh gales, No. 8, much pitching, spray over the forepart of the vessel. At 14 o'clock fresh gale, vessel pitching heavily, and shipping lots of spray over the decks. At 18

*In the  
Supreme  
Court of  
British  
Columbia.*

Plaintiff's  
Evidence.

No. 16.

William  
Dick  
McLaren.  
Examina-  
tion,

May 20th,  
1938.

—continued.



In the  
Supreme  
Court of  
British  
Columbia.

Plaintiff's  
Evidence.

No. 16.  
William  
Dick  
McLaren.  
Examina-  
tion,  
May 20th,  
1938.

—continued.

o'clock half a gale, heavy head seas, hard pitching, some spray over the forepart of the vessel. At 22 o'clock, 8, fresh gale, hard pitching, spray over foredeck. On May 10th at 2 o'clock in the morning, 8-7 fresh gale, continuous heavy head seas with spray over the foredeck. At 6 o'clock half a gale, continuous heavy head seas with spray over the foredeck. At 10 o'clock, strong gale (9-10) whole gale, rough, choppy seas, much pitching, very dim account rain, sounding regular signals, watchman on the forecastle. At 14 o'clock, strong gale, breeze 9-8 hurricane like squalls, with spray over the forepart of the vessel. At 18 o'clock fresh gale, tremendous rolling and pitching, shipping some seas over the forepart of the vessel. 10

At 23 o'clock half a gale, very heavy easterly swell, much pitching, and rolling, with spray over the foredeck. On May 11th at 2 o'clock in the morning, the weather is indicated by No. 6, fresh breeze, No. 5. At one o'clock removing the covers from ventilators to air the holds. Hard pitching and rolling.

Now, during those hours that I have given you there, from May 8th until May 11th, they were closed continuously for 55½ hours, that is the cowl ventilators, all cowl ventilators were closed 20 for that time. At the expiration of the 55½ hours the hatches and cowls were opened and three days later both cowls and hatches were again closed on the following three days for periods of eight hours per day.

MR. BOURNE: Which day is that last one?

MR. BULL: The last day is the 17th of May.

Q. Now assuming a voyage such as I have told you about, with that experience, under all the stress of weather and the closed ventilators, I want to know whether, in your opinion the mere instance of opening a Samson post or Samson posts would be considered adequate provision for ventilation. A. I would consider then, no. 30

Q. In those conditions what functions, in your opinion, would you suggest the Samson posts fulfilled? A. I take it from your description—and I think you said that these cowl ventilators were closed during severe weather.

Q. Yes, 55½ hours. A. At one time for 55 hours?

Q. Yes. A. While the cowl ventilators are closed, the Samson posts are no use as ventilators in the ordinary way, because they merely provide one hole out of the compartment, and they only liberate such air as is a little warmer, you see, you wouldn't even get through action of the air, but you would simply get a little liberation of the air from the hold. The circulation of air would be untouched completely as long as you closed the cowl ventilators. No air would be entrained that air could escape—if it gets warm enough to escape. That is all the Samson post would do 40

under that condition.

Q. Yes. Is it possible to say how many times air in a hold will change from the process of natural circulation induced by an open cowl and a satisfactory means of egress? A. No, I don't think one could say. Of course, in a ventilating system where you use mechanical means, you arrange a change of air so many times an hour, but you can't do that under natural means, because it depends upon the direction of the wind, the force of the wind, whether it is with or against the ship, and all these factors which  
10 include the question of control.

Q. Yes? A. So there is no means of knowing.

Q. Assuming that on the arrival of the "Segundo" in the Fraser River the following temperatures were noted—perhaps you might take the plan before you there: No. 1 hold 82 degrees; No. 2 hold forward 90, No. 2 hold aft, 106—

THE COURT: Just a minute. No. 2 aft—

MR. BULL: No. 2 aft, 106. No. 3 forward 106, No. 3 aft 90, No. 4, 78. Can you explain why the temperature gradient increased towards the centre of the ship? A. I am not able to explain it, but I might suggest the reason why it should get warmer.  
20

MR. BOURNE: He doesn't know how to explain it—

THE WITNESS: Excuse me, I wish to finish the sentence.

MR. BULL: Let the witness finish.

MR. BOURNE: It is not a proper question, and I submit the very form of the answer shows that this witness is not competent to answer that question.

THE WITNESS: Your lordship, I would like to finish my statement.

THE COURT: It might be that he can explain it, because  
30 it wasn't there—but he can go on and explain those conditions that were found at that time.

Q. That is what you want to say? A. I was saying that, my lord.

Q. Yes? A. In the frame of a ship we have this shape, and that leads both to the forward and after end, with much bigger bulk amidship, and when we come across any ship's cargo which is forward, or much more surrounded or farther over into the bulk than the cargo elsewhere, the effect at the ends of a ship is always greater than in the centre, so that one would expect clearer cargoes at the ends than in the centre, and that is  
40 what we find. However, there is another factor for your consideration, you see, it was fairly warm at the after end of No. 2, and at the forward end of No. 3. These are on each side of the engine room, and the engine room is always the warmer part of the ship—it can't be otherwise—much warmer than the rest of the ship, because it meets with the same air as the rest of the ship,

*In the  
Supreme  
Court of  
British  
Columbia.*

Plaintiff's  
Evidence.

No. 16.

William  
Dick  
McLaren.  
Examina-  
tion  
May 20th,  
1938.

—continued.



*In the  
Supreme  
Court of  
British  
Columbia.*

Plaintiff's  
Evidence.

No. 16.  
William  
Dick  
McLaren.  
Examina-  
tion,  
May 20th,  
1938.

—continued.

and that air is heated by the working of the engines, so one always finds warmth there. So I think those are two explanations as to why we should expect more temperature towards the centre of the ship.

Q. By the way, this boat was powered with diesel engines, apparently? A. Yes, so I see.

Q. Will you explain how the heat generated in the combustion of oil is dissipated? A. Yes, I can give you that in terms which would apply to most engines, and no engine can be very far from average. In working of diesel engine, about 40 per cent of the heat usually employed, 60 per cent is dissipated. Of the dissipated heat, about 30 per cent goes through circulating water and 30 per cent by means of exhaust. Whether by means of circulating water or exhaust, that heat is heating the engine room, and the amount of the rise of temperature depends upon the amount of circulation of air they maintain in the engine room, but you might expect anything up to 20 degrees more than the surrounding air under certain conditions.

Q. What is the temperature in the exhaust in the case of a four-cycle engine? A. Well you don't like to operate them over 600 degrees, they are getting a little heavy. Some of them might be a little more, but we try to get them at that.

Q. What is the temperature at which the circulating water will be discharged? A. With sea water circulation we try to keep it at 110, with fresh water we allow a little more, because there is no serious effect of salt deposit.

Q. What do you think in your opinion whether or not the heat in the engine room ordinarily would be conducted through the bulkhead? A. Well the suggestion because the engine room is warmer than the adjoining space and that the temperature does cause the heat to flow through the bulkhead. That is a physical fact, yes.

Q. Can you explain the variation in temperature in different parts of the holds. I am now referring to my previous question as to the increase in temperature according to the variation in temperature in different parts of the same hold, assuming that there is a variation. A. Well we couldn't expect to find just uniform temperature in a hold. There are two or three factors. Suppose a hold were carrying some inorganic thing, a thing that is not subject to any change, then the heat attracts all the airflow because of the changes of temperature, the stream of air finds easier passage, and the temperature would be lower there; at pockets where the air can reach the temperature is higher, I would say definitely that it would be a very rare thing to find uniform temperature in any hold, especially from natural ventilation.

## CROSS-EXAMINATION BY MR. BOURNE:

Q. Have you had any experience at sea, Mr. McLaren, that is, I mean, you have never operated a ship? A. I have not operated a ship, no.

Q. So that your experience is purely as you have described, in the technical—purely technical experience. A. Well my experience involves going on many ships, but not as a ship operator, but as a builder and a consultant, and I have got to attend trials of all kinds of ships under many conditions.

10 Q. Going on ships in port and making surveys? A. And a knowledge of vessels too.

Q. Yes. A. But not as a ship operator.

Q. No. Now you described the construction of the cowl ventilator. A. Yes.

Q. To my friend, and you said the primary function was of course a support for the derricks. A. No—excuse me.

Q. I am sorry, I should have said Samson post ventilators. I used the wrong expression. That is correct? A. The Samson post is the primary support of the derricks.

20 Q. Yes, but they are a recognized type of ventilation? A. They are used for ventilation.

Q. Yes, but they are a recognized type in the construction of ships, and that is the reason that they are made hollow and connected with bolts, is that not right? A. No, I don't wish to agree to that, I wish to put it another way if I may.

Q. Well put it your own way as long as we get the idea. A. Well, the way is this, that derricks have to be carried in order to operate the hold, the same as any place where masts are available. They approximate to the condition of a mast by putting up a Samson post. It is necessary to make your Samson post tubular because the tubular post gives the best strength; and the fact that the post is tubular and yet naturally allows one half of it for ventilation, but the primary purpose of the Samson post is to support the derrick.

Q. Yes, but now they are constructed in the form in which you were told they were on the "Segundo" for the purpose of providing ventilation as well as for use for their primary purpose. A. I wish to say that they are only useful for ventilators when air is admitted in some way to allow the air to escape.

40 Q. You haven't answered my question. You will get plenty of opportunity to give that other answer. I say that they are constructed in the form in which they are on the "Segundo" as described to you, in order to provide a means of ventilation in addition to providing for their primary purpose. A. They provide a means of ventilation.

*In the  
Supreme  
Court of  
British  
Columbia.*

Plaintiff's  
Evidence.

No. 16.  
William  
Dick  
McLaren.  
Cross-Ex-  
amination  
May 20th,  
1938.



In the  
Supreme  
Court of  
British  
Columbia.

Plaintiff's  
Evidence.

No. 16.  
William  
Dick  
McLaren.  
Cross-Ex-  
amination,  
May 20th,  
1938.

—continued.

Q. And that is a recognized form of construction? A. That is right.

Q. And what would be the interior diameter of a Samson post on a ship such as the "Segundo"? A. Oh, about 18 to 24 inches. They vary, depending upon their purpose. 18 inches probably. It might have been even less. The rules admit of various sizes you know.

Q. And you said something about the frame of the ships. A. Yes.

Q. Now are the covers of those Samson posts fixed, or are they some that are put on on occasions? A. Not in the case of the Samson posts, because of the height above the water, there is no connection at all with them, they are so high.

Q. They are fixed? A. They are fixed in position as a rule —as a rule.

Q. But they can be raised up and down? A. They are made so in many cases with a screw.

Q. Yes, and as they are raised, of course it provides more air. A. That may be—

Q. Why do you say that they are a good means of permitting air to escape, and not a good means of permitting it to get in? A. Would I be allowed to illustrate that? Q. Yes, that is what I want you to do. A. Let us fix that there, sir. This post is erected from the deck, and in order to prevent rain from going into it, this mushroom top is put over it. That mushroom top moves over more with the post. Now it is quite easy for air to rise out of this post and escape, but there is nothing in this mushroom top to cause air to be induced down the ventilator or cowl itself, so that the purpose is essentially one of escapement. Now that is what I have described that is the way—

Q. But it will also permit air to get into the hold? A. It will permit it, but not induce it.

Q. I suppose this is so, Mr. McLaren, that if there are two Samson posts ventilators connected with one hold then there will be taken in a further amount of air. A. No, there is nothing to cause that, because what one does the other does. They are all equally good, and they can provide escapement. I would like to illustrate that if the air in the hold gets slightly warmer, causing the inside to be lighter than the air outside, then the difference will be established by air escaping, but that is what the post does, it allows air to escape, but from its very construction does not induce air into the hold. Now whether you put up one or more, what one fails to do the other fails to do. You require something different to cause circulation.

Q. Surely this is so, that if air is being taken into the hold there must eventually some air escape. Isn't that so? A. My

statement is that the mushroom top Samson post is not going to take air into the hold, and you have—

Q. But if two in one hold, if there is air taken in—air escaping, there must be air taken in. Isn't that correct? A. If it is taken in, but I wish to say it is not used for the purpose of taking air in.

Q. I know, but whatever purpose it may be, I am asking you what the action of it would be when you have two of them together. A. Well I have stated, with the two together, they both  
10 are as one.

Q. I see, so with two together, although either of them may take in some air, does not affect the amount of air that is going out, is that what you are suggesting? A. No, I don't. You have added something to what I have said, sir.

Q. I thought I understood you. Will you repeat what you said then? A. Yes.

Q. Assuming now there are two Samson posts ventilators connected with one hold, described as you have? A. Yes.

Q. Do you want to say anything further on it? A. You  
20 have asked—assuming something, I am waiting, sir.

Q. Well I asked you if you wanted to go on and illustrate as you said you did. A. Well I said this, that I have described that Samson post, and I tried to show the mushroom top, the other Samson post is just like that one. The mere fact you put one close to that or away from it does not necessarily cause circulation of air because the top is not in the shape to induce the air into the hold, it is of the shape to induce air to escape, and it is not causing circulation, it is causing escapement.

THE COURT: Is it not your point that although there may  
30 be a certain amount of air led through one of the Samson posts, that does not produce circulation, because if you take air out from one, the air is coming into the other, and still there is not very much air? A. I am not calling it circulation, but escapement.

Q. Whatever there is, there is not very much? A. I couldn't tell you what it will be. Suppose the temperature in the hold rises about 20 degrees, and that is quite a lot, the escapement will be about 5 percent. That is a physical law.

Q. Then there will be 5 percent— A. 5 percent of the air  
40 will escape from the hold. It has been warmed about 20 degrees above the temperature outside. That is a physical law.

Q. That would induce air to come in through your Samson post? A. It won't cause induction when the air is cooler, unless the air is warmer it maintains position, because it is expansion—it would have to cool again before the other air came in.

Q. Your point is different to my point there. You have not

*In the  
Supreme  
Court of  
British  
Columbia.*

Plaintiff's  
Evidence.

No. 16.

William  
Dick

McLaren.  
Cross-Ex-  
amination,  
May 20th,  
1938.

—continued.



In the  
Supreme  
Court of  
British  
Columbia.

Plaintiff's  
Evidence.

No. 16.  
William  
Dick  
McLaren.  
Cross-Ex-  
amination  
May 20th,  
1938.

—continued.

mentioned that before. A. I am sorry, sir.

MR. BOURNE: Q. You spoke in answer to my friend of the heat of a diesel engine. It is recognized, is it not, that the heat in an engine room coming from a diesel engine is much less than that which would come from a steam engine of any type?

A. Yes, appreciably less, yes.

Q. So that we could expect, in a vessel of the type of the "Segundo" that diesel engine to have a much lower temperature in its engine room than you would find in a steamship? A. Unless correction be introduced. Any steamship that I saw working 10 there is ventilation to keep the temperatures down.

Q. But ordinarily you would expect less temperature in a motor vessel? A. One would expect less, yes.

Q. And you also spoke of the possibility of the hold close to the engine room either fore or aft of it having a higher temperature than in a steamship? A. Yes, I said so, yes.

Q. Now you also used the expression that heat would flow through the bulkhead. What did you mean by that? A. If the engine room side of the bulkhead has a much higher temperature than the hold side, then that temperature causes the heat 20 to flow.

Q. Heat to flow? A. Yes.

Q. That is—I want to be sure that I understand that, because you used that expression. A. Yes.

Q. That is, you would expect air in the hold immediately adjoining the engine room to have added heat flowing through the bulkhead? A. Well you understand it is heat flowing.

Q. Well, I said flowing through the bulkhead. A. Yes, that is right.

Q. And if it is taken care of with any siding on the ship, 30 there is a space left between the bulkhead and the cargo. A. That is right, it does not keep the air from taking away the heat—

Q. It allows circulation? A. Yes, and that air becomes warm because of coming against the hotter plate.

Q. When you say airflow, you simply mean what we ordinarily understand the same thing—air in contact with something warm becomes warm itself. A. That is so, yes, that is the way with all currents of air.

Q. There is provision in the engine room for meeting that heat? A. Yes, there is provision, but I made the statement that 40 the engine room is warmer.

Q. And the heat rises in the engine room naturally as it would anywhere else? A. That is so.

Q. You gave the illustration of why you would expect to find the air—the temperature higher in the hold at the stem of the ship and also at the stern, and also places closer to the en-

gine room, although you have told me that in the case of a diesel engine that probably would not be anything like as hot as in the case of a steamship. Now isn't this another probability, if, having the heat greater in one hold than another one, some of the cargo may have become, through inherent defect before it was loaded, heated in itself. Isn't that correct? A. The cargo itself heating?

Q. Yes, you might have that condition. That is correct, is it not? A. If the cargo is heating in itself, that would cause the temperature to rise.

Q. Now you were asked, are you familiar—I think you said, McLaren, you were familiar with reading of logs? A. Yes, very familiar, I have to analyze many of them.

Q. Yes, I thought you would. Does it indicate to you that—what does that indicate to you here?

MR. BULL: What is the reference?

MR. BOURNE: That is under date of April 27th.

Q. My friend read to you "Put on ventilator covers on account unsettled weather".

20 THE COURT: Page what?

MR. BOURNE: It is page 10, I think, my lord, but it is under the date of April 27th.—A. Yes.

Q. Well? A. I read that, yes, "Put on ventilator covers". That is exactly the way he said it.

Q. What are ventilator covers? A. Oh, that is natural ventilation which takes the air into the holds as they are closed down on the deck, and your ventilator is made with a coaming, which is a stiff plate, and then the top of the coaming just catching this little plate, then when they get into heavy weather this ventilator is closed down on the deck, or they would ship seas.

30 Q. Yes? A. Now, the practice is, and this is involved in a statutory regulation, but the practice is to have a means of plugging the ventilator by a cover, in fact, it is usually provided that there should be canvas also, as well as a wooden plug, and the duty is to close these ventilators if the weather is extremely severe—

Q. Yes. Now you say the practice is to have a wooden plug as well as canvas? A. That is the common way, the common way. Sometimes they make metal stoppers, but usually it is a wooden plug.

40 Q. Do they not sometimes have simply a cover—a heavy canvas cover? A. That would be if the weather is not too bad, but I think you will find that they specify that the ship shall be provided with plugs which would cover the ventilators.

Q. Yes, but as a matter of experience in operating ships,

*In the  
Supreme  
Court of  
British  
Columbia.*

Plaintiff's  
Evidence.

No. 16.

William  
Dick  
McLaren.  
Cross-Ex-  
amination,  
May 20th,  
1938.

—continued.



*In the  
Supreme  
Court of  
British  
Columbia.*

Plaintiff's  
Evidence.

No. 16.  
William  
Dick  
McLaren.  
Cross-Ex-  
amination  
May 20th,  
1938.

—continued.

isn't it quite a frequent practice even in rough weather to cover these cowl ventilators with canvas covers alone? A. The canvas cover is an intermediate step with an open cowl, you would practically close the cowl—

Q. But you haven't answered my question. You said you have had considerable experience in surveys. A. Yes.

Q. And seeing the operation of ships, how they have been operated. A. Yes.

Q. And I asked you if it is not common practice in the operation of ships even in severe weather to cover cowl ventilators simply with canvas covers? A. That is quite a common thing. 10

MR. BOURNE: That is all, thank you.

THE COURT: Now, gentlemen of the jury, at any time if there are any questions you would like to ask any one witness, please let me know, and if they are proper questions I will have them put. Next witness.

(Witness aside).

THE COURT: Gentlemen of the jury, we are going to adjourn now. I am afraid you are finding the reading of this Commission evidence rather tiresome. It is rather difficult to follow, but no doubt when counsel come to address you, they will direct your attention to the important parts. I also, of course, have to charge you on the evidence. 20

I am going to adjourn until half past two. Please bear in mind not to allow anyone to talk to you, and do not talk to anyone about the case.

(COURT ADJOURNED AT 1 O'CLOCK UNTIL 2.30 P.M. OF THE SAME DAY).

MAY 20, 1938: 2:30 P.M.

30

(COURT RESUMED PURSUANT TO ADJOURNMENT)

THE COURT: Have you the commission evidence there? All right.

MR. BULL: I will call Captain Reed now.

THE COURT: Yes, that is the evidence for the plaintiff.

ARCHIBALD C. REED, a witness called on behalf of the Plaintiff, being first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. BULL:

Q. I understand you are a master mariner, Captain? A. Yes, sir. 40

Q. With what papers? A. I have extra master's certificate for all classes of ships.

Plaintiff's  
Evidence.

No. 17.  
Archibald  
C. Reed.  
Examina-  
tion,  
May 20th,  
1938.

Q. And your present occupation is what? A. Harbour Master in Vancouver.

Q. How long have you held that post? A. 26 years.

Q. Prior to that what experience had you at sea, generally speaking? A. I have had altogether 28 years sea experience and 26 years Harbour Master's experience, and I also served overseas.

Q. Have you had any experience with trade in rice and general cargo? A. Yes, sir: nine years.

10 Q. And are you familiar with the system of ventilating grain cargoes? A. Yes, sir.

Q. Are you familiar with what is known as the Samson post ventilators? A. Yes.

Q. What is their purpose—the primary purpose of a Samson post? A. The primary reason is for support for derricks.

Q. And if used in conjunction with cowl ventilators, do they serve any purpose? A. They are also used for ventilating purposes, and sometimes they are even fitted with cowls, but that is not usual.

20 Q. In your opinion does the Samson post ventilators in themselves do the Samson post ventilators produce good ventilation? A. No. They will give ventilation, but not sufficient to ventilate a cargo that requires good ventilation.

Q. And if they are used in conjunction with cowl ventilators do they serve as good ventilators? A. Yes, they will serve as an up-take for good air and foul.

Q. Have you read the extracts from the log of the M.S. "Segundo"? A. I beg your pardon?

30 Q. I asked you if you have read the log or extracts from the log, which is put in as exhibit 7, of the voyage of the M.S. "Segundo" from Rangoon to Fraser River in April and May 1936? A. Yes.

Q. I believe your answer was yes? A. Yes.

Q. Have you particularly noticed the remarks in the log relating to the opening and closing of the cowl ventilators? A. Yes, I have paid particular attention to that, and also the opening and closing of the hatches of the ship.

40 Q. Now if after the arrival of the ship it was found that there was condensation of water on cold surfaces in the hold, how in your opinion would that be caused? A. Through insufficient surface ventilation.

Q. Yes. Anything else? Do you want to add to that in any way? A. Well, that would be the primary cause, of course, but the cause of the condensation would be the presence of damp, humid air in the hold, which, being brought into contact with the outer skin of the ship in Northern Pacific waters, which are

*In the  
Supreme  
Court of  
British  
Columbia.*

Plaintiff's  
Evidence.

No. 17.  
Archibald  
C. Reed.  
Examina-  
tion,  
May 20th,  
1938.

—continued.



*In the  
Supreme  
Court of  
British  
Columbia.*

Plaintiff's  
Evidence.

No. 17.  
Archibald  
C. Reed.  
Examina-  
tion,  
May 20th,  
1938.

—continued.

colder, would cause condensation and would of course be a perfect system of condensation on the ship.

Q. Well, would you say condensation would indicate anything to you with regard to the humidity in the air of the hold?

A. Certainly. Unless you had a damp humid atmosphere there could be no condensation.

Q. Speaking from your own experience, would you say that a cargo of rice could absorb any of that moisture? A. Unquestionably, in my opinion.

Q. What in your opinion was the direct cause of the build- 10  
ing up of such humidity and the resulting condensation? A. The damp humidity would be caused by the opening of hatches and then being compelled to close them during periods of bad weather, plus the cold water on the ship's skin condensing the damp humid atmosphere.

Q. Now having regard to the facts shown in exhibit 7 and the extract from the log, and particularly with regard to the opening and closing of the cowl ventilators, and having regard to the fact the ship carried a cargo of rice, what would you, in your opinion expect the condition of the cargo to be on arrival 20  
at the port of discharge? A. I would expect it to be more or less damaged if the ventilation was not as good as the master of the ship was able to accord it.

Q. And what would that dampness consist of? A. Dampness on the bags, penetrating in a certain distance to the interior of the bags not necessarily right through, but possibly some inches from the outside of the bags.

Q. Well, what would naturally follow from that moisture penetrating the bags? A. The absorption of the moisture in the contents—if I understand your question right. 30

Q. Now have you anything to say with regard to the remarks in the log about the pitching and rolling of the ship in heavy weather, from your experience? A. Yes.

Q. Would that have anything to do with the heating of the rice? A. In my opinion, decidedly so. When I was shown the extract from the log, before any question came up I immediately considered that since violent or heavy rolling is repeated several times in the log book, that the action of this rolling does cause friction and working of the cargo further while it is stowed to such an extent that in some cases of cargo that are inflam- 40  
mable, it would catch fire.

Q. That is, inflammable cargo? A. Yes, but rice being non-inflammable, I have never heard of it catching fire, but undoubtedly, with the heavy working of the ship, with the hatches open, it would set up heat.

Q. Well, assuming the cargo of rice which was carried in

the tween decks space arrived in good condition, would you attach any significance to it? A. Yes, because the extract from the log showed that for part of the time anyway the hatches were open, and that would indicate the cargo in the tween decks would have access to the air and would be ventilated so that the humid air would be given off.

*In the  
Supreme  
Court of  
British  
Columbia.*

Plaintiff's  
Evidence.

CROSS-EXAMINATION BY MR. BOURNE:

Q. Captain Reed, you know Captain A. B. Watson, surveyor for the Board of Marine Underwriters? A. I do, sir.

10 Q. And you consider him well qualified to express an opinion bearing on the issues in this action? A. I have no doubt he is.

Q. You didn't see the cargo on the M.S. "Segundo" either when it was on the ship, or before it was discharged or after? A. No, sir.

20 Q. And I suppose if Captain Watson did see the cargo, both while it was on the ship and after it was discharged, he would be in a better position to express an opinion with reference to the matters in question in this action, and particularly with reference to the cargo that was damaged than you would be? A. Possibly, yes.

Q. And if his opinion differs with yours in respect to any of those matters I have mentioned, you would not quarrel with his opinion? A. I would unless I had a conversation with him and heard what he based his opinion on.

30 Q. Well, anyway, we can leave it at that: He would be in a better position to form an opinion on that than you? A. I wouldn't say that. By seeing the cargo he has a better advantage of me than I have in not having seen it, but I would not be prepared, except on the basis of a friendly conversation, to argue with Captain Watson or anyone else.

Q. Well, I will put it this way: If you had seen the cargo—if you had been present during the discharging of the cargo and watched the cargo afterwards, you would have been in a better position to express an opinion on the matter you have given evidence on to-day than you are without that? A. Precisely.

40 Q. Now you, in answer to my learned friend, gave certain opinions with reference to the log. Did you take the trouble to check up and form any opinion as to how long the ventilators were closed and how long the hatches might be open on this voyage from Rangoon to the Fraser River? A. No, I didn't work out any details. I simply saw the log as showing day after day succession of strong winds not amounting to the force of a whole gale—I think force 10 is the greatest—but heavy weather and violent rolling of the ship, throwing heavy sprays, is frequently mentioned, indicating perfect ventilation is impossible.

No. 17.  
Archibald  
C. Reed.  
Examina-  
tion,  
May 20th,  
1938.

Cross-Ex-  
amination



*In the  
Supreme  
Court of  
British  
Columbia.*

Plaintiff's  
Evidence.

No. 17.  
Archibald  
C. Reed.  
Cross-Ex-  
amination,  
May 20th,  
1938.

—continued.

Q. Now what time would you say the vessel was in the process of heavy pitching and rolling during that voyage? A. From the extract that I saw, the greater part of it was taken up in pitching and rolling, but I did not commit it to memory.

Q. A greater part? A. From the extract I saw.

Q. And you are basing your opinion on the several matters that might be affected by it, on the fact that for the greater part of the whole voyage the vessel was pitching and rolling heavy? A. The part of the log that I read—I did not scrutinize it for the purpose of committing it to memory. 10

Q. Well, what copy did you see? Was it the translation of the log which is now exhibit 7? A. If you will show it to me. Yes, I think this is the exact copy that I saw sir.

Q. Yes. A. Shipping spray over fore deck.

Q. Now just look, captain, the first day of the voyage, the 24th April. A. 24th April.

Q. There is no indication on that day that there was anything but a slight sea on the one occasion and a moderate sea on the other. A. Yes, I have the 24th.

Q. And a gentle breeze in the one entry and a moderate 20 breeze in the other? A. Yes.

Q. No reason to close the ventilators under those circumstances? A. No, but under those conditions damp warm air in that part of the world, in what they call the straits, would be entering the hold. You would not expect condensation unless there was colder water outside.

Q. Yes, and the temperatures there indicate nothing to you as extraordinary for that locality? A. Well, it would indicate to me—Where are the temperatures shown?

Q. It is in the second column—85, and 84, and 84, and so 30 on. A. Well, that is high. That is the sort of weather you would get in the Straits at that time of the year, and that would be heavily diluted with moisture, and humid.

Q. And the water is warm, of course? A. Yes.

Q. Now take the 25th of April. A. Yes, sir.

Q. Do you see the wind is shown all through that day? A. Moderate breeze.

Q. Fresh breezed, fresh breezed and moderate breeze? A. Yes.

Q. And the sea? A. Moderate to rough. 40

Q. The first three entries moderate and rough, then moderate again? A. Yes.

Q. And for eight hours rough? A. Yes, and the last two entries "Shipping some spray over the fore deck."

Q. But that doesn't indicate pitching and rolling, does it? A. No.

Q. And then on Sunday April 26th, going down as shortly as we can: "Moderate breeze" all through that day down to "gentle breeze" in the last entry? A. Yes.

Q. And the sea moderate? A. Yes, except in the first watch they enter "Shipping spray over the fore deck".

Q. But nothing mentioned about pitching and rolling there? A. No. That is quite usual.

Q. And then on April 27th during the day: "Gentle breeze, gentle breeze and light breeze." A. 27th—gentle breeze—moderate, and then it says they put on the ventilator covers on account of unsettled weather, and that means they have closed up the holds and kept the damp air in.

Q. And I suppose it is true, if there is danger from damp air, it keeps the damp air out as well—if it is a danger inside of keeping it in? A. Quite.

Q. It works both ways: But let us stick to the weather—pitching and rolling — stick to that 24 hours. There was gentle breeze for the first four, and gentle breeze for the next four, and then light breeze— A. Yes.

Q. And no evidence of pitching or rolling? A. No.

Q. And there is no reason, except on that one occasion, for closing the ventilator covers? A. That is the only entry, except there is one comment I would make there, on the first watch in that day—they put on ventilator covers on account of unsettled weather, and it wasn't until the last watch it says "airing the holds," that ventilator covers were put on on account of rain.

Q. Yes? A. So not having made any mention of ventilators during four watches, I would take it ventilators were still on.

Q. Now does that follow, Captain? Isn't it a fact from your experience correct me if I am wrong, which I know you will do very quickly—that you will find more references to whether or not the ventilators are on in this log than is usual in logs—or than is usual to find in logs of ships of this kind? A. No. The ventilation of a ship should be entered up by the officer on every watch.

Q. Now your reason for expressing the opinion that during the 16 hours—and during the first four hours on the 27th April and the last four hours on the same day ventilators were on, is because in the column of the first four hours there is an indication that the ventilators were put on? A. Yes.

Q. And then in the last four hours there is an indication they are airing the holds? A. Yes.

Q. And you are assuming because there is no entry in the intermediate four hours they must have been closed in the meantime. A. Yes.

*In the  
Supreme  
Court of  
British  
Columbia.*

Plaintiff's  
Evidence.

No. 17.  
Archibald  
C. Reed.

Cross-Ex-  
amination,  
May 20th,  
1938.

—continued.



*In the  
Supreme  
Court of  
British  
Columbia.*

Plaintiff's  
Evidence.

No. 17.  
Archibald  
C. Reed.  
Cross-Ex-  
amination  
May 20th,  
1938.

—continued.

Q. Now look at the indication of the weather and the sea during the intervening 16 hours and tell me if there is any reason in the world why ventilators should be put on? A. No, I do not see any reason at all.

Q. So it would be bad judgment if they were on? A. No, it wouldn't be bad judgment.

Q. Well, explain it then. A. Well, ventilators are put on—

Q. It would be a matter of judgment? A. Yes, it would be a matter of judgment by the officer on watch. 10

Q. Now you have agreed with me already that from the time this ship left Rangoon until this entry we speak of on April 27th the ventilators were open? A. Largely so, I think.

Q. Yes. A. Yes, it says here "Airing holds."

Q. No, there is no entry. A. Yes, on the 26th—you asked me to look back—airing holds through ventilators.

Q. I am sorry, I went too far ahead. Take from the time the ship left Rangoon at 3:20 p.m. A. Yes.

Q. That would be 15:20? A. Yes.

Q. On the afternoon of April 24th? A. Yes. 20

Q. You will see there is no entry whatever with reference to ventilators until the four hours between 9 and 12 o'clock on the 26th—the third day after—and then— A. Yes.

Q. And then the entry is "Airing holds through the ventilators and through door in forward end of No. 2 hatch." A. Yes.

Q. Now you have already agreed with me that the ventilators must have been open during those first two or three days and there is no entry? A. There is no entry.

Q. Therefore, I suggest to you that it does not follow because there is a blank space on the 26th or 27th—rather in the first four hours when there is an entry "Ventilator covers put on because of unsettled weather" until the last entry "Airing the holds until 23 o'clock, when ventilator covers put on on account of rain"—it does not follow because there is a blank space there that the ventilator covers were not taken off in the meantime? A. Naturally there was—and the reason the officer of the watch did not enter it, I cannot tell you; but I would have that inference. 30

Q. Well, give me your reason for this log not being more carefully entered when the ventilators were on and off than ordinary logs are. Give me your reason in view of your information why there is not some reference to the ventilators for the first few days of the voyage. A. I cannot give you any reason why the officer did not enter this up. 40

Q. So we cannot take it as final by taking the time between

one and the other and assuming they were either open or closed during those periods? A. I would say since that is the first mention of putting on the ventilator covers, it would appear to be natural that the ventilators were still on in the first few watches—until he makes the entry that he is airing the holds through the ventilators.

Q. What are you referring to? A. The 27th.

Q. Isn't it a fact that the first entry with reference to ventilators at all is the one—the four hours watch on the 26th— A. Yes.

Q. And that entry is "Airing the holds through the ventilators"? A. Right.

Q. And doesn't that displace the argument you have just made? A. I don't think so.

Q. Isn't that an entry made on that occasion of something that must have been the situation from the commencement of the voyage down to that time, because the weather makes it perfectly obvious that they would have the ventilators open? A. I would assume they would certainly be open.

Q. And isn't it obvious on the 28th again—the same thing? A. No, because they have mentioned they have put the ventilators on—they have mentioned they have done something; and they don't say they have done anything else until the last watch of that day, when they say they have again ventilated it.

Q. Yes, but in the first hours when they have put them on you find in the log — on the 27th — "Cloudy, very dark and threatening"? A. Yes, that was why he put the ventilators on.

Q. Yes, and in the next four hours, gentle breeze, moderate A. Yes, but still very dark and threatening; so having put the ventilators on during "very dark and threatening weather" in the next watch, I would naturally assume in the next watch they would be on.

Q. That is what you assume from that? A. Yes.

Q. Now come to this pitching and rolling. A. What page are you on now?

Q. We have got through the 27th and there is no reference to that, and no reference to it being heavy and rolling. And coming now down to the 28th, the reference to the wind is "Gentle breeze", gentle breeze: gentle breeze: light breeze; light breeze; light breeze;—throughout the 24 hours. A. Yes, but if you read the first watch there, gentle breeze, overcast sky, squally and rain.

Q. Now but I am talking of pitching and rolling. A. Yes, but you are also talking of gentle breeze.

*In the  
Supreme  
Court of  
British  
Columbia.*

Plaintiff's  
Evidence.

No. 17.  
Archibald  
C. Reed.  
Cross-Ex-  
amination,  
May 20th,  
1938.

—continued.



*In the  
Supreme  
Court of  
British  
Columbia.*

Plaintiff's  
Evidence.

No. 17.  
Archibald  
C. Reed.  
Cross-Ex-  
amination,  
May 20th,  
1938.

—continued.

Q. Does that indicate that the ship was pitching and rolling? A. Oh, no, but you referred to "gentle breeze" and I thought you would read the whole of the entry.

Q. Well, let us get your opinion on pitching and rolling as affecting the cargo in this ship, and nothing else. A. Very good.

Q. And I understand you to say there was pitching and rolling during the greater part of the voyage? A. No, not the greater part, but during the greater part in the North Pacific, if I have read the log right. The log that I saw—or the extract showed a very large amount of pitching and rolling. 10

Q. Well, now, just let me see where that comes in. It comes about the 7th or 8th May in the North Pacific. And there is no contest about that. There was bad weather there for some time.

A. Yes, it was the 7th May: "Easterly swell, some pitching, airing the holds through ventilators."

Q. Now on the first four hours on the 7th May there is an entry "Some pitching"? A. Yes.

Q. And I am only going to deal with "Pitching". A. Yes.

Q. And nothing until the last four hours on that day, when there was again some pitching. A. Yes. 20

Q. And then we get to the 8th. The first entry: "Vessel pitching," and the second the same, and again the third time "Much pitching", and the fourth "Much pitching." A. The fourth watch gives "Much pitching and heavy head seas."

Q. Yes, and then the fifth—for those four hours—"some pitching." And the last four hours, "Much pitching"? A. Yes.

Q. And then when we come to Saturday May 9th, no evidence of pitching? A. Oh, yes.

Q. Except—wait a minute—we come to the second four hours. A. But the first four hours, "Heavy head seas, pitching, 30 and spray over decks and hatches."

Q. Yes, and the third the same? A. Yes.

Q. Throughout the whole day? A. Yes, throughout the whole day.

Q. It doesn't say pitching heavily? A. Pardon me—"Vessel pitching heavily and shipping lots of spray over the decks."

Q. Well, not pitching heavily? A. One watch says that.

Q. But not throughout the whole day? A. No.

Q. The first one says "heavy head seas, pitching, and spray 40 over decks and hatches," and the next one "Pitching and spray over decks and hatches," and then the next one, "Much pitching, spray over the fore part of the vessel," and the next one, "Vessel pitching heavily and shipping lots of spray over the deck," and then the next one, "Heavy head seas, hard pitching, some spray over the fore part of the vessel." A. Yes.

- Q. And then "Hard pitching with spray over the fore deck". A. Yes.
- Q. On those entries? A. Yes.
- Q. And the next day, May 10th, the first eight hours— A. The first four hours, sir.
- Q. Well, I was taking the eight together. A. Yes.
- Q. There is no entry of pitching there, is there? A. There is by inference, yes. "Continuous heavy head seas," and you cannot have a heavy head sea without pitching.
- 10 Q. Well, then we have got "Very Heavy" on the fourth? A. Yes.
- Q. And then "Tremendous rolling"? A. Yes.
- Q. And then on the last one "Much pitching and rolling"? A. Yes.
- Q. Now we have gone through three days and the first four hours on May 11th is "Hard pitching and rolling"? A. Yes.
- Q. And the same rolling and pitching on the second? A. Yes.
- Q. And then "Much pitching"? A. Yes.
- 20 Q. And then it stops, and for the next 12 hours there is no evidence of it at all, is that correct? A. Yes. And we have the latitude of that day, have we?
- Q. May 11th. A. Because the ship, I imagine, is getting up into colder water then.
- Q. But on Tuesday May 12, if you will look down the right-hand column through the whole day of 24 hours, there is no evidence of pitching or rolling, is there? A. No.
- Q. Or anything to indicate there would be any? A. No. The only entry I see here of the first watch in the evening is
- 30 "Some bags in No. 3 lower hold under the Samson tops were found to be wet through sweat."
- Q. Well, my friend will argue the case to the jury and not you, Captain. A. But I am just calling your attention to the log.
- Q. But I say there is no evidence of pitching? A. No.
- Q. Will you tell me if that remark you have just made has any reference to pitching or rolling at all? A. No, but you are asking me to go over the log.
- Q. Well let my learned friend argue the case to the jury. On Wednesday May 13th there is no evidence of any pitching or
- 40 rolling of that day of 24 hours? A. There is evidence in one watch, "Big easterly swell." And with a big easterly swell the vessel would be rolling or pitching.
- Q. That is in one watch? A. Yes.
- Q. Now take the next 24 hours, is there any indication of pitching or rolling there? A. No, sir.

*In the  
Supreme  
Court of  
British  
Columbia.*

Plaintiff's  
Evidence.

No. 17.  
Archibald  
C. Reed.  
Cross-Ex-  
amination,  
May 20th,  
1938.

—continued.



*In the  
Supreme  
Court of  
British  
Columbia.*

Plaintiff's  
Evidence.

No. 17.  
Archibald  
C. Reed.  
Cross-Ex-  
amination  
May 20th,  
1938.

—continued.

Q. And take the next 24 hours, is there any indication of any pitching or rolling there? A. No, but it says here, "Engines at half speed." Why was that?—oh yes, on account of fog.

Q. And on May 16th—take the first—I think the first 20 hours you can deal with alone. A. Yes.

Q. There is no evidence there of pitching or rolling, is there? A. No, dense fog.

Q. And in the last four hours? A. "Engines at full speed, some rolling and vessel shipping some spray over deck."

Q. And then on May 17th? A. "Vessel rolling and ship- 10  
ping spray over deck." "Much rolling." "Shipping spray over deck."

Q. The first eight hours? A. Yes.

Q. And we have during the day entries indicating rolling?  
A. Yes.

Q. And begin on May 18th? A. But the rest of that day, "Strong breeze and moderate gale," and it is quite evident that the ship must have been rolling, with a strong breeze and very rough sea. The sea was classed as very rough that day, and later on in the evening watch, "Blowing heavy gale," high choppy 20  
seas with tremendous rolling. Vessel shipping spray over decks again.

Q. What are you at? A. On the 17th.

Q. Well, now, we have got from the 10th to the 17th? A.  
Yes.

Q. Nearly seven days with practically no evidence at all of pitching or rolling? A. Oh, yes, there is a good deal of evidence of pitching and rolling from the 10th to the 17th, although I have not made pencil notes of the times.

Q. I would say not. I think it ended on the 10th, that last 30  
bit of unusual weather, but possibly I am a day out. A. There were hurricane-like squalls on the 10th, and on the 11th heavy easterly swell, and on the 12th, easterly swell again, sir.

Q. Well, would you say the vessel would be pitching and rolling, as you have described it to my learned friend, to the extent that it would have an effect on this cargo, with an easterly swell? A. With an easterly swell it is perfectly obvious the ship would be rolling.

Q. But to the extent that it would have any effect on the cargo? A. Well, with a swell, every ship with a roll—the roll 40  
has the effect that I have already described.

Q. With a roll. Then when you see an entry marked "Easterly swell"— A. Precisely.

Q. That indicates to you that the vessel would be rolling to such an extent as to affect its cargo? A. Any rolling to a more or less extent affects the cargo.

Q. Now that is something you can expect on any voyage a good deal of the time, isn't it, Captain—at any time of the year, generally speaking? A. Well, frequently speaking, but I won't say generally. There are some voyages where you get fine weather all the way, but this is a North Pacific voyage—

Q. I agree with that. That is partly through the North Pacific? A. Yes.

Q. All right, go on. "This is a North Pacific voyage," you were saying? A. Yes.

10 Q. Had you finished? A. No, sir—oh, yes, unless you have another question.

Q. You would expect that weather in the North Pacific, wouldn't you? A. Yes.

Q. And it is quite a usual thing? A. Yes.

Q. Now, Captain, you spoke of ventilation and condensation and so on, and I think if I understood you rightly that the difference between the air in the hold and the temperature of the skin of the ship is affected by the temperature of the water? A. Yes, sir.

20 Q. And that you would expect to cause condensation on the skin of the ship? A. Yes.

Q. And that is quite a usual thing which you have to contend with in cargoes? A. Yes.

Q. It is affected by the temperature of the water that the vessel is going through? A. Yes.

Q. And ships if they are properly stowed there is dunnage to take care of that situation? A. Yes.

Q. So that the cargo does not come in contact with the skin of the ship at all? A. Yes, that is quite so.

30 Q. And there are air spaces in between? A. Yes.

Q. So that is not an unusual thing to expect on any ship? A. It is a question of degree.

Q. And it is a thing that must be contended with on any voyage? A. Yes, sir, certainly.

Q. Well, Captain, tell me this. If you find in the same hold (the whole cargo being rice to begin with) if you find in the same hold directly one above the other—starting from the top down—I am not speaking of tween decks— A. No, the lower hold.

40 Q. Yes—a block of rice undamaged, and then another block of rice in between damaged, and then below that, immediately below a block of rice undamaged, how would you account for the centre block being damaged and the others not? A. I couldn't.

Q. When subjected to the same conditions in that hold as far as one can tell—all subjected to the same conditions—in the same positions as far as fore and aft of the holds are concerned—but in those orders, starting from the top to the bottom of the

*In the  
Supreme  
Court of  
British  
Columbia.*

Plaintiff's  
Evidence.

No. 17.  
Archibald  
C. Reed.  
Cross-Ex-  
amination,  
May 20th,  
1938.

—continued.



*In the  
Supreme  
Court of  
British  
Columbia.*

Plaintiff's  
Evidence.

No. 17.  
Archibald  
C. Reed.  
Cross-Ex-  
amination,  
May 20th,  
1938.

—continued.

ship. How do you account for that? A. I couldn't account for it, sir, unless I saw it.

Q. Is there any explanation you can give for that except the fact that the damaged one had some inherent defect before it was loaded on the ship and the others didn't? A. There is a possible cause—you are asking me to give an opinion now and something I was not a witness to.

Q. No, but you were giving your evidence in chief on that—  
A. All right. It is a common thing to revert to coal cargoes where you have pitching on a voyage and lack of ventilation, 10 which causes much damage through spontaneous combustion, and the coal cargo will heat in the centre and the greater heat will be in the centre of the mass.

Q. But that would not be so with respect to rice? A. I couldn't say, but I am only speaking now of certain cargoes that I know are subject to spontaneous combustion.

Q. But there wouldn't be any reason for that in the case of rice being placed in the ship—in the same lower hold as I have described to you? A. No, I have no reason to express it with regard to rice, but I have given you an instance of what happens 20 in a vessel due to heating.

Q. Well, having in mind the circumstances I have described to you, and these several parcels in that position not damaged and the others damaged, would you not say that it must have been caused by some inherent defect which existed before the cargo was put on board? A. I cannot admit that, sir, because I do not know whether rice is subject to a lesser degree of spontaneous combustion that is found in several cargoes. It may be that the inside of the mass had heated and the outer portion had not heated: but that is merely an opinion. 30

Q. Well, you can assume this, can't you: They would be all subject to the same conditions with reference to spontaneous combustion? A. No, because spontaneous combustion generally starts in the centre of the mass.

Q. Centre up and down or in the centre of a huge pile? A. No, the centre of gravity.

Q. Well, now, assuming alongside the piling of this mass that I have described to you ranging in parcels from the top of the ship down, and in the nearest bulkhead there was an air space of 18 inches, and the ordinary system of wood ventilators going 40 horizontally through it— A. Yes.

Q. —so that there would be no likelihood of spontaneous combustion in that way, would there? A. Well, that lessens spontaneous combustion greatly.

Q. And there would not be any difference so far as danger from spontaneous combustion is concerned in that block that I

have described to you as having arrived damaged than with the others? A. But I am referring to the centre of the mass. It would be more liable to spontaneous combustion than that which is adjacent to the air space that you have described.

Q. Well, then, if we come to another hold and find a similar cargo damaged, which is not in the centre of the hold, that will not apply there, will it? A. No.

Q. That argument? A. No.

Q. Now you mentioned coal a short time ago? A. Yes.

10 Q. It isn't usual with coal to put in a system of ventilators through it—or am I wrong about that? A. At times they do, but you are correct in saying that in ships where they carry these cargoes they don't accept them unless they can ventilate through the hatches as far as possible.

Q. And the cargo that you are speaking of was not sacked cargo: it was loose cargo? A. There were other cargoes sacked as well. For instance, if you want my opinion on spontaneous combustion, take bales of wool, they are liable to spontaneous combustion through the working of the ship, and some have  
20 caught fire through that spontaneous combustion alone.

Q. Yes, Captain, and it is quite proper for the captain or the master of the ship to close the ventilators when there is spray or rain and in heavy weather in order to protect the cargo, isn't it? A. Yes. It is one of the most important duties of the officers on watch to see that the ship is protected from wet going down the ventilators, and that the ventilator is closed.

Thank you.

(Witness aside)

30 NORMAN LEE LAUHLAND, a witness called on behalf of the plaintiff, being first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. BULL:

Q. What is your position with the plaintiff company? A. Managing director.

Q. Were you managing director in May, 1936, and at all subsequent times? A. Yes.

Q. How long have you been engaged in the business of rice? A. Since 1918.

Q. All that time with this Company or its predecessor? A. Yes.

40 Q. Do you have occasion, in the course of your duties in your position, to examine the rice as it goes through the mill? A. Whenever I go down to the plant I always examine what is going through.

Q. Did you ever prepare milling records? A. Yes.

*In the  
Supreme  
Court of  
British  
Columbia.*

Plaintiff's  
Evidence.

No. 17.  
Archibald  
C. Reed.

Cross-Ex-  
amination,  
May 20th,  
1938.

—continued.

No. 18.  
Norman Lee  
Lauchland,  
Examina-  
tion,  
May 20th,  
1938.



In the  
Supreme  
Court of  
British  
Columbia.

Plaintiff's  
Evidence.

No. 18.  
Norman Lee  
Lauchland,  
Examina-  
tion,  
May 20th,  
1938.

—continued.

Q. Did you prepare milling records at the time of milling in respect of 163 and 102 and A.L.Z. Intereo Brose rice that came on board the "Segundo"? A. Yes, I prepared some of them, and I checked them all.

MR. BULL: I would like to tender these, my lord. They are milling records.

THE COURT: Any objection?

MR. BOURNE: No objection.

MR. BULL: I think they might be marked as one exhibit.

DOCUMENTS MARKED EXHIBIT No. 23.

10

Q. Were you present at the time of the unloading of the "Segundo"? A. Yes.

Q. Were you there on May 9th? A. Yes, I was there when they started to unload the first morning.

Q. Were you there before they started unloading? A. Yes.

Q. And did you notice the condition of the rice at the time of the unloading? A. Not just at first, I didn't, as I was busy engaged getting the men to pile it up.

Q. And when did you hear of it? A. One of the men told me after they started to unload it.

20

Q. And as a result of something that was said to you, what did you do? A. I went and examined the bags myself.

Q. And what did you find as to the condition of the rice? A. I found some bags hot, and some very hot, when I touched them with my hand.

Q. How did you happen to notice that? A. I could tell that when I took the bags off the truck, and I could feel them.

Q. Now what test did you make to ascertain whether they were heated or not? A. I kept trying them with my hand, and also had a tryer, and where the heat was, I put the tryer in, and I would draw some rice out and look at the rice.

30

THE COURT: The tryer is shoved into the bag? A. Yes, it is a little metal tube with a sharp point on it.

Q. You shove that into the bag and take a sample of the rice that is in the bag? A. Yes, and you take it in your hand.

MR. BULL: Just speak up.

Q. How did the sacks feel to your hand? A. Some sacks were hot, and some others were very hot.

Q. And I understand you to say when you tried the tryer, the rice, as far as the tryer was concerned, was warm? A. Yes, the rice inside was warm, as well.

40

Q. Did you examine the sample of rice that came through the tryer? A. Yes.

Q. What would you say with regard to its color? A. Some of the bag—where it was heated—I found some of the rice that

I had in my hand, and had got out of the tryer, it was very dark in color.

Q. Well, to a man of your experience, what would that indicate to you? A. Well, that is what I was afraid of—that the cargo was damaged.

Q. What was the nature of the damage? A. The rice was not as clear in appearance as the other rice.

Q. Did you notice any mark or marks around the sacks that you examined? A. Well, there were different marks, but  
10 the first one that I examined that day was the 163.

Q. Yes? A. And later on I examined different marks.

Q. Yes? A. We had four different marks.

Q. And you examined all the different marks, did you? A. Yes, that day.

Q. And what was the condition of the rice under the other marks? A. Some were warm, and some of the bags were hot.

Q. Did you try them with the tryer? A. Yes.

Q. And what did you find there? A. I found that they were hot—I found the same condition as in 163.

Q. The same as in 163? A. That is, as far as the dark appearing rice was concerned.  
20

Q. And did you know what part of the ship these damaged bags of rice came from? A. No, I did not pay any attention to them.

Q. What did you do when you found they were damaged, if anything? A. When I found out the condition of the cargo was hot like that, I called up Mr. Gavin.

Q. Who is Mr. Gavin? A. He is the president of our Company.

Q. And what else did you do after telephoning him? A. I kept watch right along of the cargo coming off the boat.  
30

Q. And did you still keep testing them? A. Yes.

Q. With the tryer? A. Yes.

Q. And what did you find? A. Some of the bags were warm.

Q. And does that apply to all marks? To the ones that I examined that day, yes.

Q. That is, other than 163? A. Yes, some were not as warm as others.

Q. Then did you do anything else besides examining those bags? A. Well, we made, as we usually try to do when rice of that kind comes in, we tried to make some test runs or something like that, through the mill.  
40

Q. When did you try to make these test runs, after the boat arrived? A. If I remember rightly, we took the N.L.Z. and made a test run on that—just a short one.

*In the  
Supreme  
Court of  
British  
Columbia.*

Plaintiff's  
Evidence.

No. 18.  
Norman Lee  
Lauchland,  
Examina-  
tion.

May 20th,  
1938.

—continued.



In the  
Supreme  
Court of  
British  
Columbia.

Plaintiff's  
Evidence.

No. 18.  
Norman Lee  
Lauchland,  
Examina-  
tion  
May 20th,  
1938.

—continued.

Q. How many bags? A. I don't remember that, but something about 30 or 40 bags.

MR. DESBRISAY: I think the records will show that.

MR. BULL: I didn't hear my learned friend's remark.

Q. Do those records show that? A. No, they don't cover that.

Q. They don't cover these samples? A. No.

Q. When you started to mill the 163, how did you go about it? What did you do first? A. In the same manner as usual. We had the bags weighed. 10

Q. Well did you do anything preliminary to the milling?

THE COURT: Gentlemen of the jury, can you hear the witness?

Speak up a little louder, Mr. Lauchland, as the jury finds it hard to hear you.

MR. BULL: Q. You were all right there for a while, and then you dropped your voice. You watched the milling yourself? A. Yes.

Q. Did you notice the condition of the brown rice as it went through the mill? A. No, I was out, busy around, and then I waited and saw it come out in the white rice. 20

Q. And in what condition did it turn out to be? A. It wasn't satisfactory. There was a lot of discolored grains to which the bran was still adhering.

Q. And did you make a note of that? A. I made a record that it was not to be sent out, and I made a record of it—in the records.

Q. Well what happened that day. Did you meet Captain Watson? A. Yes, in the afternoon.

Q. Where was that? A. I was in No. 2 warehouse, using the telephone. I didn't know Captain Watson at the time, but I know now it was Captain Watson. He came to me in the No. 2 warehouse. 30

Q. Yes? A. And he asked me where were the sacks that I complained of as being hot, as he had been down in the holds of the boat, and he could not find any of a temperature of over 84 degrees, and I took him out to No. 1 warehouse, where the rice was coming off the boat, and I showed him some sacks there, and I explained to him at that time that they were not coming as hot as they had been in the morning. However, on one truck he put the thermometer in one bag, and it showed a temperature of 94 degrees. We went to another truck, and it showed a temperature of 96 degrees, and then we went to another truck, and it showed a temperature of 94 degrees, and then he examined a few more bags, and said there wasn't anything more he could do that day. And he left the office—or he left the warehouse, rather, 40

and that is the last I saw of him,—he was going out through the doorway with an officer of the ship.

Q. What were the marks on the bags that Captain Watson examined on that occasion? A. Well I took him to the 163 pile.

Q. Can you estimate how many bags you examined that day? A. Myself?

Q. Or with Captain Watson? A. I have already said how many we examined when I was with Captain Watson, but I must have examined by putting my hand on them at least 100 bags  
10 that day.

Q. Now on the following day, did you go to the warehouse while the rice was being unloaded? A. Yes.

Q. You were there every day that the rice was being unloaded? A. Yes.

Q. What did you notice with regard to the condition of the rice on the second day? A. It was still hot.

Q. Now I think on Monday, June 1st, you again attended the unloading? A. Yes.

Q. What was the condition of the bags on that day?  
20

THE COURT: What date was that?

MR. BULL: June 1st, Monday.

Q. Did you see Captain Watson on that day? A. Yes, I saw him.

Q. When, and at what time, and where?

MR. DESBRISAY: Which day are you speaking of?

MR. BULL: That is June 1st.

THE WITNESS: I saw Captain Watson on June 1st, and he was in the warehouse, and he examined the bag of rice. It was 163. It showed a temperature that day of 94 degrees—on  
30 the same truck—no, I think on another truck he took one, and it showed 98 degrees, and then we went out on the dock, and he took a bag of the 163 there and put a thermometer in, and it showed 96 degrees, and then we went back in the warehouse to the other mark A.L.Z., and examined a bag there on a truck, and it showed a temperature of 94 degrees. There was another bag that showed a temperature of 98 degrees, and another bag of 100 degrees.

Q. Did you see Captain Watson make any further tests after the 1st of June? A. No.

Q. Although he was down there again, was he not? A. Those were the only days that I saw him make the tests.

Q. Did he make any remark to you at that time about the condition of the bags that came out from the 'Tweendecks space? A. Yes, on June 3rd, Captain Watson was on the dock when I came out of the warehouse, and he said the bags were coming of the 'tweendecks cool.

*In the  
Supreme  
Court of  
British  
Columbia.*

Plaintiff's  
Evidence.

No. 18.  
Norman Lee  
Lauchland,  
Examina-  
tion,  
May 20th,  
1938.

—continued.



In the  
Supreme  
Court of  
British  
Columbia.

Plaintiff's  
Evidence.

No. 18.  
Norman Lee  
Lauchland,  
Examina-  
tion,  
May 20th,  
1938.  
—continued.

THE COURT: They were cool.

MR. BULL: Q. Cool—what, roughly, would the temperature be—what would you expect the temperature of the rice to be in the 'tweendecks? A. I have never put a tryer in those bags of rice.

Q. But they should come off cool?

MR. BOURNE: I think my learned friend should put the question properly to him.

THE COURT: What would you expect it to be? A. We have never found—any time I have gone down to the dock, when a boat has come in—I never found any cargo that was heated like that—except one or two where there might have been a slight spot on it, that was up against the skin of the boat—but not as far as the cargo was concerned—I never did find it.

MR. BULL: Q. Now didn't you examine the sacks of rice later, after they were stowed in the warehouse? A. Yes I was anxious to see what the result would be when they were piled up in that warehouse, and that week when I was down there, I kept watching the piles and putting my hand between them at the far end, to see what condition they were in, and I found they were cool. 20

Q. Now did you give any instructions with regard to the milling of the 163 and the A.L.Z.? A. Yes.

Q. And as a result of those instructions, what was done? A. Well after the first while—in May and June—and after the test of Captain Watson on June 8th—we did not run the 163. I told them to hold it.

Q. Why did you do that? A. Because we wanted to see the result of the milling we had done—we were not satisfied with it. 30

Q. Was any of it sent out as milled? A. We made a small run on May 30th, and we also mixed the 102 and 163 and A.L.Z. together, and sent that out, and that is why we were waiting to see the result of that. We were not satisfied with that product.

Q. Well then what else was done? Did you go on with any other milling? A. Yes, we milled the A.L.Z., and then about a month after, some time in the middle of July, we tried the milling of the 163, but the result of the product in the first bag showed us it was not going to be satisfactory, and we stopped putting any more in, and what was weighed in the machine had to be milled out and we took it out. 40

Q. I understand you were present in June at more than one test run made by Captain Watson. A. Yes.

Q. How many tests were there? A. On June 8th, we made a test of the 163, and on June 11th of the A.L.Z.

Q. And what was the result of the test run of the 163? A.

It showed the same condition as we found in the other rice that we had run.

Q. And what about the test run of the A.L.Z.? A. It appeared to be satisfactory.

Q. After these test runs, did you have any conversation with Captain Watson at your warehouse? A. Yes, Captain Watson was in there occasionally.

Q. And did he say anything about this rice—particularly 163? A. One day when Captain Watson was in discussing it  
10 with me, he said that it could not be classed as a first class rice. It would have to be a lower grade.

THE COURT: Is this admissible?

MR. BOURNE: Well I don't know just yet what he is talking about—which rice.

THE COURT: You made no objection, and he is now asking him what Captain Watson said.

MR. BULL: Captain Watson is the agent.

MR. BOURNE: He has not proven it yet, and we submit he was not.

20 THE COURT: Well I suppose if he were the agent, he is entitled to make admissions, that he can prove later on.

MR. BOURNE: Yes, but I submit he is not in a position to make admissions at all.

MR. BULL: Alright, my lord, we will read the interrogatories.

THE COURT: I do not know anything about the interrogatories. I am only judging it from the case so far.

MR. BULL: Q. Did Captain Watson tell you who he was, and what he was doing there? A. Well the first day he said  
30 he was a surveyor for an insurance company.

THE COURT: Well this is not the Captain of the ship.

THE WITNESS: I beg your pardon?

THE COURT: This is not the Captain of the ship?

MR. BULL: No, no.

THE COURT: I thought he was.

MR. BULL: No, he represented the underwriters.

THE COURT: There is no objection to that?

MR. BOURNE: Yes, we take the position the defendant in  
40 this case, the insurance company, and not necessarily the representative of the board of underwriters, is the agent for that company for the purpose of making any admissions.

MR. BULL: If they employ a man to make a survey, as they did, and to report to them there is no doubt he is their agent.

Q. Now what discussion did you have with Captain Watson, if any, with regard to the claim that you propose to make with respect to this damage? A. We had some general discus-

*In the  
Supreme  
Court of  
British  
Columbia.*

Plaintiff's  
Evidence.

No. 18.  
Norman Lee  
Lauchland,  
Examina-  
tion,  
May 20th,  
1938.

—continued.



*In the  
Supreme  
Court of  
British  
Columbia.*

Plaintiff's  
Evidence.

No. 18.  
Norman Lee  
Lauchland,  
Examina-  
tion  
May 20th,  
1938.

—continued.

sions, and at one time we were discussing it there in the office, and Mr. Gavin was there at the same time—and while we never admitted that the other marks were not damaged as well—

Q. Well did you say anything to Captain Watson about damage to the other marks like the K G and the A.L.Z.? A. Yes.

Q. What did you say about that?

MR. BOURNE: I object to this, because my learned friend is leading up to something which I presume is in the nature of some agreement.

MR. BULL: No, no agreement at all. 10

MR. BOURNE: And certainly there was no authority to make any such agreement, and I take that objection now.

THE COURT: I am assuming now that Mr. Bull is going to prove that Captain Watson is the agent of the defendant in this action.

MR. BOURNE: I think he should do that.

THE COURT: He has got from this witness that this Captain represented himself as the agent of the defendant.

MR. BOURNE: I don't think this witness has even said that. He said he came down there, and said he was representing an insurance company, and we take the position that he was not the agent of that company—if he went there as a servant, it does not make him the servant of the defendant company. 20

THE COURT: Do you say he was not there on behalf of your company, as representing your client?

MR. BOURNE: I submit he was not there with any authority to make any admissions.

THE COURT: Do you take the position he was not their representative?

MR. BOURNE: No, I don't. 30

THE COURT: I think the evidence is admissible.

MR. BULL. Q: I am not asking you for the moment to speak of any agreement that was made, Mr. Lauchland, but I am asking you what was said if anything to Captain Watson about any damage to other marks than the 163 and the 102. A. There was a reference to damage to A.L.Z. and K.G.

Q. Did you tell Captain Watson that? A. Yes, I always contended there was.

Q. Did you say anything about the claims you proposed to make as being confined to any one particular lot? A. Yes. 40 We told him while those other marks were damaged, we would confine our claim to the Interco Brose.

Q. Did you ever tell Captain Watson that there was no damage to the other marks? A. No, because the first day the rice came off the boat, I found the other rice hot, and as I said, on June 1st, I saw Captain Watson put his thermometer in those

three bags of N.L.Z. which showed a temperature of 100 degrees in one bag.

Q. Would that indicate any damage? A. Yes.

Q. Do you know Mr. Ismon, of the defendant insurance company? A. I met him last year.

Q. Did he represent himself to be the duly accredited representative of the defendant company? A. As far as I know, yes.

Q. Did you have any conversation with him with regard to claims? A. Yes.

10 Q. Where did that take place? A. In Messrs. Macaulay Nicolls & Maitland's office.

Q. When was that, roughly? A. I am not clear as to the date of that, but I think it was some time in 1937.

THE COURT: What is the man's name?

MR. BULL: I-s-m-o-n, Ismon.

Q. Now on that occasion what was said? A. We discussed the claim.

Q. What is that? A. We discussed our claim on this rice.

Q. At that time, had you put in a claim? A. Yes.

20 Q. Your claim — your first claim was put in on a certain basis. Did you have anything to do with the preparation of that first claim? A. Yes, Mr. Gavin and I worked it out.

Q. And your estimate then was considerably lower than it is now? A. Well we made a clerical error in the first claim.

Q. You made a clerical error? A. Yes.

Q. When you put that claim in, did you have any advice from your solicitors? A. No.

Q. You had not consulted any solicitor about it? A. No.

30 Q. That was dated June 23rd, 1936, and the total was \$2763.73.

THE COURT: How much?

MR. BULL: \$2763.73.

Q. And you say there is a clerical error there of how much. A. Well, when we figured it out again we got \$1400 more, I think it was.

Q. Well then, was it about this claim—yes, was it this claim that you were discussing with Mr. Ismon, or was it the amended one of September 23rd, 1936? A. It was the amended one.

Q. It was the \$4149.00? A. Yes.

40 Q. Now what did Mr. Ismon say, if anything, about these claims? A. Well, he claimed that they were not made out on the proper basis; that we had to make them out in relation to the insured value, and we subsequently did that.

Q. You subsequently did that. Now, I think I had better put in the one of June 23rd. Well, my friend has the originals. I suppose they ought to go in. What will that be—June 23rd.

*In the  
Supreme  
Court of  
British  
Columbia.*

Plaintiff's  
Evidence.

No. 18.  
Norman Lee  
Lauchland,  
Examina-  
tion.  
May 20th,  
1938.

—continued.



In the  
Supreme  
Court of  
British  
Columbia.

## DOCUMENT MARKED EXHIBIT 24.

A. And the one of September 23rd.

## DOCUMENT MARKED EXHIBIT 25.

Plaintiff's  
Evidence.

THE COURT: Just a moment—23rd June, 1936 is Ex. 24: and 23rd September, the same year is exhibit 25?

MR. BULL: Yes, my lord.

No. 18.  
Norman Lee  
Lauchland,  
Examina-  
tion,  
May 20th,  
1938.

THE COURT: Q. So then you made a new claim on the basis suggested by Mr. Ismon, is that correct? A. Yes.

Q. And that claim is for \$5,885.00, is that correct? A. Yes, I think that is the one. 10

Q. Whose handwriting is that in? A. Mr. Allistair Gavin's.

MR. BULL: Yes. And I think that was typed out. If my learned friend will produce it.

THE WITNESS: This is \$5,885.00. There was one for \$5,-171.20. But there was some London difference—we had with Mr. DesBrisay on that—we could not get it. And we worked it out on this other basis, and by working it out on the other basis it made it up to \$5,885.00.

MR. BULL: Q. Well I think we had better put in that—the \$5,885.00 statement. 20

## DOCUMENT MARKED EXHIBIT 26.

Q. Had you any advice from your solicitors when that was made up? A. No.

Q. There was another claim put in, was there—or there was another claim made up, of which you have no personal knowledge, is that right? A. Yes, there was a subsequent claim.

Q. The one I wish to call to your attention is the one which Mr. Nichols is concerned in. Have you any knowledge of that?

MR. BOURNE: Well he has already said that he has no personal knowledge of another claim, and yet he has referred to it. 30

MR. BULL: Have you any personal knowledge with the one Mr. Nichols is concerned with? A. The one that Mr. Nichols is concerned with is the one the way he made it out.

Q. Have you any personal knowledge of that? A. No, I did not see it.

Q. Well then we will leave that for another witness. That is what I want to know.

Q. Now what if anything did you do when you found these Interco Brose were not satisfactory to your case? A. When it got along in November and the A.L.Z.'s which we had been using for our trade was getting down—that is the quantity was getting down, we negotiated for other rice to mix with 163 and 102, and we were successful after a while in buying 125 tons of 40

California Blue Rose paddy. This cost us \$33, per 2000 pounds, f.o.b. docks at San Francisco, and we eventually bought 275 tons—of 2000 pounds of Mexican rice.

Q. Now in that result just explain the mixture you made with the California rice, the Mexican and the 163. A. From the rice that we got from California, the Blue Rose, we mixed 58.7 tons of the white rice, which cost us \$88.08, or a total of \$5,170.29—the Mexican rice. Out of that we took 120.65 tons of the white rice, and that cost us \$87.56, and the total was \$11,264.59. And we mixed that. We used with that 168.47 tons of the Brose white rice, which cost us \$53.60—making a total of \$9,030.00. And the total of that was \$25,464.88.

Q. For how many tons? A. 355.82 tons.

Q. Yes. Now if the 163 Brose had been sound, what would the total cost have been of the 155.28 tons? A. At the \$53.60, they would have cost us \$19,071.95, a difference of—or a loss to us of \$6,392.93.

Q. And what was the average selling price per ton of that mixture? A. \$80.00.

20 Q. What is that? A. \$80.00.

Q. Now it might be suggested, Mr. Lauchland, that that mixture resulted in an increase in the total tonnage sold. Have you anything to say about that? A. Well that might be, but we had the rice that I have indicated before—the California Blue Rose white and also the Mexican white that cost us more than what we sold it for.

Q. Yes. So if you had sold the tonnage — the foreign rice—that is the Mexican and the California alone, at the price that you did sell it at, you would have lost money. A. Yes.

30 Q. Now in addition to that actual loss which I think comes at over \$6,000, what other loss was suffered? A. We still had 41½ tons of white rice, which had been milled out of the most seriously damaged brown rice, and the only valuation that you can put on that is \$25 a ton, whereas it should have been worth \$53.60 a ton, a difference of \$28.60—or on the 41½ tons, \$1,186.90.

Q. Yes. Are there any other heads of actual damage? A. Yes, we had extra expense in keeping that weevil damaged rice—

40 Q. In what? A. In keeping that weevil damaged rice from going into the runs and running the less seriously damaged rice.

Q. What would that come to? A. We estimated that at \$415.00.

Q. And anything else in the way of damage? A. Yes, we had to slow up—in running this rice it slowed up our machines, and we figured that out on a basis of 94 cents a ton on the 386.72 tons of the white rice that we got out—\$364.55.

*In the  
Supreme  
Court of  
British  
Columbia.*

Plaintiff's  
Evidence.

No. 18.  
Norman Lee  
Lauchland,  
Examina-  
tion,  
May 20th,  
1938.

—continued.



In the  
Supreme  
Court of  
British  
Columbia.

Plaintiff's  
Evidence.

No. 18.  
Norman Lee  
Lauchland,  
Examina-  
tion,  
May 20th,  
1938.

—continued.

THE COURT: How many tons? A. 386.72.

MR. BULL: Q. Now, in the course of your duties, did you sample any of this rice? A. From nearly every shipment I took samples myself.

Q. Now I want you to just identify these samples. Now this is A.L.Z. Just explain what that is. A. That is a sample of white rice — from the marking — from the brown rice marked A.L.Z. I helped in the milling of that—on our sampling machine.

MR. BULL: That will be exhibit what

SAMPLE MARKED EXHIBIT 27.

10

MR. BOURNE: My lord, before this goes in, is it clear that this witness was actually present and took part in the sampling of it. You see I want to keep my position clear.

THE COURT: Yes. Were you present when this sample of brown rice was milled—A.L.Z.? A. I did that with a sampling machine.

Q. Yes, you did this yourself? A. Yes.

MR. BOURNE: Oh, I see.

MR. BULL: Well is that marked yet?

THE REGISTRAR: Exhibit 27.

20

MR. BULL: Now what is this next sample? A. That is a sample of the rice—the brown rice, 163. That is the white milled from the brown rice.

MR. DESBRISAY: This is the white milled from 163.

MR. BULL: That will be No. 28—this next one.

SAMPLE MARKED EXHIBIT 28.

MR. BOURNE: I presume the same applies to all of these—that the witness took the samples himself.

MR. BULL: Well I asked you if, in the course of your duties, you took these samples. A. This sample that I have in my hand is the white rice, milled from a sample of brown rice, of 163, that I took myself.

MR. DESBRISAY: This is the second sample of that.

THE COURT: That will be Exhibit 29.

SAMPLE MARKED EXHIBIT 29.

MR. BULL: And this next one, Mr. Lauchland. A. These are two samples of the brown rice of 163 that I drew myself. I took this sample from one part of the bag, and this sample from another part of the bag, and I wrote on these envelopes—

MR. DESBRISAY: Is this the brown or white? A. The 40 brown.

MR. BULL: They might be marked together.

SAMPLES MARKED EXHIBIT 30.

Q. Just explain what that is. A. These samples—this one was the brown from the outside of the bag.

THE COURT: Do not say this one—that is 31-A— A. What shall I call this?

THE COURT: What is that—is that 31-B? A. This 31-B was drawn from the center of the bag of 163. I didn't draw these samples myself, but I was present when Mr. Sachs drew them.

SAMPLES MARKED EXHIBITS 31-A and 31-B.

MR. BULL: Were they from the same bag? A. Yes.

10 THE COURT: These are samples of brown rice, are they? A. Yes.

MR. BULL: Q. And this last one now, Mr. Lauchland?

A. That is a sample of the brown A.L.Z., which I drew myself from the bag.

SAMPLE MARKED EXHIBIT 32.

Q. Will you explain the difference between 30-A and 30-B.

A. May I have the samples?

THE COURT: 31-A and 31-B.

MR. BULL: Well then 30—there are two of 30.

20 THE COURT: Well if you are going to explain the difference they had better be marked A and B.

(Samples of Exhibit 30 MARKED EXHIBITS 30-A AND 30-B).

MR. BULL: Now if you will just take 30-A and 30-B and explain the difference in the samples. Is it difficult to judge differences in brown rice, Mr. Lauchland? A. Yes, it is, unless you have got something to compare them with.

Q. Well now you are dealing 30-A are you, and 30-B. What is 30-A? Where did that come from? A. 30-A was drawn from one part of the sack.

30 Q. What part? A. Well I didn't put it on it, but I put on it that 30-B was drawn from another part of the sack.

Q. You didn't put it on? A. No.

Q. What is the difference between the two samples? A. 30-A is brighter in appearance than 30-B.

Q. Well that is all I want. Now I want you to look at Exhibits 31-A and 31-B.

MR. BOURNE: I think these should speak for themselves after all.

40 THE COURT: He is an expert on that. I wouldn't know, and perhaps you wouldn't know, and the jury would not know. Now I think you might as well show those to the jury now. A. Shall I take them over?

Q. Yes, just take them over to the jury and show them to them.

*In the  
Supreme  
Court of  
British  
Columbia.*

Plaintiff's  
Evidence.

No. 18.  
Norman Lee  
Lauchland,  
Examina-  
tion,  
May 20th,  
1938.

—continued.



In the  
Supreme  
Court of  
British  
Columbia.

Plaintiff's  
Evidence.

No. 18.  
Norman Lee  
Lauchland,  
Examina-  
tion,  
May 20th,  
1938.  
—continued.

MR. BULL: What is that? A. 30-B.

Q. Now which is the brighter of the two? A. The light is not very good here—that one.

Q. But which is the brighter of the two—give the number. A. 30-A.

MR. BOURNE: I think it should go on the notes the one that the witness says was the lighter one.

THE COURT: He has said 30-A. He has said that already.

MR. BULL: That is right, is it, Mr. Lauchland—that is the brown rice? A. Yes. 10

Q. —before milling? A. Yes.

MR. DESBRISAY: Mr. Gavin is not giving evidence.

THE COURT: No, Mr. Gavin, you must not interfere. I just want the jury to see them. Have you seen all that you want, Gentlemen of the Jury?

A JUROR: Yes.

THE COURT: All right, you might return to the witness box again.

MR. BULL: All right, now take 31 and 32 and bring them over here, will you—no 31-A and 31-B. 20

Q. Now are those two taken from the same bag? A. Yes.

THE COURT: Just speak up so that the reporter can hear you. A. Yes.

MR. BULL: Q. And what kind of rice is it? A. Brown rice.

Q. Yes, but what marking? A. 163.

Q. Taken from different parts of the same bag, is that right? A. This one marked 31-A was taken from the outside of the bag, and the one marked 31-B was drawn from the centre of the bag. 30

Q. Now will you just spread them out and tell the jury the difference between the two samples. Now what is the difference between the two? A. Unfortunately a little weevil has got into one, and that affects the color.

THE COURT: The weevil has got into what one? A. 31-B. That is drawn from the centre of the bag—31-B, and it is not as dark in color as 31-A.

MR. BULL: Q. That is the one taken from the centre of the bag is not as dark in color as that taken from the outside of the bag? A. No. 40

Q. That is what you mean? A. Yes.

Q. B was in the center, and A was from the outside. Now you might tie them up.

MR. BULL: There was one document that I said I was going to prove by this witness, my lord—invoice Exhibit No. 4.

MR. BOURNE: Yes, an invoice of 7500 bags.

MR. BULL: This invoice of the 7500 bags of Blue Rose—what is that document? A. That is the invoice that we got. That is the document to cover the 7500 bags.

MR. DESBRISAY: What is the exhibit number?

MR. BOURNE: Exhibit 4.

MR. BULL: Is this your handwriting on it about the unloading and so on? A. Yes, that is just what I put on to show the cost.

MR. BULL: Yes, your witness.

10 THE COURT: What about those—is there any objection to these notes that are on it? Those pencil marks are not any part of the original exhibit?

THE WITNESS: No.

MR. BULL: I was going to let him cross-examine on it.

MR. BOURNE: It isn't in yet, as I understand it.

THE COURT: Well the notes made by the witness are not evidence.

MR. BULL: I would suggest they be ignored. I am not going to make anything out of it.

20 THE COURT: Well if that goes before the jury you had better make a clean copy of it, but the exhibit had better remain as it is.

MR. BULL: I do not think there is anything in the notes to hurt, one way or the other.

THE COURT: Would you like to adjourn now for five minutes?

MR. BULL: Is it your lordship's intention to adjourn at 4.30?

THE COURT: Yes.

30 (JURY RETIRED FOR FIVE MINUTES)  
(COURT RESUMED AT 4.15 P.M.)

MR. BULL: Q. Mr. Lauchland, I show you Exhibit 2 which is the record of import shipments. That is a book that is kept in your office, isn't it, and supplied by the insurance company? A. That book was supplied to us by Messrs. Macaulay Nicolls & Maitland.

Q. Do you recognize the signatures there—of Macaulay Nicolls & Maitland? A. Yes, that is Miss Louden's signature.

Q. That is her signature? A. Yes.

40 Q. I draw your attention to an item of 7500 bags of brown rice to be insured at—there is a reference to the 7500 bags in question. A. Yes.

Q. Now have you any—I see that the freight is added to your cost price, isn't it? A. Yes.

*In the  
Supreme  
Court of  
British  
Columbia.*

Plaintiff's  
Evidence.

No. 18.

Norman Lee  
Lauchland,  
Examina-  
tion,  
May 20th,  
1938.

—continued.



In the  
Supreme  
Court of  
British  
Columbia.

Plaintiff's  
Evidence.

No. 18.  
Norman Lee  
Lauchland,  
Examina-  
tion  
May 20th,  
1938.

—continued.

Q. Are there any other items which must be added to that to make up the gross sound values of that? A. Yes, the insurance premium.

Q. And how much would that be. Have you worked that out?

THE COURT: Well the policy is in and the premium is there.

MR. BULL: The premium covers the whole, my lord.

Q. Have you apportioned that? A. Yes, I will take these figures, \$123.19 plus \$15.40, covers the premium.

Q. And that is how much? A. \$138.59.

Q. And are there any other charges to add to that? A. Yes, there would be the unloading charge.

Q. And what would that amount to? A. I could not tell unless I could see the other exhibit.

Q. You made a note on that, did you. That is Exhibit 4. I think if he made the note there it is just a matter of refreshing his memory.

THE COURT: Q. Oh yes.

Q. What would the unloading charges be? A. \$412.02.

Q. Have you anything else to add now? A. When we paid the bank for our letter of credit, we have to pay them a commission, and we also have to pay our broker in London a commission, and we add that on.

Q. How much would that be? A. It is down here as \$123.15 for our broker's commission, and the letter of credit is \$92.36.

Q. Yes, and are there any other items? A. A small item there of \$1.50.

Q. What is that for? A. That is just the clearing entry—the customs broker's entry.

Q. Making a total of the gross sound value of how much? A. Well when we paid this freight, we paid on the whole 7500 bags as being 224 pounds, whereas 5,678 of those bags were only 220½. We therefore got from the shippers the difference in freight to cover—a difference of 3½ pounds, on those 5,678 bags, and that amounts to \$39.92.

Q. That is a credit, is it? A. Yes.

Q. And you deduct that then, do you? A. Yes.

Q. \$39.92, is that right? A. Yes.

THE COURT: Then the total you have given us should be less \$39.92? A. Yes.

MR. BULL: Now what does that make the gross sound value? A. According to the figures I have, \$28,732.20.

Q. Yes, that covers it. Now when you referred to that item of 39 something, you said \$39.92. That is \$39.92, isn't it? A. Yes, \$39.92. But as we were paying that freight to the boat, and in arriving at our gross sound value at the time, we did not know

whether we were going to get that amount, and I don't think we took that \$39.92 into account in arriving at our gross sound value in our claim.

THE COURT: There is something wrong there. Your total value of the shipment, including the freight, is \$30,798.

MR. BULL: I am going to come to that. How is it that the amount to be insured is \$30,798, when the total value is \$28,000?

A. Because in the \$30,798, in order to arrive at that figure, we take the invoice cost, which was £4909-19-6 at the exchange of 10 5.01½, which gives us a total of \$24,623.52. We added to that the freight that we paid, £675., at \$5.00 to the pound—a total of \$3,375. Then those two amounts are added together and 10 per cent of that is added to arrive at the \$30,798.

Q. You see the policy provides for cost plus 10 per cent as the insured value, is that correct? A. Yes.

THE COURT: But what I am pointing out is, he took \$30,798, plus \$138.59 for insurance and \$412 for loading, and that would make \$32,000 and then he takes so much off there and gets \$28,000.

20 MR. BULL: Well that is my mistake. The insured value is the cost plus freight, plus 10 per cent according to the policy. Now I should not have put the question the way I did. I should not have said, have you anything to add to the \$30,798 to make up the gross sound value. But I think from what the witness has said it shows how the figure was made up to what he mentioned. Is it clear now?

THE COURT: Well in order to avoid any mistake, you can make up a statement so that the jury can have it quite clear in their minds, as it is very hard to follow all these figures.

30 MR. BULL: Q. There is another question that I want to ask you that this document brings to my mind. Is this your writing? \$1,750? A. Yes.

Q. What does this represent?

MR. BOURNE: Is this the same exhibit that went in? I understood my learned friend to hand this to the witness to refresh his memory on, but my understanding is that it went in as an exhibit without that.

MR. BULL: Yes. Nevertheless, that is a note in your handwriting, the \$1750.00, isn't it? A. Yes.

40 THE COURT: You can ask him—he cannot refer to it unless it is necessary to refresh his memory.

MR. BULL: Q. You know what the \$1750.00 is, don't you? A. Yes.

Disregarding that document—what is that item? A. That covers an allowance that the shippers made to us on account of the two shipments A.L.Z. and Interco Brose, having yellow grains,

*In the  
Supreme  
Court of  
British  
Columbia.*

Plaintiff's  
Evidence.

No. 18.

Norman Lee  
Lauchland,  
Examina-  
tion,  
May 20th,  
1938.

—continued.



In the  
Supreme  
Court of  
British  
Columbia.

Plaintiff's  
Evidence.

No. 18.  
Norman Lee  
Lauchland,  
Examina-  
tion,  
May 20th,  
1938.

—continued.

when the shipments were guaranteed free from yellow grains.

Q. And that should go to what portion of this cargo? A. It goes to the A.L.Z. and Interco Brose.

Q. And how much Interco Brose was there altogether? A. 7500 bags—and 7500 A.L.Z.

Q. So that \$1750.00 should be distributed among those two lots, is that right? A. Yes.

MR. BULL: Your witness.

THE COURT: Well, it is practically half past four, and I do not see any chance of your finishing on Monday unless you 10 start earlier.

MR. BOURNE: I do not think there is any chance of our finishing Monday, but we are in your hands.

THE COURT: We will make it eleven o'clock Monday morning, and gentlemen of the jury, I wish again to repeat the warning I have given you twice before to be careful not to speak to anyone about this case.

(COURT ADJOURNED UNTIL MONDAY, 23rd MAY, 1938,  
AT 11:00 A.M.)

May 23rd, 1938: 11 a.m.

20

(COURT MET PURSUANT TO ADJOURNMENT)

NORMAN LEE LAUHLAND, resumed the stand:

CROSS-EXAMINATION BY MR. DESBRISAY:

Cross-Ex-  
amination,  
May 23rd,  
1938.

Q. Mr. Lauchland, this cargo of rice was purchased through Agents in London? A. Yes.

Q. Your agents in London are Jackson, Son & Company? A. Yes.

Q. And they act for you continually in the matter of buying rice? A. Well, they are our brokers.

Q. You bought the rice which is in question in this action 30 from the International Rice Company? A. Yes.

Q. Through Jackson, Son & Company? A. Yes.

Q. And your contract provided for the delivery to you of this 5000 tons in Rangoon. You took delivery at the Vessel in Rangoon? A. You mean the 5000 tons you are referring to—

Q. I mean the whole cargo of rice? A. Yes, we had to take it at Rangoon.

Q. And you arranged for the vessel to carry the rice? A. Yes.

Q. Have you the freight contract here? Well, we can put 40 that in when it is found.

THE COURT: Do you want to put it in?

MR. DESBRISAY: Yes, my lord.

THE COURT: That will be exhibit 33.

(DOCUMENT MARKED EXHIBIT 33)

MR. DESBRISAY: Q. Mr. Lauchland, in that ship, in addition to the Interco Brose, which was marked 163, there was a parcel of Interco Brose marked A.L.Z.? A. Yes.

Q. Each parcel contained 750 tons? A. Each parcel contained 7500 bags, but the A.L.Z. was 750 tons, whereas the other parcel was something like 741 tons.

Q. That was by reason of some bags being light? A. Yes.

10 Q. There was also a shipment of rice which is called Select Delta? A. Yes.

Q. That came from Burma? A. Yes.

Q. And there was a parcel called Steel Loonzain K.G., 20,000 sacks? A. Yes.

Q. The rice in that parcel was called Kalagyi? A. Yes.

THE COURT: Steel something.

MR. DESBRISAY: Steel Loonzain.

THE COURT: Yes.

20 MR. DESBRISAY: Q. And the two lots of Interco Brose are what is called Saghundi grain—S-a-g-h-u-n-d-i? A. Yes, very often.

THE COURT: Q. You say the Interco Brose, it is called Saghundi, just another name for it? A. Yes.

30 MR. DESBRISAY: Q. Mr. Lauchland, I notice that this insurance policy, exhibit 1, contains a provision that granted the option of insuring import shipments of rice per regular line or first class approved steel steamers and/or motorships subject to the conditions as noted below and at rates as hereinafter set forth or as may be agreed on, always provided that they, the assured, declare their intention to do so prior to sailing of the vessel and prior to any known loss or casualty; To include the risks of heat, sweat and mould irrespective of percentage.

And then you pay an additional premium for that. A. If we do it.

Q. But you didn't do it in this case? A. No.

MR. DESBRISAY: That is on the third page of the endorsement, the second paragraph, below the line about a third of the way down.

40 Q. Now, Mr. Lauchland, as I understand it, what you did in this case when you had bought this cargo and you knew approximately when it was coming forward, you notified the defendant company's agent that you had a cargo coming along, and gave them the approximate value of it? A. Yes.

*In the  
Supreme  
Court of  
British  
Columbia.*

Plaintiff's  
Evidence.

No. 18.  
Norman Lee  
Lauchland,  
Cross-Ex-  
amination  
May 23rd,  
1938.

—continued.



*In the  
Supreme  
Court of  
British  
Columbia.*

Plaintiff's  
Evidence.

No. 18.  
Norman Lee  
Lauchland,  
Cross-Ex-  
amination,  
May 23rd,  
1938.

—continued.

Q. Now that valuation was considerably in excess of the maximum provided by the policy, therefore it required special coverage? A. That is what they always ask us—always ask us to give them an approximate valuation, and we did whatever was necessary just beyond that.

Q. But without anything being said, the limit of insurance under that policy is \$75,000? A. We always gave—we always gave them—

Q. Higher figures than 75,000? A. Yes.

Q. And within that rate you actually told them to hold you covered? A. Yes, that was confirmed. 10

Q. Yes, but you didn't know the exact value or cost, at the time of the rice? A. We always give them the approximate amount.

Q. Yes, and then that was done sometime in March, and when the ship came in you sent up this book, which I think is exhibit 2: and you got your certificate on June 4th? A. I don't remember the date that we got the certificate.

Q. Well, do you remember the date you sent the book up? A. No, I have the form, I made my entries in that book, and the book has been in the office there for a week or ten days or longer than that at times, and I have had to phone up when they would come and get the books. 20

Q. Do you remember when you sent the book up? A. No. They would come down for it.

Q. I see. So you don't know just when they got it? A. No.

Q. In your examination in chief, Mr. Lauchland, you mentioned yellow grains. What is the effect of yellow grains on the quality and value of rice? A. They depreciate the value to a certain extent. 30

Q. It depreciates the quality and the value of the rice for sale? A. In the appearance.

Q. It does not depreciate it so far as food value is concerned? A. No, it is just appearance.

Q. If there is an abnormal number of yellow grains, then it could not be considered to be fair average quality? A. If there is an abnormal number you wouldn't.

Q. Or an unusual number? A. Very unusual, yes.

Q. And it could not in that event be used for the purpose for which it was intended? A. If it had an abnormal number of yellow grains. 40

Q. As I understand it, you buy rice free of yellow grains because it affects your ability to dispose of it at the best price? Is that right? A. Well, it affects your trade; yellow grains affect your trade.

Q. And if you have got more than—suppose there is a minimum number of yellow grains, that you don't pay much attention to, is that so? A. Oh, that would be a very small percentage.

Q. And if it goes above a very small percentage then it begins to be affected from the point of view of your trade? A. Yes.

Q. And you can't use it for the purpose you intended it to be used for? A. We might, yes.

Q. Or you might not? A. We might not, it just depends.

10 Q. Depends on whether you can get rid of it? A. Yes, to a certain extent, depending on the number of yellow grains.

Q. But depending on the number of yellow grains, if there were too high a proportion it would not be fair average quality of rice? A. Just what do you mean by—

Q. Well, if you have got too many yellow grains in rice you could not consider it to be fair average quality rice, could you? A. If we bought it free of yellow grains we would likely take steps to make complaint on it.

20 Q. Yes, I know, and you would do it because it would not be fair average quality, isn't that so? A. If the rice was sold to us free of yellow grains and there was rice—it would not be fair average quality of rice with yellow grains.

Q. Well, you bought this rice free of yellow grains? A. Yes.

Q. And of course it follows that the larger the proportion of yellow grains the more inferior the rice is? A. Yes, that is from appearance or sale value.

30 Q. Yes, that is from the point of view of sale value. Now I understand that yellow grains are not apparent in brown rice? A. They are harder to detect.

Q. And when the rice is milled the yellow grains are immediately apparent? A. Yes.

Q. I believe the milling records show that the first milling of 163 was made on May 29th, the day following the arrival of the vessel? A. They were made the first day that the boat started to unload.

Q. That was May 29th? A. On May 28th the boat was docked.

Q. On May 29th it was— A. Yes.

40 Q. That was the first? A. Yes.

Q. What is the effect upon rice of late rains in the growing season? A. I have never had any experience in the growing of rice at all.

Q. Well, you have had experience in purchasing rice, and you have had occasion to gain knowledge by discussion with your

*In the  
Supreme  
Court of  
British  
Columbia.*

Plaintiff's  
Evidence.

No. 18.  
Norman Lee  
Lauchland,  
Cross-Ex-  
amination,  
May 23rd,  
1938.

—continued.



*In the  
Supreme  
Court of  
British  
Columbia.*

Plaintiff's  
Evidence.

No. 18.  
Norman Lee  
Lauchland,  
Cross-Ex-  
amination,  
May 23rd,  
1938.

—continued.

sellers, have you not? A. Yes, but it depends—from what I know of it it would depend on the severity of the rains.

Q. I beg your pardon? A. Depend on the severity of the rains, what time of the year they came in the growing districts.

Q. But if rains do come in the late growing season and they are more than normal, what is the effect upon rice?

THE COURT: Is that of any value? He says he does not know anything about it.

MR. DESBRISAY: My lord, he agreed with me, I think, that the rain—

THE COURT: Oh, yes, he said he had heard something about it. That is only hearsay.

MR. DESBRISAY: My lord, I would think I would be entitled to ascertain from him what information he received from sellers or anyone else in respect of parcels of rice which may have arrived in damaged condition. I should think I would be entitled to inquire from him any information he has, no matter how he got it.

THE COURT: Well, you are asking him as to damage done to rice—

MR. DESBRISAY: Well, I certainly—

THE COURT: Just a minute—that has been subject to abnormal rains. He says, I don't know anything about it. Well, the evidence is of no value. It is pure hearsay.

MR. DESBRISAY: I think that is true, my lord, but if I am able to refer to specific cases of which he has gained information.

THE COURT: That is hearsay.

MR. DESBRISAY: I should think that even though he secured that—

THE COURT: If he has made a point of informing himself on that sort of thing so that he really knows about it it may be allowed in.

MR. DESBRISAY: Q. Well, have you investigated that question yourself? A. No, I have not, only what has been passed on to us. It may have been just passed on to us from time to time, that is all. I never investigated it myself.

THE COURT: As a matter of fact, I may be wrong, but was there not something in the commission evidence touching on that point by people who of course knew?

MR. DESBRISAY: I think there is something, my lord.

Q. Have you received from your agents in London reports?

MR. BULL: I object to that expression, my lord. My friend asked this witness whether they bought through Jackson Brothers, and the witness said Jackson Brothers are brokers. Now there is no reason why my friend should refer to Jackson Broth-

10

20

30

40

ers as agents. There is a big difference between a broker and an agent.

THE COURT: Well, find out what the definition is.

MR. DESBRISAY: My lord, I think in the examination for discovery reference was made to them as their agents.

THE COURT: That may have been inadvertent. Just find out what the position is. A broker might be an agent for the purpose of purchase, and might not be an agent for the purpose of making admissions.

10 MR. DESBRISAY: Q. Mr. Lauchland, you might explain what the position of Jackson, Son & Company in relation to your company is. A. They send us quotations, or we ask for quotations from time to time, and we negotiate through them for rice in this way, that they are acting—they are in touch with the market there, they act as brokers for us by charging us a commission. That is all.

Q. They charge you commission? A. They charge us commission on the sale.

20 Q. And you ask them to inquire from this seller and that seller, and so on? A. No, but we ask them to quote.

Q. You have never asked them to inquire from the East Asiatic Company, for instance? A. You mean for a quotation?

Q. Yes. A. All we do is just cable them, telegraph quotation, naming the rice and giving the date of shipment.

Q. For instance, the International Rice Company, you say that you have never asked them to ascertain from the International Rice Company if they would be able to supply rice to you? A. I don't see why we would. I don't remember—from memory I don't remember an instance where we did. It might be.

30 Q. Well, I think I can give you one. I would refer you to a cable from your company to Jackson, Son & Company dated March 9, 1936.

By the way, "Imperjack" is the cable address, is it not of Jackson, Son & Company? A. Yes.

MR. DESBRISAY: I would like that cable.

MR. BULL: Jackson Brothers would have that cable if it was sent to them.

MR. DESBRISAY: Well, you have a copy. You produced it.

40 (DOCUMENT PRODUCED BY MR. BULL).

Q. This cable reads as follows, Mr. Lauchland:

"Think should be possible determine approximately percentage yellow Kalagyee."

That was the shipment we have already mentioned, was it not, from Steele Brothers? That is what you were talking about. A. 2000 tons?

*In the  
Supreme  
Court of  
British  
Columbia.*

Plaintiff's  
Evidence.

No. 18.  
Norman Lee  
Lauchland,  
Cross-Ex-  
amination  
May 23rd,  
1938.

—continued.



*In the  
Supreme  
Court of  
British  
Columbia.*

Plaintiff's  
Evidence.

No. 18.  
Norman Lee  
Lauchland,  
Cross-Ex-  
amination,  
May 23rd,  
1938.

—continued.

Q. Yes. "If rice badly damaged as to yellows and milling price must be affected ascertain percentage approximately and lowest price obtainable for reconditioned rice up to 2000 tons if can be reconditioned in time. Would Interco"— You mean International Rice Company? A. Yes.

Q. "—be in position secure better quality or if price low enough they might secure balance reconditioned up to 2000 tons." That was a request then for them to get in touch with the International Rice Company? A. Yes, but as a general rule we didn't mention them.

Q. But you do, when the occasion arises you use them? A. I was giving you our general practice.

THE COURT: Do you want that document to go in?

MR. DESBRISAY: Yes, my lord.

THE COURT: It is only on that one question?

MR. DESBRISAY: That is all, I am coming to other matters.

THE COURT: I don't suppose it will help you.

(DOCUMENT MARKED EXHIBIT 34)

MR. DESBRISAY: The witness has already said they asked for quotations from time to time, they negotiated through them. Well, I submit that is agency.

Q In any event, Mr. Lauchland, that is so, that at the time of the making of the contract for the purchase of the Interco Brose 163 you had some difficulty in making that purchase, didn't you to start with? There was a question of whether or not you could get that grain?

MR. BULL: I object to that question. I don't think there is much relevancy in it. If my friend is leading up to get statements made by Jackson Brothers on the quality of this rice, I take the position that is not admissible. It is hearsay. Nor can it be asked in cross-examination. Now if that is his object the matter might just as well be dealt with now. Other than that, I don't see what relevancy this contract had on the question. It is a question whether it was damaged en route on the vessel.

MR. DESBRISAY: The question of whether it was damaged before it got on the vessel is also very important, my lord, and I submit that if there is correspondence between the Canada Rice Company and the people from whom they were purchasing the rice indicating the situation with regard to the rice in December that I am entitled to ask him about that, and what information they received.

THE COURT: Well, that is the person from whom you say they bought the rice?

MR. DESBRISAY: That is the person—the agent through whom they bought the rice?

THE COURT: Well, you see, that is different.

MR. DESBRISAY: And subsequently in the correspondence there will be letters forwarded by the agents from the rice company itself; that is, the International Rice Company, and I can't see on what possible ground it is not admissible for me to ask if he made a bid for the rice and then he was advised certain things with regard to it, and then subsequent correspondence that occurred leading up to the purchase and after the purchase, because it is dealing with this particular rice with respect to  
10 which they are making their claim.

THE COURT: First of all, let us see, what have we on this point?

MR. DESBRISAY: The question of whether—You see, my lord, the matter of whether or not this was the result of inherent vice is very important. Inherent vice is not a risk insured against.

MR. BULL: There is no plea of inherent vice.

MR. DESBRISAY: No, my lord, I don't need to plead it. I pleaded that it was not a risk insured against.

20 THE COURT: First of all, let us get the concrete case. You want to ask him how a certain person has—

MR. DESBRISAY: My lord, I want to ask him, to start with if he didn't have difficulty in securing this rice.

There was some doubt as to whether or not he would be able to get it. I think that is a perfectly proper question.

THE COURT: Subject to what he has said. Well, have you any objection to that, Mr. Bull?

30 MR. BULL: Yes. I say it is not relevant. The jury is not considering in this case anything having to do with the contract, nor anything that transpired up to the time of the shipment of the rice. If anyone in London made any statements, anything which my friend might think would suggest this rice was damaged before shipment, he should have had a commission to London to take that. The rule is very compendiously put in Halsbury, volume 19, page 574, the reasons advanced for the rejection of hearsay evidence are numerous (reading).

Now I am not in a position now, if any such statement should come in, to cross-examine these people; and they are not our agents.

40 THE COURT: That is the whole point, the whole question, whether or not they are your agents. First, if they are—if they are not that is a different thing.

MR. BULL: They are our brokers.

THE COURT: We had better settle that point first.

MR. DESBRISAY: My lord, he has already said that they asked him for quotations from time to time, they negotiated

*In the  
Supreme  
Court of  
British  
Columbia.*

Plaintiff's  
Evidence.

—  
No. 18.  
Norman Lee  
Lauchland,  
Cross-Ex-  
amination  
May 23rd,  
1938.

—continued.



*In the  
Supreme  
Court of  
British  
Columbia.*

Plaintiff's  
Evidence.

No. 18.  
Norman Lee  
Lauchland,  
Cross-Ex-  
amination  
May 23rd,  
1938.

—continued.

through them. There is a cable there in which they asked them to see if they could not get the rice—there was some difficulty getting it from someone else—from the International Rice Company, and they give them instructions.

THE COURT: Let me see the cable.

MR. BULL: That simply means, my lord, they are dealing with brokers—asking a broker for a quotation with Interco. That is the International Rice Company, they are exporters of rice. It is the mere suggestion of a broker that Interco might be in position to secure better quality. That does not turn them into something they never were. They never were our agents; they were only our brokers. My lord, the same difficulty applies to the cross-examination. Even on the assumption that by any stretch of the imagination it might be said they were agents, agents' admissions being made to the principal are not admissible anyway. That is Halsbury, volume 13, page 583 (reading). There are two or three cases there (reading).

So that the effect of that, my lord, is—I don't suppose anyone will ever doubt that law—is that we can't put in documents such as this which contain hearsay evidence, and you can't ask the receiver of those letters in cross-examination as to the same thing. On the two grounds: First, that he is merely a broker, not an agent, I say they are not admissible. Secondly, alternatively, if it could be said they were agents, they are not statements such as could be evidence against us—not having been made to a stranger. Now then, page 595 (reading). The rule seems to be clear.

THE COURT: Get 1932, 2 W.W.R. Now what you are suggesting here is letters from these people in London to the plaintiff company, or reports?

MR. DESBRISAY: I submit that from the time they started to purchase this rice they first send a cable indicating they want to purchase; they then immediately received a cable in reply to that. I submit that. That is all part of the *res gestae*, my lord.

THE COURT: That is, the Canadian Rice Company get a cable in answer?

MR. DESBRISAY: Yes.

THE COURT: You want to put in that answer?

MR. DESBRISAY: I beg pardon?

THE COURT: You suggest that answer should go in?

MR. DESBRISAY: Yes, my lord. I am suggesting the whole correspondence should go in.

THE COURT: No, I mean that now—you have a cable in here from Canadian Rice Company to somebody in London. That is exhibit 34.

MR. DESBRISAY: Yes, my lord.

THE COURT: I am dealing with any cable there may be to them. I understand you want that put in. I think that applies within the hearsay rule.

MR. DESBRISAY: No, my lord, I put that in only for the purpose of indicating that Jackson, Son & Company were agents. At the moment—

THE COURT: I do not want to rule generally with regard to a whole mass of documents. Now what is the document you want to ask the witness about?

10 MR. DESBRISAY: My lord, I wish to ask this question:  
Q. You had as a matter of fact some difficulty in making the purchase of this cargo of rice?

THE COURT: I will allow that.

THE WITNESS: Would you read that question?

MR. DESBRISAY: Q. The question is, You had as a matter of fact some difficulty in making the purchase of this cargo of rice? A. I would have to go through the correspondence to see just what you are referring to.

Q. Well, then, I would refer you—

20 THE COURT: Now he can look through his correspondence and answer your general question, if he had any difficulty about purchasing rice. This was something—as it were sending a cable and getting a reply at once, and as it were closing it, or would you get a contract to supply and arrange that?

MR. DESBRISAY: Would you get the correspondence so I can look through it and ascertain the facts? A. This is the first cable from Jackson—

THE COURT: Q. The question is did you have any trouble making a contract.

30 MR. BULL: The question is put to the witness and the witness can't answer without that correspondence. Now that correspondence was handed to him. I don't want the witness to read out these cables because I take objection again to any statements going in from these brokers in London. I haven't had a chance to cross-examine them on their statements.

THE COURT: Can you answer the question?

40 MR. DESBRISAY: My lord, this whole thing has a very strong bearing, I think it is part of the *res gestae*, it indicates the question of *bona fides*, the knowledge they had when all these transactions took place. While they may not be evidence to prove anything, they are evidence to prove the state of mind of the plaintiff, what they knew.

THE COURT: The state of mind is not in question at all, it is the condition of the goods.

MR. DESBRISAY: I know, my lord—I think perhaps as

*In the  
Supreme  
Court of  
British  
Columbia.*

Plaintiff's  
Evidence.

No. 18.  
Norman Lee  
Lauchland,  
Cross-Ex-  
amination  
May 23rd,  
1938.

—continued.



*In the  
Supreme  
Court of  
British  
Columbia.*

Plaintiff's  
Evidence.

No. 18.  
Norman Lee  
Lauchland,  
Cross-Ex-  
amination,  
May 23rd,  
1938.

—continued.

the thing develops it will be more obvious that they are admissible under the *res gestae* rule.

THE COURT: I do not see how that rule applies here as to the making of a contract. Anyway, the rule of evidence a statement made by an agent to his principal is not evidence. That is to say the principal cannot be called on to say what that statement is. That is hearsay.

MR. DESBRISAY: But my lord, why not? He can be asked if he was informed by his agent of such and such a state of affairs, surely, at the time—and that he knew of this—and that he had this information when he makes this claim. 10

THE COURT: If the question was his state of mind as to—

MR. DESBRISAY: This is cross-examination, my lord.

THE COURT: Yes, I know, but the rule is very strict in regard to that. The rule is cited by the Court of Appeal of Saskatchewan in *Rex v. Drew* (1933) 2 W.W.R., page 249: "The rule against hearsay applies to the proof of the relevant facts in the course of cross-examination, just as much as to their proof by examination in chief."

Now suppose this was your witness you were examining in chief, you could not ask about these statements. 20

MR. DESBRISAY: No, I agree with that.

THE COURT: "That is to say, a party is not entitled to prove his case merely by eliciting from his opponent's witness in cross-examination not his own knowledge on the subject, but what he has heard others say about it, but has not verified for himself."

MR. DESBRISAY: My lord, he has this knowledge, the knowledge that he received these letters. I submit that these letters coming from his vendors of this rice are certainly admissible in the case where he is endeavouring to establish that he made a loss resulting from the risk insured against in this policy. 30

THE COURT: Well, I would think not. That is pure hearsay. Somebody writes a letter to his vendor and makes certain statements, there is no proof that those statements are correct.

MR. DESBRISAY: I am not stating they are correct. I don't know whether they are correct or whether they are not, but we do know that he had these letters, and I submit the fact that he had them and what is in them is admissible.

THE COURT: I think not. 40

MR. DESBRISAY: In any event, I will proceed, my lord. I will submit further along this line at a later time, my lord. I don't want to take up time unnecessarily.

THE COURT: I will deal with each matter as it comes up.

MR. DESBRISAY: Q. Did you or did you not have difficulty in obtaining this cargo of 5000 tons of rice? A. You are

referring to the whole 5000 tons?

Q. Yes. A. Everything—before we made our purchase?

Q. Yes, and before you applied to buy it in Rangoon and get delivery of it? A. Are you referring to this rice now or the Kalagyi?

Q. I am referring to the cargo of rice, 5000 tons. It did come from Burma, didn't it? A. It did come from Rangoon.

Q. Yes. A. There were certain negotiations passed between us—between Jackson and ourselves, certain cables.

10 Q. Yes? A. Everything was cleared up before the boat sailed as to—

Q. But you had difficulty in obtaining this rice, didn't you? A. Looking at the price of the rice, we didn't have any difficulty.

Q. You did with the Kalagyi? A. The Kalagyi, yes, that was only on account of the sellers being very anxious to see that the rice arrived here. They had evidently had no experience with that rice at all.

20 Q. To be sure that the rice would arrive here in safe condition? A. They were very anxious, that is all. There was no difficulty as far as we were concerned; it was all—

Q. You were requested to see that the Kalagyi rice was particularly well stored, were you not? A. Because they had had no experience.

Q. Now did they tell you that? A. Yes.

Q. They told you that they had no experience.

MR. BULL: My friend is trying to get in against your lordship's ruling statements made by these brokers.

THE COURT: I was wondering why you did not object. That is hearsay.

30 MR. DESBRISAY: Well, my lord, he has made the statement.

THE COURT: As to what?

MR. DESBRISAY: That they were inexperienced.

40 THE COURT: I know, that came out in cross-examination. He says that they did certain things with regard to Kalagyi, which is not in question here. You see, if it was a question of a state of mind it would be a different thing altogether, but this is a case of the condition of the goods. He never saw the goods when they were shipped, knows nothing about them except what he has been told by somebody, and that is purely hearsay.

MR. DESBRISAY: Well, I asked him if he was not requested by them to arrange that this Kalagyi be particularly well stored.

THE COURT: Yes. Well, that is a request. Now he answered that.

MR. DESBRISAY: He answered that.

In the  
Supreme  
Court of  
British  
Columbia.

Plaintiff's  
Evidence.

No. 18.  
Norman Lee  
Lauchland,  
Cross-Ex-  
amination  
May 23rd,  
1938.

—continued.



*In the  
Supreme  
Court of  
British  
Columbia.*

Plaintiff's  
Evidence.

No. 18.  
Norman Lee  
Lauchland,  
Cross-Ex-  
amination  
May 23rd,  
1938.

—continued.

THE COURT: Yes.

MR. DESBRISAY: And then he started to explain why, I submit I am surely entitled to follow that up.

THE COURT: Well, unless it is on a question of credibility.

MR. DESBRISAY: Well, it certainly is, my lord. The whole thing goes to that. It goes to the whole matter, because this has been produced, this correspondence. Surely, my lord, if the people who are selling the rice ship it and ask the purchasers in carrying it to do something with regard to it, point out to them the necessity, and why, that is admissible. 10

THE COURT: Perhaps I could shorten this, was there a request to you or to someone else.

MR. DESBRISAY: Q. It was conveyed to you, was it not?

THE COURT: Well, just a moment now. That is the point. Q. Whatever it was, was it a communication direct to you or to somebody else, and then passed on? A. It came to—it would be from the shippers to Jackson and then to us.

MR. DESBRISAY: Q. And Jackson would convey it on to you? 20

THE COURT: Well, that makes it clear that it is hearsay.

MR. DESBRISAY: Well, it is hardly hearsay if Jackson & Company are agents, as I submit this correspondence would indicate very clearly, if read by your lordship.

THE COURT: Suppose it was submitted that Jackson is an agent in the fullest sense and he makes a communication to the witness as to something told by somebody else? Is that not hearsay?

MR. DESBRISAY: Making a request, conveying a request, surely conveying a request is not hearsay? 30

THE COURT: Is that not hearsay? He says that somebody else has requested him to say this. Now that is hearsay.

MR. DESBRISAY: No, my lord, that is a statement surely. I am telling you to do something.

THE COURT: That is hearsay. He says that somebody in Rangoon asks in London to ask you in Vancouver to do certain things. That is hearsay, surely.

MR. DESBRISAY: But, my lord, the vendor and these brokers for the sale are agents, surely. They act through them entirely. If they are making a request with respect to a cargo of rice, which is the subject of this litigation, the fact that they were requested to do something with that cargo is surely evidence. 40

THE COURT: Well, I think that is clear. Can you go on with another witness, Mr. Bull?

MR. DESBRISAY: There are other matters in connection with this.

THE COURT: I will not trouble with this matter for the moment. Go on with this witness and I will give you a chance to look up this during the lunch hour to find some case to support your statement.

MR. DESBRISAY: I think all this is admissible, my lord.

Q. As a matter of fact, Steele Brothers, from whom you bought this Kalagyi, at one time wanted to cancel this order, did they not?

MR. BULL: I object to that, my lord. The question is irrelevant on this issue—the mere statement of an agent.

THE COURT: Q. Do you say such a request was made to you directly or was it made to somebody in London? A. It would be made to Jackson.

THE COURT: You see, that is again hearsay.

MR. DESBRISAY: Well, then, the cables which went from the plaintiff's in response would certainly be admissible. There is nothing of hearsay about what they put in their own cables.

THE COURT: What do you say to that, Mr. Bull?

MR. BULL: I would like to see each one by itself before I answered that.

THE COURT: That will be reserved too, Mr. DesBrisay. You see, what I was dealing with before was communications from the London people to the plaintiff. They are communications made on a different basis.

MR. DESBRISAY: Q. There was delay, was there not, during the loading of the "Segundo" in Rangoon? A. I believe there was.

Q. You were advised by the shippers' agents here of the delay? A. I believe—from memory I am not quite so clear, but I believe we were at the time.

Q. Well, the vessel arrived at Vancouver on May 28th. I think that is common knowledge.

Now prior to the arrival of the ship in Vancouver you had received information about the Interoce Brose 163 or Interoce Brose generally, had you not? A. Not from memory, I don't remember.

Q. You don't remember. At any rate, upon the arrival of the ship you sent to Macaulay, Nicolls & Maitland this detail of how the value was made up? A. On the—

Q. After the arrival of the ship? A. You mean—

Q. Yes, that exhibit 2. A. Yes.

Q. And did you advise them at that time of the information you had received? A. What information are you referring to?

Q. The information that you had received from London? A. I don't know what information you are referring to, from memory.

*In the  
Supreme  
Court of  
British  
Columbia.*

Plaintiff's  
Evidence.

No. 18.  
Norman Lee  
Lauchland,  
Cross-Ex-  
amination  
May 23rd,  
1938.

—continued.



*In the  
Supreme  
Court of  
British  
Columbia.*

Plaintiff's  
Evidence.

No. 18.  
Norman Lee  
Lauchland,  
Cross-Ex-  
amination  
May 23rd,  
1938.

—continued.

Q. Well, I might refer you to it, but Mr. Bull objects.

MR. BULL: My friend is proceeding—he is trying to get this thing in some way or other.

MR. DESBRISAY: No, I am not trying at all, my lord, he had information—

MR. BULL: He is putting a question in an innocent-like fashion which he thinks will lead on to the witness saying something else. Surely my friend ought to accept the ruling of your lordship until there is some change.

MR. DESBRISAY: I didn't intend to—

10

MR. BULL: Information that would be obtained in this way—

THE COURT: Statements that he made to the agent of the insurance company I think would be evidence.

Q. What did you say to the insurance company, if anything?

MR. DESBRISAY: Q. Did you give them any information beyond what is contained in that exhibit 2? A. No.

Q. Did you make a claim against the International Rice Company in respect of the Interco Brose 163? A. We made a claim for both A.L.Z. and the Interco Brose—the two of them, 20 the two parcels.

Q. You made that claim first by cable dated June 8th did you not? A. I am not—

MR. DESBRISAY: I would ask that to be produced.

THE WITNESS: I am not sure as to the dates.

(Document produced by Mr. Bull)

MR. DESBRISAY: Q. I am producing a cable dated June 8th, 1936. This is from your company to Jackson, Son & Company? (handing document to witness) A. Yes.

MR. DESBRISAY: That reads (reading cable).

30

(CABLE MARKED EXHIBIT 35)

Q. Now the Interco Brose is this 163? A. Yes.

Q. And did you receive a reply to that cable? A. We must have got something.

MR. DESBRISAY: There is a letter of June 11th.

MR. BULL: Well, I am certainly objecting to that. Again my friend is attempting to get in in another way something that has been ruled out.

MR. DESBRISAY: Well, I submit surely, my lord—

THE COURT: I think the same ruling—that will stand 40 with the rest of it, and give you a chance for further argument. Just make notes of that so that you will not overlook it. I don't want you to do that.

MR. DESBRISAY: Q. You then wrote to Jackson, Son & Company on June 12th? A. You are asking me a lot of ques-

tions and you have had the correspondence for months, and we haven't had it. We didn't take copies, unfortunately.

Q. I haven't had the correspondence. A. Well, I thought you had.

MR. BULL: You see, your lordship—

THE COURT: I think it is admissible in regard to the claims they made.

MR. BULL: All right; there you are. It is not written by this witness, anyway (handing document to counsel).

10 MR. DESBRISAY: Have you seen that letter before, and you know who wrote it? That is a copy produced from your files. (handing document to witness).

MR. DESBRISAY: Is my friend going to suggest now that this should wait until Mr. Gavin comes?

THE COURT: Let us get ahead. We are dragging along here. Is there any objection to that, Mr. Bull?

MR. BULL: No, my lord.

THE COURT: All right; exhibit 36.

(DOCUMENT MARKED EXHIBIT 36).

20 THE COURT: That is a letter of 11th July, is it?

MR. DESBRISAY: Letter of June 12, 1936, from Canada Rice Mills Limited to Jackson, Son & Company (reading).

Q. These two samples were sent? A. Yes.

Q. This first—perhaps you had better give an explanation of this milling process. You take this brown rice and you put it through the mill. The mill is a small cylinder enclosed in a machine and it revolves very rapidly and the friction of the grains against one another takes this brown outer covering off. Is that the process? A. Well, it is the friction in the machine.

30 Q. Well, against the walls of the machine and the grains of rice striking against one another? A. Well, it takes off that outer covering of bran.

Q. Yes, and when you speak of the high milling, you mean that you leave it in the machine for a greater length of time— A. The milling—

Q. —than otherwise, than you would for what you call low milling, or as you usually mill it?

Q. If you have got the machine, it is not tightened up, the rice will run through it freer than when it is tightened up.

40 Q. That is, it stays in the mill longer? A. You don't get it out as quickly.

Q. Therefore, it has more opportunity to mill? A. That is the idea.

Q. And that is what you call high milling? A. Yes.

Q. When you speak of light milling, do you mean ordinary

*In the  
Supreme  
Court of  
British  
Columbia.*

Plaintiff's  
Evidence.

No. 18.  
Norman Lee  
Lauchland,  
Cross-Ex-  
amination  
May 23rd,  
1938.

—continued.



*In the  
Supreme  
Court of  
British  
Columbia.*

*Plaintiff's  
Evidence.*

*No. 18.  
Norman Lee  
Lauchland,  
Cross-Ex-  
amination,  
May 23rd,  
1938.*

*—continued.*

milling? A. It all depends what grade of rice you are running.

Q. I see. Well, this particular rice, 163, the two samples were of the 163, were they not? A. Yes, I think they were.

Q. Yes, and the first one was one of high milling, and the second one was one in the condition in which you would ordinarily mill it? A. I am not—just from memory, which way they went, but anyway, that is the way they were. One was high milling and the other not so high.

Q. And these samples I take it, were taken after the first milling? A. I couldn't say just which one they come from, on 10 May 30th or 29th, or which one.

Q. These milling records show that you milled 163 on May 29th; or two on May 29th; then on June 5th and on June 8th it would be taken from one of these millings? A. Yes.

Q. And how do you take these samples—just as it comes out of the mill, is it, or out of the machine? A. After it is finished, yes.

Q. Yes, after it has been milled into white rice? A. Yes.

Q. Had there been a shipping sample, or a shipment samples, of this rice 163 processed sent to London? A. Shipping—? 20

Q. Shipment sample? A. They always do.

Q. They always do? A. Send samples to London.

Q. So that the sample of the rice that went on board this ship was sent to London at once — immediately after shipping? A. Well, I won't say it was immediately after it. They are always sent.

Q. That is the custom? A. It is the custom, yes.

Q. And it was done in this case, you know that? A. Yes.

Q. Did the sellers agree with you that there were yellow grains in this rice? A. We referred it to Jackson. 30

Q. Yes? A. It was all through Jackson.

Q. Well, did you ever hear— A. We had the claim paid, yes—the yellow grains.

Q. You had the claim paid? A. Yes.

THE COURT: Q. You say you had the claim paid? A. Yes.

Q. For the yellow grains? A. Yes.

MR. DESBRISAY: Q. Did Jackson, Son & Company tell you what they thought about the samples you sent over?

MR. BULL: I object to that on the same ground. 40

MR. DESBRISAY: I submit that that is not hearsay, my lord. They send sample of rice to me, or to anyone else, and I tell them what I think about it.

THE COURT: That is hearsay.

MR. DESBRISAY: No, my lord, that is not hearsay, that is not—

THE COURT: As I understand the rule, suppose a man is charged with theft, he has picked up something in the room, he can say, "I was told by John Jones that that was his property and he didn't want it." That is hearsay, but it is accepted, why? Because it shows the state of his mind. But suppose you want to prove the truth of the ownership of that article in the room, that statement would not be admissible.

MR. DESBRISAY: Surely, my lord, the Canada Rice Mills sends a sample of rice to their agents, what their agents indicate to them with regard to its appearance is evidence in this case.

THE COURT: No.

MR. DESBRISAY: You think not, my lord.

THE COURT: No, but I will leave that until you find something in the luncheon hour to support your statement, and I will be very glad to reconsider the whole thing.

MR. DESBRISAY: Q. Well, at any rate, you did effect a settlement with the International Rice Company regarding the claim you made for these yellow grains? A. We got our claim paid through Jackson.

MR. DESBRISAY: I would like a cable of September 11th, 1936, from the Canada Rice Mills.

(Document produced by Mr. Bull).

MR. DESBRISAY: This is a cable dated September 11th, 1936, from Canada Rice Mills to Jackson, Son & Company:

"Will accept seventeen hundred and fifty dollars settlement Brose but owing poor quality cannot use for purpose intended therefore causing us further loss. Can Interco secure for us five hundred tons free from discoloured or yellow grains fully equal to last years sample number 22."

(DOCUMENT MARKED EXHIBIT 37)

MR. DESBRISAY: I assume my friend will object to producing the cable in reply to that one of September 15th?

MR. BULL: I am not agreeing to that one, my lord.

THE COURT: Well, that will stand in the same position as the rest.

MR. DESBRISAY: Yes, my lord. My lord, there were also letters from the International Rice Company to Jackson, copies of which were sent on to the plaintiff, which they have.

THE COURT: That will be in the same position too.

MR. DESBRISAY: Well, I would like the production of a letter of October 7, 1936, from Canada Rice Mills to Jackson.

(Document produced by Mr. Bull).

*In the  
Supreme  
Court of  
British  
Columbia.*

Plaintiff's  
Evidence.

No. 18.

Norman Lee  
Lauchland,  
Cross-Ex-  
amination  
May 23rd,  
1938.

—continued.



*In the  
Supreme  
Court of  
British  
Columbia.*

Plaintiff's  
Evidence.

No. 18.  
Norman Lee  
Lauchland,  
Cross-Ex-  
amination,  
May 23rd,  
1938.

—continued.

MR. DESBRISAY: This is dated October 7th, 1936. This will be exhibit 38.

(DOCUMENT MARKED EXHIBIT 38).

MR. DESBRISAY: "We duly received your several cables and also your letters of the 11th and 18th ultimo regarding allowance on Brose and Seeta parcels"—

Q. That has nothing to do with this cargo at all? A. No.

MR. DESBRISAY: (reading balance of letter).

Q. Now you had in the meantime made a claim against the defendant? A. You mean before October? 10

Q. On this insurance policy? A. Yes.

Q. And it was indicated by the defendant that it required information to show the loss you claimed for was one that you were entitled to make under the terms of your policy? A. We had never claimed for yellow grains, these yellow grains, from the insurance company.

Q. You merely wanted to claim—I will come to this later on.

And the insurance company took the position that it was not satisfied that the loss had resulted from peril of the sea or other risk insured against. Isn't that so? They wanted you to give them further information so that they could decide whether it was a claim they felt they should admit or not admit? A. I am not just so sure just what passed between us at that time. 20

Q. I see. A. What they did ask us for.

Q. Well, you did ask Jackson Son & Company to get some information for you about it, didn't you? A. Yes.

MR. DESBRISAY: I would like to see a cable of December 4th.

(Document produced by Mr. Bull).

MR. DESBRISAY: (reading letter). That will be exhibit 39. 30

(DOCUMENT MARKED EXHIBIT 39).

Q. And then did Jackson, Son & Company do something for you with regard to that?

MR. BULL: I object to that.

MR. DESBRISAY: Q. Well, they cabled you. You received a reply?

MR. BULL: Yes, but I am objecting to any reply going in.

MR. DESBRISAY: My lord, this is in response—this is telling them what they did. 40

THE COURT: That is hearsay again.

MR. DESBRISAY: A cable from their agent telling them, in response to a request that they ascertain whether there was moisture content or not, replying and saying what they have

done with regard to carrying out the request? They don't give any information one way or the other. They simply say what they have done. That is not hearsay surely.

THE COURT: Well, I will reserve anything touching on that question until after lunch.

MR. DESBRISAY: Q. Did you get a certificate with regard to moisture content? A. No.

Q. Why did you want that? A. I think the insurance company—I am not clear just whether the insurance company asked us to get it or we wanted to get it ourselves. I am not just clear on that.

Q. Well, then, if you wanted to get it yourself, why did you want it? A. To show there was the correct moisture content.

Q. And why did you want to show the exact moisture content? A. Because we wanted to see what the moisture content was of the rice at the time of shipment.

Q. Yes, but why did you want to see that? A. Because you had—you or Captain Watson had given us what the moisture content was upon arrival.

Q. No, I didn't give it to you. I want you to answer the question, why you wished to obtain that moisture content. What was your purpose? There was some purpose other than just knowing what it was. A. We wanted to see whether it was safe—within safe limits.

Q. That is, you wanted to see whether the moisture content of that rice when it was shipped was such that the rice was safe to be shipped? A. Well, if it was 19%, why—

Q. If it was over a certain percentage it would be unsafe to ship, wouldn't it? A. It would have to go up around 15.

Q. Well, will you answer my question; If it was beyond what is regarded as safe moisture content it would be unsafe to ship it, wouldn't it? A. No, not with proper ventilation.

Q. And it would be pretty nearly certain to heat? A. Not with proper ventilation, it wouldn't.

Q. Then why did you want to get this moisture content? A. I think there must have been something for the insurance Company. I don't know just at the moment what it was. I am not sure. That is what I said, I don't know whether we wanted it or not, just exactly why we wanted to get it.

Q. Now are you suggesting to me that it is usual to ship rice irrespective of the moisture content and expect no damage from it—or no heating? A. We didn't ask for the moisture content of that rice when we had it shipped.

Q. You do now, though, don't you? A. I beg your pardon?

*In the  
Supreme  
Court of  
British  
Columbia.*

Plaintiff's  
Evidence.

No. 18.  
Norman Lee  
Lauchland,  
Cross-Ex-  
amination  
May 23rd,  
1938.

—continued.



In the  
Supreme  
Court of  
British  
Columbia.

Plaintiff's  
Evidence.

No. 18.  
Norman Lee  
Lauchland,  
Cross-Ex-  
amination  
May 23rd,  
1938.

—continued.

Q. You do now, though, don't you? A. We—since—we never ask from Burma for rice with moisture content.

Q. But you do now? You did in 1937? A. Yes. You are asking me as though we do it in every instance. I know we do it in some instances. You are asking me, when you say you do it now, you mean every case?

Q. I said you do it now. I don't mean in every instance, but you do do it now? A. Yes, we ask for moisture content.

Q. And you don't want rice shipped that is not of a certain minimum or maximum moisture, do you? A. It all depends. 10  
We have it come in here with 19%.

Q. I am not asking you what depends at all, I am asking you, that you don't want it shipped under certain—or above certain moisture content? A. If we had it properly stowed, why, it will come, we buy it with that moisture content.

Q. I beg your pardon? A. We buy it with that content in it, we buy rice with it.

Q. I am asking you, I am going to keep on asking you until you answer it, Mr. Lauchland, whether it is not true that you don't want your sellers to ship rice to you which at the time it 20  
is placed on board the ship has more than a certain maximum moisture content? A. We ask for moisture content—a certificate on the moisture content.

Q. Yes? A. No, then, if we buy rice that has got moisture content beyond that—what we have asked them for—

Q. Yes? A. We might have that rice shipped and have the ventilation.

Q. But have extra ventilation for it? A. Not any more than was put on the "Segundo".

Q. Just a minute now. You would have extra ventilation 30  
for it? A. The same as was put on the "Segundo".

Q. Now is the ventilation that was put on the "Segundo" extra ventilation? A. That was shipped out according to the custom of the port.

Q. That was shipped in the usual fashion? A. You see, that is an extra cost, the ventilation.

Q. And under that charter— A. Well, there is extra cost of ventilation.

Q. Well, you always have wooden ventilators in rice coming from the tropics, don't you? A. Yes. 40

Q. And you have to pay, that is part of the cost that you have to pay? A. We don't always pay it.

Q. Well, then, that is a matter of arrangement between yourselves and your sellers? A. Or the ship owners.

Q. Or the ship owners, but ventilators—wooden ventilators are always put in the rice cargoes coming from the tropics? A.

I wouldn't say they always are. I have no experience what they do.

Q. Well, you have experience in cargoes of rice that you receive from the tropics? A. We have had—

Q. You have had that experience, haven't you? A. Wooden ventilators, yes.

Q. Over a number of years, and there are always wooden ventilators? A. I wouldn't say always.

10 Q. Have you had any coming in from the tropics, any substantial quantity of rice, in which there were not wooden ventilators? A. We had a shipment come into Vancouver two years ago.

Q. In what ship? A. Now you are asking me.

Q. Yes, I am asking you. And how much rice was there? A. I think there was 224 tons—something like that. Now I don't know whether—

Q. You don't know whether they had ventilators or not? A. No, I didn't see it.

20 Q. You don't know. Well, you started and said that they came without ventilators. Now you don't know. A. I say it might have come without ventilators.

Q. It might have come. You said before that it had come. A. The question you asked me—you said they always came. I don't know whether that came or whether it didn't. I didn't see it.

30 Q. But apart from this one that you didn't see, which was a small quantity, 224 tons, these wooden ventilators were always in the rice that came from the tropics which you received up to now? A. No, I can't say that from memory, that they always have been.

Q. You can't say? You would expect them to be? A. They always—they put in wooden ventilators, and especially as the insurance people had asked us to cable to have Lloyd's certificate on that cargo.

Q. Well, now, after you got the certificate, that is the certificate with regards to the moisture that you were requesting, after you got the certificate showing say 19% of moisture, what did you do? A. We buy the rice at 19% moisture in many instances.

40 Q. No, you haven't yet answered the first question I asked you on this, that is, why in connection with this Interco Brose you were seeking to learn the moisture content? That is this 163. A. I said I didn't remember what—whose request it was on, whether it was for the insurance company or our own I don't remember.

*In the  
Supreme  
Court of  
British  
Columbia.*

Plaintiff's  
Evidence.

No. 18.  
Norman Lee  
Lauchland,  
Cross-Ex-  
amination  
May 23rd,  
1938.

—continued.



In the  
Supreme  
Court of  
British  
Columbia.

Plaintiff's  
Evidence.

No. 18.  
Norman Lee  
Lauchland,  
Cross-Ex-  
amination  
May 23rd,  
1938.

—continued.

Q. Well, then, what was the purpose of getting it, no matter at whose request? A. I don't just offhand—let me see the correspondence on it.

Q. Well, your counsel doesn't want you to see the correspondence. There is no correspondence that I know with—or that you have produced to me—that will show what your purpose was in getting the moisture content at the time of shipment of this rice, Intereo Brose 163. A. There must have been a letter in confirmation of that cable. It might refresh my memory. I don't just remember now. 10

Q. You wanted it in connection with the claim against the insurance company, didn't you? A. Most likely that is what we were getting it for.

Q. Well, is that what you wanted it for? A. I don't know—you are asking me whether it was for ourselves or for the insurance company, that is the way you started.

Q. You said you wanted to see the cables? A. Yes. I started to say it was at our instigation, or the insurance company, that is the way you started out in the first place, and then you went on to something else, why did you do it, and I kept telling you— 20

Q. You are not asking me, you are answering questions. I am asking you what your purpose was in getting that moisture content. A. Most likely it was in connection with the claim. I just don't remember at the moment.

Q. Have you any doubt at all it was in connection with the claim? A. No, that is why we were most likely to get it.

Q. Of course, you would get it in connection with the claim, for what purpose? What was the idea you had in mind of getting this certificate of moisture content? A. Well, it would show me that—the substantial condition of the rice when it left. 30

Q. That is, you thought that if you got the certificate of the moisture content showing it below a certain percentage, that that would indicate that it was in good condition so far as the moisture content was concerned when it was shipped? A. Well, now the moisture content—

Q. Just answer the question. Don't start arguing; answer the question. A. I am not arguing. We knew what was the moisture content of the rice upon arrival. We wanted to check that up, that is what we wanted to do, check up that moisture content. 40

Q. And that is all you wanted. You didn't want it for information to hand to the insurance company to support your claim? A. Well, if you have got the moisture content before shipment and the moisture content upon arrival, that helps you with your claim.

Q. Yes, and if you were to get the moisture content before shipment that shows say 12%, you would not expect anything to happen on the voyage? A. If the rice is properly ventilated, no.

Q. No, and if you had it up as high as 19 or 20%, it might be— A. Not with proper ventilation.

Q. I see. Now then, what do you call proper ventilation? A. I am not a shipping man.

Q. You don't know anything about it? A. About ventilating a boat?

10 Q. Yes. A. I have never had any experience.

Q. What do you mean by proper ventilation? A. That is what the—other people do that, any of the boat people consider proper ventilation, ones accustomed to loading rice cargoes.

Q. And you mentioned awhile ago a figure of 19%, why did you mention that—19% moisture? A. Because we had a cargo come in one time with the moisture content—I think it was between 16 and 19.

Q. That would be a high moisture content? A. Yes. They knew it before it was dangerous moisture content. It appeared  
20 to us—

Q. At which to ship rice? A. We had never had any experience, and it appeared to us to be dangerous. It didn't turn out that way, though.

Q. What is the effect upon rice if it has been wet and redried prior to shipment? A. If it has been wet and redried?

Q. Yes, prior to shipment. A. I have never had any experience.

Q. You have never had any experience. Did you ask Jackson and Company to find out from Blackwood, Ralli & Company  
30 whether that had been done with this rice 163? A. I couldn't tell you from memory now.

Q. You could tell from looking at your letters? A. Yes, I would have to go through them all.

Q. If you asked for such information, did you receive it?

MR. BULL: I object to that, my lord. The man still persists.

MR. DESBRISAY: I am asking him whether he received it, that is all. That is a perfectly proper question. I am not asking what the information was.

40 MR. BULL: I can't see how this correspondence—I don't see why this witness should be asked to go through these letters. If there is a letter in which the witness has asked for something, why not produce it?

MR. DESBRISAY: I am not producing the letter.

THE COURT: What is your question?

MR. DESBRISAY: I am asking him what is the effect upon

*In the  
Supreme  
Court of  
British  
Columbia.*

Plaintiff's  
Evidence.

No. 18.  
Norman Lee  
Lauchland,  
Cross-Ex-  
amination  
May 23rd,  
1938.

—continued.



*In the  
Supreme  
Court of  
British  
Columbia.*

Plaintiff's  
Evidence.

No. 18.  
Norman Lee  
Lauchland,  
Cross-Ex-  
amination,  
May 23rd,  
1938.

—continued.

rice if it has been wet and redried prior to shipment. He said he didn't know. And I asked if he had asked Jackson & Company to find out if that had occurred in connection with this rice, and he said he wouldn't know without looking at the correspondence, and I said, if you did as a matter of fact ask for that information, did you receive it?

THE COURT: Well, he says he does not know whether he did. I suppose he would have to look up his correspondence.

MR. DESBRISAY: I have asked him, assuming he did ask, did he receive it. 10

THE COURT: You mean, did he receive the answer?

MR. DESBRISAY: Well, did he receive the information that he requested?

MR. BULL: I don't see how the witness can answer that, my lord, when he says he doesn't know whether he asked for any.

THE COURT: I will reserve that. First of all, you have to establish he did ask him. You have not established that, then you say if he did, did he receive a reply. I do not see how he could answer that at all. I am not stopping you putting in any document you like in which he asked for certain information. 20 That is something he knows himself. That is not hearsay.

MR. DESBRISAY: My lord, this letter contains a statement with regard to the facts of the voyage.

THE COURT: What letter?

MR. DESBRISAY: The letter in which the matters I have been discussing are mentioned.

THE COURT: Well, are you speaking of his letter?

MR. DESBRISAY: Yes, acknowledging the Rice Company's letter.

MR. BULL: What letter is it? 30

MR. DESBRISAY: Letter of December 18th.

THE COURT: Do you say you want to put that in?

MR. DESBRISAY: My lord, I can't put it in in view of the arrangement we have made, and I don't want to put in that part of it which has anything to do with the order.

THE COURT: Well, what you might do, I suppose, you might put the letter in—or put a copy of that part of it which is not mentioned in your agreement.

MR. BULL: I have no objection to that going in, my lord.

MR. DESBRISAY: Of course, you wouldn't but the second 40 sentence was struck out.

THE COURT: Mr. Bull, is there something there which should not be put in view of the arrangement that you two counsel have come to?

MR. BULL: No.

MR. DESBRISAY: The second sentence of the letter.

THE COURT: He says one thing, and you say the other. That does not get me very far.

MR. DESBRISAY: I submit your lordship should read that letter, and I should not read it.

THE COURT: Suppose you show the letter to Mr. Bull now.

MR. BULL: I agree that it go in, my lord.

MR. DESBRISAY: That second sentence in the first paragraph should not be in.

10 MR. BULL: That has nothing to do with the agreement—the facts of the voyage.

THE COURT: Well, your friend takes the objection that that has nothing to do with the agreement. Now it is for you to say whether you will put in that letter.

MR. DESBRISAY: My lord, I would ask your lordship to look at the agreement and see whether you agree with my friend.

THE COURT: Was that agreement in writing?

MR. DESBRISAY: Yes, my lord, it is here, filed as exhibit 6.

20 THE COURT: Let me see the letter and the agreement.

MR. DESBRISAY: The second sentence in the first paragraph is the one I suggest should not be put in.

THE COURT: Of course, this document is not a statement of fact; it is a statement of opinion.

MR. DESBRISAY: No, no, after the first phrase is a definite statement of fact.

THE COURT: Well, yes, but that is pure hearsay because he does not know of his own knowledge. That is clear enough.

MR. DESBRISAY: He makes a definite statement.

30 THE COURT: I see what you mean. If you say this is in conflict with your agreement then unless your friend consents you cannot put this in.

MR. DESBRISAY: Of course, he consents to my putting it in, and I don't want to put it in with that paragraph.

THE COURT: I see your position. I will have to point out to the jury it is merely their view then. This man was not present and does not know anything about it.

MR. DESBRISAY: My lord, I will consider whether I will put it in.

40 THE COURT: Yes, very well.

MR. DESBRISAY: Q. Mr. Lauchland, the rice marked A.L.Z. and the rice marked 163 are the same type of rice precisely? A. Yes.

Q. And were bought for the same purpose? A. Yes.

Q. Now you were able to use the rice marked A.L.Z. for the purpose for which you intended it? A. Yes.

*In the  
Supreme  
Court of  
British  
Columbia.*

Plaintiff's  
Evidence.

No. 18.  
Norman Lee  
Lauchland,  
Cross-Ex-  
amination  
May 23rd,  
1938.

—continued.



*In the  
Supreme  
Court of  
British  
Columbia.*

Plaintiff's  
Evidence.

No. 18.  
Norman Lee  
Lauchland,  
Cross-Ex-  
amination,  
May 23rd,  
1938.

—continued.

Q. And with respect to 163 you were not? A. I explained to you in my examination of where we had used some of that, that we had to fill some orders and so forth, and that we mixed it with other rice and sent it out.

Q. Well, then, you were able to use this 163 for the purpose for which you intended it after mixing it with other rice, is that what you mean? A. We had to buy other rice to mix with it, yes.

Q. Did you notify the defendant company of your intention to accept this settlement with the International Rice Company? 10

A. Well, we told the defendant company in June.

Q. That you were making a claim? A. We were making a claim for yellow grains.

Q. Well, did you tell them when you made the settlement? A. I don't know whether we did or not, I wouldn't say—we told them distinctly that we were making a claim for yellow grains.

Q. Did you ask them if they were satisfied with the settlement you were making? A. The yellow grains were not in our claim on the insurance company.

Q. Well, we will see about that. My question is a perfectly 20 simple question. What I asked you was, did you notify the defendant company before you accepted the settlement with the International Rice Company that you were making a settlement?

A. If we did, we did it verbally. We didn't do it in writing.

Q. Well, did you? A. I didn't, no.

Q. Did you notify them after settlement? A. I did not.

Q. Did you ever tell them how much you got? A. I don't know whether I did in conversation with Mr.—

Q. You have no recollection of doing it? You didn't write a letter? A. No, I don't think we ever wrote a letter to them 30 in that connection.

Q. In the Rangoon evidence, Mr. Lauchland, you heard the method of milling described, by taking the rice and putting it in a canvas bag or a hose pipe and knocking it with something—

A. I heard that, yes.

Q. Well, that is a makeshift, crude method of turning rice into white rice, is it? A. You have got your machines for making rice into white rice. I don't know whether they ever would think of making white rice in that crude manner over there. Perhaps 40 some of the natives might.

Q. But they do do it for the purpose of examination? A. Yes.

Q. You wouldn't get high milling by doing that, would you? A. You wouldn't get a polish on it, no.

Q. You wouldn't get high milling, you wouldn't get—the

effect of this rubbing— A. If you stayed at it and your rice were to break you might get it.

Q. But if it will break—it would be very likely to break, wouldn't it? A. It all depends how long you kept at it what the condition of the rice was.

Q. I understood if you kept at it long enough, if you tried that long enough you would break it up. A. I imagine so, if you kept long enough at the thing you might break it up.

10 THE COURT: It is 1 o'clock. Let me understand what you are going to look up during lunch. The question first is as to the admissibility of an answer from Jackson & Company to a cable sent by the plaintiff asking for information?

MR. DESBRISAY: Asking them to do something.

THE COURT: Well, that is one. And the next one is asking them to do something, and their answer?

MR. DESBRISAY: Yes.

THE COURT: Then the next one is generally letters from Jackson & Company to this plaintiff in answer to letters written by them?

20 MR. DESBRISAY: Yes, my lord.

THE COURT: Those are two things, yes, all right.

Now gentlemen of the jury, I am going to adjourn until quarter past two. It is not necessary to repeat the warning I have given you two or three times before. Be very careful not to speak to anyone about this case.

(COURT ADJOURNED AT 1 P.M. UNTIL 2:15 P.M.)

(COURT RESUMED AT 2:15 P.M. PURSUANT TO ADJOURNMENT).

NORMAN LEE LAUCHLAND, resumes the stand:

30 THE REGISTRAR: You are still under oath, Mr. Lauchland,

MR. DESBRISAY: Does your lordship wish me to discuss that matter about the admissibility of the documents for the moment? Your lordship has already ruled that the documents sent by the Canada Rice Company are admissible.

THE COURT: I do not see any part of the case upon which that is evidence at the present time.

MR. DESBRISAY: Will your lordship delay the matter and I will proceed?

40 Q. Mr. Lauchland, in your direct examination you said bags of rice which were heated were coming from the vessel on May 29th? A. Yes.

Q. Do you know what part of the vessel they were coming from? A. No, I did not take notice what the holds were.

*In the  
Supreme  
Court of  
British  
Columbia.*

Plaintiff's  
Evidence.

No. 18.

Norman Lee  
Lauchland,  
Cross-Ex-  
amination  
May 23rd,  
1938.

—continued.



In the  
Supreme  
Court of  
British  
Columbia.

Plaintiff's  
Evidence.

No. 18.  
Norman Lee  
Lauchland,  
Cross-Ex-  
amination  
May 23rd,  
1938.

—continued.

Q. Did you keep a record of the bags you examined? A. No.

Q. Their marks and so on? A. No.

Q. Did you yourself take any temperatures? A. No.

Q. Did you keep a record of temperatures yourself taken by anyone else? A. I did on May 29th and on June 1st.

Q. You kept a record? A. I made notes of them, yes.

Q. You did not produce that in your affidavit of documents? A. I was never asked for it.

Q. You mean your solicitors didn't ask you for it? A. It is my own notes. 10

Q. Who took the temperatures in respect of which you took notes? A. Captain Watson.

Q. Where did you make the notes? A. Right on the premises.

Q. I think you said that all of the rice was damaged to some extent. Did you say that? A. What I saw coming off the boat, the rice was heated, warm or hot, and heating causes damage.

Q. But this is clear, that apart from 163 none of the other rice was damaged? A. It certainly was damaged. When it is heated it must be damaged. 20

Q. Did you consider the Kalagyi was damaged? A. Kalagyi was heated the same, some of it.

Q. I am asking you do you say that the Kalagyi was damaged? A. To a certain extent, yes.

Q. You sold it without any loss? A. The Kalagyi?

Q. Yes. A. Yes.

Q. There was an inquiry made of you, or to your agents, by Steele & Company asking you how the Kalagyi had carried, how it had come through? Did you have such an inquiry? 30

THE COURT: What is the question?

MR. DESBRISAY: The question is this, not information or anything else, but if he had an inquiry from London as to how—I will read the words—you had an inquiry, at least a letter from Jackson & Company saying Steele Brothers—

MR. BULL: Now—

MR. DESBRISAY: Q. You did receive—all right, I will not put it in at all—I will put the letter in. It indicates they had.

THE COURT: Is it the plaintiff's letter?

MR. DESBRISAY: Yes, this is a letter from the Canada Rice Company to Messrs. Jackson & Company on July 25th, 1936. 40

MR. BULL: Just put in a copy.

MR. DESBRISAY: This is the letter dated July 25th, 1936. In the absence of the copy, my lord, I am putting in what is not a complete copy, but is a copy of the paragraphs that relate to

this matter. This letter is written by yourself. There are your initials? A. Yes.

(LETTER READ AND MARKED EXHIBIT 40)

Q. Now when this 163 came off and the other rice, was 163 piled by itself, set aside where it could be observed? A. You might have a few of the other marks mixed in, but in the hold it was all by itself.

Q. It was put off by itself because it appeared to contain the heaviest heating? A. No, it was put in the place—

10 Q. Where it was intended? A. Yes.

Q. But it did show the heaviest heating? A. I got a bag of N.L.Z. on June 1st which showed 100, whereas the 163 showed only 93, the highest on that day that he examined.

Q. Are you suggesting the whole of the N.L.Z. was heated to that extent? A. No, I am not.

Q. Will you tell me how many sacks of the N.L.Z. that heated to that extent? A. Those are the only three I saw a temperature test of.

20 Q. You don't know what the temperature was of the balance of the N.L.Z. A. No.

THE COURT: Q. You said three sacks went 100 degrees? A. No, one.

MR. DESBRISAY: Q. And the fact is you made no claim for it and you were able to dispose of it without any loss? A. The N.L.Z.?

Q. Yes? A. Yes. We did not make any claim for it.

Q. Do you mean yes? A. Yes to the question.

30 Q. I understand that it was not possible to detect the damage in the brown rice 163 apart from the heating; the rice was dry? A. The rice itself?

Q. The rice itself was dry as it came out of the ship? A. Yes.

Q. The sacks were dry, and if it had not been for the fact that on handling those sacks you noticed they were warm or hot, you would not have detected this damage until the rice was milled? That is correct, is it not? A. Except if I had seen the rice when it showed a darker appearance.

40 Q. But you would not have looked for that—you would not have noticed that until you milled it had the bags not been warm or hot? A. Do you mean I would not examine the rice when it came off the boat first? That is what I go down for.

Q. You open up the sacks as they come down? A. No, I have a tryer.

Q. How long is that tryer? A. About four inches.

Q. How do you take this test? Do you shove it in the side

*In the  
Supreme  
Court of  
British  
Columbia.*

Plaintiff's  
Evidence.

No. 18.  
Norman Lee  
Lauchland,  
Cross-Ex-  
amination  
May 23rd,  
1938.

—continued.



*In the  
Supreme  
Court of  
British  
Columbia.*

Plaintiff's  
Evidence.

No. 18.  
Norman Lee  
Lauchland,  
Cross-Ex-  
amination,  
May 23rd,  
1938.

—continued.

of the bag? A. Just stick it in the bag like that.

Q. Then you would have told at once when you looked at that brown rice it had suffered some damage? A. If I got a rice that shade, the dark appearance, I would be suspicious of it right off. It would not be the bright colour that I expected it to be.

Q. You would not know what the damage was, though? A. Would not know what had caused it?

Q. Yes? A. No, I would not know what caused it. I might have an opinion, but I would not know.

Q. It might be one of several things? A. I would not know 10  
right at the time, no.

Q. Would you be able to tell until you had milled this brown rice what the damage was? A. I might put it in a sampling machine, but that first day we milled some and then I saw it.

Q. You milled it immediately for the purpose of finding out what the trouble was? A. Yes. I wanted to see the effect.

Q. You were not satisfied with the test with your four-inch tryer? A. No, I wanted to see it through the mill.

Q. This damage which existed in 163 as it arrived in Van-  
couver does not affect the food value? It affects as I understand 20  
it the sale value by reason of the appearance, but it does not affect the rice so far as food value is concerned? A. It should not, although you might have a little too much bran in it.

Q. You told me before that it did not. We were talking about the discoloration or tint in a sample of this particular rice. I said:

“Q. Does that discoloration or tint affect the food value of the rice? A. No.

“Q. It is the question of the appearance of it? A. You mean the actual consumption?” 30

MR. BULL: What question?

MR. DESBRISAY: Questions 124 to 127.

“Q. The loss, then, or damage is the fact that the trade won't take it as a first grade white rice? They don't like the looks of it? A. No.”

Q. That is what you said. Do you want to change it now? A. No, I do not want to change it.

Q. Witness, the milling process with brown rice is for the purpose of putting it in the condition to be sold in this market? A. The milling, yes, with the exception that if you are taking 40  
brown rice and putting it through to re-clean it and selling it in its brown state—you are not referring to that?

Q. No. I understand you do sell some of it in its brown state? A. Yes.

Q. But the bulk of it you do mill? A. Yes. You are referring to the white rice market.

Q. And the milling is necessary to get the white rice and get the other products in which you deal? A. Yes.

Q. The result of the milling is you get a certain amount of white rice, a certain amount of brokens, a certain amount of rice meal from the brown rice? A. Yes.

Q. The white rice being the kernels with the brown outer covering removed; the brokens being the rice with the brown outer covering removed, but broken up; and the meal being the outer covering or bran that makes it brown. Is that it? A. Yes, 10 not altogether. You might have a little fine brokens in the meal.

Q. Broken, which is smaller than the normal broken? A. Very small.

Q. It would be another meal, only brokens? A. They are very very fine.

Q. And if there is damage, and I think the damage in this particular 163, as you have shown from your statements, appeared in the white rice— A. Yes, that is the way we worked the claim out.

Q. You are making the claim out on that basis, and the 20 brokens and meals went into the stock of brokens and meals? A. Yes.

Q. I suppose it is true of any shipment of brown rice that until you put it through the mill you cannot tell precisely what you have got so far as its value for sale is concerned? A. You mean what white rice you would get out of it?

Q. What white rice you would get out of it, and what its appearance and condition would be. A. You can judge fairly well by the white rice—I mean by the brown rice from one time to another, putting it through under the same conditions in the 30 mill, you would expect to get the same amount of white rice. If the brown rice shipment came up to the previous shipment of brown rice you would expect to get the same amount of white rice out of it.

Q. You would not know until you actually milled it? A. No, you would see the white rice.

Q. You milled all the Intereo Brose marked A.L.Z.? A. Yes.

Q. And you sold it all? A. Yes.

Q. Exhibit 23 are the milling records of the A.L.Z. and the 40 163? That is, it contains the records of the milling of the 163 and the A.L.Z., is that correct? A. Yes—is that it?

Q. That is not an exhibit on this trial. A. It has 23 on it.

Q. What is it—part of those documents I handed up to you? A. Yes.

Q. Then it is. A. Exhibit 23 contains the records that you spoke of. It also contains the records of the California Blue Rose paddy and the Mexican rice.

*In the  
Supreme  
Court of  
British  
Columbia.*

Plaintiff's  
Evidence.

No. 18.  
Norman Lee  
Lauchland,  
Cross-Ex-  
amination  
May 23rd,  
1938.

—continued.



*In the  
Supreme  
Court of  
British  
Columbia.*

Plaintiff's  
Evidence.

No. 18.  
Norman Lee  
Lauchland,  
Cross-Ex-  
amination  
May 23rd,  
1938.

—continued.

Q. That you spoke of the other day? A. Yes.

Q. And those milling records show the result in white rice, brokens, and rice meals obtained from the milling of the A.L.Z. and the 163? A. Yes.

Q. As I understand it, the rice, after being unloaded from the ship, is stored and then it is simply dumped from the sacks into the hopper and there milled? A. Yes.

Q. And that is what was done in this case, is that so? The bags of 163 and A.L.Z. were dumped in the mill just as they came from the ship? A. They were all piled up and then used. 10

Q. Through the mill? A. Yes. You are not referring to the records here of the first two or three days when the boat was in? You are not including those in?

Q. Well, I presume those were just taken at once as you brought them? You did not store those? A. I don't want any misunderstanding about it. These were not piled.

Q. And from these records it is possible to extract the percentage of white rice recovered from the A.L.Z. and the 163? A. Yes.

Q. And the proportion of the white that you got from the A.L.Z. is the proportion of the white you say you should have got from the 163? A. Yes. They are both the same type of rice. 20

Q. And the price you received for the A.L.Z. is the price you should have received for the 163? A. Yes.

Q. You sell rice under brands, and A.L.Z. and 163 are types of rice that are shown under various brands, are they not? A. Yes.

Q. And there are different prices charged for the different brands; some more and some less than others? A. Yes.

Q. And those records indicate the brands into which the rice was put? A. Yes. 30

Q. I understand you sold all the white rice from 163 except 41½ tons? A. A lot of the white rice, a lot of the brown rice of 163, was mixed with the A.L.Z.

Q. I am not suggesting you sold it independently. I mean you have not actually got it? A. I want to be clear.

Q. All you have left in your warehouse now of the 163 is the 41½ tons you have mentioned? A. In the white yes.

THE COURT: Q. And the white? A. In the white.

MR. DESBRISAY: Q. Have you some of the brown left? A. There are a few bags there. 40

Q. How many? A. Oh, something like 14 or 15.

Q. Now you sold some of the 163 as brown rice? A. Yes.

Q. Then you sold it in the form in which you received it, except that you gave it a cleaning? A. Yes, we put it through the mill.

Q. You put it through the cleaner. You did not put it through the mill for the purpose of making white rice? A. No. They went right over the screens to take the broken out and also taken out through the suction.

Q. And you received for that brown rice the going price, the same price as you received for the A.L.Z. brown? A. Yes, but after we had put that brown rice out we had a complaint on it.

10 Q. You had a complaint, I think, in respect to the lot of 25 bags from Kelly, Douglas? A. Well, that is a lot of 25 bags of 163 we put through the mill.

Q. Made into brown rice? A. Yes.

Q. Sold as brown rice? A. Yes. Just what proportion of that we had a complaint on I don't know.

Q. That was the only complaint you had. I think you told me the other day? A. Yes.

Q. And I think you also told me you made no allowance to them in respect of that? A. No.

20 Q. You sold some of the 163 by itself without mixing other grades with it? A. Yes, but we had the Orange—

Q. Just a minute. I am only discussing that one. You just answer and I will give you plenty of opportunity to explain. Now of the 163 which you sold in the form of white rice without any mixing with other grains, you sold all but an amount that was milled on October 9th, sheet 26 of your records, and which was sold under a brand called—you sold all this particular item I am mentioning under the usual brands that it would be sold under? A. You mean where it was milled by itself.

30 Q. Where it was milled by itself you sold, and all you did sell by itself, you sold under the appropriate brand, and the same brands as you would sell the A.L.Z. under with the exception of a quantity milled on October 9th, which was sold under a brand called "Prairie Rose," is that right? A. What about the records I showed you of July 16th?

Q. I am asking you—this is what I understood from the examination; if there is anything wrong, tell me. A. I thought I made that record clear.

Q. I will get the question. The question was this, 351;

40 "Q. Now apart from the rice milled on October 9th which we have just been discussing was all the rice of the 163 sold under the brands which you would customarily have sold that particular type of rice? A. Yes, in some instances, after being mixed with other rices.

"Q. Was there any other instance in which it was sold under any brand other than that which it would customarily have been sold under, whether mixed or unmixed? A. No,

*In the  
Supreme  
Court of  
British  
Columbia.*

Plaintiff's  
Evidence.

No. 18.  
Norman Lee  
Lauchland,  
Cross-Ex-  
amination  
May 23rd,  
1938.

—continued.



In the  
Supreme  
Court of  
British  
Columbia.

Plaintiff's  
Evidence.

No. 18.  
Norman Lee  
Lauchland,  
Cross-Ex-  
amination  
May 23rd,  
1938.

—continued.

I cannot see any in records, and from memory I don't remember any."

A. That is correct. I thought you were going to take that record which showed this 30 that I showed you in the examination

Q. No, no. A. As long as you have it clear.

Q. That quantity on October 9th was how much that was sold under the "Prairie Rose" brand? A. 100 bags.

Q. That is 100 bags of 100 pounds? A. Yes.

Q. Now all of the 163 which you sold separately and un- 10  
mixed was sold under the brands that A.L.Z. sells for, and you sold it at the prices you sold A.L.Z. for? A. Yes, but we had those orders filled.

THE COURT: Q. You sold all the A.L.Z. shipment at A.L.Z. prices?

MR. DESBRISAY: No, he sold all the 163 shipment, with the exception of those of October 9th, which were sold in an un-  
mixed form at the going price; that is the price for which the  
A.L.Z. was sold. I think those questions and answers on examina- 20  
tion for discovery make it clear, and I am going to read it so there  
will be no confusion. Questions 382 and 383 and 384;

"Q. Yes. All this 163 apart from the 41½ tons of white  
rice produced, and this milling of October 9th sold under  
"Prairie Rose" having been sold under appropriate brands  
for that type of rice, did you receive the going price for those  
brands for that rice? A. We received the going price for  
the brands, but 163 might have been mixed with other rice.  
In some instances this was done."

Q. And when you say "in some instances," in all instances  
where you sold 163 unmixed you sold it for the going prices? A. 30  
Yes.

Q. Now, Mr. Lauchland, in your experience in this business  
you have no doubt had frequent occasion to come into contact  
with marine surveyors? A. We have never had a claim that I  
can remember for 15 years, and that is the first marine surveyor  
that I can remember seeing at our place for any cargo.

Q. Then you don't know anything about marine surveyors?  
A. I beg pardon?

Q. Do you know anything about the intentions of marine  
surveyors? Do you know what Lloyd's surveyors do? A. No, I 40  
do not know. I have no experience of that.

Q. You knew, however, that Captain Watson was down  
there inspecting this cargo? A. Well—

Q. Getting the facts as to the cargo; you knew that? A.  
He told me when he came down. I didn't know Captain Watson

at the time. He told me he was a surveyor for an insurance company.

Q. You knew that he was going to make a report? A. Naturally he would.

Q. Why would you say naturally if you don't know anything about surveyors? A. Well, I surmise that he would make a report, make a report of what he saw.

Q. You knew he was endeavoring to ascertain the cause of the loss, did you not? A. He never discussed it with me.

10 Q. Never discussed it with you? A. To ascertain the cause of the loss.

Q. You knew in any event that he was examining the cargo with a view to ascertaining its condition? A. That is what I presume he would be doing.

Q. Did you give him any information with regard to the cargo? A. Did I give him?

Q. Yes. A. I don't remember at the moment.

Q. Were you given an opportunity to look over Captain Watson's report before it was made? A. Not that I remember.

20 Q. You don't remember? A. Not that I remember, no.

Q. You are quite sure you did not see it at all? A. Not that I remember.

Q. You are quite sure you did not see the report until it was insured? A. That is the only recollection I have of it.

30 Q. Now, Mr. Lauchland, I would like to discuss the various claims you have sent in to the insurance company, I would like to see exhibits 24, 25 and 26. In exhibit 24 you show a certain out-turn of white rice, namely, 340 tons from the 163, and you are making this statement up on the basis of the difference between the condition of the out-turn of 163 and the out-turn of the A.L.Z.? A. Yes. As I say, we were inexperienced at making these things up, and that is the way we made it.

Q. But you did make it up in that way? A. Yes. That was only an estimate.

Q. At that time you show the rice produced a difference in value of \$5 a ton. You mean the value had been reduced by reason of this damage you were claiming to the extent of \$5 a ton? A. That was only an estimate.

40 Q. What do you mean by that? A. That was only our own estimation of that. At the time we did not know how seriously the rice was damaged.

Q. And when did you learn? A. When did we learn?

Q. Yes. A. We took it out afterwards and showed it to the trade and found out from the trade.

Q. When you were selling it? A. Well, we got their ideas; that is, what the trade was—

*In the  
Supreme  
Court of  
British  
Columbia.*

Plaintiff's  
Evidence.

No. 18.  
Norman Lee  
Lauchland,  
Cross-Ex-  
amination  
May 23rd,  
1938.

—continued.



*In the  
Supreme  
Court of  
British  
Columbia.*

Plaintiff's  
Evidence.

No. 18.  
Norman Lee  
Lauchland,  
Cross-Ex-  
amination,  
May 23rd,  
1938.

—continued.

- Q. But you sold the rice? A. I know we sold the rice.
- Q. And you say you did not have time on June 25th when you put this claim in to ascertain, is that it? A. No, I didn't say we didn't have time. I said that was just a sort of arbitrary figure we put on ourselves.
- Q. Well, you are the main dealers in this rice, are you not? A. In Vancouver.
- Q. In Vancouver and British Columbia? A. Yes.
- Q. You handle practically all of it? A. Not all of it.
- Q. Well, a large proportion of it, don't you? A. Yes. 10
- Q. Your second claim went in on September 23rd. At that time it was still \$5 per ton difference? A. Well, that claim was to correct a clerical error in the previous one.
- Q. And exhibit 26, you put that in in March of 1937, didn't you? A. Let me see it.
- Q. I don't think there is a date on it. A. I am not just sure when Mr. Ismon was up here. It was after Mr. Ismon was up here last year.
- Q. You had some discussion with him as to how a claim of this nature should be made up? A. Yes. 20
- Q. And after you had discussed that you went back and tried to make it up on the basis he suggested? A. Yes.
- Q. And you sent in your suggestion and you heard, did you not, that he did not agree that you had made it out as he thought it should be made out? A. That first one and this subsequent one?
- Q. No, this is the one. Did you not know that he replied sending back a computation of his own which was very different to this? A. Mr. Ismon?
- Q. You sent this to Macaulay, Nicolls & Maitland, didn't 30 you? A. Yes.
- Q. And then Macaulay, Nicolls & Maitland informed you of what Mr. Ismon had to say about it? A. Well, now, just a moment.
- Q. Showed you the letters: do you remember that? A. No, I don't. They didn't show them to me.
- Q. You don't remember? A. Just a moment—You remember one previous to this, Mr. Desbrisay. You were down in the office; you didn't understand it, and we made out this one that we both thought followed out Mr. Ismon's suggestion. 40
- Q. You thought you were following them out? A. We thought we were. I am pretty sure they did.
- Q. Eh? A. I am pretty sure they did.
- Q. You never heard anything about it after that as to whether it was correct? A. From Macaulay, Nicolls & Maitland?
- Q. Yes. A. Not that I remember personally at all.

Q. This exhibit 26—you were asked in your examination in chief if you had had the advice of your solicitors on that, and you said no. I don't know just what the significance of it is, but I would point out in the statement of claim which was filed, the original statement, this precise statement, exhibit 26, is incorporated in the particulars of damage they claim. So you must have had advice in respect of that? A. On the way to make it out?

10 Q. Yes. A. Not from our solicitor, because they stated later it was not made out in the statutory form.

Q. That was after the action was commenced. They made up the statement of claim, didn't they, in the action? A. I don't know whether they did or we did offhand.

Q. The document filed in court is what I mean. A. The one you had the other day?

Q. Let me see the pleadings, will you? This document filed in court is the original statement of claim and contains the statement made up in the form of exhibit 26, the precise terms? A. Yes.

20 Q. You did not prepare that document? A. No.

Q. I take it we can assume that when you filed each one of these statements, you thought that was your loss? A. If the insurance company had paid us at that time. We found out later there was serious damage to that rice.

Q. Will you explain to me how you arrived at the difference between \$5 and \$8 per ton deduction?

THE COURT: A difference of—

30 MR. DESBRISAY: In exhibit 21 he shows the rice was reduced in value, the white rice, by \$5 per ton, and exhibit 26 he shows a reduction of \$8 per ton.

A. They were just arbitrary figures put on by ourselves.

Q. How did you arrive at those arbitrary figures? A. Because the rice did not come out as well as we thought.

Q. Was it just a guess? A. I beg pardon?

Q. Just a guess? A. Just an idea we had, yes.

Q. When did you complete the sale of the 163 with the exception of the 41½ tons? A. There might have been some of it sold in April and May 1937 mixed in.

40 Q. By April and May 1937 it was all sold? A. There may have been a few bags mixed in with the Mexican.

Q. But for all practical purposes it was all sold by April and May 1937? A. Yes, the chances are it would be.

THE COURT: What is the date of exhibit 26? There is no date on it.

MR. DESBRISAY: There is no date on it. There is a date up in the corner. It is 8 over 6 over 37. It was earlier than that.

*In the  
Supreme  
Court of  
British  
Columbia.*

Plaintiff's  
Evidence.

No. 18.  
Norman Lee  
Lauchland,  
Cross-Ex-  
amination  
May 23rd,  
1938.

—continued.



In the  
Supreme  
Court of  
British  
Columbia.

Plaintiff's  
Evidence.

No. 18.  
Norman Lee  
Lauchland,  
Cross-Ex-  
amination,  
May 23rd,  
1938.

—continued.

Q. I think it was immediately after you had your meeting with Mr. Ismon, and I think that was in March or April, was it not? A. As near as I remember it was March or April.

Q. Of 1937? A. Yes, when Mr. Ismon was up here.

Q. So this statement would be put in in March or April of 1937? A. Yes.

Q. If it went in in March of 1937 there would be very little left of that 163 unsold? A. Well, there was what was mixed in the Mexican and sold at that time.

Q. I beg pardon? A. Whatever we had there, whatever 10 the record shows.

Q. It would not be a very large proportion? A. It is hard to say just how much there was of it. I have shown you where there is 106 tons mixed in with the Mexican and the other rices —some of that.

Q. Just what did you intend by giving the information to the jury that you had no advice from your solicitors in regard to those claims? A. I never saw that claim that went in. I was not talking to our solicitors about this claim at all.

Q. You seem to place some significance on the fact that 20 when you made up those claims, 24, 25 and 26, you did not have the advice of solicitors? A. As to how to make them up in the statutory form.

Q. If you make them up in the statutory form does that mean an increase? A. I beg pardon?

Q. What do you mean? You made them up here and show certain amounts. Now you have got an increase. You say the increase is by the fact you now compute it on a different basis? A. No, there were certain other things we took into account.

Q. You included items you had not thought of before, is 30 that it? A. Yes. One thing we did not think of was extra milling and mixing that rice. That is not in there at all.

Q. Now your claim was very recently amended, and in the statement of claim you set out what you say to be the gross sound value of the rice and the gross damaged value of the rice, just giving the lump figures without any indication of how you arrive at it. You have seen that? A. I don't know as I have.

Q. That is exactly what you have done. You can see that that is so. It is that one at the top there. A. You mean this 40 one here?

Q. No, no, the one just above your left thumb. That is so? You are saying now in your statement of claim, instead of exhibit 26, that the gross sound value of the shipment at the Canada Rice Mills dock was \$28,748.35, and the gross damaged value of the shipment was \$21,211.68? A. Yes.

Q. Now then, the result of that method of computation is

to bring your claim up to \$8071.64? A. On the basis of insurance.

Q. And the effect of that computation is to obtain that result? A. Yes.

Q. And that result was reached by adopting a different method of computation? A. Than—

Q. Than you had before.

THE COURT: I do not understand—he says it was made up according to statute. He does not know the provisions of the  
10 statute, I suppose; but I am not stopping you.

MR. DESBRISAY: Q. You recall, Mr. Lauchland, that after receiving this amendment and on examination for discovery I endeavoured to ascertain the manner in which you arrived at this figure of damaged value. I discussed it with you at quite considerable length; you remember that? A. Yes.

Q. And that as the result of the discussion we had your solicitors wrote a letter to my firm. I presume the information given in that letter was information furnished by you? A. What letter are you referring to now?

20 Q. I am referring to a letter I showed you on examination for discovery written by your solicitors. A. May 5th.

Q. Yes. A. But you said we discussed it on discovery. My first discovery was on May 14th.

Q. But I discussed this letter of May 5th with you on your discovery? A. But I understand you to say you discussed it in discovery, and that letter was subsequent.

Q. Then subsequently we got the letter—Oh, I mean Mr. Gavin's examination. A. My first one was May 14th.

30 Q. Yes, I quite appreciate that. The fact is we did discuss that letter which your solicitors had written to us giving us certain information regarding this figure? A. Yes.

Q. And the information in that letter indicates that you arrived at the figures—that one of the items you took into consideration was this; You showed 345.22 tons of white rice from 163, from which there was a loss in value of \$15 per ton? A. Yes.

Q. And you showed in that letter an entirely different method of arriving at your claim, different figures than you have stated in evidence here on Friday? A. What was your question again?

40 Q. Well, you saw this letter from which information as to the manner in which you arrived at your damage value was made up — you also, you will recall, at that examination handed me another statement made out by yourself? A. Yes, in a more concise form.

Q. Yes, and then on your direct examination on the trial

*In the  
Supreme  
Court of  
British  
Columbia.*

Plaintiff's  
Evidence.

No. 18.  
Norman Lee  
Lauchland,  
Cross-Ex-  
amination  
May 23rd,  
1938.

—continued.



In the  
Supreme  
Court of  
British  
Columbia.

Plaintiff's  
Evidence.

No. 18.  
Norman Lee  
Lauchland,  
Cross-Ex-  
amination  
May 23rd,  
1938.

—continued.

of this action you gave yet another manner of arriving at it? A. That was just a check.

Q. Which was just a check? A. The one I gave on Friday.

Q. I see. But it was not one that you had indicated to me was the manner of arriving at your claim? A. No. I showed you the precise one.

Q. You gave a figure of \$53.50 as being the value of the 163, \$53.50 per ton? A. \$53.60.

Q. Is that the value of the 163 in its white form or brown form? A. I was taking the sound value in its white form. 10

Q. The sound value in its white form? A. Yes.

Q. The sound value of it? A. The sound value after being milled into white rice.

Q. How did you arrive at that sound value? How was it made up? A. On the percentage that we showed you there of the 50.03, working it out on that basis and giving you credit for the meals and broken and so forth.

Q. But is this sound value of \$53.50 per ton for white rice arrived at by taking the invoiced prices you paid for the rice, the brown rice, and then adding costs of freight, and so on? A. Well, 20 we took to arrive at that sound value the invoice costs, plus the freight and the insurance, and there is the unloading and the commission brokerage we paid.

Q. You arrived at \$53.60 a ton? A. No, that arrived at the sound value of the brown rice.

Q. That is what you say is the sound value of the brown rice? A. No. Then you can work out—take what percentage we got out of the A.L.Z. as the sound value of rice of this type and work it out on that basis. That is the way it was worked.

Q. Let me be clear about this. Is the sound value of \$53.60 30 per ton of white rice, its value to you, cost to you? A. That is what we paid, the cost—the sound cost value.

Q. Is that what the A.L.Z. cost you per ton? A. I was taking the invoice cost of the 163 when I worked that out.

Q. Then the \$53.60 has no relation to the sound value of the A.L.Z. or the value of the A.L.Z.? A. On the same basis with the 50.03; there would be very few cents difference.

Q. A very few cents difference between the sound value of the A.L.Z. and the sound value of the 163? A. If the 163 had been sound. 40

Q. If the 163 had been sound you say it would have been worth \$53.60 per ton, is that it? A. That is what—

Q. As white rice? A. That is what it would have cost us to produce a ton of white rice.

Q. That is what it would have cost you to produce a ton of white rice? A. Yes, the sound value to us.

Q. Basing that on your invoice cost, what you paid for it to the International Rice Company? A. Plus those other charges and the 50.03.

Q. In your solicitor's letter you also showed those 41½ tons to have suffered a diminution in value of \$22.60 per ton. That would be \$22.60 from the \$53? A. Yes.

Q. That would leave a value of \$32.90? A. It is \$31.

Q. Yes, \$31; and then on your direct examination the other day you said it was only worth \$25 per ton, which would be a reduction of \$28.50 instead of \$22.60? A. That \$31 we put on is only an arbitrary figure.

Q. Well, they are all arbitrary figures, are they not? A. \$25 to-day is all that rice is worth.

Q. You say so, but you showed on May 5th in a statement prepared by you it had diminished in sale by \$22.60 per ton? A. We have not sold it.

Q. I am not concerned with that. I am pointing out to you you gave a diminution in sale value of \$22.60 on May 5th, and on May 20th you show a diminution in sale value of \$28.50. You say that first figure was just an arbitrary figure, and I assume the second figure is equally arbitrary? A. We figured out we might have to grind the rice.

Q. You are figuring it higher at one time than another. Have you tried to sell those 41½ tons? A. No.

Q. Mr. Lauchland, after you had presented your claim to the insurance company, there was some discussion, was there not, with regard to you furnishing to the insurance company that this was a proper claim. Did you have any such discussion? A. No.

Q. You did not? A. No.

MR. DESBRISAY: I would like the cable dated March 12, 1936, also the one of March 9th, from the Canada Rice Company to Jackson.

MR. BULL: That is already in—March 9th.

MR. DESBRISAY: Oh, yes, let me have that. That was put in this morning.

THE REGISTRAR: Exhibit 34.

MR. DESBRISAY: Q. I am producing to you a cable which is dated March 9, 1936, marked exhibit 34. Read that and tell me why you sent that cable.

MR. BULL: My learned friend is trying to get in in an indirect way what he cannot get directly. He wants the witness to say that we had a cable from Jackson saying so and so. He cannot be cross-examined on it. Your lordship has ruled. When counsel cross-examines upon that he should be very careful.

MR. DESBRISAY: Can one not ask why the cable was sent?

*In the  
Supreme  
Court of  
British  
Columbia.*

Plaintiff's  
Evidence.

No. 18.  
Norman Lee  
Lauchland,  
Cross-Ex-  
amination  
May 23rd,  
1938.

—continued.



In the  
Supreme  
Court of  
British  
Columbia.

Plaintiff's  
Evidence.

No. 18.  
Norman Lee  
Lauchland,  
Cross-Ex-  
amination  
May 23rd,  
1938.

—continued.

THE COURT: Let me see the exhibit.

MR. DESBRISAY: This is another one I am proposing to put in. It has not been put in yet. Your lordship might look at it.

THE COURT: You propose to ask him the reasons why he sent this exhibit 34?

MR. DESBRISAY: Yes.

THE COURT: Your position is, just as if he were your witness and you were examining in chief?

MR. DESBRISAY: I think I can ask him that for that matter. 10

THE COURT: That is what I want to know. What do you say, Mr. Bull? You heard what was said.

MR. BULL: Yes. I object to the question my learned friend puts, and I say that is infringing on the rule that your lordship has already made.

THE COURT: I will allow the question, but I won't allow any answer about what you were told by somebody else. Now just a minute, would you like five minutes adjournment. I am going to sit until 5 o'clock tonight. 20

(COURT ADJOURNS FOR FIVE MINUTES)

(COURT RESUMES PURSUANT TO ADJOURNMENT).

NORMAN LEE LAUHLAND, resumes his stand.

MR. DESBRISAY: Q. Mr. Lauchland, I am not quite clear I think I have asked this question, but I am not quite certain. Was the price you received for the rice marked A.L.Z. the current market price for the various brands in which you put it out? A. To the trade you mean?

Q. Yes, I think I asked you this question and you said, "Yes?" A. Yes. 30

Q. The answer is, "Yes"? A. Yes.

Q. Now will you look at this telegram? It is exhibit 34. You see in the telegram, "If rice is badly damaged as to yellows and milling price must be affected." What do you mean by "milling price must be affected?" A. Just what it says, milling price must be affected.

Q. Does that mean the cost of milling rice in which there are yellows is increased? A. I cannot tell you whether there should have been a stop after the word "Milling" or not, now. It might have been there should be the word "stop" in there. 40

Q. Tell me. That seems to be perfectly clear. You say "If rice is badly damaged as to yellows and milling price must be affected ascertain percentage approximately and lowest

price for re-conditioned rice". What is meant by those words, "Milling price must be affected?" you must know what they mean. A. This cable is sent in consequence of a cable which we received.

Q. Yes, I know that? A. Now without looking at that cable I could not tell you whether the word "stop" should be in there or not.

Q. Where would you put the word "Stop"? A. "If rice badly damaged as to yellows", stop, "Price must be affected". I am not saying it should be in there. I say I cannot tell you without looking what led up to it. This cable refers to—

Q. If you would like to look at the cable you received to explain that, I should be glad to show it to you. I have a purpose in asking this question and it is very important in this case. I do not think I should be required to disclose why. I presume you can look at the cable if my learned friend does not wish it to go in. He could at least look at it to explain this one?

THE COURT: Look at your cable?

MR. BULL: Well I object.

20 THE COURT: He can give a reason.

MR. BULL: He is speaking about some other kind of rice.

THE COURT: He does not need to set out the information but all he needs to say is he had a certain reason.

MR. DESBRISAY: Q. I want to know how and why the milling price must be affected if rice is badly damaged as to yellows. That is what I want to know. You are an experienced man and should be able to tell me without looking at anything?

A. I told you this cable was sent in consequence of a cable which we received. Now that is two years ago, March 6, 1936. I have 30 not seen the cable. I don't recall.

Q. Will you tell me why, if rice is badly damaged as to yellows, milling price must be affected? A. I say it might have to have the word "stop" in there.

Q. Well put the word "stop" in there. You mean after the word "milling". Oh, no, no. There is no reason for that. You would like to do that, I can quite see?

MR. BULL: That is the only sensible way to read the cable.

MR. DESBRISAY: If you show him the other cable, it would be perfectly obvious; at least to me it is.

40 THE COURT: You can put your own construction on that cable to the jury.

MR. DESBRISAY: I can put my construction on it but I think if I were permitted to cross-examine him and I had the other cable, I would very quickly—

Q. Will you tell me how then the milling price could be affected? A. I am not saying without, as I said, it is in con-

*In the  
Supreme  
Court of  
British  
Columbia.*

Plaintiff's  
Evidence.

No. 18.  
Norman Lee  
Lauchland,  
Cross-Ex-  
amination  
May 23rd,  
1938.

—continued.



*In the  
Supreme  
Court of  
British  
Columbia.*

Plaintiff's  
Evidence.

No. 18.  
Norman Lee  
Lauchland,  
Cross-Ex-  
amination,  
May 23rd,  
1938.

—continued.

sequence of that other cable.

Q. Let me ask you this, if rice is badly damaged as to yellows, why is the milling price affected?

MR. BULL: It does not read that way.

MR. DESBRISAY: No, no. I am asking him the question.

MR. BULL: Just a moment. My learned friend has no right in cross-examination to read a document the wrong way. It is quite sensible.

MR. DESBRISAY: He says, "And milling price must be affected".

10

MR. BULL: If badly damaged as to yellowing and milling. That is the sensible way to read it. There is nothing about milling price.

THE COURT: I think it says milling price.

MR. BULL: No, it says "damage as to yellows and milling".

MR. DESBRISAY: Q. Then if you put the word "stop" after the word "milling" as you say—supposing you say, as you suggest would be the proper thing to do, "If rice badly damaged as to yellows and milling," what do you mean by, damaged as to yellows and milling. Tell me that? A. It is in consequence of 20 the other cable we received, the information.

Q. You suggested putting the word "stop" after milling. I am taking it your way and asking you, "If rice is badly damaged as to yellows and milling," what that means. What is the damage as to milling? A. This reply was sent in consequence of the other cable. Now it is referring—

Q. Let me ask you this, if someone tells you rice is damaged as to milling, what does that convey to you? A. It depends on what they told me.

Q. I am telling you now, it is damaged as to milling. What 30 does that mean to you? A. If they told me as to milling, why, how it was damaged as to milling, that is exactly the answer.

Q. If I tell you that rice is damaged as to yellows and milling—you see, you are saying, "If rice is badly damaged as to yellows and milling"—if someone tells you that, what does that mean? I want you to tell me? A. Just what it says, if rice is badly damaged as to yellows and milling, naturally the price must be affected.

Q. Certainly. I agree with that, but I want to know what you mean by, damage as to milling? A. Just what the other 40 cable said, that we have been already referring to. I am answering, another cable?

Q. Has not "damaged as to milling" some known meaning amongst rice people? A. It depends what the other cable told us.

Q. But you do the milling yourselves? This is not milling

that is done over there but it is done here? A. I realize that.

Q. Then you should know what you mean, "If rice is badly damaged as to yellows and milling"? A. The whole cable is in answer to one we got.

Q. I think he can take a look at that cable to see what he meant. Now what do you say as to that?

MR. BULL: The witness may look at it, but my learned friend is now achieving his purpose to some extent.

THE COURT: No, it is a different thing altogether. He is asking this man what he meant by a statement in his own documents. He says he cannot answer except by reference to something else. Now the other document does not go in but he looks at it for the purpose of refreshing his memory.

(Document handed to witness).

THE COURT: Have you read it? Now go ahead.

MR. DESBRISAY: Q. Now will you tell what this—

THE COURT: Just give your reason. Do not say what was said to you, but give your reason. What does it mean? A. There is something in the other cable that milling refers to.

20 Q. What did you mean when you used those words in your own cable? A. In our cable, yes?

Q. Yes, what did you mean? A. Referred back to something that was said in the other cable.

Q. What was it you had in mind? A. May I tell what was in the cable.

Q. Tell us now what you had in mind. A. Just what we were told in the other cable.

MR. DESBRISAY: Q. Well after looking at that other cable can you tell me what you mean by, "If rice badly damaged as to yellows and milling"? A. What we were telling them in view of the information that was in this other cable.

Q. The price must be affected. A. Yes.

Q. I appreciated that and you did not need to look at that for that purpose, but what I am interested in is; the reason why rice that is badly damaged as to yellows and milling must be affected as to price. That is what I am interested in and I want you to tell me? A. Well if rice has got, just as it says, badly damaged as to yellows, containing an abnormal quantity of yellows, naturally it affects the price.

40 Q. And also it affects the milling? A. The yellows?

Q. Yes, you have said so. If it is damaged as to yellows and milling, is it the yellows that affect the milling or not? A. I said those whole words, "If rice badly damaged as to yellows and milling," refer to something we had in another cable.

Q. You can explain to me? A. No I explained it before.

*In the  
Supreme  
Court of  
British  
Columbia.*

Plaintiff's  
Evidence.

No. 18.  
Norman Lee  
Lauchland,  
Cross-Ex-  
amination  
May 23rd,  
1938.

—continued.



*In the  
Supreme  
Court of  
British  
Columbia.*

Plaintiff's  
Evidence.

No. 18.  
Norman Lee  
Lauchland,  
Cross-Ex-  
amination,  
May 23rd,  
1938.

—continued.

Q. You can explain to me what you mean by rice which is badly damaged and to yellows or milling? A. You could put something referring to yellows in one part of the cable and something referring to milling in another part and we could connect them up as we did. This is written in a few words in a cable. That is what you try to do when you know that the party receiving it will understand what you intend.

Q. You intended, did you, to refer to rice which was badly damaged as to milling. There must be some result or some difficulty you are going to have in connection with the rice. That is what it must refer to? A. In consequence of the information which was in the cable. 10

Q. In consequence of the information which was in the cable, you feared that there would be some difficulty in respect of the milling of the rice. Is that it? A. What was your question again?

Q. Damage as to milling? What is the damage as to milling. That is an expression which you used there. What does damage as to milling mean? A. That milling only refers to the —if rice is damaged as to yellows stop—milling stop price must be affected. 20

Q. Supposing you put stop after yellows too. I ask you what the damage as to milling is and you won't tell me. You must know. Surely you know. I am asking you generally what you mean when you say about any rice, this or any rice damaged as to milling? A. You are asking me now about this particular lot of rice.

Q. I am going to ask you now about any lot of rice and tell me what you mean by, damaged as to milling in relation to any rice? A. That word "milling" is only put in here referring to this information in this cable. 30

Q. Has it any meaning at all? Does it mean that you get less rice out of it in milling, that it is more difficult to mill? What does it mean? A. I have got to divulge the contents of this cable to answer the question.

THE COURT: Q. Does it mean the operation of putting the rice through the mill? A. Yes.

MR. DESBRISAY: I don't know if I heard that.

THE COURT: Does milling mean the operation of putting rice through the mill? 40

MR. DESBRISAY: Q. You would experience difficulty as related to rice which was not badly damaged, is that it? A. I am telling you, this milling refers to something which was in this cable.

Q. I know you say that but I am asking you what damage as to milling conveys to you in respect of any rice? A. The

words, "If rice badly damaged as to yellows and milling"—you don't connect up if rice badly damaged as to milling—

Q. Which way do you want to put it, that the milling price must be affected? A. No. This, my lord, refers to information which is in this cable and, as I understand it, that is not admissible.

THE COURT: Q. It is not the milling price, it is the price of the product that you say that refers to? A. The price must be affected. That would be the raw product.

10 MR. DESBRISAY: Q. Do you mean that the costs of milling the rice would be affected? A. No.

Q. What do you mean now? There is something you say it doesn't mean. Tell me something it does mean? A. That price must be affected refers to the rice itself.

Q. I know that, but supposing I bring to you a sack of rice, and you look at it; you are an expert and you turn to me and you say, "Well, that rice is badly damaged as to milling". What do you mean? A. Not milled properly.

20 Q. I am talking about brown rice now. I am not talking about white rice. I am talking about brown rice? A. If you brought me a sack of brown rice—

Q. Yes? A. And I said it was badly damaged as to milling—

Q. Yes? A. That would mean that when the hull was taken off that rice, it was punished.

Q. It was what? A. Punished.

30 Q. Punished? A. You see if that brown rice— When I use that expression with regard to brown rice as to milling, I would mean it was punished in taking off the hull. You realize you take the hull off in order to get the white rice.

Q. Yes, what did you mean here. Did you mean here the milling quality? A. Your lordship, I have to answer that question by referring to something which was furnished in this cable.

THE COURT: Q. Cannot you say you mean something without referring to the cable at all. A. But we are referring to this cable.

Q. And you can tell it in your way. I said so and so, meaning so and so, giving the meaning of the words you used there? A. Well, it refers to what was told us here in this cable.

40 MR. DESBRISAY: Q. Well, Mr. Lauchland, you are not prepared to give any better explanation than you have so far? A. Well, I understand that this cable is not admissible.

Q. My learned friend Mr. Bull, said his lordship has so ruled?

THE COURT: I ruled that you could tell us what you mean in your own cable and you did not seem apparently able to do it.

*In the  
Supreme  
Court of  
British  
Columbia.*

Plaintiff's  
Evidence.

No. 18.  
Norman Lee  
Lauchland,  
Cross-Ex-  
amination  
May 23rd,  
1938.

—continued.



*In the  
Supreme  
Court of  
British  
Columbia.*

Plaintiff's  
Evidence.

No. 18.  
Norman Lee  
Lauchland,  
Cross-Ex-  
amination  
May 23rd,  
1938.

—continued.

THE WITNESS: We mean in our own cable, referring to milling, where milling was mentioned here, we are referring to that connection.

Q. What did you mean by milling? A. May I show you that?

Q. No, just answer the question? What did you mean by milling? What did you mean by milling in your cable? A. The out-turn milling.

Q. That is what you meant? A. Yes.

MR. DESBRISAY: Q. The out-turn of the milling is affected as you say and would depend how much you have milled it?

A. Yes.

Q. Whether you give it a high or low milling? A. Yes.

MR. DESBRISAY: I am not going to put in this other cable, my lord.

THE COURT: Hand that back to Mr. Bull so it won't get mixed up.

MR. DESBRISAY: I want a copy of a letter from the Canada Rice Mills to Jackson Sons & Company, March 23, 1936.

Q. This letter is a copy of a letter sent by your company, to Jackson Sons & Company? A. Yes, written by Mr. Gavin.

MR. DESBRISAY: I am putting this in an exhibit, my lord.

(LETTER READ AND MARKED EXHIBIT 41)

MR. DESBRISAY: I want the letter of April 6, please. This is dated April 6, 1936 from the Canada Rice Mills to Jackson Sons & Company.

(LETTER READ AND MARKED EXHIBIT 42)

THE COURT: Any re-examination—no questions.

(Witness aside)

THE COURT: Gentlemen of the jury. Owing to the death of a near relative I shall not be able to sit tomorrow. Consequently, I shall have to adjourn until Thursday. We shall adjourn until Thursday at 10 o'clock. I want to repeat the caution I have given you several times, be careful not to speak to anyone about this case. We shall adjourn until 10 o'clock on Thursday and try to finish up on Friday.

(PROCEEDINGS ADJOURNED UNTIL MAY 26)

Vancouver, B.C., May 26, 1938; 10 A.M.

(COURT MET PURSUANT TO ADJOURNMENT)

MR. DESBRISAY: May it please your lordship, there was

one point I forgot to ask Mr. Lauchland. I have spoken to my learned friends and they have agreed. One of these exhibits, a sample of white rice, was shown to Mr. Lauchland, and he picked out two yellow grains which were put in a little yellow package and put back into this exhibit, and I just want this exhibit 28 to be identified.

THE COURT: Exhibit 28?

MR. DESBRISAY: Yes.

10 JACOB FRED SACHS, a witness called on behalf of the plaintiff, being first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. BULL:

Q. What is your position with the plaintiff company? A. Superintendent.

Q. How long have you occupied that position? A. Since 1914.

Q. What experience have you had in rice-milling? A. About 37 years.

Q. Were you superintendent in May 1936? A. Yes.

Q. And have you been ever since? A. Yes.

20 Q. Do you remember the cargo of rice that was discharged from the "Segundo"? A. Yes.

Q. What did you have to do with it? A. In loading into our warehouse.

Q. How many men did you have helping you? A. About 200.

Q. About what condition did you find that rice as it came off the ship? A. It was brought to my attention the rice was heated, from some of the men who were piling the rice.

Q. Did you ever examine it yourself? A. I did.

30 Q. What did you do as a result of what you found? A. I just put my hand in between the bags as I was quite busy ordering the men who got this rice unloaded—200 men, it takes some time to get them organized, so I did not have much time to feel the rice.

Q. Did you bring it to any person's attention? A. I spoke to Mr. Lauchland about it.

Q. Besides trying it with your hands, did you use anything else? A. I used a tryer merely to see the results of the heating.

40 Q. Were you able to judge the actual temperature? A. No, I could not.

Q. Did you examine the rice from all different marks for heating? A. At various times.

Q. What do you say about it? A. Well, all of the different marks had been heated.

*In the  
Supreme  
Court of  
British  
Columbia.*

Plaintiff's  
Evidence.

No. 18.  
Norman Lee  
Lauchland,  
Cross-Ex-  
amination  
May 23rd,  
1938.

No. 19.  
Jacob Fred  
Sachs,  
Examina-  
tion,  
May 26th,  
1938.



*In the  
Supreme  
Court of  
British  
Columbia.*

Plaintiff's  
Evidence.

No. 19.  
Jacob Fred  
Sachs,  
Examina-  
tion,  
May 26th,  
1938.

—continued.

Q. Did you notice the rice marked A.L.Z.? A. Some of that was heated also.

Q. Did you particularly notice the Kalagyi? A. That was also heated, some of that was.

Q. What about the Kalagyi that was in between decks?  
A. That may have come off at the beginning. That may have come off at the start.

Q. Did you notice the rice marked 163 and 102? A. I did. They were warm also.

Q. Were you able to say which marks came out of the dif- 10  
ferent holds? A. No, I could not tell you that. It was coming from all directions; five holds unloading, at the same time.

Q. Did you go down into the holds at all? A. Not immedi-  
ately.

Q. But did you later on? A. Yes, two and three, as I re-  
member it.

Q. Were you present at the unloading on the subsequent  
days too? A. Yes.

Q. Until completed? A. Yes.

Q. Did you notice anything about the heated condition of 20  
the rice on the subsequent days? A. Yes, it was still heated coming off the boat.

Q. Did you see Captain Watson? A. No.

Q. What did you do with the rice after taking it from the  
ship? A. Stored it in the warehouse.

Q. What do you mean by testing with a tryer? A. Well,  
just trying a small portion out. You could get a hand full. It is  
a little tube. I happen to have it in my pocket.

THE COURT: Hand that to the jury.

MR. BULL: Q. I understand you kept no record of the 30  
sacks which you examined during the unloading? A. No, I did  
not.

Q. Can you say approximately how many you examined  
during the unloading? A. During the entire unloading it might  
have run into hundreds.

Q. And you could not give any number of sacks by mark?  
A. No.

Q. And you took no temperature by thermometer? A. No.

Q. Did you see the Port Warden there? A. Captain Slater, 40  
do you mean?

Q. Yes. A. I was with him at one time. He asked me to  
go down the hold with him.

Q. Did you see any temperatures he took? A. Yes.

Q. What were they?

MR. BOURNE: I object. This can be proved in the proper

way by the person who took the temperature. He could only tell by having been told, so—

THE COURT: He says he saw the temperature—the thermometer put in the sack.

Q. Did you examine the thermometer? A. Yes, I read it myself.

MR. BULL: Q. Being able to read one and having seen the temperature taken— A. Yes, they ranged at different portions of the boat from 101 up as high as 106½.

10 Q. Did you notice the marks on the sacks Captain Slater was testing? A. 163 in the two hatches I was in.

Q. How long were you on board? A. I could not state the exact time. Sometime during the noon hour.

Q. After the rice is stored in your sheds, is there any system of ventilation? A. We have our warehouse provided with floor ventilators and we also use the same ventilators that come off the boat.

Q. Did you examine the rice after it came off the boat? A. Yes, we did.

20 THE COURT: Q. Did you yourself? A. I did actually myself, Mr. Lauchland and my men.

MR. BULL: Q. What would you say with regard to the rice as to heat when you examined it in the sheds? A. Well, we discovered—I discovered that it gradually cooled off.

Q. And did it ultimately become cool? A. Yes. We figure a length of three to four days.

Q. Were you present when any of the rice marked 163 was milled? A. Yes.

Q. When was that? A. Upon arrival—just a portion of it.

30 Q. Did you examine the sacks that went into that? A. With the occasional number, yes.

Q. What did you find with regard to the sacks you did examine? A. We found it was still warm when the men were getting it in under my supervision.

Q. Did you put your hands down in the centre of the sack? A. Yes. It appeared to be warm, but not as warm on the outside in most of the bags.

Q. In what condition was the rice produced from that? A. It was very poor.

40 Q. In what respect? A. Well, we could not remove the bran, of course. In trying to remove the bran it broke up considerably.

Q. What would you say about the colour? A. The colour was poor.

Q. What do you mean? A. Well, it means that it is dark.

Q. After you found that the 163 was out-turned in a dam-

In the  
Supreme  
Court of  
British  
Columbia.

Plaintiff's  
Evidence.

No. 19.  
Jacob Fred  
Sachs,  
Examina-  
tion,  
May 26th,  
1938.

—continued.



*In the  
Supreme  
Court of  
British  
Columbia.*

Plaintiff's  
Evidence.

No. 19.  
Jacob Fred  
Sachs,  
Examina-  
tion,  
May 26th,  
1938.

—continued.

aged condition, what did you do in respect to it? A. Well, we milled several lots of it and found we were not able to dispose of it in that way, and we started milling the different lots, the A.L.Z.

Q. You have records to check the milling of the 163 and 102? A. Yes, we have them.

Q. In regard to those records did you make a condensed statement of the milling? A. Well, I did not personally. Mr. Lauchland did.

Q. How many bags did you examine for damage in the first five runs through the mill? A. We only examined the odd one going in, because it was just a milling to verify whether we could turn it out in that way or not. 10

Q. How many bags would go through roughly in that first five runs? A. Oh, there may have been 400 or 500. I presume the record will show that.

Q. And you say you only examined the odd bag of the first five runs? A. Again, please?

Q. You say you only examined the odd bag of the first five runs? A. Yes.

Q. Was there any damage perceivable? A. Not more than some of it was much darker than others. 20

Q. Were you able to judge approximately the percentage of damage in the bags you did examine? A. Well, it appeared to me there was at least 20—25%.

Q. Would you be able to say in respect of any bag you tested out of the first five runs that the damage was in any case less than 3% in each bag?

MR. BOURNE: That is a leading question, my lord.

MR. BULL: Q. Well, will you state what in your opinion was the minimum amount of damage in any one bag you examined? A. Well, I would say there would not be any less than 10%. 30

Q. You say there would not be any less than 10%? A. No.

Q. Now after the first five runs did you give any instructions? You need not state what they were. Did you give any instructions to anyone working under you in the milling? A. Yes.

Q. Will you state his name? A. Walter Simpson.

Q. Now that you gave these instructions—what was his position in regard to the milling? A. He opens the bags and delivers it to the hopper. 40

Q. Now after you gave Simpson these instructions did you personally make any examination of the sacks which went through the mill? A. At the odd time, yes.

Q. What did you find? A. Discolouration, dark in colour.

Q. Did you do anything about the segregation of the sacks from the boat? A. Later on.

Q. When was that? A. Perhaps two or three months after the boat arrived when we started to do that.

CROSS-EXAMINATION BY MR. BOURNE:

Q. You said, witness, that some of the rice you examined showed 20 to 25% damage? A. Yes.

Q. That was when you were examining the rice that was being put into the mill? A. Yes.

Q. When it was coming out of the sacks? A. No, that was before it went through the mill.

10 Q. Yes, when it was being dumped by this man—Simpson was dumping the sacks into the mill? A. Yes.

Q. How did you do that—pick up one of those 220-odd sacks and simply dump it into a hopper? A. Simply dump into a hopper, just poured into that hopper.

Q. Well, will you tell me how you could judge that rice was damaged 20 to 25% in the second or two you would see that flow of rice into the hopper? A. Very easily tell it by my experience. Take a handful of it and compare the amount—

20 Q. Did you do this with all these sacks you say were damaged, almost 20, 25%? A. We did with a great many.

Q. Well, how many? A. On examining it in that way the appearance of the balance would show it was the same.

Q. Of the sacks you say were damaged 20 or 25% now, how many in the process of dumping did you take a handful from? A. A number of them.

Q. How many? A. Oh, perhaps 40, 50, 100 during the entire milling of it.

Q. Did you keep any record of it? A. No, I did not.

30 Q. Now when you took a handful how would you determine in this you had that it was damaged 20 to 25%? A. Just the same as the white rice; look for yellow grains. I can tell from a glance at it, a look by the eye.

Q. You took a handful out and took a look at it and determined it was 20 to 25% damaged? A. Yes, I would not be out much.

Q. Did you ever examine it that way before you estimated the damage? A. Yes.

40 Q. What do you ordinarily expect to find in the way of discoloured grains in rice? A. We do not expect to find any discoloured grains.

Q. Yes, but you find it, don't you—discoloured grains in rice right along? A. You do the odd discoloured grain.

Q. Well, how many discoloured grains, or what proportion of discoloured grains would you say constituted damage? A. Well, any discoloured grains at all constitutes damage.

*In the  
Supreme  
Court of  
British  
Columbia.*

Plaintiff's  
Evidence.

No. 19.  
Jacob Fred  
Sachs,  
Cross-Ex-  
amination,  
May 26th,  
1938.

—continued.



*In the  
Supreme  
Court of  
British  
Columbia.*

Plaintiff's  
Evidence.

No. 19.  
Jacob Fred  
Sachs,  
Cross-Ex-  
amination  
May 26th,  
1938.

—continued.

Q. And so you put it down to damage when you find any discoloured grains in the handful you pick up? A. Yes.

Q. And do you always claim for that damage? A. Not necessarily if the damage is very little.

Q. Did you give any further examination than you told us about? A. In the milling as well, yes.

Q. Well, beforehand? A. Well, that was the only way I could tell beforehand.

Q. And will you tell me what proportion of the grain you saw in the rice was discoloured? A. In some hands-ful it ap- 10  
peared to be half of it.

Q. And that was the rice in its brown state? A. Yes.

Q. And you say some of the rice you looked at in that stage appeared to be half bad? A. Some of them, some bags, yes.

Q. Is it easy to tell the dark grains just looking at them in the brown state? A. Yes, quite easy for an experienced man, yes.

Q. I want to read you question No. 578 on your examination for discovery:

“Q. On casual examination you would not expect to no- 20  
tice them? A. Not very readily, no.”

Now are you changing that answer? A. No, I am not changing it any more than at the time I told you I was not in a position to take much notice of it. I was employed in the warehouse.

Q. You meant that answer to be the truth: “Not very readily, no.”? A. Yes, it is not very readily, no.

Q. Now you say by putting up a handful of the rice and putting it down you can tell whether it is damaged? A. Yes, when you get familiar with it.

MR. BULL: I am sorry to interrupt my learned friend. 30  
You are speaking about yellow grains there. It started at question 571, then he continues on, and 578 refers to a casual examination with reference to yellow grains, not damage by heating.

MR. BOURNE: I will start at question 568:

“Q. You could not detect yellow grains in the brown con-  
dition? A. Not in these particular samples. As I say, I  
would have to look very close to them to find them.”

Well, what do you say is the difference between yellow grains and discoloured grains? A. A yellow grain is distinctly yellow right through. 40

Q. Yellow when it is what is called in this brown state? A. No, you would not be able to detect it in the brown state so readily.

Q. You could not detect what you call the yellow grains in the brown state? A. Not very readily.

Q. But you differentiate between these yellow grains and the other you say was damaged. Do you call yellow grains damaged? A. Not necessarily.

Q. So it would not matter to you how many yellow grains were in there, it would not be damaged? A. It matters in this way: From the selling, from the appearance of the sack.

Q. Now this so-called damaged rice, brown rice, its only damage was in its appearance, was it not? When it went out to the trade its food value was just as good as white rice? A. No, but—

Q. But the food value is there? A. Well, it might be.

Q. So far as selling it to the trade, your so-called yellow rice was simply damaged as to the colour, and the brown rice for the same reason, but the food value was there? That is correct? A. That might be true.

Q. When, according to your experience, does the yellow grain damage arise, and how? A. I have not had sufficient experience to go into that.

Q. Well, you are expressing an opinion about it now. A. 20 you ask me how it originates.

Q. Yes. You had long experience.

THE COURT: He says he does not know anything about that. A. Not more than I have heard.

MR. BOURNE: Q. Well, how—if you do not know how it arises how do you differentiate? A. Well, one is really—in the brown you can tell the yellow grains.

Q. Some are darker than others? A. Some are slightly darker.

Q. Noticeably darker? A. Well, a yellow grain is yellow 30 right through.

Q. And is the other grain, damaged grain, not discoloured right through? A. No.

Q. Does that not depend on the amount of damage, the length of time it has been subject to the cause of damage? A. This particular trouble of ours is just on the outside. The bran has adhered to the rice.

Q. Does the discolouration in some cases go right through the grain? A. It would have started, I suppose.

Q. Did it not in the rice you examined go right through? 40 A. I would not say it did.

Q. Did you examine it to see if it did or not? A. Well, it did not show any sign of going right through.

Q. Any, you say? A. Yes. It was not necessary to examine it. I could see from the eye on the outside.

Q. You could see from the outside, from looking at it from the outside, that the discolouration was right through the yellow

*In the  
Supreme  
Court of  
British  
Columbia.*

Plaintiff's  
Evidence.

No. 19.  
Jacob Fred  
Sachs,  
Cross-Ex-  
amination  
May 26th,  
1938.

—continued.



*In the  
Supreme  
Court of  
British  
Columbia.*

Plaintiff's  
Evidence.

No. 19.  
Jacob Fred  
Sachs,  
Cross-Ex-  
amination,  
May 26th,  
1938.

—continued.

grain? A. No, it is not correct. Only when you break a yellow grain, you can tell by breaking it, you can see it is yellow right through.

Q. How many bags of rice did you say you examined or felt? I think you said you felt some of them with the hand, and sometimes in between the sacks? A. Yes.

Q. How many of these did you examine of the 163 when coming off the ship? A. In the course of the unloading it was three or four days, and I could not say the exact amount. It would run up into the hundreds. 10

Q. I am talking about the 163? A. I did not count them.

Q. Well, you said something in your examination in chief about examining hundreds during the entire unloading? A. I did.

Q. How many would you say you examined of 163? A. That is a hard question to answer. That includes all of them. When I say the amount I examined, that includes them all.

Q. Yes, but I asked you to say how many you examined of 163. That is the one you said you noticed the most heated. A. Yes. It may have been hundreds. I cannot exactly tell how many 20 of that particular mark. I did not keep a record of it.

Q. Well, what is your recollection of it? A. I examined hundreds during the course of unloading of various marks.

Q. How many each day? A. I did not keep a record of how many I examined each day.

Q. Did you examine more of 163 than you did of the other lots? A. Most likely I did.

Q. You are not sure of that, though? A. At the time of unloading that rice it was all coming off heated, and we were milling the rice, and I did not see any particular need of examin- 30 ing 163 more than the rest of them, but I examined a portion of that rice as it came off the boat.

Q. Well, we have got it you examined hundreds in all probability, hundreds of 163? A. Yes.

Q. And that was divided up, I suppose, between the days the unloading took place, was it? A. Yes, that is correct.

Q. How many would you say you examined on May 29th, the first day? A. I could not tell you exactly.

Q. Well, I will read you question 83 and answer on your discovery—82: 40

“Q. And you believe you opened sacks on that day particularly—on May 29th? A. I believe we did.

“Q. Well, do you know if you did or not? A. Well, I can't remember exactly—there must have been a certain amount, I just can't say how many. It might be three or four or half a dozen.”

Now which statement is correct, the one you made on discovery?  
A. You are referring to the operation of the mill, as it went to the mill?

Q. No, this is not the mill. May 29th you were not doing any milling, were you? A. I think it was. I am not exact as to the date.

Q. Well, May 29th was the first day of discharging the ship? A. I believe we did mill some that day, yes.

Q. Were you speaking of the milling when you gave that  
10 answer? A. The bags that were opened during the milling.

Q. These answers then are not with reference to the examination on the ship? A. I did not open any bags in transit.

Q. You are referring to the milling in that answer? A. I am referring to the milling.

Q. And you say you did some milling on the very first day, May 29th, of the 163? A. I believe that was the first milling we did, when it first came off the boat.

Q. Now the occasion you used the tryer you showed us to-day was not at the milling, but as it was coming off the ship?

20 A. Yes.

Q. Now I will read you 298:

“Q. In how many did you use the long tryer? A. Oh, I would say half a dozen or more when we were making any investigation.”

Now is that correct? A. That was not at that time.

Q. Well, when was it? A. It was later on.

Q. When on any occasion did you actually use the tryer on half a dozen or so sacks, because you see, you have said to-day you examined several hundreds of all marks, of this cargo, and  
30 probably hundreds of 163? A. With the hand, yes. I do not believe I said I did with the tryer.

Q. Well, the situation is you are going to change it and say you actually examined half a dozen or so of the 163 as it came off the ship, and probably a hundred or more with the hand? A. Well, I examined a lot of them with the tryer also.

Q. Well, did you examine more than half a dozen, as you said in your examination for discovery? A. I venture to say I did.

Q. What holds were you in? A. I was in the centre of the boat, I think two and three.

40 Q. And how many sacks would you say you felt or examined in any way in the holds? A. Well, there was a lot of them. I could not tell you how many. There was dozens of them.

Q. Dozens of them, that is as far as you would go, is it?  
A. Well, I would be safe when I said that.

Q. Did you open any sacks in the hold? A. No, I did not.

*In the  
Supreme  
Court of  
British  
Columbia.*

Plaintiff's  
Evidence.

No. 19.  
Jacob Fred  
Sachs,  
Cross-Ex-  
amination  
May 26th,  
1938.

—continued.



*In the  
Supreme  
Court of  
British  
Columbia.*

Plaintiff's  
Evidence.

No. 19.  
Jacob Fred  
Sachs,  
Cross-Ex-  
amination  
May 26th,  
1938.

—continued.

Q. But you examined dozens and felt them; that is correct?

A. Yes.

Q. Question 137:

“Q. Well, how many sacks did you examine in the holds?

A. Well, the exact amount I can't say, but it was at least half a dozen or more.”

A. Half a dozen or more. I was not certain as to the exact amount. I did not keep a record of it.

Q. And your recollection is not very good on it at this date?

A. I did not keep a record of how many were examined exactly. 10

Q. Now this rice was dry when it came off, all of it, was it not? A. It was warm.

Q. I said it was dry when it came off, all of it? A. Warm.

THE COURT: Q. Answer the question. Was it dry or was it wet? A. Dry, yes.

MR. BOURNÉ: Q. And that applies to what you saw in the hold of the ship as well as on the wharf afterwards; it was all dry? A. Well, in the hold and out on the dock there is a slight difference, because as soon as the temperature breaks it makes a sudden change. 20

Q. Well, is it not a fact that all the rice you saw on the dock or in the hold or afterwards that came off that ship was at all times dry? A. To the touch, yes.

Q. Witness, the expression has been used a number of times in giving evidence by different witnesses, of heavy and light milling. Now I take it that you have charge of the milling. You are the superintendent in charge of that particular function of the operation, are you not? A. Yes.

Q. And when you say light milling you mean the ordinary milling that is used in the mill? A. You do not use so much stress 30 on the rice.

Q. That would be the ordinary milling you would give ordinarily to rice? A. There is a difference in the rice. It is a lighter milling, yes.

Q. It is the milling you give ordinarily, and then when you have some occasion for it you give what is called a heavy milling? A. Yes, you might put it that way.

Q. And heavy milling is done by tightening up the machines and making it behave in such a manner that the grains are subject to more friction inside? Am I right in that? A. Yes. 40

Q. Now you said something about the rice being brought off the boat into the warehouse. I think you said that a somewhat similar ventilation system was used, and gradually in about four days it became cool. Correct me if I am wrong. A. Yes.

Q. Do you know anything about the safe moisture condition of rice for shipment? A. Only what I have heard them figure,

a safe moisture content in shipping is 14 or 15%.

Q. And did you keep track of your moisture content in your warehouse in any way? A. No.

Q. Did you ever take the moisture content of rice yourself in all your experience? A. No, not by myself.

Q. I want to read your questions 86 to 92 of your examination:

10 "Q. Well, then, when you opened 163, just describe to me what you found. A. Well, the rice was warm. That is about all I could say.

"Q. You just put your hand in it and found it warm? A. Yes.

"Q. Did you examine into all parts of the sack or just take it from the top? A. Oh, we just picked out from the top.

"Q. I see. Apart from the heat, was there any condition of the rice that would draw it to your attention as distinct from any other rice? A. No, it was hardly noticeable.

20 "Q. That is, there was no brown rice, there was no— A. When we made the inspection, yes, it was not—it was not noticeable to the eye at the time, you see.

"Q. I see. A. What I mean to say—

"Q. That is, if there hadn't been heating you wouldn't have noticed anything about the rice to distinguish it from other rice? A. We wouldn't have noticed it until we started milling it."

Now do you agree with those answers you gave on discovery? A. Yes.

30 Q. Now do you know, do you not, witness, how the rice was stored in holds 2 and 3 in a general way? You know there was several other lots of rice in those two holds besides 163? A. You mean there were more holds there?

Q. No, you went into holds 2 and 3, I understand. A. Yes.

Q. The holds immediately forward and immediately aft the engine room? A. Those were in the centre of the boat.

Q. And in each of those holds was a part of 163, in each of them? A. If I recollect that is what it was.

Q. In each of the two holds you were in, whatever the position, there was 163 stored? A. If I remember right, yes.

40 Q. And in each of those holds there was other rice? A. I think so.

Q. And you saw the other rice there? A. I seen whatever was there, yes.

Q. And that other rice was not damaged? A. Oh, no, I don't say that.

Q. You say the A.L.Z. was damaged? A. To a certain extent, yes.

*In the  
Supreme  
Court of  
British  
Columbia.*

Plaintiff's  
Evidence.

No. 19.  
Jacob Fred  
Sachs,  
Cross-Ex-  
amination  
May 26th,  
1933.

—continued.



*In the  
Supreme  
Court of  
British  
Columbia.*

Plaintiff's  
Evidence.

No. 19.  
Jacob Fred  
Sachs,  
Cross-Ex-  
amination.  
May 26th,  
1938.

—continued.

Q. What was the extent? A. Well, much less than the 163.

Q. Did you have any trouble whatever getting rid of the

A.L.Z.? A. Not as I was told.

Q. Well, you know, don't you? A. I am not at the selling end of it.

Q. Well, you know whether it was got rid of without any trouble or not at the selling end? A. Only what I was told.

THE COURT: Well, I think you got that from Mr. Lauchland did you not? You see, it is just hearsay from him.

MR. BOURNE: Well, it bears on the way the question 10 was answered.

Q. Was the Kalagyi that was in one of those holds damaged in any way? A. It was heated likewise.

Q. Was it damaged in any way in the final analysis? A. I figure it was damaged, yes.

Q. Did you lose anything as a result of any heating of the Kalagyi rice? A. Well, that goes to the offices.

Q. Do you say these other rices were damaged or heated as much as this 163? A. Yes, some was of each.

Q. Which was? A. Some of each. 20

Q. Did you say some of it? A. I said some of each was damaged.

Q. Will you say some of the Kalagyi rice was damaged? A. Yes.

Q. You know that from your own personal knowledge? A. Yes.

Q. And to what extent was it damaged? A. I did not have to mill it down as much as the other, therefore it did not show the same effect.

Q. To what extent was it damaged, witness? A. As to 30 colour.

Q. And what proportion of it was damaged as to colour? A. I did not pay much attention as to that. It was not necessary.

Q. Why was it not necessary if you say it was damaged as much as 163? A. Well, that grade of rice we mill for a cheaper trade.

Q. And you mean to tell me now it was damaged as much as 163 and still you cannot tell me the extent to which it was damaged in appearance or anything else? A. I would say it was damaged almost equally to 163. 40

Q. That is, you would say, it was damaged 20 to 25%? A. Some of it.

Q. Have you any record to show that? A. Never kept any record.

Q. Have you any milling record to show the result of mill-

ing of the Kalagyi rice? A. We milled it as we usually mill it. We have a record, yes.

Q. And does the record show any damage at all to the Kalagyi rice? A. Not that I know of.

Q. And did you make any claim for damage to the Kalagyi rice? A. That is entirely up to the office. I never heard of it.

Q. You know that the company did not, don't you? A. I don't know. I am not sure.

10 Q. How many bags of A.L.Z. did you examine? A. Any amount of them. I could not say how many. During the entire operation of it I suppose it would run into hundreds.

Q. Was that on the ship or dock or where? A. During the milling process and also while it was being unloaded.

Q. How many? Give me an idea? A. Well, I would have to refer back and say I did not count them.

Q. Well, was it half a dozen or several hundreds? A. Oh, well, it would run into a hundred, I suppose. I don't know how many. It was not necessary to keep track of them. The exact amount I could not tell you.

20 Q. Is it because you cannot remember after the time that has passed or you are just guessing at it? A. Well, I would have to guess at it.

Q. And you are guessing in regard to all your numbers? A. Well, not exactly.

Q. Well, how do you know how many you examined of 163 any more than A.L.Z.? A. I told you I took an examination of all the rice. I did not tell you any particular one.

30 Q. How many bags of the Kalagyi did you examine? A. We did not continue on examining it because it was not necessary.

Q. How many bags of Kalagyi did you examine, that you say was damaged as badly as 163? A. I could not tell you.

Q. You have not the slightest idea? A. Oh, yes.

Q. Well, tell me, was it half a dozen or several hundreds? A. It was in the dozens of them. I could not tell you how many.

Q. Did you examine those with a tryer? A. Some with a tryer and some as it was coming off.

40 Q. You did not make any examination of anything but 163 on the ship, or did you examine A.L.Z.? A. We did if it was feasible.

Q. Well, did you? A. I don't remember seeing the A.L.Z. on the ship at all.

Q. You said you examined some of all marks. Was that on the ship or afterwards? A. That was during the time of unloading and afterwards.

Q. While it was coming off the ship? A. Yes.

*In the  
Supreme  
Court of  
British  
Columbia.*

Plaintiff's  
Evidence.

No. 19.  
Jacob Fred  
Sachs,  
Cross-Ex-  
amination,  
May 26th,  
1938.

—continued.



In the  
Supreme  
Court of  
British  
Columbia.

Plaintiff's  
Evidence.

No. 19.  
Jacob Fred  
Sachs,  
Cross-Ex-  
amination,  
May 26th,  
1938.  
—continued.

Q. And did you keep any record of any of the marks at all that was damaged? A. I did not, no.

Q. Now let me read 396 to you:

“Q. How many of the A.L.Z. bags did you examine? A. Oh, approximately a dozen or more maybe during the day—during the unloading.”

Is that correct? or more? I am asking you whether that answer is correct.

MR. BULL: Well, you must read the next one too.

MR. BOURNE: “397 Q. That is, you examined about a 10 dozen sacks of A.L.Z. altogether? A. I don't want to be talking of the amount I did examine, I examined any amount of them, but I just can't recall the exact amount. I didn't count them.”

THE WITNESS: That is correct.

Q. Now was a dozen your recollection when you were examined for discovery of what you examined? A. You asked me to say a certain amount, and I stayed within the amount.

Q. And that was what you thought was about what you examined? A. Oh, no, I did not say that. It was more. That means 20 it was that many or more.

Q. All the heating you saw, and any of the evidence you saw of heating, was on the outside of the sacks at all times? A. Well, with the exception of when I used this.

Q. Well, that goes about 4 inches into the sack? A. Yes.

Q. And when you describe the result you got from that tryer you would call it the outside of the sack? A. Near the surface, yes.

Q. I mean you would not call it the centre of the sack at all? A. No. 30

Q. Now of all the other marks except 163, how many would you say you examined either with the tryer or by feeling with the hands or by any other way? A. During the unloading of the boat?

Q. Yes, how many would you say now? A. I would say dozens, or more.

Q. What do you mean when you say “more”? A. That might run up into hundreds.

Q. You say dozens or more, and when you say that you mean it might run up into hundreds? A. Yes. 40

Q. And is that the best explanation you can give? A. I think I am perfectly safe in making that sort of explanation. The entire amount, I did not count them.

Q. Let me read 753:

“Q. Did you notice with regard to the marks other than

163 on what part of the sacks the heating appeared? A. Generally on the outside.

“Q. Did you test them? A. Tested with the hand.

“Q. You felt on the outside of the sack? A. Yes.

“Q. And did you make tests with your tryer? A. Oh, yes, we did.

“Q. How many? A. Oh, I can't say just how many; half a dozen or a dozen, I presume.

“Q. On each day? A. Different times.

10 “Q. About half a dozen or a dozen over the whole period of unloading? A. Somewhere along there. I wouldn't say exactly how many.”

Were you giving your recollection on your examination for discovery of what happened with reference to the examination of the marks other than 163? A. That is with the tryer only; that is not with the hand.

Q. 754, I will read it again (reading). A. Yes.

20 Q. 755, 756, 757, 758, 759 (reading). Now, you see, witness, that is testing with the hand by feeling and testing with the tryer? A. No, you are referring to the last mark, the tryer; it says so right there.

Q. Is that the construction you put on those questions? I read them to you twice. Is that what you are saying now, you were only talking about the tryer? A. About testing that many with the tryer.

Q. And how many did you test by feeling with the hand? A. During the course of unloading I would say it was hundreds of them.

Q. Of the other marks? A. All the marks.

30 (Witness aside).

WILLIAM WALTER SIMPSON, a witness called on behalf of the Plaintiff, being first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. BULL:

10 sir. Q. You are an employee of the plaintiff company? A. Yes,

Q. In the mill? A. In the warehouse.

Q. During the milling of rice what is your job? A. Emptying into the hopper.

40 Q. What does that mean? A. Well, getting the sacks opened and dumping them in.

Q. Were you so employed between May 1936 and 1937? A. Yes, sir.

Q. How long in May 1936 had you been employed at that particular job? A. Two years.

*In the  
Supreme  
Court of  
British  
Columbia.*

Plaintiff's  
Evidence.

No. 19.  
Jacob Fred  
Sachs,  
Cross-Ex-  
amination,  
May 26th,  
1938.

—continued.

No. 20.  
William  
Walter  
Simpson,  
Examina-  
tion,  
May 26th,  
1938.



In the  
Supreme  
Court of  
British  
Columbia.

Plaintiff's  
Evidence.

No. 20.  
William  
Walter  
Simpson,  
Examina-  
tion,  
May 26th,  
1938.  
—continued.

Q. And you are still on that job, are you? A. Yes, sir

Q. Do you remember a shipment of brown rice which arrived on the "Segundo" which arrived in May 1936? A. I remember the shipment of rice.

Q. Did you have any job, any special instructions in regard to getting any of the rice, 163 and 102? I am not asking what the instructions were. Did you have any special instructions? A. Yes.

Q. Who gave you the instructions? A. Mr. Sachs.

Q. As a result of those instructions what did you do with the rice marked 163 and 102 before you emptied into the hopper? A. After I got the instructions? 10

Q. Yes. A. Tested it.

Q. To what extent? Did you test every sack? A. Yes.

Q. When were those instructions received? How much had gone through before you got those instructions? A. I could not say.

Q. Do you know what month it was? A. The month I got the instructions?

Q. Yes. A. No. 20

Q. How did you test the rice after you got the instructions? A. With the tryer.

Q. That Mr. Sachs had there, a similar one? A. Yes, a similar one.

Q. What did you do? A. Well, I put it in a sack on four sides and took out the rice and looked at it.

Q. What did you find with respect to 163 and 102 on that test? A. Damaged Rice.

Q. What was the nature of the damage? A. It was dark, a brown rice. 30

Q. And you say you put the tryer in four different places? A. Yes, sir.

Q. That is at both ends and the centre and sides? A. Yes, sir.

Q. Did you form any conclusion as to the condition of the rice? A. Pretty badly damaged.

Q. Did you form any opinion as to the extent of the damage on each bag you examined? A. 25%.

Q. Did you find any bag that was not damaged to that extent? A. Not to my recollection. 40

Q. What was your purpose in examining each bag of 163 and 102? A. To get the real damaged rice out of the lesser damaged.

Q. Did you discard any at all? A. Yes, sir.

Q. In what condition were the bags you did allow to go into the hopper? A. They were damaged.

Q. Were you present when the rice 163 and 102— A. Yes, with the exception of the odd night shift.

Q. And when you were off the night shift who was on in your place? A. Mr. Bell.

Q. Was any of this rice mixed with A.L.Z.? A. It might have been.

Q. Was it customary to mix different brands? A. No, sir.

Q. Where were you when the rice landed from the ship?

A. I was on my job.

10 Q. In the warehouse? A. Yes.

Q. Did you examine any of the rice that came off that ship at that time? A. That they brought to the hopper I did.

Q. But not in the warehouse? A. No.

Q. Do you remember the marks on any of the bags you examined? A. There was A.L.Z., 163, 102 and K.G.

Q. That is Kalagyi? A. Yes.

Q. In what condition were the bags you examined? A. Damaged.

20 Q. How did you notice that? A. First I noticed they were warm and when I opened them up I looked into them and found damaged rice in them.

Q. Did you notice the condition of the rice as to heat at any time after the unloading? A. Well, I felt the outside of the piles later on.

Q. How long after? A. Say around four days.

Q. And what condition was it in then? A. It had cooled off.

#### CROSS-EXAMINATION BY MR. BOURNE:

30 Q. I was not sure I understood your evidence. The first examination you were speaking of would be with the tryer immediately prior to the process of milling? A. Yes, sir.

Q. And the other examination you speak of was just after the rice had come off the ship? A. Just as it came off.

Q. Where would that be—piled in these piles? A. No, right at the hopper where I empty it in.

Q. Well, it is unloaded from the slings of the ship and trucked into the warehouse, is that right, by hand trucks? A. No, not exactly.

Q. Well, however it is, it does not matter, and both these examinations were right at the hopper? A. Yes, sir.

40 Q. Well, why did you distinguish between the two? You said you examined—in the second part of your evidence you said you examined part of the rice that came from the ship to the hopper? A. Yes, sir.

Q. That was coming directly from the ship to the hopper, was that it? A. Directly.

*In the  
Supreme  
Court of  
British  
Columbia.*

Plaintiff's  
Evidence.

No. 20.  
William  
Walter  
Simpson,  
Examina-  
tion,  
May 26th,  
1938.

—continued.

Cross-Ex-  
amination



In the  
Supreme  
Court of  
British  
Columbia.

Plaintiff's  
Evidence.

No. 20.  
William  
Walter  
Simpson,  
Cross-Ex-  
amination  
May 26th,  
1938.

—continued.

Q. Oh, I see. Now when you said some of the rice you considered 25% damaged, which examination was that?—that which came directly to the hopper from the ship, or later on? A. During the milling.

Q. So you did not make any examination to test the percentage of damage when it would come direct from the ship to the hopper? A. No, sir.

Q. And you said you examined direct from the ship to the hopper, I think you said four marks, 163, 102, A.L.Z., and K.G.? A. Yes.

Q. And you said when you made that examination the bags were damaged? A. The rice was damaged.

Q. You used that expression. What examination did you make on that occasion? A. When it came direct in?

Q. Yes. A. No, I did not use the tryer.

Q. Why do you say it was damaged? A. Well, I seen it. I dumped half a sack in and looked at it, and looked at the other half.

Q. And you said it was discoloured? A. Yes.

Q. When you made the estimate of it being 25% damaged 20 during the milling, what process did you go through to come to that conclusion? A. Well, I could see it.

Q. At that time you had had two years experience at that particular job of feeding the hopper? A. Yes.

Q. And that had been all your experience in rice up to the time this "Segundo" rice came along? A. At that job, yes.

Q. Had you other experience? A. I had been there a year previous.

Q. And it was on that experience you say this rice was damaged 25%, seeing it pour from the sack into the hopper? A. 30 Yes, sir.

Q. Do you know anything about the amount of discoloured grains you found in the rice, if you did find them? A. What do you mean by that?

Q. Well, is it not the usual thing to find some discoloured grains in any rice that comes along? A. It is not noticeable.

Q. What do you mean by that? A. They are so few.

Q. I see; you would notice them, but not to any great extent. Now then, you judged there was enough discoloured grains in this particular rice that it was noticeable? A. Yes, it was 40 noticeable.

Q. In the brown state? A. Yes.

Q. And how would you come to the conclusion it was 20, 25%? A. By the quantity of damaged rice mixed through the sack.

Q. What test did you make? Did you do anything else than

dump it in, out of the sack into the hopper? A. I never made any test of it, no.

Q. And you simply formed that conclusion from dumping in the sacks in the process of milling and noticing what you did notice? A. Yes, sir.

Q. What was it you observed—discoloured grains? A. Yes.

Q. And I suppose different shades of discolouration, was it? A. Yes.

Q. How long did it take to feed a sack through the hopper?

10 A. Well, it just depends, on how fast you have started running.

Q. Well, ordinarily. A. I could not say.

Q. Well, is it half a minute? Do you pick it up and dump it as fast as it will dump, and does it carry on until you can empty a sack—dump it, or do you have to wait? A. It is not that fast.

Q. What did you say? A. I would not estimate the time.

THE COURT: Q. Well, you can give us some idea. Does it take an hour, or half an hour, or 15 minutes? Can you not give us some idea? What do the sacks weigh—212? A. 220.

20 Q. Well, how long would it take that sack to go through the hopper, just roughly? A. Well, say half a minute.

MR. BOURNE: Q. And I suppose in the process of milling you follow one sack just as fast as you can with another, not to lose any time? A. We just keep the mill going.

THE COURT: Q. I am not sure I understood you. You said the rice was damaged 25% in your opinion? A. Yes, sir.

Q. Was that the rice coming direct from the ship to the hopper at all times? The rice you say was damaged 25%. Was that the rice coming direct to the hopper from the ship? A. That was a later date.

30 Q. You mean later, somewhere in the warehouse you examined it and it showed 25% damage? A. Yes, sir.

MR. BOURNE: Q. I understood you to say, witness, you did not make any particular examination of the rice that came direct from the ship to the hopper? A. That is what I said.

Q. Did you make any record at all of these examinations at the time? A. No, sir.

Q. Or at any time? A. No, sir.

(Witness aside)

40 KENNETH OSCAR BELL, a witness called on behalf of the Plaintiff, being first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. MERRITT:

Q. You are an employee of the plaintiff company? A. Yes, sir.

Q. What is your position? A. Relaying on to Mr. Simpson.

*In the  
Supreme  
Court of  
British  
Columbia.*

Plaintiff's  
Evidence.

No. 20.

William  
Walter  
Simpson,  
Cross-Ex-  
amination  
May 26th,  
1938.

—continued.

No. 21.  
Kenneth  
Oscar Bell,  
Examina-  
tion,  
May 26th,  
1938.



In the  
Supreme  
Court of  
British  
Columbia.

Plaintiff's  
Evidence.

No. 21.  
Kenneth  
Oscar Bell,  
Examina-  
tion,  
May 26th,  
1938.

---continued.

- Q. Relaying the sacks on to Mr. Simpson? A. Yes, sir.
- Q. And how long have you been doing that? A. Oh, nine months or a year.
- Q. Pardon? A. Between nine months and a year.
- Q. When did you first work for the plaintiff company? A. I think I started in 1935.
- Q. And in May 1936 what were you doing? A. I was passing bags to Mr. Simpson.
- Q. Did you have any job when Mr. Simpson was away? A. Yes. 10
- Q. What did you do when he was away? A. I was cut-in.
- Q. During the year between May '36 and May '37—do you remember the shipment of rice marked 163 and 102? A. I do.
- Q. During the year between 1936 and May 1937 did you do anything in respect to that rice when Mr. Simpson was not there? A. Direct from the ship, or when we got orders to—
- Q. No, when Mr. Simpson was not there. A. Oh, yes, I tested it.
- Q. On how many occasions? A. Four sides of the sack.
- Q. And how many different occasions were you working on that when Mr. Simpson was not there? A. One or two runs; I don't know. 20
- Q. On these occasions how many sacks did you test? A. All of them.
- Q. You said you tested them on four sides—with a tryer? A. Yes.
- Q. And then did you cut them into the hopper? A. I did.
- Q. What do you say about the condition of that rice? A. It showed dark.
- Q. And can you estimate the extent of the damage? A. It is pretty hard—20% or 25% anyway. 30

Cross-Ex-  
amination,

CROSS EXAMINATION BY MR. BOURNE:

- Q. That is, you would test the sacks with the tryer just immediately prior to dumping them into the hopper? A. Yes.
- Q. And you said it showed dark. What do you mean by that? A. It showed a very dark colour.
- Q. This was brown rice, was it not? A. Yes.
- Q. What is the ordinary colour of brown rice? A. Well, it is light.
- Q. Well, what colour is it? It is called brown rice, but what colour is it—brown—and you thought this was a darker brown, is that it? A. Yes. 40
- Q. And all brown rice is coloured brown according to your idea? A. Yes.

- Q. Was it a dark brown, would you say, all the grains in the sack? A. What brand was that?
- Q. Did you examine more than one mark? A. I examined them all. There was some worse than others.
- Q. Well, do you know which ones were going through when you were on these several runs? A. I did not say several runs; I said two.
- Q. One or two runs? A. Yes.
- Q. Do you know what marks were going through? A. 163.
- 10 Q. You did not examine any others? A. Yes, when the run was changed.
- Q. Now of the 163, would you say some of the grains were darker than the others? A. Nearly all of them were darker than what we usually cut in.
- Q. And were they nearly all dark? Is that what you say? A. Practically.
- Q. And when you cut into the four sides of the sack what did you do—take it into your hand? A. Yes.
- Q. And did you make any record? A. No.
- 20 Q. And what was your idea in doing so? A. To see what colour it was.
- Q. Well, you put it right through. What difference did it make? A. Some I lifted out was really dark.
- Q. That is, you examined it to see what colour it was, but you made no record of what went through? A. Yes.
- Q. And you are depending now on your recollection? A. Yes.
- Q. You agree with what the last witness says as to the operation of the mill on how long it takes to go from one sack to another? A. Yes.
- 30 Q. And how did you estimate this 20-25% damage? A. Well, when we got orders to test, I took some out of the hopper.
- Q. Yes, but how did you estimate this damage? A. That is what I mean. I lifted some of the darkest out of the hopper.
- Q. Did you do that more than once? A. I did.
- Q. Well, how did you estimate it was 20-25% damaged? A. Because it showed in the bag.
- Q. Do you mean 20 to 25% of the grain were off colour? A. Very dark.
- 40 Q. That is what you mean? A. Yes.
- Q. Well, that is, occasionally you took a handful out of the hopper? A. I took a scoop-full occasionally out of the hopper.
- Q. How often would you do that? A. Practically every bag.
- Q. And you would look at the scoop-ful just as you held

*In the  
Supreme  
Court of  
British  
Columbia.*

Plaintiff's  
Evidence.

No. 21.  
Kenneth  
Oscar Bell,  
Cross-Ex-  
amination,  
May 26th,  
1938.

—continued.



*In the  
Supreme  
Court of  
British  
Columbia.*

Plaintiff's  
Evidence.

No. 21.  
Kenneth  
Oscar Bell,  
Cross-Ex-  
amination,  
May 26th,  
1938.

No. 22.  
Duncan  
Gavin,  
Examina-  
tion,  
May 26th,  
1938.

it and you would estimate 20 to 25% damage? A. Well, I have taken more than one scoop.

Q. Yes, but that is what you would do? A. Yes.

Q. You said you had been working, I think you said— Well, how long had you been working? A. Between nine months and a year.

Q. Well, now? A. Practically three years.

Q. And that is all the experience you had had in rice? A. That is all.

Q. Of any kind of experience? A. Yes.

10

(Witness aside)

DUNCAN GAVIN, a witness called on behalf of the Plaintiff,  
being first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. BULL:

Q. You are president of the plaintiff company? A. Yes.

Q. How long have you been engaged in the rice business in this province? A. 44 years.

Q. How long have you been importing brown rice or paddy and milling it here? A. Since 1907.

Q. What other rice mills in Canada are there besides your own? A. There are a few small Japanese mills here and a mill about the same capacity as ours in Montreal—Mount Royal Rice Mills.

Q. How do these Japanese rice mills rank with you as far as capacity is concerned? A. I do not know exactly, but very small capacity.

Q. Where is the market for your product? A. Well, we ship throughout Canada.

Q. Your company imports from various parts of Asia, does it not? A. Yes.

30

Q. And you have been doing so since how long ago? A. From about practically the time of the milling.

Q. And to what extent of tonnage do you import rice in any one year? A. Well, I think about 12,000 to 15,000 tons.

Q. Is it your practice to insure the rice you bring in? A. Yes.

Q. And you have carried the policy, exhibit 1, for some years? A. Yes, for nine years. I think.

Q. That same policy? A. Yes, I believe so. I do not think there have been any changes made.

40

Q. Will you just explain what processes you put rice through in your mill? A. Well, when it comes from the boat,

if we are waiting for that rice it is taken directly to this hopper, and from there it is carried by a belt to an elevator, which takes it up to the top floor. At the top floor it is cleaned of all foreign matter, such as seeds and straws and matters of that kind, and then it comes down to the shellers—I am talking about paddy, sometimes paddy and sometimes brown. If it is brown rice it skips the shellers, of course, but not paddy; it goes through the shellers, and then from the shellers it goes to the hullers.

*In the  
Supreme  
Court of  
British  
Columbia.*

Plaintiff's  
Evidence.

No. 22.

Duncan  
Gavin,  
Examina-  
tion,  
May 26th,  
1938.

—continued.

Q. Well, that converts the paddy into brown rice? A. Yes.

10 Q. Now as regards the brown. A. After it comes through the shellers, it is now in the brown state and goes to the hullers. There are two stones, an under and top stone, which is a fixture, and the hulls go in at the centre and the friction takes the hull off, and from that point it goes to the hullers, and it is then turned into white rice. It may have to go through two or three different times, but when we get the proper colour, it goes then to the grading machines and polishers and then down to the automatic scales, and it is weighed into bags and ready for shipment.

20 Q. Now you remember the shipment of rice that came in on the "Segundo", May 1936? A. Yes, I do.

Q. And particularly 163 and 102? A. Yes.

Q. What grade is 102? A. It is intended for a very high class trade. They are very particular about the colour and the general appearance.

Q. Were you down at the vessel? A. When Mr. Lauchland called me and told me—

MR. BOURNE: I object.

MR. BULL: Q. In that shipment there were 50,600 bags? A. Yes.

30 Q. And the 163, 750 tons? A. Yes.

Q. Did you examine the rice when it came, on the ship? A. Not until May 30th.

Q. As a result of something you were told, I suppose? A. Yes, I had heard of the damage.

40 Q. And then you went down, and did you make an examination on May 30th? A. Only a slight examination. I felt the bags with my hands. You naturally would not look at some of the bags. There was nothing we could do. We just had to go on unloading and discharge cargo. At that time I was with Captain Slater, the Port Warden of New Westminster.

Q. What is the effect on rice of heating, particularly the rice intended for high class trade? A. Well, it darkens the colour and causes more breakage and it reduces the value by that amount.

Q. What about the milling of it besides the breaking? A. Well, it delays the milling. We have to scour harder to get the



*In the  
Supreme  
Court of  
British  
Columbia.*

Plaintiff's  
Evidence.

No. 22.  
Duncan  
Gavin,  
Examina-  
tion,  
May 26th,  
1938.

—continued.

bran off if it was not coming off properly, and it causes extra breakage.

Q. Does it have the effect of leaving any of the bran on the kernel? A. Yes, it did in this case.

Q. There were other grades of rice in the shipment? A. Yes.

Q. What were their marks? A. Well, there was another lot marked A.L.Z. 750 tons, the same grade of rice as 163. There was 2000 tons marked K.G., I think, and 1560 tons of Selected Delta. I think that makes the—

Q. For what trade is the K.G. and A.L.Z. intended? A. For the cheaper trade. We sell most of it in Quebec.

Q. Any difference in the milling of the cheaper and higher grades? A. Yes. We mill it more lightly. It means colour is not of importance. Customers do not look for anything particularly well finished.

Q. Is it possible in your mill to mill individual bags of rice? A. No.

Q. Why? A. Because they would get lost in the machinery. You have got to have your lines full and the machines properly fed to get proper results.

Q. I understand you were only occasionally on the dock during the unloading? A. Yes.

Q. And the examination you made was by touching with your hands? A. Yes. I saw Captain Slater taking the temperatures, but I did not look at the thermometer. No. 1 hold was—

Q. I am just speaking generally now. A. Generally, there was considerable heat.

Q. Do you recollect any of the particular marks you examined? A. No, I cannot say I do. It was not of much importance. We wanted to get the rice off and examine it through the mills. You cannot tell much about it otherwise.

Q. Did you go down the holds with Captain Slater on May 30th? A. Yes.

Q. What did you see? A. In No. 1 hold the temperature was fairly moderate and it got hot as we came aft towards the engine-room.

Q. Just before you leave No. 1, did you notice anything else apart from the temperature? A. I noticed a faint smell of must.

Q. Is that usual on a cargo of rice? A. Oh, yes, I didn't think it was serious, not in that hold, anyway.

Q. Anything else you noticed? A. No, except the musty smell and the comparative cooler temperature.

Q. What about No. 2 hold? A. It was much hotter. The

10

30

40

bags were distinctly hot, particularly the ones nearest the engine room.

Q. What did Captain Slater do, if anything? A. He was taking temperatures. I think he took them in all four holds.

Q. You, however, simply felt them with your hands? A. I was waiting for his report.

Q. Did you examine the bags in various parts of No. 2 hold? A. Yes, I just felt them in that way with my hand.

10 Q. Did you notice any odour in that hold? A. Yes, a stronger musty smell.

Q. Did you go down 3 and 4 holds? A. Yes. No. 3 was very similar to No. 2 immediately after the engine room, and No. 4 at the stern or after end was approximately the same as No. 1.

Q. So 2 and 3— A. Yes, were most seriously affected.

Q. Did you see rice 163 and 102 as it was milled? A. Yes, at different times, I did.

Q. Just before I go on with that, what rice was stored in the 'tween decks space on board? A. The K.G.

Q. Did you see it there? A. I know by the stowage plan.

20 THE COURT: Q. That is hearsay. You do not know of your own knowledge? A. No, it was out of the boat before I saw it.

THE COURT: Disregard that evidence.

MR. BULL: Q. Now the 163 and 102 as it was milled, what was its condition? A. It came out of the mill very dark in colour, with a certain amount of the bran adhering to the kernels and generally unsatisfactory in quality.

Q. Can you estimate the percentage which was damaged? A. Excuse me, what I meant by generally unsatisfactory quality, I am referring to its appearance.

30 Q. I understand for that particular trade you have to have a particularly good appearance? A. Yes.

Q. Can you estimate the percentage of damage of 163? A. At the time I do not think it would be very far out to place it at 20% of the damaged kernels. I never counted them, mind you. That is just my general impression of it.

Q. That would be your impression at the time? A. Yes.

Q. Have you been able to confirm that since? A. Yes.

40 Q. Have you at the present time on hand any part of the shipment which was marked 163 or 102, either milled or unmilled? A. We have 41½ tons of the milled which we do not know what to do with, and we have about 12 to 15 tons of bags of damaged white rice, so bad we did not use it. I think it was unloaded separately from the holds.

Q. When you found this rice was coming off the ship in the condition you have described, did you take any steps to dispose of the rice as brown rice? A. No.

*In the  
Supreme  
Court of  
British  
Columbia.*

Plaintiff's  
Evidence.

No. 22.

Duncan  
Gavin,  
Examina-  
tion,  
May 26th,  
1938.

—continued.



In the  
Supreme  
Court of  
British  
Columbia.

Plaintiff's  
Evidence.

No. 22.  
Duncan  
Gavin,  
Examina-  
tion,  
May 26th,  
1938.

—continued.

Q. Why not? A. Because there are no other buyers of rice here.

Q. Where would be the next nearest possible buyer of rice of that kind? A. The United States Market is completely shut off by a high tariff. The only market left would be Montreal, and the same difficulty applies there owing to the high freight rates.

Q. Any other reason why it would not be possible to sell it at that time of the year? A. Well, we try to practice, and I believe all the mills have to do it, to buy early and select good proposals. If they do not they have to take what is left, and it is quite unsatisfactory at a later date. 10

Q. Can you state the gross sound value of the Interco Brose 163 and 102 as of the 29th May, 1936, assuming it had been in sound condition? A. I think it was \$28,748 odd.

Q. You heard Mr. Lauchland's evidence on how it was made up, and you agree with that? A. Yes.

Q. And that includes cost of freight, insurance and all other charges? A. Yes, cost, freight and insurance and running charges. I think it includes Excise.

Q. What is your estimate of the value of that 163 and 102 20 in the condition in which it actually was, as brown rice? A. I think that works out to about \$21,211.

Q. Upon what do you base that valuation? A. I base it on my experience over many years in buying rice. We buy almost altogether by sample, with very few exceptions, and our profits depend upon our accuracy in estimating the out-turn on these samples. We do it very carefully and check as closely as we can, and have to take our chances, and I do not think we have made very many mistakes—not serious ones, at all events.

Q. Yes: what else? A. Well, I have, of course, had a view 30 of the actual results of this—the milling of this rice—as a guide, and I also showed it to two buyers.

Q. To what buyers did you show this rice? A. I showed it to a buyer for Kelly, Douglas & Company, and I also showed it to Mr. McPhee, Kelly-Douglas, and Jardine of W. H. Malkin Company.

Q. Did they give you an estimate of what they thought the value was? A. Yes.

Q. From your own knowledge and from the valuations or estimates you got from other buyers, were you able to form an estimate of the gross damaged value of the brown rice? 40

MR. BOURNE: I object to that. It is just getting these things in in another way.

THE COURT: Are you calling them?

MR. BULL: Yes, certainly I am calling them.

THE COURT: I think it would be admissible. It is his own opinion.

MR. BOURNE: Well, I submit he could give his own opinion and not base his opinion on what someone else told him.

THE COURT: You see, this question of value, a man has to go around and make inquiries, market conditions and so forth, and then he comes to an opinion of his own based on that.

MR. BULL: Q. Well, having in mind what you said you did have, your own experience and these other matters, what in your  
10 estimation should be deducted from this brown rice on account of the damage? A. I have not got the figures in my head. I have statements prepared.

Q. No, but you can tell in putting your valuation of \$21,211 what amount per ton you deducted? A. Oh, that would be about \$10 per ton, I think, on the brown, or 50 cents per hundredweight.

Q. If you had been in the market for rice at that time, at the time of the landing and before you had milled it, would you in fact have made an offer of \$21,211?

MR. BOURNE: Well, I submit that is not evidence.

20 THE COURT: He has already said the value was \$21,211.

MR. BULL: Yes, but there is a reason, I suggest, why he might not have taken—

THE COURT: I do not think so. He has already sworn to what he considered was the damaged value. It does not make any difference whether he would or would not have bought it. He has sworn it was the damaged value.

MR. BULL: Q. Would you yourself have offered \$21,211?

MR. BOURNE: The same objection, my lord. He has given  
30 different ways.

MR. BULL: Q. Does the fact you actually know the rice make any difference in your estimate? A. Oh, it certainly does.

Q. What is that difference? A. The difference is this, that we milled that rice out and knew what we were doing in connection with attempting to value, but if I had not had that information I would not take a gamble on the rice.

MR. BOURNE: I object to that.

MR. BULL: He says the value: "I have actually had the experience of milling that."

40 MR. BOURNE: I object to that. It has been ruled out.

MR. BULL: I am saying this witness has said, and he is entitled to say, "I have the experience of milling this and therefore I know what it produced, and therefore I can set the gross damaged value."

THE COURT: I see no objection to that.

MR. BULL: Well, why could not the witness go on and say

*In the  
Supreme  
Court of  
British  
Columbia.*

Plaintiff's  
Evidence.

No. 22.  
Duncan  
Gavin,  
Examina-  
tion,  
May 26th,  
1938.

—continued.



*In the  
Supreme  
Court of  
British  
Columbia.*

Plaintiff's  
Evidence.

No. 22.  
Duncan  
Gavin,  
Examina-  
tion,  
May 26th,  
1938.

—continued.

there is a difference in making an estimate with that experience and making an offer for brown rice without that experience. However, if your lordship is against me on that—

THE COURT: Well, I think he has already given his estimate of the value and what he has done, and the jury can form its own conclusions.

MR. BULL: Q. You have stated you estimated the gross damaged value at \$21,211? A. Yes.

Q. Have you been able to check that estimate since? A. Yes.

Q. And in what way have you checked that? A. I have made completed statements which verifies the valuation.

Q. Can you give the method in which you have checked that estimate without referring to the statements you have made? A. I can tell you what method we used, but I could not go through the figures.

Q. We will first deal with the method. A. We took the sound value landed in Vancouver as a basis and we took our records and we took the actual results of what we got from this rice, and we gave credit to the damaged rice account, adding the full value of the by-products, that is, the bran and what we call meal and the broken. It so happens it is the same price as we figured it cost us. We have to take a very low price. Then we figured in the tonnage of white rice, which of course was somewhat less than we should have got.

Q. Well, ordinarily, what percentage of brown rice should you get in the form of white rice? A. We should have got approximately 50% with this parcel.

Q. And what did you get? A. 46.59. Well, that made a difference in it, and then we took the milled products of the damaged rice and we put that in at a price about \$15 a ton less than the good rice.

Q. Why did you do that? A. Well, I thought it was reasonable at the time. When the final claim was made we had of course made other statements, which we found to be incorrect.

Q. Well, the white rice produced from this particular brown rice was in your estimation worth \$15 a ton less than if the rice had been in sound condition? A. Yes, that was the basis of our claim. I have not got a very good memory for figures. I could give it to you from the statement much more readily.

THE COURT: Well, if the statement itself does not go in it would probably be better to have it go in in that shape.

Q. Did you make the statement yourself? A. Yes, I made it with Mr. Lauchland.

Q. You were there, present all the time? A. Yes.

MR. BULL: Q. Will you look at that statement and just

refresh your memory from that? Give the figures, which I understand is a check on your figures. A. Well, the complete statement I have here—

MR. BOURNE: My lord, it is either a statement to assist him in giving his evidence or not.

THE COURT: Well, the net result, is it, the thing goes in and does not go on the notes? The jury have to trust this to their memory.

MR. BOURNE: Well, this is either of assistance to this witness to be able to give the figures that he otherwise could not recollect, the figures having been made up by him, or it is not.

THE COURT: He says he has gone into this carefully as to how the \$21,211 was made up. He called it a check, but I suppose it is an actual statement made up for the purpose of arriving at what the actual damage was.

MR. BULL: The witness gave his estimate as to the gross damage. Then the next question was, Have you been able to confirm your check? And he said yes, and I am now asking if he can give the details of that, and he says he has it in the form of a statement.

THE WITNESS: Sound value, \$28,748.35.

THE COURT: It would be common sense to have that go in, because he reads that off from it.

MR. BULL: This was marked on discovery. I suggest that might go in as the statement Mr. Gavin is referring to to check his estimate.

MR. BOURNE: We have no objection to it going in on that basis, that it proves nothing.

MR. BULL: Q. You have the statement before you now?  
A. Yes.

Q. Just having that statement before you to refresh your memory, will you just give details showing how you have checked your estimate of the damaged value? Never mind the sound value. A. We milled 1,660,127 pounds. That was the total weight of that lot. We got out of the 46.59% of what we call head rice. There was 199,879 pounds of meal.

MR. BOURNE: My lord, he is simply reading them off. I am not going to object to it going in on that basis as long as it is understood it is his estimate.

MR. BULL: It was never put forward as anything else.

THE COURT: Well, that settles that. It goes in on that basis.

THE WITNESS: This figured out 12.04% of the total weight. The value of that is \$1998.79. We had 670,027 pounds of brokens, which is 40.36%. The total value of that was \$8375.34. There was a loss in milling of 16,768 pounds, which represented

*In the  
Supreme  
Court of  
British  
Columbia.*

Plaintiff's  
Evidence.

No. 22.  
Duncan  
Gavin,  
Examina-  
tion,  
May 26th,  
1938.

—continued.



In the  
Supreme  
Court of  
British  
Columbia.

Plaintiff's  
Evidence.

No. 22.  
Duncan  
Gavin,  
Examina-  
tion,  
May 26th,  
1938.

—continued.

1.01 of the total rice milled. That was dust and mechanical loss reasonably runs about that. 690,453 pounds of white rice; that is 46.59%; total value of that, we have it here \$10,579.60. 83,000 pounds of white rice, that is the rice that was too bad to put in, we put that in at \$1.25.

Q. Is that the 41½ tons? A. Yes, that amounts to \$1037.50. The total is \$21,991.23, from which is to be deducted for additional expenses in examination on the appraisal \$415, and extra milling on account of slowing up of machines, 94 cents per ton on 386.72 tons; that is \$364.55. Deduct those two amounts from \$21,991.23 and it brings it to \$21,211.68. That is the way, that is the amount of our loss. 10

(STATEMENT MARKED EXHIBIT 43)

Q. Now you heard Mr Lauchland in his evidence, did you not, speak of another way of arriving at the loss in regard to the mixing of California and Mexican rice? A. Yes.

Q. What do you say about that? A. I think it is a very good check on this statement I have just read.

Q. You have the same knowledge of what was done with regard to this mixing as Mr. Lauchland? A. Yes. 20

Q. Although you have not perhaps gone into the detailed figures, or have you? A. No, Mr. Lauchland made the figures out.

Q. Do you agree with what he said about them? A. I do. I went over them with him.

Q. Now certain claims were put in by the Company on this policy at different times, first a letter of the 5th May—I won't put that in. You have made certain claims, exhibits 24, 25 and 26? A. Yes.

Q. You are familiar with exhibit 24, are you not? What have you to say with regard to that? A. That was one we made soon after the boat was unloaded. It was incorrect. A clerical error was made in the calculation. We figured out 5% loss on the white rice, whereas it should have been on the larger bulk, the brown rice, and it made a material difference, and the difference we figured between the good and bad rice at \$5 which was later found to be quite incorrect, much too low. 30

Q. Would you look at exhibit 25 and make what comment you wish on that? A. I remember this one. This was to correct that other mistake, but it was only a partial correction. It still left the wrong estimate of the value of \$5. That should have been much greater. 40

Q. Then when you delivered these claims, exhibits 24 and 25, did you then consult your solicitors as to the manner in which your claim should be made out? A. No.

Q. When did you first consult your solicitors about this claim? A. It was—I was away from February to June, and I think it was shortly after that.

Q. In 1937? A. Yes.

Q. You were in Rangoon, were you not? A. Yes.

Q. While in Rangoon did you do anything at the request of the defendant insurance company? A. Yes, before I left Mr. Nicolls—the agents of the insurance company, Macaulay, Nicolls & Maitland, handed me one or two sheets full of questions, which I understood Mr. Desbrisay had given to him to give to me to get information for him on my visit to Rangoon, which I did for him and handed back to my lawyer.

Q. Did you submit that information to the insurance company? A. Through their agents.

Q. Mr. J. P. Nicolls of Macaulay, Nicolls & Maitland? A. Yes.

Q. Now Mr. Nicolls—you know his handwriting, don't you? A. Yes, quite well.

Q. I am handing you a statement—  
20 MR. BOURNE: I am objecting to this going in.

MR. BULL: I am not tendering it.

Q. Would you look at that document and say in whose handwriting it is? A. Mr. Nicolls', with the exception of his name on the top, which I put on, and a short calculation of the results.

Q. Do you know the circumstances under which that writing was made out by Mr. Nicolls? A. Yes, I know the circumstances.

Q. What were the circumstances? A. I was away at the time—

30 THE COURT: No, no. If you were away you must have obtained this by hearsay.

MR. BULL: Well, I will come to that, my lord.

Q. Since coming back from Rangoon and since this action started, have you spoken to Mr. Nicolls about this? A. Yes.

Q. And what conversations took place?

MR. BOURNE: I object to that. Mr. Nicolls is not in the position to make any admissions.

MR. BULL: Mr. Nicolls is the agent for this company.

40 THE COURT: There is a difference. He may be the agent, but what authority has he to make any admissions on behalf of the company?

MR. BULL: I perhaps should have read the interrogatories first.

THE COURT: Just show that to your friend; possibly he will agree.

MR. BULL: Interrogatory No. 8 and the answer to it—

*In the  
Supreme  
Court of  
British  
Columbia.*

Plaintiff's  
Evidence.

No. 22.  
Duncan  
Gavin,  
Examina-  
tion,  
May 26th,  
1938.

—continued.



*In the  
Supreme  
Court of  
British  
Columbia.*

Plaintiff's  
Evidence.

No. 22.  
Duncan  
Gavin,  
Examina-  
tion,  
May 26th,  
1938.

—continued.

MR. BOURNE: Well, the question there is (reading).

MR. BULL: And the answer is yes.

MR. BOURNE: That is not at that time. It is at the time the policy was being dealt with. The 29th May is simply the time of landing of the goods. My learned friend has not established when this was. It must have been long afterwards.

THE COURT: Well, the witness did not come back from Burma until sometime in June.

MR. BULL: Q. Do I understand, Mr. Gavin, in regard to this document that you knew nothing about that until you came back from this trip? A. No, I knew nothing about it. 10

Q. And it was only after that you had a conversation with Mr. Nicolls about it? A. Yes.

Q. And it was someone else in your firm who dealt with Mr. Nicolls about this? A. Yes.

Q. Do you know who that was? A. Yes.

Q. Who was it? A. My brother, J. H. Gavin.

MR. BULL: Well, my lord. I tender this in evidence as being made by Mr. Nicolls, a member of the firm of Macaulay, Nicolls & Maitland, who were agents for this company, and the handwriting of which has been proven. 20

THE COURT: I think it is not admissible. They were simply agents for the purpose of writing a policy. There is nothing to show that they were agents to negotiate or make any admission.

MR. BULL: There will be other evidence as to that, but I think it should be marked in any event for identification.

(DOCUMENT MARKED "A" FOR IDENTIFICATION)

Q. Now I want you to look at exhibit 28, which is a sample of the 163 as milled. Explain to the jury what there is about that rice that is damaged. Is there a sample of A.L.Z.? 30

MR. MERRITT: Exhibit 27.

A. It is very bad light here.

MR. BULL: Q. Well, there is the A.L.Z. A. It is very bad light in here. Perhaps over on that other table—

THE COURT: Well, you may go over there and the jury may go over there and see it.

MR. BULL: Q. Which is the 163? A. This (indicating).

Q. And the other is the A.L.Z.? A. Yes.

Q. Will you point out to the jury the damage to 163? A. 40 First of all, these grains have got bran on them, still sticking to the kernel, and the whole of the sample is dark in colour. This other sample is the way it should have milled, the A.L.Z. sample.

Q. You are now referring to exhibit 27. Just shortly, what was the difference between the two? A. The 163 is discoloured

and reduced its value very considerably from the selling point of view.

Q Now did you show those identical samples to Mr. McPhee of Kelly-Douglas and Mr. Jardine of Malkin & Company?

A. Yes.

Q Now I am producing to you a tin of rice, Mr. Gavin, a sample. You recognize this, don't you? A. I do.

10 Q Where did you get that? A. Well, I thought until a few days ago we got it by mail, but now I am not quite so sure of that. It may have come on the "Segundo", but it might have been by mail.

Q And it purports to be—

MR. BOURNE: Well, surely if the witness does not know—  
A. I do know. It is a sample of the shipment that came by the "Segundo", 175, 163.

MR. BOURNE: There is the objection. If it was in existence it should have been produced.

MR. BULL: This is a sample taken by Morrison & Company of this particular shipment and sent to us.

20 THE COURT: Who can prove it was taken by Morrison & Company.

MR. BULL: It is signed by them. The certificate is there. I submit it is evidence, and it is for the jury to say.

THE COURT: I must rule against it. This is not from the other side.

THE COURT: I still think it is not evidence. Now it had better be marked for identification, so if the case goes higher it will be available before the higher court.

(ARTICLE MARKED "B" FOR IDENTIFICATION).

30 MR. BULL: Q. Now you made a certain claim with respect to 163 and A.L.Z. in respect of yellow grains, did you not? A. Yes.

Q. Now in what respect did damage by yellow grains differ from damage caused by heating? A. Well, there is not much difference in some respects, but when this shipment came out of the mill I saw some very deep yellow grains, which is an indication—which from our experience is an indication it had been field damage, and I thought it would not be fair to the insurance company to include that in the claim and assume that it had happened aboard ship. So I consulted Mr. Nicolls—

40 MR. BOURNE: I object to this evidence being given. I take the position he was only the agent so far as writing the policy is concerned.

*In the  
Supreme  
Court of  
British  
Columbia.*

Plaintiff's  
Evidence.

No. 22.  
Duncan  
Gavin,  
Examina-  
tion,  
May 26th,  
1938.

—continued.



*In the  
Supreme  
Court of  
British  
Columbia.*

Plaintiff's  
Evidence.

No. 22.  
Duncan  
Gavin,  
Examina-  
tion,  
May 26th,  
1938.

—continued.

MR. BULL: I would ask my learned friend to produce a letter from Macaulay, Nicolls & Maitland to the marine insurance company dated June 6, 1936.

THE COURT: Well, it is just one o'clock now and we will adjourn until a quarter past two. Now remember the warning I have given you, and please do not mistake the hour, one-quarter past two.

(COURT ADJOURNED AT 1 P.M. UNTIL 2:15 P.M.)

(COURT RESUMED AT 2:15 P.M. PURSUANT TO  
ADJOURNMENT)

10

DUNCAN GAVIN, resumed the stand:

DIRECT EXAMINATION CONTINUED BY MR. BULL:

Q. You are still under oath, Mr. Gavin? A. Yes.

Q. Mr. Gavin, after this cargo arrived did you have any discussions as to the loss with the representative of Macaulay, Nicolls & Maitland? A. After the cargo arrived?

Q. Yes. A. Yes.

Q. How long after that did the discussions last? A. I think we carried on discussions pretty well up to date.

Q. And did you submit your claims to Macaulay, Nicolls? 20  
There were various claims put forward? A. Yes, I think so.

MR. BULL: I ask my friend to produce a letter of June 6th?

MR. DESBRISAY: From Macaulay & Nicolls to the defendant company?

MR. BULL: I perhaps should state this: For a certain time after this cargo arrived Macaulay, Nicolls & Maitland continued to act as agents until—I have not the exact date, but I understand sometime in the following summer. This letter is only a few days after the cargo arrived. 30

MR. DESBRISAY: Yes, that is right.

MR. BULL: This is June 6th.

(LETTER READ AND MARKED EXHIBIT 44)

MR. BULL: Now that brings me to the question which I put to Mr. Gavin, and which my friend objected to. That is with regard to any claim that you put forward against the shipper of the rice with regard to yellow grains. Did you discuss that with Macaulay, Nicolls & Maitland shortly after the arrival of the ship? A. I did, yes.

Q. What was that discussion? A. I told him that the rice 40  
showed signs of yellow grains, which I did not think should be chargeable to the insurance company; there were types of yellow

grains which had all the appearance of long standing, and I told him I had better put in a claim so the insurance company would understand that, so there would be no question we were trying to claim twice from two parties. Mr. Nicolls thoroughly understood what the situation was.

*In the  
Supreme  
Court of  
British  
Columbia.*

MR. DESBRISAY: That is what Mr. Nicolls said, now?

Plaintiff's  
Evidence.

MR. BULL: I didn't hear you.

MR. DESBRISAY: He is saying what Mr. Nicolls said?

No. 22.

THE COURT: Is Mr. Nicolls going to be called?

Duncan  
Gavin,  
Examina-  
tion,  
May 26th,  
1938.

10 THE WITNESS: I can get Mr. Nicolls right now if you want him.

MR. BULL: Q. However, this was right after the arrival of the shipment? A. Yes, that is right.

Q. What particular cargo was that? A. The A.L.Z. and 163.

—continued.

Q. What percentage of the cargo? A. The percentage is very small but it is very disfiguring. I don't suppose the percentage would be more than half of one per cent, not any more than one per cent.

20 Q. And I understand you were protected against that by your contract? A. We were guaranteed we would be free of yellow grains, by the contract.

Q. What is yellow grains? A. The particular yellow grains we are referring to now is a type of yellow grain usually, if you break it in half you can see the yellow carried right through the kernel—but yellow grains can be caused by other reasons than what we suspect this was. I suspected it was field damage, but it might happen the grain would turn yellow in transport from Ran-

30 Q. Is it a common experience to find yellow grains in rice? A. It is one of the things we are very careful to guard against in rice contracts, and guard against it especially with rice from that district.

Q. What distinction do you draw between yellow grains and the damage which you are claiming in this action? A. Quite a different matter. The grain we are making claim for is a dull muddy-looking appearance with kernels throughout with that appearance. The milling would not take it out of it; it accentuates the poor color, no connection with yellow grains.

40 Q. Did you in fact make a claim for yellow grains to the shipper? A. We did.

Q. Did you settle that? A. Yes.

Q. At what amount? A. \$1750 for the 1500 tons.

Q. How much of that should be for yellow grains in the 163? A. Half, \$875.



In the  
Supreme  
Court of  
British  
Columbia.

Plaintiff's  
Evidence.

No. 22.  
Duncan  
Gavin,  
Cross-Ex-  
amination,  
May 26th,  
1938.

Q. I want you to explain to his lordship and the jury the difference between milling by the ordinary process of your milling and the milling by the sampling machine.

CROSS-EXAMINATION BY MR. DESBRISAY:

Q. Mr. Gavin, I understand it is customary to describe rice as paddy. When you see the word paddy used without anything else in any literature or anything else relating to rice, that means rice, does it not? A. Paddy means rice with the hulls on.

Q. You were in the holds one day. The rice in the holds I think you told me was dry? A. It was dry to the hand, yes. 10

Q. And I think you also told me that from simply looking at the brown rice it would be difficult to distinguish what was wrong with it? A. Yes, it is.

Q. I think I said:

“Q. Will you describe to me just what you found?”

And your answer was:

“A. As I told you, it is very difficult to detect the damage at fist sight.”

That is question 246. A. Yes.

Q. That is correct? A. Yes. 20

Q. I take it this also is correct: at 554: or I will start at 553:

“Q. I understood you, Mr. Gavin, so far as the damage to this 163 was concerned, that you could not ascertain until you milled, the extent of the damage? A. No, you could not tell.”

You agree with that? A. I agree you cannot tell what the rice is going to look like until you mill it.

“Q. That is the only way you can ascertain the proportion of yellow, discolored and stained rice? A. Yes, you have to turn it into white rice.” 30

A. Yes.

Q. The claim you made against the sellers was fully settled, that is you accepted what you received in full of all claims? A. We settled.

Q. Did you obtain the consent of the insurance company to the settlement before making it? A. No. We didn't think it was any of their business what settlement we made.

Q. Mr. Gavin, what is the effect on rice of late rains in the growing season? A. I am not a grower of rice, but they have got facilities for taking care of that. 40

Q. I am asking what the effect on the rice is. You had a long experience. You have been in these countries and you are giving expert evidence, and I am asking you from your experience what you find to be the effect of late rains in the growing season? A. I can't tell you.

Q. Have you ever received any information? A. If properly taken care of I should not think there would be any serious effect.

Q. If not properly taken care of there might be? A. Yes, I should think so.

Q. What is the effect of the heavy rains in the growing season? A. It would wet the rice.

Q. Would it not damage the rice? A. Yes, if not taken care of.

10 Q. Is it not true that the result of heavy rains is an abnormal quantity of yellow grains and an excess of broken grains in the rice? A. It is quite true in the growing season if care is not taken and it lodges on the ground and lies there for any length of time it will turn it yellow, just the same as in the hold of a ship you have a certain amount of heat and moisture in connection with the rice it will in time turn it yellow.

Q. You have occasion I believe occasionally to buy rice from various parts of Asia or the Orient? A. Yes.

Q. You buy rice from Siam? A. Yes.

Q. Siam is a country adjoining Burma? A. Yes.

20 Q. You did buy rice there in the season of 1935-36, from Siam? A. Yes.

Q. Was that rice damaged? A. Not by rain, I don't think.

Q. Not by rain? A. It was the condition—

Q. Did you not have a case arising out of that? A. What I should say is this: We got rice from Siam to replace the rice which was complained of, which was perfectly sound. It was a bad year. I perhaps was not quite correct in saying it had not been wet with rain.

30 Q. That is the season of 1935-36 was a very bad season in Siam? A. Yes.

Q. And the reason for it was there were very late rains? A. Yes, very late rains.

Q. With the result the rice was damaged? A. Yes, some of it.

Q. Well, the crop was pretty generally damaged? A. I couldn't tell that. It was a bad year; but I know we got good rice, as good as we had ever had from Siam, that year.

40 Q. But you got some which was not good? A. Yes: but the last lot we bought in May, when we should have bought in February. If we had bought it all in February we would have got it completely sound ordinarily.

Q. You are only assuming that? You happened to get one lot which was all right? A. Oh, I know that.

Q. But you also know this, that the crop generally in Siam was badly damaged by rain? A. Yes.

*In the  
Supreme  
Court of  
British  
Columbia.*

Plaintiff's  
Evidence.

No. 22.

Duncan  
Gavin,  
Cross-Ex-  
amination,  
May 26th,  
1938.

—continued.



In the  
Supreme  
Court of  
British  
Columbia.

Plaintiff's  
Evidence.

No. 22.  
Duncan  
Gavin,  
Cross-Ex-  
amination,  
May 26th,  
1938.

—continued.

Q. That year was the same year as this 163 was bought from Burma? A. Yes.

Q. Now, Messrs. Jackson, Son & Co. as I understand it, are your agents in London? A. No, they are not our agents.

Q. Do you receive reports from them? A. Yes, receive reports from brokers. They are members of the London rice brokers and they issue reports — or we get occasional letters from them.

Q. You get a series of letters from them giving you information? A. No. We got letters from them, certainly. 10

Q. And when you want to obtain rice you inquire from them? A. Yes.

Q. And they let you know if they can obtain it for you? A. Yes, as brokers.

Q. And what they can obtain it for? A. Yes.

Q. And where they can obtain it? A. Yes.

Q. And that is the only direct contact you have with the London market? A. No, not at all, but we have bought almost exclusively from them because they have given us good service.

Q. You buy through them or from them? A. We bought 20 through them and other people.

Q. This whole cargo in the Segundo was bought through Messrs. Jackson, Son & Co.? A. Yes, I think it was.

MR. DESBRISAY: Now my lord, this question of the admissibility of these letters, I do not want to be persistent but I wish to make a further submission to your lordship on the question of the letters which were received by the Plaintiff, or any information it had from any source prior to the time this insurance was placed. I submit that is evidence and is made evidence under the provisions of the Marine Insurance Act. I wish to 30 read section 19 and parts of section 20 my lord. I mentioned this on Monday, my lord, but I did not pursue it.

MR. DESBRISAY: Then, my lord, I would like to have the correspondence marked for identification.

THE COURT: You want to have something marked you are about to tender. All right.

MR. DESBRISAY: My lord, possibly I could save time by getting the letters together later and putting them in if it suits your lordship's convenience?

THE COURT: That is all right, if you show them to your 40 learned friend.

MR. DESBRISAY: Q. Was the season of 1935 late in Burma? A. I don't think it was late, no. I don't remember anything about that.

Q. You never heard anything about it? A. I don't think

it was late. I think it was November or December. I know there were late rains.

Q. You know there were late rains in Burma? A. Oh, yes, I know that.

THE COURT: Just a moment. Do you say those documents you want to tender were disclosed in the affidavit of documents?

MR. DESBRISAY: No, they were not disclosed in the affidavit of documents, but subsequently,—

THE COURT: That is all I wanted to know.

10 MR. DESBRISAY: But subsequently on examination for discovery when I found they had not been disclosed, I asked for their production and they were produced from the plaintiff's possession.

THE COURT: How long ago was that?

MR. DESBRISAY: Oh, during the first examination for discovery which was—

THE COURT: Roughly a month ago.

MR. DESBRISAY: Oh, yes, some weeks ago.

20 THE WITNESS: On that last question I would like to add this: that information we got in the ordinary course. I know nothing about whether it is correct or not, we are not posted from day to day on the situation in either Burma or Siam.

MR. DESBRISAY: Q. Yes, but you do get information as to the conditions prevailing in the rice growing countries?

MR. BULL: He is still persistent in trying to get in that long letter.

MR. DESBRISAY: No, I am not.

MR. BULL: How does this witness know whether it was raining in Burma unless he was there?

30 MR. DESBRISAY: I am doing nothing of the kind. The witness himself stated, and I was just following up.

THE COURT: You must speak up so the jury and I can hear you.

THE WITNESS: I said I understood it was a late season, but I made this qualification: I only learned that in a round-about way. I don't know definitely whether it is correct or not. Our rice is bought in February and after the business is closed we rarely follow up with regular information.

40 MR. DESBRISAY: Q. What I asked you was if you did not obtain information as to the crop conditions in rice growing countries?

MR. BULL: I object to that.

MR. DESBRISAY: —during the course of the crop season?

MR. BULL: I am objecting to that.

MR. DESBRISAY: I am only asking if he obtained the information.

*In the  
Supreme  
Court of  
British  
Columbia.*

Plaintiff's  
Evidence.

No. 22.  
Duncan  
Gavin,  
Cross-Ex-  
amination,  
May 26th,  
1938.

—continued.



*In the  
Supreme  
Court of  
British  
Columbia.*

Plaintiff's  
Evidence.

No. 22.  
Duncan  
Gavin,  
Cross-Ex-  
amination,  
May 26th,  
1938.  
—continued.

MR. BULL: The information he received is hearsay.

MR. DESBRISAY: My lord, he has already told us—

THE COURT: You can answer that. I will allow that ques-  
tion.

THE WITNESS: What was it?

MR. DESBRISAY: Will you read it.

(Question read by reporter).

A. Not authentic information.

MR. DESBRISAY: Q. What is reconditioning, Mr. Gavin?

A. Reconditioning is done in various grain growing countries; 10  
I believe in California they have got equipment for re-drying rice  
when it gets wet, but in Asia I believe it is done by air. From the  
time the rice is shipped in April in Siam, I believe—I can't tell  
you, because I was not there—that the ground was packed, baked  
hard because of lack of rain—sunny.

Q. That is the dry season? A. The dry season. So that I  
presume any drying necessary would be done in a natural manner  
so it would have very little effect on the quality of the rice.

Q. I was asking you what reconditioning is? A. I am tell-  
ing you that in Asia it is done by air. I don't think they have 20  
any chemicals there or anything to do it with. It is done in the  
open air. That is all I can tell you.

Q. What is the effect on rice which has been wet and re-  
dried before shipment? A. It depends how it has been handled.

Q. Why did you inquire whether the 163 had been wet and  
re-dried prior to shipment? A. I suppose I wanted to know. I  
was not quite sure as to the condition of it.

Q. The condition it was in prior to shipment? A. When  
was it, and I can probably give you a better answer.

Q. You made the inquiries sometime in November 1936. A. 30  
That was after your clients were refusing to pay the claim and  
we were looking around to get what information we could get to  
satisfy your company the damage had not occurred prior to the  
shipment, and to justify our claim we wanted to get all the facts.

Q. The insurance company had taken the position the dam-  
age must have taken place prior to shipment? A. I couldn't  
learn at that time what the position was, couldn't get anything  
definite out of them. I was asked by you to make a lot of in-  
quiries and I went to Burma in February 1937, and I thought,  
naturally, that a complete answer to those questions would satis- 40  
fy you and we would get our claim paid.

Q. You were asked to ascertain whether there had been  
any late rain? A. Whatever is on your list—You know what it  
is, but whatever it was you got complete answers in affidavit  
form.

Q. You were asked, were you not, to ascertain whether there had been any late rains in the growing season of this rice?  
 A. That I can't tell you, but I don't think it was included. I might be wrong in that, but if it was, it was answered.

MR. DESBRISAY: My lord, I am going to ask this question and get your lordship's ruling on whether it is admissible. I am going to ask the witness whether he received letters from his London agent and from the International Rice Co. and whether he disclosed the contents of the letters to the insurer.

10 MR. BULL: I object.

THE COURT: That is all the same thing.

MR. DESBRISAY: Q. You bought this 163, I think, on a sample of the previous year, did you not? A. Yes—Well, I don't think it was the previous year, but they referred us anyway to a sample which we had in our possession.

Q. Was the 163 a fair average quality of the previous year?  
 A. What do you mean?

Q. Was this 163 rice of a fair average quality? A. Not when we got it, no.

20 Q. Beg pardon? A. The condition it arrived in.

Q. What causes variations in crops, that is fair average quality? A. Weather conditions.

Q. I would like to read questions 224 and 225 of your examination for discovery:

“Q. But Intereco A.L.Z. was not cheap? A. No, but it was not so much damaged. If it was damaged, it was damaged very lightly. But we don't say it was free from damage, we don't say it was seriously damaged. We agreed to accept it, that is what we did.

30 “Q. If it was damaged, it was from your point of view inconsequential, is that it? A. Yes, you might put it that way.”

Do you agree with that? A. Certainly. There is nothing wrong about that.

Q. In regard to this yellow grain claim, Mr. Gavin, you made that claim almost immediately after the arrival of the ship?

A. Shortly after.

40 Q. And you had some correspondence and negotiation with the International Rice Co. through Jackson, Sons & Co.? A. Yes.

MR. DESBRISAY: My lord, this correspondence that took place after the plaintiff company made its claim in connection with yellow grains, is in a different category than that which I just referred to.

THE COURT: The plaintiff's claim was settled, not with the insurance company but with the seller, in regard to some-

*In the  
 Supreme  
 Court of  
 British  
 Columbia.*

Plaintiff's  
 Evidence.

No. 22.  
 Duncan  
 Gavin,  
 Cross-Ex-  
 amination.  
 May 26th,  
 1938.

—continued.



*In the  
Supreme  
Court of  
British  
Columbia.*

Plaintiff's  
Evidence.

No. 22.  
Duncan  
Gavin,  
Cross-Ex-  
amination,  
May 26th,  
1938.

—continued.

thing that was not covered in any way in the insurance policy, but he notified the agent for the insurance company he was making this claim, and has stated he notified them so there would be no question of doubt as to why the claim was being made. The settlement is made on that basis. I think I cannot admit correspondence between the plaintiff and the seller. You can only be subrogated in regard to something you can be compelled to pay, but you cannot be subrogated here. The evidence is inadmissible. We have had this up many times.

MR. DESBRISAY: I would like to be permitted to have 10  
these letters marked on the same basis.

THE COURT: All right.

MR. DESBRISAY: Q. Now, Mr. Gavin, you asked for information as to the moisture content of this rice prior to shipment, did you not? A. We may have done so. I don't know.

Q. And you received information that they didn't know what it was? A. No, I don't think so. They said it was quite unusual and unnecessary to take moisture content test of brown rice. All Asiatic countries shipping rice take that—all paddy rice they do take it. 20

Q. They do not take it with brown rice? A. No.

Q. And they said it is not necessary? A. They said it was unusual.

Q. I asked you why you were endeavouring to get that information? A. When, may I ask?

Q. The same time, in January 1936? A. For the same reason we were asking for these other things, building up the case.

Q. In what way would you build up the case by asking for the moisture content? A. If we found the moisture content was much below the danger point, then I would say it would have the effect of proving our case. 30

Q. To prove it could not have— A. It could not have been damaged before it was shipped—that it was damaged in the boat.

Q. But you were not able to get that evidence? A. No, because they do not take these tests. But I can prove it for you another way if you like.

Q. I suppose, Mr. Gavin, if a season is late it takes that much longer for rice to dry out? A. I wouldn't venture to say. I am not familiar with crop conditions over there. I am not a 40  
farmer.

Q. Don't you think it would follow, if your crop is late, and you have late rains with the resultant moisture content, it is going to take longer for the rice to dry out and be ready for shipment? A. It might, But the harvest is November and December

and the shipment was in January and February, and it would give ample time for the rice to dry.

Q. That is normal, November or December. It was much later last year? A. No, it was not. I think it was November or December, I haven't got definite information about it.

Q. I think you told me on examination for discovery, Mr. Gavin, that if there was a loss of  $3\frac{1}{2}$  pounds in a month in a sack of 224 pounds, it would indicate a high moisture content in the rice? A. You are talking about the rice when it is in Rangoon.

10 Q. I am just talking generally.

MR. BULL: What is the question.

MR. DESBRISAY: Q. Question 498:

"Q. Would that indicate to you a high moisture content with a shrinkage of  $3\frac{1}{2}$  pounds in a month? A. Yes, I think it would, but it would not do any harm as long as there was plenty of ventilation to carry it freely away. There is no harm."

A. I think that answer is correct. It is not a very high shrinkage after all when you come to figure it out— $3\frac{1}{2}$  pounds in 224

20 pounds—

Q. In a month? A. —is only  $1\frac{1}{2}\%$ . I suppose that is not very heavy. I didn't figure it out when I gave you the answer.

Q. What is the normal shrinkage in a month? A. I couldn't tell you.

Q. You don't know? A. No. It depends on the rice.

MR. DESBRISAY: Q. I take it you would usually find a slight musty smell from rice stored in a close place such as a hold? A. We did not place any importance on that.

Q. That you found in this case? A. No, the milling process would take that off. I may ignore that altogether unless it is very bad. That usually removes it.

Q. When do you get mold and mildew and that sort of thing on rice? A. When it is wet, I presume. I am not a chemist.

Q. Have you seen rice in a moldy condition? A. Yes.

Q. What caused that in your experience? A. Too much moisture and heat combined, I should think, would do that very quickly.

Q. What is sun-crack in rice? A. Rice that has been left out. If you mill rice and leave it where the sun will shine on it

40 about an hour or an hour and a half it will crack it all up.

Q. If rice is suffering from sun-crack it breaks to pieces? A. Falls all to pieces.

Q. There is a certain amount of sun-crack in all rice? A. We never saw any sun-cracks in this parcel.

Q. In this 163? A. Not any in it.

Q. How do you detect it? A. You can see it.

In the  
Supreme  
Court of  
British  
Columbia.

Plaintiff's  
Evidence.

No. 22.

Duncan  
Gavin,  
Cross-Ex-  
amination.  
May 26th,  
1938.

—continued.



In the  
Supreme  
Court of  
British  
Columbia.  
—  
Plaintiff's  
Evidence.

No. 22.  
Duncan  
Gavin,  
Cross-Ex-  
amination,  
May 26th,  
1938.  
—continued.

Q. There are cracks in the rice? A. Particularly in the long grain rice you can see it check right down.

Q. Transverse? A. No, right across.

Q. What causes sun-crack, do you know—just the rice getting in the sun when drying? A. Yes. There was no sign of that whatever in this case.

Q. Have you any record of how much longer was required to mill the 163 than the A.L.Z.? A. I think it was about 10%.

Q. That was an estimate. Did you keep any record? A. No. There was a check on that. There was two parcels milled 10 and we had the hour they started and finished.

Q. Have you the record on that? A. I think Mr. Lauchland has it.

Q. I would like to see it. A. I am not sure, but I think it is available.

Q. There were some sacks in 163 that were undamaged, were there not? A. Not that I know of.

Q. You don't know of any that were undamaged? A. No, I don't know of any.

Q. Did you yourself examine any of the 102? A. No. 20

Q. So you don't know anything about the condition of the 102? A. No.

Q. Mr. Gavin, did you see Captain Watson's report before it was submitted? A. No.

Q. You did not see it? A. No, I have no recollection of it.

Q. You were not afforded an opportunity of checking it over? A. I have no recollection of it.

Q. Now the estimate that you were reading from this morning, you call it a check estimate? A. No, I don't think I did. That is the amount we figured our claim was. 30

Q. This was put in? A. That is the actual amount of our loss.

Q. Exhibit 43: you say that this was estimated to be the amount of your loss? A. That we have worked out ourselves—to that figure.

Q. And the value you place here for the damaged white rice are estimated values? A. Yes, we have had advice on it.

Q. I know. They are not sale values? A. The estimate of the difference in the value between the damaged rice and the sound rice. 40

Q. But they are not what you got for it? A. No.

MR. DESBRISAY: Let me have exhibits 24, 25 and 26, please.

Q. In exhibits 24 and 25, Mr. Gavin, this morning you mentioned the proportion of out-turn as shown as 46.59 and 50%. You were mistaken in that, because you show it there at 41 and

45. A. Yes, but I think that was a case of making out the statement too early. We did not make that out until the whole parcel was milled.

Q. In making up your statement exhibit 43, the damage value, you simply do so by estimating from information you have received from others, who would be basing their opinion on the sale value? A. I would have to get that. Let me see that statement.

10 Q. I have a copy here somewhere. A. What are you referring to—damage value?

MR. DESBRISAY: Q. Yes, damage value. Damage value per 100 pounds. A. Well, if you will notice, I might explain it this way better, that sound value agrees with the details of the cost, \$28,748.35. The white rice was put into this statement of sound value at a price which would balance that. It is not the actual value of the rice. This statement is to arrive at our loss, so that then we have got the price at the sound value. Then we have to take this 163 at \$15 less than that price, which we value the rice—the worth of that rice to be \$15 less, and the difference  
20 between the two was our loss.

Q. This \$15 is in respect of a certain number of pounds, and then there is a larger deduction of \$20 odd in respect to some of it? A. No, no, that is—

Q. You see that item, 83,000 pounds— A. Oh, yes, that is 41 $\frac{1}{2}$  tons we have on hand.

Q. You say you arrived at these figures from information you secured from your trade people to whom you sold? A. Well, the difference we would. Don't misunderstand that. These are not prices really; that sound value is cost—that makes up the total  
30 cost. The other price is put in at a \$15 margin loss.

Q. I take it in exhibit 25 you make your claim up on what you thought was a fair basis? A. Well, we thought at the moment, yes.

Q. Was your loss? A. Yes, we found out later that it was not, because we had to mill the rice. That is just exactly what I have told you, it must be milled to arrive at the proper amount.

Q. You had milled a good deal of it by September 23rd, had you not? A. The records all showed that. There was a time when we were milling A.L.Z., and then we were mixing it.

40 Q. I think you sent a further copy of this claim, exhibit 25, in in December of 1937, did you not? A. December 1937? I don't know. I don't know what you are referring to.

Q. Perhaps I wasn't correct. Mr. Gavin, with respect to distinguishing between what are yellow grains and this other damage you claim for, how can you tell the difference between the two? A. Well, I tell the difference this way, that the rice when

*In the  
Supreme  
Court of  
British  
Columbia.*

Plaintiff's  
Evidence.

No. 22.  
Duncan  
Gavin,  
Cross-Ex-  
amination,  
May 26th,  
1938.

—continued.



*In the  
Supreme  
Court of  
British  
Columbia.*

Plaintiff's  
Evidence.

No. 22.  
Duncan  
Gavin,  
Cross-Ex-  
amination,  
May 26th,  
1938.  
—continued.

I examined for yellow grains contained grains which were deep yellow. There was some discolored grains in the rice that of course we attributed a little to the moisture in the hull and so forth, but these deep yellow grains, I thought, were entirely due to field damage, and I sent it over to London to be compared with other samples that they had for milling, the same as we got. Now they compared them and they found yellow grains in these samples.

THE COURT: You are going into the field of hearsay now.

MR. DESBRISAY: I asked him a question. I am surely 10  
entitled to ask him that question. He gave in direct evidence his explanation, surely I can cross-examine him on it. If he chooses to give an opinion without a reason, I don't know why—

Q. Will you please go on? A. We sent the samples of our rice that we received by the boat containing yellow grains, informing them that we were making a claim—or rather we were going to ask for arbitration on it, which is the customary way of settling these matters; and they looked at that sample we sent over and compared it with their samples, and they found that those yellow grains existed in their own samples, so therefore the 20  
matter was settled as far as the yellow grains, that these yellow grains were not caused by the voyage—justified our view of it, that those were only the deep yellow grains, and there were not very many of them, and they paid the claim upon—at least, they said they were prepared to settle it without arbitration.

Q. The sample you sent them was a sample of 163, was it not? A. 163 and the A.L.Z., I think.

Q. Will you show me anywhere where you sent A.L.Z.? A. I am not sure about that—I think I must have found it in the A.L.Z. 30

Q. Will you show me any record you have of having sent— A. I might be mistaken on that, whether we sent the A.L.Z. or not, I can't be quite sure, but I know that the London office found yellow grains in their sample of the A.L.Z.

MR. DESBRISAY: My lord, that just raises the whole question. He says that they found samples of the A.L.Z., and I submit I should now be entitled to proceed to ask him where he has any evidence of that.

THE COURT: He says they told him.

MR. DESBRISAY: He says so, yes. 40

THE COURT: Well, that is pure hearsay.

MR. DESBRISAY: It must have been told him by—

THE COURT: That is the same question again.

MR. DESBRISAY: Q. Well, at any rate, on June 8, 1936, your claim in which you first brought this to the attention of the sellers, "Brose shipments contain considerable yellow grains

particularly lot marked Interco Brose mailing milled sample of latter. Original sample and former shipment did not contain yellows protect our interests as to arbitration." That Interco Brose is 163, is it not? A. Yes.

Q. That is exhibit 35. Exhibit 36 is a letter dated June 12, 1936, to Jackson, Son & Company: "We sent you a sample of Interco Brose by air mail last night. This is a sample milled as we usually mill this grade of rice, and will serve to show you its appearance after the usual shrinkage is allowed for. The sample we sent forward on the 8th inst. by ordinary mail will show you the result after very high milling, which of course results in a heavier percentage of loss and a slowing up of our daily returns from our mill." Now have you got anything else anywhere to indicate that you sent a sample of the A.L.Z., because I haven't seen it if you did, and I understood that all the correspondence had been finally produced? A. Well, I don't know, as I told you, I am not quite sure whether A.L.Z. was sent or not.

Q. Well, aren't you quite sure that you did not? A. No.

Q. You are not quite sure? A. No. If I was I would tell you.

Q. I think Mr. Lauchland has already said that you were able to use the A.L.Z. for the purpose for which you intended? A. Yes.

Q. And sell it without any loss whatsoever? A. Yes. I wouldn't say any loss whatsoever. It depends on how you word it. We sold it.

Q. Well, you said it in your examination for discovery.

THE COURT: Well, at any rate, they are making no claim. That shows the true state of the circumstances.

MR. DESBRISAY: Q. Now in your telegram of acceptance to the—well, it was to your agents, Jackson, Son & Company, but it was your telegram of acceptance, which has been marked here as an exhibit. I haven't the exhibit number. This is September 11, 1936, a cable: "Will accept Seventeen hundred and fifty dollars settlement Brose, but owing poor quality cannot use for purpose intended therefore causing us further loss." Now the rice that you couldn't use for the purpose intended was the 163, was it not? A. Yes.

Q. And Mr. Lauchland has also said that the samples which you sent forward to London were—at least, he took them himself, didn't he? You didn't take them? A. No, I didn't take them.

Q. You didn't take them, so you don't know anything about that? A. No.

Q. Now this matter of yellow grains, you look at a sample of grain and you say, Well, there are some yellow grains there

*In the  
Supreme  
Court of  
British  
Columbia.*

Plaintiff's  
Evidence.

No. 22.  
Duncan  
Gavin,  
Cross-Ex-  
amination,  
May 26th,  
1938.

—continued.



*In the  
Supreme  
Court of  
British  
Columbia.*

Plaintiff's  
Evidence.

No. 22.  
Duncan  
Gavin,  
Cross-Ex-  
amination,  
May 26th,  
1938.

—continued.

and you—I mean deep yellow grains, some less—lighter yellow grains, and you immediately claim damage? A. Yes. It all depends how it has been brought about.

Q. There may be considerable variation in colour resulting from the damage which caused the condition which existed in this rice before it was shipped? A. No, in this case—just after the arrival of the ship the bran would not come off. The grain was perfectly sound and clear underneath it, you could scrape it off with a penknife, there was no yellow grain in that, but it wouldn't come off. Now I understand that latterly—at least, towards the end of the milling—that the bran came off better than it did at first, but it still left—it left a kind of stain on the kernel which we could not remove by milling. 10

Q. And if that stain continued through it was yellow grain? A. Well, it was yellow grain when it just tinged it.

Q. Do you say that the damage you are complaining of here as damage, it does not go beyond the outer surface at all? That is, you say it is part of the brown outer covering? A. Yes.

Q. And if you take a penknife and scrape this rice then you are bound to get the white kernel? A. In the early stages when it arrived first, but I say latterly—at least, towards the end of the milling process—the end of the November 1937, if you milled that the bran came off better than it did before, but left a discoloration in the grain. 20

Q. But that discoloration would look precisely like the discoloration you would expect from yellow grains, would it not? A. It would look a very faint tinge of brown or yellow.

Q. And it would be the same as you would expect from yellow grains? A. No, it would be the same as we expected to get from this shipment that came by the "Segundo". Yellow grains, the deep yellow grains, as I have told you half a dozen times, you can distinguish it. It stands out clearly from the rest of the rice, it still disfigures the rice. 30

Q. This stain goes right through. Well, is the distinction this then, that the stain, caused by what you claim was damage sustained on the ship, is only in the outer surface of the rice, and the yellow grain damage extends right through? A. That is just as a matter of degree, that is all.

Q. A matter of degree? A. Yes.

Q. The colour looks the same, I mean the colour—it is the regular colour, but it has more of the degrees of colour? A. Yes. 40  
When I saw these yellow grains in that rice I immediately suspected that that particular amount of damage had been done by field damage, and that was confirmed by the investigation made in London of yellow samples, but it has got no bearing whatever on this damage which we are claiming.

Q. If the rice had heated in the godowns, or prior to shipment in Rangoon, you would expect to find the same condition as you found on arrival here? A. If the rice had been damaged in Rangoon it would have been brought to light by the constant testing that went on before shipment.

Q. I beg pardon? A. It would be brought to light by the examiners who were testing the rice before shipment.

Q. Yes; but I am asking you a question and you don't answer it. A. Well, let me hear it again.

10 MR. DESBRISAY: Will you read it please?

(Question read as follows: "If the rice had heated in the godowns, or prior to shipment in Rangoon, you would expect to find the same condition as you found on arrival here?")

A. Well, I said that if it had been damaged in Rangoon in the godowns I would have expected to find it, but it was not found. It was not found.

Q. It was found here, was it not? A. It was found here, but not found in Rangoon. That is our point.

20 Q. Yes. They didn't find yellow grain damage in Rangoon either, did they? A. Not definitely, no.

Q. They overlooked that too? A. No, I wouldn't say they overlooked that too, but I don't know just how that—

Q. Well, the commission evidence— A. It shouldn't have been shipped with yellow grains in it, according to our contract.

30 Q. The official of Morrison & Company who inspected this rice gave evidence in Rangoon—you heard it read the other day—and in his cross-examination he was asked if he had seen any yellow grains in this rice before it was shipped, and he said no, not a single yellow grain. A. I can't add anything to that because I never was in Rangoon at the time.

Q. Well, then, do you agree with me that the examination in Rangoon— A. I would—but for the fact that yellow grains were found in London I would think that it had been damaged in the boat, that is what I would think.

40 Q. But the fact that it was found in London indicates that it was damaged beforehand? A. That is only a half of one per cent at the utmost, and that is not a very big amount, but we were guaranteed against any, and we put our claim in and your principals were duly advised.

Q. I just want to be clear about it. Now does this damage which you distinguish from yellow grain damage consist in damage which is confined entirely to the outer covering of the rice? A. No. When you take the outer covering off, still you have a certain—it is still discoloured.

*In the  
Supreme  
Court of  
British  
Columbia.*

Plaintiff's  
Evidence.

No. 22.  
Duncan  
Gavin,  
Cross-Ex-  
amination,  
May 26th,  
1938.

—continued.



*In the  
Supreme  
Court of  
British  
Columbia.*

*Plaintiff's  
Evidence.*

*No. 22.  
Duncan  
Gavin,  
Cross-Ex-  
amination,  
May 26th,  
1938.*

*—continued.*

Q. Does the stain extend throughout or not? A. It won't take the polish.

Q. Does this stain extend throughout? A. To some extent, no doubt.

Q. I am asking you if it extends all the way through. You see, I want to get this thing distinguished so that you can see my distinction. A. Well, I couldn't tell, but I don't think it would go right through, but it does persist after the skin is taken off.

Q. Could one be able to look at a sample of rice such as this 10  
163 and be able to—I want you to tell me how I would go about  
learning that there were in it some yellow grains and some that  
were caused from some other damage, and where would I draw  
the line, how would I pick them out? A. It is very hard to ex-  
plain that to a man who knows nothing about rice, but I think  
it would be clear to any miller of rice—any salesman of rice—  
that this discoloration goes through the skin, and it is on the  
kernel. At all events, our machines would not take it off, that  
is all I can tell you, and they take—they clean it and make a very  
fine job of other types of rice in milling, which it wouldn't do  
with that. 20

Q. And if the rice had been damaged by late rain or exces-  
sive moisture somewhere prior to shipment— A. Yes, it would—

Q. —Then it would contain yellow and discoloured grains,  
would it not? A. Yes, it would have discoloration at the point  
of shipment.

Q. I see. So you are basing your whole opinion of this on  
the fact that— A. No, I am not.

Q. —that you say it was not discoloured at the point of  
shipment? A. No, I am not. I am saying that the damage done  
was discovered here. I am not saying if it was done in Rangoon; 30  
my answer to that is it would have discoloration at the time of  
shipment. That is quite clear, I think.

Q. Well, can I put it this way then: Assuming, to shorten  
this, the rice had been damaged by moisture, or even by heating  
in the godowns, the condition as regards the different appear-  
ance so far as yellow and brown is concerned would be exactly  
the same as it was when it landed here, would it not? A. I  
couldn't tell. I think it would be very much aggravated if it had  
been so. It would be very much worse.

Q. By what? A. In colour and everything else in view of 40  
the weather conditions on the boat. If you ship damaged rice, you  
have damage before it is shipped, surely it is reasonable to sup-  
pose that that rice will arrive in a more damaged condition if the  
weather has been such, your ventilation such—hatches half of the  
way closed down—that is only common sense.

Q. Either I don't seem to be able to make myself clear to you or you don't want to answer my question. A. I do, I will be glad to answer any question, but I must understand it, and it is not clear to me how you could expect rice that has been already damaged in Rangoon to arrive in the same condition as this did.

*In the  
Supreme  
Court of  
British  
Columbia.*

THE COURT: Q. Wait a minute. The jury cannot hear you, Mr. Gavin. Speak up.

Plaintiff's  
Evidence.

A. Well, I was saying that it is quite unreasonable to expect rice which has already been damaged in Rangoon to arrive  
10 in Vancouver without further damage in view of the weather conditions found upon the voyage. If on the other hand our rice was shipped in sound condition and it was damaged on the voyage it would be less damaged when it got here than the first rice that Mr. Desbrisay has described. I can't make it clearer than that. That is obvious.

No. 22.  
Duncan  
Gavin,  
Cross-Ex-  
amination,  
May 26th,  
1938.

—continued.

MR. DESBRISAY: Q. Do you agree with this, that rice which has suffered from moisture exhibits a varying degree of colour in the grains, that is, you will find yellow and discoloured grains? A. What about it?

20 Q. In rice that has been damaged by moisture? A. Yes, I would think so.

THE COURT: Next witness.

(Witness aside)

MR. BULL: My lord, before calling Mr. Eldridge, I want to read that report of the Port Warden which I started to read, you remember.

THE COURT: Read what?

MR. BULL: It was later developed—

THE COURT: What is it?

30 MR. BULL: The report of the port warden. When I came to that paragraph about which there is some discussion I paused. Exhibit 8, this is headed "Office of Port Warden, Department of Marine, New Westminster, 13th June, 1936," (reading report). Now I want to read the next paragraph, as my friend wants to speak about that: "A.M. May 29th. Commenced discharging cargo . . . . Apart from the 13 bags mentioned as damaged by sweat from ventilators there were no other bags damaged by wet."

40 THE COURT: That is tied up with the other paragraph that you did not read?

MR. BULL: Oh, yes. "Figures on out-turn quantities received from Canada Rice Mills" (reading balance of report).

Now I will call Mr. Eldridge.

(RECESS: 4:10 P.M. to 4:20 P.M.)



In the  
Supreme  
Court of  
British  
Columbia.

Plaintiff's  
Evidence.

No. 23.  
Interrogato-  
ries Ad-  
ministered  
to Defend-  
ant's Officer.  
May 13th,  
1938.

MR. BULL: My lord, before calling Mr. Eldridge, I would like to put in some answers to interrogatories. There is certain information there that I want to base some questions on.

I might explain to the jury, my lord, if I may: These are questions which are put to the defendant before trial and are answered on oath by an officer of the defendant.

No. 23.

Interrogatories Administered to Defendant's Officer

Q. 5. Did not the Plaintiff pay to the Defendant the sum of \$138.59 as a premium under Policy No. 1703 referred to in the Statement of Claim herein in respect of the said shipment of 7500 bags? 10

If not, what premium was paid in respect of the said 7500 bags?

A. 5. The Plaintiff paid to the Defendant the sum of \$863.96 as a premium in respect of the said shipment of 50,600 bags of rice.

Q. 6. Was not the said premium exclusive of war risk premium at and after the rate of 40c per \$100.00 on the value of the said shipment? If not what, at what rate was it? 20

A. 6. The rate of premium was 40c per \$100.00 plus 5c per \$100.00 war risk, or a total of 45c per \$100.00.

Q. 8. On the 29th day of May 1936 and for some time prior thereto, were not Messrs. Macaulay, Nicolls, Maitland & Company Limited agents in British Columbia for the Defendant?

If not, who were agents for the Defendant?

A. 8. Yes.

Q. 9. Did not Captain A. B. Watson, Surveyor of the Board of Marine Underwriters of San Francisco, Incorporated, attend at the request of the agents for the Defendant on May 29th, May 30th, June 1st, June 2nd and June 3rd 1936 on board the "Segundo" for the purpose of making a survey of the rice cargo for and on behalf of the Defendant? 30

If not, on whose behalf did Captain Watson so attend?

A. 9. Captain A. B. Watson is an employee of the Board of Marine Underwriters of San Francisco Incorporated, which body was requested by Messrs. Macaulay, Nicolls, Maitland & Company Limited to survey the cargo of rice on board the Motor Vessel "Segundo" and has issued a report signed by the said Captain Watson which indicates that he attended on board the said Motor Vessel "Segundo" on May 29th, May 30th, June 1st, June 2nd and June 3rd, 1936, and made a survey of the said cargo. 40

Q. 14. Did not Captain Watson record the following temperatures of rice on the dates indicated:

	No. 1 Hold	No. 2 Hold Forward Aft	No. 3 Hold Forward Aft	No. 4 Hold Forward Aft
May 29	76 to 78	75-80 94-96	96-100 80-84	82 78
May 30	82	86 98	100 88	84
June 1		92-94 103-105	104-106 94-96	
June 2		92 105	106 94	

*In the Supreme Court of British Columbia.*

Plaintiff's Evidence.

No. 23. Interrogatories Administered to Defendant's Officer. May 13th, 1938.

—continued.

10 If not, what temperatures did he record, and in what places in the ship?

A. 14. It appears from the said Report that Captain Watson took temperatures of rice on the dates below mentioned and found as follows:

	No. 1 Hold	No. 2 Hold Forward Aft	No. 3 Hold Forward Aft	No. 4 Hold Forward Aft
20 May 29	76-78	75-80 94-96 And that bags showing this extreme heat were marked Interco-Brose 163, whereas rice stowed in adjacent blocks showed temperatures around 80 deg. Fahrenheit.	96-100 80-84 And that it was again noted that bags showing extreme heat were marked Interco-Brose 163.	82 78
30 May 30	82	86 98	100 88	84
June 1		92-94 103-105	104-106 94-96	
June 2		92 105	106 94	

Q. 21. Was not the moisture content of the Interco Brose 163 rice as tested on instructions of Captain Watson on arrival 11.30 per cent?

If not, what was the percentage?

A. 21. The said Report shows that a sample of Interco-Brose 163 was tested for moisture content and that the chemist reported the moisture content of the sample to be 11.30%.

40 Q. 22. Was not the moisture content of the Interco-Brose ALZ rice as tested on instructions of Captain Watson on arrival 11.50 per cent?

If not, what was the percentage?



In the  
Supreme  
Court of  
British  
Columbia.  
—  
Plaintiff's  
Evidence.

No. 24.  
Gardner  
Smith  
Eldridge,  
Examina-  
tion,  
May 26th,  
1938.

A. 22. The said Report shows that a sample of Intereco-Brose ALZ was tested for moisture content and that the chemist reported the moisture content of the sample to be 11.50%.

GARDNER SMITH ELDRIDGE, a witness called on behalf of the Plaintiff, being first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. BULL:

Q. I want you to speak up so the jury will hear you. What is your occupation, Mr. Eldridge? A. Testing engineer, chemical engineer.

Q. What are your qualifications? A. Member of the Canadian Institute of Chemistry and a registered professional engineer of the Province of British Columbia. 10

Q. How long have you been carrying on your profession in Vancouver? A. 26 years.

Q. In your practice have you been called upon to make a survey of the damage done to cargoes of all kinds carried by ships? A. I have during that time.

Q. Yes. Have you had any experience of damage caused to cargo by lack of ventilation? A. I have.

Q. Have you been asked on behalf of the plaintiff in this action to prepare yourself to give evidence in connection with damage alleged to have been done to a cargo of rice on the motorship "Segundo"? A. Yes. 20

Q. Have you made a study of the effect of weather and ventilation on cargoes, the physical changes brought about by changes in temperature and relative humidity of the atmosphere on cargoes? A. I have.

Q. Now this is a long question. I want you to follow it as carefully as you can. I will read it to you:

Assuming that a cargo of rice in good condition in sacks was loaded on the motorship "Segundo" at Rangoon between April 13th and April 23rd, 1936, when the outdoor temperature varied from a maximum of 100.7 degrees to a minimum of 75 degrees, and the humidity on the last day of loading was 92 degrees: that the vessel sailed, from Rangoon on the 24th of April and docked at the Canada Rice Mills dock on the Fraser River on the 28th of May, 1936, and that the weather encountered on the voyage according to the log of the vessel showed that when the vessel was three days out from port weather was experienced which necessitated closing of the hatches and cowl ventilators; that the closure was maintained for 20 hours, after which the cowl ventilators were open for two hours, again to be closed for 13 hours, and generally throughout the whole of the voyage ventilation was regulated so that the hatches were closed 63.4% of the time, and 30 40

the cowl ventilators were closed 19.5% of the time, and from May 8th to May 11th the hatches and cowl ventilators were closed continuously over a period of 55½ hours, and at the expiration of the 55½ hours the hatches and cowls were opened, and three days later both cowls and hatches were again closed on the following three days for periods of eight hours per day; that when the cowls were opened from the 12th to the 14th of May the outside temperature was a maximum of 71 degrees and a minimum of 50 degrees; that when they were opened on the 19th to the 20th of May the minimum temperature was 37 degrees; that on May 12th some bags of rice were found to be wet with sweat in No. 3 lower hold under the samson post ventilator; that after the ship docked at Canada Rice Mills' dock in the Fraser River the temperatures of the rice were taken as follows: No. 1 hold, May 29th, 76-78; May 30th, 82; June 1st, June 2nd, no record. No. 2 hold forward, 75-80, May 30th, 86; June 1st, 92-94; June 2nd, 92; aft, 94-96; May 30th, 98; June 1st, 103-105; June 2nd, 105, No. 3 Hold, May 29th, 96-100; 30th, 100; June 1st, 104-106; June 2nd, 106. Aft, May 29th, 80-84; May 30th, 88; June 1st, 94-96; June 2nd, 94. No. 4 Hold, forward, May 29th, 82; May 30th, 84. Aft on May 29th, 78; that the sides of the ship from the water line down were very wet from sweat in the lower holds; that the cargo of rice in Nos. 1 and 4 holds and Nos. 2 and 3 lower holds were quite heated and the heat being evolved was a very damp heat as the bags were damp and hot and that some of the rice in said holds smelled quite musty while the cargo in the tween decks felt cool and appeared to be in good condition: that the most serious damage was confined to a lot of 750 tons of rice marked Interco Brose 163 and that on milling the rice was found damaged in the following respects: first, that the bran would not mill off all the grains completely and about 25% of the grains retained a covering of bran; second, that there was a higher percentage of broken grains on milling; and third, that the outer portion of the grains of rice had a brown discoloration, but the centre of the kernel was undamaged; that the damage was more on the outer portion or near the sacks rather than in the centre; that after the rice had been stored in Canada Rice Mills' sheds it cooled down rapidly and was cool in about three days;

Now what in your opinion was the cause of that damage?

40 A. Your lordship, the grain was loaded at a fairly warm temperature, that is, the temperature of the cargo might be in the neighborhood of 85 to 90 degrees, about three days out the ventilators were closed. When the ventilators were closed the temperature of the air inside the hold would become about that of the temperature of the cargo, which would be 85 to 90. Air at that temperature will hold about six times as much moisture as

*In the  
Supreme  
Court of  
British  
Columbia.*

Plaintiff's  
Evidence.

No. 24.  
Gardner  
Smith  
Eldridge,  
Examina-  
tion,  
May 26th,  
1938.

—continued.



*In the  
Supreme  
Court of  
British  
Columbia.*

Plaintiff's  
Evidence.

No. 24.  
Gardner  
Smith  
Eldridge,  
Examina-  
tion,  
May 26th,  
1938.

—continued.

air at the temperature of 40 degrees fahrenheit. Now when the ship got into—it was going north into a colder climate, it is a very disastrous thing to open the ventilators under those conditions, because you have supersaturated air containing six times as much moisture as it could contain if it were the same temperature as the air outside. Letting in this cold air at around 40 degrees—37—fog would be formed inside, the temperature of the air inside would be lowered, precipitation would take place at once. It would wet the outside portions of certain sacks where the cold air struck the warm air; on the outside most of these sacks would become damp—might become quite wet on the outside; but it is a well known fact that the grain on the outside of the sack will protect the grain on the inside of the sack from moisture coming from the air outside, consequently you would not expect the centre of the sack to be damaged under these conditions with the amount of moisture available from that source. This swelling of the grain, and probably some incipient fermentation would cause bran to adhere to the gelatinous stuff there, especially when the grains were dried out afterwards. In my opinion that accounts why—for the reason that this bran didn't mill off readily and immediately upon receipt of the cargo, this took place several times on the voyage, and once fermentation—which is only a slight degree of fermentation which would be on the outside of the grain on—once that started it would be easy—and the ventilation came through, it would probably stop it, and then when the cowls were closed the moisture would build up as before to a supersaturated condition, and at a temperature of 100 would hold eight times as much moisture as it would at 40. Then the cold air would let in again and the whole process was repeated. That would account for some sacks being quite wet. That would be a very foggy condition inside the hold and a considerable precipitation of moisture where the cold air and the warm air came together, and that would probably apply all around the ducts while the cowl ventilators were open adjoining the ducts.

Q. Would your opinion be altered at all in the case of the question I put to you—I might have been slightly wrong in the percentages during which the ventilation was closed off, that is, to a slight degree. A. No, it wouldn't, for it is only a matter of degree, the damage would be the same.

Q. Yes. Now in your opinion where does the moisture come from which you referred to? A. The moisture would come from the grain itself.

Q. Yes. What, candidly speaking, is the object of ventilating a cargo of grain? A. To take away excess moisture.

10

20

30

40

Q. And in your opinion what caused the excess moisture?  
A. The closing of the cowl-ventilators.

Q. Yes. Had there been no stoppage of ventilation, do you consider that under those conditions the cargo would have carried safely? A. Yes, absolutely.

Q. You say—What is your answer? A. Absolutely.

Q. Are you in a position to say that the temperature in the hold of a ship at the time of unloading is maintained regardless of normal ventilation? A. That is a well-known fact, that cargo at the time of shipping tends to stay the same throughout the voyage. There is not sufficient ventilation as a rule to cause a large mass of cargo to drop in temperature or rise in temperature very seriously.

Q. Now if on an analysis after the arrival of the cargo it is found that the moisture content of the Interco Brose 163 was 11.30 degrees, and that by comparison of weights on unloading—the weights of loading on the vessel, the rice lost 2% in weight, are you able to say what the moisture content was at the time of shipment? A. I would say that that would be a very good way of determining the percentage of moisture in the cargo at the time of shipping.

Q. And what would that percentage be? A. About 13.1%.

THE COURT: Q. How much? A. 13.1%.

MR. BULL: Q. That is at the time of shipment? A. Yes.

Q. Would you say whether that is considered a safe water content to ship rice? A. Quite.

Q. What do you consider a safe limit as to moisture content for shipping? A. The United States specifications set a maximum of 14 to 15%.

Q. 14 to 15? A. For safe carriage.

MR. BULL: Your witness.

#### CROSS-EXAMINATION BY MR. BOURNE:

Q. Well, Mr Eldridge, your whole opinion is based on the assumption that this rice was in sound condition when loaded on the ship? A. Well, no, not altogether.

Q. Well— A. If it were unsound, the damage would be serious.

Q. I understood my friend to make that as his first assumption. Isn't that correct?

MR. BULL: I said in good condition.

MR. BOURNE: In good condition at the time of shipping.

Q. Now you based your whole opinion on that assumption, didn't you? A. I don't think I made any statement as to that.

Q. No, but my friend did in his question. That was the very

In the  
Supreme  
Court of  
British  
Columbia.

Plaintiff's  
Evidence.

No. 24.  
Gardner  
Smith  
Eldridge,  
Examina-  
tion,  
May 26th,  
1938.

—continued.

Cross-Ex-  
amination,



*In the  
Supreme  
Court of  
British  
Columbia.*

Plaintiff's  
Evidence.

No. 24.  
Gardner  
Smith  
Eldridge,  
Cross-Ex-  
amination,  
May 26th,  
1938.

—continued.

first assumption he made; assuming that the cargo was in good condition in sacks at the time of loading. Now you based your whole opinion on that one assumption to begin with, did you not?

A. As to this cargo, yes.

Q. Yes, and again, you based your opinion on the assumption that the cargo was very moist when discharged? A. I didn't say anything about that.

Q. No, but my friend did in putting the question to you, and you gave your opinion, and you based that opinion on that one main assumption, did you not? A. Well, we know the mois- 10  
ture on discharge was 11.5%.

Q. You are basing it on that, though—very damp I should have said, probably I used the wrong word—very damp.

MR. BULL: No, I might correct my friend, there was not any mention of moisture, it was very damp.

MR. BOURNE: Yes, all right, I will put it that way. I probably confused the word about moisture and dampness.

Q. You based it on another main assumption, that the cargo was very damp when discharged?

MR. BULL: That is not—damp heat. 20

MR. BOURNE: Will my friend permit me to conduct this examination? I made a careful note of it.

THE COURT: Just a minute. Mr. Bull says that you say the witness based his opinion on moisture—

MR. BOURNE: Yes, my lord. I was at this disadvantage, that my friend read a question—certainly the longest question I ever heard in my experience—and I was doing my utmost to take notes as he went along of the important points in it, and I got this down.

THE COURT: I appreciate your difficulty, but he is point- 30  
ing out that you misunderstood what he said, that is all.

MR. BOURNE: Q. Are you not basing your opinion on the assumption, among other assumptions, one of which you have already dealt with, Mr. Eldridge, that there was damp moist heat in the cargo when discharged? A. I am basing it on the condition of certain grains in the cargo—

Q. I am asking you a question. Is it not one of the assumptions that you are basing your opinion on that there was damp moist heat in that cargo when it was discharged? A. Well, naturally there was—would be damp moist heat. 40

Q. You are basing it on that assumption, though, aren't you—one of the assumptions? A. Well, that is the result, not an assumption. That is a condition on certain other effects.

Q. Do you agree with me that it was one of the conditions stated by my friend in his question that the cargo was damp? A. I say—

Q. And heated when discharged? A. Yes, that is right.

Q. And it was damp heat? A. Yes.

Q. And you are basing your opinion on that as one of the assumptions? A. Well, you can put it that way if you like.

Q. And if those two conditions were removed you would have a different opinion than you have got? A. No, I couldn't—I made the statement as to why that happened—I think in my statement the cause of the damage—I didn't bring that point in in any way.

10 Q. If as a matter of fact the cargo was dry, though heated, when it was discharged, would that change your opinion? A. No.

Q. It does not? A. No.

Q. So then moisture has nothing to do with it? A. Well, the cargo, I say, as far as the moisture content may be dry when it was discharged.

Q. No, I am talking about the moisture content— A. You are talking about two different things there; one is atmosphere and one is cargo.

20 Q. Yes. I am trying to keep them separate. I know if you get far enough you will tell me a lot about the different kinds of moisture in grain, which I don't understand, but I am using the expression that my friend did, which was damp or moist heat. A. That is temperature and the condition of the atmosphere—saturated atmosphere.

Q. As distinguished from a dry condition with heat and forming degrees of moisture in the rice? A. I don't know whether you could get a dry condition with heat in a cargo of that nature.

30 Q. Well, then, you are saying that it could not be so, notwithstanding what evidence may have been given here by people who saw it? A. I wouldn't want to say that—it would be difficult to obtain, in my opinion.

Q. You didn't see any of this rice, or did you, Mr. Eldridge?  
A. I have seen some of it.

Q. Since? A. Since.

Q. Yes, but you didn't see any of it—when did you see it?  
A. About two months ago.

40 Q. You were not in the position of being able to examine any of the rice in question at a time when its condition might indicate anything to you in connection with your opinion other than the appearance you saw, the outward appearance, as to moisture or anything of that sort? A. Oh, no.

Q. No. And I suppose anyone who saw it at the time it was being discharged and saw the condition that existed then would be much better equipped to give an opinion with reference to

*In the  
Supreme  
Court of  
British  
Columbia.*

Plaintiff's  
Evidence.

No. 24.  
Gardner  
Smith  
Eldridge,  
Cross-Ex-  
amination,  
May 26th,  
1938.

—continued.



*In the  
Supreme  
Court of  
British  
Columbia.*

Plaintiff's  
Evidence.

No. 24.  
Gardner  
Smith  
Eldridge,  
Cross-Ex-  
amination,  
May 26th,  
1938.

—continued.

what might have caused the damage than you would be as a result of that? A. I wouldn't say so.

Q. Well, I say equipped. I don't mean equipped in the nature of the knowledge you have, Mr. Eldridge; but put it another way: You would have been better equipped yourself to express an opinion if you had seen the rice when it was being discharged?

A. I don't think it would make very much—

Q. You don't think you would? A. No.

Q. Well, it is a fact that you are depending entirely upon a description of the condition of it given to you by someone else, 10  
or several other people, are you not? A. Yes.

Q. Yes; and do you not think that if you had been able to go into the hold of that ship and see the condition of that rice at first hand you would be in a better condition to state what caused the damage? A. I wouldn't know any better what caused the damage if I looked in the hold than if I didn't. I would have to know these other facts before I could pass an opinion.

Q. Now you, I say, base your opinion on certain statements as to when and for how long the ventilation was closed on that ship; and that assumption of the time was the first time after it 20  
left Rangoon that you say it was closed? A. I don't remember that.

Q. And can you say for how long? A. Well, it was about three days after, and about 12 hours, if my recollection is right.

Q. Yes, and closed after that— A. It was a shorter period, I believe, and then a longer period.

Q. A shorter period, you say? A. Yes, there are one or two short periods, and then a long period of 55½ hours.

Q. Now then when you say a shorter period, do you mean that the ventilation was closed off for a shorter period than 55 30  
hours, or do you mean— Just what do you mean by that? A. I mean that the ventilation was closed off for a shorter period.

Q. Would the fact that—well, then, go on, what other facts affecting the time the ventilation was closed did you take into consideration in giving this opinion? A. Well, the longer period would build up the percentage of moisture.

Q. Yes, but when? You based it on some assumption in that connection. I want to know what that is. A. The temperature—the atmosphere temperature in the hold with a large mass like cargo and the very small air space, it wouldn't take very long 40  
for that temperature to build up to the temperature of the cargo.

Q. Yes? A. At that temperature the air in there will take up a great deal of moisture from the rice.

Q. Yes, and that is all that is affected by the length of time before it was closed off, for it might have been open to the temperature of the outside air and the temperature of the inside air

during those periods? A. Not so much the outside air. It had very little to do with it.

Q. Very well, the temperature of the inside air then? A. The temperature of the cargo is more important than the temperature of the inside air.

Q. Yes, but the temperature of the cargo when the ventilators have been open for say a period of six full days, and the hatches have been open during that six full days for say four full days, will have the effect of having the cargo take on a certain extent anyway of the temperature outside, will it not? A. Practically no difference.

Q. No different? A. Practically no difference.

Q. Why open the ventilators, why open the hatches, Mr. Eldridge, in those cases? A. Sometimes it is a mistake to open ventilators.

Q. I know, but you say that it doesn't change and make very little effect, then why use them at all? You see, what you are telling me in one breath is that it is very dangerous to open them in certain conditions, and in the next breath you tell me it doesn't make much difference what position they are in. Isn't that a contradiction? A. No, it is not.

Q. Well, I thought it was. You explain it. A. Will you repeat that again?

Q. You have told me in the one instance that it is very dangerous to open the hatches or the ventilators and let in ventilation under certain conditions. On the other hand, when I put the proposition up to you that if the ventilators had been open for six days, 24 hours each day without a break, and during that same time the hatches open four days of 24 hours, that the effect would be that the cargo would take on pretty much the same temperature as the air outside, and you said no, it would make very little difference. I am suggesting to you that these two propositions are in direct contradiction one with the other. A. Well, in my explanation I pointed out that the cargo does not change in temperature materially in a voyage. It is too big a mass for a little mass of air to effect, consequently the air round that cargo will—as soon as the cowls are closed, will readily come to the temperature of the cargo, and the cargo being fairly normal at 85 to 90.

Q. That is at the start from Rangoon? A. Yes, and when it got here it was higher.

Q. And if the air during the first few days of the voyage was about that, or not very far from that, and the ventilators were open, there would be very little change, wouldn't there, in that? Isn't that correct? A. Will you repeat that again, please?

Q. I say if the temperature at Rangoon was as you stated

*In the  
Supreme  
Court of  
British  
Columbia.*

Plaintiff's  
Evidence.

No. 24.  
Gardner  
Smith  
Eldridge,  
Cross-Ex-  
amination.  
May 26th,  
1938.

--continued.



*In the  
Supreme  
Court of  
British  
Columbia.*

Plaintiff's  
Evidence.

No. 24.  
Gardner  
Smith  
Eldridge,  
Cross-Ex-  
amination.  
May 26th,  
1938.

—continued.

and there was very little change in the temperature for the first few days after the ship left Rangoon, and the ventilators were open, there would be no appreciable change in the conditions in the hold from what they were when they left? A. Except for the cowls being open, the moisture would be kept from becoming saturated.

Q. Yes, that would be the effect of keeping the cowls open, that the moisture content of the air in the hold would become less? A. Yes, that is right. It wouldn't build up.

Q. Now when, during the period that my friend described 10  
in that lengthy question of his, do you say that this damage took place in the manner you suggest, at what stage of the voyage? A. In the time that the ventilators were closed the moisture of the saturated atmosphere would become very much higher.

Q. How long do you consider it is necessary to close the ventilators in order to cause that condition? A. I would say the matter of a day would be—would cause a serious increase in the moisture content.

Q. You say you have made a study of ventilation on ships, Mr. Eldridge. Is it not a fact that the only function of the venti- 20  
lating system is to carry off a certain amount of moisture? It can't be any more than that. A. No, that is not—

Q. Isn't that correct? A. No. If you had a cargo of canned goods, for instance, loaded at a cold temperature and you let in damp air you are going to have condensation of your whole cargo.

Q. Well, then, it is as dangerous on some occasions to open ventilators as it is to close them on others according to your argument? A. It depends on the nature of the cargo.

Q. So for the safety of the cargo it is a matter of judgment 30  
of the captain or the officer in charge of the ship as to when he will open and close ventilators? A. It is a matter of his experience.

Q. Yes, and a matter of his judgment when to do it—sometimes dangerous to open them and sometimes dangerous to close them. A. With a cargo of that kind the ventilators should be kept open.

THE COURT: Q. Should be what—kept open? A. Kept open, with a cargo of this kind, continuously.

MR. BOURNE: Q. Well, isn't it dangerous to a cargo of 40  
this kind to let in damp atmosphere through the ventilators? A. Not if you keep the temperature of the saturated atmosphere down.

Q. Yes, but how do you keep it down except keeping the ventilators open as much as you can? A. Well, you might put in forced draft—something like that.

Q. Oh, yes, we get down to that. But the way you would take care of it would be to have some sort of forced draft system there? A. Air conditioning.

Q. Air conditioning, which we don't have on even the best equipped of the tramp steamers, you know that. A. Well, some of the better equipped ones may have it.

Q. On tramp steamers? A. I wouldn't be very surprised.

Q. Well, have you seen that yourself? A. No. I have heard considerable talk about it.

10 Q. I don't think that you ever saw any. I have never heard of it before, Mr. Eldridge. Do you know of one at all? A. I have heard talk of doing that.

Q. Why, do you know— A. Sometime ago. It may be a possibility now.

Q. As I understand it, Mr. Eldridge, if the moisture content of rice is low enough, that is, not above a certain level, it can be hermetically sealed and kept so for a whole voyage without any ventilation at all. What do you say as to that? A. Provided the temperature doesn't get too hot.

20 Q. Provided it doesn't get too hot. How would that work out? A. Well, you take a sealed jar of rice, warm it up, say 100 degrees or so for a considerable length of time, and then take it into a cool atmosphere, you will find sweat.

Q. Condensation, yes. A. Condensation.

Q. Yes, but there is nothing here in what you have seen with reference to—or been advised with reference to the voyage, which indicates any condition like that, is there—any change in temperature? A. Well, the high temperature, as I pointed out at first—

30 Q. Yes, but with the ventilation, which was merely just as you would expect coming from the South Pacific to the North? A. It wouldn't work out—

Q. I am talking about the outer temperature now. A. The temperature of the air outside, you mean?

Q. Was merely just as you would expect if coming from the South Pacific to the North? A. Surely.

40 Q. So that there was nothing unusual in that which would indicate that this voyage was any different than the ordinary voyage that you had anything to do with in cases you have examined? A. Well, the closing of the ventilators, that is a very unusual thing to do in the nature of cargo.

Q. Isn't it a fact, Mr. Eldridge, that in your experience making examinations of this kind, that this voyage as disclosed by the log book, on the assumption you have answered, is an ordinary voyage, nothing extraordinary about it for a voyage from

*In the  
Supreme  
Court of  
British  
Columbia.*

Plaintiff's  
Evidence.

No. 24.  
Gardner  
Smith  
Eldridge,  
Cross-Ex-  
amination  
May 26th,  
1938.

—continued.



*In the  
Supreme  
Court of  
British  
Columbia.*

Plaintiff's  
Evidence.

No. 24.  
Gardner  
Smith  
Eldridge,  
Cross-Ex-  
amination,  
May 26th,  
1938.

—continued.

Rangoon to Vancouver? Isn't that a fact, or have you had enough experience to answer that question? A. I can't answer that.

Q. No. I think you said something about—I am not quite sure that I got your answer—that assuming the moisture content was 11.3 after loading, you would have expected it to be about 2 degrees higher when it was put on board, was that it? A. About that.

Q. Well, now, how did you work that out, with these varying conditions that you say are so affected by the kind of weather there is, and damp air coming in, and all that sort of thing—how did you work it out? A. Well, that is exactly what I have been saying— 10

Q. And that is an average— A. That is what I have been saying, that the warm temperature took the moisture out of the rice and saturated the air in the hold.

Q. How did you work out the 2% then? Is there any basis that you figured on, or is it just a sort of guess? A. No, no, it is on the difference in weight at the time the cargo was shipped and the weight here.

Q. Well, what difference in weight are you basing that assumption on, because we haven't heard any yet—not between the time it was shipped and the time in Vancouver? What variation in weight are you basing that assumption on? A. The weight of the cargo as loaded and the weight of the cargo at this end. 20

Q. Now the weight of the cargo as loaded, have you taken into consideration— A. I haven't got the figure here.

Q. And the weight of the cargo when discharged, have you taken into consideration? A. I worked it out from the figures supplied to me. 30

Q. And what was the difference between the weight here, 228 pound sack, the ordinary sack, what was the difference in weight between loading and discharging that you based your calculation on? A. I haven't the figures with me. It was worked out at 2%.

Q. Yes, worked out at 2% loss in weight? A. Yes, loss in weight.

Q. That was on figures presented to you, and you don't know anything about the correctness of them at all? A. Well, in our business we usually rely on the figures obtained at both ends of the shipment. 40

Q. Yes, I quite appreciate that. And suppose there was no difference in weight between loading and discharging would that affect your opinion as given here to-day? A. Not necessarily.

Q. Oh, you say that that difference in weight means nothing then? A. It might not.

Q. Well, it doesn't if your answer—if I understand your answer. You told me that the weights were something which would make a difference in your opinion, and now you say the difference in weight makes no difference in your opinion at all. Is that correct? A. That is right.

Q. Did you ever hear of a cargo of—suppose corn, maize—has many of the same tendencies as rice? A. Yes.

Q. Did you ever hear of a cargo coming to Vancouver from South America where there has been no ventilation by direction from the beginning of the voyage to the end, and it arrived in good condition? A. That is quite possible.

Q. I see. Did you ever hear of such a cargo? A. No, I never heard about it.

Q. There is what is called—I hesitate to embark on this, but I have to ask the question—there is what chemists and engineers call—correct me if I use the wrong term—free moisture and hygroscopic moisture. Is that correct? A. I would call them both the same.

Q. I see. Well, then, the term that is used, raising the content less than about 12% moisture—I want to distinguish between them—is practically a dormant condition, is it? A. Yes.

Q. And is it a fact well known to your profession that experiments made in Japan some years ago show that it was possible to keep rice with not more than 12% moisture hermetically sealed for a period of 20 years without suffering any damage?

A. I could see that it would be quite possible. I might explain in connection with that that it would be necessary to have the temperature such that the saturated atmosphere in the hold would be in equilibrium with the rest.

Q. Yes? A. But that would be a matter of keeping the temperature just right.

Q. Is it a fact, Mr. Eldridge, that variations of temperature approximating 130 degrees Fahrenheit do not affect the quality of the rice if the rice is kept dry? A. You mean it is closed in at that temperature?

Q. Well, take it either way. I understand it does not affect it if it is kept dry. I presume that to keep it dry you might have to close it in some way. A. No, I imagine that is correct.

Q. That is correct. Assuming, Mr. Eldridge, that in some holds—two of the holds in which the rice in question in this action, damaged rice, was stowed in those same holds, there were parcels of rice of other marks stowed apparently under the same conditions throughout the vessel, certainly so far as ventilation was concerned, assuming that is so, wouldn't you expect if the ventilation caused it, or lack of ventilation, that the other rice

*In the  
Supreme  
Court of  
British  
Columbia.*

Plaintiff's  
Evidence.

No. 24.  
Gardner  
Smith  
Eldridge,  
Cross-Ex-  
amination,  
May 26th,  
1938.

—continued.



*In the  
Supreme  
Court of  
British  
Columbia.*

Plaintiff's  
Evidence.

No. 24.  
Gardner  
Smith  
Eldridge,  
Cross-Ex-  
amination,  
May 26th,  
1938.

—continued.

would be damaged similarly in these holds? A. Well, ventilation in a ship is very imperfect at best.

Q. Yes? A. And you might get one parcel say near a duct that would be damaged under the conditions in question, whereas a parcel in between ducts would not be damaged, and there would be great variation there. It would be partly a matter of chance, it would depend entirely on the amount of cold air that struck that particular parcel.

Q. Assuming, Mr. Eldridge—you have heard described the system of ventilation? A. Yes. 10

Q. With these trunk and other wooden ventilators? A. Yes.

Q. So many feet apart, and in one of these holds the cargo piled in four piles, that is 18 to 24 inches of a space from top to bottom fore and aft across the ship, divided up into four parcels, some placed about 18 to 24 inches between the cargo and the bulkheads on either end, and the ship well dunnaged, as has been described, and assuming that this damaged cargo had above it in the same vessel other cargo which was undamaged, now if the damage was caused by lack or change of ventilation, wouldn't you expect that other cargo in the same hold to be damaged similarly? A. It would be just a matter whether the ventilation from that particular parcel had let in cold air or not. 20

Q. Well, Mr. Eldridge— A. To cause fog.

Q. If you had two parcels piled one above the other, the same system of ventilation, vertically and horizontally through it, wouldn't the situation so far as the ventilation is concerned be the same in those two parcels? A. I couldn't say. It is very uncertain ventilation in a hold.

Q. Very—? A. Very uncertain. 30

Q. Can you account for that situation that I have described in any way? A. Just that one—

Q. Other parcels, several of them in the same hold, were piled above this particular one in another hold— another parcel below the particular one, but in the same two holds you find the other cargo undamaged, but these two parcels of this damaged rice damaged, and the only cargo damaged in those two holds? Now does that indicate to you that when you find it in two holds, that this cargo happened to pick the only places that there were ventilation sufficient for the cargo, or isn't there some other explanation for that? A. Well, the lower portion of the hold is naturally not as well ventilated at any time. 40

Q. Yes? A. Apart from cowls being closed, that portion of the hold you would expect to be—

Q. Suppose we find some on top, then what do you say as to the damaged cargo? A. I couldn't say much about it. It is possible the other was damaged slightly.

Q. Where do you expect moisture to first form in the hold under the conditions you have described to my friend here today?

A. Where can I expect it?

Q. Yes, in what part of the hold first, where does it condense first? A. Where the cold air hits the moisture—the warm moist air.

10 Q. Where would that be under the conditions you have described? A. The ventilators—

Q. At the top, wouldn't you, that is where you would expect it first? A. Well—or near the ducts.

Q. Yes, and it is a fact, too, is it not, Mr. Eldridge that practically one-third of the cubic space of this hold was left free of cargo, and air space which would be there could have an effect upon the ventilation that is it could form a buffer for the conditions when the ventilators had to be closed; isn't that so? A. I couldn't say as to that.

20 Q. You couldn't say as to that. You used the expression in answer to my friend that you thought it was disastrous to open the ventilators at that temperature, referring to the temperature of the 12th May? A. Yes.

Q. Do you think that was what—or was the fact that you based your opinion on when saying that the damage was caused as a result of the conditions you had described, the fact that it had been opened suddenly? A. No. As I pointed out before, that cold air with the saturation point about 1/8th of actual capacity of moisture, 1/8th of the temperature that was probably in the 30 hold at that time, wasn't a sound thing to do.

Q. You think that they should have been kept closed longer?

A. Well, they should have got around it in some way.

MR. BOURNE: Thank you.

(Witness aside)

WALTER CAULFIELD McPHEE, a witness called on behalf of the Plaintiff, being first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. MERRITT:

Q. Mr. McPhee, what is your occupation? A. Buyer for Kelly, Douglas & Company.

40 Q. And in your occupation as buyer do you have anything to do with buying rice? A. Yes.

Q. How long have you been buying rice for Kelly-Douglas?

A. About 15 years.

In the  
Supreme  
Court of  
British  
Columbia.

Plaintiff's  
Evidence.

No. 24.

Gardner  
Smith  
Eldridge,  
Cross-Ex-  
amination,  
May 26th,  
1938.

—continued.

No. 25.

Walter  
Caulfield  
McPhee,  
Examina-  
tion,  
May 26th,  
1938.



*In the  
Supreme  
Court of  
British  
Columbia.*

Plaintiff's  
Evidence.

No. 25.  
Walter  
Caulfield  
McPhee,  
Examina-  
tion,  
May 26th,  
1938.

—continued.

Q. Have you had any experience before that time? A. Only in handling it, not in buying.

Q. When you buy rice, Mr. McPhee, how do you buy—by sample or by description? A. Mostly on sample.

Q. I want to show you a sample of rice. Are you familiar with Saghundi type of rice? A. I don't know it under that name.

Q. Do you know the "Blue Bird" brown rice of the Canada Rice Mills? A. The Blue Bird? No, that is not a line we handle.

THE COURT: Q. Blue Rose. A. Blue Rose, we handle some. 10

MR. MERRITT: Q. Blue Rose. You are familiar with the Blue Rose type? A. Yes, fairly well.

Q. I want to show you this sample exhibit 28, and I want to get your opinion of the value of that sample. A. In my opinion it is a poor sample of rice.

Q. Well, give me your opinion as to its comparative value with the Blue Rose type that you know of? A. Oh, probably \$15—\$15—\$20 less in value per ton.

MR. MERRITT: That is all.

Cross-Ex-  
amination,

CROSS-EXAMINATION BY MR. DESBRISAY: 20

Q. That is, you are making this valuation as of today? A. Yes, of today.

Q. When did you first see that sample? A. I saw that sample to-day.

Q. And the price, or what you would pay for the rice, of course, fluctuates from time to time, depending on the market conditions at the time, and you might pay more for one if there was a scarcity today than you would in a month or a year perhaps? A. That is true.

Q. That is true? A. Yes. 30

Q. So that you are not giving any evidence now as to what that was worth in 1936? A. Well, rice values fluctuate probably less than any grains, or about as little as any grains do.

Q. Well, you say they don't fluctuate much. I have here your examination in another rice case in which you were asked by the court a question in May 1936, and you said the price fluctuated so often—"We handle so many commodities I wouldn't like to make a statement on that." A. No, what I said was they don't fluctuate to the same extent as some of the other grains.

Q. But I say they do fluctuate? A. Oh, yes. 40

Q. What is there about that rice that causes you to say — A. Mainly their poor colour. A great many of the grains are very poor colour indeed.

Q. Do you mean by that that they are yellow discoloured grains? A. No, they are what we call yellow grains.

Q. What would you call them? A. Well, it would be hard to just tell you. The percentage of poor coloured grains in that is very large, I would say, in my opinion.

Q. If you have rice with yellow grains in it, though—suppose a quantity of rice might have yellow grains in it, still a small sample not show them? A. Well, a fair sample should show some signs of yellow grains.

Q. But if there are yellow grains, what is the effect on the value of the rice? A. Well, it brings down the value of the rice.

10 Q. It brings it down? A. Yes.

Q. How much does it bring it down? A. Well, of course, that is pretty hard to say without a sample.

Q. Well, if you had one sample—one grain in a sample that size, how much would it bring it down? A. Well, the presence of one or two grains of—yellow grains of rice in a sample would bring it down from No. 1 grade.

Q. What is the value? A. More than that—

Q. What? A. More than that it is very difficult to say without seeing the sample.

20 Q. That is, if the rice had so much as one yellow grain it would be inferior to a No. 1 grade? A. That is what I say.

Q. If you had rice with considerable yellow grains in it what would be the effect? A. Just lower the value that much more.

Q. By what percentage of price would you lower a sample of rice in which there was one yellow grain? A. Well, that would altogether depend upon the type of rice you were buying and the trade you were catering for.

30 Q. If you were buying this as high—that is, rice for high-class trade, is it not this type of rice? A. Well, I suppose it could be No. 1 grade rice, would be high class trade rice.

Q. If it didn't have this discoloration in it it would be high class grade? A. Looks high class grade, yes.

Q. Yes, and I want to know now, if you saw rice like that with one yellow grain in it, how much would it reduce it in value? A. One yellow grain in a sample of this size?

Q. Yes. A. Oh, probably \$4 or \$5 a ton.

40 Q. Yes, and if you saw one with considerable yellow grains in it, what would you say? A. That would depend on what was meant by considerable—anything up to \$10 or \$12 a ton.

Q. This rice was never offered to you for sale? A. No, not as far as my memory serves.

RE-DIRECT EXAMINATION BY MR. MERRITT:

Q. Mr. McPhee, do you see any yellow grains in the sample before you? A. Not what you would term yellow grains, no.

*In the  
Supreme  
Court of  
British  
Columbia.*

Plaintiff's  
Evidence.

No. 25.  
Walter  
Caulfield  
McPhee,  
Cross-Ex-  
amination.  
May 26th,  
1938.

—continued.

Re-Exam-  
ination,



*In the  
Supreme  
Court of  
British  
Columbia.*

Plaintiff's  
Evidence.

No. 25.  
Walter  
Caulfield  
McPhee,  
Re-Exam-  
ination,  
May 26th,  
1938.

—continued.

Q. You gave an opinion as to the comparative valuation of that sample with a good sample of Blue Rose grains, as I understand it, as of to-day. Would your opinion be different if you were valuing that as in 1936?

MR. DESBRISAY: My lord, I don't think this is proper re-examination.

THE COURT: You asked if that was his opinion of to-day.

MR. DESBRISAY: I did, my lord, yes, but as it relates to that—surely this trial is for the purpose of ascertaining what it was worth if he wants to use it in his trade—

THE COURT: I would allow that question. You asked that yourself.

MR. DESBRISAY: Oh, yes, my lord, I did. I got his answer. Why should he now be allowed to re-examine?

THE COURT: Well, you have asked him in cross-examination.

MR. MERRITT: Q. Would your opinion differ as between now and 1936, as to the difference in value? A. No, not materially.

(Witness aside)

MR. MERRITT: Mr. Jardine.

No. 26.  
Edwin John  
Jardine,  
Examina-  
tion,  
May 26th,  
1938.

EDWIN JOHN JARDINE, a witness called on behalf of the Plaintiff, being first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. MERRITT:

Q. What is your occupation? A. Purchasing agent, W. H. Malkin Company Limited.

Q. Have you had any experience in the purchasing of rice? A. About 18 years.

Q. Are you familiar with the type of rice known as Blue Rose? A. Yes.

Q. You have before you a sample of rice, exhibit 28, I want you to make a valuation of that rice as of the summer of 1936. Can you do that?

THE COURT: May 1936.

MR. MERRITT: May 1936.

A. I am sorry, I can't give you a valuation of that year. I can tell you approximately the value of this rice—that is, how much lower it is in value than first class rice.

Q. Yes, well give me that. A. Well, I would say this is \$15 to \$20 per ton under the value of a good rice.

Q. Is there any particular change between the value in 1936 and now? A. Well, there might be in the cost per ton of the rice, but the value would still be \$15 to \$20 under per ton, under a good rice to-day or any other year, that the market going

up or down would not make any difference. A first class rice would be worth very much—that is this rice would be worth so much less—\$15.

MR. MERRITT: Thank you.

CROSS-EXAMINATION BY MR. DESBRISAY:

Q. What do you mean by good rice? A. Well, good rice is good clear grain.

Q. You are comparing this with the particular type and grade of rice, aren't you? A. Well, a high quality rice, yes.

10 Q. The very top grade of rice? A. Well, I wouldn't say the top—good No. 1 rice.

Q. And the rice of one year may—or the crop of one year varies, doesn't it, from another? A. Yes.

Q. Some years fair average quality is not so good as it was in other years? A. That is quite possible.

Q. And you may have rice coming in which would be of a fair average quality for one season, but it would not be anything like as good quality of rice or grade of rice as the same rice of a previous season? A. Well, the value of it would be according to  
20 the season. You can't compare rice of one year with rice of several years ago. As you say, there might be a difference in quality.

Q. You are now comparing this with the very top grade of rice? A. I am comparing this—

Q. Could you give that distinction in price? A. —with good No. 1 rice, whatever the season would be.

Q. Well, it might differ from one season to another? A. Well, that is possible, but whatever season we buy the rice in would determine the value of it.

30 Q. Of course, you are looking at that from the point of view of purchasing rice from the Canada Rice Mills? A. Yes.

Q. And if you were trying to buy it you would endeavour to cut it down to the lowest possible price? A. Yes.

Q. And you figure that is about what you would try to beat them down to? A. It is not a case of beating down at all; it is a case of buying rice that we can resell at a fair price.

Q. If you have yellow grains in rice does it reduce its value?  
A. Yes.

Q. And if you saw one in a sample of that size how much  
40 would it reduce the value of the rice per ton? A. Well, one or two grains, I would say, would reduce it approximately \$5 per ton.

Q. One grain would reduce it \$5 per ton? A. Yes, one or two, I would say.

*In the  
Supreme  
Court of  
British  
Columbia.*

Plaintiff's  
Evidence.

No. 26.  
Edwin John  
Jardine,  
Cross-Ex-  
amination  
May 26th,  
1938.



*In the  
Supreme  
Court of  
British  
Columbia.*

Plaintiff's  
Evidence.

No. 26.  
Edwin John  
Jardine,  
Cross-Ex-  
amination,  
May 26th,  
1938.

—continued.

Q. And if there were considerable yellow grains in it? A. That would reduce it that much more—possibly \$10 or \$15, depending on the number of grains.

MR. MERRITT: Q. Do you see any yellow grains in the sample before you? A. No, I haven't seen any.

MR. DESBRISAY: My lord, I just want to make it clear that the witness has not looked at the sample that is wrapped in paper.

THE WITNESS: No.

Q. You haven't looked at that? A. No, I haven't looked 10 at that.

(Witness aside)

MR. BULL: My lord, I think that finishes the plaintiff's case. I would like to keep it open until tomorrow.

THE COURT: We will sit at 10 o'clock to-morrow. The same caution, gentlemen of the jury, do not speak to anyone about this case.

(COURT ADJOURNED AT 5.45 P.M. UNTIL 10 A.M.  
MAY 27th)

Vancouver, B.C., May 27th, 1938: 10 a.m. 20

(COURT RESUMED PURSUANT TO ADJOURNMENT)

MR. BULL: I have finished the plaintiff's case, my lord.

MR. BOURNE: If your lordship pleases, I submit, my lord, that no case has been made out by the plaintiff to go to the jury. This is an action on a marine insurance policy. The burden of proving that the goods were damaged as a result of one of the risks insured against is always on the plaintiff. I submit he has not discharged that burden. In order to succeed and to have the case go to the jury, he would have to prove firstly that the damage to these goods happened after they were loaded and while 30 they were on the motor-ship "Segundo". He would further have to prove that they were not damaged in any way as a result of an inherent vice in the goods at the time they were loaded. He has the further burden on top of that of proving, even if they were damaged in any way on the vessel, that the damage was the result of a peril of the sea. That is the only risk insured against. I submit in this case there has been no evidence adduced to carry the burden in any one of these respects, that the evidence—that his own case, I submit, is overwhelmingly in fa- 40 vour of the proposition that the goods were damaged and that they were subject to inherent vice as at the time they were loaded on the ship. The evidence already adduced of the effect on the other cargo in the same two holds as the damaged cargo was is

Proceedings  
at Trial,  
May 27th,  
1938.

that they are undamaged, although subjected to all the same conditions throughout the voyage. I submit the burden is not on us of proving that the damage could not have happened on board the vessel. Then again the plaintiff is limited in his statement of claim to the claim that the damage resulted from the battening-down of the ventilators and hatches. That is the limit of his claim, and that that is a peril of the sea.

Now I submit on the evidence already adduced, that of Captain Reid appearing on the log, there was nothing unusual about this voyage from Rangoon to Vancouver at that time of the year. No unusual conditions were encountered, and he also admitted that the closing or opening of the hatches or ventilators was something done by the captain or other officers on the ship in his judgment, for the protection of the cargo and not for any other purpose. Then there was the evidence of Eldridge. Eldridge admitted it was as essential at times to close the ventilators under certain conditions as to have them open. However that may be, the note shown in the log shows nothing unusual about it. Even if it were that the damage happened on the vessel, and even if it were that it happened as a consequence of closing or battening down of the ventilators or hatches, I submit it is not a peril of the sea, and therefore not a risk insured against. I would refer your lordship to the case of *Canadian National Steamships v. William Bayliss* (1937) S.C.R., page 261: "Upon an action against a carrier . . . stowage of the cargo have been given."

A further point is Eldridge's evidence alone. He said—I think I can remember his words almost correctly—that the opening of the ventilators on May 11th or 12th—I am not sure of the date—after having them closed for the period they were, was disastrous. He said they should not have been opened; they should have found some way round it. Now that has been suggested to others. What if that was the cause of the damage? That is not something that is insured against, and would be a question of the carrier and the jobber. It is not a peril of the sea. It is something resulting from bad judgment of the captain, or whoever was responsible, and would not come within the bounds of the policy.

MR. BULL: My lord, I shall have to review the evidence at some length on this. As far as the law is concerned, your lordship may as well have two cases now, *Donkin Creedon & Avery Limited v. S.S. "Chicago Maru"*, 23 B.C.R. 551. He had to consider the meaning of the words "accidents of the sea", which is the same as perils of the sea. The other case is referred to as *The Thrunsoe* (1897) Probate, 301. Each were cases where a cargo was injured owing to the necessity of closing the ventilators

*In the  
Supreme  
Court of  
British  
Columbia.*

—  
Proceedings  
at Trial,  
May 27th,  
1938.

—continued.



*In the  
Supreme  
Court of  
British  
Columbia.*

Proceedings  
at Trial,  
May 27th,  
1938.

—continued.

during the stress of weather, and it was held in both cases to be a peril of the sea. Now with regard to the other points raised by my learned friend, it will be necessary for me to review the evidence not only taken on commission but before your lordship.

THE COURT: I think I will disallow the application. I propose to have the jury find on the facts. This question will be open after their finding.

MR. BOURNE: Then it will be open to us to renew the application afterwards?

THE COURT: Yes, if they answer questions. Supposing 10 they should bring in an adverse verdict—

MR. BULL: I was going to say if my friend had a right to renew this—I did not understand your lordship was giving him the right to renew this.

THE COURT: No, but at the end of the trial when the jury gives their findings, if they answer questions there may be an application.

MR. BOURNE: Will your lordship give me one moment? On that question, my lord, I refer your lordship to 13 Halsbury at page 537: "Where the judge at the conclusion of the plain- 20 tiff's case . . . defendant." I submit it may be renewed at the close of the hearing.

THE COURT: Well, I will hear you on that if you convince me that is so.

MR. BOURNE: I ask that the cargo plan be put in. I thought that was the understanding.

MR. BULL: If my learned friend says there was an understanding—personally, I think it is most misleading and I had no intention of putting it in.

THE COURT: Before we proceed I would ask you to agree 30 upon questions, if you can.

MR. BULL: I have some ready.

---

## DEFENCE.

(Mr. Bourne addresses jury in opening)

MR. BULL: I do not think this is an opening address. This is an argument. The purpose of an opening address is to outline what the nature of his defence will be.

THE COURT: He is discussing your evidence in order to outline his own case.

(Mr. Bourne continues address)

THE COURT: Mr. Bourne, I think you are commenting 40

on your evidence. You will have that opportunity at the end of the trial.

(Mr. Bourne concludes address)

MR. DESBRISAY: My lord, in Mr. Eldridge's evidence yesterday he gave some figures in regard to the loaded weights of this cargo at Rangoon and the weights here. I wish to put in some of the discovery evidence of Mr. Gavin and Mr. Sachs on that point. Question 522—I am discussing now these milling records. Now, my lord, I may say that Mr. Lauchland gave the  
 10 answers. He was at the examination, and Mr. Gavin did not have the information, and Lauchland gave it; Questions 523, 524, 525, 526, 527, 528.

THE COURT: 522 to 528 inclusive?

No. 27.

**Extracts from the Examination for Discovery of Duncan Gavin, An Officer of the Plaintiff Company, Put In By the Defendant.**

203. Q. Well now, was this plan that you are now looking at, which was apparently the stowage plan, or cargo plan of the "Segundo", showing where the rice is stowed—was that prepared by someone in your company, or was it furnished to you?  
 20 A. I think it came from the agent of the steamer here, Anglo-Canadian. We got it from Captain Slater.

204. Q. This is the plan prepared by Captain Slater? A. No, he would get it off the boat.

205. Q. Anyway, this plan that we are looking at is what you might describe as an official cargo plan? A. It is the best we have been able to get.

206. Q. This indicates where the different rice was stowed, or loaded in the ship. A. Indicated roughly the stowage. For  
 30 instance, 1200 bags there, it is altogether out of proportion. That is what I wanted to call to your attention.

MR. DESBRISAY: 522. Q. I want to get the thing generally to start with. You show the net weight in the column after deducting the weight of the sack.

MR. LAUHLAND: The net invoice weight.

523. Q. The total net weight shown on each of these records is the total net invoice weight invoiced to you by the shippers.

MR. LAUHLAND: Yes.

524. Q. Do you weigh these sacks before you put them in?

40 MR. LAUHLAND: Not always.

525. Q. You just take the invoice weight and dump them into the hopper?

MR. LAUHLAND: Yes.

In the  
 Supreme  
 Court of  
 British  
 Columbia.

Proceedings  
 at Trial,  
 May 27th,  
 1938.

—continued.

Defendant's  
 Evidence,

No. 27.  
 Extracts  
 from Exam-  
 ination for  
 Discovery of  
 Duncan  
 Gavin,  
 March 28th,  
 1938.



In the  
Supreme  
Court of  
British  
Columbia.

Defendant's  
Evidence,

No. 27.  
Extracts  
from Exam-  
ination for  
Discovery of  
Duncan  
Gavin,  
March 28th,  
1938.

—continued.

526. Q. The point here, so far as the invoice was concerned, there were 1822 bags at 224, 5678 weighing 220½, that is according to the invoice, and the plaintiff did not know which was which. How did you adjust the situation throughout, in milling 163 did you ascertain which weighed the 220½ and which 224?

MR. LAUHLAND: No.

527. Q. How did you adjust that?

MR. LAUHLAND: How do you mean?

528. Q. How would you know how much of the weight you had actually put through the mill? 10

MR. LAUHLAND: We did not weigh them.

MR. DESBRISAY: Yes, my lord. I will call Captain Watson.

ADAM BROWN WATSON, a witness called on behalf of the Defendant, being first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. DESBRISAY:

Q. Captain, what is your present occupation? A. Marine Surveyor to the Board of Marine Underwriters of San Francisco.

Q. What is the nature of the business carried on by that Board? A. Well, we are independent surveyors and we go around and try to give as fair and as proper advice as we can on anything we can see in the nature of making surveys. 20

Q. That is, you make surveys of marine casualties? A. Marine casualties or damages, yes.

Q. Now in what occupation were you engaged prior to entering the employ of the Board? A. I was a ship master on ocean-going ships for 14 years.

Q. On any particular trades? A. I have traded on the seven seas; I think every place of note.

Q. Have you had experience in the carrying of grain? 30  
A. Grain, yes.

Q. Rice? A. Yes.

Q. Could you indicate what experience you have had, particularly in the carrying of rice? A. I have carried rice from Siam to Europe and from—over the North Pacific, and I have carried part cargoes different times, and I have shipped here for Eastern Canada quite a lot of small parcels of rice.

Q. Did you have occasion to make a survey of the cargo of rice on the motor-vessel "Segundo"? A. I did.

Q. Do you remember when? A. May 1936. 40

Q. And I think the first day you went down was May 29th?

A. That is right.

Q. About what time? A. I got there about 1 o'clock.

No. 28.  
Adam  
Brown  
Watson.  
Examina-  
tion,  
May 27th,  
1938.

Q. And the vessel was at the dock of the Canada Rice Company? A. Yes, Woodward's Landing.

Q. Can you give me a description of the "Segundo"? A. Well, she is what we call a three-island type with two short well decks, if you know what that is. She has a raised foc'sle head and the No. 1 hatch is in the well deck, at the end of the well deck, or where she comes up to the bridge deck, and that is extended from the forward end of the No. 2 hold straight along to the aft end of the No. 3 hold abaft the engine room. Then she drops  
10 down again at the aft hold into a short well deck the same as she has at the forward end. Then she lifts up again into what is known as the poop.

Q. What holds did the vessel have? A. She had 1, 2 and 3. Hatches were in No. 2 Hold. No. 3 was abaft the engine room, and No. 4 hold was in the aft well deck.

THE COURT: Q. How many hatches were there in No. 1 hold? A. One hatch.

Q. How many in No. 2? A. Two in 2.

Q. How many in 3? A. One in 3.

20 Q. How many in 4? A. One in 4.

MR. DESBRISAY: My lord, I have some photographs of this ship. My friend is not prepared to agree that they should go in.

THE COURT: Well, are they of any assistance?

MR. DESBRISAY: Well, they indicate—

MR. BULL: Unless he undertakes to prove them he should not say they are—

MR. DESBRISAY: My lord, the plan that was brought up is in somewhat the same position.

30 Q. Will you describe what a Samson post ventilator is, particularly on this ship? A. Well, a Samson post ventilator is a tall structure with a top on it, and it is placed on the ship, I should say, with the intention of being clear of the water at any time so it can always remain open to let the hot air come out of the hold; that is if they have mushroom tops. If they have cowl tops then they can be used as intakes.

Q. On your arrival at the vessel what did you do on May 29th? A. I went and saw the chief officer of the ship May 29th, and the supercargo.

40 Q. And what did you do? A. I was informed—

Q. You cannot say what you were informed; just what you did? A. Well, the chief officer and supercargo and myself immediately started for the No. 1 hold, and we went down to see the cargo. When we got down there I took my thermometer, which I always carry, and started putting the thermometer into the bags to see what the temperature of the bags was.

In the  
Supreme  
Court of  
British  
Columbia.

Defendant's  
Evidence,

No. 28.

Adam  
Brown  
Watson,  
Examina-  
tion,  
May 27th,  
1938.

—continued.



In the  
Supreme  
Court of  
British  
Columbia.

Defendant's  
Evidence.

No. 28.  
Adam  
Brown  
Watson,  
Examina-  
tion,  
May 27th,  
1938.

—continued.

Q. To what point had the unloading reached at that time?

A. They had started discharging at 8 o'clock in the morning, I understand, or about 8, and then they just started after lunch when I got there.

Q. Would there be considerable cargo out? A. Oh, I have no idea; I do not know.

Q. Well, anyway, you took temperatures in No. 1 hold?

A. That was the start.

Q. Now will you please explain the system under or the manner in which you found this rice stowed when you reached the ship? A. Well, in the No. 1 hold the cargo was stowed well clear of the ship's side, well clear of the forward bulkhead and well clear of the aft bulkheads and in the centre was another resistance face built right across. That was in addition to the ordinary wooden ventilators for rice carriage. 10

Q. What do you call that method of stowage? A. Block system; that is the most modern accepted method.

THE COURT: Q. Transverse of the ship? A. Transverse, yes.

MR. DESBRISAY: Q. What ventilators were there on that hold? A. There was one Samson post ventilator and one cowl ventilator. 20

Q. And what did you find the condition of the rice in No. 1 hold to be? A. It was good.

Q. What is the system of wooden ventilators you speak of that was used in this cargo? A. The rice ventilators?

Q. Yes. A. I don't know.

Q. What are those rice ventilators put in the cargo? A. Well, they are pieces of wood with two solid sides and two frame sides, and they are built with a little 8 by 6, or what they want. 30

Q. And they were placed throughout this cargo? A. And they were placed in accordance with the surveyor's requirements right through and across the cargo and up and down.

Q. Then did you proceed from No. 1 hold? A. From No. 1 we went down to the No. 2 hold.

Q. And what did you do there? A. Then we started taking temperatures there again.

Q. What did you find in the No. 2 hold? A. In the No. 2 hold, the forward end, the sacks were all right, and when we came to the aft end, that would be under the No. 3 hatchway, we found heating, dry heat. 40

THE COURT: Q. Dry heat? A. Dry heat, sir.

MR. DESBRISAY: Q. What was the extent of the heating? A. In my report I gave the exact figures, I think they went in yesterday.

THE COURT: Well, that is all there. Do not repeat that.

MR. DESBRISAY: Q. What rice was stowed in that hold in the way of marks? Was it all the one mark? A. Oh, no, there was several marks there, and on the forward end was Delta, and on the upper end was A.L.Z. and at the aft end was this mark which I found, 163. That was stowed a little bit down, where they were just starting to work when I got there.

Q. Was it—was the 163 stowed in any one place in No. 2 hold? A. Yes, at the aft end of the hold, under No. 3 hatchway.

Q. Will you look at this plan, please, and indicate—exhibit 10 15? A. This is the No. 2 and 3 hatchways covering the No. 2 hold. This here is the No. 2 hold, the whole of that structure.

Q. Put the letter A at one end and the letter B at the other. A. (Witness marks plan). That is the beginning there, and this is No. 3 hatch. Why not put it this way, 1 hatch, 2 hatch, 3 hatch, 4 hatch, 5? How is that?

Q. And No. 2 hold is served by No. 2 and 3 hatches? A. By 2 and 3 hatches to here (indicating).

Q. Put the letter B. A. (Witness marks plan).

JUROR: Q. Is there no bulkhead in this No. 2? A. No.

20 MR. DESBRISAY: Q. Will you indicate where the 163 was stowed? A. The 163 was stowed approximately from there, say about 8 feet head room above all cargo, so it would be stowed about there (indicating).

JUROR: Q. Where is your vent? A. The ventilator?

Q. Yes. A. Here are 1, 2, and here is your Samson post. There is still ventilators here (indicating).

Q. But there is no one between this and this? A. No.

Q. And none here? A. No, just at the forward and aft end of the hold.

30 MR. DESBRISAY: Q. There are two cowl ventilators and two Samson posts, as I understand it? A. Yes.

Q. Now will you describe where other rice was stowed in relation to 163?

THE COURT: He said the other rice was stowed forward of 163.

MR. DESBRISAY: But this is the large hold, my lord, No. 2.

THE COURT: All right.

40 MR. DESBRISAY: Q. Where was the rice of other marks stowed in relation to 163? A. Well, the whole of that lower hold up to approximately the water level was full of other marks, and on top of this 163 I think it was A.L.Z. that was at the aft end and Delta at the forward end, on top.

Q. The forward end of this pile of 163? A. Yes.

Q. That is the end of the 163 extends up— A. To the No. 3 hatchway.

*In the  
Supreme  
Court of  
British  
Columbia.*

Defendant's  
Evidence,

No. 28.

Adam  
Brown  
Watson,  
Examina-  
tion,  
May 27th,  
1938.

—continued.



In the  
Supreme  
Court of  
British  
Columbia.

Defendant's  
Evidence,

No. 28.  
Adam  
Brown  
Watson,  
Examina-  
tion,  
May 27th,  
1938.

—continued.

Q. How far forward on the No. 3 hatchway? A. I think that is about right, about half way along the hatchway. It may be a little bit more or less.

Q. From the hatchway to the square of the hatch, as you might say? A. To the middle of the hatch, yes.

Q. You say you found the condition of the rice in the forward part good? A. That was good, yes.

Q. And the condition of the rice in the aft part you found was what? A. They were busy discharging this mark on top. They were cool, but the mark below of—that is this 163—was hot. 10

THE COURT: Q. That one part was cool, you say? A. Yes, fairly cool; about 80.

MR. DESBRISAY: Q. Did you proceed from the No. 2 hold? A. Yes, we went from there to the No. 3.

Q. How was the cargo stowed in the No. 2 hold? A. That was in four blocks. There was four distinct parcels.

Q. How was it stowed in relation to the ship's sides and bulkheads? A. Clear of the ship's sides, 18 to 20 inches from the bulkhead, and this block system—you could walk down between the channels. 20

Q. Was the vessel dunnaged? A. Yes, she was well dunnaged.

THE COURT: Q. You might explain to the jury what dunnage is? A. Well, dunnage is dry wood that is placed over any place that is likely to get moisture, with the whole intention of preventing the cargo getting that dampness. It is placed right around the sides and bottom of the ship and placed right across the 'tween decks of the ship, and you generally stow fairly close so as to make, not a solid floor but a pretty good grating.

MR. DESBRISAY: Q. You went into the No. 3 hold next, 30 I take it? A. Yes.

Q. How was the rice stowed in that? A. Very similar to the No. 1. It was a smaller hold than No. 2, block system, well dunnaged and clear of the ship's side.

Q. What did you find in regard to the condition of the rice in that hold? A. When I went down into this No. 3, as far as I remember the ladder was at the aft end, and as soon as I got down I was going through the sacks right opposite me and a longshoreman said—

THE COURT: Q. You cannot say that. 40

MR. DESBRISAY: Q. You went down and what did you find? A. Started taking temperature at the forward end.

Q. What rice, what different marks were in this hold No. 3? A. Well, I noticed this 163 was at the forward end again, and the chief officer was with me—

Q. You cannot say what he told you or what you asked him. I want you to tell me what you did. A. Well, I took the tempera-

tures of this mark I found on top, and quite a number of those bags I took temperatures of were marked 163. They were at the forward end of that No. 3 hold.

Q. What other rice was in that hold? A. Well, here I think at the aft end was Selected Delta.

Q. Have you records which you made at the time? A. I have my report.

Q. To which you might refer to refresh your memory? A. I can only repeat what is in the report. At the forward end of this hatch I had 96 degrees to 100 degrees and at the after block it was 80 to 84.

Q. Now do you know the marks of the rice that were stowed in that hold? A. No, I have no record of them here. I know there was several marks, but the one that drew my attention most was this heated rice marked 163.

Q. And what was the condition of the other marks? A. They were very good.

Q. And where were the other marks stowed in relation to 163? A. 163 was stowed in the forward end, up at this end, and I think it was Selected Delta—I am not sure—was stowed in the aft end.

Q. What proportion of the hold? A. Take half way down the hatchway, that would be approximately—I would say that the 163 was stowed at the forward half of the No. 3 hold and that other marks were stowed at the aft half of the same hatch.

Q. Now was there anything stowed above 163 in that hold? A. There was nothing above the 163 when I got there at 1 o'clock in the afternoon.

Q. Did the 163 extend to the bottom of the ship at the place where it was stowed? A. Yes.

Q. Then you left No. 3 hold, I take it, and went into No. 4 hold? A. Right.

Q. What did you find the condition of the rice there as to stowage, dunnage and so forth? A. Stowage and dunnage was the same as the other holds. There was block heads well clear of the ship's sides.

Q. And what did you find the condition of the rice to be in that hold that day? A. In that No. 4 hold, the aft hatch, the rice was good.

Q. You said the heat that you found in the No. 2 hold was a dry heat. What was the heat in the No. 3 hold? A. That also was dry.

Q. How many sacks would you test in each of those holds on that day, May 29th? A. It is hard to make a guess, but in two hours that I was in those holds I figure that I took from 75 to 80 different temperatures of sacks.

*In the  
Supreme  
Court of  
British  
Columbia.*

Defendant's  
Evidence,

No. 28.  
Adam  
Brown  
Watson,  
Examina-  
tion,  
May 27th,  
1938.

—continued.



In the  
Supreme  
Court of  
British  
Columbia.

Defendant's  
Evidence,

No. 28.  
Adam  
Brown  
Watson,  
Examina-  
tion,  
May 27th,  
1938.

—continued.

Q. What space was there between the top of the cargo and the deck head in No. 3 hold? A. 10 feet of head room.

Q. And in holds 1 and 4 what was the head room? A. Approximately 12 feet—10 feet in the aft hatch, 12 feet in the forward hatch.

Q. Did you look at any rice on the dock on May 29th which had been unloaded from the ship? A. Yes, I went on the dock after I came out of the aft hold.

Q. What did you see on the dock? What did you do? A. I took temperatures of various sacks as I went along. They were coming along in sling-loads, and as I went along I would put my thermometer in and try that sling, and go from one to another. For possibly an hour I did that. 10

Q. And did you observe the various marks on the sacks you tested? A. Yes.

Q. And what did you find as to the condition of the sacks, as to heating? A. The one thing that seemed to be predominant there was this 163 seemed to be heated. Other bags, occasionally I would get another bag that was hot, but generally the other bags were 78 and 80. 20

Q. Did you take temperatures of rice and inspect the cargo on days subsequent to May 29th? A. Yes, every day up to the finish of the discharge.

Q. That would be May 30th, June 1st, 2nd and 3rd? A. Right.

Q. And on May 30th did you go into each hold? A. On May 30th I was down Nos. 1, 2, 3 and 4 holds.

Q. What did you find the condition to be in No. 1 hold, the condition of the rice? A. No. 1 and the two end holds were all right. They were well down then. 30

Q. And you went into No. 2 and No. 3 and what did you find? A. There I found that the aft section of the No. 2, that is still under the No. 3 hatchway, was hot, and the same thing applied at the forward end of the No. 3 hold abaft the engine room.

Q. And what did you find the condition to be at the forward end of No. 2? A. They were normal.

THE COURT: We had all this before.

MR. DESBRISAY: This is another day. This is May 30th we are speaking of now.

Q. The discharging was going on continuously? A. Yes, 40 they were working continuously.

Q. Did the condition with regard to the heating in the different marks—was that the same? A. That still remained the same. No. 163 was keeping hot.

Q. And what about the other marks? A. They were vary-

ing. They were going around 80. 84, I think, was about the highest.

Q. Then you went into—On June 1st you were down there?

A. I would like to say, too, on the 30th May when I went back I took two thermometers so as to get around, take a great many more temperatures.

Q. And on June 1st you went back. That would be the Monday? A. Yes.

Q. What holds did you go into at that time? A. Well, there was only cargo left in No. 2 and No. 3 hatches—No. 2 and 3 holds.

Q. What did you find the condition to be as regards heat in No. 2 hold on June 1st? A. On June 1st from my report I see that from the forward end of No. 2 it was 92 and 94 degrees Fahrenheit, and at the aft end it was 103 to 105.

Q. And in the No. 3? A. In the No. 3 hatch at the forward end it was 104 to 106, and at the aft end it was 94 to 96.

Q. And did you take temperatures of all marks on that day? A. Yes.

Q. And what did you observe with regard to the high temperatures? A. I noticed that of these hundreds, above 100 were 163.

Q. And with regard to the other marks which were contiguous to 163 what did you find? A. I noticed in some of the bags that were touching 163, at one end of the bag it would be high and at the other end of the bag it would be considerably less, which showed me that the heat was coming towards that bag.

Q. And where did you consider it was coming from? A. from this 163, which kept uniformly high, up above 100.

Q. How many temperatures did you take on that day, June 1st? A. Well, on these days I should say that on Monday, Tuesday and Wednesday I must have taken considerably over 100 bags each day.

Q. Now June 2nd you again entered the ship? A. Yes.

Q. And you went into 2 and 4 holds? A. That is right.

Q. What did you find on that day in regard to this heating condition? A. It was more or less the same. No, the second, the heating had spread. On the 1st and 2nd it was noticed that heating had spread to adjacent blocks and affected other marks, and that the bags close to the aft blocks in No. 2 had reached close to 100, and in the other hatch the heating was also spreading.

Q. Now in taking the temperatures, when you say in the forward part of the hold, you mean the forward half, do you?

A. Yes.

Q. And the aft half? A. The aft half and the forward half.

*In the  
Supreme  
Court of  
British  
Columbia.*

Defendant's  
Evidence,

No. 28.

Adam  
Brown  
Watson,  
Examina-  
tion,  
May 27th,  
1938.

—continued.



In the  
Supreme  
Court of  
British  
Columbia.

Defendant's  
Evidence.

No. 28.  
Adam  
Brown  
Watson,  
Examina-  
tion,  
May 27th,  
1938.

—continued.

Q. Did you visit the vessel on June 3rd? A. June 3rd I was there.

Q. And what did you find on that day? A. I found on the bottom tiers the temperature was getting less.

THE COURT: Q. Where are you speaking of now? A. No. 2 and No. 3 hatches now, sir.

MR. DESBRISAY: Q. What particular rice are you referring to—all of it? A. All rice was keeping less temperature.

Q. What do you mean by bottom tiers? How many rows of bags? A. About four tiers high, four or five tiers of bags was 10 keeping a less temperature.

Q. What was the nature of the heat on each of these days? A. All dry heat.

Q. I am producing to you a translation of the log of the vessel "Segundo" for this voyage. What exhibit is that— exhibit 7. Have you seen this log and examined it? A. Yes I have seen this and read it.

Q. I think you told us you made voyages from tropical countries through the north Pacific to Vancouver, and across the north Pacific? A. I have. 20

Q. And what have you to say as to whether this was a normal voyage as indicated in this log? A. This voyage was a fine weather voyage.

MR. BULL: I object to that, my lord, whether it was a normal voyage or not. The log speaks for itself. I do not think that is a matter for an expert to say.

THE COURT: I think it is admissable.

MR. BULL: What is normal, that is the point?

MR. DESBRISAY: Will you just explain what you think about this voyage? A. I would say it was a very fine voyage for 30 the time of the year.

Q. Captain, what is the purpose of hatches on a ship? A. The hatchways?

Q. Yes, of the hatch covers? A. To take in and take out the cargo.

Q. What are the hatch covers there for? A. The hatchboards?

Q. Yes? A. Well they are there to cover up the hatch so that no damage gets done. They batten them down to keep the place water-tight. 40

Q. There has been a reference made here during the course of the trial to the fact that the hatches were battened down during part of this voyage, and were not opened. What have you to say about that? A. It is a custom with any cargo that will take damage, or sweat quickly to open up the corner hatchways, while the weather permits, but only in fine weather. That can-

not be looked upon as real ventilation of a ship's holds. That is a risk that any master takes by opening up his hatches. It is done, repeatedly. We have to do it.

Q. Now what is the nature of the cover that is used to put over cowl ventilators? A. A canvas cover.

Q. Well, I want you to— A. Well, the one you put over the cowl is made of canvas, and there is a band around it, with an expansion joint or V-shaped hole, so you can stretch it right around the band, and then it will be tight.

10 Q. Does that render the cowl completely air-tight? A. Oh, no, it will never be air-tight. It keeps the water from getting in.

Q. From your examination of the log was there at any time during the voyage any reason other than for the purpose of protecting the cargo from spray rain or fog for the covering of the ventilators? A. No, as I said, the voyage was a fine voyage in my opinion?

Q. Did the vessel encounter any weather which in your opinion would make it necessary to close the ventilators for the safety of the ship? A. None whatever.

20 Q. I understand the "Segundo" was a motor vessel? A. That is right.

Q. What have you to say as to the heat generated by the engines of a motor vessel? A. The heat that generates in the engine room of the modern built ship is so raised now—

THE COURT: This ship.

MR. DESBRISAY: Q. Refer to this ship.

30 A. Well the heat that generates in the engine room of the "Segundo" would rise and pass out through the engine sky-light. That would be assisted on the "Segundo" because she has two ventilators placed in the forward end of the engine room, and two at the after end, which would help to drive the cold air down and the hot air up.

Q. How would the heat from the motor of the "Segundo" compare with that of a steamship? A. It is considerably less on any motor-ship.

Q. What is the duty of a master in charge of a ship with regard to the ventilation of a cargo, such as a cargo of rice? A. It is the ship master's duty to see that the cargo is ventilated to the best of his ability while on the voyage.

40 Q. Is there any other duty upon him? A. Oh yes, a cargo can be too well ventilated and sometimes, after the closing of the hatches, it becomes necessary that you use a lot of caution in opening up and not let too much cold air get in. If you are going from warm to cold weather, you have got to be very careful and just ventilate easily. All ship masters know that.

*In the  
Supreme  
Court of  
British  
Columbia.*

Defendant's  
Evidence,

No. 28.

Adam  
Brown  
Watson,  
Examina-  
tion,  
May 27th,  
1938.

—continued.



*In the  
Supreme  
Court of  
British  
Columbia.*

Defendant's  
Evidence,

No. 28.  
Adam  
Brown  
Watson,  
Examina-  
tion,  
May 27th,  
1938.

—continued.

Q. From your examination of the log of this ship, was there, in your opinion, any undue interference with the ventilation during the voyage of the "Segundo"? A. The only reference I see to that is in this head sea on the 9th and 10th of May.

Q. Just look at it? A. Yes on the 9th and 10th.

Q. Excuse me—? A. That was the only time there was any real interruption of the ventilation.

Q. And what have you to say about that? A. Well this makes a total of about fifty hours.

Q. It is fifty-three and one-half precisely. My learned friend has said fifty-five; I think he is two hours over? A. Call it fifty hours. When you interrupt ventilation it is not so good, and when you open it up again you have to use some considerable caution, especially when you are opening the hatches at one o'clock in the morning, and you have the dampness of the night air, but there is nothing unduly wrong with 48 or fifty hours.

Q. That is something you would expect? A. Yes got to expect that.

Q. Have you carried rice cargoes from tropical countries to northern latitudes? I think you said you had? A. Yes. 20

Q. Have you in carrying those cargoes experienced as great an interference with ventilation as is disclosed in that log? A. Yes, more than once. In fact, if any master of a ship has gone from Rangoon across the south-west Monsoons to Europe with a cargo of rice, he has got two thousand miles to plug into a head sea and you cannot do that in no two days.

Q. That would mean you would experience weather similar to that? A. Five or six days you would be plunging into a head sea, diving bows under.

Q. And what was the condition of your cargo on arrival? 30

MR. BULL: I object to that. What happened on another voyage has nothing to do with this case.

MR. DESBRISAY: It indicates what may be expected.

THE COURT: I think it is admissable.

THE WITNESS: I had no trouble with rice cargoes.

MR. DESBRISAY: Q. And at the time you were at sea were the methods of stowage of rice the same as the stowage on the "Segundo"? A. No, this block system is an improvement on what we used. That has been the only improvement, and in the last five or six years, I think. 40

Q. By the way, I don't think I got from you, the length of time, Captain, you have been a surveyor for the Board of Marine Underwriters? A. Since 1925, thirteen years.

Q. Captain, what has been your experience as a surveyor? It is in the port of Vancouver? A. All in the Port of Vancouver and district. We take in the whole district.

Q. And you have surveyed cargoes of every description?  
A. All kinds of cargoes.

Q. Have you surveyed rice cargoes? A. Yes.

Q. Do you consider yourself fully familiar with the methods of stowage which should be adopted for such cargo? A. I was asked to give my opinion to the Australian government on the carriage of rice. I think I am.

Q. At the time you surveyed the cargo of rice on the "Segundo" did you form any opinion as to whether or not the damage to the rice marked 163 had been caused by lack of ventilation? A. No, I do not think it was caused by lack of ventilation, although in closing the ventilation you always are putting in something by— If you open it up again you are putting in something that is not normal.

Q. Now if there was a lot of head room in the ship and the log indicates the vacant space in the holds of the vessel was 128,000 cubic feet, what would you say the effect of that circumstance would be in respect to the ventilation? A. Well, you have a good chamber of air that is helping to let the cargo cool off all the time.

Q. What proportion of the whole space is 128,000 cubic feet? A. I was just looking here. It is approximately one-third of the capacity of the ship. The cargo holds 396,000 feet.

Q. I believe you have looked at the entries in the log from April 24th, the date the vessel sailed to May 8th? A. Yes.

Q. Will you tell me what those entries indicate to you the state of the weather was and what you would expect would be the effect upon the cargo during that period? A. There was nothing there other than an ordinary fine voyage. The ship is proceeding along good. She is making good average speed. She is not meeting any heavy weather. Everything is going along fine and dandy, as we would say.

Q. What would be the temperature of the sea water that the vessel went through, during the first two weeks of the voyage?

MR. BULL: Well—

MR. DESBRISAY: Q. Captain, what does the fact that you find a high heating in the 163, and the others not heated indicate to you? A. My opinion was at that time that the cargo was heated before it was put on board, and I also think if that was not the case it was a bad carrier. There are some rices that are bad carriers and will not stand the salt water atmosphere.

Q. From your experience, what would you expect the appearance of rice or other grain damaged from lack of ventilation in the hold to be? A. It would shrivel.

Q. I beg your pardon? A. It would shrivel.

THE COURT: You said you had no experience of that?

In the  
Supreme  
Court of  
British  
Columbia.

Defendant's  
Evidence,

No. 28.  
Adam  
Brown  
Watson,  
Examina-  
tion,  
May 27th,  
1938.

—continued.



In the  
Supreme  
Court of  
British  
Columbia.

Defendant's  
Evidence,

No. 28.

Adam  
Brown  
Watson,  
Examina-  
tion,  
May 27th,  
1938.

—continued.

MR. DESBRISAY: No, not with his cargoes, but he has been surveying here for thirteen years, my lord.

THE COURT: Q. You said the rice would shrivel? A. Shrivel.

MR. DESBRISAY: Q. Would there be anything on the sacks to indicate that? A. Yes, I think that—not if it was dry heat, no.

THE COURT: Q. You say it would shrivel if the damage was caused by bad ventilation? A. No, I didn't say that.

Q. What would cause it to shrivel? A. If it was dry heat it would start shrivelling. 10

MR. DESBRISAY: Q. What is the result if it is moist heat? A. Then it turns mouldy, specks of mould, black specks.

MR. DESBRISAY: Q. I wonder if I might interrupt this examination to put in some further discovery? There was a stowage plan which was produced by the plaintiff, and I examined for discovery. I asked these questions, 203 to 206 of Mr. Gavin's discovery, (reading). I submit, my lord, that stowage plan should go in.

THE COURT: Any objection? 20

MR. BULL: For what it is worth but not as an accurate plan of the stowage because here is one space which is about three times another one, and the larger space holds 986 bags, and the smaller space holds a great many more so it could not possibly be accurate.

THE COURT: We have got from this witness the stowage of all the cargo as it was actually stowed.

MR. DESBRISAY: Yes, my lord. I just want him to indicate on this plan which of the parcels—well I don't need even to ask him that because the rice 163 has been identified as Intereo Brose and it is shown on this plan. 30

THE COURT: We have got all that. It is only confusing to put that in.

MR. DESBRISAY: If your lordship thinks it might confuse—

THE COURT: I do not think it will help the Jury.

MR. DESBRISAY: I appreciate all these cargo plans are more or less an approximation. They are not expected or intended to be accurate.

Q. After you complete a survey what is it your duty to do? A. Make up a report covering everything I see. 40

Q. Did you make up a report in this case? A. I did.

Q. And did you give in that report?—

THE COURT: No, that is giving the contents of the report.

MR. DESBRISAY: Q. Your report I think, is dated July 15th, 1936? A. Yes, that is July 13th.

Q. July 13th is it? Before submitting that report did you see any officer of the plaintiff company? A. Mr. Gavin saw this report, and he passed it in my presence to Mr. Lauchland for comments, and they held it there for five or six days, I don't know which.

Q. Did you receive it back? A. I got it back without any comments.

*In the  
Supreme  
Court of  
British  
Columbia.*

Defendant's  
Evidence,

No. 28.

Adam  
Brown  
Watson,  
Examina-  
tion,  
May 27th,  
1938.

—continued.

CROSS EXAMINATION BY MR. BULL:

Q. I understand that you are the representative in Van-  
10 cover of the Board of Marine Underwriters of San Francisco?

A. I am one of three.

Q. And you are paid a salary to represent them? A. I am  
paid a fixed salary by the Board of Marine Underwriters.

Q. You are exclusively in their employ? A. Absolutely.

Q. And I understand the Board of Marine Underwriters  
of San Francisco is an association of companies which write  
marine insurance? A. Yes.

Q. And your regular duties are to make a survey for the  
Board of any cargo or marine loss in respect of which a claim is  
20 made or about to be made against the company? A. Or any  
other company.

Q. I say any insurance company? A. Or any shipping  
company.

Q. Is it your duty to make a survey or examination in cases  
where a claim may be made against an insurance company? Just  
answer that yes or no? A. Yes.

Q. And you have been doing that for thirteen years? A.  
Thirteen years.

Q. You have pretty well the point of view of the insurance  
30 companies in respect of all those claims have you not? A. I don't  
think so.

Q. Have you got the point of view of the insurance company  
or have you not? A. No.

Q. Whose point of view have you got then when you embark  
on a matter of this kind? A. I try to be unbiased in all my  
reports.

Q. We have that already. You said that in your opening.  
In this particular case you were requested by or on behalf of the  
defendant company to make this examination were you not? A.  
40 That is Macaulay, Nicolls & Maitland, is it?

Q. Are you aware that Macaulay, Nicolls & Maitland were  
agents of the defendant insurance company? A. I did not know  
that Macaulay, Nicolls were agents for any insurance company  
I was on then.

Cross-Ex-  
amination,



*In the  
Supreme  
Court of  
British  
Columbia.*

Defendant's  
Evidence.

No. 28.

Adam  
Brown  
Watson,  
Cross-Ex-  
amination,  
May 27th,  
1938.

—continued.

Q. For whom did you think they were acting when they instructed you to make this examination? A. I didn't think. They asked me to make a survey on the rice and I went and made it.

Q. Did you know there was insurance on the rice? A. No.

Q. When did you find that out? A. Oh, about the time the cargo was finished discharging.

Q. How did you find it out? A. I suppose it came to my attention. I don't really know.

Q. I beg pardon? A. I suppose it was just passed on to me. 10  
I don't know how I got that information.

Q. By whom? A. I don't know. Macaulay, Nicolls, I should think.

Q. Well, when you were requested by Macaulay, Nicolls & Maitland, and by the way, you knew they acted for an insurance company? A. Oh, yes.

Q. To make this examination and report, for what purpose did you think it was being done? A. Well, the information that I got—

Q. No, please answer the question. A. How can I answer 20  
the question unless I give you the information I got.

Q. Do you know the question I asked you? If not I will have it read to you. A. I didn't know.

Q. You had no idea? A. No idea.

Q. Until the examination was over? A. No.

Q. Although you saw Mr. Lauchland there on the 29th of May? A. Yes.

Q. Did he mention insurance to you? A. I have no recollection whether he mentioned insurance or not.

Q. Will you say that he did not? A. I would not say that 30  
he did not.

Q. When you first went there you took your thermometer with you? A. Yes.

Q. Why did you do that? A. I always carry my thermometer.

Q. Were you told when you were requested by this insurance agent to make this examination there was heating damage to the cargo? A. They said there was some rice heated. Would I go out and look at it.

Q. And that was all they told you? A. That was the infor- 40  
mation I had.

Q. And you took your thermometer out there and arrived at one o'clock on May the 29th? A. That is right.

Q. Is that right? A. That is correct.

Q. And you made an examination— You heard Mr. Lauchland's evidence did you not? A. I heard some of it, yes.

Q. Did you hear Mr. Lauchland say you told him you were insurance surveyor for an insurance company? A. I never told anyone that in my life.

Q. Did you hear Mr. Lauchland say that in the witness box?  
A. Yes.

Q. Is that true or no? A. No.

Q. It is untrue? A. It is incorrect.

Q. You did not tell Mr. Lauchland at any time, that you were a surveyor for an insurance company? A. No.

10 Q. Although that was the truth? A. No, I was surveying for the Board of Marine Underwriters of San Francisco.

Q. Which is an association of Marine Underwriters? A. That is correct.

Q. You started then on May 29th. I suppose you had surveyed cargoes of rice before? A. Yes.

Q. In Vancouver? A. At the Canada Rice Mills and in Vancouver.

Q. And you had your thermometer with you because you thought the temperature was important? A. I always take my  
20 thermometer.

Q. You do? A. Yes.

Q. What would you expect the temperature of a cargo of rice to be? A. Discharged at the Canada Rice dock in the month of May in weather like this it would be over 80°.

Q. What? A. It would be around 80°.

Q. That would be normal? A. That would be normal.

Q. Weather like the present day you mean? A. Yes.

Q. What was the weather like at this same time two years ago? A. Just very similar to that.

30 Q. Was it warm? A. Yes.

Q. Have you a clear recollection of that? A. Yes.

Q. There is nothing in your report about it? A. No.

Q. Have you any idea what the temperature is today? A. The temperature today?

Q. Yes. A. Outside?

Q. Yes. A. I have not been out since 10 o'clock. I should think right now it is about 70°.

Q. Do you know what it was? Would you be surprised to know on May the 28th, 1936 when the vessel arrived the temperature was 54. A. I was not there on the 28th of May.

40 Q. I am afraid we have not it for the 29th. But you say there was quite a difference between the 28th and the 29th? A. the 29th, the 30th and the Sunday, and Monday and Tuesday and Wednesday were nice warm days.

Q. And on such days you would expect the temperature to be around 80°? A. Yes.

*In the  
Supreme  
Court of  
British  
Columbia.*

Defendant's  
Evidence,

No. 28.

Adam  
Brown  
Watson,  
Cross-Ex-  
amination.  
May 27th,  
1938.

—continued.



In the  
Supreme  
Court of  
British  
Columbia.

Defendant's  
Evidence.

No. 28.

Adam  
Brown  
Watson,  
Cross-Ex-  
amination,  
May 27th,  
1938.

—continued.

Q. On discharge? A. Yes.

Q. That would be what you would expect normally? A. Normally.

Q. And under those circumstances, the bags of rice would have a nice cool feeling when taken off? A. You can tell more or less within ten degrees.

Q. It would have that cool feeling one would expect of rice in good condition? A. Yes.

Q. So that if you found a temperature of over 80, you would know there was something wrong? A. Not exactly 80. I think 10 rice at 85 is alright.

Q. You said a moment ago 80, and we will stick to that. So if you have found temperatures in excess of that you would think it was abnormal? A. No not abnormal. You would think it was warming up.

Q. Now on the day when you got there, when you went into the Number one hold you found there was sweating along the sides of the ship, between the stringers and the plating? A. Yes.

Q. What did that sweating indicate to you? A. That the 20 cold water of the Fraser River striking the side of the ship—

Q. To be more exact you are making a guess? It means there is moisture condensation there? A. Yes.

Q. That moisture was coming from where? A. That was coming from the ship's shell, penetrating through the shell.

Q. Is that your idea of the condensation of the water? A. That is condensation.

Q. That the moisture comes from the ship's shell. A. Yes, where that ship, or where the cargo was stowed below the level of the water. 30

Q. You are serious about that? Your idea is that the condensation found on the side of the ship's plating came from the ship's steel? A. No, it is formed on the ship's steel. The condensation is formed on the ship's steel.

Q. You don't understand my question? Where did the moisture come from—that was condensed on the ship's side? A. Your rice is warm, and the water on the outside of the ship is cold, and the two are blending on the shell of the ship. Therefor your moisture or your heat coming out towards the cold will form a moisture on the shell of the ship. 40

Q. It is moisture coming out of the atmosphere and condensed on a colder surface? A. Yes.

Q. That is what you found in the Number one hold on the 29th of May? And then in the Number two hold you also found sweating in the same places. A. On the ship's side.

Q. Now in Number two hold on that first day, the tempera-

tures in the forward part were 75 to 80. A. 75 to 80.

Q. And at the outer part it was 94 and 95? A. 94 to 95.

Q. Which would indicate something abnormal to you?

A. Yes.

Q. Now you went down into the No. 3 hold? A. Yes.

Q. And you took temperatures and you found that the forward end was 96 to 100? A. 96 to 100.

Q. And in the aft block, 80 to 84? A. That is right.

10 Q. And you also found there was sweating between the damage over the cargo stringers and the shell plating? A. Yes.

Q. Then in the No. 4 hold you found it much more normal. 82 degrees forward and 78 aft? A. That is right.

Q. Also you found sweating there? A. On the ship's side.

Q. Now those were all the temperatures you took that day, is that correct? A. That is the average of the temperatures.

Q. I beg pardon? A. That is the average.

Q. Would you say how many different sacks you tested?

A. Well, I was two hours in those four holds and I figure that the thermometer will take one temperature in a minute. I could take  
20 78 to 80 in the four holds—I don't know.

Q. That was the actual temperature of the rice in the atmosphere? A. That is the rice in the sacks.

Q. And you took them regardless of the marks on the bags?

A. Yes.

Q. You took the temperature of all the bags there? A. As I went around there.

Q. So you might say on that particular day no one cargo showed a different temperature than another. A. The only thing I noticed was this 163 seemed to be coming up more rapidly  
30 than the others.

Q. That was distributed around the different holds, was it not? A. No. In the Nos. 2 and 3 holds only.

Q. By the way, this is correct, is it not—that except for the small amount of 163 in the 4 hold, the 163 was stowed in No. 2 hold aft? A. Yes.

Q. And in No. 3 forward; and that would be next to the engine room bulkhead? A. That is right.

Q. Just while I am on that, did you hear Mr. McLaren's evidence? A. No.

40 Q. About the heating of the engine room of a motor-vessel? A. No. I got in too late.

Q. Do you agree with this: it will never be less—the temperature of the engine room on a motor ship will never be less than the temperature of the air, will it? A. No.

Q. That is the starting point. It must be greater because

*In the  
Supreme  
Court of  
British  
Columbia.*

Defendant's  
Evidence,

No. 28.

Adam  
Brown  
Watson,  
Cross-Ex-  
amination,  
May 27th,  
1938.

—continued.



In the  
Supreme  
Court of  
British  
Columbia.

Defendant's  
Evidence,

No. 28.  
Adam  
Brown  
Watson,  
Cross-Ex-  
amination,  
May 27th,  
1938.

--continued.

of the dissipation of the heat of any engine, steam or diesel? A. That is correct.

Q. Now that dissipation is less in a motor ship than in a steam ship? A. It is considerably less than a steamer.

Q. Do you agree with regard to the heat generated by the combustion of oil about 40% is usefully employed? A. Yes, about that.

Q. Of the remaining 60% about half is distributed by the circulating water? A. Yes.

Q. And the other half by the exhaust? A. Yes. 10

Q. And the hot circulating water and the hot exhaust heat the engine, don't they? A. Yes.

Q. Do you know the temperature of the exhaust on a motor ship when working full power? A. Somewhere around 400 I believe.

Q. Would you agree with 600 to 700? A. That may be possible. I am not an engineer.

Q. Do you know the heat at which the circulating water will be discharged? A. No.

Q. Will you agree with 110 to 120? A. I would say that, 20  
more or less.

Q. Will you also agree the warmth in the engine room would be conducted through the bulkheads and be the means of increasing the temperature in the adjoining holds? A. No.

Q. Why do you disagree on that particular? A. Because on the "Segundo" we find right here on the plan two ventilators at the foremost end of the engine room, two in the after end of the engine room, which would drive the cold air down and prevent the heat from going through the bulkheads into the holds.

Q. You will agree that the engine room would be warmer 30  
than the atmosphere? A. Sure.

Q. Probably would be warmer than the atmosphere in the adjoining holds? A. Yes.

Q. In that case there must be heat conducted through the bulkhead? A. No, the heat is going up through the skylight.

Q. You say it all goes up there? A. Most of it.

Q. Now the next day, that is the 29th, you went there again. How long did you spend there on the 29th? A. The 29th, the first day, I spent there—

Q. In the afternoon of the 29th? A. That is right. 40

Q. Now, in the afternoon is it true that you found bags of all marks which showed heating? A. I found a few bags of all marks, yes.

Q. When you say "a few bags" do you mean the bags you tested, or just a few of those which you tested? A. A few of the bags I tested.

Q. How many did you test, apart from the 163? A. I should think that in the No. 1 hold—I am working on memory—I might have taken 12 different sacks, or 15, and in the aft hold I would take about the same, because I found the temperatures low; but in the centre holds I would take the balance.

Q. What do you mean—the balance? A. I said I would take 75 to 80 temperatures on the first day I went there, and if I took 30 in the two holds, that would be 50 in the centre holds.

Q. And you took those of different marks? A. Yes.

10 Q. Did you keep any record of how many temperatures you took of bags other than 163? A. Yes, the chief officer was taking those down as we read them. The chief officer was with me and he would say—

Q. Never mind what he said. A. That is all I have to work on.

Q. He is not here. Did you keep any record, I say, of those tests which you took for other than the 163 in the two centre holds? A. I marked them down in my book.

Q. Have you got that book? A. No.

20 Q. You are not prepared to say how many temperatures you took of rices other than those marked 163? A. No.

Q. But you did find that some bags of all marks showed heating? A. Yes.

Q. Was there any decision arrived at with regard to the stowage of the 163 separately? A. Yes.

Q. Who decided that? A. Mr. Lauchland and I were talking—it was in the afternoon—and I asked him what he was doing, or something to that effect, with this 163, and he said “I am stowing it separately”, and I said “That is fine”.

30 Q. Now I am instructed that the 163 was stowed in the usual place in the warehouse. What do you say about that? A. It was stowed in the warehouse, but whether—

Q. In its usual place? A. Its usual place—It had just arrived; how could it be its usual place?

Q. If you are trying to be funny, please don't. The usual place which is usually allotted to that particular kind of rice. Do you understand that? A. Well, I don't know where they keep it, but that is what he told me, they were stowing it separately so they could get at it later on.

40 Q. On May 30th you attended again? A. Yes.

Q. At what time? A. About half past eight, was it.

Q. Half past eight in the morning. How long were you there? A. I was there about an hour.

Q. All day? A. That is all—I was called away.

Q. And it was on that date you noticed a musty odor amongst the bags of rice? A. A musty odor, a slight musty odor

*In the  
Supreme  
Court of  
British  
Columbia.*

Defendant's  
Evidence,

No. 28.

Adam  
Brown  
Watson,  
Cross-Ex-  
amination,  
May 27th,  
1938.

—continued.



*In the  
Supreme  
Court of  
British  
Columbia.*

Defendant's  
Evidence,

No. 28.

Adam  
Brown  
Watson,  
Cross-Ex-  
amination.  
May 27th,  
1938.

—continued.

in No. 2 and No. 4.

Q. On that day the rices from Nos. 1 and 4 holds were discharged, completed? A. They were completed that day.

Q. And the next day you went was June 1st. What day of the week was that? A. That was on Monday.

Q. And you took the temperatures again in Nos. 2 and 4? A. Yes.

Q. And in No. 2 at the after end you found the temperatures very high, 103 to 105, didn't you? A. Yes.

Q. And No. 4 forward end, 104 to 106? A. That is correct. 10

Q. At the after end of No. 4 it was lower? A. Yes.

Q. Was there any 163 stowed in No. 4? A. At the after end?

Q. I say was there any 163 stowed in No. 4 hold? A. In the forward end, yes.

Q. In the forward end? A. Yes.

Q. That is where you put the higher temperature? A. That is the high temperature, yes.

Q. I am instructed that the only 163 in No. 4 hold was at the after end? A. Well, I saw the 163 at the forward end. 20

Q. I am instructed at the forward end there were 1092 bags of Steel Loonzain, and at the after end—

MR. DESBRISAY: I object to any reference being made to the plan, if that is what my learned friend is doing.

MR. BULL: I have said nothing about it.

Q. I am instructed there was no 163 in the forward end of No. 4 hold, but there were some 36 bags at the after end? A. There was a lot at the forward end.

Q. Have you made any plan of the stowage? A. No. I have just here what I took down when I made this report. 30

Q. Never mind reading your report now unless you have got some record showing a list of the 163 in the No. 4 hold. Have you? A. No.

Q. We have it at the after end— At the forward end of No. 4, the temperature was 104 to 106, and the after end was 94 to 96? A. On what day was that?

Q. I say that was on June 1st. A. The forward end 104 to 106; the after end 94 to 96.

Q. And do you still maintain the 163 was stowed at the forward end? A. I do. 40

Q. And you are relying now entirely on your memory? A. Yes.

Q. Without any record made?

MR. BOURNE: There is a record made and I do not think my learned friend should take him away from it.

MR. BULL: What is it?

MR. BOURNE: The record is the report, and you have told him not to look at it.

MR. BULL: Q. Where is there any record of the 163 being stowed in the forward end of No. 4 hold? A. I think I said more than once it was shown that the heat was in the Interco Brose, 163—

THE COURT: You are entitled to look at your report for the purpose of refreshing your memory as to where the 163 was stowed in the No. 4 hold. A. It doesn't say here.

10 MR. BULL: Q. Then you have no record of the stowage in the No. 4 hold, have you? A. No.

Q. Exactly what I said. And you are relying entirely on your memory? A. On my memory.

Q. Now on June 2nd you went again—a musty odor again, by the way? A. Oh, a slight musty odor.

Q. In 2 and 4? A. Yes.

Q. On June 2nd you were there again and you found the temperatures in No. 4 about the same? A. About the same.

20 Q. On June 1st and 2nd you say— Or did you find that heat was any different in No. 4? A. The 1st and 2nd?

Q. On the 1st and 2nd? A. I said that the heat was spreading to adjacent blocks and affecting other marks.

Q. Well now, in No. 4 did you say that the heating was found to have spread to the various marks? A. During the 1st and 2nd it was noted that the heating had spread to adjacent blocks and affected other marks.

Q. I am referring to what you are stating, that in the No. 4 hold the heating was found— A. To have spread to the various marks.

30 Q. Explain what you mean by that—from what mark to what mark? A. Well, there was here a lot of cargo that was hot, different marks; besides that at one end of the bag sometimes I found a temperature much warmer than at the other end of the bag, which shows the heat was coming from this central part.

Q. Take it in a way we can understand. On June 1st you found the temperature in No. 4, 104 at the forward end and 94 at the after end? A. Yes.

Q. Which way did it spread? A. It was spreading from forward, aft.

40 Q. That is it was spreading from the rice which was forward into the rice which was aft? A. Correct.

Q. So that if the 163 was actually aft, the heat was spreading from the Steel Loonzain to the Interco Brose, the 163? A. The 163 was forward.

Q. I say assume the 163 was aft, will you? A. Yes.

*In the  
Supreme  
Court of  
British  
Columbia.*

Defendant's  
Evidence,

No. 28.

Adam  
Brown  
Watson,  
Cross-Ex-  
amination,  
May 27th,  
1938.

—continued.



In the  
Supreme  
Court of  
British  
Columbia.

Defendant's  
Evidence.

No. 28.

Adam  
Brown  
Watson,  
Cross-Ex-  
amination,  
May 27th,  
1938.

—continued.

Q. Then you would say if the Steel Loonzain was forward—  
A. If forward—

Q. Then you would say that the heating spread from the Steel Loonzain to the 163? A. If that was correct.

Q. That is all I want. A. Yes.

Q. Why do you use the word "spread"? You said you wanted to go there and make a fair report. Why did you say it had spread? Just explain that. You could not see a spread, could you? A. No, but you could take it by the temperature of the sacks. You would find that a sack, as I said before, at one end was higher than the other, and yet it was not in that forward stock. 10

Q. The cargo was being discharged all the time? A. Yes, sure.

Q. How could you say on one day or another that the heating was spreading from one lot to another? A. Well, there was still cargo in the hold and the heating had gone from the central part, where I thought it was, to sacks which were adjoining them.

Q. What you want to do, and there is no doubt about it. You wanted to indicate in your report that the 163 was hotter than the other and that was contaminating the rice of other marks. Is that what you want to suggest? A. That is it. 20

Q. And what basis did you have for making a suggestion of that kind? A. For the simple reason that that cargo, that 163 was hot, and the other marks that were not touching it, were not so hot.

Q. Well, follow up that. Where does that lead you? A. It shows the 163 was causing the heat to spread or to expand.

Q. Can you say there was any spread of heat, as you call it, between June 1st and June 2nd? A. No, but we were lower down in the hold. 30

Q. Yes, you were lower down. What you mean is that as you got lower down you found rice of other marks was of a higher temperature? A. Yes, than it was the day before.

Q. And you choose to call that heating. How can you say the day before? You did not take the temperature of that rice the day before? A. No, I could not get down that low.

Q. So that is what I am coming to. You are putting a very unfair inference, I suggest, on to what you found there, and without any warrant for it, is that not correct? A. I don't see it. 40

Q. All right, we will leave it at that. A. Yes.

Q. Now on June 3rd you found the discharging was completed during the afternoon? A. Yes.

Q. And it was found that the temperatures were less than obtained previously? A. Correct.

Q. It had a chance to cool off, I suppose. Is that correct?  
 A. No, because we were working there before that, the night before, and the temperature was warmer on the 2nd of June than it was on the 3rd. There was only the night air to cool it off.

Q. Did you find sweating and mildew over the flooring of these holds? A. Yes, along the flooring and along the sides.

Q. On June 8th, that was after the discharging, sometime after the discharging. At that time you certainly knew you were acting for an insurance company, didn't you? A. Yes.

Q. And you attended on behalf of the insurance company at the milling of a sample lot of 163? A. I attended at the milling of the 163.

Q. That was a sample lot milled in your presence as a representative of the insurance company? You can say yes or no to that. A. I didn't know—I was still working for the board. You can call it an insurance company if you like.

Q. The board was acting for an insurance company. You knew at that time you were acting for an insurance company? A. I knew there was an insurance company implicated in the matter.

Q. And you and your board were acting for that insurance company? A. Yes, I suppose.

Q. You attended the milling of this sample and you found the white rice had a distinct yellow film on completion of the milling? A. Yes.

Q. And samples were taken by you to an analysing chemist for testing purposes? A. Correct.

Q. Who was the chemist? A. Norman Armstrong.

Q. And then you attended on June 11th on further tests of A.L.Z.? A. Right.

Q. Which was considered of good average quality on completion, is that correct? A. Correct.

Q. Then between June 12th and the 15th millings were made of other shipments, the Delta and the Kalagyi? A. Yes.

Q. Now at that time you had certain conversations with Mr. Lauchland, didn't you? A. Yes.

Q. And you heard his evidence here, didn't you? A. I heard part of it.

Q. On what day did you have those conversations with Mr. Lauchland? A. I first met Mr. Lauchland on the 29th. That was the day I went out there.

Q. Did you tell Mr. Lauchland, that would be after the test runs, that the rice could not be considered first grade rice and it would have to be a lower grade? A. That is the 163?

Q. Yes. A. Yes.

Q. Now, did Mr. Lauchland say to you that although the

*In the  
 Supreme  
 Court of  
 British  
 Columbia.*

Defendant's  
 Evidence,

No. 28.

Adam  
 Brown  
 Watson,  
 Cross-Ex-  
 amination.  
 May 27th,  
 1938.

—continued.



In the  
Supreme  
Court of  
British  
Columbia.

Defendant's  
Evidence.

No. 28.

Adam  
Brown  
Watson,  
Cross-Ex-  
amination,  
May 27th,  
1938.

—continued.

other marks like the N.L.Z. and K.G. and A.L.Z. were all more or less damaged, they would confine their claim to the 163? A. They said they would confine their claim to the 163 because there was insufficient damage to any other mark to warrant a claim.

Q. Now can you answer my question. I want to get an answer yes or no to that. Did Mr. Lauchland say that although the other marks like N.L.Z. and K.G. and the A.L.Z. were all more or less damaged, he would confine the claim to the Intero Brose? A. No, I was never given to understand that.

Q. Well, your answer is in the negative? A. In the nega- 10  
tive.

Q. You heard Mr. Lauchland say that? A. Yes.

Q. And you say that is not true? A. No, I was never given to understand that.

Q. As a matter of fact you, with Mr. Lauchland, tested a great many bags in the warehouse didn't you, during the course of the unloading? A. I guess I went through there with quite a few number of bags with him.

Q. Do you remember the day? A. I could not say what day; most likely every day, I should think. 20

Q. Do you remember an occasion when Mr. Lauchland was in the No. 2 warehouse telephoning and you came in? A. I don't know which is the No. 2 warehouse. Is that the top one?

Q. Do you remember finding him telephoning in the warehouse? A. Yes.

Q. You do remember the occasion? A. Yes.

Q. And did you ask him where the bags were that Mr. Lauchland complained of as being hot? A. Yes, something to that effect.

Q. Did you say that you had been on the boat and you could not find any over a temperature of 84 degrees? A. I said I could not find any out of the No. 1 or 4 holds that were over 84. 30

Q. Did you go with him to the No. 1 warehouse where the rice was being piled? A. Yes.

Q. And he showed you sacks on one of the trucks? A. Yes.

Q. Did you put your thermometer on one bag and it showed a temperature of 94 degrees? A. That is quite possible.

Q. And on another truck showing a temperature of 96? A. That is possible.

Q. And after examining a few more sacks on other trucks, 40 did you say there was not any more you could do that day? A. Well, I guess so if he says so. I don't remember that.

Q. Did Mr. Lauchland explain to you that the bags that were then coming from the ship were not as hot as some he had found when the rice came off the boat in the morning? Do you remember that? A. No.

Q. Now, do you remember June 1st, seeing Mr. Lauchland?  
A. Yes.

Q. When you were examining some bags that day coming out of hatch No. 4—that is hold No. 3? A. Hold No. 3.

Q. You remember that? A. Yes.

Q. There were two bags on a truck in the warehouse both marked 163? A. Two separate bags?

Q. There were two bags on a truck in the warehouse, both marked 163. You took the temperature of one; it was 94, and the other was 98? A. That is quite possible. I was taking temperatures all the time.

Q. You also tested a bag out on the dock, of 163, which showed 96. Do you remember that? A. I don't remember those actual bags that I took. I know I was doing this.

Q. Do you remember going to where the N.L.Z. was which came out of hold No. 3? A. Yes.

Q. And tested one bag which showed a temperature of 94?  
A. That is quite possible.

Q. And another bag, of 98? A. That is quite possible.

20 Q. Another of 100? A. 100?

Q. 100. This is N.L.Z.? A. No.

Q. You don't remember 100? A. No, I don't remember anything over 94 there.

Q. You were quite satisfied that the stowage was good and sound? A. Good sound stowage.

Q. Loaded under the supervision of a qualified surveyor?  
A. Correct.

Q. The facilities for ventilating were quite good? A. Yes, quite good.

30 Q. Well now, before you made your report, I understand that you asked the Port Warden at New Westminster for his report—is that correct—Captain Slater's report? A. I don't think I would ask him for his report. We sometimes pass it to each other as a matter of compliment.

Q. I have been instructed, Captain Watson, that you asked Captain Slater for his report, before you wrote your own. What do you say about that? A. I have no recollection of that.

40 Q. Do you deny it? A. I don't deny it because I often see him and we talk things over before we make up our reports very frequently.

Q. Your report is dated the 15th of July? A. The 13th of July.

Q. His report was made on the 13th of June? A. I could not say that.

Q. Did you see his report and read it before you made your

*In the  
Supreme  
Court of  
British  
Columbia.*

Defendant's  
Evidence,

No. 28.

Adam  
Brown  
Watson,  
Cross-Ex-  
amination,  
May 27th,  
1938.

—continued.



In the  
Supreme  
Court of  
British  
Columbia.

Defendant's  
Evidence,

No. 28.

Adam  
Brown  
Watson,  
Cross-Ex-  
amination,  
May 27th,  
1938.

—continued.

own? A. No, I didn't see his report; I spoke to him but I have no recollection of seeing his report.

Q. I am instructed that you did have his report and I want you to charge your memory with that carefully? A. No, I know I was speaking to him, we spoke together before that, but I have no recollection of having his report.

Q. You don't deny definitely you might have had it? A. I may have had it.

Q. You may have had his report; I am instructed that you had, and you have no recollection, so that is as far as you will go? 10

A. That is correct.

Q. Although it is dated a month before yours. Now, did you read this? Will this remind you whether or not you saw the report, or did you hear it from him: he says "Examined cargo and found the cargo in No. 1 and 4 holds and in Nos. 2 and 3 lower holds to be quite heated, and the heat being evolved was a very damp heat as the bags were damp and hot. Some of the rice in said holds smelt quite musty." Do you remember that expression in his report? A. I remember him telling me about that.

Q. But you don't remember seeing his report before you 20 made yours? But before you made your report he did tell you what I have just read? A. Yes, he had told me information just the same as I had given him information.

Q. And you made no comment to him when he told you that the heat being evolved was a very damp heat as the bags were damp and hot? A. I have known Slater for a long time.

Q. Never mind that. Did you make any comment to him? A. Quite possibly I did.

Q. Do you remember making any comment to him? A. No.

Q. You cannot say that you did then? A. No. 30

Q. And still you did not incorporate in your report the very important thing which this public servant found? A. That is this damp heat you are referring to?

Q. Exactly what I am referring to. A. I did not see this damp heat.

Q. And you did not incorporate it although you had the information from this public officer that was a fact? A. But I had been there.

Q. But you are representing the insurance company. I think you said a moment ago in chief that on June 1st you found 40 no temperature of cargo other than 163 was over 100; is that right?

A. On June 1st?

Q. Yes. A. Outside of 163, that is right.

Q. Did you have when you made your report before you, Captain Slater's report, in which on June 1st he says that he found— "Again examined cargo in the Nos. 3 and 4 lower holds

and the bags of rice were found damp and heated to about the same degree— On this occasion I took temperature of the rice—” and he gives the Interco Brose No. 2 lower hold N.L.Z., temperature 106 and 103; the number of the lower hold bags marked Steel Loonzain 106½, 105½, 106½, 106. Did you have that information? A. I did not have that information from him.

Q. So apparently Captain Slater found something that you did not find? A. Probably.

Q. You will, I suppose, agree with Mr. McLaren—you know him by reputation, don't you? A. Yes.

Q. And with Captain Reed, the Harbour Master—you know him? A. I know him.

Q. The primary intention of Samson posts is to support the bearings? A. That is a small matter; it is not worth bothering about because sometimes they have no bearing on them.

Q. Would you agree with those two gentlemen who got in the box and pledged their oath to that effect? A. No, they are erected with the intention of getting the hot air out of the holds. That is their primary object.

20 Q. You disagree, I take it? A. I disagree.

Q. And you say their primary intention is to take the hot air out of the holds? A. Yes.

Q. But as ventilators they are— A. Personally, I am not in favour of them.

Q. You must have something which is an intake? A. I want an intake as well as an uptake.

Q. You looked through this log? A. Yes.

Q. And you say this is a very fine voyage for the time of the year? A. Yes.

30 Q. What time of the year would you expect a worse one?  
A. In the month of January or the month of April.

Q. What sort of a voyage would you expect in April or May?

A. You expect some bad weather.

Q. You expect some? A. Yes.

40 Q. Now you have gone carefully through this, have you? I particularly draw your attention to May 8th, 9th, 10th and the early part of the 11th, where the wind got up to a whole gale. A. The 8th we get a fresh breeze, a strong breeze, fresh breeze, strong breeze; 9th, half a gale, half a gale, and from 8 o'clock in the morning we get fresh gale, fresh gale, half a gale, fresh gale, fresh gale, half a gale.

Q. You are now on the 10th? A. Yes, a strong gale at noon on the 10th.

Q. Whole gale? A. Strong gale, strong gale, fresh gale.

Q. Do you see— A. Oh, yes, whole gale underneath on the third watch 8 to 12 in the morning.

*In the  
Supreme  
Court of  
British  
Columbia.*

Defendant's  
Evidence,

No. 28.

Adam  
Brown  
Watson,  
Cross-Ex-  
amination,  
May 27th,  
1938.

—continued.



In the  
Supreme  
Court of  
British  
Columbia.

Defendant's  
Evidence,

No. 28.  
Adam  
Brown  
Watson,  
Cross-Ex-  
amination.  
May 27th,  
1938.

—continued.

Q. And fresh gale? A. Fresh gale.

Q. Until the first watch on the 11th? A. On the 11th.

Q. And then fresh breeze? A. Yes.

Q. And you will note for 55½ hours the ventilators were closed? A. The cowl ventilators were closed.

Q. And there were heavy head seas pitching spray over the deck and hatches? A. Yes.

Q. Vessel pitched heavily, heavy head seas. Then on the fourth watch on May 11th, with spray over the fore part of the vessel? A. On the 11th? 10

Q. On the 10th, the fourth watch? A. Yes, over the fore part of the vessel.

Q. If you had been master of the ship would you have closed the ventilators? A. On the forward end, yes.

Q. I asked you if you would close the ventilators? A. The ventilators? Yes.

Q. You would leave open the aft ones? A. The aft ventilators are all right.

Q. Why would you close them? A. Because there was spray coming around. 20

Q. What difference does that make? A. You don't want spray to get down in your holds.

Q. Why? A. Because it will cause damage to the cargo.

Q. So the reason the captain of the ship closed the ventilators was for the safety of the cargo? A. Was to stop the cargo getting wet.

Q. Why not adopt my language? It was for the safety of the cargo? A. To prevent damage.

Q. Can you answer my question? Did he close them for the safety of the cargo or not? A. Yes. 30

Q. And you would have done the same thing, would you not? A. I might not, with the weather.

Q. You say with regard to the hatchways their primary purpose is to take in and take out cargo, as we all know? But you agree when you have a cargo of grain on board the more you keep your hatchways open for the purpose of ventilation the better? A. You generally do that.

Q. Anything which will readily sweat, as you said, should have as much ventilation as possible? A. That is my opinion.

Q. Now you say that you see no reason for the closing of 40 the ventilators on the 9th and 10th—that is on the 9th and 10th May.

MR. DESBRISAY: He did not say that.

MR. BULL: I understood him to say that.

Q. What do you say about the 9th and 10th; that is the weather I have been referring to? I have a note here— I will

be very glad to know you did not say it—that you saw no reason for closing of the Ventilators on the 9th and 10th May. Did you say that? A. I don't remember saying that.

Q. You don't remember saying it? You did not say it? A. I don't remember saying it.

Q. If you did you did not mean it? A. I didn't mean that on the 9th and 10th.

Q. Now there are some other entries in this log. I want you to refer to page 31 or page 30. This is on May 17th. A. Right.

10 Q. It starts off with "Strong breeze" and gets down to "strong gale" in the last watch? A. Yes.

Q. And then the next day, a strong gale, sea very precipitous. You will see it was precipitous all day? A. Yes.

Q. With a heavy gale in two of the last three watches. That is correct, is it not? A. That is correct.

Q. And on the 19th May, at page 32, starting with heavy gale down to moderate gale? A. Yes.

Q. You say you see nothing unusual in that? A. No, there is not. That weather is right behind the ship. That is west  
20 north-westerly, the wind right behind it. It was helping it. It was not against her in any way.

Q. You say you came to the conclusion as the result of your examination this cargo was heated before it was put on board, or that it was a bad carrier? A. Yes.

Q. Will you kindly state your reasons for giving that opinion? You did not see it when it went on? A. I did not see the cargo when it was put on.

Q. You did not see it until it arrived? A. And I did not see it until after it got here.

30 Q. And you will bear in mind that a surveyor has certified it was in good condition when it left Rangoon. Why did you report to this insurance company in your opinion it was heated before it was put on? I want you to give all your reasons. A. Well, the heat in the hold and around the bags was dry. That is my opinion shows that it started in a small space and gradually extended. Had it developed on board the ship there would have been evidence of that sweating or condensation. There was none on board the "Segundo."

40 Q. Anything else? A. The reason why I say it might have been a bad carrier was because when the hatchways were closed, that is on the 8th May, and they were opened, that was really from my point of view not a good thing to do; but at the same time if the rice had been as good a carrier as the other parts it would have stood the test. It did not stand the test. That is why I said it was a poor carrier.

Q. Which reason do you base your opinion upon—it was

*In the  
Supreme  
Court of  
British  
Columbia.*

Defendant's  
Evidence,

No. 28.

Adam  
Brown  
Watson,  
Cross-Ex-  
amination,  
May 27th,  
1938.

—continued.



In the  
Supreme  
Court of  
British  
Columbia.

Defendant's  
Evidence.

No. 28.

Adam  
Brown  
Watson,  
Cross-Ex-  
amination,  
May 27th,  
1938.

—continued.

heated before it left or it was a bad carrier? A. I think it was heated before it was put on board ship.

Q. You are excluding the question of it being a bad carrier?

A. Yes. That is a secondary reason.

Q. You exclude that and rest your opinion—

MR. BOURNE: That was a secondary reason, he said.

MR. BULL: Q. Which are you going to adopt now? A.

Maybe both. There are certain rices that won't carry.

Q. Have you any reason to say this is a bad carrier? A. 10  
Except what I found in the hold.

Q. What did you find in the hold? You don't know any-  
thing about the different grades of rice? A. No.

Q. Or their different properties? A. No.

Q. Or whether one will carry well or not. You don't know  
anything about that? A. No. I know there are certain rices  
won't carry.

Q. Is there any single thing which will suggest to you this  
rice was a bad carrier? A. Well, the reason I say is the other  
rice carried well. Why would not this one carry well.

Q. As a matter of fact that is merely a guess, is it not? Is 20  
that not true, Captain Watson? You are just guessing at it?  
A. Yes, I am guessing there.

Q. Therefore we get back to your first reason that it was  
damaged before it left Burma, and that is it was heated before it  
left there? A. Yes.

Q. Now that is all we have got to worry about as far as you  
are concerned, and your reason for stating that is—your reasons  
are that it was a dry heat? A. Yes.

Q. That is no. 1? A. That is the reason; it was a dry heat.

Q. And the secondary reason is there was no sweating? A. 30  
There was no sweating.

Q. You have already said there was sweating on the sides  
of the ship? A. The sweating is on the sides of the ship, due, as  
I said, to the cold water causing the condensation. There was no  
sweating on the cargo.

Q. How do you know there was no sweating on the cargo?  
A. I was down there and saw it there.

Q. What is your idea of how heat is generated in this rice?  
Have you any idea or theory? A. The rice is hot when it is put  
on boat. The ship is travelling through water that is making it 40  
cooler, and if it does not cool down as is expected, well, then it is  
still heating in itself.

Q. Did you hear Mr. Gardner Eldridge's evidence? A.  
No.

Q. You were not here when he was called yesterday as an  
expert, an analytical engineer or chemist, and you are not familiar

with his theory of how this happened? A. No.

Q. Do you think there can be heating in this rice without moisture? A. There is moisture in rice, considerable moisture.

Q. How do you think heating is generated in a cargo of rice? What is your idea of that? A. Generated from itself by the heat that is contained therein.

Q. That is your idea, the heat in the rice? A. Yes.

Q. The heat inherent in the rice? A. Inherent.

Q. Causes the rice to heat; is that your idea? A. Yes.

10 it? Q. You don't think that moisture has anything to do with it? A. Oh, yes, it has quite a lot if it shows outwardly.

Q. How do you mean, outwardly? A. The moisture will show on the outside.

THE COURT: We will adjourn until a quarter past two. Gentlemen, be careful not to speak to anyone about this case.

(COURT ADJOURNED AT 1 P.M. UNTIL 2:15 P.M.).

(2:15 P.M. COURT RESUMED PURSUANT TO ADJOURNMENT).

A. B. WATSON, Resumes the stand.

20 THE REGISTRAR: You are still under oath, Captain Watson.

CROSS-EXAMINATION RESUMED BY MR. BULL:

Q. Captain Watson, just before I leave this question that I was on, that is your reason for the assertion that the cargo was heated before it was shipped in Rangoon. I understood you base that on the following reasons: first, it was a dry heat. Is that right? A. Dry heat.

Q. Second, there was no sweating or— A. That is right.

Q. Now do you want to add anything to that? A. No.

30 Q. All right, that covers it. Now do you know that there can be no heating of such a commodity as rice without moisture?

A. There is a moisture content which it must always have.

Q. I am putting it to you plainly. Do you suggest that there can be heating of a commodity such as rice without moisture?

A. There must be moisture to form fermentation.

Q. There must be moisture before there can be fermentation? A. Yes.

Q. That is so? A. Yes.

40 Q. Now if the port warden was right when he says that the heat was a very damp heat as the bags were damp and hot, that would destroy your first reason, wouldn't it? A. That does not agree with my opinion.

*In the  
Supreme  
Court of  
British  
Columbia.*

Defendant's  
Evidence,

No. 28.

Adam  
Brown  
Watson,  
Cross-Ex-  
amination.  
May 27th,  
1938.

—continued.



In the  
Supreme  
Court of  
British  
Columbia.  
—  
Defendant's  
Evidence.

No. 28.  
Adam  
Brown  
Watson,  
Cross-Ex-  
amination,  
May 27th,  
1938.

—continued.

Q. I am putting it on the assumption now that it is right?  
A. Yes.

Q. And I say assuming he is right that the heat being evolved was a very damp heat and the bags were very damp and hot, that would destroy your first reason? A. That would be destroyed, yes.

Q. So that would only leave then the absence of sweating or condensation? A. Yes.

Q. And how do you know there was no condensation on this rice during this voyage? A. Because there was no evidence of any to the bags. 10

Q. What evidence would you expect to find? A. Specks of mould, or water dripped all over the bags or on the sides of the ship above the level of the cargo, on the hatchways, and that would drip down on to the bags.

Q. You said there was no sweating at all or no condensation of moisture on these bags during the voyage? A. There was none on the bags.

Q. I say during the voyage. All you can say is this, and is not this true; that as far as you could see when the cargo arrived here there was no evidence of condensation? A. Sure, that is a better way to put it. 20

Q. Although there may have been during the voyage? A. But we saw no bags—there were no bags shown to me that there was moisture seen on the outside throughout the cargo.

Q. Are you giving your considered opinion that if there were condensation on the bags during the voyage they must show on arrival? A. Yes.

Q. Well, you didn't hear then, as I said before, the evidence given by Mr. Eldridge? A. No, I didn't hear Mr. Eldridge. 30

Q. I will tell you what I understood is his opinion—that the air in the holds was a high percentage of humidity— A. Yes.

Q. —and when the cowl were closed the humidity would increase. That sets up a saturated condition of the air. Then when the ventilators were opened and the cool atmosphere was allowed to enter, that formed a fog which would condense on the outside of the sacks and the grain adjoining the outer portion of the sacks and then fermentation would set in? A. That is more or less my idea.

Q. That is your idea? A. Yes. 40

Q. So we have got to the point on this now, that your opinion is based on the fact that when the ship arrived there was no evidence on the outside of the bags of any condensation?

A. That is right.

MR. BOURNE: That is not a fair way to put that question. It is based on the assumption—my friend does not put it

properly because it is based on the assumption as to what Captain Slater had in his report and the witness has not agreed to that.

THE COURT: The witness has just agreed to it.

MR. BOURNE: The witness said he did not agree with Captain Slater's statement at all, and now my friend puts it as though he did.

*In the  
Supreme  
Court of  
British  
Columbia.*

Defendant's  
Evidence,

RE-DIRECT EXAMINATION BY MR. DESBRISAY:

No. 28.

Q. Will you just look at this plan please and tell me where hold No. 4 which was referred to in your cross-examination, is  
10 located in relation to the engine room? A. Hold No. 4 is abaft the engine room.

Adam  
Brown  
Watson,  
Cross-Ex-  
amination,  
May 27th,  
1938.

Q. Immediately abaft the engine room? A. Immediately abaft.

Q. And is there a hold abaft that? A. There is one, No. 5, abaft that.

Re-Exam-  
ination,

Q. And I understand that there are four holds with two hatches? A. That is right. No. 2 and No. 3 holds.

Q. And when you refer to hold No. 4 that is referring to the third hold which is abaft this engine room? A. First hold  
20 abaft the engine room.

THE COURT: Q. In your opinion you say that you found the heat was dry when you went on board the ship? A. Yes, sir.

Q. And you say you think there was no condensation during the voyage because if there had been you would have expected to find signs of that on the sacks? A. Right there.

Q. And when you didn't find that you think there was no condensation? A. That is my opinion, sir.

THE COURT: That clears up your difficulty, Mr. Bourne.

MR. BOURNE: Yes, my lord.

30 (Witness aside).

MR. DESBRISAY: I call Mr. Armstrong.

NORMAN LESLIE ARMSTRONG, a witness called on behalf of the Defendant, being first duly sworn testified as follows:

No. 29.  
Norman  
Leslie  
Armstrong,  
Examina-  
tion,  
May 27th,  
1938.

EXAMINED BY MR. DESBRISAY:

Q. Mr. Armstrong, what is your profession? A. I am an analytical and consulting chemist.

Q. Of how many years experience? A. The last four years I have been the manager of the firm known as Norman L. Armstrong Limited. Prior to that I was for some fifteen years with  
40 a well known reputable firm in Vancouver in the same line of business.

Q. What is your business? A. Well, our business concerns many problems of chemistry, part of which is looking after com-



*In the  
Supreme  
Court of  
British  
Columbia.*

Defendant's  
Evidence,

No. 29.

Norman  
Leslie  
Armstrong,  
Examina-  
tion,  
May 27th,  
1938.

—continued.

modities shipped in and out of the port of Vancouver; includes large cargoes of peanuts and such things as corn, fish meal—products of that kind.

Q. Is it your business to examine such cargoes? A. We examine cargoes at times, yes, for a specific reason. We don't make surveys of cargoes.

Q. For what reason do you examine cargoes? A. Examine cargoes for various types of damage, infestation.

THE COURT: Q. What? A. Infestation with vermin, and things of that kind; moisture contents; the quality of the 10 cargo on arrival and despatch.

MR. DESBRISAY: Q. Have you in your practice and experience had to do with the ventilation of cargo in vessels? A. We have examined ventilation. As a matter of fact I have devoted part of my time for two years in the province of ventila- tion, but I don't call myself a ventilation engineer or anything like that. I am familiar with the problems of ventilation.

Q. You might explain to the jury what causes sweat and condensation to appear on the inner sides of a vessel, for instance when a vessel comes into the port of Vancouver and its hatches 20 are opened up, if you find condensation there, or sweat on the sides of the ship, what is the cause of that? A. The so-called sweat is caused by condensation of moisture in warm air; the moisture being caused is deposited on the cold surfaces such as the side of the vessel or cargo.

Q. Well, as I understand it the warmer the air the more moisture it would hold? A. Yes, that is right.

Q. And if warm air comes in contact with a cool surface the effect of that is to cool down the air which came in contact with the cool surface to a point where it will not hold all the moisture, 30 and then that condenses on the cool surface in the way of sweat? A. That is right, providing your warm air is saturated with moisture. You can have warm dry air. But if the air is warm and moist and it cools down it must liberate some of its moisture.

Q. If it is cooled down to the point where it liberates what- ever moisture there is in the air, then there is condensation? A. That is right.

Q. Were you present in court yesterday when Mr. Eldridge gave his evidence? A. Yes, I was.

Q. You heard him describe what he thought must be the process that went on—basing it on certain assumptions that he was asked to make? A. Yes. 40

Q. In ordinary plain language that we would understand would you describe the process that he stated—

MR. BULL: My lord, I object to one witness being called

to describe the evidence given by another. He may give his own opinion—

THE COURT: If you can give us a description it will be your own opinion? A. The simplest way possible, we would call it a process of sweating or condensation, your honour.

MR. DESBRISAY: Q. Sweating of what? A. If the problem concerned the cargo it might be due to the moisture in the cargo. It might be the air.

Q. Now I believe you tested a sample of this particular rice after the arrival of the ship? A. Yes, we examined two samples from that shipment—alleged to be from that shipment—for moisture.

THE COURT: Q. When you say "we" do you mean yourself? A. Yes, the firm. It happened to be me in this case.

MR. DESBRISAY: Q. And do you recall how the samples were marked, what symbols or markings they bore? A. I have a copy of my report. One was 163, which we have discussed, and the other A.L.Z. Brose.

Q. What did you find the moisture content of each to be? A. 11.3% moisture, and the other was 11.5 I believe.

Q. Which was 11.3? A. The 163 was 11.3% and the A.L.Z. was 11.5.

Q. Now it has been given in evidence here that this parcel of rice 163 was unloaded from the ship in a heated condition with the temperature running up to over 100, and that the heat was a dry heat; the rice was dry, not moist. What does that condition indicate to you as to whether or not the heating took place on the ship or elsewhere? A. Well, I would not attempt myself to describe a wet or dry heat, but if it was a dry heat we must admit that the heat being dry contained little or no moisture. That being the case, and there is no evidence of moisture existing at that time, immediately before the moisture may have existed at a time and while heated be dissipated into the air.

THE COURT: Q. I do not understand that. You say the air is dry. A. If the air is dry there would be no moisture in it, little or no moisture in it.

Q. And what do you deduce from that? A. That the cargo was heated but there was no evidence of moisture immediately present. Moisture in there must have been dissipated at some time prior to the time the cargo was examined, and the air in contact with it being in a dry, warm condition. In other words, speaking about moisture damage, there is no indication of moisture damage at that time. The moisture factor must have occurred before.

MR. DESBRISAY: Q. Before when? A. Before the time of examination when the ship was found to be warm and dry.

*In the  
Supreme  
Court of  
British  
Columbia.*

Defendant's  
Evidence,

No. 29.

Norman  
Leslie  
Armstrong,  
Examina-  
tion,  
May 27th,  
1938.

—continued.



*In the  
Supreme  
Court of  
British  
Columbia.*

Defendant's  
Evidence,

No. 29.  
Norman  
Leslie  
Armstrong,  
Examina-  
tion,  
May 27th,  
1938.

—continued.

Q. Well then, does the fact that it arrived in that condition indicate anything as to the ventilation it must have had within a period—that is during the period of its voyage for instance, which was something over thirty days?

MR. BULL: May I ask what document the witness has before him?

THE WITNESS: This is the report showing the moisture content of the two shipments, which has been quoted previously. Speaking of the sample that came into my possession there is no indication of excess moisture in the shipment at the time I examined it. Previous to that if moisture had been in that rice the ventilation must have taken care of it. Say rather excess moisture, because all rice contains a certain amount of moisture. 10

MR. DESBRISAY: Q. I understand that there is what you might call a safe moisture content for shipping grain, and unsafe moisture content. If you have rice with a moisture content of 12% for instance, what have you to say as to the carrying qualities of that rice and the necessity for ventilation on a voyage such as took place here—that was from Rangoon to Vancouver?

A. Well, rice with a moisture content of 12% would keep indefinitely in a confined air space, even with a temperature variation all the way from zero to 130; it would not require ventilation at all. Rice of that moisture content is stored for months and months without ventilation whatever. 20

Q. Now if you are told that this particular parcel of rice, a large portion of it, was milled—that is the paddy was milled off it somewhere up country from Rangoon between March 3rd and March 10th and that it was brought to the vessel somewhere between April 13th and April 23rd, and that from the time it was milled until it reached the ship it lost an average in weight of 3½ pounds for each 224 pound bag, would that circumstance indicate anything to you? A. It would indicate one of two things, either the rice was drying out in that time due to—I wouldn't say artificial, but due to quite high conditions of temperature; or if the rice had an abnormal moisture content to start with it is possible the rice could have started heating, it could have lost that moisture content due to being subjected to conditions of high temperature. In other words it could have dried out to that amount, or if the rice to begin with had an abnormal moisture content it could have become heated in that time, and the heat could have driven off that amount of moisture. 30

Q. What do you mean, it could have become heated? A. Well, in the process— We have a process of germination, the natural growth in rice in which it begins to grow, and with excessive moisture the rice will begin to heat. Some shipments of grain will heat almost to combustion point. 40

Q. What would the fact that it shrank to the extent it did during that four or five weeks indicate to you as regards moisture content? A. You are speaking of the time the rice was milled until the time it was loaded in the ship?

Q. Yes, in five weeks at the outside it shrank an average of 3½ pounds to each 224 pound bag. A. Well, in a hot climate, relatively high temperatures, there are several factors could influence that rice. The rice could have become heated, as I say, and it could have been dried. But as a matter of fact without knowing the moisture content a person could not say definitely.

Q. No, but I am asking you can you form any conclusion as to whether the moisture content was high or low? A. I would say abnormal, higher than normal, because rice is much like wood, it has what we call a "moisture regain". That is excessive moisture—it tends to equalize, and if it dries up too much it tends to pick up moisture. By losing that weight I would say the moisture would be on the excessive side.

Q. If you are told that in the hold of this ship, in addition to a parcel of 750 tons of rice, rice with various other marks was stowed, and that the damage occurred, or the consequential damage occurred only to this particular parcel, what conclusion would you draw from that? A. Generally speaking under even conditions I would be very suspicious of that particular parcel to start with.

Q. Well, will you explain a little farther. You used the word suspicious. I would just like you to explain what you mean? A. From your question I assume that you have two parcels of rice in one hold in a ship.

Q. Well, there are several parcels. A. If several parcels were stowed under equal conditions, and carried under equal conditions, and if one parcel by itself began to heat, and the other parcels did not, I would be certainly very inclined to think that the parcel that heated had an excess of moisture to start with, or was subjected to some influence different to the other parcels. As a matter of fact to really answer that question, it is conceivable that the rice—that particular shipment—may have been loaded on the ship in a warmer condition than the other. It might be in the earlier stages of heating when it was loaded on the ship. Those are all possibilities. And normally we have the moisture content of the shipment when loaded. If we have not got the moisture content we are forced to make certain assumptions.

Q. Well, we have not the moisture content. Mr. Eldridge in his evidence stated that this rice would have at the time of the loading in Rangoon a temperature, in view of the heat of the atmosphere down there, of 85 to 90 degrees. That being so would

*In the  
Supreme  
Court of  
British  
Columbia.*

Defendant's  
Evidence,

No. 29.

Norman  
Leslie  
Armstrong,  
Examina-  
tion,  
May 27th,  
1938.

—continued.



In the  
Supreme  
Court of  
British  
Columbia.

Defendant's  
Evidence.

No. 29.  
Norman  
Leslie  
Armstrong,  
Examina-  
tion,  
May 27th,  
1938.

—continued.

it be possible for heating to have commenced, or to perhaps be finishing? A. It is possible at any time.

Q. And have been overlooked, by reason of the atmospheric condition, in the loading? A. Yes, if the heating were commencing—not descending, going down—it could be overlooked.

Q. And if it had been heating before it was taken from the go-downs, what would the effect of handling it in the boats or lighters or loading in the ship, be upon the heating? A. Well, the heat generated, the heating would be retarded at least momentarily in the breaking down of the piles, and then when the rice is restacked again it is possible that heating would recommence. Those are distinct possibilities. I can't say exactly how they refer to this particular lot. 10

Q. Have you examined the log of the Segundo? A. Yes, I have.

Q. I would ask you to refer to the period from April 24th, the day she sailed, until May 8th; that is about sixteen days. From your examination of that log and looking at the record in regard to the weather and ventilation, what condition do you consider that rice or cargo would be in on May 8th as compared with the condition it was in when it was loaded on board at Rangoon—that is normally? A. In other words we have an approximate period of two weeks. 20

THE COURT: Q. The question is, was there anything in the weather which prevailed during that period, to affect the rice if it was in good shape? A. Well, in that two weeks, your rice would tend to dry out appreciably, due to ventilation, due to moisture being taken off by ventilation.

MR. DESBRISAY: Q. Now if the rice had been shipped with a safe moisture content would you expect within the period—that if the cowl ventilators have canvas covers over them for a period of 53½ hours and the hatches are on and the Samson post ventilators are open—if you have the condition on May 9th and 10th and part of the 8th when the ventilation is interfered with to the extent I have indicated, what does the theory that this rice became heated and suffered damage in that period of 53½ hours lead you to—what conclusion? A. I will have to couple that with your first question that the rice had been ventilated for two weeks, roughly speaking. We have to assume from your question that the rice was shipped in good prime condition; after shipping, we may call it being subjected to a conditioning process for two weeks. In other words moisture being restricted, and then after two weeks your ventilation would be restricted, if the rice were in good condition as to moisture content at the start of the voyage the moisture would really be the same after the two weeks of continued ventilation. At that time, 50 40

hours of restricted or probably total lack of ventilation would not have any appreciable effect on the rice, providing there was not a great temperature change, and I see that the temperature change was not very great. I have the high temperature here showing 90, and 69 is the low temperature, the lowest temperature around about 63—62, low temperature 62 in those two days, which is a very minor change from day to night.

Q. Well, what would you have to say if it were three days?

A. Three days? There would be very little difference to the two days because we have to remember this, that when rice is in good condition it doesn't give off moisture, and it is comparatively slow with rice which is conditioning from a little extra moisture.

Q. By extra moisture you mean over the safe moisture content? A. Over the safe moisture content, about 14%.

Q. Now if there is any condensation or sweat to any extent in a hold during the voyage, what would you expect to find in your experience, on the out-turn of the cargo? Would it be dry, or moist? A. We generally find some bags containing mould on the top part of it, evidence of dripped sweat, and more than often there would be a sour smell with fermentation taking place. As a matter of fact you may even have "caking". Moisture promotes mould on the areas of the bags where sweating has come in contact with them.

Q. If you were shown a bag of rice in which there is heating and there is less heat in the centre of the bag and more heat on the outer side of the bag, and the rice is dry, it is dry heat, what would that indicate to you? A. Would you mind repeating that question again?

Q. If you were shown a bag of rice which is heated, and there is more heat on the outside of the bag than in the centre of the bag, and the heat is a dry heat, what would that indicate to you? A. Well, it could mean that the rice is warming up. It could actually mean that the rice is warming up. It could mean several things. I would not like to comment on that question because I believe there would be two or three things might be factors in that.

#### CROSS-EXAMINATION BY MR. BULL:

Q. Mr. Armstrong, I understand that when you finished high school you went to work for Mr. Gardner Smith Eldridge who was the last witness? A. Yes.

Q. And you had no previous experience or study in this particular line? A. Not at that time.

Q. And you stayed with Mr. Gardner Eldridge for fifteen years? A. Nineteen and a half to be exact.

Q. Nineteen and a half years? A. Yes.

*In the  
Supreme  
Court of  
British  
Columbia.*

Defendant's  
Evidence,

No. 29.

Norman  
Leslie  
Armstrong,  
Examina-  
tion,  
May 27th,  
1938.

—continued.

Cross-Ex-  
amination.



In the  
Supreme  
Court of  
British  
Columbia.

Defendant's  
Evidence.

No. 29.  
Norman  
Leslie  
Armstrong,  
Cross-Ex-  
amination,  
May 27th,  
1938.

—continued.

Q. And about three years ago you started on your own?

A. Four years ago.

Q. So what you have learned, it is fair to say, you learned of Mr. Eldridge? A. I learned a great many things of Mr. Eldridge, but I learned quite a few things myself in my own study. I attended University for a year and—

Q. Mr. Eldridge's firm is a reputable firm? A. Yes.

Q. Now you sat here during his examination? A. Yes.

Q. In fact you were instructing counsel for the defendant in respect to his evidence? A. I made no comments to Mr. 10  
Bourne. I was holding a watching brief.

Q. I am not criticizing, I am just saying that you followed the evidence very carefully? A. Yes.

Q. And understood thoroughly what he said, did you? A. I did my best to follow him, yes.

Q. And do you quarrel with anything he said? A. I might disagree about some points in his evidence, Mr. Bull.

Q. Well, would you tell me of any point in his evidence that you would disagree with, because we can possibly boil it down that way. Just state how many there are and give them? A. 20  
Well, I could not say. I think probably I could take any specific question that you can give me, if I agreed. Mr. Eldridge had in the questions that you put to him—primarily there were a great many questions raised there which were rather hard for me to follow. Mr. Eldridge would have to presume on certain answers because you were making assumptions there which candidly I had a little difficulty in following at the time.

Q. Well I want to deal with it on the basis that the assumptions which were put to Mr. Eldridge were correct. Now you followed his evidence pretty closely? A. Yes, I listened to 30  
the evidence.

Q. And you understood probably better than we all did—being a chemist—what he was getting at. Is that right? A. Yes.

Q. Well now, isn't it fair to ask you in what respect, if any, do you disagree with anything Mr. Eldridge said? A. Well, on the questions put to Mr. Eldridge, certain ones of the questions put, the answers would be correct. Speaking of a shipment of grain being prime rice on the boat, so far as being a point it is not a matter of agreeing with the evidence. But you stated there, brought out that evidence, that if the temperature of the rice re- 40  
mained the same during the whole shipment—scientifically the rice must cool off a little if it comes from a warm climate to a cold climate. Well, we can't say the rice maintained its same temperature, but generally speaking it holds the temperature quite high. And then in the evidence there you bring out the point of the ventilation being restricted and the air in the hold

being heated to roughly a temperature of the rice, at which temperature I believe Mr. Eldridge stated the air held six times more moisture than at some other temperature, which I haven't got right now, whether it was 40 degrees or— In the evidence that was brought out that when cold air, when the ventilation is opened again and cold air is allowed in, that the cold air chills off the warm, moist air and precipitates a fog or sweat, which goes on the sacks. Where I disagree with that evidence is this, that there are certain compensating factors must be regarded. In the first  
 10 place when you ship the rice you will have the warm air inside, and when you admit cold air you must have some place for the warm air to go, and by the process of ventilation all that warm air dissipates in the atmosphere ahead of the cold air before it can drop its moisture. Now that may be a fine point, but it is very hard for two people to agree specifically on one thing.

Q. On the assumption that all the hypotheses that were put to Mr. Eldridge are correct— A. Yes.

Q. —do you disagree in any single particular with what he said? A. Except there is one instance; I will disagree in one  
 20 instance.

Q. There is only one instance, is there? All the facts being correct that were put to him, there is only one instance that you disagree with him?

MR. BOURNE: I think where the question was as long as it was my learned friend should give the question again and then let the witness express himself. Because if he had as much difficulty in following as I had it would be very difficult for him to deal with it in the way the questions were put.

THE COURT: He says as far as he can recollect. He does  
 30 not attempt to remember the whole question.

MR. BULL: Q. I am not referring to any particular question. I am assuming, Mr. Armstrong, that you understood what Mr. Eldridge was saying. That was why you were here, of course. And you followed it very closely, and you do understand what he said, don't you? A. I think so.

Q. Now I am putting it to you, and it is a very easy question to answer; assuming that all the facts that I put to Mr. Eldridge are correct, in what particulars, if any, do you disagree with what he said? Now, first, tell me is there more than one instance where  
 40 you disagree with him? A. Well, I am afraid, yes, there are two or three instances.

Q. Well, give them all, one after another. What is your first one? A. Well, you must address my memory to your question.

Q. Never mind my question. What particular statement that he made do you disagree with? A. In your question you

*In the  
 Supreme  
 Court of  
 British  
 Columbia.*

Defendant's  
 Evidence,

—  
 No. 29.

Norman  
 Leslie  
 Armstrong,  
 Cross-Ex-  
 amination,  
 May 27th,  
 1933.

—continued.



In the  
Supreme  
Court of  
British  
Columbia.

Defendant's  
Evidence,

No. 29.

Norman  
Leslie  
Armstrong,  
Cross-Ex-  
amination,  
May 27th,  
1938.

—continued.

assumed that the grain was shipped in good condition. I believe I am right now?

THE COURT: Yes, that is right.

MR. BULL: That is correct. But that has nothing to do with any answer that I want. A. Assuming that this grain was shipped in good condition, meaning it was at safe moisture levels the conditions as I understood them of the shipment should not be such as to cause heating damage to the cargo.

Q. Well now, just explain what you mean? A. I am sorry, Mr. Bull, I can't quite remember your question exactly. I must admit that. I want to be fair. I will do my best to explain it, but not knowing the specific question which you asked, which covered about a page as I remember, I will do my best to answer it. Mr. Eldridge was asked that assuming, reviewing that, assuming that when the rice was shipped on this boat that the surveyor's report said the rice was in prime shipping condition, that it was well loaded, and when the ship left the temperature—I believe you assumed the temperature of the rice as around 80 to 85 degrees at Rangoon: the temperature at Rangoon was around 85 to 90 degrees, and it gradually came into a colder climate, and I believe it was mentioned there was quite a great drop in temperature and the ventilation was restricted. I don't know for fifty-three hours or whether it was days that you mentioned. And I believe Mr. Eldridge said that when the ventilation was restricted if cold air were allowed to go into that afterwards when the hatches were opened there would be condensation of moisture or fog which would deposit moisture on the grain and cause heating. Under the conditions which you put, if you admit extreme variations in temperature, yes; but I am not familiar with the number of days in which you claim the ventilation was restricted on that. It is very hard for me, frankly it is very hard for me to cover that.

Q. You haven't stated yet a point on which you disagree with Mr. Eldridge. Now surely you can state that in a very few words, and if there are more than one you can state them all. A. Well, I won't state more than one, and you can review the one which I have given, where Mr. Eldridge stated the hatches were closed and the air was saturated with moisture at a high temperature, and it would contain six times as much moisture as it would contain at some other temperature. Now I don't agree with that six times as much moisture unless you tell me what the maximum temperature was and the minimum temperature. Because if the air in that hold is warm, say 70 degrees, and the rice is 80, it won't hold six times more than at 70. But in any case it was stated that the damage was caused, to the best of my knowledge, by admitting cold air into that warm moist air. Now, I say this much, that when you have a cargo, full of air and rice, and you admit cold

air into it, you can't hold all that hot air in there with the contained rice; by the simple process of replacement part of the warm air must of necessity escape before the cold air can come in, and the amount of condensation by opening the hold is not as great as indicated. Now I will take that one point—

Q. I have not got one specific point on which you disagree with any expressed opinion of Mr. Eldridge yet.

MR. BOURNE: Well, he has.

THE COURT: Well, I must say I cannot see it.

10 THE WITNESS: Could I hear the evidence on that point?

MR. BULL: Q. You are called as an expert and you heard the evidence given by Mr. Eldridge, and undoubtedly it was for the purpose of calling you here to give evidence contrary to Mr. Eldridge. A. I have never been asked to give evidence contrary.

Q. Well, either agree or disagree with Mr. Eldridge, is it? A. Yes.

Q. Do you agree with what he said? A. On one question I disagree.

Q. On only one? A. Maybe others, but I want the specific—

20 Q. Well, tell me if there is more than one? A. I can't say, Mr. Bull, unless I have the evidence before me.

Q. All right, speaking from memory, you being a man trained in that business, having heard it only a few hours ago you cannot say whether you agree or disagree with his opinion, is that right? A. One of his opinions I disagree with.

Q. All right. There is one, is there. Are there any others? A. There may be.

Q. Well, what do you mean by maybe? A. Well, Mr. Bull, you gave Mr. Eldridge a list of questions that required probably 30 twenty or thirty answers.

Q. Not a list of questions. A. Well, you gave one question which was very long and it covered so many points, a technical man would be dishonest if he was to support one basic premise on the whole thing.

THE COURT: He said as far as he can recollect there is one point on which he disagrees with Mr. Eldridge.

MR. BULL: Q. Will you state shortly what that point is, so that the jury will understand it. Never mind any assumptions. Any part of his opinion that you disagree with? A. From the 40 evidence given yesterday—

Q. Yesterday? A. I believe Mr. Eldridge was speaking yesterday—this morning and yesterday afternoon— In the series of questions asked of this damage being due to moisture, to the best of my knowledge it was stated by Mr. Eldridge that the rice was indicated to have a temperature around 82 to 85 degrees at Rangoon, and that the rice would not drop in temperature during

*In the  
Supreme  
Court of  
British  
Columbia.*

Defendant's  
Evidence,

No. 29.

Norman  
Leslie  
Armstrong,  
Cross-Ex-  
amination,  
May 27th,  
1938.

—continued.



*In the  
Supreme  
Court of  
British  
Columbia.*

Defendant's  
Evidence,

No. 29.

Norman  
Leslie  
Armstrong,  
Cross-Ex-  
amination  
May 27th,  
1938.

—continued.

the voyage. Mr. Eldridge, I believe, further stated that if air was admitted to the hold of the ship where the rice was stored it would quickly become heated by contact with the rice, to the temperature roughly, of the bags of rice, and incidentally moisture being given off by the bags of rice would saturate that air with moisture. That assumption, of course, was based on the fact that the ventilation of the hold was restricted. And then I understood Mr. Eldridge to state that when you admitted cold air into that hold it would meet—this cold air goes into the hold, meets this warm moist air and chills it so that it causes moisture to be deposited on the sacks, 10 thereby causing this damage. I claim that if you have a cargo, the holds are covered and the temperature warms up to the same temperature as the bags, and if you admit cold air into that hold you cannot admit cold air unless you compress it, and at ordinary pressure which we experience at sea level, the cold air must drive the hot air out and chill the hot air, and it comes out first, and the amount of condensation taking place there is little or nothing, and certainly in my opinion not enough to cause the damage complained of.

Q. So you disagree with Mr. Eldridge on the most important 20 part of his evidence? A. I would not say most important.

Q. As to the cause of this heating? A. On that particular question I disagree with him.

Q. That was Mr. Eldridge's idea as an expert of how this heating had set up? A. Yes.

Q. And you disagree with him on that? A. On that one point, yes.

Q. I want to see what he says. I will read his answer and you might tell me when you disagree with anything he says: 30 "The grain was loaded at a fairly warm temperature, that is, the temperature of the cargo might be in the neighborhood of 85 to 90 degrees. About three days out the ventilators were closed. When the ventilators were closed the temperature of the air inside the hold would become about that of the temperature of the cargo, which would be 85 to 90."

Q. Do you agree with that? A. Yes.

Q. "Air at that temperature will hold about six times as much moisture as air at the temperature of 40 degrees fahrenheit."

Q. Do you agree with that? A. I agree with Mr. Eldridge's 40 figures. I haven't worked the calculation out but I can agree with his evidence there.

Q. "Now when the ship got into—it was going north into a colder climate, it is a very disastrous thing to open the ventilators under those conditions, because you have super-saturated air containing six times as much moisture as it

could contain if it were the same temperature as the air outside."

Q. So you agree with that, that it is a very disastrous thing to open ventilators under those conditions because you have super-saturated air containing six times as much moisture as it could contain if it were the same temperature as the air outside? A. Which is 40.

Q. Do you agree with that? A. Yes, we have it at 40.

10 Q. "Letting in this cold air at around 40 degrees—37—fog would be formed inside, the temperature of the air inside would be lowered, precipitation would take place at once."

Q. Do you agree with that? A. Not in substance, no.

Q. "It would wet the outside portions of certain sacks where the cold air struck the warm air."

Q. Do you agree with that?

Q. Would you mind repeating that question?

Q. "It would wet the outside portions of certain sacks where the cold air struck the warm air."

A. No, I wouldn't agree with that.

20 Q. You don't agree to that? A. Not in substance, no.

Q. "On the outside most of these sacks would become damp—might become quite wet on the outside."

Q. Would you agree with that? A. Become quite damp, no.

Q. Become quite wet. You don't agree with that? A. No. "—but it is a well known fact that the grain on the outside of the sack will protect the grain on the inside of the sack from moisture coming from the air outside."

Q. Do you agree with that? A. Not entirely, no.

30 "—consequently you would not expect the centre of the sack to be damaged under these conditions with the amount of moisture available from that source."

Q. What about that? A. That is true in part.

Q. True in part only? A. Yes, dealing with relative humidity.

Q. "This swelling of the grain and probably some incipient fermentation would cause bran to adhere to the gelatinous stuff there, especially when the grains were dried out afterwards."

40 A. I think I would sooner not pose as an authority. I am no authority on grain.

Q. "In my opinion that accounts why—for the reason that this bran did not mill off readily and immediately upon receipt of the cargo, this took place several times on the voyage, and once fermentation, which is only a slight degree of fermentation which would be on the outside of the grain,—once that started it would be easy—and the ventilation came

*In the  
Supreme  
Court of  
British  
Columbia.*

Defendant's  
Evidence,

No. 29.

Norman  
Leslie  
Armstrong,  
Cross-Ex-  
amination,  
May 27th,  
1938.

—continued.



*In the  
Supreme  
Court of  
British  
Columbia.*

Defendant's  
Evidence.      yes.

No. 29.  
Norman  
Leslie  
Armstrong,  
Cross-Ex-  
amination,  
May 27th,  
1938.

—continued.

through, it would probably stop it, and then when the cowls were closed the moisture would built up as before to a super-saturated condition, and at a temperature of 100 would hold eight times as much moisture as it would at 40."

Q. Do you agree with that? A. I agree with those figures,

Q. "Then the cold air would let in again and the whole process was repeated."

Q. Do you agree with that? A. No.

Q. "That would account for some sacks being quite wet. 10 That would be a very foggy condition inside the hold and a considerable precipitation of moisture where the cold air and the warm air came together, and that would probably apply all around the ducts while the cowl ventilators were open adjoining the ducts."

Q. Do you agree with that? A. I would like to get that last paragraph again, if you don't mind.

Q. "Then the cold air would let in again and the whole process was repeated. That would account for some sacks being quite wet. That would be a very foggy condition inside 20 the hold and a considerable precipitation of moisture where the cold air and the warm air came together, and that would probably apply all around the ducts while the cowl ventilators were open adjoining the ducts."

A. That may apply around the ducts.

Q. You don't disagree with that? A. Not entirely, no.

Q. Well, we come down to this; you will disagree in principle with all the facts and all the assumptions which were put to him—

A. I am trying to keep your question in mind.

Q. Assume good, sound condition— A. Yes. 30

Q. —when it was loaded. A. Yes.

Q. And assuming a certain temperature. A. Yes.

Q. Assuming certain shutting off of ventilation. A. Six days after the ship—

Q. Oh, no. Three days out from port. A. Three days, yes.

Q. "Weather was experienced which necessitated closing of the hatches and cowl ventilators; that the closure was maintained for twenty hours"—

A. Yes.

"—after which the cowl ventilators were opened for two 40 hours, again to be closed for thirteen hours, and generally throughout the whole of the voyage ventilation was regulated so that the hatches were closed 63.4% of the time, and the cowl ventilators were closed 19.5% of the time, and from May 8th to May 11th the hatches and cowl ventilators were closed continuously over a period of 55½ hours, and at the expiration

of the 55½ hours the hatches and cowls were opened, and three days later both cowls and hatches were again closed on the following three days for periods of eight hours per day; that when the cowls were opened from the 12th to the 14th of May the outside temperature was a maximum of 71 degrees and a minimum of 50 degrees; that when they were opened on the 19th to the 20th of May the minimum temperature was 37 degrees; that on May 12th some bags of rice were found to be wet with sweat in No. 3 lower hold under the Samson post ventilator;"

10

And then after arrival of the cargo of rice in the Fraser River the temperatures of the rice were taken as follows; and then he goes on and gives the temperatures May 29th to June 2nd.

"That the sides of the ship from the waterline down were very wet from sweat in the lower holds; that the cargoes of rice in Nos. 1 and 4 holds and Nos. 2 and 3 lower holds, were quite heated, and the heat being evolved was a very damp heat as the bags were damp and hot and that some of the rice in said holds smelled quite musty, while the cargo in the tween decks felt cool and appeared to be in good condition."

20

Q. Did you have all this information in mind? A. I was trying to cover that as near as I can.

Q. I just want you to have that in mind. A. Yes.

Q. And then you say you disagree with Mr. Eldridge when he says this—and I will read it—

"Letting in this cold air at around 40 degrees—37—fog would be formed inside, the temperature of the air inside would be lowered, precipitation would take place at once. It would wet the outside portion of certain sacks where the cold air struck the warm air; on the outside most of these sacks would become damp—might become quite wet on the outside;

30

Q. Now that part you disagree with? A. Yes.

Q. And where do you say he is wrong? A. I disagree in part, because before you can admit the cold air into the hold of the ship you must remove the hot air in there, that was previously in there. You can't have two volumes of air in a room of this size at the same time at normal pressure. Now cold air goes into the hold and it moves the hot air in front of it. There may be a little junction line, but we are speaking of a hold where we have a cargo, bags of rice. When that hot air meets the cold air the cold air in the bottom will tend to drive the hot air before it, and the amount of fog and precipitation in the hold on the cargo is of little or no significance in the sweating of the cargo. That is one point I disagree with.

40

Q. What you say is, as a matter of fact—You say there should be no condensation? A. No, I don't say there should be

*In the  
Supreme  
Court of  
British  
Columbia.*

Defendant's  
Evidence,

No. 29.

Norman  
Leslie  
Armstrong,  
Cross-Ex-  
amination,  
May 27th,  
1938.

—continued.



In the  
Supreme  
Court of  
British  
Columbia.  
—  
Defendant's  
Evidence.

No. 29.  
Norman  
Leslie  
Armstrong,  
Cross-Ex-  
amination,  
May 27th,  
1938.

—continued.

no condensation. I say in the condition in that ship the condensation is negligible under those conditions.

Q. Why? You have your hatches closed and you have a high state of humidity? A. Yes.

Q. You have a high temperature? A. Yes.

Q. And then you open your cowls and you let in cold air?  
A. Yes.

Q. Those are conditions which favor condensation usually, aren't they? Now why wouldn't that occur in this case? A. Well, for one reason, your hot air contains moisture that is driven out to the top. And don't forget when the cold air in the hold of the ship meets the hot air it takes the hot air up and after that there is an equilibrium being reached all along the line. 10

Q. You say Mr. Eldridge is wrong. Although conditions are present in which condensation of the moisture in the air takes place it could not happen in this case because when the cold air goes in, the hot air must go out? A. Very largely, yes.

Q. And you say there would be no condensation at all? A. No, I say the condensation is negligible.

Q. What do you mean? Is there any or is there not? A. So little as can be a determining factor in this case. 20

Q. You don't suggest the hot air goes out before the cold air goes in, do you? A. I beg your pardon?

Q. You don't suggest the hot air goes out before the cold air goes in? A. The hot air would have to go out the same time as the cold air goes in.

Q. Just answer my question. You don't suggest that, do you—the hot air goes out before the cold air goes in, leaving a vacuum? A. No, I don't.

Q. What you say is that the air is warm and high humidity, and then when the cowls are opened the cold air goes in and drives the warm air out? A. It drives the hot air out before it. 30

Q. It is not instantaneous? A. No, it isn't instantaneous. But don't forget the point is—I will try to explain it this way. There is a body of cold air, and here is a body of hot air. The cold air does not go right into the hot air. The cold air gradually shoves that hot air up, and there is a juncture line and that line does not go all through the air. That juncture line is only just a line between the two, and the amount of moisture, there might be only one pound in the whole of the ship. 40

Q. I suppose you agree that Mr. Eldridge is a man competent to deal with a subject of this kind? A. I have the highest regard for Mr. Eldridge and I am sorry that there is any implication of that nature at all.

Q. He would not give his evidence lightly and unless it were

true and he was qualified to speak of it? A. I would never suggest such a thing.

Q. You merely disagree with him on some small point?

A. Yes.

Q. And I think we have got down to one small point. You say that no condensation would take place? A. No. I said no condensation of any consequence would take place.

Q. Do you say that no condensation of sufficient consequence to do damage? A. To do damage.

10 Q. Then there is a very narrow point between you, and I take it that is the only point upon which you disagree with Mr. Eldridge? A. That may be the only point.

Q. Now have you had any experience with the examination of cargoes of grain previously? A. I have had no experience with examining cargoes of rice. I have taken samples from cargoes of rice. I have had no experience on damaged cargoes of rice. I have had with corn and I have had with other shipments of grain, but not of rice.

20 Q. Corn in bulk or corn in bags? A. I have seen corn in bulk and corn in bags.

Q. You have examined a cargo and inquired into the heating of it? A. Yes.

30 Q. Now I understood you to say to my friend, looking at the log, that for roughly the first two weeks, assuming the cargo was in good condition when put on board the ship, with the ventilators open there would be a drying process taking place. Isn't that what you said? That the cargo should improve its condition during the first two weeks? A. If anything; in good condition of ventilation. Now I honestly haven't had time to go through this before, but assuming there is good ventilation and there is moisture being formed, which theory we must hold because Mr. Eldridge has stated this theory and I will agree with him on the fact that moisture of rice diffuses in the atmosphere, therefore if the moisture coming out of the rice diffuses in the atmosphere, then being ventilated all the time, if anything your cargo would tend to lose a small amount of moisture, and you can call that conditioning.

40 Q. Isn't that put in a very involved way. Did you not say to my friend that from the 23rd of April until the 8th of May when ventilation was opened, and assuming the cargo was in good condition when it was put on board, it should improve? A. Yes, it should improve.

Q. Now didn't you say that? A. Yes.

Q. Well now, if those conditions had been maintained throughout the voyage and the ventilators were open the cargo would have kept on improving wouldn't it—drying out? A. Yes.

*In the  
Supreme  
Court of  
British  
Columbia.*

Defendant's  
Evidence,

No. 29.

Norman  
Leslie  
Armstrong,  
Cross-Ex-  
amination,  
May 27th,  
1938.

—continued.



In the  
Supreme  
Court of  
British  
Columbia.

Defendant's  
Evidence,

No. 29.

Norman  
Leslie  
Armstrong,  
Cross-Ex-  
amination,  
May 27th,  
1938.

—continued.

Q. So that it would have arrived in the Fraser River in perfectly good condition, wouldn't it? A. Yes.

Q. Well, now, assuming that it was in good condition, as we have been doing, what was it that caused this heating? A. We are assuming that the rice was in good condition, which we don't know.

Q. I want you to assume that. As I said, assuming it was in good condition when it was put on board, and that the ventilation was open until the 8th of May, the condition should improve?

A. Yes, assuming the rice was in good condition. 10

Q. And furthermore you said that if the same condition had been kept up until the arrival in the Fraser River it would improve still even more? A. Yes, it might have lost 1%, 2% moisture.

Q. So that when it arrived here it would be in perfectly good condition? A. Yes.

Q. Now assuming it was in good condition when it was put on board— A. Yes.

Q. —what in your opinion was the cause of the heated condition when it arrived here? A. If we assume that the rice is in good shape when it was put on board, it must be subject to some outside influence to cause the damage. Now when I say that, I say assuming the rice was in good shape,—I am not going to say the rice was in good shape—we have to make an assumption there. If you tell me the rice content and the weather conditions I could tell you whether it was in good condition. We assume the rice was in good condition and assume the moisture content was approximately 14% when it was shipped. The rice in good condition would lose a certain amount of moisture under good conditions of ventilation, how much I am not going to say. I couldn't say this rice would lose 1% in the ship. There are days when the rice would lose no moisture. 20

THE COURT: Q. Assume again—just assume the rice was in good condition, no excessive moisture content and nothing wrong with the rice, and so on, and the rice arrives here in the condition in which it did. Can you give any reason to account for its damaged condition? A. No, I can't in that case. If the rice were in good shape when it left, continuous ventilation in good condition, the rice should have arrived in good shape. If it didn't arrive in good shape there must be some reason for it. 40

MR. BULL: Q. Well, what is it? A. Well, I won't go so far as to say it is a poor carrier. I am not going to say that at all.

Q. Leave that out. A. The only thing is this: some improper condition must have occurred to cause that damage.

Q. Mr. Armstrong, you have assumed that it was sound in

every way when it was put on there and the ventilation was kept open all the time? A. Yes.

Q. And you admitted that the cargo should arrive here better than when it was shipped. Now if it arrived in a heated condition what would cause that? Might it not have been the closing off of ventilation? A. We are assuming it was well ventilated all through.

Q. How could you assume that if you look at the log? A. Well, you just said to me assuming the rice was in good condition and it was ventilated through the whole trip, it should arrive—

Q. And I put it to you that this rice arrived here in a damaged condition, and I asked you if you can account for that? A. No, I wouldn't.

Q. What would you say—I want you to think this over carefully, and bearing in mind that this ventilation was shut off on several occasions and on one occasion to the extent of 55½ hours— A. Yes.

Q. —would you say that that had nothing whatever to do with the heated condition when it arrived? A. Absolutely, I say that. It had nothing to do with the condition when it arrived.

Q. And that would not be conducive to sweating or heating in any manner or form? A. No, assuming the rice were in good condition when shipped.

Q. How far would you go with regard to that? Would you say it could have been closed off all the time of the whole voyage? A. No, I wouldn't say all the voyage, but I would say that rice in good condition could have ventilation gradually restricted for a week or ten days without generating trouble.

Q. And still arrive in good condition? A. Still arrive in good condition.

Q. Do you base that on any experience you have had? A. I do.

Q. Of rice cargoes? A. Well, I base that on the opinion of experts. Mr. Smith—

Q. Never mind that. I say, do you base that on any experience of yours with rice cargoes? A. No.

Q. We have got it up as far as a week and you say that would not effect the cargo. How much farther than a week would you go? A. I wouldn't go farther than a week or ten days.

Q. That would be a continuous shutting off? A. The ventilation gradually restricted. The Samson posts take care of the expansion of heat. I have never considered a shipment being entirely shut off.

Q. You go so far as to say that on this particular voyage you could have closed these cowl ventilators for a week or ten days without doing any damage to the cargo? A. No, I wouldn't say

*In the  
Supreme  
Court of  
British  
Columbia.*

Defendant's  
Evidence,

—  
No. 29.

Norman  
Leslie  
Armstrong,  
Cross-Ex-  
amination,  
May 27th,  
1938.

—continued.



*In the  
Supreme  
Court of  
British  
Columbia.*

Defendant's  
Evidence,

No. 29.  
Norman  
Leslie  
Armstrong,  
Cross-Ex-  
amination  
May 27th,  
1938.

—continued.

on this particular voyage, because I don't know what the nature of the cargo was when it was loaded on the boat.

Q. We are assuming it is a good cargo. A. Assuming a good cargo on that voyage the ventilators could be closed for a week or ten days.

Q. Continuously? A. Yes. But leaving gradually a restricted ventilation.

Q. What do you mean by restricted ventilation? Where would you get any ventilation? A. I have never heard of a shipment of grain or anything having a total lack of ventilation. 10  
There is always enough ventilation from air seeping into the hold, so that temperature changes can be taken care of.

Q. Where would you get any intake of air with all cowl ventilators closed off? A. Well, go back to your Samson posts again. If the cargo warms up the Samson posts give ventilation.

Q. You don't suggest any air goes in through the Samson posts? A. Not necessarily.

Q. Do you suggest that? A. No.

Q. All right. Where do you get any intake of air if your cowl ventilators are closed? A. You can get an intake of air 20  
right through the cowl ventilators when they are closed, intake of air around your canvas coverings.

Q. Are you speaking of your experience? A. I am speaking of my experience, having seen that. I have seen lots of cowl ventilators with canvas covers on.

Q. Have you ever taken a cruise on a freighter? A. Yes.

Q. Where? A. On the west coast of Vancouver Island, up to Prince Rupert.

Q. Did you see any cowl ventilators closed? A. Yes.

Q. Did you make any experiment to see whether any air 30  
was getting in? A. I have seen it. And if you take a cowl ventilator with a canvas tied on the outside you can feel a slight draft of cold air. I have had reason to do that because it is part of my duty to do that in my work.

Q. What vessel was this on? A. Boats hauling fishmeal to Vancouver. The Northholm or Southholm—

Q. Was it heavy weather that closed up the cowl ventilators? A. To me it was heavy weather and there was lots of spray.

Q. Those boats are about 100 feet long? A. No; about 100  
feet long would never go through. Those boats are 175 or 225 40  
feet—

Q. It is not at all comparable with the Segundo, is it? A. No.

Q. They are not boats with deep holds? A. No; the holds in those boats are only about 25 feet.

Q. Frankly you don't pretend to be an expert on the ventilation of ships? A. No; I told you that; but when I say that of course there are certain facts I know and I think I will say other than that I don't pose as an expert on ventilation.

Q. At the time Captain Watson, acting for the insurance company, made a report on this cargo? A. Yes.

Q. He referred certain samples to you for examination? A. Yes.

Q. And you found in one case, this 163, had a water content 10 of 11.30. Is that right? A. 163, yes.

Q. What is the safe water content for shipment? A. The safe moisture content for shipment?

Q. Of rice? A. Rice runs 14 to 15%.

Q. What does rice usually lose on a voyage from, say Burma to Vancouver? A. That is a question, Mr. Bull, I would not like to answer, because I simply don't know.

Q. Have you any knowledge about it at all? A. No. I would only be guessing.

Q. You said something about 2% a little while ago? A. 20 Well, I am taking Mr. Eldridge's answer to you, and I believe he assumed there was so much loss, which was 2%.

Q. Now if there was a loss of weight on the rice between Rangoon and Fraser River, that would be due to water content only, wouldn't it? A. Providing there was no loss in handling the bags, and things like that.

Q. It could only be a loss of water content, couldn't it? A. Yes.

Q. Now if this 163 lost approximately 2% on the voyage—assume that— A. Yes.

30 Q. —and its water content here was 11.30, how much would it be when it was put on board? A. Under those conditions it would be 13.3%.

Q. Which would be a very safe percentage? A. It would be a safe percentage.

Q. You had a sample referred to you for the purpose of taking the water content? A. Yes.

Q. And you did not examine the cargo or the ship or anything like that? A. No, I didn't see the ship at all.

40 Q. But you did write a letter, didn't you, to Captain Watson? A. Yes, I wrote a report. I think I have a copy before me.

Q. And didn't you say that you could offer no reasonable explanation as to how or why the damage was caused to the 163 lot? A. Yes.

Q. But the fact that two lots were carried in the same hold was significant? A. Yes.

Q. "And until such time as some expert judgment is given

*In the  
Supreme  
Court of  
British  
Columbia.*

Defendant's  
Evidence,

No. 29.

Norman  
Leslie  
Armstrong,  
Cross-Ex-  
amination,  
May 27th,  
1938.

—continued.



In the  
Supreme  
Court of  
British  
Columbia.

Defendant's  
Evidence.

No. 29.  
Norman  
Leslie  
Armstrong,  
Cross-Ex-  
amination,  
May 27th,  
1938.

—continued.

on the above matter, we submit that while moisture and/or heating may have caused the damage complained of—" —Did you say that? A. That is what I have here.

Q. "—you are still faced with the strong probability that the inherent quality of the rice may have been the primary cause of this damage?" A. Yes.

Q. So you say two things there, and you did not know which caused the damage? A. At that time, yes.

Q. In your mind both things quite possible? A. Yes.

Q. That is damaged rice, the inherent quality when it was shipped; heating or something like that— that it must have been heating, or moisture and heat in transit? A. That while moisture and/or heat may—"or" underlined—may have caused the damage complained of. Now you must bear in mind that report was done two years ago. A man brings in two samples to me and he wants a moisture determination of them. He asked me about yellow grains.

Q. Never mind the yellow grains. A. But there would be more facts in this case, because we certainly know what they are today.

Q. What have you learned since that you didn't know then? A. Well, for one thing I have heard the evidence given by Captain Watson. I have heard the evidence given by Mr. Eldridge. I have spoken to Mr. Desbrisay who gave me a list of questions on things he wished answered, and in conversation naturally one learns much more about the situation than I knew at that time.

Q. What actual facts, apart from what Mr. Desbrisay may have told you— what actual facts do you have before you now that you did not have before you in 1936? A. I have Captain Watson's evidence as given just now, I have Mr. Eldridge's evidence, I have had a chance to see the ship's log—and while I am not an expert on ships' logs there are certain facts that are significant in there.

Q. Did you see the Port Warden's report? A. I have never seen the Port Warden's report.

Q. When you were preparing to give evidence in this case do you mean to say you did not know this very important fact, that he gave in his report, that the bags of rice were at a temperature up to 106 or 106½ fahrenheit? You didn't know that?

A. Until I came into this court I had never seen or heard of it.

Q. You realize the importance of that? A. Yes.

Q. And wouldn't this be very important to know; that the heat being evolved was a very damp heat, the bags were damp and hot? Wouldn't that be important for you to know? A. If I were examining the cargo, yes.

Q. No, if you were giving evidence? A. To me— Now I

20

30

40

wouldn't like to say. I wouldn't like to say what the man may have meant by damp heat or dry heat, I am not competent on this.

Q. I suppose Captain Watson is competent to speak of dry heat? A. I wouldn't say. When he speaks of moist heat and dry heat, it means certain things to him, but I am a chemist and I would be very chary in saying what constitutes moist heat or dry heat, by putting my hand up into the air, because that is a thing I am afraid against our opinion.

10 THE COURT: Any re-examination?

MR. DESBRISAY: No, my lord.

THE COURT: Q. Mr. Armstrong, which is the heavier, absolutely dry air or air on a rainy day? A. The air on a rainy day at the same temperature, the air on a rainy day would be indicated as heavier. The air contains relatively high humidity.

(Witness aside).

MR. BOURNE: With your lordship's permission I will now read the evidence of one of the defendant witnesses taken on commission in Rangoon, Arthur Phipps Cotterell. (Reading direct examination and producing document which is marked Exhibit No. 45. Also produces government reports).

THE COURT: Are these of any assistance?

MR. BOURNE: Yes, they are of very great assistance. I don't propose to take up the time now but I will later.

(GOVERNMENT REPORTS PRODUCED MARKED EXHIBITS No. 46 and 47)

(Mr. Merritt reads the cross-examination of the same witness, and in course of reading produces document which is marked Exhibit No. 48).

30 (Mr. Bourne reads re-direct examination of the same witness).

(Mr. Merritt reads re-cross-examination of the same witness).

(Mr. Bourne reads re-re-direct examination of the same witness).

ARTHUR PHIPPS COTTERELL duly sworn according to the Directions contained in the Writ of Commission.

EXAMINATION-IN-CHIEF BY MR. HORROCKS.

Q. Mr. Cotterell, you are the Manager of Joseph Heap & Sons Limited, Rangoon? A. Yes.

Q. And your Head Office is in Liverpool, England. A. Yes.

Q. Where your Company has rice mills? A. Yes.

*In the  
Supreme  
Court of  
British  
Columbia.*

Defendant's  
Evidence,

No. 29.

Norman  
Leslie  
Armstrong,  
Cross-Ex-  
amination,  
May 27th,  
1938.

—continued.

No. 30.

Arthur  
Phipps  
Cotterell,  
Examina-  
tion,  
December  
31st, 1937



In the  
Supreme  
Court of  
British  
Columbia.

Defendant's  
Evidence.

No. 30.  
Arthur  
Phipps  
Cotterell,  
Examina-  
tion,  
December  
31st, 1937.

—continued.

Q. I take it they handle all kinds of rice? A. Yes.

Q. How long have you been with your firm in all? A. Half a century.

Q. And except for a space of about three years, have you been with the Rangoon Office since the year 1897? A. Yes.

Q. Throughout that time have you been the Rangoon Manager of the firm? A. Yes.

Q. Shipping rice to all parts of the world? A. Yes.

Q. But usually, I think, to your Head Office in Liverpool? A. Yes. 10

Q. Have you had any experience in rice milling? A. Yes.

Q. Can you give me the years of your experience in that branch of the trade? A. From 1897 to 1933 excepting three years.

Q. Have you been purchasing rice during that time? A. Yes.

Q. I understand you are also a member of the Rice Sub-Committee of the Burma Chamber of Commerce? A. Yes.

Q. For how long have you been a member of that organization? A. On and off for about 20 years.

Q. Does that body concern itself with improved species of paddy, rice? A. Yes. 20

Q. In what way does it concern itself? A. The Agricultural Department submits samples for evaluation.

Q. That is to say, the Agricultural Department of the Government of Burma? A. Yes.

Q. And, does that Sub-Committee report to the Agricultural Department? A. Yes, they do. Mr. Butler is a member.

Q. And by that means is the Agricultural Department enabled to obtain the views of the trade on this improved paddy? A. Yes. 30

Q. Have you yourself made a study of improved paddy during the last ten years? A. Yes.

Q. I think you follow the reports issued by the Government on the operations of the Department of Agriculture? A. That's right.

Q. Regularly? A. Yes.

Q. The rice growing areas in Burma are grouped in what are termed "Circles"? A. Yes.

Q. Is Mayetwa in the Irrawaddy Circle? A. Yes.

Q. In this case, Mr. Cotterell, we are concerned with a parcel of Sugandi rice. Can you indicate some of the main characteristics of Sugandi or Emata rice? A. It is termed a long grain as compared with some being a round grain. Kalagyi is a round grain. 40

Q. Speaking quite generally, how does Sugandi fare in the

process of milling? A. The best qualities mill well, the poorer qualities mill badly.

Q. Can you tell us whether the growing of Sugandi in the Delta is of comparatively recent origin? A. Fairly recent.

Q. Where is the principal source of Sugandi rice? A. Prome District.

Q. Prome, I think, is North of the Delta? A. Prome is the Northern town of the District.

Q. What do you understand by the term "Amagyi"? A. It is a biggish grain.

Q. A big grain of what type of paddy? A. Type of Sugandi paddy.

Q. In what respect is it big? A. Well it has got a broad shoulder.

Q. It has been said in evidence that the rice in question, which for convenience we are referring to as 163 rice, is different from the usual class of Emata or Amagyi obtainable in the Prome District. It has also been said that this Field Amagyi is the only kind of Amagyi grown in the Delta and the witness whose concern  
20 handled it said he heard it was from a Government seed. He also said it was similar to Blue Rose and that it matured early. With those facts in mind, are you able to express an opinion as to what Government seed it was? A. Grown in the Delta?

Q. Yes, this was in the 1935-36 season. A. In my opinion it was of A.26/3.

Q. In your opinion would Field Amagyi be appropriate to describe A.26/3? A. Yes, all the paddy in the market is from the fields.

Q. But, would it be also appropriate to call it Amagyi? A. Well it all depends upon the size of the grain. Generally speaking yes.

Q. Would it be proper to call A.26/3 an Amagyi grain? A. Yes.

Q. Can you tell us something about the history of this grain, A.26/3? A. Originally it was started in the Prome area.

Q. And can you tell us whether it gave satisfactory or unsatisfactory results in the Prome area? A. It was not considered satisfactory.

Q. On what ground was it considered unsatisfactory? A. Bad colour and did not keep particularly well and was a bad miller.

Q. Can you give in rather more detail what you mean when you say it had a bad colour and it did not keep very well? A. Well, the trade requires a bright grain. This A.26/3 was more of a dark colour.

Q. And, as to its inability to keep well? A. It is not inclined to keep.

*In the  
Supreme  
Court of  
British  
Columbia.*

Defendant's  
Evidence,

No. 30.

Arthur  
Phipps  
Cotterell,  
Examina-  
tion,  
December  
31st, 1937.

—continued.



*In the  
Supreme  
Court of  
British  
Columbia.*

*Defendant's  
Evidence,*

*No. 30.*

*Arthur  
Phipps  
Cotterell,  
Examina-  
tion,  
December  
31st, 1937.*

*—continued.*

Q. And the result of that tendency would be what? A. Discolouration.

Q. Now, you have told us that A.26/3 was originally tried in the Prome area where it proved unsatisfactory. Can you tell us something about its subsequent history? A. It was tried in the Delta and it was found there to be not a good grain in appearance but with pretty much the same results, muddy colour, the paddy would not keep and when it was tested in the mills it broke heavily.

Q. Do you know any other class of Sugandi rice grown in the Delta in 1935-36? A. I don't recollect any. 10

Q. Do you know whether A.26/3 has been replaced by any kind of Emata grain? A. Where?

Q. In the Delta. A. It has been replaced by another type called 28/8 and 28/6, I believe.

Q. Would you call either or both of those grains an Amagyi? A. It greatly depends where exactly it is grown. If it is grown in the Delta it is purely and simply a trade name, they might describe it as Amagyi, but there are other names by which it is known, Pindosein for instance. Those two types are generally known as Pindosein. 20

Q. Can you tell me whether A.26/3 has a short life period? A. Yes.

Q. By that you mean it ripens early? A. Yes.

Q. It is in evidence that this particular parcel of paddy was harvested in the middle of December 1935.

MR. PAGET: I object to that question as I do not think the "middle" of December 1935 has been recorded. The second half of December has been suggested which is quite a different thing. The second half of December was the time originally given in the affidavit of Mr. Rustrumframa and that is not the same as the middle of December. It is true that on page 9 of Mr. Rustrumframa's evidence in answer to the question put to the witness by Mr. Horrocks: "At the time you affirmed that affidavit I take it you then believed it was harvested in the middle of December." The witness answered "Yes." I suggest that the question was in the circumstances misleading. 30

MR. HORROCKS: No objection of any kind was lodged at the time and it was noticeable that the point was in no manner squared up in re-examination. 40

(Subject to the objection the question is put to the witness).

Q. Would you consider paddy which was harvested in the middle of December to be an early paddy? A. Yes.

Q. Does the fact that this paddy was grown in the Delta and harvested at that time of itself indicate to you the type of grain

which it probably was? A. Only that it is A.26/3. I knew of no other.

Q. We have been told that this mark "Brose" was a mark asked for by the International Trading Company. I understand these people to be the London Associates of Blackwood Ralli & Company who sold rice to the Plaintiffs in April. Does the word "Brose" indicate anything to you? A. I suppose "B" is intended for "Blue" and "rose" is for "rose." Blue rose.

10 Q. What is Blue Rose? A. It is an American grown paddy, one of the best kinds in the markets at home.

Q. What type of paddy would you say Blue Rose is? A. It is a broad shouldered paddy, something like Emata. It is a better type of paddy than that. It is a better type than anything we have got in Burma.

Q. In what respect does it resemble A.26/3? A. It is broad across the shoulders, it is pretty much the same length and we reckon, and probably the suppliers reckon, that it was a good imitation. We don't handle Blue Rose here, we only occasionally see the samples. Sugandi paddy is a good imitation of Blue Rose.

20 Q. Have you any experience of the characteristics of foreign grains grown in Burma. Have you yourself imported any for growing in Burma? A. Yes, we imported a lot of best seed from America and distributed it over the whole of Burma through the Agricultural Department.

Q. And was that paddy of short life, medium life or long life? A. Short life.

Q. Do you know of a damage to rice known as Sun-crack? A. Yes, I don't call it "damage," I call it an "imperfection."

30 Q. I accept the correction. What types of grain are most subject to Sun-crack? A. Emata in particular.

Q. Emata, that is to say, Sugandi? Yes, Sugandi. Mind you, suncracking is apt to occur to all paddy, more so to Sugandi.

Q. And what is the cause of suncracking? A. It usually occurs in the harvesting, being unduly exposed to the sun. I don't know sufficient about the growing of the paddy to know when the suncracking exactly takes place but generally it is through exposure to the sun at an inconvenient time.

40 Q. If paddy is dried in the shade, does it affect its liability to suncracking? A. If it is dried in the shade, it does not sun-crack so much.

Q. What result obtains when suncracked paddy is milled? A. It breaks into coodie.

Q. An excessive amount of brokens? A. Yes, an excessive amount of brokens, that's the better way of putting it.

Q. Do you know anything about Kalagyi? A. Yes.

*In the  
Supreme  
Court of  
British  
Columbia.*

Defendant's  
Evidence,

No. 30.

Arthur  
Phipps  
Cotterell,  
Examina-  
tion,  
December  
31st, 1937.

—continued.



In the  
Supreme  
Court of  
British  
Columbia.

Defendant's  
Evidence.

No. 30.

Arthur  
Phipps  
Cotterell,  
Examina-  
tion,  
December  
31st, 1937.

--continued.

Q. Would you describe that as a good carrier or a bad carrier? A. A bad carrier.

Q. There was a parcel of 2000 tons of Kalagyi shipped by the "Segundo." Now, tell me in your opinion if the damage to the Intero-Brose had been due to restriction of ventilation would you or would you not have expected the Kalagyi to remain unaffected? A. Are you speaking of Kalagyi, white rice or loonzain?

Q. In this parcel 2000 tons of Kalagyi loonzain were shipped. If the damage to the 163 were due to restricted ventilation, would you have expected damage to Kalagyi? A. If you put it that way, yes. Do I understand your question to mean that if the damage occurred to one, it would occur to the other? 10

Q. Yes. A. It ought to.

Q. I just want to read to you the method in which the cargo was stowed and the system of ventilation. There are four holds and the 2nd hold has two hatches. The Intero-Brose was stowed in the 2nd and 3rd holds, that is to say in the holds immediately forward and immediately aft of the engine room bulkheads. In the 2nd hold there was approximately 8 feet of space between the deck head and the upper tier of bags. This cargo was stowed in four blocks with 18" spaces between the blocks and about 18" to 20" spaces clear from the forward and aft bulkheads. There were 12 12" x 12" vertical trunk ventilators with customary rice ventilators built through the stowage. The ventilators were built through the cargo and were spaced between every 4th tier of bags vertically and every 5th tier of bags horizontally. These horizontal ventilators all led to the large trunk ventilators and to the air channels between the blocks of cargo and the bulkheads. A. Yes. 20

Q. There were two high Samson posts and two ordinary cargo ventilators to this hold. Do you consider that method of stowage and that system of ventilation to be normal and customary? A. Certainly. 30

Q. I am instructed that a similar method of stowage was adopted in the 3rd hold (it was the one immediately aft the engine room bulkhead) and that in that hold there was approximately 9' of head room between the deck head and the top tier of bags. In this there were 8 vertical 12" x 12" ventilators and the customary 8" x 6" rice ventilators stowed through and across as in the other hold. There was one high Samson post. A. It sounds all right. 40

Q. Now, the 163 rice as I told you was in the 2nd and 3rd holds and it was stowed over another parcel of loonzain known as A.L.Z. and beneath loonzain of still other marks. A. Yes.

Q. Do you now follow the disposition of the cargo in the holds? A. Yes.

Q. I am instructed that when the Plaintiffs examined the bags of 163 on their arrival in Vancouver it was discovered that damage was on one side only of the bags which were examined and that in no case was the rice in the middle of the bag damaged. Furthermore that the 163 parcel was the only one of which the Plaintiffs complained about. Having regard to the disposition of the cargo and to the stowage and ventilation, are you able to express an opinion whether the damage which appeared in the 163 was caused on board or before it came on board? A. As you say the bags were damaged at the side, it looks as though it had been caused before they went on board.

Q. Tell me, when rice is heated, is there a smell? A. When it is heated, not appreciably?

Q. When it has been heated appreciably, is there a smell? A. Yes.

Q. Well, which would be the more appropriate description of the smell—a stench, or a slight musty odour? A. It just depends whether it was dry heat or wet heat. If it is dry, it is a horrible stench. If it is wet, it smells like a brewery.

Q. What would the damage to these bags indicate to you? A. It indicates to me it is damaged by wet or damp.

Q. Therefore, if I understand your answer correctly, you would expect there to be a pronounced stench? A. Any rice that has been wet is liable to smell badly.

Q. In what ways do you suggest bags of loonzain might become damaged only on the side? A. Do you mean in a ship or out of a ship?

Q. Take it out of a ship first and take it in a ship afterwards. A. Before it goes to a ship the bags will be damaged by lying on damp or wet floors or the bags may become damaged in transit to the steamer, lighter.

Q. We have had it in evidence that this particular rice was milled between the 4th and the 13th of March. It left the mill on and between the 8th and 17th days of April and was alongside Rangoon on and between the 15th and 20th days of April. In other words for periods between the 8th and 20th days of April this parcel of paddy was on its way by river from Mayetwa to Rangoon. Have you consulted your records with regard to the weather obtaining in the early part of April? A. I looked at my home letters.

Q. Have you taken an extract from three of those letters? A. Yes.

Q. Is that a correct extract from them? A. That's right.

(Extracts from the official correspondence of the witness with his Head Office in Liverpool are put in by consent and marked as Defendants Exhibit No. 3).

*In the  
Supreme  
Court of  
British  
Columbia.*

Defendant's  
Evidence,

No. 30.

Arthur  
Phipps  
Cotterell,  
Examina-  
tion,  
December  
31st, 1937.

—continued.



In the  
Supreme  
Court of  
British  
Columbia.

Defendant's  
Evidence.

No. 30.

Arthur  
Phipps  
Cotterell,  
Examina-  
tion.

December  
31st, 1937.

—continued.

Q. In your experience Mr. Cotterell is it usual to cover paddy cargo boats at this time of the year? A. Which time?

Q. The time we are speaking of,—April. A. Some do and some don't. I should say the majority is uncovered.

Q. If bags of loonzain were loaded into a cargo boat, the bottom of which had become wet with rain, and those bags were then placed on board and stowed, what result would you expect?

A. They would become damaged on the voyage.

Q. What part of the bag would become damaged? A. It just depends where the water touched the bags. Most likely at the sides or if the bag was at the bottom it would be the bottom of the bag. 10

Q. If bags of loonzain loaded in a cargo boat came in contact with a wet tarpaulin placed over the bags, what result would you expect? A. It would wet the bags or damp the bags.

Q. And if the bags were then stowed? A. That is also liable to cause damage.

Q. If paddy were harvested in December and remained in a pile in a godown until the first week in March, what result would you expect? A. I would expect discolouration. 20

Q. Would there be any way of preventing that result? A. Not unless the paddy was properly ventilated or if it was stored in bags.

Q. If bags of loonzain became damaged having been placed on a wet floor or having come into contact with a wet tarpaulin, would you expect any damage to result in the middle of the bag? A. Hardly.

Q. Assuming rice were shipped dry would it in your opinion sustain any damage by an increase of temperature? A. No, not in a well found ship. 30

Q. Is damage to loonzain possible by reason of condensation in a ship? A. Slightly, sometimes the damage takes place through condensation.

Q. Having regard to the amount of head room between the top tier of bags and the bulkhead in this case, would you expect condensation say possibly on the skin of the ship? A. On account of the head room?

Q. Having regard to the head room which I think was in the region of 7 to 8 feet. A. You are asking me about conditions of voyages. I am not an expert on this. I can only tell you what I hear from reports from my Head Office. 40

Q. Very well, that's quite good enough for us,—in respect of rice which you yourself had shipped? A. Yes.

Q. Have you had experience such as you have indicated in respect of A.26/3? A. Yes.

Q. Can you indicate to us the nature?

(Mr. Paget objects to this question on the ground that it is based on hearsay. Witness has admitted that his experience is hearsay).

Have you prepared an extract of a letter which you wrote to your Head Office on the 13th May 1936? A. Yes.

Q. Is that the extract? A. Yes.

Q. Was that written in reply to a letter from your Head Office dated the 1st of May?

Q. It has been suggested in this case that the bags may have been damaged by condensation along the ventilators. In the whole of your experience have you ever heard of condensation along rice ventilators? A. No.

Q. Did you examine the shipment samples of the parcel of A.26/3 which you sent to your Head Office? A. Yes.

Q. How long after the shipment? A. Before the shipment and after the shipment.

Q. Did you find those samples kept well? A. No.

Q. What happened to them? A. On opening the samples they were all deteriorated, putrid.

20 (Witness it shown Exhibits T to Y).

Q. If you look at Exhibits T to Y you will observe that in every instance save Exhibit X there is a loss of weight between the milling weight and the shipping weight, what is that loss of weight due to? A. If the bags were weighed correctly in the first instance it looks as if the rice was damaged and dried up after the milling.

Q. If there were no loss in weight as between the weight when the bags were shipped and the weight on arrival in Vancouver, would that afford you an indication as to whether the rice had heated on board and, if so, what indication would it give you? A. I cannot answer that question. I don't quite follow what you mean by it.

(Question repeated.) That would give me no indication.

Q. Can you tell me where heating in grains of loonzain begins? What part of the grain it begins? A. In the germ end as a rule,—the tip.

Q. Is the germ end necessarily removed in the process of milling paddy into loonzain? A. Some of the germ may remain in loonzain.

40 Q. Is it possible for a process of heating which begins in paddy to continue in the loonzain after the milling process? A. Yes.

Q. What is the effect of heating on grains of paddy or loonzain? Does it render them more likely or less likely to break when they are milled? A. Rice or loonzain or paddy if milled

In the  
Supreme  
Court of  
British  
Columbia.

Defendant's  
Evidence,

No. 30.

Arthur  
Phipps  
Cotterell,  
Examina-  
tion,  
December  
31st, 1937.

—continued.



*In the  
Supreme  
Court of  
British  
Columbia.*

Defendant's  
Evidence,

No. 30.

Arthur  
Phipps  
Cotterell,  
Examina-  
tion,  
December  
31st, 1937.

—continued.

when it is hot will break badly . If the rice is allowed to cool down, then breakage will be less.

Q. Is a damaged grain more likely or less likely to break in the process of milling than an undamaged grain? A. A damaged grain would break more.

Q. Is it in your opinion possible for damage in loonzain to escape detection at the time it is milled into white rice? A. Do you mean discolouration?

Q. Discolouration, yes. A. Discolouration should be noticed at the time of milling. 10

Q. At the time of preparing shipment samples, is it possible for discolouration to escape detection? A. You mean yellow discolouration?

Q. Yes. A. It might escape detection but it would not be noticed in the loonzain.

Q. Mr. deJordan was asked if bags, that is of loonzain, had been wetted a short time before the shipment samples were taken, whether he would expect them to show any discolouration and he replied "It would show signs of breakage (powder) which from experience I know that it is from wet rice." Do you know anything about this powder? A. White powder,—I don't know. 20

Q. If rice is really wet I understand it will crush in your fingers? A. Yes.

Q. If it has not been thoroughly wet in that way, do you know of any sort of white powder which will show when a shipment sample is prepared? A. No.

Q. If at the time a shipment sample was prepared loonzain had become wet but not heated, could that damage in your opinion escape detection? A. Yes.

Q. Would the white rice sample appear white? A. Yes, 30 appear white and broken.

Q. It has been suggested that if the bags were floor-damaged the sides would be too hard to permit a pike being inserted. Do you agree with that? A. I would say that would depend greatly upon the strength of the man who was drawing the sample.

Q. Would it also depend upon the degree of damage? A. I don't follow this question at all.

Q. If the bags had become floor-damaged a short time before shipment and before the heating had set in, would you expect the rice at the side of the bag to become so hard that a pike could not be inserted? A. No. 40

Q. Do you produce a report of the operations of the Department of Agriculture, Burma, for the year ended 31st March 1936 and for the year ended the 31st March 1937? A. Yes.

Q. Those are Government publications? A. Yes.

(The reports of the Department of Agriculture, Burma, for the year ended 31st March 1936 and the 31st March 1937 produced by the witness are put in and marked as Defendants Exhibits Nos. 5 and 6).

*In the  
Supreme  
Court of  
British  
Columbia.*

CROSS-EXAMINATION BY MR. PAGET:

Defendant's  
Evidence,

Q. Mr. Cotterell, how long ago is it that you first had experience of the grain A.26/3? A. Since it was brought into the market.

No. 30.  
Arthur  
Phipps  
Cotterell,  
Cross-Ex-  
amination,  
December  
31st, 1937.

10 Q. Yes, how long ago was that? A. Two or three years. I think it came into the market about 1933. I am speaking from memory.

Q. Now, I understand that about the year 1933 your Company, Joseph Heap & Sons, ceased doing milling here? A. Yes.

Q. So, may I take it, that you have had no personal experience of the grain A.26/3 as a miller? A. As a buyer, yes. As a miller, no, except what I have had milled in outside mills.

20 Q. Am I right in thinking that since 1933 your shipments (by which I mean Joseph Heap's shipments) from Rangoon have been very much less than in previous years? A. Yes, that's right.

Q. Can you tell me what quantity of A.26/3 you shipped in any of the years 1933-34-35 or 1936? A. I have only made two shipments of it, for a good reason.

Q. Is one of these shipments, the shipment referred to in Exhibit 4? A. Yes.

Q. When was the other shipment, Mr. Cotterell, of A.26/3? A. The other shipment was a year previous. You will see in Exhibit 4 the words "experimental shipment."

30 Q. This shipment was quite a small shipment, 400 bags only? A. Yes.

Q. Was the other shipment a year previously a small shipment too? A. That was also a small shipment.

Q. Do you know that Messrs. Blackwood Ralli & Company Limited have shipped in one year over 2000 tons of A.26/3 to various destinations? A. No, I don't. I don't dispute it but I don't know.

40 Q. Will it surprise you to learn that they received no complaints for shipments of over 2000 tons, nearly 2520 tons, as regards heating, damaged or yellow grains in one year? A. Yes, it does surprise me.

Q. Now, just one general question. Apart from A.26/3 are you now shipping rice from Rangoon on a large scale? A. What do you mean by a "large scale"?

Q. Well, Mr. Cotterell, you know the extent of shipments



*In the  
Supreme  
Court of  
British  
Columbia.*

Defendant's  
Evidence,

No. 30.  
Arthur  
Phipps  
Cotterell,  
Cross-Ex-  
amination,  
December  
31st, 1937.

—continued.

made by the different firms and Companies from Raungon? A. I don't profess to be a big shipper at any time.

Q. Now, do you consider that you have had enough experience of the grain A.26/3 to compare it with other Government grains of the same family? A. Yes, from the various samples I have examined I do and from what information I have received about it.

Q. I see you reported in 1936 that it was then considered superior, particularly from Maubin District? A. Yes.

Q. Is that correct? A. That is where I made that purchase from. I was quite satisfied with the outward appearance of the paddy. 10

Q. Was there any complaint with regard to the remaining bags which were shipped by the "Bhamo" or "Yorkshire"? A. I did not get any.

Q. And, may I take it also, there was no complaint with regard to the previous shipment you made a year before? A. With regard to the previous year's shipment I made, my Principals complained of the colour of the rice and in milling that it broke badly. 20

Q. Where is this A.26/3 specifically grown? A. In the Delta.

Q. Can you be a bit more specific than that,—any particular part? A. Well it is grown at Kyaiklat, Pyapon, Maubin—all that area.

Q. And is it still being shipped extensively? A. I should say not.

Q. Now, you have probably seen this Report of the Agricultural Department dated the 17th December 1937? A. Yes.

Q. And, while I am on it, the Hon'ble Somerset Butler has the same opportunity of seeing Government returns and reports regarding the rice trade as you have. A. Yes. 30

Q. He is also a member of the Chamber of Commerce Subcommittee dealing with the rice trade? A. Yes.

Q. Now, will you look at the 4th and 5th pages? A. I have seen all those. I know what they are.

Q. Does that return show that A.26/3 Emata is extensively grown? A. Yes, I admit all that.

Q. Presumably it is grown for purposes of shipment, Mr. Cotterell? A. It is grown for export to certain markets. 40

(Government Report of the Deputy Director of Agriculture, Irrawaddy Circle, Bassein shown to the witness and is put in by Mr. Paget and is marked as Ex. JJ).

Q. Do you know R. R. Khan, one of the Directors of R. R. Khan Mills? A. Personally, no.

Q. You know of him by repute? A. Yes.

Q. Do you know that he is a large grower of paddy? A. I have heard so but I don't know.

Q. You don't know the type of paddy he grows? A. I have heard he has grown a lot of Sugandi paddy. I cannot swear that it is A.26/3.

Q. Have you made any enquiries to find out? A. No.

Q. Would you be able to form an opinion from rice samples as to whether the paddy from which that rice had been milled was A.26/3? A. White rice samples?

10 Q. Yes, and the loonzain from which the white rice samples were prepared? A. I might. But, you cannot really tell about this particular class of paddy until you start milling it.

Q. Now, Mr. Cotterell, what I am asking you is this. You, as a shipper, have bought paddy from a mill? A. Yes.

Q. Which has been milled at that mill? A. Yes.

Q. And you get samples at the time of shipment, or at the time of milling, if you like? A. Are you referring to this particular paddy?

20 Q. No, I am speaking generally. Would you be able to form an opinion as to whether those samples had come from A.26/3? The samples you get after milling. A. I should think so.

Q. And, presumably, Messrs. Blackwood Ralli & Company's expert would be able to form the same opinion? A. I hope so.

Q. He would not be much good unless he could? A. I don't know that, I cannot say.

Q. Have you ever met Mr. C. deJordan who was employed by Messrs. Blackwood Ralli & Company for some time? A. No.

Q. You would form your opinion from certain characteristics which would be apparent in the samples? A. Yes.

30 Q. Such as? A. A.26/3 would be a much duller coloured rice than some of the others. This is the only outward appearance that you could detect, and shape of course.

Q. Would there be anything in the brokens which would give you an indication? A. In milling, yes.

Q. Very well. Now, will you agree with me that Messrs. Blackwood Ralli & Company's expert in connection with this particular shipment is in a better position than you are to say whether or not it was A.26/3? A. Obviously. He saw the samples, I did not.

40 Q. A.26/3 is not the only type of paddy that is reaped in the middle of December is it? A. No, there are other paddies reaped in the middle of December.

Q. Take this year Mr. Cotterell. We have had a great deal of unexpected rain in the first week of December. A great many cultivators have had their paddy already reaped and lying in the fields? A. That's quite right.

*In the  
Supreme  
Court of  
British  
Columbia.*

Defendant's  
Evidence,

No. 30.

Arthur  
Phipps  
Cotterell,  
Cross-Ex-  
amination  
December  
31st, 1937.

—continued.



In the  
Supreme  
Court of  
British  
Columbia.

Defendant's  
Evidence.

No. 30.

Arthur  
Phipps  
Cotterell,  
Cross-Ex-  
amination  
December  
31st, 1937.

—continued.

Q. I daresay you have seen some of it yourself, such as I have. A. I have been amongst it.

Q. May I take it that a great deal of paddy reaped in the first week in December was not A.26/3? A. I have seen no A.26/3.

Q. All you have seen this year have been other classes of paddy? A. Yes. A.26/3 is not grown near Rangoon. No Sugandi is grown to within 20 miles.

Q. And there are other types of Sugandi besides A.26/3 which might be reaped in the middle of December? A. Yes, that's 10 about the usual time for it.

Q. That is the usual time for reaping of Sugandi? A. Yes.

Q. The particular characteristic in the appearance of A.26/3 you have told us is the broad shoulder. Would you agree with one witness who said that it tapered at both ends? A. Both ends? Well, I have just been drawing it. I will show you the grain.

Q. If that is like A.26/3 (showing witness a grain) would you agree with me that it does taper slightly at both ends? A. I don't know what you mean.

Q. I mean the thick part, it tapers down? A. The Burmese 20 refer to as A.26/3 as a big woman, and she tapers down.

Q. Very well, thank you. You have had placed before you the circumstances such as they are known of this rice being damaged when outturned at Vancouver? A. Yes.

Q. And do I understand that you have formed an opinion as to the cause of the shipment we would call 163 being outturned in a damaged condition? A. In my opinion it started before shipment.

Q. If I understand you aright you form that opinion largely on the fact that the bags were found damaged on one side only 30 and not in the middle? A. Yes.

Q. If internal heating had set up on boardship you would be likely to find the bags damaged in the middle? A. Yes, that's usual.

Q. So that we can probably rule out heating as the cause of the damage? A. Heating, yes.

Q. What you would call internal heating of the grain, we can rule that out? A. Yes.

Q. That leaves us with some exterior cause as to the damage which in your opinion happened before the shipment? A. Likely 40 to.

Q. And, as I understand you, your suggestions are that the bags in some way became wet after milling? A. Yes.

Q. Now, you will admit that April is normally one of the driest months of the year for shipments? A. Yes.

Q. And this year, I don't know whether you would like to

check it if you are not satisfied, there was no rain in Rangoon between April 6th and April 23rd? A. That seems to be all right. (Witness is shown exhibit B 1.)

Q. And your report to your own office does not suggest that any rain occurred between April 6th and April 24th? A. I only put down that thunder storms were prevalent. I did not say when or where.

Q. The thunder storms to which you refer coincide with the Observer's report on rain on April 5th and 6th? A. Yes, it rained on both of those days in Rangoon.

Q. We have had it in evidence today that these cargo boats were loaded up on or after the 8th of April. If you look at this page and the next you will see the date they were loaded up, the dates they were alongside and the date they were shipped.

(Witness is shown Exs. GG and HH.)

A. Yes, there is one boat loaded up on the 8th.

Q. And all the others after that date? A. Yes.

Q. It does not indicate, does it, that there was a likelihood of the rice being damaged in transit from the mill to the ship?  
20 A. Not in those figures. I qualify that because your figures are for Rangoon. My observations are general. This place is 80 miles away, 100 miles away.

Q. One witness said 60 miles, do you think it is rather more?  
A. Well, I give in. Bogale is 80 miles, it is nearer than that.

Q. If you will look at the Rangoon Gazette reports from the 9th of April to the 23rd, you will see that no rain was actually recorded between those dates, except in Tenasserim. A. Is that a Rangoon report?

Q. This is an official Poona report. (Witness is shown Ex. 30 1). A. There is no mention of actual rain there. That's the Poona report.

Q. That is the official Government Report for the whole of Burma and India. Tenasserim is a Division at the extreme South of Burma, it runs down to Siam? A. Yes, one of the Divisions.

Q. Now, quite apart from the actual conditions appertaining at the time of loading, it is a fact, is it not Mr. Cotterell, that rice is loaded up and shipped ex Rangoon during the greater part of the monsoon every year? A. Yes.

Q. That indicates, does it not, that with reasonable precautions there is no reason why rice bags should get wet in transit from the mill or godown to the steamer? A. When?

Q. Even during the monsoon. A. Provided they are properly protected. It is a big "provided" too.

Q. Even during the monsoon I suggest there are not many claims on that score? A. No. Not in well found boats.

*In the  
Supreme  
Court of  
British  
Columbia.*

Defendant's  
Evidence,

No. 30.

Arthur  
Phipps  
Cotterell,  
Cross-Ex-  
amination,  
December  
31st, 1937.

—continued.



*In the  
Supreme  
Court of  
British  
Columbia.*  
—  
Defendant's  
Evidence,  
—  
No. 30.  
Arthur  
Phipps  
Cotterell,  
Cross-Ex-  
amination,  
December  
31st, 1937.  
—continued.

Q. Do you know the R. R. Khan Rice Mills personally?  
A. No, I have seen them on the banks of the river like most mills.

Q. The months December to April are normally the dry months in Burma, are they not? A. They are.

Q. You would not expect rice bags to become floor-damaged between the period of milling at the beginning of March and shipment in the middle of April? A. Yes, why not?

Q. Why should they be? A. High tides.

Q. Most mills are on the banks of a river? A. Yes.

Q. And I suppose they take precautions to prevent bags being flooded at high tide? A. It all depends. They may have rat holes and it all depends how the godowns are looked after. It is quite a common thing for the centre of a godown to be hollow and these rat holes may go right through and I have experienced it myself that water will percolate from the river to the centre of the godown.

Q. Would you expect any European miller to take precautions against such a calamity? A. They might do.

Q. You would expect what we know as the big mills to take such necessary precautions? A. Well, I would myself but what an English mill would do, is, I should say, "doubtful."

Q. A witness has stated that the R. R. Kahn godowns are the most suitable godowns among small mills. If that be so you would hardly expect flooding to occur even at high tide? A. It does.

Q. Of course, correct me if I am wrong but I think the period of the highest tides we get in the Rangoon area is during the month of September when you get spring tides in conjunction with rainfall coming down the river? A. You get also high tides in March, April and May.

Q. But not so high as the tides in September? A. Not quite so high as the tides in September. We have to take precautions at the time when our godowns are full of paddy, almost high tide in April.

Q. Now, if a bag had become flooded at high tide, it would be apparent? A. Not necessarily "flooded." We would not ship it.

Q. Because it would be apparent? A. Yes. It would smell in a very few days.

Q. You knew the late Mr. Cyril Shaw? A. Oh yes.

Q. He was surveying cargoes of rice for shipment for many years? A. Yes, I think so. That was his business.

Q. And to your knowledge did he carry on his business satisfactorily as a Surveyor? A. Yes, he surveyed for me.

Q. And I put it to you generally Mr. Cotterell, it is the custom, is it not, to test every bag that is shipped with a pike?

(Mr. Horrocks objects to this question on the ground that it is against the evidence). Not to weigh every bag Mr. Cotterell but to sample every bag. What's your experience? A. Not every bag is sampled, a good proportion of the bags are supposed to be.

Q. Well, I put it to you that if a large number of bags had become damaged through moisture of some kind while lying in the mill, that would be apparent at the time of shipment? A. Not necessarily.

Q. If the job was carefully done, would it be apparent?  
10 A. It all depends how it was done.

Q. The samples you know are taken by the pike from the outside of the bags? A. Yes.

Q. Therefore you would naturally get samples of such portion as have become damaged through water? A. It depends how far it went into the bag.

Q. And when sampling damp rice, dampness ought to be apparent? A. Not necessarily.

Q. Wouldn't it tend to break? Wouldn't it tend to be discoloured? A. Not in its damp stage, not in the loonzain. When  
20 you make white rice samples, a lot of it would break up.

Q. And therefore become apparent? A. If you like to call that apparent.

Q. It would be apparent to a sampler who did his job properly? A. Yes.

Q. At all events I understand from you that you can think of no other cause of a lot of this cargo outturning in a damaged condition except that it went on board damaged? A. Well, there is another possibility.

Q. And that is it had collected moisture by condensation on  
30 board ship? A. No, not exactly that. By the use of ventilators made from unseasoned timber.

Q. In that case I take it that there would be a certain amount of condensation from moisture which collected on or in the ventilators? A. No, I don't know how it occurs but I am told that the sides of the bags, the bags of the actual cargo which came in touch with the ventilators, showed signs of damage. I have not seen it myself but I believe that is one of the causes of damage in transit arising from timber ventilators that are made from unseasoned timber. Quite dry timber,—I should not expect any  
40 condensation or anything else.

Q. But it would be more frequent for complaints of excessive sweat damage to occur in a cargo boat than it would in a liner of the Bibby and Henderson type? A. That may be so but the percentage of sweat damage is small in comparison with all cargo.

Q. You have told us that Kalagyí is a type which travels badly? A. Very badly, yes.

*In the  
Supreme  
Court of  
British  
Columbia.*

Defendant's  
Evidence,

No. 30.

Arthur  
Phipps  
Cotterell,  
Cross-Ex-  
amination,  
December  
31st, 1937.

—continued.



In the  
Supreme  
Court of  
British  
Columbia.

Defendant's  
Evidence,

No. 30.

Arthur  
Phipps  
Cotterell,  
Cross-Ex-  
amination,  
December  
31st, 1937.

—continued.

Q. For that reason it would be proper to stow it on top of other cargo, near the top of the holds so that it would get most ventilation? A. I don't know about that. All I know is that Kalagyi is a very bad grain to hold and to ship. Everyone of us is very nervous about it and unless it is conditioned beforehand it is almost sure to get damaged.

Q. At all events Mr. Cotterell, you cannot tell us from your own experience in what part of the hold condensation is most likely to make its appearance? A. No.

Q. Mr. Cotterell, is it not usual for bags of rice to show some 10 loss of weight between the time of milling and the time of shipment? A. Slight?

Q. 1%. A. Say about half that.

Q. Have you ever had occasion to compare the weights of bags on shipment and the weights of the same bags on arrival at destination? A. We get reports of all our shipments regularly.

Q. And I suggest to you that a loss of 4 lbs. on a voyage of four weeks is nothing unusual? A. It is unusual. It should not be over 1%. We get complaints if it is over 1%.

Q. Are you referring to loonzain or white rice? A. White 20 rice will be 1% or thereabouts, not more than 1¼%.

Q. Loonzain will be slightly higher? A. Slightly higher.

Q. Loonzain would be 1% over a period of four weeks?  
A. Yes.

Q. Well Mr. Cotterell, I think I should refer you again to these Exhibits but I don't think the loss for a period of four weeks from the date of milling to the date of shipment is not more than 1%. Naturally if grain is damp it loses more weight at the beginning than it does later on? A. Yes.

Q. So that you would expect it to lose more in a month say 30 from the date of milling to date of shipment than in the subsequent month from date of shipment to date of arrival? A. If there is more than 1%.

Q. Just answer my question. (Question repeated.) That's right, yes. A. When you asked me those percentages just now I was referring to dry rice.

Q. I suggest to you it is not possible actually to ship rice in a perfectly dry condition. There is always some moisture?

A. A little.

Q. Have you any idea what the normal percentage is? 40  
A. Of moisture, no. We never take it. It is not recorded.

Q. Would it surprise you to know that Messrs. Blackwood Ralli & Company have found it is normally 8%? A. It all depends what time of the year.

Q. In March and April this was. A. This particular year?

Q. Yes, this year. A. No, I have never gone into the question.

Q. And would it surprise you to know that the Canada Rice Mills consider shipments up to 14% of moisture to be safe?

A. Never heard of it. I would not like to take the risk of shipping that.

Q. Now, would you agree with another witness who has stated that after 7 or 8 months rice bags should become for practical purposes bone dry, as dry as you can get them. Suppose a bag of rice is stored for 7 or 8 months in the dry season. Well during that period you go through a very dry period and then you strike the rains and it begins to absorb moisture again? A. The weights of bags increase in the rains. That is a known fact.

Q. And yet in spite of such absorption of moisture it is considered safe to ship them during the monsoon? A. Oh yes, it isn't so great as all that. The only appreciable effect of the moisture in the grains is that the weight of bags is slightly increased.

Q. So doesn't it come to this Mr. Cotterell, that for these bags to have outturned obviously damp, there must have been more than the ordinary moisture in them? A. No.

Q. You don't agree? A. No.

Q. Mr. Cotterell, do you know the quantity of paddy grown by R. R. Khan? A. I know nothing about R. R. Khan.

Q. Do you know that he has some 12,000 acres of paddy land under cultivation? A. I have heard he had a large area under cultivation, if he is the man that is referred to in the Government reports.

Q. And he grows Field Amagyi? A. He might do, I don't know.

Q. Well, if he grows Field Amagyi, how many baskets would he be likely to get from 12,000 acres? Would you like a piece of paper and pencil? A. I am not going to attempt to answer. I don't know what he gets. I don't know anything at all about R. R. Kahn's business.

Q. Would a yield of 60 baskets per acre be reasonable? Delta paddy. A. 60 baskets an acre is excessive.

Q. What would you consider reasonable for Delta paddy? A. Delta paddy,—40 to 50.

Q. You have told us that Pyapon and Kyaiklat are in the Irrawaddy Circle. So far as Districts go, they are in the Delta District? A. Yes, we refer to them as in the Delta.

#### RE-EXAMINATION BY MR. HORROCKS—

Q. Would you look at those two reports. Will you indicate on Ex. 5 the northern extremity of the Tenasserim Division?

*In the  
Supreme  
Court of  
British  
Columbia.*

Defendant's  
Evidence,

No. 30.

Arthur  
Phipps  
Cotterell,  
Cross-Ex-  
amination  
December  
31st, 1937.

—continued.

Re-Exam-  
ination



*In the  
Supreme  
Court of  
British  
Columbia.*

Defendant's  
Evidence.

No. 30.

Arthur  
Phipps  
Cotterell,  
Re-Examina-  
tion,  
December  
31st, 1937.

—continued.

A. I have indicated with a blue line approximately the boundaries of the Tenasserim Division attached to the map being Appendix XI in Exhibit 5, marked Exhibit 5-A.

Q. With regard to damage from unseasoned timber in the ventilators, that suggestion has not been made till you yourself mentioned it this afternoon. Ruling out that Mr. Cotterell, can you suggest any other reason to account for this damage having occurred on board? A. No.

Q. You have been asked about there having been no rain in Rangoon. Ex. 1 refers to thunder storms occurring locally. In your experience in Rangoon, does it not frequently happen that a thunder storm may be of extremely local extent? A. Oh yes.

Q. And therefore I take it thunder storms if prevalent may have occurred anywhere from Mayetwa right up to Rangoon? A. It would be in the Districts.

Q. Without there being any rain in Rangoon? A. Yes. Sometimes it rains on one side of the road and not on the other.

Q. You were also asked whether during the monsoon period you would expect damage to cargo boat lots of rice provided reasonable precautions were taken. Mr. Paget asked you whether you would expect damage to occur from rain and you said "provided" precautions are taken" and you said it was a big "provided" too. A. Provided they were properly protected.

Q. That's right. Do you consider there is any greater likelihood of those in charge of cargo boats being surprised by the weather in April than in the monsoon? A. Yes, undoubtedly.

Q. Can you suggest anyone in Rangoon with greater experience of the rice business than yourself? A. I would rather not answer that question.

Q. Do you know of anybody with longer experience in the rice trade than you have yourself had? A. Not at present in the trade.

(Mr. Horrocks has no objection to Mr. Paget putting a few formal questions.)

BY MR PAGET—

Q. If R. R. Khan had been growing Government seed A.26/3, would it not appear in some report similar to this, Ex. JJ? A. Well there is a reference but his name is not mentioned.

Q. Will it not appear in some report, similar to this, Ex. JJ? A. You mean his personal name? This is all we get. The cultivators name only appears.

Q. But R. R. Khan is a cultivator. A. Yes, but it is not mentioned here. I have not seen it.

Q. Doesn't it indicate that what is grown is not Government

Re-Cross  
Examina-  
tion,

seed A.26/3? A. These are simply parcels that are grown from seed obtained from the Government Depot.

Q. That is not so Mr. Cotterell. Figures are given here for the field stamp, on the last page of this report. A. It is from seed I take it that has been issued by the Government Department.

Q. Exactly. Therefore as Khan's name does not appear he is not growing from seed issued by the Government Department? A. I don't know.

BY MR. HORROCKS—

10 Q. In your opinion does it follow that because R. R. Khan's name does not appear in Ex. JJ therefore he did not get his seed from a Government Seed Farm. A. No, it does not follow because his name does not appear here. He may have grown A.26/3 from his own seed himself.

Q. Which he may have bought from Government in a previous year? A. I don't know anything about it but the fact that he is not named here does not convey very much. He may have had the seed kept over from last year or the previous year—his own seed in hand.

20 Q. Look at page 109 of Exhibit 5. This quantity 8121 baskets were of a large grain type of Emata represented chiefly by the strain A.26/3. This seems to indicate a revival in the demand for Emata seed. This is particularly cultivated in the Maubin district as well as in the Pyapon District where a Rice Miller who is also a Land-owner has done a great deal to formulate the local cultivation of this type of grain. Brief as it is does that description fit R. R. Khan? A. Yes.

THE COURT: Is that the case?

MR. DESBRISAY: There is one more witness, my lord.

30 THE COURT: All right. Call him.

MR. DESBRISAY: Mr Parks.

FRED HARRISON H. PARKS, a witness called on behalf of the Defence, being first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. DESBRISAY:

Q. Mr. Parks, what is your occupation? A. I am an average adjuster.

Q. What are your qualifications? A. In 1924 I was called to the Bar, admitted as a solicitor of this Court and engaged in practice for a year, and was then employed by Boyd Phillips & Co. as an average adjuster, and I have been engaged in that profession ever since. My work consists in the adjustment and settlement

*In the  
Supreme  
Court of  
British  
Columbia.*

Defendant's  
Evidence,

—  
No. 30,  
Arthur  
Phipps  
Cotterell,  
Re-Cross  
Examina-  
tion.  
December  
31st, 1937.

—  
Re-Exam-  
ination

No. 21.  
Fred  
Harrison  
H. Parks,  
Examina-  
tion,  
May 27th,  
1938.



*In the  
Supreme  
Court of  
British  
Columbia.*

Defendant's  
Evidence.

No. 31.

Fred  
Harrison  
H. Parks,  
Examina-  
tion,  
May 27th,  
1938.

—continued.

of claims under insurance policies. In the last three years I have been one of the lecturers of the classes in marine insurance, organized by the Institute, Insurance Institute of America, and the local Association of Marine Underwriters. I have settled some thousands of claims for amounts involving millions of dollars.

Q. I am producing to you Exhibit 1, the policy in this case. It contains a clause in regard to the manner in which claims are to be adjusted. A. The clause reads that the adjustment and settlement thereof be made in conformity with the laws and customs of England. I have seen policies issued all over the world most of them contain the clause. Most of my experience has been in adjusting claims under English law and practice. 10

Q. Now Mr. Parks, you have heard most of the evidence in this case? A. Yes.

Q. And you have heard that the Segundo carried two lots of rice, each called Interco Brose, one bearing mark A.L.Z. and one 163. A. Yes.

Q. You have also heard that those two parcels were the same kind of rice and bought for the same purpose? A. Yes.

Q. And you have heard that 163 was damaged and that the claim in this action was in respect of that rice? A. Yes. 20

Q. And it was not possible to check what the damage was, to check the rice, until it was milled? A. Yes.

Q. Also that the rice 163 was milled and sold with the exception of 41½ tons? A. Yes.

Q. And that the rice A.L.Z. was also milled and sold? A. Yes.

Q. And that the rice A.L.Z. was used for the purpose for which it was intended and it was sold at the going market price? A. Yes. 30

Q. It also appears from the evidence that the rice in question was, to some extent at any rate, damaged prior to shipment. You heard the evidence in that regard? A. Yes.

Q. Now having that information what have you to say as to proper method to ascertain the gross sound value and the damaged value of the rice 163?

MR. BULL: My lord, I do not think—

MR. DESBRISAY: I have a case in which average adjusters were called for that purpose.

THE COURT: I have got the statute first of all, to say how the damage— 40

MR. DESBRISAY: I submit that the practice of adjusters in the Port of Vancouver in the light of the statute and their authority and practice, is proper evidence to give before this Court. And, although this case was decided prior to the passing of the Act, nevertheless the average adjuster did give evidence as

to the manner in which the claim should be adjusted, and the Court received the evidence and then decided.

THE COURT: I think that is the very question I have got to decide. What does your case show? Anything very similar to this?

MR. DESBRISAY: The question there was as to whether or not the damaged value should be the estimated value at the time of its arrival or the sale value after it was conditioned. The evidence of the adjuster was received.

10 THE COURT: What is the name of the case?

MR. DESBRISAY: Francis vs. Boulton. It is reported in I Commercial Cases at page 27. It is also referred to in Halsbury, 344, note R.

THE COURT: What is the year of that case?

MR. DESBRISAY: The year of that case is 1895. It is also reported in 65 Law Journal Queen's Bench at page 153.

THE COURT: Have you anything further to say? I think that this is a question for me. The cases referred to on page 344 lay down the rule which is laid down by—

20 MR. DESBRISAY: That is Johnson vs. Shedden. Yes, that case was referred to in this Francis vs. Boulton. It says the gross value means the wholesale price—(reading). It is a question here of what—I submit the practice of average adjusters is; as to what wholesale price means is evidence here.

THE COURT: To show general usage which would form part of the contract?

MR. DESBRISAY: Yes. The contract itself provides.

30 THE COURT: It would be evidence of a custom which of course would be part of the Law, and the contract would be deemed to be made subject to that custom. Are you suggesting that?

MR. DESBRISAY: It is a provision of the contract my lord, that it has to be adjusted in conformity with the laws and customs of England. This is the custom of average adjusters at the Court of Vancouver that I am endeavouring to give evidence of, and this witness will state—

THE COURT: A custom in England.

MR. DESBRISAY: I know my lord, but he bases his practice on a practice which prevails in England which they ascertain from text books.

40 MR. BULL: My lord, I am sure we would all benefit very much by the opinion of Mr. Parks of how he would carry on the settlement which relates to this matter, but it seems to me your lordship is quite capable of doing it. I think it is for your lordship to decide.

THE COURT: Yes it is a matter for me to decide.

*In the  
Supreme  
Court of  
British  
Columbia.*

Defendant's  
Evidence.  
No. 21.

Fred  
Harrison  
H. Parks,  
Examina-  
tion,  
May 27th,  
1938.

—continued.



*In the  
Supreme  
Court of  
British  
Columbia.*

Proceedings  
at Trial,  
May 27th,  
1938.

MR. DESBRISAY: Thank you, Mr. Parks.

(Witness aside.)

THE COURT: Is that the case?

MR. BOURNE: We may have one more witness who is not available at the moment. I am not just quite clear whether we will have one or not, but I would like to have the opportunity of calling him.

THE COURT: You will have no rebuttal Mr. Bull. Do you think as at present advised?

MR. BULL: I may have to call Mr. Eldridge. Just at the 10 moment I don't think so my lord.

(Court adjourned at 4:55 p.m. until 10:00 a.m. May 30th.)

May 30th,  
1938.

10:00 a.m. COURT RESUMED PURSUANT TO AD-  
JOURNMENT

MR. DESBRISAY: My lord, I do not think that the Invoice for the insurance premium has been put in, and I would ask my learned friends to produce it. I have a copy of it here. My lord, I am putting in the invoice from Macaulay, Nicolls & Maitland June 5th to Canada Rice Mills for the premium on the quantity of rice in question on this action. 20

DOCUMENT MARKED EXHIBIT NO. 49

THE COURT: Is that receipted?

MR. DESBRISAY: No, my lord.

THE COURT: But there is no question but what it is paid?

MR. DESBRISAY: No, my lord. I wish to put in questions of the examination of Mr. Lauchland, from question 262 to 272. The first phrase I am not putting in. I have one more witness, my lord, Captain Morton.

---

No. 32.

Defendant's  
Evidence,

**Extracts from the Examination for Discovery of Norman Lee 30  
Lauchland, an Officer of the Plaintiff Company,  
Put In by the Defendant.**

No. 32.  
Extracts  
from Exam-  
ination for  
Discovery of  
Norman Lee  
Lauchland,  
May 14th,  
1938.

262 Q. . . . Will you tell me over what period please the  
163 was sold? A. We sold some of the rice milled from 163 when  
it was mixed in May, 1936.

263 Q. How much of it? A. And also—would you just  
give me that question again?

264 Q. I just asked at that stage, perhaps I was interrupting you, how much of the 163 you sold in May. A. We milled on May 29th 50 bags of brown IntercoBrose 163, but the white rice from this milling was not sent out as milled. We also milled on May 29th 84 bags of brown rice Interco Brose 163 and the white rice from this milling was sent out on May 30th.

265 Q. That is it was sold? A. Yes.

266 Q. Was it sold under any particular brand? A. Yes, it was sold under Bluebird, and also under Gold Standard.

10 267 Q. And that was without mixing at all? A. There was no mixing.

268 Q. What price was obtained for that. Can you tell me that without looking at your records? A. The mills charge the sales agents \$3.91 per one hundred pounds, plus 8 percent sales tax.

269 Q. Just go on as you were please. A. On May 30th, 1936, 452 bags of brown rice Interco Brose 163 and 102 were milled with 256 bags of Interco Brose A.L.Z. and the resultant production was sent out.

270 Q. That is, it was sold? A. Yes.

20 271 Q. Under various brands? A. Yes.

272 Q. And for different prices or the same price charged for each brand? A. Different prices would be charged for different brands.

ROBERT L. MORTON, a Witness called on behalf of the defendant, being first duly sworn testified as follows:

DIRECT EXAMINATION BY MR. DESBRISAY:

Q. Captain Morton, what is your occupation? A. Well, I am a master mariner. At present I am managing a stevedoring company.

30 Q. What stevedoring company? A. Victoria and Vancouver Stevedoring Company.

Q. In Vancouver? A. In Vancouver and Vancouver Island.

Q. That company has been in business a great many years? A. Oh, yes.

Q. How long have you been occupied with this firm? A. Six years now.

40 Q. And prior to that? A. I was manager and superintendent of the Robert Dollar Company and we did our own stevedoring at that time.

Q. You were port superintendent for the Company when it operated a line of steamships from this Port. A. Yes

Q. Prior to that? A. I was at sea, master of the Dollar Steamers.

*In the  
Supreme  
Court of  
British  
Columbia.*

Defendant's  
Evidence,

No. 32.

Extracts  
from Examination  
for  
Discovery of  
Norman Lee  
Lauchland,  
May 14th,  
1938.

—continued.

No. 33.

Robert L.  
Morton,  
Examina-  
tion

May 30th,  
1938.



In the  
Supreme  
Court of  
British  
Columbia.

Defendant's  
Evidence,  
No. 33.  
Robert L.  
Morton,  
Examina-  
tion,  
May 30th,  
1938.

--continued.

THE COURT: Speak up so the Jury can hear you.

MR. DESBRISAY: Q. For how many years were you Port Superintendent? A. From '18 to '23.

Q. And prior to 1918 you had been at sea? A. I was sailing master of the Dollar Steamships from 1907 to 1918.

Q. They were all cargo steamers? A. Yes.

Q. And did you have occasion to make voyages on the Pacific Ocean? A. Well all my voyages were on the Pacific Ocean continually.

Q. Have you commanded vessels on voyages in the Asiatic such as Siam and Burma? A. No, we used to go as far as Zebu, Zamboanga, Ilo Ilo—Zamboanga I think is the furthest south.

THE COURT: What country is that? A. Philippine Islands.

MR. DESBRISAY: Q. Have you made many voyages across the North Pacific? A. Continually, probably for 11 years.

Q. At all periods of the year? A. Yes.

Q. What was the nature of the cargo you carried? A. The usual general cargo from these places, for instance we loaded hemp in Manila, Ilo Ilo generally sugar, Hong Kong general cargo such as rice, some sugar, and the usual general cargo.

Q. The vessels you captained were general cargo steamers? A. Oh, yes.

Q. I am producing the log of the vessel called the "Segundo" which sailed from Rangoon on April 24th, 1936 bound for the Canada Rice Company's dock on the Fraser River, loaded with a cargo 5000 tons of rice and no other cargo, and arrived at the Canada Rice dock on the early morning of May 28th. Have you seen a copy of that log you are now looking at? A. No, I have not seen any copy of it.

Q. Well, I think Captain, I showed you this? A. Well, I have not examined the whole thing you know. This is a copy of the log of course.

Q. That is a translation of the log, which was written in Norwegian. Will you just look through that log and look at the entries and note the weather encountered and the entries with regard to ventilation. A. Yes, sir.

Q. From your perusal of the log what have you to say as to the nature of the weather encountered by the "Segundo" as disclosed in the log? A. Well, it looks to me like a fair voyage, fair average voyage and the weather to be encountered. I have just turned down where it mentions "gales of wind," otherwise it was all light breezes.

Q. And you say it was a very fair voyage for that time of the year, the month of April and beginning of May? A. Sometimes

they have a lot of bad weather in the South Pacific. It looks like a very average voyage for that time of the year.

Q. From your experience in carrying cargo do you consider from your perusal of that log that there was any undue interference with the ventilation?

THE COURT: That is a question for the Jury.

MR. DESBRISAY: Of course that is a question of opinion I suppose. However, if your lordship, thinks not I will not pursue it.

10 THE COURT: I think it is a question of fact for the Jury.

MR. DESBRISAY: Q. If you were told this cargo of rice was stored—this vessel had four holds, one forward and one aft hold, No. 2, which was served by two hatches on which there were 'tween decks and hold No. 3 on which there were 'tween decks and one hatch. The rice was stowed in what is called the block system, with wooden ventilators, which is agreed I think to have been well placed, and the cargo to have been well stowed. About one-third of the cargo hold was vacant that is it contained no cargo. The ventilators were one cowl ventilator and one Samson post ventilator on No. 1 hatch for No. 1 hold, the cowl and two Samson posts for No. 2 hold, three cowl ventilators— A. What do they call No. 2 hold?

Q. No. 3 hatch goes into No. 2 hold, but No. 4 hatch goes into No. 3 hold and No. 3 hold had three cowl ventilators. A. What you are calling No. 3 is opposite the bridge space.

Q. Yes, and then the aft hold had one cowl ventilator and one Samson post ventilator. A. Well when you mean one ventilator, you mean one on each side.

30 Q. No, one cowl and one Samson. Now, if you were told there were 5000 tons of rice in the cargo and that the only rice in the cargo on which there was any damage or loss, was one parcel of 750 tons which was stowed in two holds, the hold which I have called No. 2 and which I have called No. 3 along with other rice of different marks, what would that indicate to you? A. If you told me some of this rice was damaged.

Q. That is 750 tons stowed in the two holds was damaged, but there were large quantities of other rice stowed in the holds which was not damaged; what would that indicate to you? A. Well I would like to know where that particular parcel was stowed and just how it was stowed, just where in the hold, and how it was stowed, and I would want to know—it is peculiar there is one part of the rice damaged and what happened to the other quantity of rice in that particular hold. Was there any reason one should be damaged and the rest not?

40 Q. Captain Watson has said as I remember his evidence, that the damaged rice was stowed in No. 2 hold forward of the aft

*In the  
Supreme  
Court of  
British  
Columbia.*

Defendant's  
Evidence,

No. 33.  
Robert L.  
Morton,  
Examina-  
tion,  
May 30th,  
1938.

—continued.



In the  
Supreme  
Court of  
British  
Columbia.

Defendant's  
Evidence.

No. 33.  
Robert L.  
Morton,  
Examina-  
tion,  
May 30th,  
1938.

—continued.

bulkhead, with a space of 18 to 20". I perhaps should have told you the cargo was amply damaged and that there were spaces of 18 to 20" between the cargo and all the bulkheads. A. That is good stowing.

Q. And this particular damage—there was rice, other rice on top of it, and there was other rice stowed— A. Under it?

Q. I do not think it is clear from his evidence there was any stowed under it, but stowed on it and other rice around it. In the aft hatch, No. 3, the rice was stowed in two blocks, and the forward block was 163. A. Was it damaged too? 10

Q. Yes. A. And there was rice on top and under it too.

Q. And there was rice piled abaft of it, and I understand there was some on top of it. A. Well, that is a kind of peculiar situation that. I would not know what to say about that. I cannot see if you—if there was an air space between the engine room bulkhead and the rice—

Q. Yes? A. Well that was good stowage. Well this was a motor ship. Well how was this rice supposed to be damaged? Was it water?

Q. Well, when it arrived here it was heated with a dry heat. 20 It showed signs of heat and the heat was dry. A. With a dry heat?

Q. Yes. A. Well then, I cannot see why that particular parcel should become heated. Why did not the other rice stored around and on top of it, why was it not heated? I do not see any reason why that one particular parcel should be heated and the rest not. They were all ventilated the same as that particular parcel. The rest of that rice was put in under the same conditions, that is as regards the heat of the hold and proximity to the bulkheads. 30

Q. Have you come to any conclusion then? A. How was the cargo loaded? Was it loaded in good condition, or was there any survey on the loading?

Q. Well, without knowing how it was loaded. A. Well, I would say if this rice was stowed in this particular hold and the damage was to some rice that was, you might say, between other rice, as far as I can gather in both of these spaces they were all subject to the same conditions. In a motor ship it is different than a coal burning or oil burning ship for the reason there is not so much heat in that engine room, so there would not be any great degree of heat against that bulkhead ordinarily. You say they 40 took precautions, there was a space left. I would assume there was something wrong with that rice when it was loaded on the ship.

## CROSS-EXAMINATION BY MR. BULL:

Q. There would be nothing remarkable about it if the other rice also showed damage? A. Did it show any damage.?

Q. There would not be anything remarkable about the situation if in fact rice of other marks also showed heating? A. Well, if it all showed heating, it still comes to the point as I gather it that this particular order of rice showed a great deal more heating than any of the rest of it.

10 Q. Well, who told you that? A. Well it is damaged and has a claim on it.

Q. But my learned friend put the question to you on the supposition that this particular parcel of rice was the only parcel that was damaged, and you made your answer on that hypothesis did you not? A. Yes.

Q. If it was all damaged and all heated, there would be nothing remarkable about it. A. Well if it was all to the same extent.

20 Q. Well, you have answered that question on the hypothesis this parcel was the only one damaged. A. From over-heating, well that parcel greatly over-heated might communicate it to some other parcel of rice.

Q. My friend asked you what your explanation would be, on the basis that this was the only rice damaged and you have answered on that basis, have you not? A. Yes.

Q. All right, now you have a copy of the log in front of you? A. Yes.

30 Q. If you will turn to pages 21 to 24, you will notice starting off on the second last watch on May 8th there was an average breeze, a strong breeze, sea very rough, and the whole of the 9th the wind got up to the force of half a gale, a fresh gale and the sea was high, and on the 10th got up to a whole gale, a strong gale. Do you see that? A. Yes.

Q. Fresh gale, sea very high and very rough. A. Yes.

Q. Continuous heavy head seas until the early morning watch on the 11th? A. Yes.

Q. During all that time the ventilators were closed? A. Yes.

Q. I suppose all sailors expect a storm while at sea? A. Yes.

40 Q. And it is nothing unusual for a ship to run into a storm. Is that not right? A. Yes.

MR. BULL: All right thank you. (Witness aside.)

MR. BOURNE: That is a case for the defence, my lord.

THE COURT: Any rebuttal?

MR. BULL: Yes, my lord, I will call Mr. Eldridge.

*In the  
Supreme  
Court of  
British  
Columbia.*

Defendant's  
Evidence,

No. 33.  
Robert L.  
Morton,  
Cross-Ex-  
amination  
May 30th,  
1938.



## REBUTTAL

In the  
Supreme  
Court of  
British  
Columbia.

Plaintiff's  
Evidence.

No. 34.  
Gardner  
Smith  
Eldridge,  
Recalled in  
Rebuttal,  
Examina-  
tion,  
May 30th,  
1938.

GARDNER SMITH ELDRIDGE, recalled in rebuttal.

THE CLERK: You have already been sworn. You are still under oath.

DIRECT EXAMINATION BY MR. MERRITT.

Q. Were you present when Captain Watson was examined?

A. I was.

Q. You remember him saying that he found that the heat in the cargo on landing, was a dry heat?

MR. BOURNE: My lord, if there are any questions to be directed along this line there has been plenty of opportunity. This witness had the opportunity of considering all these questions. The evidence so far has been this, every witness called including the plaintiff's three witnesses said it was dry. The only suggestion otherwise may be in that report of Captain Slater's which my learned friend took the responsibility of putting in. Now if there is any attempt to clear up a situation that way that was not developed by us but was created by themselves, it is not admissable evidence. Gavin said it was dry, Lauchland said it was dry and Sachs said it was dry, and Watson said it was dry. 10 20

THE COURT: Yes, alright. First of all will I allow this question.

(Question read).

MR. MERRITT: Q. Do you remember him saying it was a dry heat? A. Yes, I do.

Q. What do you say having in mind the cargo when it arrived, the temperature of the cargo when it arrived and the moisture content of the cargo as tested by Mr. Armstrong, what do you say as to the possibility of it being a dry heat?

MR. BOURNE: I object to that. This has been dealt with at length and it is not proper rebuttal. 30

MR. BULL: I submit that is quite a proper question, and it is misleading to say that any of the plaintiff's witnesses referred to this as a dry heat. They referred to the bags as being dry. They said the bags felt dry and that is quite possible, and that is why we want Mr. Eldridge's evidence. This is something new the Defendants have imported into the case.

MR. BOURNE: It is not. That is from your own witnesses.

MR. BULL: I repeat it is something imported into the case by the defence. 40

MR. BOURNE: My friend should not argue his case before the Jury.

THE COURT: I do not want any cross fire between Counsel. Mr. Sachs said the rice was dry according to my notes. Now let us see what Lauchland said. I have no note of that in Lauchland's evidence, no recollection at least. Now I will look at Gavin's.

MR. BOURNE: My recollection is that they said it is a dry heat. I have noted that all three said it is a dry heat. I cannot refer to the particular note. There is not the slightest doubt in my mind that that is what they did say.

MR. BULL: My recollection is distinctly opposite, and if there is any doubt about that the notes should be looked up. Mr. Gavin said the bags felt dry.

THE COURT: I cannot find it in Watson's evidence either. Of course I have no notes—

MR. BOURNE: I have not made this statement idly. I cannot give the word but I had this point in mind all through the trial. If there is any question about it, as my learned friend says, it should be turned up, because I am going to make a point of that very thing. The only suggestion of anything but a dry heat is in Slater's report.

THE COURT: I have found one reference in the evidence of Watson. He says in the "Aft part of No. 3 hatchway he found dry heat." In No. 3 hold he says he found dry heat. In the plaintiff's evidence I find nothing on that point. Neither of the plaintiff's counsel have a note on that.

MR. BOURNE: Well, I have not had an opportunity of running through it.

THE COURT: Well as I have no note and you have no note and Mr. Bull's recollection . . .

THE WITNESS: The temperature of the cargo, as I remember it in these holds in question was from 94 to 106—in that neighborhood, and at that temperature I would expect the humidity of air to be well over 80 percent, possibly 90 to 95. You could not have a dry heat as measured by a hydrometer in the presence of so much moisture.

MR. MERRITT: Q. Now Captain Watson gave his opinion that he did not think that the damage to the rice could have been caused during the voyage on account of the fact he did not observe any stain on the bags on arrival. What do you say about the possibility of stain on the bags, resulting from condensation, during the voyage.

MR. BOURNE: I submit this is not proper rebuttal.

THE COURT: That is an answer to Watson's theory.

THE WITNESS: I would not expect any stain caused from fog of that nature on the outside of the bag. My explanation was fog was formed and while it might be a very moist condition

*In the  
Supreme  
Court of  
British  
Columbia.*

Plaintiff's  
Evidence.

No. 34.

Gardner  
Smith  
Eldridge,  
Recalled in  
Rebuttal,  
Examina-  
tion,  
May 30th,  
1938.

—continued.



*In the  
Supreme  
Court of  
British  
Columbia.*

Plaintiff's  
Evidence.

No. 34.

Gardner  
Smith  
Eldridge,  
Recalled in  
Rebuttal,  
Examina-  
tion,  
May 30th,  
1938.

—continued.

Cross-Ex-  
amination,

I would not expect the moisture to sufficiently saturate the sack-  
ing to cause a stain.

Q. You were present when Mr. Armstrong gave his evi-  
dence? A. Yes.

Q. And you recollect him saying that in his opinion there  
could not be an appreciable amount of condensation when the  
hatches and ventilators were open, because the cold air would  
drive out the warm air.

MR. BOURNE: This witness has exhausted his informa-  
tion on that before. Now surely this is not rebuttal. 10

THE COURT: I think that is right. This witness went  
into that fully.

MR. MERRITT: Yes, my lord, but this particular angle  
of the question was not brought to his attention and he was not  
cross-examined along this line.

THE COURT: Well, he said there would be a moisture and  
the other man said there would not be.

MR. MERRITT: I submit they should have cross-examined  
him to give him an opportunity to meet this point which would  
not present itself in examination in chief. 20

MR. BOURNE: The whole question was dealt with to the  
full extent of my ability.

THE COURT: I disallow it. Any cross-examination?

#### CROSS EXAMINATION BY MR. BOURNE:

Q. Mr. Eldridge, you expressed the opinion that it would  
not be a dry heat, giving reasons that there would be humidity  
in the air. That is what you mean? A. Yes.

Q. But if the sacks felt warm and dry, then you would not  
be able to say there was dampness in the sacks. A. Well, there  
might be considerable moisture in the sacks. 30

Q. And still they felt dry on the outside? A. Oh yes, quite  
a considerable amount before they would feel wet.

Q. You were speaking of the humidity in the air because  
of the temperature? A. Yes.

Q. That is all you were talking about. That is right is it  
not? A. That is right.

Q. Now speaking of the other question, the stain on the  
bags, you based your opinion did you not on the same assumptions  
that you did when you gave your evidence in chief. You men-  
tioned fog in answer to a long question by my learned friend, and 40  
I presume now because you used the word fog again you were  
referring to the same circumstances in which you used the word  
fog in your examination in chief, and basing your answer on the  
assumptions you made then. Is that correct? A. That is correct.

MR. BULL: That is all.

(Witness aside).

THE COURT: Have you agreed on questions?

MR. BULL: I submitted questions and my learned friend has a lot of new ones, none of which I can agree on. I simply took every issue that was raised and my learned friend has incorporated a lot which I submit should not be put.

THE COURT: Well, let me have your questions.

(ADDRESS TO THE JURY BY MR. BOURNE).

10 THE COURT: This might be convenient time to adjourn. Gentlemen of the Jury we will adjourn to a quarter past two. Remember the caution I gave you not to speak to any one about this case.

(1 p.m. Court adjourned to 2:15 p.m.).

*In the  
Supreme  
Court of  
British  
Columbia.*

Proceedings  
at Trial,  
May 30th,  
1938.

---

**No. 35.**

**Draft Questions Submitted by Counsel for Plaintiff**

1. Did Blackwood Ralli & Company Limited, of Rangoon, in or about the 23rd April 1936 ship in the motor vessel Segundo for a voyage from Rangoon to the Plaintiff's dock at Fraser  
20 River, B. C. 7500 bags special quality Rangoon Loonzain rice marked Interco Brose 163?

2. Was the said rice in good and sound condition when shipped?

3. If the answer to No. 2 is in the negative, in what respect was such rice not in good and sound condition?

4. Was the said shipment part of a larger shipment by said vessel, the value whereof amounted, with freight, to \$191,992.00?

5. Did the Defendant agree that the whole of the said shipment was held covered under the policy of insurance dated the  
30 19th December 1929?

6. Did the Plaintiff declare the said shipment to the Defendant prior to the 17th of March 1936?

7. Did the Plaintiff pay to the Defendant a premium in respect of the said shipment of 7500 bags after the rate of 40c per \$100 amounting in all to \$138.59?

8. Was the value of the said shipment of 7500 bags including freight declared by the Plaintiff to the Defendant at \$30,798?

9. Did the said vessel during the said voyage encounter heavy seas, rains and weather amounting to a whole gale?

No. 35.  
Draft Questions for Jury Submitted by Plaintiff,



In the  
Supreme  
Court of  
British  
Columbia.

No. 35.  
Draft Questions Submitted by Plaintiff, May 30th, 1938.

—continued.

10. By reason of such heavy seas, rains and weather did it become necessary from time to time to close all hatches and cowl ventilators on the said vessel?

11. Was the said shipment of 7500 bags damaged by heat during the said voyage?

12. Was the proximate cause of such damage the closing of the hatches and cowl ventilators?

13. Did the Plaintiff thereby suffer loss exceeding 3% on each package?

14. If the answer to 13 is in the negative, how many packages 10 were damaged less than 3%?

15. What was the gross sound value of the 7500 bags?

16. What was the gross damaged value of the same 7500 bags?

---

### No. 36.

No. 36.  
Draft Questions Submitted by Defendant, May 30th, 1938.

#### Draft Questions Submitted by Counsel for Defendant

1. Was a cargo of rice of 50,600 bags loaded on board the motor vessel "Segundo" at Rangoon between April 13th and 23rd, 1936, for carriage to the Plaintiff's dock on the Fraser River, B. C., included in which were 7500 bags of rice marked Interco 20 Brose 163?

2. Did the Defendant insure the said cargo under Policy of Insurance marked Exhibit 1 in this action?

3. Was the rice marked 163 in good and sound condition when shipped?

4. If the rice marked 163 was not in good and sound condition when shipped, in what respect was it not in good and sound condition?

5. Had the rice marked 163 suffered damage prior to shipment? 30

6. If the answer to the last question is in the affirmative, was the said rice shipped in such damaged condition?

7. Was the sea and weather experienced by the "Segundo" on the voyage usual for such a voyage?

If the answer is in the negative, in what respects was it unusual?

8. Were the cowl ventilators and hatches covered more than is usual on such a voyage?

9. Was the purpose of closing hatches and cowl ventilators on the occasions on which they were covered during the said 40 voyage for the care of the cargo?

10. Did the said bags marked 163 arrive at Canada Rice Mills dock in a damaged condition?

11. If said rice marked 163 showed damage on arrival—  
 (a) What was the nature of the damage?  
 (b) Had the damage or any part of it existed prior to shipment?  
 (c) When and where did the damage occur?  
 (d) What was the proximate cause of the damage?
12. If the said rice suffered damage on the voyage, what was the amount in money of the loss suffered to each bag?
13. What was the gross sound value of the rice marked 163?
- 10 14. What was the gross damaged value of the said rice marked 163?

*In the  
Supreme  
Court of  
British  
Columbia.*

No. 36.  
Draft Questions Submitted by Defendant, May 30th, 1938.

—continued.

### No. 37.

#### Draft Questions Prepared by Trial Judge

1. Did Blackwood Ralli & Company Limited, of Rangoon, in or about the 23rd April 1936 ship in the motor vessel Segundo for a voyage from Rangoon to the Plaintiff's dock at Fraser River, B. C. 7500 bags special quality Rangoon Loonzain rice marked Interco Brose 163?
- 20 2. Was the said rice in good and sound condition when shipped?
3. If the answer to No. 2 is in the negative, in what respect was such rice not in good and sound condition?
4. Was the said shipment part of a larger shipment by said vessel, the value whereof amounted, with freight, to \$191,992.00?
5. Did the Defendant agree that the whole of the said shipment was held covered under the policy of insurance dated the 19th December 1929?
6. Did the Plaintiff declare the said shipment to the Defendant prior to the 17th of March 1936?
- 30 7. Did the Plaintiff pay to the Defendant a premium in respect of the said shipment of 7500 bags after the rate of 40c per \$100 amounting in all to \$138.59?
8. Was the value of the said shipment 7500 bags including freight declared by the Plaintiff to the Defendant at \$30,798?
9. Was the said shipment damaged by heat caused by the closing of the cowl ventilators and hatches from time to time during the voyage?
10. Was the closing of the ventilators and hatches the proximate cause of the damage?
- 40 11. Was the closing of the cowl ventilators and hatches a matter of good seamanship imposed by the state of the weather.

No. 37.  
Draft Questions Prepared by Trial Judge, May 30th, 1938.



In the  
Supreme  
Court of  
British  
Columbia.

No. 37.  
Draft Questions Prepared by  
Trial Judge,  
May 30th,  
1938.

—continued.

12. Was the weather during the time the cowl ventilators and hatches were closed such as to constitute a peril of the sea?

13. If the weather was such as to constitute a peril of the sea what were the conditions of the weather?

14. Did the Plaintiff thereby suffer loss exceeding 3% on each package?

15. If the answer to 13 is in the negative, how many packages were damaged less than 3%?

16. What was the gross sound value of the 7500 bags?

17. What was the gross damaged value of the same 7500 bags?

(2:15 P.M. COURT RESUMED PURSUANT TO ADJOURNMENT).

Discussion  
of Questions,

THE COURT: Would you point out in Exhibit 1 where it deals with perils of the sea, perhaps Mr. Desbrisay would find it.

MR. DESBRISAY: Yes, my lord. I have underlined it. (Mr. Bourne resumed his address to the jury).

MR. BULL: Before I address the jury I think it is a question of some importance for the jury to find whether this loss was caused by perils of the sea. 20

There is a case here which I think your lordship should have, 28 N.S.R. 346. It was in 1896 before the Court sitting en banc.

THE COURT: What is the name of the case?

MR. BULL: Morrison vs. Nova Scotia Marine Insurance Co. The judgment of Mr. Justice Graham at the foot of page 354.

THE COURT: You think in view of that case the jury should not be instructed as a matter of law, but the question should be put to the jury, whether it was due to a peril of the sea.

MR. BULL: This case seems quite clear.

THE COURT: I propose as soon as you finish, to show 30 you these questions and then hear you as to any objections you might have.

MR. BOURNE: My learned friend Mr. Desbrisay will address your lordship on that question.

MR. DESBRISAY: Your lordship wishes that question which has just been raised, to stand until after Mr. Bull addresses the jury, because I have an authority the other way.

THE COURT: I propose after Mr. Bull has finished his address to let the jury go and settle the questions, because that is a very important question. 40

(Mr. Bull addressed the jury).

THE COURT: Now, gentlemen, these questions. I have prepared questions I want you to look at now. I think perhaps the jury might go. We will not get through this thing for some little time, I think. I suppose you are willing to consent to the jury

going now while we are discussing the question of what questions are to be submitted to them?

MR. BULL: Yes, my lord.

THE COURT: Gentlemen of the jury, you may go until half past ten to-morrow morning.

(Jury retire).

THE COURT: Now I took Mr. Bull's questions, the plaintiff's, and I tried to see how many of the defendant's questions were already included in his, and, for instance, now No. 1 of the plaintiff's is practically the same as No. 1 of the defendant's.

MR. DESBRISAY: Except, my lord, that I included—at least, the log showed that the loading took place between April 13th and April 23rd. What was shipped was 7500 bags, part of a cargo of 50,600 bags.

THE COURT: Yes, but what we are concerned with is 7500 bags.

MR. DESBRISAY: Yes, my lord, but this whole question is important.

THE COURT: Well, I do not believe Mr. Bull has a serious objection as far as that part of his question is concerned, to make a change to the way you want it. Have you, Mr. Bull?

MR. BULL: I don't see any reasons for it.

THE COURT: I do not, either. It shortens matters and the jury will not waste any time on that question.

MR. DESBRISAY: I am quite prepared to admit that a cargo of 50,600 bags was loaded aboard on April 23rd and shipped to the Canada Rice Company at Vancouver, included in which were the 7500 bags of rice marked Interco Brose 163. That is perfectly obvious from the evidence.

THE COURT: Well, I suppose it is.

MR. BULL: You see, I have to have a finding of fact on everything that is in issue.

THE COURT: Yes, we want to get a finding on the facts. The questions will be amended if you can agree along those lines. Now the next one is: "Did the defendant insure the said cargo under policy of insurance?" Now that is covered by Mr. Bull's questions 5, 6 and 7.

MR. DESBRISAY: Well, my lord, the point I take there is this. The question for the jury is whether we insured, and we agree that we did insure, and what is the effect of their notification to us is a question for your lordship, with all deference, not for the jury. Whether there was a declaration at one time or another is a matter for your lordship. The evidence is here of what was done. It is all a matter of record.

THE COURT: Well, if you are willing that I should tell

*In the  
Supreme  
Court of  
British  
Columbia.*

Discussion  
of Questions,  
May 30th,  
1938.

—continued.



*In the  
Supreme  
Court of  
British  
Columbia.*

Discussion  
of Questions,  
May 30th,  
1938.

—continued.

the jury in answering 2 they should say yes, I do not know that your friend would object.

MR. BULL: Yes, or if there is an admission on the record.

MR. DESBRISAY: We admit that we insured the rice and we insured it subject to this policy, and the manner in which the insurance was brought about is evidenced by the exhibit. I think they are exhibits 2 and 5.

THE COURT: Well, if you admit the insurance that ends that.

MR. BULL: It is admitted on the pleadings, my lord. 10

THE COURT: Yes, of course. Then of course if it is admitted on the pleadings it is not necessary to submit it to the jury. But what Mr. Bull wants is that everything which is necessary for him to show to the court to obtain a judgment in case the jury answers the question.

MR. DESBRISAY: Oh, yes, I quite appreciate that. For instance, the question, "Was the value of the said shipment 7500 bags—" Well, my lord, we do not know what the value of that shipment was. It may have been valued for insurance purposes at that amount. And the question is when that declaration was made. I am prepared to agree that it was insured, but as to the nature of the insurance, that is a matter for your lordship. 20

THE COURT: It is a question of fact, was this rice insured. The jury have got to answer that. I do not answer that.

MR. DESBRISAY: Well, I am prepared to agree that it was insured.

THE COURT: Well, the question will remain in regard to that.

MR. DESBRISAY: Which one is that you are looking at, my lord? 30

THE COURT: Well, you see, if you leave question 2 in your questions and admit that, that is all Mr. Bull wants. Then the next one is the same as Mr. Bull's; no trouble about that. No. 4 is the same as your 4—that is the same as his 3. Now why the simple repetition?

MR. DESBRISAY: Well, is it? There is this situation. The rice was stated in evidence so far as its fair value is concerned to be good and sound rice, whether in respect of the damage which it had suffered prior to shipment or subsequent to shipment, and the jury might misconstrue that question. 40

THE COURT: I do not think there is any danger of that, and I am going to tell them exactly what damage is set up here. Now 5 and 6 are a repetition.

MR. DESBRISAY: Except for that point I take, and that is why I included that. I do not want to have any doubt about that.

THE COURT: I will regard that in my charge. Now then,

the next question deals with a question of law.

MR. DESBRISAY: Which question is your lordship referring to now?

THE COURT: Your questions 7, 8 and 9 and Mr. Bull's questions 9, 10, 11 and 12. Now you see the way I put the questions on there, and that depends, of course, on whether or not I am right in my view as to whether I should ask the jury to say there was a loss by peril of the sea, and it seems to me as at present advised that is the proper view. For instance, in an action for  
10 negligence in a running-down case, the court explains to the jury what negligence is in law, and then the jury are asked to say whether or not there was negligence, and then, if so, in what did that negligence consist. Now here I am asking was there a peril of the sea, and then if there was, what was that peril.

MR. DESBRISAY: Well, my lord, should that not be left to you? Should the jury not simply be asked what the cause was?

THE COURT: No. Then I have to decide after that.

MR. DESBRISAY: I submit, of course, that is exactly what your lordship should do.

20 THE COURT: Well, that is what I want to hear you on.

MR. DESBRISAY: In the case of *The Thrunscoc* (1897) Probate, 301—that was the case closest to this I have been able to find, apart from the one in our own courts that I have mentioned. The finding of fact there was (reading). And then at page 305 Gorell Barnes J. says (reading). Now it has been held, my lord, that the determination of this question of perils of the sea, whether under a bill of lading or under a marine insurance policy, is the same.

30 THE COURT: That was not a jury. That was an appeal from the learned County Court judge.

MR. DESBRISAY: An appeal on a question of fact and/or a question of law. I submit it is for the jury to find the circumstances, the facts which had brought about the damage, and then it is for your lordship to decide whether upon an interpretation of a document of this kind, the insurance policy, the facts as found by the jury amount to a peril of the sea.

40 THE COURT: You see, suppose a jury in a running-down are properly instructed by the court as to the meaning of negligence in law, as to what negligence is in law, and then properly charged on that, and then the jury are asked what was this negligence, and if the answer is yes, in what does the negligence consist. Suppose the jury say the negligence consists in the driving of the car causing something which was not possibly to do with the accident. Well, now, counsel might be of the opinion that the accident should be dismissed. That question only comes up after the jury has answered.

*In the  
Supreme  
Court of  
British  
Columbia.*

—  
Discussion  
of Questions,  
May 30th,  
1938.

—continued.



*In the  
Supreme  
Court of  
British  
Columbia.*

Discussion  
of Questions,  
May 30th,  
1938.

—continued.

MR. DESBRISAY: The distinction that I see between the two is this, that the jury find the facts which caused the condition. Having found those facts, then it becomes a matter of the interpretation of the provisions of the insurance policy, and that is a matter of law. It is not for the jury to say whether the facts as they find them is a risk which the insurance company insured against. It is for the court, I submit with all deference; whether this, that or the other thing is a fact for the jury, but whether it is a peril of the sea is for your lordship to decide. That is the distinction.

10

THE COURT: Have you any other cases?

MR. DESBRISAY: This is stated in a compendious way, as it was stated in this other case—a case in the Supreme Court of Canada, *Canadian National Steamships v. Bayliss*, (1937) S.C.R., at 261. I do not think that was a jury case, my lord. Now it was proved at the trial, my lord, that this vessel had left Bermuda, one of the West Indies, with a cargo of molasses and she ran into rough weather (reading headnote and judgment).

You see, my lord, they find what the facts are and then it is for the court to decide whether upon those facts they have made out a case to bring themselves within the expression in the policy “peril of the sea,” against which we insured.

20

THE COURT: Is not the question of fact whether or not the damage was caused by a peril of the sea?

MR. DESBRISAY: No, my lord. The fact is how the damage was caused, and then after they ascertain how that damage was caused, it is a question of law whether that cause of damage was a peril of the sea. They say this was a risk insured against. You must first find what caused this damage and then you must look at the policy and decide whether that damage, or that cause of the damage, was one of the risks that was insured against within the meaning of that clause. It is a matter of interpretation of a document, just as was stated by the learned judge in this *Thrunseoe* case. I think it is a very clear exposition of the situation.

30

THE COURT: What do you say, Mr. Bull?

MR. BULL: I would be very happy to have the question decided by your lordship or by the jury. If that *Nova Scotia* case is good law there is no doubt about it.

THE COURT: I spent quite a lot of time on this thing, because it struck me at once that it was something I had to decide.

40

MR. BULL: At first I must say I thought it was a question for your lordship.

THE COURT: So did I. The case of *Hudson*, a leading case on that, that is the case I thought first would cover the situation. I do not think it does now.

MR. BULL: There is a case of *Crofts v. Marshall* (1836).

It is in 173 English Reports at 262, particularly at 265 and 267. But the two passages are contradictory. Lord Denman says at page 265 (reading). It seems to me that authority is very consistent with the Nova Scotia case, although the first part is rather opposed.

*In the  
Supreme  
Court of  
British  
Columbia.*

THE COURT: That case is quoted in Arnould on Marine Insurance, section 72.

MR. DESBRISAY: Yes, Carrington & Payne is the report.

10 MR. BULL: I would like to be in a position of having a finding on that if necessary. I would not like to take the risk of not having a finding on that specific question, because it does seem the authorities are that the jury should pass on it.

One or two of the other questions I would like to refer to, my lord, question 11: "Was the closing of the cowl ventilators and hatches a matter of good seamanship imposed by the state of the weather?" Now I submit that should not be put to the jury because under the Insurance Act it does not matter whether there has been negligence or not. That is section 43, and also in the policy itself— No, it is section 57, my lord, of the Act (reading).

20 THE COURT: You would think it should go out?

MR. BULL: Oh, yes, I think it should, my lord.

THE COURT: What about the other one?

MR. BULL: No. 12—that would be better. No. 13—I don't quite follow that, if they have already answered 12. Is 13 designed to give particulars?

THE COURT: Yes. As a matter of fact it would be rather in your interest, because if I am wrong in the jury being asked to find upon the peril of the sea—

30 MR. BULL: May I ask to change the wording? "If the answer to 12 were in the affirmative, what were the conditions of the weather?" I think it might be a little confusing. I think that is all.

MR. DESBRISAY: My lord, I would like to be sure, referring to your lordship's question No. 4—that is unnecessary, I submit, in view of the discussion in respect to No. 1. Also 5, 6, 7 and 8.

THE COURT: Well, we had them before. I am putting your question 2, and you agree that the jury should answer that.

40 MR. DESBRISAY: Now, my lord, with regard to questions 9 and 10, it is assuming certain facts to exist before any finding has been made, if I may say so, with deference.

THE COURT: Which ones?

MR. DESBRISAY: 9 and 10.

THE COURT: There have been no facts assumed there. First, was there damage caused by heat, and was that heat caused by the closing of the ventilators.

Discussion  
of Questions,  
May 30th,  
1938.

—continued.



*In the  
Supreme  
Court of  
British  
Columbia.*

Discussion  
of Questions,  
May 30th,  
1938.

*—continued.*

MR. DESBRISAY: And was the closing of the ventilators and hatches the proximate cause.

THE COURT: You might say "If the answer to 9 is yes, was the closing of the hatches and ventilators the proximate cause?"

MR. DESBRISAY: My submission is they should be asked what the state of the weather was and then point out what weather caused the damage and how it caused it, in view of the authorities. For instance, the definition of peril of the sea. That is the reason I drafted those questions which I place before your lordship. 10

THE COURT: You see, what I did referred to the provisions of the policy and then referred to that condition.

MR. DESBRISAY: Then, my lord, I think there should be some indication of when the closing—if it was caused by closing of the cowls—

THE COURT: I said so. During the time—from time to time during the voyage.

MR. DESBRISAY: Does your lordship intend by that that they should indicate the times?

THE COURT: You see, the whole submission of heat is 20 between the 8th and 11th May.

MR. DESBRISAY: The pleadings, of course, refer to the whole period by the particulars which they gave.

THE COURT: I mean the whole of the evidence is directed to the period between the 8th and the 11th. There is no suggestion of heating afterwards.

MR. DESBRISAY: Then, my lord, I should think the question should be so framed, that that is clear.

THE COURT: You mean to say set out the heating from the 11th? 30

MR. DESBRISAY: My lord, I don't know whether they should have any particular time pointed out to them, after all. It is for the jury to decide in view of the whole evidence. That is all I have to say on that point.

This question of the 3% clause, the question of whether or not they bring themselves within this depends on what the sound and damaged value is—at least, the gross sound value and the gross damaged value. When that has been ascertained the plaintiff must prove a 3% loss in value. There is no evidence of value at all. They said 20% to 25% in quantity, and that is all they said. 40 Now, my lord, 20% to 25% of rice in a sack that showed a little discolouration or darker colour than another, it might not be 25% of the value at all; it might not be 1%. And of course there is another question—on what basis the computation is made. It is made on a basis of the money value. That is why I framed that

question as I did, my lord. I am not quite sure that it is a question for the jury at all.

THE COURT: They must find that, because suppose the bags suffered only 2% no damage could be recovered in respect of that.

MR. DESBRISAY: That is true, my lord, but that is very easily ascertained by evidence.

THE COURT: You have got the evidence of the sacks.

MR. DESBRISAY: No, my lord, not of value, only of  
10 quality.

THE COURT: If you have got the article damaged—they say 25% the value is 25% less.

MR. DESBRISAY: No, my lord, there is not a scintilla of evidence to suggest what the proportion of loss in money was to each bag.

THE COURT: Now then, I will set these questions to-night and adjourn to half past ten in the morning.

MR. DESBRISAY: My lord, these letters and exhibits which were put in, marked for identification, which were tendered  
20 in evidence and not admitted, I now offer them and they may all be put in as one bundle.

THE COURT: They had better be marked clearly. There is one thing occurs to me. There were several exhibits, and a part of those were not to go before the jury.

MR. BOURNE: I have one, exhibit 8, my lord, and I have left out the portion which your lordship directs to be left out. I believe my friend has made a copy of the letter and the invoice that had the memoranda on, so I will put that in. That is exhibit 8.

MR. BULL: I object to that very much. It is just mutilating the exhibit and destroying the sense of it.  
30

MR. BOURNE: My lord, I take the position that this is rather a late time to make any suggestion of that sort. This was submitted to my learned friend and it was agreed upon, and your lordship objected—

THE COURT: You cannot submit that to the jury because it had in that part which should be struck out. Now you can do as I suggested or you can paste something over that.

MR. BULL: My point is if you are going to mutilate it at all the whole section should come out, because it would give the  
40 jury a wrong impression. Now let me read it.

MR. BOURNE: I submit, my lord, that now is a strange time for my friend to make that objection.

THE COURT: What is the number of that exhibit?

MR. BOURNE: No. 8. My lord, I want to get my position perfectly clear in this matter. I asked my friend Mr. Merritt on Saturday morning if he would produce that, and he raised that

*In the  
Supreme  
Court of  
British  
Columbia.*

Discussion  
of Questions,  
May 30th,  
1938.

—continued.



In the  
Supreme  
Court of  
British  
Columbia.

Discussion  
of Questions,  
May 30th,  
1938.

—continued.

question, and I told him positively that I would not permit that position to be taken as far as I was concerned. The matter had been submitted. I had submitted the exhibits to my learned friend during the trial, and your lordship had ruled it out. The point raised when this was referred to was that they could not go in as it was in contravention of the agreement, because it referred to something that had happened on the voyage. There was no question raised about it, and now is no time to bring it up, because we have addressed the jury and I have assumed it went in in that way, and I read it to the jury in that way. 10

THE COURT: Have a transcript made of that part of your argument, what your friend said and your position, and then I will know what to determine.

MR. DESBRISAY: Then there is also the question of gross sound value. My friend stated his position in his address to the jury. Whether the whole or any part of the goods or merchandise—your lordship is familiar with that—subsection 3 of section 73. It says (reading).

Furthermore, as far as the sound value is concerned, we know what the value of A.L.Z. was, and what 163 was, because it was the value of A.L.Z., and the wholesale price, the wholesale price here. And how are you going to ascertain this wholesale price—by just arbitrary estimates—or are you going to do that by taking it from the very best evidence available, and the best evidence available, my lord, is the fact that A.L.Z. was sold for the purpose for which it was intended; that the 163, although they say it was not sold for the purpose for which it was intended, some of it was sold as rice without any mixing, and they got the going price for it. But they just come here with an arbitrary estimate. If the wholesale price is to be estimated, then they must estimate it from the best evidence available, from the facts that disclose it, because after all, they are only entitled to be indemnified. 20 30

THE COURT: Gross value is gross selling—

MR. DESBRISAY: Yes, is the wholesale price.

THE COURT: You mean gross damaged value or gross sound value?

MR. DESBRISAY: Yes, my lord, that is what it means. Gross value means wholesale price, and that is the price that the rice would sell for when it arrived here. And I furthermore point out, this rice, the sound value cannot be ascertained by taking the invoice price because we know the invoice were wrong, and they knew they were wrong, because they knew on May 29th that this yellow grain existed, which they say was a perfectly obvious damage caused prior to shipment and reduced the value of the rice. 40

THE COURT: Well, that might that from the sound value.

MR. DESBRISAY: Yes, my lord, but what is the proper proportion? They said they accepted \$1750. They did not consult us about it. We were entitled to know, with all deference. And furthermore, their correspondence shows that the \$1750 did not cover the loss. Now what was the loss? We have not got to pay for something they should have got from somebody else.

THE COURT: Do you suggest that \$1750 should be taken off the gross sound value?

MR. DESBRISAY: Well, my lord, I am not prepared to agree that the \$1750 is a fair—or is correct.

THE COURT: Well, assuming whatever the amount might be, it should come off the sound value.

MR. DESBRISAY: Whatever it might be it should come off the sound value.

THE COURT: Did not Mr. Lauchland say in his evidence that the figures were irrespective of the \$1750?

MR. DESBRISAY: There is no statement produced that makes any deduction in respect to that \$1750. And I further point this out, my lord, that the policy has been pleaded throughout as an open policy, and an open policy is defined in Arnould on Marine Insurance.

THE COURT: The statute defines that.

MR. DESBRISAY: No, my lord. An open policy is an unvalued policy. It is not a valued policy.

THE COURT: Yes, that is quite true, otherwise it can cover the whole amount.

MR. DESBRISAY: A valued policy is this — “a policy which specifies the agreed value of the subject matter insured.” If there is a loss they pay the amount of the insured value, and no one can dispute about it, whether it is correct or incorrect. The situation with the open policy or unvalued policy is there the insured must show what the insurable value was at the time the goods were loaded on board the ship, and the method of ascertaining what that is is stated in section 18, subsection 3. I am pointing out that they have not given any evidence of what that would be. That is, they have evidence in their possession and they have not chosen to give it. And I submit that that case of Francis and Boulton is the authority on the subject. It is quoted in both Arnould and Halsbury.

THE COURT: Mr. Lauchland gives the figures they actually received.

MR. DESBRISAY: No, my lord, they don't show what they actually received. My friend said in his address to the jury the question of what they received had nothing to do with it. Mr. Bull said it does not matter what price they got for this rice.

*In the  
Supreme  
Court of  
British  
Columbia.*

Discussion  
of Questions,  
May 30th,  
1938.

—continued.



*In the  
Supreme  
Court of  
British  
Columbia.*

Discussion  
of Questions,  
May 30th,  
1938.

*--continued.*

THE COURT: It does not matter what Mr. Bull said. What did Mr. Lauchland say in his evidence?

MR. DESBRISAY: There is no suggestion of what it is sold for. It is stated to be an arbitrary estimate.

THE COURT: Well, I will consider that.

MR. DESBRISAY: And then there is this other point, my lord, too, that on the question of the reduction in value of the rice there is the evidence of their own witness that yellow grain in the rice, considerable yellow grain, which their correspondence indicates were present in this rice, would result in a reduction in value of \$15 a ton. And that is approximately what they are claiming here. As your lordship will remember, Mr. Lauchland stated that those were the figures he used. 10

THE COURT: I do not see what that has to do with it. The yellow grains have nothing to do with the damage, if any, caused by heat. That is something entirely apart from this question.

MR. DESBRISAY: No, my lord, Mr. Gavin said that, but it is not supported by the evidence of Mr. Lauchland.

THE COURT: Assuming now what Mr. Lauchland said, there was 10% of this yellow grain, and there still remains the claim for damages for the heating of the grain. The one thing is, they reduced the value of the grain by putting in yellow grains, and the other is you reduced the value of the grain by heating. There are two separate things. For instance, suppose I bought a motor-car, an eight-cylinder motor-car, and the vendor shipped me a six-cylinder motor-car, and on the way that car was injured by the railway, and I claimed from the vendor the difference between the price of an eight-cylinder and six-cylinder, and I also claimed from the railway company the damage to the six-cylinder car. 20 30

MR. DESBRISAY: If you use a bag of rice or a bag of peanuts—if you can pick out the number of peanuts that have been damaged by one thing and the number of peanuts that have been damaged by another, all right; but whether that is the true loss—

THE COURT: The fair value of the yellow rice is just as good as fair value of the other rice.

MR. DESBRISAY: And the fair value of the heated rice is just as good as the fair value of the clean rice. The evidence is perfectly clear, and I asked Mr. Lauchland, and it is only its appearance in both cases, and the question of whether it is a true loss, there is a dividing line and I say it is impossible to fix it. 40

MR. BULL: My lord, I would like to say one word on this because I do not think there would be any difficulty on this question of damage. Section 73 (reading). Now gross damaged value

means wholesale price, or if there be no such price, the estimated value. Now those are the words and that is the way the plaintiff's case was put in. There was no wholesale price in Vancouver on damaged rice; there was no competitor, no one to buy it, and therefore Mr. Gavin has to estimate the gross damaged value, and he is able to do that because he knew the result of the milling. But I maintain what I stated before is correct. It is damage to the commodity, and I have got a whole list of cases here. The Francis case—there there was an understanding or agreement with  
 10 the insurance company that it would be reconditioned.

MR. DESBRISAY: No, in the last there was no agreement.

MR. BULL: Of course, I never get anywhere because you always want to argue over again when I am arguing. I do not know if your lordship wants a note of this case, but in *Cater v. Great Western Insurance Company*, L.R., 8 Common Pleas, 552, and *Curran v. Royal Exchange*, 120 E.R., 170.

THE COURT: They were all crystallized in the statute.

MR. BULL: Now the case my friend cited has no bearing at all. I say there was an agreement to recondition, and I submit  
 20 the jury must be instructed under that statute to on the evidence find out what the gross damaged value was, and I submit there is no count should be taken of any improvement of quality by this plaintiff in respect of the other grain, because that is cut out altogether. That has nothing whatever to do with the policy with respect to which this action is brought. It is a different thing entirely. One is heating damage and the other is imperfection of the rice.

MR. DESBRISAY: This case did not involve an agreement.

THE COURT: All right, adjourn until half past ten to-  
 30 morrow.

(COURT ADJOURNED AT 5:10 P.M. UNTIL 10:30 A.M. MAY 31, 1938).

Vancouver, B.C., May 31, 1938; 10:30 a.m.

(COURT RESUMED PURSUANT TO ADJOURNMENT)

May 31st,  
1938.

MR. DESBRISAY: If it please your lordship, I would like to put in these letters and cables for identification.

THE COURT: You have shown them to your friend?

MR. DESBRISAY: My friend produced them.

MR. BULL: They are just marked for identification.

40 THE COURT: Put them in. The Registrar will identify them.

MR. DESBRISAY: Each one separately with separate letters.

*In the  
Supreme  
Court of  
British  
Columbia.*

Discussion  
of Questions,  
May 30th,  
1938.

—continued.



In the  
Supreme  
Court of  
British  
Columbia.

THE COURT: Call them C-1 and C-2 and so on.  
(DOCUMENTS MARKED C-1 TO C-20 INCLUSIVE FOR  
IDENTIFICATION)

No. 38.  
Address to  
Jury, Rob-  
ertson, J.,  
May 31st,  
1938.

No. 38

Address to Jury, Robertson, J.

THE COURT: Mr. Foreman and gentlemen of the jury, throughout the trial you have heard references by counsel to the plaintiff and the defendant, and I suppose it is perfectly clear to you who are meant by those respective terms, but to prevent any doubt, the plaintiff is the Canada Rice Mills Limited and the defendant is the Union Marine Insurance Company Limited. The action is brought by the plaintiff against the defendant in respect of an insurance policy, under which it is alleged the insurance company agreed to pay the plaintiff a certain indemnity, I call it, in the event of a cargo of rice suffering damage by reason of perils of the sea. There is no question about the policy having been issued and no question about it covering the rice in question. There is no question that it insured the plaintiff against perils of the sea. 10

The Plaintiff must prove first of all that the policy was issued and covered the rice in question. That is admitted. The second thing the plaintiff must prove is that the rice was put on board the ship in good condition; third, that the rice was damaged; and, fourth, that it was damaged by perils of the sea. Those are the four things which the plaintiff sets up in the statement of claim and which it alleges it has proved. 20

The defendant sets up in its defence three defences; First, it says the goods were damaged when they were shipped or there was some defect in them when they were shipped, or the nature of the article was such that it was bound to deteriorate on the voyage. Secondly, they say if it was not damaged at the time it was put on board, it became damaged by some inherent vice, or from the nature of the rice; and, third, they say in any event the damage was not caused by perils of the sea. 30

I want to clear up one or two little things. First, reference was made to an affidavit of documents. Now an affidavit of documents is drawn by the solicitor for the party, and when it is drawn, in his view certain things may be immaterial, and consequently he does not ask his client to produce them, or does not include them in the affidavit of documents if he thinks they have nothing to do with the case. Later on it may develop that such documents are of some relevance. In this case you have an in- 40

stance where documents were not mentioned in the affidavit and were later on produced. After all, it is really a matter for the solicitor to determine what documents shall be in the affidavit of documents, and it is not to be urged against the client unless it is clearly shown that he knew they were of importance and purposely left them out. You have heard throughout the trial a great many objections to evidence by the plaintiff and defendant. The parties are anxious to get in everything they think will help their case. The other side may think it is not evidence, and they are within their rights in objecting. So the fact that either side objects to any evidence sought to be adduced here is not something from which you can draw an inference unfavourable to the side or party objecting.

Under our system of jurisprudence you must take my direction on the law. It is my duty to inform myself of what the law is and instruct you, and you must accept that without reserve. On the other hand, you are the sole judges of the facts. The court has no control over you at all. It is your own independent conclusions as to the facts which govern you. You must only consider the evidence you have heard given in this court room. Of course, it would be absolutely unfair to one party if you were to consider anything you have not heard sworn to in this court. For instance, newspaper reports, or something that may have been told to you. You must be careful to consider only evidence that you have heard here.

This trial has lasted six or seven days and you have heard a great deal of evidence, and it may be that your recollection of the evidence is not very clear. It is not my recollection of the evidence which must govern, and it is not the recollection of either learned counsel which must govern. It is your own independent recollection, and if you have any doubt as to what was said by any witness, all you have to do is to ask the Sheriff, in whose charge you will be when you retire to consider your verdict, to bring you back to the court room, and I shall be glad to have read to you the whole or any part of the evidence of any witness.

There is one thing further: I do not propose to indicate to you what my view may be of this case. I want you, and it is your duty, to come to a conclusion assisted by me only with regard to the law and the facts, and without reference to what you think may be my view.

The onus is on the plaintiff throughout the whole of this case to satisfy you by a preponderance of evidence that he is right. If he does not succeed in satisfying you by that preponderance of evidence, then the defendant is entitled to a verdict, or rather is entitled to an answer on the questions on which you are not satisfied.

*In the  
Supreme  
Court of  
British  
Columbia.*

No. 38.  
Address to  
Jury, Robert-  
son, J.,  
May 31st,  
1938.

—continued.



*In the  
Supreme  
Court of  
British  
Columbia.*

No. 38.  
Address to  
Jury, Rob-  
ertson, J.,  
May 31st,  
1938.

—continued.

I may say that I am going to give you questions to answer, and you must be unanimous on the answers to each one of the questions. The plaintiff has to satisfy you by a preponderance of evidence that he is entitled to your decision if it is in his favour.

You may accept the whole or part of the evidence of any witness. That is to say you may think a witness has not told the truth, or you may think he is wrong on some point. In such case you may reject the part of the evidence you think is not truthful, or you may reject the part in respect of which you think he is mistaken, or you may accept the whole of it, or reject the whole of it. You are entitled to use your general information and every-day knowledge and experience of the common affairs of life which men of ordinary intelligence possess, subject to this that you must always be guided by the evidence before you. 10

Now I told you that I was going to submit questions to you, and they are 13 in number. I propose after I have read the question to you to tell you what the law is with regard to the question, and also to tell you the facts in connection with that question.

The first question is: "Was a cargo of rice of 50,600 bags loaded in board the motor vessel "Segundo" at Rangoon between April 13th and 23rd, 1936, for carriage to the plaintiff's dock on the Fraser River, B.C., included in which were 7500 bags of rice marked Intereco Brose 163?" 20

"2. Did the defendant insure the said cargo under policy of insurance marked exhibit 1 in this action?"

The parties have agreed that those two questions should be answered in the affirmative. You have no trouble about that.

The third question is: "Was the said rice in good and sound condition when shipped?" 30

Now dealing first of all with the law, section 57, subsection (1) and (c) of Chapter 134 of the Revised Statutes of British Columbia, 1936, known as the Marine Insurance Act, says: "Subject to the provisions of this Act"—and there is no other provision that I know of that applies here—"and unless the policy otherwise provides, the insurer is liable for any loss proximately caused by a peril insured against, but, subject as aforesaid, he is not liable for any loss which is not proximately caused by a peril insured against." You see the reason for that proximation—"he is not liable for any loss which is not proximately caused by a peril insured against." (c) "Unless the policy otherwise provides, the insurer is not liable for ordinary wear and tear, ordinary leakage and breakage, inherent vice or nature of the subject matter insured"—Now it is under those words particularly, and unless the goods are shipped in good condition, that the defendant relies. 40

Now the evidence with regard to this question can be divided into two classes. There is first of all the commission evidence, and secondly there is the evidence given by some of the witnesses who took the ground that the damage could not have been caused by perils of the sea and by closing of the ventilation, and therefore there must have been something wrong with the rice when it was shipped.

10 The first witness called on the commission evidence by the plaintiff was a man named Butler, who was the head man of Blackwood, Ralli & Company, the vendor of the rice. He said first of all that 1936 was a normal year. He saw the samples of all the rice that was shipped and he said those samples were up to specifications and in accordance with the contract. He said that April was a good month in which to ship the rice. You will remember that was the month in which the rice was shipped, and he said that this particular Brose was in good condition to stand the voyage.

20 The next witness was Krishnar Adhar. He is a rice paddler in the employ of Blackwood, Ralli & Company. He was the man who passed upon the condition and quality of the rice shipped from the Khan mill. There were 6478 bags that came from that mill. There were 986 bags which came from the godown, the Moolla godown, and there were 36 bags, which I am not sure where they came from, but I think it is from the general stock, that makes the 7500. Krishna is only concerned with 6,478 bags. He said that he remained there all the time when these bags were being milled. He was there when 6,500 bags were milled. He said that he made a test every hour. He was the only one testing it. He sent samples to his employers every day, and he said that 30 the rice was dry and was not damaged, and he said that he saw his master examine the samples of the rice. I take it that it was his master, although he does not say so. That is an inference that you may draw from the evidence. You may draw any inference from the evidence you think is properly warranted.

The next person is Tewari, a rice paddler. He dealt with 5,750 bags, part of which were shipped under No. 102, and he says that he took samples every hour of that, and they were in good condition.

40 The next witness was Tryogi, and he speaks of 38 bags which formed part of the 7,500 bags, and he says the rice was of good quality, and there was nothing wrong with it, and he brought samples to the office.

The next witness is Ba Ohn, and he is the keeper of the godown at Ally Moolla. He speaks of 986 bags, and he says he took samples and this rice was in good condition and there were no black grains in it. Then there is Ispahany, who was employed

*In the  
Supreme  
Court of  
British  
Columbia.*

—  
No. 38.  
Address to  
Jury, Robert-  
ertson, J.,  
May 31st,  
1938.

—continued.



In the  
Supreme  
Court of  
British  
Columbia.

No. 38.  
Address to  
Jury, Rob-  
ertson, J.,  
May 31st,  
1938.

—continued.

by Morrison & Company. You will remember that Shaw who was employed by Morrison & Company, gave the certificates which were referred to. This man Ispahany was employed by Morrison & Company, and worked with Shaw, and said that the samples of rice were all right, and said that no part of the shipment from the Khan mill was in a damaged condition.

Then you have deJordan, the man in charge of the rice for Blackwood Ralli, and he says it was in good shape. He says the 986 bags put in the godown at Ally Moolla he would have noticed specific samples of the shipment himself. 10

Finally, the plaintiff relies on the certificates given by Morrison & Company. I need not refer to them except to say that they are Lloyds' surveyors, and they certify the goods are in good condition.

That is the Commission evidence for the plaintiff.

On the Commission the defendant called a man named Cotterell. He is a man of very large experience in the rice business, and he said among other things that Kalagyi was a bad carrier. He said that if damage had been done to 163 by heat, by the closing of the ventilators, that he would expect to find damage done to the rice above or below it, and upon that he based the conclusion that the rice in 163 had rather an inherent vice or something in its nature of that sort which led to the damage which the plaintiff complains of. He also dealt with the fact that the bags were damaged on the side, and said that indicated to him that these bags had been wet before they were shipped, and that was the cause of the damage. He said further it was possible for a process of heating to have commenced while, or before the rice was being milled, and then to have continued after the shipment was put on the ship and upon that basis the conclusion that that com- 20  
plaint was the cause of the trouble. 30

Now in addition to that there is the evidence of Armstrong, the chemical engineer, Captain Watson, the master mariner, and Captain Morton, all called by the defendant who state in their opinion the damage was not caused by the closing of the ventilators, and therefore must have been caused by something which was there at the time of shipment. I shall have something further to say about that later on.

With regard to that, on that branch we have on the one hand the people who actually saw the rice and tell you its condi- 40  
tion. There are those who did not see it, Watson, Armstrong and these other people.

Now, in passing to question 4, was the said rice in good and sound condition when shipped. That is question 3. Question 4 is, "if the answer to No. 3 is in the negative," if you say it was

not in good and sound condition. "In what respect was such rice not in good and sound condition."

The next question is question 5: "Was the value of the said shipment 7500 bags including freight declared by the plaintiff to the defendant at \$30,798." You will have no difficulty about that because of Exhibit 2. There is no dispute about that.

MR. DESBRISAY: I understood those questions were not going in. I thought they were all out. I do not admit that.

THE COURT: The only evidence on that so far as I know  
10 is Exhibit 2, which was for \$30,798, and was signed by Macaulay & Company, agents for the defendant insurance company.

Question 6: "Was the said shipment damaged by heat caused by the closing of the cowl ventilators and hatches from time to time during the voyage." In dealing with that question, you will assume for the purpose of dealing with that question, that the rice was shipped in good condition. While the plaintiff says the damage was caused by the closing of the cowl ventilators and hatches during the voyage, it really comes down to the question from the 8th to the 13th of May. On that question of the effect  
20 of the lack of ventilation, Butler, who was examined on Commission, gave certain evidence. He said about four days closing of the ventilators would produce this damage by condensation. He said the heating would develop in bad weather, and probably once started would develop, whether there was ventilation or not. McLaren, a consulting engineer and naval architect said that the cowl ventilators and the Samson posts would be helped so far as the ventilation was concerned by the opening of the hatches. Captain Reed said if there was condensation it would show insufficient ventilation, and he said that was caused by the air in  
30 the hold becoming heated, and then the cold air being admitted in the hold, with the result that when the two met, the warm condensed and the moisture was thrown on the side of the ship.

Mr. Eldridge, the chemical expert was called, and you will remember the question put to him. I am not going to refer at great length to his evidence, except that he went into the whole question of the effect of the introduction of cold air, and said it would form a fog in the hold with the result that condensation would come about, and the moisture would be deposited somewhere in the hold. He further said he would not expect any  
40 marks to be shown on the bags. He said while he thought there was condensation, he would not expect marks of condensation to be shown on the bags. Then you have the evidence of Lauchland, Sachs and Bell, who all said the bags were hot when the shipment arrived on the Fraser River. I am not going over the different degrees. Captain Slater's report shows when he made

*In the  
Supreme  
Court of  
British  
Columbia.*

—  
No. 38.  
Address to  
Jury, Rob-  
ertson, J.,  
May 31st,  
1938.

—continued.



*In the  
Supreme  
Court of  
British  
Columbia.*

No. 38.  
Address to  
Jury, Rob-  
ertson, J.,  
May 31st,  
1938.

—continued.

his examination. That is the evidence for the plaintiff on that point.

For the defence, Captain Watson was called. He is a man of experience in this sort of work. He had an attack made upon him by plaintiff's counsel because it was said that he represented that he was acting for the insurance company, and therefore inferentially they were a sort of an interested party, and interested in keeping down the damage or avoiding the payment for damage. It is for you to say whether there was anything in his demeanour to indicate the man was not doing his best to tell the truth. 10

In all these cases there must be something — for instance, all the evidence for the plaintiff, or the Commission evidence, was given by men who made the contract, or who were employees. There would not be anybody else called, and unless you can say there was something in a man's demeanour to indicate that he is not telling the truth, do you think it is fair to say, "Well, we will not believe his evidence". That applies to Captain Watson's evidence. Was there anything to indicate to you that he was not telling the truth. He said in No. 2 hold the rice on top of No. 163 was fairly cool. The inference the defendant asked you to draw from that is that if the damage was caused by the closing of the ventilators, the rice on top of 163 should be hot as well. He said he took the temperature in No. 2 hold, and found the heat there was dry. He said the heat from 163 was very hot, and he thought that any damage to the surrounding rice which was there was caused by heat from 163 spreading to surrounding rice. He then gave the opinion that this rice was damaged before shipment and/or it was a bad carrier. He took a different view to what he would expect to find in case there had been condensation from what Eldridge said. Eldridge said he would not expect to find marks on the bags if there had been condensation. This witness said that as there were no marks on the bags, he was of the opinion there had been no condensation. 20 30

Then Armstrong was called. He said the sweating or condensation might be due to moisture in the air or the cargo itself. He said there was no evidence of excessive moisture in the rice he examined, and any moisture there was there should have been taken care of by the ventilation. He then said that if there was only one species of damage he would be very suspicious in this and in other cases, and he would have thought the damage was caused by either excessive moisture in the rice itself or by some other defect or vice in the rice itself. He also agreed with Captain Watson that if condensation had taken place, there would have been marks on the bag. Then he said the condensation would not have been very much in this case because, as the cold air came in the hold, the warm air would be forced out. That is a question 40

for you to consider, with both hatches open and cold air coming from the top, is the effect going to be to blow out the hot air, so that there is very little condensation, or is it a gradual thing that results in condensation to the extent that it damaged the cargo. He said further in his opinion that the rice if, when it was shipped, was in good condition, if the ventilators were closed for a week, it would have no effect.

10 Captain Morton said that he could not see why one parcel alone was damaged, and that if 163 was greatly heated it would communicate its heat to the surrounding parcels.

In that connection there is a point of dispute between the plaintiff and the defendant. The plaintiff says that the adjoining rice was damaged. You have Lauchland's evidence on that, among others. The defendant says the surrounding rice was not damaged. There was a strong argument on that, as to whether 163 was directly affected by vice before being shipped. On that question of what deductions you can draw from the fact that 163 alone was damaged, if you come to that conclusion, Butler said on commission—he was asked:

20 “Q. Under any circumstances can you give an answer why the Loonzain stowed immediately above and immediately below should not be damaged. A. It does happen time and time again that only certain rice stowed in certain parts of a hold are damaged, and others are arrived in sound condition.”

On the same page; this is cross-examination in both cases:

30 “Q. If the paddy which ultimately showed damaged was an earlier crop, or was more moist, or had been damaged at some stage during its time of storage as paddy or during its time of storage as Loonzain, those circumstances might have accounted for the damage of which you claim to have had experience. A. In this instance I do not consider that any of those suggestions could have been the cause of such damage, taking into account the time the rice was milled, the weather conditions during the period from the time it was milled to the time it was shipped, and the actual time of shipment.”

40 Then McLaren suggests you might have a different temperature in different parts of the hold. In other words, he said where the stream of air finds an easier passage you might have a high temperature, and where it did not find an easier passage you might find a different temperature. I think that is all the evidence I wish to refer to on that point. I have not attempted to recall all the evidence, but I am drawing attention to such parts

*In the  
Supreme  
Court of  
British  
Columbia.*

—  
No. 38.  
Address to  
Jury, Rob-  
ertson, J.,  
May 31st,  
1938.

—continued.



*In the  
Supreme  
Court of  
British  
Columbia.*

No. 38.  
Address to  
Jury, Rob-  
ertson, J.,  
May 31st,  
1938.

—continued.

of the evidence that I think will help you in coming to a conclusion.

The next question is question 7: "If the answer to No. 6 is in the affirmative, was the closing of the ventilators and hatches the proximate cause of the damage." If you answer 6, you will have no trouble answering that.

Then question 8, was the weather and sea during the time the cowl ventilators and hatches were closed, such as to constitute a peril of the sea. You remember the policy insures the plaintiff from damage to the rice arising from perils of the sea. 10  
You have to say whether or not this is a peril of the sea. First of all, with regard to the law, the term, "Perils of the sea" refers only to fortuitous accidents or casualty of the sea. It does not include the ordinary action of wind and wave. Fortuitous is defined in the Oxford Dictionary in this way, something that happens or is produced by chance or accidentally or casually. You will notice the words, "Perils of the sea". They do not include the ordinary action of wind and wave, and therefore it includes extraordinary action of wind and wave. In that connection you will remember Captain Reed was called for the plaintiff, and Cap- 20  
tain Morton and Captain Watson were called for the defendant, and said that it was a fine voyage and there was nothing unusual about it.

Now then, question No. 9. "If the answer to No. 8 is in the affirmative, what were the conditions of the weather and sea." The only evidence on that is the log. I am not directing you, of course, but if you so find, you can say the condition of the weather shown in the log for any date you like or that you think fits in.

Then, Question 10: "Did the plaintiff thereby suffer loss exceeding 3 per cent on each package." 30

The reason for that is that under the insurance policy, if the loss in respect of each package is under 3 per cent, then the plaintiff cannot claim. The reason for that is that it has to do with small irritating claims under the policy. The plaintiff's duty is to show that the damage exceeds 3 per cent. On that you have the evidence of Sachs, Simpson and Lauchland, who say the goods were damaged to the extent of 25 per cent.

The next is question 11: "If the answer to No. 10 is in the negative, how many packages were damaged less than 3 per cent." Then the next question is, "What was the gross sound value of 40  
the 7500 bags." On that you have Exhibit 43. So far as I know, this is the main evidence on that point. This is sworn to by Lauchland. In case the plaintiff is entitled to recover, the Statute fixes the amount that they are entitled to recover in this way, first of all, it provides for the finding of the gross sound value, and then the gross damaged value, and then the statute pro-

vides, having those figures, how the exact loss is to be determined. You are not bothered with that. That is a matter of arithmetic, what the gross sound value is, and what the gross damaged value is. Mr. Lauchland swore that the gross sound value was \$28,748.35, and also swore that the damaged value was \$21,991.23. I do not remember any other evidence on that, but it is for you to say, and you can take that and any other items into consideration, and answer question 12 as to what was the gross sound value. That includes the purchase price, the sale price, plus freight and insurance, and what the gross damaged value was, you have in this certificate.

Now then, as I said to you some time ago, you must be unanimous in your answers to each one of these questions. Take up each question separately. I would suggest that you take them up in the order in which they appear in this list of questions, and decide each question as you go along. You must be unanimous. After a certain time, if you are not unanimous, after three hours, then a majority can give a verdict, but I want you to try and answer them unanimously. You may have such of the exhibits as you require in the jury room when you consider your verdict.

MR. BULL: May I make one observation. It was just a slip of the tongue. Your lordship, in referring to Morrison's report said they were Lloyd's surveyors. They are not Lloyd's surveyors.

THE COURT: Quite right. Lloyd's surveyors were the persons who said the cargo was properly stowed. In fact, there does not seem to be any question about that.

MR. BULL: Exhibit 43, which has to do with the gross damaged value, your lordship stated that Mr. Lauchland gave that at some \$28,000 odd dollars. As those figures are there, that is not the way it works out. He said that the gross damaged value was \$21,211.

THE COURT: Yes, I remember.

MR. BULL: There is one other thing: Your lordship referred to perils of the sea, and the evidence of the three captains, including Captain Reed. He said it was a fine voyage, or words to that effect, as your lordship put it. What Captain Reed said was, that it was the sort of voyage he would expect at that time of the year.

THE COURT: Yes, I think that is correct.

MR. BOURNE: Quite the usual thing, he said.

MR. BULL: At this time of the year.

MR. BOURNE: I would not agree with that. He said it was quite the usual thing.

THE COURT: My recollection is that these men said it was the sort of weather you would expect at that time of the year.

*In the  
Supreme  
Court of  
British  
Columbia.*

—  
No. 38.  
Address to  
Jury, Rob-  
ertson, J.,  
May 31st,  
1938.

—continued.



In the  
Supreme  
Court of  
British  
Columbia.

No. 38.  
Address to  
Jury, Rob-  
ertson, J.,  
May 31st,  
1938.

—continued.

MR. DESBRISAY: In reference to Mr. Butler's evidence, your lordship indicated he had seen the samples. His evidence is at page 5:

“Q. Did you at any time see the samples yourself? A. I did when intimation came from London that there was a query as to the quality. The samples referred to were those drawn at the time of shipment by Messrs. Morrison & Company, surveyors.”

That was the only sample he saw.

THE COURT: Page 9. “Q. Now, you have told us that 10 you actually saw the shipment samples yourself. I want you to give us your opinion of them.”

MR. DESBRISAY: He saw the samples of the shipment drawn by Morrison & Company. That is what he is referring to. I wish to have that made clear, that is all.

THE COURT: Then on page 10: “Q. Was there anything abnormal about the samples which you saw.”

MR. DESBRISAY: I do not think there was any sample but the one, my lord.

THE COURT: There again, of course, your recollection of 20 the evidence has to govern. I told you what I thought it was, and what was said, and counsel for the defence says that only refers to certain samples.

MR. DESBRISAY: On the question of 3 per cent, I ask your lordship to direct that that is 3 per cent of the value.

THE COURT: What do you say, Mr. Bull?

MR. BULL: There is nothing in that particular provision of the policy, the 3 per cent relating to gross value. There is a general provision which deals with—I have not the policy before me, but it does say the damage shall be in relation to the value 30 of the goods. That is a general thing, and that is what the jury will find in relation to the value. It has no special relation to the 3 per cent.

THE COURT: You can draw inferences. You have the evidence that this rice was damaged to the extent of 25 per cent, and the question is whether or not it was damaged to 3 per cent of its value. You can draw an inference from that.

MR. DESBRISAY: I submit, my lord—the other point is this, in connection with the gross sound and damaged values I ask you to direct that admitting the rice was damaged when it 40 left Rangoon, that there was this, for which a claim was made, and the manner of ascertaining the damage, the sound value in Vancouver must be the amount which should be ascertained.

THE COURT: The Statute says that it means the whole-sale price, or if it be the other price, the estimated value.

MR. DESBRISAY: Then they must estimate it on some

correct basis. It does not take into consideration the fact that there is produced an invoice which is admitted is not a correct invoice.

MR. BULL: There is no such admission.

THE COURT: Throughout counsel for the defence has stated several times that it was admitted by the plaintiff the goods were damaged, and the damage is said to be the presence of yellow grain in the rice, for which someone in London paid the plaintiff \$750. The plaintiff says that has nothing to do with  
10 the damage caused by heating. That was something in the rice that did not come up to description, but that was not for the effect by the heating.

MR. DESBRISAY: My point is that that has to do with the value.

THE COURT: I do not think so. You may retire gentlemen.

(11.27 a.m. JURY RETIRED)

MR. BOURNE: There was the question of Slater's report. Evidently the transcript sent up does not cover the discussion at  
20 all. I did not see it until I came into Court.

THE COURT: The exhibit I marked in blue pencil, that part and the other, and I think, my recollection is that I understood that was to go out, but the proper thing is to get the stenographer's notes. He can be brought up.

MR. BOURNE: The trouble, apparently, and I thought I made it clear that I would get the right part—I do not know which stenographer it is. This is the end of one part, and they apparently changed there. The situation is clear, and your lordship ruled, and no question was raised until copies were being made,  
30 and my learned friend has taken whole paragraphs out. My friend cannot come in with a record and do that. They may have all the exhibits except Exhibit 8.

MR. BULL: The jury will have the exhibits they want.

THE COURT: Not until I decide this question.

MR. DESBRISAY: The question of the admissibility was discussed the next morning, and after that it came up, my lord, as to what was to be stricken.

MR. BOURNE: Yes, your lordship adjourned it to the following morning to see if there were any further authorities.

40 MR. BULL: I do not see what turns on what happened at the time. The thing came to me as a surprise that any part would be deleted, and my friend pointed out certain words that would infringe the agreement. There was no ruling made, and it was only later when my junior and I were discussing it, he said the mutilation was going to wrongfully emphasize certain following

*In the  
Supreme  
Court of  
British  
Columbia.*

—  
No. 38.  
Address to  
Jury, Robertson, J.,  
May 31st,  
1938.

—continued.

Proceedings  
at Trial,



*In the  
Supreme  
Court of  
British  
Columbia.*

Proceedings  
at Trial,  
May 31st,  
1938.  
—continued.

words, and we thought the whole paragraph should come out or stay in. There was no question of any ruling being made, and even if it were, your lordship can always consider it.

THE COURT: I want to see what was said at the time.

MR. BOURNE: I will endeavour to get a transcript.

THE COURT: Get the reporter too.

MR. BULL: Rather than deprive the jury of the benefit of the report, I am willing it should go in with the limited mutilation.

MR. BOURNE: I do not know why my friend should make a remark like that. 10

MR. BULL: I am generously agreeing.

MR. BOURNE: Not so generously.

MR. BULL: There was nothing in the remark. The document is mutilated.

THE COURT: Is this copy all right, Mr. Bull?

MR. BULL: I will have a look at it, my lord. Yes, my lord.

THE COURT: Then it is understood that copy goes in. Mark that, Mr. Registrar.

COPY OF EXHIBIT 8 MARKED AND SUBMITTED  
TO THE JURY 20

MR. DESBRISAY: I overlooked mentioning this to your lordship before the jury retired, during the course of your address, in referring to Captain Slater's report, your lordship rather treated it with the jury as conclusive evidence, and I intended to ask you to instruct the jury that the evidence in the report was not prima facie evidence, that it could be rebutted and must not be taken to be conclusive because it is a Government official's report. Section 884, my lord.

THE COURT: Have you anything further to say on that?

MR. BULL: Your lordship did not direct the jury on the statute. My learned friend addressed the jury on that. Your lordship simply pointed to the document containing the statement. 30

THE COURT: It is in the statute, anyway.

MR. BULL: Yes, but your lordship did not read that.

THE COURT: I think I will recall them. Recall the jury.

(11.37 a.m. JURY RETURNED)

THE COURT: I have been asked by counsel to direct you on one point. With regard to Captain Slater's report, he is a Government official. Now the statute makes his report prima facie evidence of the existence of the contents of a report. It is not conclusive, as it may be rebutted by other evidence. It is a question for you to say whether there is any evidence to rebut the prima facie contents. 40

A JUROR: Does that not apply to the certificates issued in Rangoon?

THE COURT: No, they are not issued in pursuance of this statute. You may disagree with those certificates. They are not conclusive. If you find on the evidence they are not conclusive, you may do so. All right, you may retire.

(11.38 a.m. JURY RETIRED)

(1.00 p.m. COURT ADJOURNED UNTIL 2.30 p.m.)

(3.15 p.m. JURY RETURNED)

*In the  
Supreme  
Court of  
British  
Columbia.*

Proceedings  
at Trial,  
May 31st,  
1938.

—continued.

### No. 39

#### Verdict of Jury

No. 39.  
Verdict of  
Jury,

10 THE CLERK: Gentlemen of the jury, have you agreed upon your verdict? If so, what is it?

(Foreman hands written verdict to Clerk).

THE CLERK: The jury have returned the following answers:

1. Was a cargo of rice of 50,600 bags loaded on board the Motor Vessel "Segundo" at Rangoon between April 13th and 23rd, 1936, for carriage to the plaintiff's dock on the Fraser River, B.C. included in which were 7500 bags of rice marked "Intereo Brose 163"? Answer: Yes.

20 2. Did the defendant insure the said cargo under policy of insurance marked exhibit 1 in this action? Answer: Yes.

3. Was the said rice in good and sound condition when shipped? Answer: Yes.

4. If the answer to No. 3 is in the negative, in what respect was such rice not in good and sound condition? No answer.

5. Was the value of the said shipment, 7500 bags, including freight, declared by the plaintiff to the defendant at \$30,798? Answer: Yes.

30 6. Was the said shipment damaged by heat caused by the closing of the cowl ventilators and hatches from time to time during the voyage? Answer: Yes.

7. If the answer to No. 6 is in the affirmative, was the closing of the ventilators and hatches the proximate cause of the damage? Answer: Yes.

8. Was the weather and sea during the time the cowl ventilators and hatches were closed such as to constitute a peril of the sea? Answer: Yes.

40 9. If the answer to No. 8 is in the affirmative, what were the conditions of the weather and sea? Answer: Heavy winds from 8th to 11th May, with high seas; from 11th to 17th, moder-



*In the  
Supreme  
Court of  
British  
Columbia.*

No. 39.  
Verdict of  
Jury,  
May 31st,  
1938.

—continued.

ate weather and moderate seas, after which latter date, strong gales and very rough seas up to 20th; variable seas and weather after that date.

10. Did the plaintiff thereby suffer loss exceeding 3 per cent on each package? Answer: No, only on 163.

11. If the answer to No. 10 is in the negative, how many packages were damaged less than 3 per cent? Answer: The remaining three.

12. What was the gross sound value of the 7500 bags? Answer: \$28,748.35. 10

13. What was the gross damaged value of the same 7500 bags? Answer: \$21,211.00.

THE COURT: Will you sign that, Mr. Foreman?

(Foreman signs verdict).

Motion for  
Judgment,

MR. BULL: My lord, do you wish me to speak to these answers? I want to move for judgment.

THE COURT: The only question I want to raise is the answer to 10.

MR. BULL: In 11 they include the remaining three. I don't know if it is proper to ask the jury to elucidate 10 and ask whether they mean the whole 7500 bags, because I think some of them came from a different area. We referred to the 7500 bags as 163, but I think it was more for convenience than anything else. I think some were marked 102, and all those were parts of the same 7500. 20

THE COURT: What do you say, Mr. Bourne?

MR. BOURNE: I cannot say that I know exactly what the jury means by the answer to No. 10.

MR. BULL: There were four altogether. There were four types of Interco Brose commonly referred to as 163. 30

THE COURT: I take that to be the whole 7500 bags.

MR. BOURNE: The term Interco Brose was used in connection with others as well. It was 163, I think.

THE COURT: That means 7500.

MR. BOURNE: The 163 was referred to as all of the 7500, but 102 was part of it.

THE COURT: The answer to question 10: "Did the plaintiff thereby suffer loss exceeding 3 per cent on each package?" Did you mean to say on each of the 7500 bags or only that part that was included in 163? 40

THE FOREMAN: 7500 bags.

THE COURT: I think that makes that clear.

MR. BULL: Yes, I would like to move for judgment in the terms of the statement of claim.

THE COURT: The amount will have to be ascertained pursuant to subsection 3 of section 7.

MR. BULL: Yes.

MR. BOURNE: I would like to consider the matter and renew the application or motion on these original questions. There are many points in connection with the policy that are purely questions not for the jury.

THE COURT: What are they?

MR. BOURNE: If your lordship will permit me I will ask  
10 my learned friend Mr. DesBrisay to address you on that.

MR. DESBRISAY: First, there is the question of the nature of the policy. My friend is bound by the pleadings that it is an open policy. If that is so, there is no evidence submitted as to what the insurable value of the rice was.

MR. BULL: I suggest now that the jury are through that it is not necessary for them to wait.

THE COURT: Gentlemen of the jury, this case has been long and unfortunately has dragged out longer than was expected. You have displayed unusual patience and have paid great  
20 care and attention to this case. I wish to congratulate and thank you. You understand in performing your duty you are carrying out a public duty to society. It is a thing that should be continued in the interests and the liberty of the subject and of all those who have litigation in the courts. You are discharged; you may go.

(Jury discharged).

MR. DESBRISAY: I refer your lordship to section 9. Ar-  
nould.

THE COURT: You have admitted—

MR. DESBRISAY: That it was insured, yes.  
30

THE COURT: Your agents signed the insurance book showing the amount of insurance.

MR. DESBRISAY: It only shows the total of insurance.

THE COURT: On this 7500.

MR. DESBRISAY: On the 50,600 bags in the insurance book. There are two parcels of 7500. He has pleaded it as an open policy.

MR. BULL: In order that I might follow my friend I would like to know what his point is. I have not heard it yet.

THE COURT: He says that it is an open policy. The policy  
40 of course describes itself as an open policy.

MR. BULL: Yes.

THE COURT: Yes, Mr. DesBrisay?

MR. DESBRISAY: Valued at amount of invoice plus 10%. The policy provides the insurance is to attach and cover upon all shipments made by insured or consigned to them for

*In the  
Supreme  
Court of  
British  
Columbia.*

—  
Motion for  
Judgment,  
May 31st,  
1938.

—continued.



*In the  
Supreme  
Court of  
British  
Columbia.*

Motion for  
Judgment,  
May 31st,  
1938.

—continued.

their own account valued at amount of invoice plus 10%. There is a provision in this policy covering 100%, not to exceed by any one vessel at any one time of \$75,000. Clause 6 of the endorsement says: "Valued at amount . . . known loss or damage."

Now my lord, the first document in this matter is the letter of March 17th from Macaulay, Nicolls & Maitland, which is exhibit 5, I think, in this action; "We were advised recently by your Mr. Gavin . . . certificate of insurance." Now then, they did come with their closing particulars in this book after the cargo had arrived in Vancouver, after they knew that the rice 10 contained yellow grains, and that it was accordingly not worth the invoice price, and they declared it at the invoice. The clause in the policy reads, providing declaration is made before known loss or damage. There was some damage known.

Now, my lord, this policy has been pleaded. My friend has pleaded it as an open policy. Arnold, section 9, says this: "Hitherto a policy . . . and other necessary vouchers." Then, my lord, in the Marine Insurance Act, section 29 defines a valued policy, and section 30 defines an unvalued policy and section 31 a floating policy, and subsection 4 of section 31 provides: "Un- 20 less the policy otherwise provides . . . subject matter of that declaration."

This open policy is either an unvalued policy or a floating policy, particularly in view of the procedure followed by the parties in this matter. This book exhibit 2 was sent up and a certificate of insurance received on June 4th. At that time it was known by the plaintiff that the invoice price was not the correct price of that rice. It does not make any difference whether it was damaged or there were imperfections. They knew the rice was not worth the invoice price. My lord, it is true that 30 ordinarily—I should have referred your lordship to the section of the Act relating to insurable value, section 18, subsection 3 (reading).

My lord, in the case of *Williams v. Atlantic Assurance Company* (1933) 1.K.B., page 81, in that case they produced the invoice as being evidence of the prime cost, and it was held in view of the fact that there had been damage and reduction of the value prior to shipment, that that was not evidence and that there must be evidence, such evidence as would indicate the value of the ship- 40 ment in the condition in which it was shipped, not of the condition it was supposed to be in, pages 90, 103 and 107. My lord, the references I am making to Arnold are from the 9th edition. I do not know whether that is the library edition or not.

THE COURT: What is your section?

MR. DESBRISAY: I wish to refer to sections 362, 364 and 365 dealing with this matter. Mine is the 9th edition. 362 is for

open policies, 363 is the practical rule and 364 is as to adjustments on open policies in case of total or partial loss, and 365. We know that the plaintiff thought, and that their sellers thought, the invoice price was not the proper price of those goods and therefore it was not the insurable value, and not the price that it cost at the time those goods were shipped. That is the point on that, my lord.

THE COURT: You mean because of the yellow grains?

MR. DESBRISAY: Yes, my lord, I say it was the yellow  
10 grains that indicated the damage. It was stated so in the Ran-  
goon evidence, and it was agreed by Mr. Gavin that there were  
late rains and that the late rains had caused damage, and that  
that was prior to shipment; therefore they must say what the  
prime cost was at the time of shipment. The invoices do not in-  
dicate, and I say they have failed to establish the insurable value  
of the goods.

I wish to deal with the 3% clause. The plaintiff has pleaded  
that he suffered a loss of 3% on each package of these goods. It  
is for the plaintiff to establish that. It is true the jury has made  
20 this finding, but I submit there is no evidence upon which it  
could make a finding. I think it is obvious from the answer to  
question 11, for instance, my lord, that they were treating the  
7500 bags as a parcel, and not each of the 7500 bags as a package,  
which they should have done, because the answer to question 11  
says "The remaining three." What three? I think they obvious-  
ly meant the three remaining parcels of A.L.Z. and Select Delta.  
There were just the four different parcels. This 3% clause is  
dealt with in Arnold, section 892, 893, 894 and 896. 893 is as to  
how the required percentage is to be made up. I draw attention  
30 to section 896, in which it is laid down that the particular average  
charges which the cost of conditioning would be, cannot be added  
to the damage in order to make it up to the required amount.  
(reading).

The section in the Marine Insurance Act is Section 78, sub-  
section 4. Now, my lord, as to percentage, the method of ascer-  
taining it is this, that having ascertained the loss by taking the  
gross sound value and the gross damaged value—then does that  
loss exceed 3%? Does it exceed 3% of the insurable value? I  
submit there is no insurable value shown. If there were insur-  
40 able value—and I furthermore submit there is no evidence here  
—this franchise clause reads: "Warranted free from Particular  
Average under 3% on each package." My friend has assumed  
the burden of establishing that. He must show that each of the  
bags of rice sustained damage exceeding 3% of the insured value  
of each of those bags of rice. If I am right on my first point that  
he has not shown what the insurable value is, there is nothing

*In the  
Supreme  
Court of  
British  
Columbia.*

—  
Motion for  
Judgment,  
May 31st,  
1938.

—continued.



*In the  
Supreme  
Court of  
British  
Columbia.*

Motion for  
Judgment,  
May 31st,  
1938.

*—continued.*

by which we can ascertain the amount. If I am wrong, then the certificate of insurance shows we insured 50,600 bags for a certain sum of money, not 7500 for \$30,900. Those particulars are not shown. I submit the amount must be ascertained from the certificate. In any event, there is no evidence to show the loss sustained is over 3% on each bag. They have not attempted to. They came along and said as they were throwing the rice in they noticed there was brown rice—there was about 25% of the rice browner than the other, but Mr. Gavin said, I read his examination for discovery and he was quite frank about it, that it was impossible to tell what the damage to the rice was until they had milled it, and they did not in their milling mill it in such a way that they could distinguish the damage to one bag from another. There is not the slightest evidence that they did or could. I submit there is no evidence here upon which it could be found that the loss on each bag exceeded 3% or any amount. My lord, it is 3% of the insured value. If you take it at 30,798, it is 3% of the insured value of each bag on that. You cannot take it on quantity, my lord. It must be on the value, because there might be a damage to the quantity without any corresponding damage to the value; because there are 20% of dark brown grains it does not follow that you have a 20% loss. You might have only 1%.

THE COURT: If I buy a sack of oats for \$5 and I find that there is 20% of it bad, would it not be a fair inference that it is \$1 less in value?

MR. DESBRISAY: No, particularly where they say they do not know what the proportion of the damage is. That they could not ascertain it until they milled it.

THE COURT: Supposing the whole 7500 bags were thrown overboard, would you say you were not liable?

MR. DESBRISAY: That would be total loss in respect of each sack.

THE COURT: Would you say—

MR. DESBRISAY: That is warranted free of particular average under 3% on each sack.

THE COURT: Take that first, the whole 7500. If that were thrown over because of perils of the sea?

MR. DESBRISAY: That would be general average, not particular average.

THE COURT: Because this is the owner's loss?

MR. DESBRISAY: Still general average loss.

THE COURT: What part of the insurance would you say was payable in respect of the 7500 bags?

MR. DESBRISAY: If they were thrown over they would be a total loss?

THE COURT: Of this 7500 how much would you say the insurance company would be liable?

MR. DESBRISAY: They would be liable in my opinion for the amount the shipper would be able to show they would be worth, what their insurable value was at the time they were shipped. The 3% would not enter into it in that case because it was a total loss. That would have no bearing on that feature of it. Did I cite section 900 of Arnould? The percentage is to be calculated on the value of the policy or on the prime cost in the

10 case of an unvalued policy.

On the question of the manner of ascertaining the amount the insurer must pay, I would like to submit these authorities. I think the references I have to Arnould are in the sections in the edition your lordship has. Arnould, sections 1012, 1013, 1014 — section 1018 at pages 1312 and 1313, where there is a discussion of this. It must be borne in mind where sound and damaged goods are sold together the insured value of the sound is not a loss for which the underwriter is liable. The underwriter can not be made liable, section 1019, for the cost of examining such

20 goods as are undamaged. That bears on this situation. Mr. Lauchland came in here and said that as a check to show this he gave the price of California and Mexican rice, which were mixed with this 163 and sold. This is the situation. They sold that 163 with the California rice. It is true it costs more. They say it did, and we assume it did, that it cost more than the 163. But the point is that they did not suffer a loss because they sold it with the California rice. They would have made more profit. We are not concerned with that. They sold some of the 163 in the form of brown rice, just as it came, at the going price. They sold some

30 in the form of white rice by itself at the going price, and made no loss. They sold 163 mixed with other rice and got the going price and did not make any loss. They can say if they had not had to get the Mexican and Californian rice they would have made more profit. That is not the point. We are concerned with these particular goods, and I submit, my lord, that upon reading all of the sections in Arnold relating to this matter, and to the case of Francis v. Bolton, which is already referred to and cited in Halsbury, volume 14, note R; "Where damaged goods . . . . ascertain the proportion of the loss." In that case there was a

40 direct dispute as to whether those goods should have been sold in the damaged condition they arrived, or should be conditioned, and it was held they should be conditioned and sold, and it was the price after the conditioning and not the price they had been offered at. There was conditioning here. They agree they could not tell what the loss or damage was to this rice. They had to do extra milling to put it in shape, and then they sell it in the

*In the  
Supreme  
Court of  
British  
Columbia.*

Motion for  
Judgment,  
May 31st,  
1938.

—continued.



*In the  
Supreme  
Court of  
British  
Columbia.*

Motion for  
Judgment,  
May 31st,  
1938.

—continued.

form of white rice, brown rice and meal. They make no loss on the meal or broken rice. The whole loss is in respect of the white rice, and in respect of the white rice they come here with an estimate, and they say in one breath that it must be the estimate of the value of the brown rice, and we are not concerned with the selling at all, but in order to support their figures they call witnesses who give evidence of what they think the selling or wholesale value of white rice is and take that and apply it. The best evidence of the selling value of that rice was what they sold it for, and I submit that the Act does not mean an arbitrary estimate when it says the gross value means the wholesale price, or if there be no such price, the estimated value. The estimated value, if there be no wholesale price, must be on some basis, and that is the fairest and most honest basis, because after all this is a contract of indemnity. 10

THE COURT: You say they suffered no loss at all?

MR. DESBRISAY: I don't say that, but I say they were in a position to give the accurate evidence from which it could be ascertained and shown. You have got to compare it. You might have the situation that it arrived in Vancouver and the market had gone up. That is the purpose of the gross sound and gross damage rule. When it gets into Vancouver you ascertain what is the gross sound value, that is the wholesale price for which it would sell in Vancouver. They have said that it was their invoice price plus freight and so on. That is clearly wrong because it would depend on their own actions and their claims against the seller in London. That is not a proper basis that may be taken into account. It is the condition of the rice when it gets to Vancouver that has to be considered. If you have not got a wholesale price readily available by reason of the market not being available for this particular brown rice, then you must try and estimate it. How do they estimate it? They take an invoice price they know is not correct, and we know it is not correct, and they say that was the sound value, but they had the very best information of what the sound value was. It was available to them, they might have given it, but they did not. They agree that the rice known as A.L.Z. is the same as 163. The evidence is clear the A.L.Z. was sold for the purpose for which it was intended, and it was all sold for the purpose for which it should have been sold. That is made abundantly clear. There they have the price of the conditioned rice in the A.L.Z., conditioned or milled, and if they wanted to estimate what the proper sound value of the brown rice was it was a simple matter to do it, because all they had to do was to deduct the cost of milling. That was a proper honest basis on which to do it. They take an invoice which is wrong, and they know it. That is what I say 20 30 40

they should have done, they should have come to this court and given the evidence of the gross sound value of that 163, which was the gross sound value of the A.L.Z. They are one and the same. They had it and knew it. For 163 it is the question of the damage value. In the case of 163 what do we find? They come here with an estimate, and I must say that I am not able to follow the variety of figuring that they use in trying to come to these various conclusions. They say that they do it and that it is the value of the white rice produced after production was reduced

10 by a certain amount, first five, then eight, then 15, and it is higher on the day of the trial than at any previous time. Furthermore, on the trial they bring along another estimate, which was never suggested before, this mixing of California and Mexican, as indicating the extent of the gross damage value, when all the time they had this situation, that they had conditioned this brown rice; that they sold it and knew what they sold it for. I have shown by cross-examination of Mr. Lauchland that they sold certain of this brown rice in its brown form for the going price. That is the brown, 163. As a matter of fact, if the mill-

20 ing records are computed they sold about 10 tons of that in its brown form and got the going price for it. They sold a substantial quantity of 163 in its white rice form without any mixing, and they sold that and they got the going price for it. Mr. Lauchland agrees that is so. They sold the 163 mixed with the A.L.Z. and got the going price. They sold 163 mixed with California and Mexican and got the going price for it. I don't know whether there were any deductions made or discounts to buyers, or anything of that nature, but they had that evidence to present and did not do it, and submit to this court a simple arbitrary estimate

30 made on the basis that the plaintiffs are the only people in Vancouver capable of making the estimate, and that therefore it must be accepted. That is not a correct basis when you have the information that will give you the fair honest figure and not estimated figures at all.

The gross value means the wholesale price. The estimate is when there is no wholesale price. I submit in addition to the previous argument I have advanced that there is a wholesale price available. This rice was brought here for a purpose. It was brought here as brown rice for a particular purpose, and was

40 never intended to be sold in small quantities as brown rice. It is true there was a wholesale price for whatever brown rice they did sell. I submit when they bring rice here and as they do, break it up and take the husks off it, it is still the actual rice and they sell it, and they know what the wholesale price was, and all they had to do was to compute it and present it here, and they did not do it.

*In the  
Supreme  
Court of  
British  
Columbia.*

—  
Motion for  
Judgment,  
May 31st,  
1938.

—*continued.*



*In the  
Supreme  
Court of  
British  
Columbia.*

*Motion for  
Judgment,  
May 31st,  
1938.*

*—continued.*

**THE COURT:** Does that mean that the wholesale price of the article is important?

**MR. DESBRISAY:** I have three grounds. First, that it is proper to condition and sell it. The second one, if it is to be estimated that it should be estimated on the best available information and not on imagination, when they have the actual information that enables it to be proved beyond peradventure of doubt. They have it, they admit, and they do not give it. And thirdly, the price of this A.L.Z. in the white form, whether it was white rice, brokens or meal, is the gross sound value, that is the wholesale value of these goods. 10

Now your lordship asked me, and I don't think I answered the question, whether they made a big profit and if it made any difference. The rule is to take care of that situation, if it arrives in Vancouver and the price of rice has gone up to a point where there is a big profit by reason of the market price, then you ascertain what the gross sound price is in Vancouver. If it has gone up they get the benefit of it, but the damaged value goes up proportionately with it. That is the purpose of the rule, as your lordship will see from reading the references I have given you. 20

**THE COURT:** 1016 points out that the value is to be adjusted irrespective of the fluctuation of the market value, it is to be arrived at irrespective of the fluctuation of the market value.

**MR. DESBRISAY:** Yes, that is the very purpose of the rule. To really accomplish that, when the rice gets here you find out what it is worth here if it is sound and what it is worth damaged, and that being so, it takes care of any fluctuations, but it does not take care of the fluctuation if you go back to the invoice price in Rangoon. That is not the way to estimate it, that is, the invoice price when shipped on board is a guide for the purpose of ascertaining the insurable value. If it is shown those invoices are not correct and do not indicate the price, and as they do not in this case, they are not evidence of the sound value of the goods. They go away back to Burma to get a price that they paid there, and say that with some additions that is the sound value here. 30

**THE COURT:** If a man buys here wholesale 50,000 bags of rice from Rangoon, that is the wholesale price.

**MR. DESBRISAY:** My lord, he sells to wholesalers here. The sound value is not the buying value. 40

**THE COURT:** Yes.

**MR. DESBRISAY:** That is the insurable value. That is not the wholesale value.

**THE COURT:** The wholesale value to anyone who buys here in the market.

MR. DESBRISAY: What it costs here.

THE COURT: What it costs to buy in the country of origin?

MR. DESBRISAY: The Canada Rice Mills are wholesalers. They sell to people like Kelly-Douglas. It is the sound value here, and it must be a selling price here and not a buying price. It is not what you pay to somebody in India or England. It has to be the gross sound value here, and it is the price you can get here.

THE COURT: Gross value means the wholesale price. That  
10 means the wholesale price at which you buy and not the whole-  
sale price at which you sell. If it meant that you would be  
charged on the profit. Supposing this company bought this rice  
for \$30,000 and sold it for \$50,000 to the wholesale trade here,  
would you suggest the sound price was \$50,000?

MR. DESBRISAY: Yes, my lord.

THE COURT: You would add to that price freight and cost  
of insurance.

MR. DESBRISAY: You have the wholesale price here when  
you sell it. The usual course followed in these cases is to sell  
20 odd amounts. If this had been in a large market that rice would  
have been sold at auction and that would have been the gross  
damage value, and what a similar quantity of sound rice would  
have sold for, would be the sound value. I say there was a market  
here and they did sell it. It is not necessary that they sell it all  
in one lot. There are cases in which they take the various days  
on which they sold it. They did that in the Francis v. Bolton  
case. The damaged value there was the value of the sale, and  
the sound value was the value in London that it could have been  
sold for had it been sound. The best possible evidence of what  
30 it could be sold for here is what they did sell it for. I submit  
with the greatest deference my lord, that the honest way is the  
fair way to ascertain it, and this estimate which is made is on  
no basis at all, except just an arbitrary compilation, as Mr. Lauch-  
land says, and it is not a proper method at all.

My lord, there is also the question of the perils of the sea and  
whether the plaintiff at the conclusion of the case had carried  
the onus which lay upon it to satisfy that onus, and as to your  
lordship's right to consider it now I refer to the case of Bacon v.  
Bank of Montreal, on the fourth page—

40 THE COURT: There is no doubt about that.

MR. DESBRISAY: My lord, I submit— Would your lord-  
ship wish to hear me on the question of the perils of the sea, be-  
cause I wish to submit a number of authorities, because I am  
satisfied the onus was not satisfied under the authorities, and the  
finding of the jury, I submit, my lord, it not conclusive at all,  
and I submit whether or not there was a peril of the sea under

*In the  
Supreme  
Court of  
British  
Columbia.*

—  
Motion for  
Judgment,  
May 31st,  
1938.

—continued.



In the  
Supreme  
Court of  
British  
Columbia.

Motion for  
Judgment,  
May 31st,  
1938.

—continued.

these findings, or whether these findings were justified by the evidence is a matter of law.

THE COURT: It is a question of fact if there is any evidence to support it. Otherwise it would mean that the insurance was practically worthless.

MR. DESBRISAY: I submit not.

THE COURT: There is a well-known section as to wear and tear.

MR. DESBRISAY: The very case on which my friend must rely, the *Thrunsoe*, and the case in our courts depends on this as to whether the ventilation was interfered with by reason of extraordinary weather which made closing of the ventilators necessary for the safety of the ship. There were cases in which ships or vessels were delayed for days by reason of rough weather. One had perishable cargo on board and the cargo went bad due to the delay. That was held to be not a peril of the sea. Those are the only two cases in which interference with ventilation was held to be a peril of the seas, and in those cases it was held to be for the safety of the ship. And I submit on that basis that in those cases held as they did that interference with the ventilation did not show that it was for the safety of the ship, but simply for the purpose of preventing moisture getting to the cargo. There is no evidence of weather which required the closing of the ventilators for the safety of the ship. 10

THE COURT: There was water coming all over the ship.

MR. DESBRISAY: That was on the two or three days when they were closed for 52½ hours. In consequence they were shipping heavy seas, precipitous seas which were higher than they experienced on May 8th and 11th, and during that period the ventilators were drawn. I submit the inference from those facts are against peril of the sea, having made it necessary to close the ventilators. They were able to keep the ventilators open and even the hatches from the 16th to the 19th or 20th, when they were experiencing much heavier weather, and the interference with the ventilation for the short periods was obviously necessary when they have rain or fog or something of that description. That is not a peril of the sea, and furthermore their own experts would not state that it was necessary to keep those ventilators closed, and at times to keep them open, and their only explanation of how this happened, their own expert said it was the opening of the ventilation too quickly after it was closed. That has to do with the management of the ship and not perils of the sea. He said they should have gotten around it, and apparently they could have got around it. The definition of perils of the sea is given in the case of *Canadian National Steamships v. Bayliss*. I think I have already cited it, but *Scrutton* at page 261 lays down 30 40

the definition of what is perils of the sea: "Any damage . . . probable extent of the adventure." That is accepted in this case as being the definition of perils of the sea. Mr. Justice Duff said: "The issue raised by this defendant . . . probably an instance of the voyage." They have given no evidence to satisfy that onus. Furthermore, in the case of *British and Foreign Marine vs Gaunt* 2 A.C., page 41, my lord, the plaintiff in that case had asserted the loss arose out of a peril of the sea. This particular case was a case in which they were claiming to re-

10 cover under a policy which covered all risks, and the question was as to the onus, whether the onus which lay upon the plaintiff in such a case was the same as one that lay upon a plaintiff where he asserted he suffered a loss under a particular risk under a policy. At page 57 he says: "Accordingly the expression . . . which it is carried." Then the next paragraph commencing at the bottom of page 57: "I think the warranty . . . not by something else." I submit he did not prove it was not by something else. There was damage to those goods when they were put on board. I submit that the jury's finding is absolutely in the teeth

20 of the evidence, the evidence from Rangoon and the admissions by Mr. Gavin. He admitted there was damage. True, he called it yellow grain damage, but it was damage no matter what term he may apply to it. Then there is the rule that when the question is whether the loss is covered by Marine or War Risks the defendant (reading)—Arnould, section 905 (b).

The question of onus is considered at considerable length by Mr. Justice Martin, now Chief Justice Martin, although it was a dissenting judgment, in the case of *Creeden & Avery v. North China*, 24 B.C., page 335.

30 I say furthermore that the damage or the reduction in value of the goods, deterioration, or whatever you may like to call it, which results from the presence of yellow grain damage is something—it was a claim they had against the sellers, and it does not make any difference whether it arises out of the contract or otherwise, we are entitled to be subrogated. If they choose to settle without our consent, then they must establish that they got and give us credit for the amount they should have received out of that claim.

40 **THE COURT:** It is not quite subrogation. If you pay some money for somebody else, then you subrogate that person's rights.

**MR. DESBRISAY:** But if we pay this and it is found we are entitled to be subrogated to their rights, they have put themselves in the position where we cannot be subrogated.

**THE COURT:** The insurance company would pay on the contract.

**MR. DESBRISAY:** On the basis presented to-day they are

*In the  
Supreme  
Court of  
British  
Columbia.*

—  
Motion for  
Judgment,  
May 31st,  
1938.

—continued.



*In the  
Supreme  
Court of  
British  
Columbia.*

Motion for  
Judgment,  
May 31st,  
1938.  
—continued.

asking us to pay the loss between the gross sound and the damaged value of these goods.

THE COURT: You make that point, that the yellow grain damage is in turn covered by the insurance policy?

MR. DESBRISAY: I don't know whether you would call it depreciation or deterioration, the rice is not worth what it is valued at or what they are claiming against us for. They made a claim and got something for it, it is admitted. At page 1561, section 1225: "The general rule of law . . ." (reading section 1225).

10

Now, my lord, then at section 1226: "It is entirely foreign . . . more than once."

Here they had insured rice. It was damaged when put on board and an allowance was given to them, and that is the rice they are asking us to pay for, and on the basis of the insured value of those invoice prices.

THE COURT: What do you say in regard to the last answer, Mr. Bull?

MR. BULL: If there is any right of subrogation it would be a right of subrogation in respect of what was being paid by the insurance company. If our loss is ascertained at \$8000, it is true they would have a right of subrogation—I don't know against whom. It may be the shipowner for something he may have done.

20

THE COURT: Their point is this. He says, assuming the price you agreed to pay was \$30,900, that was the value of the goods. Now when they got the yellow grain they succeeded in getting the vendor to reduce the price \$750, thereby reducing the cost price of those goods.

MR. BULL: That was fully argued when the questions were framed and your lordship decided against the contention of my friend, and your lordship decided to let it go to the jury. Your lordship said, and that is the argument that I would put forward, and that is an entirely different thing, the existence of yellow grain is not damage, it is an imperfection. It is not damage. Sun cracks, for instance, are an imperfection. The presence of yellow grain was an imperfection against which we had the guarantee of the vendor. That was not insured against. We put forward our claim and it was settled. My friend argued against the questions that were drawn up, that that would affect the gross sound value, and asked for no question accordingly, and your lordship decided against him on that, and it seems to me that it is too late to review that question. We have a finding of fact specifically on the question of gross sound value. Does your lordship wish me to deal with the question of damage?

30

40

THE COURT: No, I do not think I want to hear anything further with regard to the last question. I think subsection 4 of

section 73 governs. I think the two things are entirely separate. The yellow grains is the matter of quality, if I may use the term, in the rice, and is not a question of damage covered by the insurance company.

MR. DESBRISAY: I was not directing my argument on the matter of gross sound value, but directing it to the proposition that they have failed to show what the damage was as distinguished between the two, they cannot get that twice, they are not entitled to it. There is more or less the distinction between  
10 the two.

THE COURT: Then with regard to the 3 per cent in view of my charge to the jury on the evidence of Sachs, Simpson, Bell and Lauchland, I think the jury are clear in saying that each packet of 7500 bags was damaged more than 3 per cent.

With regard to the other point, I think it is clear from a letter of Macaulay & Nicolls of March 17th, 1936, before the goods arrived, that this cargo was insured, and it is only a matter of figuring the exact amount, and that is fairly determined on the certificate given as shown by Exhibit 2. There will be judgment  
20 for the plaintiff on the amount to be determined pursuant to subsection 3 of section 3, based on the finding of the jury.

MR. BULL: We have included that in the amendment to the statement of claim, if your lordship gives judgment for that amount, \$8,071.64.

MR. DESBRISAY: I am not consenting.

MR. BULL: I am not asking you to consent to anything. I ask your lordship to accept those figures, and ask for judgment for that amount, otherwise, I do not know who is going to compute it.

MR. DESBRISAY: I wish to take the point now, to be perfectly clear that the whole principle upon which the plaintiff has proceeded is wrong. That no insurable value has been proven.  
30

THE COURT: I think it can be taken that that is perfectly clear.

MR. DESBRISAY: Very good.

THE COURT: Mr. Bull said that it figures out at this amount, and says that the amount is \$8,071.64. I will give judgment for that amount. If you figure it up before the judgment is presented to me, if it is wrong, I will have to figure it out  
40 myself.

(Concluded.)

---

*In the  
Supreme  
Court of  
British  
Columbia.*

Motion for  
Judgment,  
May 31st,  
1938.

—continued.



In the  
Supreme  
Court of  
British  
Columbia.

No. 40.

Judgment

No. 40.  
Judgment,  
May 31st,  
1938.

TUESDAY, the 31st day of May, A.D. 1938.

This action coming on for Trial before the Honourable Mr. Justice Robertson and a Special Jury, at the Court House, in the City of Vancouver, B.C., on the 19th, 20th, 23rd, 26th, 27th, 30th and 31st days of May, 1938, in the presence of Mr. Alfred Bull, K.C., and Mr. C. C. I. Merritt, of Counsel for the Plaintiff and Mr. H. A. Bourne and Mr. A. C. DesBrisay, of Counsel for the Defendant, upon hearing the evidence adduced and what was 10 alleged by Counsel aforesaid, and questions having been submitted to the Jury, and the Jury having answered the questions submitted, and upon Motion for Judgment by Counsel on behalf of the Plaintiff,

THIS COURT DOTH ORDER AND ADJUDGE that the Plaintiff recover against the Defendant the sum of \$8071.64, and its costs of the action to be taxed.

BY THE COURT.

"J. F. MATHER"

District Registrar. 20

"H.A.B."

Checked

"J.D."

"H.B.R."

J.

"J.F.M."

D.R.

ENTERED

June 10, 1938

Order Book Vol. 102 Fol. 225

Per "E.R.O.C."

(Seal of the Supreme  
Court of British Columbia,  
Vancouver Registry)

30

## No. 41.

## Notice of Appeal

*In the  
Supreme  
Court of  
British  
Columbia.*

—  
No. 41.  
Notice of  
Appeal to  
Court of  
Appeal,  
June 28th,  
1938.

TAKE NOTICE that the Defendant (Appellant) intends to appeal and doth hereby appeal to the Court of Appeal of the Province of British Columbia from the Judgment of the Honourable Mr. Justice Robertson pronounced herein the 31st day of May, 1938;

AND FURTHER TAKE NOTICE that the Court of Appeal will be moved at the Court House in the City of Vancouver, British Columbia, on Tuesday, the 1st day of November 1938, at the hour of 11:00 o'clock in the forenoon, or so soon thereafter as counsel can be heard for an order reversing the said Judgment as pronounced against the Defendant (Appellant) setting aside the verdict of the Jury upon which the said Judgment was pronounced, and for an Order or Judgment directing that the action be dismissed with costs on the following, amongst other, grounds:—

1. That the Judgment and the verdict are against the evidence and the weight of evidence.
- 20 2. That the Judgment and verdict are against the law.
3. That the Judgment and verdict are against the law and the evidence.
4. That the Statement of Claim discloses no cause of action.
5. That the verdict of the Jury was perverse and there was no evidence to support the findings of the Jury.
6. That the verdict of the Jury was unreasonable and not one which the Jury, viewing the whole evidence, could reasonably or properly find.
7. That there was no evidence upon which the Jury could properly find that the loss claimed by the Plaintiff was caused by a risk insured against by the Defendant.
- 30 8. That there was no evidence upon which the Jury could properly find that the Plaintiff suffered any loss by perils which the Defendant had insured against.
9. That there was no evidence upon which the Jury could properly find that the Plaintiff suffered loss exceeding 3% on each package.
10. That there was no evidence upon which the Jury could properly find the "gross sound value" and the "gross damaged value" of the rice in question in the action.
- 40 11. That there was no evidence upon which the Jury could properly find the insured or insurable value of the said rice.
12. That there was no evidence upon which the Jury could properly find that the said rice was in good and sound condition when shipped.



*In the  
Supreme  
Court of  
British  
Columbia.*

No. 41.  
Notice of  
Appeal to  
Court of  
Appeal,  
June 28th,  
1938.

—continued.

13. That there was no evidence upon which the Jury could properly find what was the proximate cause of damage to the said rice.

14. That there was no evidence upon which the Jury could properly find that the said rice was damaged by heat.

15. That there was no evidence upon which the Jury could properly find that the said rice was damaged by heat caused by the closing of cowl ventilators and hatches of the Motor Vessel "Segundo" from time to time during the voyage from Rangoon to Vancouver. 10

16. That there was no evidence upon which the Jury could properly find that the closing of ventilators and hatches was the proximate cause of damage to the said rice.

17. That there was no evidence upon which the Jury could properly find that the weather and sea during the time the cowl ventilators and hatches of the said vessel were closed were such as to constitute a peril of the sea.

18. That on the evidence the Jury should have found that the said rice had suffered damage prior to shipment.

19. That on the evidence the Jury should have found that the damage to the said rice resulted from inherent vice. 20

20. That on the evidence the Jury should have found that the Plaintiff suffered no loss.

21. That the learned trial Judge on the findings of the Jury erred in not dismissing the action on the grounds:

(a) That there is no finding by the Jury that the loss claimed by the Plaintiff was by a peril insured against;

(b) That the Jury found that the loss claimed was caused by a risk which was not insured against;

(c) That the Jury failed to find that the loss exceeded 3% on each package. 30

22. That the learned trial Judge erred in refusing the Defendant's motion that the action be dismissed on the ground that the Plaintiff had failed to satisfy the onus upon it of establishing:

(a) That the loss claimed had been caused by a peril of the sea;

(b) That the loss claimed exceeded 3% on each package; and upon the further grounds that there was no evidence that the Plaintiff had sustained loss, or alternatively that there was no evidence upon which the loss (if any) could be properly determined; and upon the ground that the Plaintiff, having pleaded that the policy was an open policy, had failed to adduce evidence of insurable value. 40

23. That the learned trial Judge misdirected or failed to properly instruct the Jury as to the issues to be tried, as to the burden of proof, the difference between questions of law and fact,

the evidence or absence of evidence or weight of evidence on each issue.

24. That the learned trial Judge misdirected the Jury:
- (a) By directing that there was evidence that the loss on each package exceeded 3%;
- (b) By directing that it was for the Jury to find whether or not the loss claimed had been caused by a peril of the sea;
- (c) By directing that it was for the Jury to find whether or not the weather and sea encountered by the said vessel during the time the cowl ventilators and hatches were closed were such as to constitute a peril of the sea;
- (d) By directing the Jury that there was evidence upon which the gross sound and gross damaged value of the said rice could be properly ascertained;
- (e) By directing the Jury that it need not take into account in ascertaining the gross sound value damage suffered by the said rice prior to shipment;
- (f) By directing the Jury that it need not take into account in ascertaining the gross sound value and the gross damaged value of the said rice the fact that the Plaintiff had sold all but 41½ tons of the said rice at the going price for sound rice;
- (g) By directing the Jury that the Plaintiff had declared the said rice at a value of \$30,798.00.
25. That the learned trial Judge erred in failing to direct the Jury that the Plaintiff had failed to adduce any evidence of the loss in value to each package of the said rice.
26. That the learned trial Judge erred in holding that it was a question for the Jury and not for the Court whether or not the cause of the loss alleged was a peril of the sea.
27. That the learned trial Judge erred in failing to properly direct the Jury as to the manner in which gross sound value and gross damaged value should be ascertained.
28. That the learned trial Judge erred in failing to direct the Jury that there was no evidence upon which the gross sound value and gross damaged value of the said rice could be ascertained.
29. That the learned trial Judge erred in failing to direct the Jury that damage suffered by the said rice prior to shipment should be taken into account in ascertaining the loss (if any) suffered by the Plaintiff.
30. That the learned trial Judge submitted improper questions to the Jury.
31. That the learned trial Judge improperly admitted evidence which was not admissible.
32. That the learned trial Judge should have rejected the report of Captain Slater, Port Warden, which was marked Ex-

*In the  
Supreme  
Court of  
British  
Columbia.*

No. 41.  
Notice of  
Appeal to  
Court of  
Appeal,  
June 28th,  
1938.

—continued.



*In the  
Supreme  
Court of  
British  
Columbia.*

No. 41.  
Notice of  
Appeal to  
Court of  
Appeal,  
June 28th,  
1938.

—continued.

hibit 8 . . . , and certain Certificates of condition of the said rice, marked Exhibits 12 and 13.

33. That the learned trial Judge improperly refused to admit evidence which was admissible and in particular letters and telegrams from the Plaintiff's London agents to the Plaintiff, marked for identification C.1 to C.20 Inclusive.

34. That the learned trial Judge improperly refused to permit cross-examination of the officers of the Plaintiff upon the letters and telegrams referred to in the last paragraph.

35. That the learned trial Judge improperly refused to admit evidence of the practice of average adjusters. 10

AND UPON such further and other grounds as may be advised.

DATED at Vancouver, British Columbia, this 28th day of June, A. D. 1938.

“BOURNE & DESBRISAY”  
Solicitors for the Defendant  
(Appellant)

To the Plaintiff (Respondent);  
And to W. W. Walsh, Esq.,  
its Solicitor.

## Reasons for Judgment — Martin, C. J. B. C.

Court of  
Appeal.No. 42.  
Reasons for  
Judgment,  
Martin,  
C.J.B.C.,  
February  
1st, 1939.

MARTIN, C. J. B. C.: The judgment of the Court, that is to say my brother Sloan and myself, our brother McQuarrie dissenting, is that the appeal should be allowed, because in our opinion the jury did not find that the proximate cause of the damage was a peril of the sea, and therefore that damage is not covered by the policy.

This view renders it unnecessary for us to give further con-  
10 sideration to the other substantial grounds of appeal, though they  
would otherwise require careful consideration. My brother Sloan  
is handing down his reasons and I agree with them and think it  
desirable to add thereto only a further reference to *Donkin v. S.S.*  
*Chicago Maru* (1916) 23 B.C. 551 (because I tried that case in  
the Admiralty Court) *viz.*, that the negligence alleged therein as  
“the cause of the deterioration of the cargo” of maize “was the  
improper stowage of the same causing insufficient ventilation”,  
and so to that “principal one” (question) I first addressed my-  
self (p. 552) and my judgment must be read largely in that light,  
20 and in the other different circumstances, but there is no allega-  
tion of improper stowage in the present case. Furthermore, the  
log of the “Segundo” shows that the ventilators and hatches were  
frequently closed because of rain and fog, though nothing of that  
kind occurred in *Donkin’s* case, wherein the stoppage of ventila-  
tion occurred solely “as a matter of good seamanship (and one)  
of necessity imposed by the state of the weather” (554) as des-  
cribed on p. 553, which shows a very exceptional state of affairs  
—the worst in a long series of 24 voyages to the East—the wind  
“reaching the maximum” (as it then was) and the sea much  
30 higher than the ship had ever experienced, causing her to labour  
and strain and “shipping much water constantly and flooded  
at times” and “heavy seas washing over all constantly”, thus  
creating beyond question a truly “perilous” state of affairs and  
one not paralleled in the present case. It should be added that,  
as counsel pointed out, the headnote to *Donkin’s* case is not wholly  
accurate, thereby tending to misconception.

“A. M.”  
C.J.B.C.

---



Court of  
Appeal.

No. 43.

Reasons For Judgment—McQuarrie, J.A.

No. 43.  
Reasons for  
Judgment,  
McQuarrie,  
J.A.,  
February  
1st, 1939.  
—continued.

This is an appeal from Robertson, J., dated the 31st day of May, 1938, arising from the verdict of a special jury, whereby the respondent was awarded the sum of \$8071.64 for damage to a portion of a cargo of rice shipped on the M.V. "Segundo" from Rangoon to respondent's dock on the Fraser River.

As to the facts and points in dispute I quote from the appellant's factum as follows:—

"2. The action was brought by Writ of Summons dated 10 the 23rd day of July, 1937, for a loss under an open policy, No. 1703, of the Appellant—Exhibit 1.

3. The Respondent engages in the business of buying, milling and marketing rice and rice products. It imports rice from rice-growing countries, in most cases by sea. The large bulk of rice imported is either in the form known as "paddy" or "brown rice". Paddy is the form in which it usually comes from the grower and is rice from which the husk has not been removed. "Brown rice" is rice from which the husk has been removed and is known in Burma as Loonzain. 20

4. In February, 1936, the Respondent purchased 5,000 tons of rice for delivery to it in Rangoon and entered into a freight engagement (Exhibit 33) for its carriage by the motor vessel "Segundo" from Rangoon to the Respondent's dock on the Fraser River. The cargo of rice was insured by the Appellant under the terms of a contract of marine insurance (Exhibit 1) dated 19th December, 1929.

5. A cover note (Exhibit 5) holding the cargo covered under the contract of insurance was issued by the Appellant's agent and a Certificate of Insurance (Exhibit 3) was issued 30 on June 4th, 1936, insuring 50,600 bags of brown rice for the sum of \$191,992.00 against, inter alia, "*perils of the sea*", being the only risk insured against in question in this action.

6. The loading of the cargo of rice comprising 50,600 bags, totalling 5060 tons, on board M.V. "Segundo" commenced April 13th, 1936, and after some delay from lack of cargo alongside was completed April 23rd and the vessel sailed April 24th.

7. The M.V. "Segundo" has four holds and five hatches, Hold No. 2 having two hatches which are referred to as 40 Hatches Nos. 2 and 3. A plan of the ship is Exhibit 15. The rice was stowed in all four holds and she carried no other cargo. The rice in question, being 7500 bags marked 163 and 102 and referred to as 163, was stowed in Holds Nos. 2 and 3 together with large quantities of other rice which was stowed on it and around it.

8. Discharge of cargo commenced on May 29th at 8:00 a.m. During the course of that morning it was found that some of the bags of rice showed signs of heating. Captain Watson, Surveyor for the Board of Marine Underwriters of San Francisco, Inc., attended at the Vessel, inspected the cargo, and took temperatures on that day and on each subsequent day of the unloading. He found that the rice known as Interco Brose and marked with the number 163 showed excessive heat but that rice of other marks was not heated except to the extent that some stowed adjacent to or so as to come in contact with rice 163 had become heated by reason of the spread of the heat from the rice marked 163.

*Court of  
Appeal.*

No. 43.  
Reasons for  
Judgment,  
McQuarrie,  
J.A.,  
February  
1st, 1939.  
—continued.

10

9. The Respondent presented a claim to the Appellant with respect only to the rice marked 163, and no claim was made in respect of the balance of the cargo, nor was any loss suffered in respect of it. The claim as to the cause of the damage as set forth in the Statement of Claim is:—

“Par. 9—During the said voyage the said steamship (Segundo) encountered heavy seas, rains and weather amounting to a whole gale and by reason of such heavy seas, rains and weather it was necessary to batten down all hatches and ventilators.”

20

“Par. 10—As a result thereof, the said shipment was damaged by sweat and heat and alternatively by moisture and the plaintiff has suffered loss thereby exceeding 3 per cent. on each package.”

10. The Respondent's case was that the rice was in good condition when shipped; that when it arrived at the Respondent's dock it was damaged, and that the damage had resulted from heating which had occurred during the voyage and was caused by the closing of the “Segundo's” ventilators and hatches made necessary by weather conditions encountered during the voyage; that the loss sustained exceeded 3% on each package; and that the amount of the loss was a sum ascertained upon estimates made by the Respondent of the gross sound value and the gross damage value of the rice.

30

11. The Appellant's case was—

(a) That the Respondent had failed to establish that the loss was by a peril insured against.

40

(b) That the Respondent did not prove that the rice was in good condition when shipped and that as a fact the rice had been damaged prior to shipment.

(c) That the damage (if any) during the voyage resulted from the damage sustained prior to shipment or from inherent vice or want of power in the rice to bear the ordinary rigours of the voyage. In this connection



Court of  
Appeal. —

No. 43.  
Reasons for  
Judgment,  
McQuarrie,  
J.A.,  
February  
1st, 1939.  
—continued.

it is significant that of a total cargo of 5060 tons, all of which was exposed to identical conditions and of which 2000 tons of rice known as "Kalagyee" was admittedly a poor carrier, loss was suffered and claimed only in respect of the lot marked 163 of 750 tons.

(d) That the "Segundo" had a fine voyage and that the closing of ventilators shown by the evidence was quite normal and what was to be expected and did not arise from a peril of the sea.

(e) That there was no interference with ventilation 10  
sufficient to cause damage, and that the damage claimed could not have arisen therefrom.

(f) That there was no evidence that a loss was sustained exceeding 3% on each package.

(g) That there was no evidence upon which the loss (if any) could be properly ascertained in accordance with the provisions of the "Marine Insurance Act" and that evidence available to the Respondent to enable the proper ascertainment of such values had not been 20  
presented.

12. The following questions were put and the following answers given by the Jury—

Q. 1. Was a cargo of rice of 50,600 bags loaded on board the motor vessel "Segundo" at Rangoon between April 13th and 23rd, 1936, for carriage to the Plaintiff's dock on the Fraser River, B. C., included in which were 7500 bags of rice marked Interco Brose 163? A. Yes.

Q. 2. Did the defendant insure the said cargo under policy of insurance marked Exhibit 1 in this action? A. Yes. 30

Q. 3. Was the said rice in good and sound condition when shipped? A. Yes.

Q. 4. If the answer to No. 3 is in the negative, in what respect was such rice not in good and sound condition? A. No answer.

Q. 5. Was the value of the said shipment, 7500 bags, including freight, declared by the plaintiff to the defendant at \$30,798? A. Yes.

Q. 6. Was the said shipment damaged by heat caused by the closing of the cowl ventilators and hatches 40  
from time to time during the voyage? A. Yes.

Q. 7. If the answer to No. 6 is in the affirmative, was the closing of the ventilators and hatches the proximate cause of the damage? A. Yes.

Q. 8. Was the weather and sea during the time the

cowl ventilators and hatches were closed such as to constitute a peril of the sea? A. Yes.

Q. 9. If the answer to No. 8 is in the affirmative, what were the conditions of the weather and sea? A. Heavy winds from 8th to 11th May, with high seas; from 11th to 17th, moderate weather and moderate seas, after which latter date, strong gales and very rough seas up to 20th; variable seas and weather after that date.

Q. 10. Did the plaintiff thereby suffer loss exceeding 3 per cent. on each package? A. No. Only on 163.

Q. 11. If the answer to No. 11 is in the negative, how many packages were damaged less than 3 per cent? A. The remaining three.

Q. 12. What was the gross sound value of the 7500 bags? A. \$28,748.35.

Q. 13. What was the gross damaged value of the same 7500 bags? A. \$21,211.00.

10 Arising from the answers is the point that the Jury did not find that the closing of the cowl ventilators was caused by a "peril of the sea."

I am inclined to the opinion that the main points which we have to consider are regarding the findings of the jury answering questions 3 and 6, the latter in conjunction with questions 7, 8, and 9.

It appears to me subject to one other feature—proximate cause—that if those questions were properly submitted to the jury and there is evidence to support the findings of the jury the appeal must fail.

30 As I see it the questions were submitted after a full discussion by the learned trial Judge with counsel for the appellant and the respondent and were the cumulative result of that discussion. My understanding is that at the suggestion of the learned trial Judge counsel for both sides submitted questions for submission to the jury which were whipped into shape so as to embody the learned Judge's ruling on the drafts so presented to him eliminating duplications and unnecessary or objectional matter. It might even be said that the questions were presented to the jury by agreement of counsel as reviewed and revised by the trial Judge in a manner which was fair and reasonable, to the fullest extent. In any event  
40 there was no real objection to the questions at the time they were submitted to the jury.

Dealing first with question 3 and the answer thereto. The jury found that the rice with which we are concerned was in good and sound condition when shipped. In that connection I take it that the obvious intention of the jury in forming the answer was that the rice was in good and sound condition when shipped so far

Court of  
Appeal.

No. 43.  
Reasons for  
Judgment,  
McQuarrie,  
J.A.,  
February  
1st, 1939.

—continued.



*Court of  
Appeal.*

No. 43.  
Reasons for  
Judgment,  
McQuarrie,  
J.A.,  
February  
1st, 1939.  
—continued.

as any damage claimed by the respondent herein was concerned. It is contended by counsel for the appellant that "it is in any event admitted that the rice was damaged prior to shipment and the evidence of the Rangoon witnesses is entirely displaced thereby."

The position taken by counsel for the respondent in that connection is that the respondent was able to recover from the shippers on a collateral guarantee at the time of purchase the sum of \$875.00 with respect to the part of the shipment which is the subject matter of this action. That was in regard to yellow grains and quite a different thing from the damage caused to that rice during the voyage. Here reference might be made to the Appeal Book (p. 272), where I quote from the evidence of Duncan Gavin, President of the Respondent Company, as follows:

Q. Is it a common experience to find yellow grains in rice? A. It is one of the things we are very careful to guard against in rice contracts, and guard against it especially with rice from that district.

Q. What distinction do you draw between yellow grains and the damage which you are claiming in this action?

A. Quite a different matter. The grain we are making claim for is a dull muddy-looking appearance with kernels throughout with that appearance. The milling would not take it out of it; it accentuates the poor color, no connection with yellow grains.

Q. Did you in fact make a claim for yellow grains to the shipper? A. We did.

Q. Did you settle that? A. Yes.

Q. At what amount? A. \$1750 for the 1500 tons.

Q. How much of that should be for yellow grains in the 163? A. Half, \$875."

The respondent says the claim for yellow grains was discussed with the appellant. The respondent's explanation appears to have satisfied the jury and I think properly so.

It cannot be successfully asserted that there is no evidence to support the answer of the jury to question No. 3. The evidence taken on the Rangoon commission alone would warrant the finding.

Regarding the answers to Questions Nos. 6, 7, 8, and 9, I think it is clear that there is sufficient evidence to support the findings of the jury.

The insurance covered by the policy and certificate of insurance was on this particular cargo of rice carried by this designated ship. It may be that the ship was not strictly modern as to its ventilating system and that ships having what is known as "forced draught" ventilation would have been safer and more suitable for the transportation of a dangerous cargo such as rice on a

voyage of the duration and nature contemplated but that in my opinion does not make any difference here. It is common ground that the policy of insurance on which this action is founded covered the rice in question when in this ship and on this voyage. See also Exhibits numbered 2 and 5 and the certificate of Insurance dated 4th June, 1936, Exhibit 3, in respect to the whole shipment. It is noted that in those documents "brown rice" is referred to as being insured.

- It seems to be admitted that the rice with which we are concerned was damaged before it reached its destination and there is no real objection to the amount of damages allowed. Counsel for the appellant, as previously mentioned, contends that the respondent has failed to establish that the loss was a peril insured against even if the answers to questions 6, 7, 8, and 9 are accepted. That involves consideration of what is included in "perils of the sea," which is the only risk insured against. The appellant also submits that arising from the answers that the jury did not find that the closing of the cowl ventilators was caused by a peril of the sea. Counsel for the appellant very carefully and patiently took the
- 10 Court on a voyage from Raugoon to the Fraser River by way of the ship's log and explained the recorded conditions of weather experienced on the trip which the "Segundo" made. He pointed out that to come under the terms of the insurance the respondent must have shown that the damage was done by a "peril of the sea" and not a "peril on the sea." I do not think it incumbent on me to go into all the features of the voyage discussed by counsel and would limit myself to saying that in my opinion the answers to questions numbered 6, 7, 8, and 9 in their cumulative effect constitute a finding that the damages claimed by the respondent
- 20 from a peril of the sea and come within the provisions of the insurance. I have reached this conclusion after careful consideration of the authorities cited to us by counsel on both sides. The appellant referred to Rule 7 of the Rules for construction of Policy set out in the schedule to the "Marine Insurance Act" R.S.B.C. 1936. Chap. 134 which reads as follows:

"The term 'perils of the sea' refers only to fortuitous accidents or casualties of the seas. It does not include the ordinary action of the winds and waves."

- The respondent's case regarding this feature is that the rice
- 40 was damaged during the voyage by a peril of the sea. I quote from the respondent's factum as follows:—

"To support the finding of the jury that the shipment was damaged by heat caused by the closing of the ventilators and hatches during the voyage, on account of weather such as amounted to a peril of the sea, the Respondent refers to the translation of the Log Book of the vessel, Exhibit 7, particu-

Court of  
Appeal.

No. 43.  
Reasons for  
Judgment,  
McQuarrie,  
J.A.,  
February  
1st, 1939.

—continued.



Court of  
Appeal.

No. 43.  
Reasons for  
Judgment,  
McQuarrie,  
J.A.,  
February  
1st, 1939.  
—continued.

larly at pages 794, 798, and 802-804; the evidence of Capt. Reid, the Harbour Master in Vancouver, that he would expect from a perusal of the weather conditions shown in the Log Book and from the fact that ventilation was restricted, that the rice cargo would outturn damaged through dampness caused by restriction of ventilation. He was also of the opinion that excessive rolling and pitching of the vessel would heat up the rice; and the evidence of Mr. Eldridge, the chemist called by the Respondent. He gives his opinion as to the cause of the damage in particular at page 315, line 19 to page 317, line 9. Indeed, he is supported by the Appellant's expert, Capt. Watson, who stated that the hatches were closed for the safety of the cargo, to prevent it getting wet, and that a cargo of grain should have as much ventilation as possible. He stated also that Mr. Eldridge's opinion as to what would happen when the ventilators were closed and then later opened, coincided more or less with his opinion. 10

It should be remembered too, it is submitted, that Capt. Watson's opinion that the damage was not caused by heating enroute, is based upon the two reasons referred to under 1 (a) of the Respondents Argument herein, the ground for which has been cut from under his feet by the evidence hereinbefore referred to, and accepted by the Jury." 20

In coming to my conclusion that the findings of the jury constitute damage from or by a "peril of the sea" I have gained considerable enlightenment from a case cited by the appellant in its Factum—*The Stranna, L.R.* (1938) Probate Division, p. 69—where several other cases are reviewed. I cannot see why the repeated closing of the ventilators and hatches, which we must presume was properly done, owing to fortuitous weather conditions encountered, was not a peril of the sea which was in this case insured against. 30

The majority of the Court has held that the appeal should be allowed, because in their opinion the jury did not find that the proximate cause of the damage was peril of the sea, and therefore that damage is not covered by the policy.

With all due deference I am afraid I cannot agree with them. It seems to me that the findings of the jury previously referred to and more particularly the answers to questions numbered 6, 7, and 8 are conclusive on this point in favour of the respondent. 40

I would therefore dismiss the appeal.

VICTORIA, B. C.

(Sgd.) W. G. McQUARRIE,

1st February, 1939.

J.A.

## No. 44.

## Reasons for Judgment — Sloan, J. A.

Court of  
Appeal.No. 44  
Reasons for  
Judgment,  
Sloan, J.A.  
February  
1st, 1939.

This is an appeal by the appellant (defendant below) from a judgment of Mr. Justice Robertson in a jury action, wherein the Respondent (plaintiff below) recovered the sum of \$8,071.64 for damage to a shipment of rice under a valued floating policy of marine insurance.

In February of 1936, the respondent purchased 5,000 tons of rice and entered into a freight engagement for its carriage by the motor vessel "Segundo," from Rangoon to the Respondent's dock in the Fraser River. This cargo was insured by the appellant against (inter alia) "perils of the sea" and it is this risk and none other in which we are concerned in this appeal.

The "Segundo" sailed from Rangoon on April 24th, 1936, and on May 28th, 1936, arrived at its British Columbia destination. Discharge of cargo commenced on the morning of May 29th, when it was discovered that one lot of rice had been damaged by heating.

The appellant having denied liability to make good the loss or damage caused by the heating, the respondent brought this action claiming that the rice was in good condition when shipped; that it arrived at its destination in a damaged condition and that the damage had resulted from heating during the voyage because of the closing of the ship's ventilators and hatches necessitated by weather conditions at sea.

The appellant's position was that the rice was not in a sound condition when shipped, but in any event if the rice had suffered damage during the voyage such damage was not caused by an insured risk, *i.e.*, a peril of the sea. It is upon this last submission, in my opinion, that the appellant is entitled to succeed, and while there is much to be said in support of the contention that the rice was unfit for the journey and had been damaged before loading on ship, I find it unnecessary to come to any decision on that or any other aspect of the appeal.

To my mind this appeal falls to be determined by the construction proper to be placed upon the answers of the jury to questions and the "legal result of the facts so found *McGovern v. James Nimmo & Company* (1938) 107 L.J.P.C. 82, 83.

The relevant questions and answers are as follows:—

Q. 6. Was the said shipment damaged by heat caused by the closing of the cowl ventilators and hatches from time to time during the voyage? A. Yes.

Q. 7. If the answer to No. 6 is in the affirmative, was the closing of the ventilators and hatches the proximate cause of the damage? A. Yes.

Q. 8. Was the weather and sea during the time the cowl



Court of  
Appeal.

No. 44  
Reasons for  
Judgment,  
Sloan, J.A.  
February  
1st, 1939.  
—continued.

ventilators and hatches were closed such as to constitute a peril of the sea? A. Yes.

Q. 9. If the answer to No. 8 is in the affirmative, what were the conditions of the weather and sea? A. Heavy winds from 8th to 11th May, with high seas; from 11th to 17th, moderate weather and moderate seas, after which latter date, strong gales and very rough seas up to 20th; variable seas and weather after that date.

Now as Lord Hailsham said in *Clan Line Steamers Limited v. Board of Trade* (1929) A.C. at 524:—

“... it is a well settled principle of marine insurance law that *causa proxima non remota spectatur*.”

That principle has been embodied in the Marine Insurance Act, R.S.B.C. 1936, chap. 134, sec. 57 (1), which reads as follows:—

(1) Subject to the provisions of this Act, and unless the policy otherwise provides, the insurer is liable for any loss proximately caused by a peril insured against, but, subject as aforesaid, he is not liable for any loss which is not proximately caused by a peril insured against.

Two familiar cases are illustrative of this principle, *viz.*, *Hamilton Fraser & Company v. Pandorf & Company* (1887) 12 A. C. 518, and *Pink v. Fleming* (1890) 25 Q.B.D. 396.

In *Hamilton Fraser & Company v. Pandorf & Company*, *supra*, rice was damaged by sea water which found its way into the hold of the vessel through a hole gnawed by a rat, in a leaden pipe connected with the bathroom of the vessel. It was held by the House of Lords that such damage resulted from the entry of the sea water—a peril or accident of the sea—and the act of the rat was immaterial for the proximate cause only was to be considered.

In *Pink v. Fleming*, *supra*, a vessel on which insured goods were shipped came into collision with another vessel and sustained damage necessitating repairs in port. In order to make such repairs the cargo, consisting of fruit, was discharged into lighters. Upon completion of repairs the cargo was reshipped but at the port of destination the fruit had gone bad. The damage had been caused partly by the delay and partly by the handling of the fruit. The Court of Appeal applying the “*proxima*” principle held that the collision was not the proximate cause of the loss. Bowen, L.J., at p. 399, said:—

“The proximate cause of the loss was not the collision or any peril of the sea. It was the perishable character of the articles combined with the handling in the one case and delay in the other.”

In this case it will be at once observed the jury found (in answer to a leading question) that the proximate cause of the

10

20

30

40

damage to the rice "was the closing of the ventilators and hatches." To my mind there can be no escape from that finding of fact, neither, in my understanding of the authorities, is it of any moment, at this stage of the case, to go behind that finding to search for remote causes; for links in the chain of causation, which may have led to the proximate, *i.e.*, the efficient and direct cause of the damage.

Lord Sumner in *Becker Gray & Co. v. London Assurance Corporation* (1918) A.C. 101, 116, refers to an early judgment of Lord Mansfield (*Jones v. Schmoll* (1785) 1 T.R. 130 n), to indicate "at how early a date a strict construction was applied to causation in policies of insurance." At p. 112, he said:—

"Proximate cause is not a device to avoid the trouble of discovering the real cause or 'common-sense cause,' and although it has been and always should be applied rigorously in Insurance cases, it helps the one side no oftener than it does the other."

Lord Shaw in *Leyland Shipping Company v. Norwich Union Fire Insurance Society* (1918) A.C. 350 at 370, said:—

20 ". . . proximate cause is an expression referring to the efficiency as an operating factor upon the result. Where various factors or causes are concurrent, and one has to be selected, the matter is determined as one of fact and the choice falls upon the one to which may be variously ascribed as the qualities of reality, predominance, efficiency."

It is of some interest to compare what the text books have to say upon the rule to be applied. Eldridge on Marine Policies (3rd Ed.) at pp. 53, 54 says:—

30 "The principle which prevails is that the loss must be attributed to the actual and direct cause, so that where there are a number of events successive in order of time, each producing the one which follows it, the last event preceding and producing the loss is held to be the cause of such loss.

. . . Often it may appear that one of the earlier events is the dominant cause in producing the damage; it may be the *causa sine qua non*, while the actual *causa causans* may seem to be comparatively insignificant. Nevertheless, the law does not regard the relative importance of causes in the production of loss . . . "

40 In *Smith Mercantile Law* (13th ed.) at pp. 458, 459, we find the following comment apparently based upon the judgment of Lord Shaw in the *Leyland case, supra*.

"This theory has, however, now been displaced by a very different view of the matter. The notion that there was a chain of causes was shown to be inaccurate. "Causation is not a chain but a net," and consequently it becomes necessary

Court of  
Appeal.

No. 44  
Reasons for  
Judgment,  
Sloan, J.A.  
February  
1st, 1939.  
—continued.



Court of  
Appeal.

No. 44  
Reasons for  
Judgment,  
Sloan, J.A.  
February  
1st, 1939.  
—continued.

to find not the last cause in point of time, but the cause which "is proximate in efficiency." The rule must therefore be restated in the following form, *i.e.*, that where there is a loss due to a combination of causes operating at or about the same time, the proximate cause of the loss will be the cause which is the dominant or effective cause, and this is not necessarily the cause which occurs last in point of time."

In my view, as I have said, it is really a matter of no moment in this case by what process of reasoning the jury arrived at the conclusion expressed in the answers, unassisted, I am constrained 10 to say, with respect, by the direction of the learned trial Judge on this aspect of the case. Whether they viewed the closing of the ventilators and hatches as a "last event preceding and producing the loss" or whether they regarded this event as the proximate cause because they were satisfied it was "proximate in efficiency" as well as the last event, one thing is clear and beyond dispute: there is a finding by the jury of what in this case, was the proximate cause of the damage.

The jury having found that the proximate cause of the damage was the closing of the ship's ventilators and hatches, it is 20 then necessary to consider the consequences of such finding. That enquiry involves the determination of this question: Can the damage to the rice consequent upon the closing of the ventilators and hatches be said to result from a peril of the sea? In order to answer that question it is first proper to examine the authorities to find what is meant by the term "perils of the sea."

The Marine Insurance Act does not attempt a definition but some assistance is found in Rule 7 of the Schedule to that Act. The rule reads as follows:—

"The term 'perils of the sea' refers only to fortuitous 30 actions or casualties of the seas and does not include the ordinary action of the wind and waves."

Scrutton on Charter Parties (13th ed.) at p. 261, defines the term as follows:—

"The term 'Perils of the Sea' (whether in policies of insurance, charter-parties, or bills of lading, has the same meaning and includes:—

Any damage to the goods carried caused by sea-water, storms, collisions, stranding or other perils peculiar to the sea or to a ship at sea, which could not be foreseen and guarded 40 against by the ship owner or his servants as necessary or probable incidents of the adventure."

This definition was accepted by the Supreme Court of Canada in *Canadian National Steamships v. Bayliss* (1937) S.C.R. at 263. See also *Bunge North American Grain Corporation v. "Skarp"* (1932) Ex. C.R. at 216 (affd. (1933) Ex. C.R. 75). Other and like

definitions are to be found in Eldridge on Marine policies (3rd ed.) pp. 84-85, and Arnould on Marine Insurance (10th ed.) vol. 11, p. 1040.

I am unable to see how the closing of the ventilators and hatchways, the proximate cause of the damage, can be said to be a peril of the sea within the meaning of the quoted definition.

Assuming that it is useful to consider the reasons for their closing an examination of the ship's log discloses that the primary reason for this action was rain or at most rain and wind. Rain and wind are not "peculiar to the sea," nor are they ineluctable perils. A parcel of rice in a freight car moving on rails across the Canadian prairies might suffer from heat damage resulting from closing the car's ventilators because of rain and wind (See Lord Haldane's comments in *Stott Baltic Steamers Ltd. v. Marten* (1916) A.C. at p. 309). The peril must be a peril "of" the sea as well as a peril "on" the sea. The "*Xantho*" (1887) 12 A.C. at p. 509. I do not consider the closing of the ship's ventilating system because of weather conditions which are reasonably to be expected and experienced on a normal voyage of this character is, in its result, a peril that could not be foreseen and guarded against.

Then too in this case there intervened between the weather and the damage voluntary acts on the part of the responsible ship's officer. The damage to the rice was caused by consequences directly flowing from those intervening acts. The loss was not caused by a peril of the sea but (assuming weather conditions constituted a peril of the sea) as the result of a successful attempt of the ship's officer to avoid damage to the rice by a peril of the sea. In the words of Lord Reading in *Kacianoff v. China Traders Insurance Company Limited* (1914) 3 K.B. at p. 1127, the closing of the ventilators was a fact "preventing the peril from operating, it was making it impossible that the peril should operate" and see *British and Foreign Marine Insurance Company Limited v. Samuel Sandy & Company* (1916) A.C. at p. 665.

A voluntary action taken in expectation or apprehension of peril is not a peril of the sea. *Becker Gray & Company v. London Assurance Corporation, supra.*

In my view therefore, as I have said, I cannot come to any other conclusion, in my understanding of the authorities, than that the closing of the hatchways and ventilators, under the circumstances of this case, was an act which falls not within but without the *indicia* of the quoted definition of "perils of the sea."

There have been cases in which damage resulting from closing the ships ventilators has been held to be damage caused by a peril of the sea, *viz.*, *The Thrunsoe* (1897) 66 L.J.P. 172; *Donkin*

Court of  
Appeal.

No. 44  
Reasons for  
Judgment,  
Sloan, J.A.  
February  
1st, 1939.

—continued.



Court of  
Appeal.

No. 44  
Reasons for  
Judgment,  
Sloan, J.A.  
February  
1st, 1939.  
—continued.

*Creeden & Avery Limited v. "Chicago Maru"* (1916) 23 B.C.R. 551, but in my view such cases are distinguishable in fact from the present one.

In the *Thrumscoe* case, *supra*, the ventilators were closed because of "extraordinary weather" and "in a storm of exceptional severity and duration" and "they were necessarily closed for the safety of the ship." In addition "the servants of the shipowner were compelled to close the ventilators for a period which nobody could possibly contemplate."

In the "*Chicago Maru*" case, *supra*, the vessel was on her 24th 10 voyage East and "the sea became much higher than the ship ever experienced." Excerpts from the log follow: "Whole gale and ugly weather, high seas causing ship to labour and strain." "Shipping much water constantly and flooded at times." "Heavy seas washing over all constantly."

In these cases the over-riding necessity of taking action to save the ship from sinking as a result of extraordinary weather conditions, which could not have been anticipated as the normal incidents of the voyage cannot be regarded as a voluntary act of the ship's officer intervening between the peril and the damage. 20 Closing the ventilators was an act of extreme necessity and not of mere choice. The peril was immediate and operating—the ship endangered—and so high was the obligation of her officers to take every means of saving her that to adopt the language of Lord Sumner in *Becker Gray Company v. London Assurance Corporation, supra*, at p. 116 "an act done in performance of it did not causally bear the character of a voluntary act or of a new intervening cause."

The principle applicable to the facts of the "*Thrumscoe*" and "*Chicago Maru*" cases can have no application here. 30

As Lord Macnaghten pointed out in *Thames and Mersey Marine Insurance Company v. Hamilton* (1867) 12 A.C. at p. 502; when referring to "perils of the sea":—

"I think that each case must be considered with reference to its own circumstances and the circumstances of each case, must be looked at in a broad common sense view and not by the light of strained analogies and fanciful resemblances."

According to the evidence the voyage in question here was regarded by seafaring men as a fine voyage for that time of the year; the weather encountered was normal and what was to be antici- 40 pated. No weather was encountered rendering it necessary to close the ventilators for the safety of the ship nor for that matter were the ventilators closed for a longer period than what would be in the contemplation of the parties to the contract of insurance; that is to say it was a normal voyage for that time of the year with all the normal incidents thereof. If the shipper wished to protect

himself against possible loss due to probable incidents of the voyage (*e.g.*, heat, sweat and mould) then by the payment of an extra premium he could have had that protection (A.B. pp. 730, 731).

10 He does not get it by alleging a loss by a peril of the sea when in fact his loss was caused by heat engendered by the closing of ventilators when circumstances were such that such action was a necessary and probable result of normal weather conditions: a result which could have been foreseen and guarded against. It appears to me that the only element which could not be foreseen was the delicate constitution of the rice, and its lack of resistance to the normal hardships of the voyage.

Counsel for the Respondent submitted that questions 6, 7, 8 and 9 when read together formed a "chain of causation"; that as the weather was the cause of the closing of the ventilators and hatches and as the jury found the weather and sea during the time the ventilators and hatches were closed a peril of the sea therefore a peril of the sea was the efficient and dominant, *i.e.*, the proximate cause of the damage.

20 This argument, with respect, does not appear to me to be sound. In the first place as it has been said by Lord Shaw in *Leyland Shipping Co. v. Norwich Union Fire Insurance Society*, *supra*, at p. 360:—

30 Causes are spoken of as if they were as distinct from one another as in a row or links in a chain, but—if this metaphysical topic has to be referred to—it is not wholly so. The chain of causation is a handy expression but the figure is inadequate. Causation is not a chain but a net. At each point influences, forces, events precedent and simultaneous, meet; and the radiation from each point extends infinitely. At the point where various influences meet it is for the judgment as upon a matter of fact to declare which of the causes thus joined at the point of effect was the proximate and which was the remote cause."

The jury as "a matter of fact" did "declare which of the causes . . . was the proximate" cause.

40 I cannot substitute for that specific and direct finding a fresh and totally different one declaring the closing of the ventilators a *causa sine qua non* and the condition of the weather the *causa causans*. As Lord Atkin said in *McGovern v. James Nimmo & Company*, *supra*, at p. 83:—

"The Court cannot itself supply an answer to a missing question, nor if the verdict in itself answers the issue can the Court either set aside a particular answer or supply others."

At the risk of tiresome repetition I would again stress the point that the long established rule is the the proximate cause

Court of  
Appeal.

No. 44  
Reasons for  
Judgment,  
Sloan, J.A.  
February  
1st, 1939.

—continued.



Court of  
Appeal.

No. 44  
Reasons for  
Judgment,  
Sloan, J.A.  
February  
1st, 1939.  
—continued.

alone is to be considered. This principle as Lord Sumner observed in *Beckers* case, *supra*, at p. 112:—

“ . . . has been and always should be rigorously applied in insurance cases.”

Or as Lord Justice Scrutton said in the *Leyland* case (1917) 1 K.B. at 894:—

“This strict rule has been applied in all insurance cases.”

Or as Lord Loreburn said in *British and Foreign Marine Insurance Company Limited v. Samuel Sandy & Company, supra*, at p. 659:— 10

“The maxim *causa proxima non remota spectatur* has been strictly applied in marine insurance cases.”

And again:—

“ . . . this maxim is pushed to considerable lengths in marine insurance law.”

I am not unmindful of the observation of Lord Shaw in the *Leyland* case, *supra* (1918) A.C. at 370, when he said “To treat *proxima causa* as if it was the cause which is proximate in time is . . . out of the question. The cause which is truly proximate is that which is proximate in efficiency.” And because counsel for the Respondent pressed it upon us I wish to consider the *Leyland* case for a moment. It is cited as illustrative of the principle that a cause antecedent to that which is the last event preceding the loss may be regarded, in certain circumstances, as the proximate cause. The vessel there was insured against marine risks excepting “consequences of hostilities or war like operations.” She was fatally injured by an enemy torpedo (a “doomed ship” p. 364) and was brought to harbour in an effort to salve her. As Lord Findlay said at p. 355:— 20

“The injuries received from the torpedo made it impossible for the vessel to keep the sea.” (And see Lord Atkinson at p. 366.) When at anchorage she grounded forward at ebb tide and floated again with the flood. This straining broke her weakened back and she sank. It was held that the injury suffered by the ship from the effects of the torpedo was the proximate cause of her loss. It is clear that the dominant and efficient cause of her sinking was unbroken and operated throughout as an over-powering agency. She was in imminent risk of sinking from the moment of the torpedoing (“all the time in the grip of the casualty” p. 371) and the grounding was not a *novus actus interveniens*. Lord Hal- 40  
dane said at p. 360:—

“Had she remained out at sea she would have sunk,” and was of opinion that (p. 362):—

“The fact that attempts were made to obviate the natural consequences of the injury inflicted by the torpedo does not

introduce any break in the direct relation between the cause and its effect which culminates in the damage sustained.”

Court of  
Appeal.

The other judgments in that case are of a like effect. I fail to see how that case is of assistance to the Respondent. There the ship suffered a mortal wound and anything done subsequent to that could not be said to be the efficient cause of her loss.

No. 44  
Reasons for  
Judgment,  
Sloan, J.A.  
February  
1st, 1939.

—continued.

I venture to say, from my reading of the relevant authorities to date, that in cases of marine insurance the proximate cause is the last event in time preceding and directly producing the damage except in those cases where the efficient cause, while not last in time, is of such an overpowering and irresistible nature that its course and predictable result cannot be materially affected by subsequent intervening acts or events.

Before leaving this branch of the appeal I would make a passing reference to “*The Stranna*” (1938) P 69. I can find no similarity either in fact or principle between that case and this. There a ship in port while loading a deck cargo of timber took a sudden and unexplained list causing a portion of the deck load to fall overboard into the sea where it was carried away by the tide and lost. It was held that the loss was caused by a peril of the sea. I think it will suffice if I refer to two passages in the judgments. Lord Justice Slesser, at p. 77, said:—

“The list of the ship which caused the cargo to fall overboard was certainly a fortuitous accident not a necessary or even a probable incident of the voyage.”

Lord Justice Scott said at p. 82:—

“... the event was wholly unexpected, it was just an unfortunate accident. But it was also a peril of the sea and not merely a peril on the sea.”

Turning once more to the submission of Counsel for the respondent that the answers to questions 6, 7, 8, and 9 must be read together and construed in their cumulative effect I can only say that, if forced by authority to that position, I would have had great difficulty in upholding, as proper, the finding of the jury (assuming without deciding it to be a matter of fact for the jury) that the weather conditions as disclosed in the Ship’s Log constituted a peril of the sea. I mention this question as a ponderable one without expressing a final opinion thereon as I find it unnecessary to do so in the determination of this appeal and in that respect I bear in mind what Lord Justice Vaughan Williams in *Maas v. Gas Light and Coke Company* (1911) 2 K.B. at p. 548, described as a “wise and astute rule”, i.e., “not to decide anything more than was necessary to decide the case before the Court.”

Counsel for the respondent complained that the appellant, if correct in his submission to us, ought to have taken the position at the trial that the questions submitted to the jury did not include



Court of  
Appeal.

No. 44  
Reasons for  
Judgment,  
Sloan, J.A.  
February  
1st, 1939.  
—continued.

all those elements concerning which a finding of fact was necessary in order to support the respondent's cause of action, and in support of his submission relied upon *Scott v. Fernie Lumber Company* (1904) 11 B.C.R. (recently approved in *Field v. David Spencer Limited* (1939) 1 D.L.R. 129).

I do not think those cases are in point here. It is not my view that appellant's counsel was charged in the Court below with the responsibility of conducting his opponent's case. Counsel for the respondent had his day in Court on terms of his own choosing and if anyone is to suffer by reason of the form in which the case 10 went to the jury then it cannot in fairness, be the appellant. Any objection he did have to the form of the questions was overruled by the learned trial Judge.

In the result, then, I would allow the appeal, set aside the judgment below and dismiss the action, for as Lord Macnaghten said in *Thames and Mersey Marine Insurance Company v. Hamilton, supra*, at p. 502:—

“In marine insurance it is above all things necessary to abide by settled rules and avoid anything like novel refinements or a new departure.”

20

VICTORIA, B. C.  
1st February, 1939.

(Sgd.) GORDON McG. SLOAN,  
J. A.

---

No. 45.  
Judgment

Court of  
Appeal.

No. 45  
Judgment.  
February  
1st, 1939.

CORAM:

THE HONOURABLE THE CHIEF JUSTICE OF  
BRITISH COLUMBIA  
THE HONOURABLE MR. JUSTICE McQUARRIE,  
THE HONOURABLE MR. JUSTICE SLOAN.

Victoria, B. C., the 1st day of February, A.D. 1939.

THE APPEAL from the Judgment of the Honourable Mr.  
10 Justice Robertson pronounced herein on the 31st day of May,  
1938, coming on for hearing at Vancouver, B. C. on the 7th, 8th,  
9th, 10th, 14th, 15th and 16th days of November, 1938; UPON  
HEARING the Honourable Mr. J. W. deB. Farris, K.C. and  
Mr. A. C. DesBrisay of Counsel for the Appellant and Mr. Alfred  
Bull, K.C. and Mr. C. C. I. Merritt of Counsel for the Respond-  
ent; and upon reading the Appeal Book and judgment being  
reserved until this day:

THIS COURT DOTH ORDER AND ADJUDGE that the  
said appeal be and the same is hereby allowed and the said judg-  
20 ment set aside with costs here and below to be paid by the above  
named Respondent to the above named Appellant forthwith after  
taxation thereof.

BY THE COURT.

J. F. MATHER,  
REGISTRAR.

"A.B."

"A.M."

C.J.

30

Entered  
March 21, 1939  
Order Book Vol. 11, Fol. 136  
Per E.R.O.C.

---



Court of  
Appeal.

No. 46.

Conditional Order

No. 46  
Conditional  
Order,  
March 7th,  
1939.

CORAM:

THE HONOURABLE THE CHIEF JUSTICE OF  
BRITISH COLUMBIA,  
THE HONOURABLE MR. JUSTICE MACDONALD,  
THE HONOURABLE MR. JUSTICE McQUARRIE,  
THE HONOURABLE MR. JUSTICE SLOAN,  
THE HONOURABLE MR. JUSTICE O'HALLORAN.

VANCOUVER, B. C., the 7th day of March, 1939.

10

UPON READING the Notice of Motion of the Plaintiff (Respondent) dated the 13th day of February, 1939, and the Affidavit of Walter William Walsh sworn herein the 13th day of February, 1939, and upon hearing Mr. Alfred Bull, K.C., of Counsel for the Plaintiff (Respondent), and Mr. A. C. DesBrisay of Counsel for the Defendant (Appellant),

THIS COURT DOTH ORDER that, subject to the performance by the Plaintiff (Respondent) of the conditions hereinafter mentioned and subject to the Final Order of this Court upon the due performance thereof, leave to appeal to His Majesty in Council against the Judgment of this Honourable Court be granted to the Plaintiff (Respondent). 20

AND THIS COURT DOTH FURTHER ORDER that the said Plaintiff (Respondent) do within three months from the date hereof enter into good and sufficient security to the satisfaction of this Court in the sum of £500 Sterling for the due prosecution of the said appeal and the payment of all such costs as may become payable to the Defendant (Appellant) in the event of the Plaintiff (Respondent) not obtaining an order granting it leave to appeal, or of the appeal being dismissed for non-prosecution, or of His Majesty in Council ordering the Plaintiff (Respondent) to pay the costs of the appeal of the Defendant (Appellant). 30

AND THIS COURT DOTH FURTHER ORDER that the Plaintiff (Respondent) do within three months from the date hereof take the necessary steps for the purpose of procuring the preparation of the Record and its settlement and certification by the Registrar and the dispatch thereof to England.

AND THIS COURT DOTH FURTHER ORDER that the Plaintiff (Respondent) shall upon compliance with the aforesaid conditions be at liberty within three months from the date hereof to apply for a final order for leave to appeal.

BY THE COURT.

J. F. MATHER,  
REGISTRAR.

Court of  
Appeal.

No. 46  
Conditional  
Order,  
March 7th,  
1939.

—continued.

“A.C.DeB.”  
Minutes filed  
10 “A.M.”  
C.J.B.C.

Entered  
March 22, 1939  
Order Book Vol. 11, Fol. 138  
Per E.R.O.C.

---

No. 47.

**Certificate of Registrar as to Security**

I, JAMES FREDERICK MATHER, Registrar of this Honourable Court, in Vancouver, British Columbia, do hereby  
20 certify that the Plaintiff (Respondent) herein has provided security to my satisfaction in the sum of \$2500.00 of lawful money of Canada for the due prosecution of its appeal to His Majesty in His Privy Council against the judgment of this Honourable Court herein, and that the Plaintiff (Respondent) has taken out all appointments that are necessary for settling the Transcript Record on such appeal to enable me to certify that the Transcript Record has been settled and that the provisions of the Order of this Honourable Court made on the 7th day of March 1939, on the part of the said Plaintiff (Respondent) have been complied  
30 with.

No. 47  
Certificate  
of Registrar,  
March 25th,  
1939.

DATED at Vancouver, B. C., this 25th day of March, 1939.

J. F. MATHER,  
REGISTRAR.

---



*Court of  
Appeal.*

**No. 48.**

**Final Order**

No. 48  
Final Order, CORAM:  
March 29th,  
1939.

THE HONOURABLE THE CHIEF JUSTICE OF  
BRITISH COLUMBIA,  
THE HONOURABLE MR. JUSTICE McQUARRIE,  
THE HONOURABLE MR. JUSTICE O'HALLORAN.

VANCOUVER, B. C., the 29th day of March, 1939.

UPON READING the Notice of Motion of the Plaintiff (Respondent) dated the 25th day of March 1939, and the Order made herein on the 7th day of March 1939, and the Certificate of the Registrar dated the 25th day of March 1939, and upon hearing Mr. Alfred Bull, K.C. of Counsel for the Plaintiff (Respondent) and Mr. J. A. Bourne of Counsel for the Defendant (Appellant),

THIS COURT DOTH ORDER that final leave to appeal to His Majesty in Council from the Judgment pronounced herein on the 1st day of February 1939 be and the same is hereby granted to the said Plaintiff (Respondent).

BY THE COURT.

J. F. MATHER,  
REGISTRAR.

20

Approved  
"J.A.B."  
"A.M."  
C.J.B.C.

Entered  
March 29, 1939  
Order Book Vol. 11, Fol. 142  
Per. A. L. R.

---

**EXHIBITS****Exhibit No. 1.****Policy of Insurance Less Non-Material  
Parts As Agreed Between Counsel***In the  
Supreme  
Court of  
British  
Columbia.*Exhibits.

The policy is described as Open Policy 1703, and is in the usual form of Marine Insurance Policy, and is dated the 19th of December 1929, and contains the following clause:

P.1.  
Policy of  
Insurance,  
December  
19th, 1929.

10 "AND touching the Adventures and Perils which the said Company is contented to bear and does take upon itself in the Voyage so Insured as aforesaid they are of the Seas Men of War Fire Enemies Pirates Rovers Thieves Jettisons Letters of Mart and Counter Mart Surprisals Takings at Sea Arrests Restraints and Detainments of all Kings Princes and People of what Nation Condition or Quality soever Barratry of the Master and Mariners and of all other Perils Losses and Misfortunes that have or shall come to the Hurt Detriment or Damage of the aforesaid subject matter of this Insurance or any part thereof."

20 The assured under the policy is Canada Rice Mills Limited. Copy of certain clauses of the policy are as follows:

1. Insurance is wanted by CANADA RICE MILLS LIMITED.

2. For account of whom it may concern.

3. Loss, if any, payable to the Assured or Order.

4. To attach and cover upon all shipments excepting only such shipments as they may have received specific instructions not to insure, made by the assured or consigned to them for their own account or for the account of others with instructions to insure, such instructions to be given in writing prior to ship-  
30 ment. Also to cover shipments made by or consigned to others for account of the assured. Shipments purchased by the assured on cost, insurance and freight terms are excluded from and not covered by this policy.

5. On general merchandise consisting principally of rice, rice meal and rattan, including prepaid freight and/or advances on account of freight and/or freight payable "Vessel lost or not lost" under and/or on deck.

6. Valued at amount of Invoice, plus ten (10%) percent including prepaid freight or freight for which the Assured may be  
40 liable "vessel lost or not lost" under the terms of the "Bill of Lading" or "Charter Party" or "Contract of Affreightment" and shipping, forwarding and other charges, should the same be incurred, until declared and then at amount declared, providing declaration is made prior to known loss or damage.

7. Per Steamer or steamers and/or motorship or motorships and/or connecting conveyances.



In the  
Supreme  
Court of  
British  
Columbia.

Exhibits.

P.1.  
Policy of  
Insurance,  
December  
19th, 1929.  
—continued.

8. At and from ports and/or places in any and all parts of the world, direct or via port or ports,

10. All shipments of General Merchandise, shipped UNDER DECK are insured:—

“Warranted free from Particular Average under three (3%) percent. on each package, unless the vessel or craft be stranded, sunk, or burnt, but notwithstanding this warranty the Assurers are to pay the insured value of any package or packages which may be totally lost in loading, transshipment or discharge, also for any loss of or damage to the interests insured which may reasonably be attributed to fire, collision or contact of the vessel and/or craft and/or conveyance with any external substance (ice included) other than water, or to discharge of cargo at port of distress, also to pay landing, warehousing, forwarding and special charges if incurred for which Underwriters would be liable under a Policy covering Particular Average. 10

16 The assured are not to be prejudiced by the presence of the negligence clause and/or latent defect clause in the Bills of Lading and/or Charter Party. The seaworthiness of the vessel as between the Assured and the Assurers is hereby admitted, and the wrongful act or misconduct of the shipowner, or his servants causing a loss is not to defeat the recovery by an innocent assured if the loss in the absence of such wrongful act or misconduct would have been a loss recoverable on the policy. With leave to sail with or without pilots, and to tow and assist vessels or craft in all situations, and to be towed. 20

The assured are hereby granted the Option of insuring import shipments of rice per regular line or first-class approved steel steamers and/or motorships subject to the conditions as noted below and at rates as hereinafter set forth or as may be agreed on, always provided that they, the assured, declare their intention to do so prior to sailing of the vessel and prior to any known loss or casualty: 30

To include the risks of heat, sweat and mould irrespective of percentage.

Warranted the moisture content of each shipment is not to exceed 14% at time of shipment.

Warranted that the condition and loading of each shipment is subject to a satisfactory survey report from Lloyd's Agents at port of shipment. 40

It is understood and agreed however that such shipments shall not exceed via any one vessel at any one time Thirty Thousand (\$30,000.00) Dollars.





In the  
Supreme  
Court of  
British  
Columbia.

Exhibits.

P.1.  
Policy of  
Insurance,  
December  
19th, 1929.  
—continued.

Voyages between Vancouver,  
Victoria, Nanaimo, Seattle,  
Los Angeles, San Diego — and San Francisco 10c 12½c  
Shipments from or to other ports or places and/or by other routes  
and/or by other steamers or motorships not specified herein are  
held covered at rates to be arranged.

All other clauses of the policy have been omitted by consent  
of Counsel.

---

Exhibit No. 5.

Letter Macaulay, Nicolls, Maitland & Co. Ltd. 10  
to Canada Rice Mills Ltd.

Vancouver, B. C.  
March 17th, 1936

P. 5. ATTENTION MR. N. L. LAUHLAND

Letter  
Macaulay,  
Nicolls,  
Maitland &  
Co. Ltd. to  
Canada Rice  
Mills Ltd.  
March 17th,  
1936.

Canada Rice Mills Ltd.  
340 Railway Street,  
CITY.

Dear Sirs:—

We were advised recently by your Mr. Gavin over the tele-  
phone that you are importing from Rangoon via the S.S. "SE- 20  
GUNDO" a shipment of rice valued at approximately \$192,484.00.  
We understand this shipment will be leaving sometime during  
the month of April and as it represents rather a substantial value  
the Underwriter of the Union Marine & General Insurance Co.,  
who was in town a day or so ago, has asked that you kindly request  
the shippers to furnish you with a satisfactory survey report from  
Lloyd's Agent covering the loading and stowage of this cargo.  
We trust you will have no difficulty in arranging to secure this  
document.

We also understand that you are importing from Calcutta 30  
via the M/S "SILVER PALM" a further shipment of rice valued  
at approximately \$15,787.00. We understand this vessel will be  
leaving Calcutta on or about March 23rd next.

In accordance with the writer's discussion with your Mr.  
Lauchland over the telephone this morning we confirmed with  
the Union Marine that you desire both of these shipments covered  
subject to the Institute War Risk Insurance Clauses at the def-

inite rate of 5c per \$100.00. In the meantime we are holding you fully covered under the terms and conditions of your open contract including war risk insurance as specified above for the above two shipments, and when you are in receipt of closing particulars if you will kindly advise we shall be glad to issue certificates of insurance.

In addition to the above two shipments we understand you are importing a third shipment which you may require to insure under your open contract with us. We shall be glad to hold you covered on this third shipment when you instruct us to do so.

Thanking you for your advices in regard to the above matters, we are,

Yours very truly,

MACAULAY, NICOLLS, MAITLAND & CO. LTD.

Per T. W. Warkman.

---

*In the  
Supreme  
Court of  
British  
Columbia.*

Exhibits.

P. 5.

Letter  
Macaulay,  
Nicolls,  
Maitland &  
Co. Ltd. to  
Canada Rice  
Mills Ltd.  
March 17th,  
1936.

—continued.



In the  
Supreme  
Court of  
British  
Columbia.

Exhibits.

P. 2.  
Extract from  
Record of  
Import Ship-  
ments,  
May 28th,  
1936.

Exhibit No. 2.

Extract from Record of Import Shipments

EXTRACT FROM RECORD OF IMPORT SHIPMENTS

Open Contract No. 1703

Date of Entry 1936	Date of Bill of Lading	Name of Vessel	To Be Insured From	To
May 28	April 18	M. S. "Segundo"	Rangoon	Canada Rice Dock, Fraser River
" 28	" 17	"	"	" " " " " "
" 28	" 23	"	"	" " " " " "
" 28	" 23	"	"	" " " " " "

In the  
Supreme  
Court of  
British  
Columbia.

Exhibits.

P. 2.

Extract from  
Record of  
Import Ship-  
ments,  
May 28th,  
1936.

Cargo	Amount of Invoice	Amount To Be Insured	Rate of Premium	Amount of Premium	Approved
20,000 Bags Brown Rice £12000	60,150.00 @ \$5.01½				
9,000.00 Freight £1800 @ \$5.		\$76065.			
7,500 Bags Brown Rice £4968 15/0	24,918.28 @ \$5.01½				
3,375.00 Freight £675 @ 5.00		31122.			
7,500 Bags Brown Rice £4909 19/6	24,623.52 @ \$5.01½				
3,375.00 Freight £675 @ \$5.00		30798.	C		
15,600 Bags Brown Rice £8385/0/0					
50,600 Bags £3062/10/0 @ \$5.01½-15358					
£5322/10/0 @ \$5.02 26,718.95		54007.	40c		Certificate No. 6768 June 4/36
Freight £1404 @ \$5.	7020				
		<u>\$191,992.</u>	War and Risk	\$767.97 96.00	
				<u>\$863.97</u>	

MACAULAY, NICOLLS, MAITLAND  
& CO. LIMITED

Per "E. Laudon"



In the  
Supreme  
Court of  
British  
Columbia.

Exhibits.

P. 3.  
Certificate  
of Insur-  
ance,  
June 4th,  
1936.

**Exhibit No. 3**  
**Certificate of Insurance**

**CERTIFICATE OF INSURANCE**

Original

No. 6768

\$191,992.00  
(CAN. FUNDS)

**THE UNION MARINE AND GENERAL INSURANCE  
COMPANY, LTD.**

of Liverpool, England

**PACIFIC COAST BRANCH**  
114 Sansome Street, San Francisco

10

Geo. H. Ismon,  
Underwriter

THIS IS TO CERTIFY, that on the 28th day of May, 1936, this Company insured under Policy No. 1703 for CANADA RICE MILLS LIMITED, the sum of One hundred ninety one thousand nine hundred and ninety two Dollars on 50,600 bags brown rice .....valued at SUM INSURED Shipped on board the M.S. SEGUNDO at and from RANGOON to CANADA RICE DOCK, FRASER RIVER, B.C. Loss, if any, 20 payable to the ASSURED OR ORDER.

This Certificate represents and takes the place of the Policy, and conveys all the rights of the Original Policy holder, (for the purpose of collecting any loss or claims) as fully as if the property was covered by a special Policy direct to the holder of this Certificate, and is free from any liability for unpaid premiums.

**CONDITIONS**

**MARKS & NUMBERS**

**INCLUDING WAR RISKS**

This Certificate is made and accepted subject to the fore- 30 going stipulations and conditions, and to the stipulations and conditions printed on the back hereof, which are made a part of this Certificate, together with such other provisions, stipulations and conditions as may be endorsed hereon, or added hereto as herein provided.

IN WITNESS WHEREOF, the said Company has caused these presents to be signed by its Underwriter in the City of San Francisco, but this Certificate shall not be valid unless countersigned by the Company's duly authorized agent.

*In the  
Supreme  
Court of  
British  
Columbia.*

Not valid unless  
Countersigned by  
MACAULAY, NICOLLS,  
MAITLAND & CO. LTD.

Geo. H. Ismon  
Underwriter

Exhibits.

P. 3.

Certificate  
of Insur-  
ance,  
June 4th,  
1936.

—continued.

10

Countersigned: MACAULAY, NICOLLS  
MAITLAND & CO. LIMITED

per R. M. Maitland

at VANCOUVER, B.C. the 4th day of June, 1936.

---

**Exhibit No. 49**

**Invoice**

Vancouver, B.C.  
June 5th 1936

D. 49.  
Invoice,  
June 5th,  
1936.

Messrs. Canada Rice Mills Ltd.  
343 Railway Street, CITY

In account with

20      MACAULAY, NICOLLS, MAITLAND & CO. LTD.  
Insurance, Financial and Estate Agents

Cable Address:  
"Maenic"

---

UNION MARINE & GENERAL INSURANCE CO. LTD.

To Premium Policy No. 6768      \$863.96  
\$191,992.00—50,600 Bags Rice  
Per M/S "SEGUNDO" from Rangoon to  
Vancouver

E. & O. E.

---



In the  
Supreme  
Court of  
British  
Columbia.

Exhibits.

P. 6.  
Agreement  
Between  
Solicitors re  
Log Book,  
May 3rd,  
1938.

**Exhibit No. 6**

**Agreement Between Solicitors re Log Book**

It is agreed between the parties hereto for the purposes of the trial of this action:

(1) That the deck log of M/V "Segundo" for the period commencing April 12th and ending June 3rd, 1936, be admitted in evidence without proof thereof.

(2) That the translation of the said log made by Hercules Warsoe be accepted as a correct translation of the log, save and except entries omitted from the translation, in respect of which 10 reference may be had to the original log.

(3) That the Sampson post ventilators on the said M/V "Segundo" were not at any time closed but were open at all times during the voyage from Rangoon to Canada Rice Company's dock, Fraser River, B.C. which commenced April 24th, 1936, and terminated May 28th, 1936.

(4) That the said log, the translation thereof, and the facts stated in the preceding paragraph hereof shall be the only evidence to be adduced as to the facts of the said voyage from Rangoon to the Canada Rice Company's dock, Fraser River, B.C., 20 which commenced April 24th, 1936, and terminated May 28th, 1936; PROVIDED that nothing herein contained shall be deemed to limit such inferences as may properly be drawn by the Court or a jury from such facts or the right of either party to adduce opinion evidence of experts upon such facts.

DATED at Vancouver, B.C. this 3rd day of May, 1938.

W. W. Walsh,  
Solicitors for the Plaintiff.

Bourne & DesBrisay,  
Solicitors for the Defendant. 30

**Exhibit No. 7**  
**Extract From Logbook M.V. "Segundo"**

EXTRACT OF LOGBOOK

M.V. "SEGUNDO"

Loading at Rangoon and Voyage to Fraser River B.C.

Vessel arrived at Rangoon from Lourenco Marques, Sunday.  
April 12th, 1936 at 12.25 P.M.

MONDAY, APRIL 13th 1936 (In the Port of Rangoon):

AT 8 A.M. received following news from the Hospital:

- 10        "This is to inform you that the member of your Crew,  
          who was brought to the Hospital yesterday died this  
          morning. Kindly make the necessary arrangements for  
          his Funeral."

AT 11 A.M. Workmen from shore came onboard to prepare holds with dunnage mats and bamboo. A Surveyor also came along to inspect the holds which were found to be in good shape and proper order.

Sailor Fredrik Clausen brought ashore to the Hospital at 11 a.m. as he felt indisposed with a headache and biliousness.

- 20        AT 4 P.M. the holds are ready to receive cargo the Vessel is taken over by Charterer, and loading of rice in bags commences immediately, as lighters are at our disposal alongside. Working with 5 gangs until Midnight, and with 3 gangs during the rest of the night, without stop.

TUESDAY, APRIL 14th, 1936 (In the Port of Rangoon):

Nice clear weather. Loading continues without interruption. From Noon on with five gangs again. Finished for the day at 5 p.m. No nightwork.

- 30        Engine Boy Sverre Gustavsen taken ashore to the Hospital at 11.30 a.m. suffering from pain in the stomach. Sailor Hans Hamre buried at 4 p.m. in the presence of all those who could possibly be spared from the ship.

Total quantity loaded at 5 p.m. 1619 tons rice. Shore watchman onboard for the night.

WEDNESDAY, APRIL 15th, 1936 (In the Port of Rangoon):

Loading resumed at 6 a.m. in No. 1, 2, 3 and 4 hatches.

Work ceased at 11.10 a.m. in No. 4 hatch owing to lack of

*In the  
Supreme  
Court of  
British  
Columbia.*

Exhibits.

P. 7.

Extract  
from Log-  
book,  
April 12th—  
June 3rd,  
1936.



*In the  
Supreme  
Court of  
British  
Columbia.*

Exhibits.

P. 7.

Extract  
from Log-  
book,  
April 12th—  
June 3rd,  
1936.

—continued.

cargo. Stopped at 11.30 a.m. in No. 1 hatch for the same reason. Stopped at noon in No. 2 and continuing in No. 3 hatch only until 3.15 p.m. From then on working one gang in No. 2 hatch till 5 p.m., when finished for the day.

Total quantity loaded 2299 tons. Watchman from shore.

THURSDAY, APRIL 16th, 1936 (In the Port of Rangoon):

Loading resumed at 6 a.m. in No. 2, 3 and 4 hatches. Ceased work in No. 2 hatch at 8 a.m., as the weight of the bags was found to be incorrect. Ceased work in No. 3 hatch at noon. Stopped work in No. 4 hatch at 4.15 p.m. and continued again in No. 3 hatch until 5.15 p.m. when finished for the day.

Total quantity loaded 2689 tons. Watchman from shore. The whole crew, with the exception of the Bosun, 1/2 day off.

FRIDAY, APRIL 17th, 1936 (In the Port of Rangoon):

Loading resumed at 6 a.m. in No. 1 and 3 hatches. Stopped at 10 a.m. in No. 3 and shifted over to No. 4; Stopped at 11 a.m. in No. 1 and shifted over to No. 2. Ceased work in No. 4 at 11.15 a.m. and it is continued in No. 2.

Working from 6 p.m. with 3 gangs all through the night. The Bosun has 1/2 day off.

Six men from shore assisting in ordinary work onboard the vessel from 2 to 6 p.m.

Received word from the Hospital that the 3 members of the crew who had been brought ashore could not join the vessel outward bound.

Total quantity loaded at 6 p.m. 3029 tons.

At 5 p.m. April 17th, 1936 ship's counsel was held to discuss shortage of crew. Present were:

The Master, Chief Engineer, Chief Officer, Bosun, Carpenter and 1 Motorman.

One member of the crew is now dead and 3 men will be left at the hospital in Rangoon. Crew now consisting of the following:

10 Men on Deck  
10 Men in the Engines  
4 Men in the Galley

—  
24

and the Master, and therefore 4 men short.

The conclusion was reached by all present that both vessel and crew would be safe for the oncoming voyage with the crew now remaining.

signed: Bjornestad, Torgersen, Larsen,  
Andreassen, Wilhelmsen, Hansen.

SATURDAY, APRIL 18th, 1936 (In the Port of Rangoon):

After having worked all night with 3 gangs, loading continues throughout the day with 3 gangs until 4.30 p.m. when there is a temporary shortage of cargo.

Total quantity now loaded 4377 tons.

The crew has  $\frac{1}{2}$  holiday with the exception of the Bosun. 6 men from shore to assist in scraping and oiling the welldecks. Took onboard abt. 80 tons fresh water.

At 6 p.m. the longshoremen went ashore as no cargo had arrived. Watchman from shore for the night.

SUNDAY, APRIL 19th, 1936 (In the Port of Rangoon):

No work in connection with loading, 6 men from shore scraping and painting the decks. Watchman from shore.

MONDAY, APRIL 20th, 1936 (In the Port of Rangoon):

Loading is resumed at 6 a.m. in No. 1 and 3 hatches. Stopped at 11 a.m. on account of lack of cargo. The crew has painted No. 1 and 5 hatch coamings.

Total quantity now loaded 4577 tons. Watchman from shore.

TUESDAY, APRIL 21st, 1936 (In the Port of Rangoon):

No loading. Total quantity now lacking 483 tons, which are said to be now coming down the river. The crew is scraping and painting the deck. Watchman from shore.

WEDNESDAY, APRIL 22nd, 1936 (In the Port of Rangoon):

No loading, and no report as to when the cargo can be expected.

Crew engaged in various work on deck. The cook has been to the Doctor. Watchman from shore.

THURSDAY, APRIL 23rd, 1936 (In the Port of Rangoon):

At 11.15 a.m. the rest of the cargo arrived alongside, but it is impossible to load on account of rain.

At 5 p.m. the longshoremen came onboard. No rain at 6 p.m. and loading starts with 4 gangs.

At midnight the vessel is completely loaded.

It is noted that several bags in Nos. 2, 4 and 5 are covered with coaldust. Mention of this is made on Mate's receipt. Watchman from shore.

In the  
Supreme  
Court of  
British  
Columbia.

Exhibits.

P. 7.

Extract  
from Log-  
book,  
April 12th—  
June 3rd,  
1936.

—continued.



In the  
Supreme  
Court of  
British  
Columbia.  
—  
Exhibits.

P. 7.  
Extract  
from Log-  
book,  
April 12th—  
June 3rd,  
1936.  
—continued.

FRIDAY, APRIL 24th, 1936 (In the Port of Rangoon):

Awaiting high tide. Total intake is 5060 tons rice in bags. Amount of bags: 50600. Abt. 800 tons are placed in the tween-decks.

All cargo in lower holds and tweendecks is properly protected with dunnage mats and bamboo.

Ventilation channels every 5 tiers.

Vacant cubic capacity onboard 128,000 cubic feet. Draught forward 18 ft. 6 in., Aft 20 ft. 10 in. Mean draught 19 ft. 8 in. in 3 in. fresh water. 10

Total onboard: 5060 tons cargo
370 " oil
50 " water
150 " stores and sundries
<u>5630 tons</u>

At 2 p.m. the Doctor came onboard to inspect the crew. All men found to be in good health.

The vessel is in proper seaworthy condition, 3 good tarpaulins on each hatch.

At 2.15 p.m. an assisting crew from shore arrived to help put 20 the chains in place.

#### VELOCITY OF WIND (BEAUFORT SCALE):

0—Calm	
1—Light Air	
2—Light breeze	
3—Gentle breeze	
4—Moderate breeze	
5—Fresh breeze	
6—Strong breeze	
7—Moderate gale (half a gale)	30
8—Fresh gale	
9—Strong gale	
10—Heavy gale (whole gale)	
11—Storm	
12—Hurricane	

#### STATE OF WEATHER

a—Clear	h—Hazy	
b—Light clouds	i—Foggy	
c—Half clear	j—Drizzle	
d—Cloudy	k—Rain	40
e—Overcast sky	l—Snow	
f—Very dark & Threatening	m—Thunder	
g—Showery (squally)		

## STATE OF SEA

0—Calm	5—Very rough
1—Smooth	6—High
2—Slight	7—Very high
3—Moderate	8—Precipitous
4—Rough	9—Confused

*In the  
Supreme  
Court of  
British  
Columbia.*

—  
Exhibits.

—  
P. 7.

Throughout entire voyage rounds regularly made, tanks and holds regularly sounded. For sounding particulars see official Log. Recorded as follows:—

Extract  
from Log-  
book,  
April 12th—  
June 3rd,  
1936.

—continued.

10 HEIGHT OF WATER (OR OIL) IN BOTTOM TANKS  
AND HOLDS.

Tank 1	Tank 2	Tank 3	Tank 6	Tank 5	(Rum 1) Hold 1	(Rum 2) Hold 2
Stb Pt	Stb Pt	Stb Pt	Stb Pt	Stb Pt	Stb Pt	Stb Pt
(Rum 3) Hold 3	(Rum 4) Hold 4	Engines & Boiler (Fresh Water)			Fore Peak	After Peak
Stb Pt	Stb Pt	Stb	Pt			



## Exhibit No. 7.

In the  
Supreme  
Court of  
British  
Columbia.

Extract of Logbook M/V "SEGUNDO"  
On Voyage from Rangoon to Fraser River, B. C.

Exhibits.

Friday, April 24th, 1936—On voyage from Rangoon to Fraser River, B. C.

Time	Direction and Force of Wind Weather	Sea Barometer Thermometer	Remarks
1			
2			
3			
4			
5			
6			
7			
8			
9			
10			
11			
12			
13			Left Rangoon at 3.20 p.m.
14			bound for Fraser River, Brit-
15			ish Columbia, assisted by
16			Pilot. Steering down the River to Pilot's directions.
17	Southerly	(2) Slight	Steering to Pilot's directions.
18	(3) Gentle breeze	756.5	At 19.35 passed Fairway light-
19	(a) Clear	85	ship on Starboard ½' off. Dis-
20			charged the Pilot at 20.05 just beyond Fairway lightship.
21	Southerly	(3) Moderate	When the Pilot had been dis-
22	(4) Moderate breeze	757	charged and vessel was to
23	(b) Light clouds	84	continue according to course
24			set she was apparently not under command and did not answer her Helm. It took abt. 2 hours with various manouev- ers before it was possible to maintain the course, the prob- able reason being tidal con- ditions.

10

20

30

40

## Exhibit No. 7.

**Extract of Logbook M/V "SEGUNDO"**  
**On Voyage from Rangoon to Fraser River, B. C.**

Saturday, April 25th, 1936, on voyage from Rangoon to Fraser River, B. C.

Time	Direction and Force of Wind Weather	Sea Barometer Thermometer	Remarks
	1 Southerly	(3) Moderate	
	2 (4) Moderate breeze	756.5	
10	3 (c) Half clear	84	
	4		
	5 Southerly	(3) Moderate	
	6 (4) Moderate breeze	756.5	
	7 (b) Light clouds	87	
	8		
	9 Southerly	(3-4) Moderate	
	10 (5) Fresh breeze	to Rough	
	11 (c) Half clear	757.5	
	12	89	
20	13 SSW	(4) Rough	
	14 (5) Fresh breeze	756	
	15 (c) Half clear	87	
	16		
	17 SW	(4) Rough	
	18 (5) Fresh breeze	756	Shipping some spray over the
	19 (a) clear	84	fore-deck.
	20		
	21 SW	Moderate (3)	
	22 (4) Moderate breeze	757	Shipping some spray over the
30	23 (b) Light clouds	84	fore-deck.
	24		

*In the  
Supreme  
Court of  
British  
Columbia.*

Exhibits.

P. 7.  
Extract  
from Log-  
book,  
April 12th—  
June 3rd,  
1936.  
--continued.



In the  
Supreme  
Court of  
British  
Columbia.

## Exhibit No. 7.

Extract of Logbook M/V "SEGUNDO"  
On Voyage from Rangoon to Fraser River, B. C.

Exhibits.

Sunday, April 26th, 1936, on voyage from Rangoon to Fraser River, B. C.

Time	Direction and Force of Wind Weather	Sea Barometer Thermometer	Remarks	
1	SW	(3) Moderate		
2	(4) Moderate breeze	756.5	Shipping some spray over the fore-deck.	10
3	(a) Clear	83		
4				
5	SW	(3) Moderate		
6	(4) Moderate breeze	757		
7	(d) Cloudy	84		
8				
9	SW	(3) Moderate		
10	(4) Moderate breeze	757	Airing the holds through the Ventilators and through door in forward end of No. 2 hatch.	
11	(c) Half clear	86		
12				
13	WSW	(3-4) Moderate		20
14	(4) Moderate breeze	to rough		
15	(c) Half clear	756.5		
16		85		
17	WSW	(3) Moderate		
18	(4) Moderate breeze	757		
19	(d) Cloudy	83		
20				
21	WSW	(3) Moderate	Airing the holds.	
22	(3) Gentle breeze	757		30
23	(c) Half clear	83		
24				

## Exhibit No. 7.

**Extract of Logbook M/V "SEGUNDO"**  
**On Voyage from Rangoon to Fraser River, B. C.**

Monday, April 27, 1936, vessel's position, Strait of Malacca

Time	Direction and Force of Wind Weather	Sea Barometer Thermometer	Remarks
	1 SW	(3) Moderate	
	2 (3) Gentle breeze	757	
10	3 (d.f.) cloudy, very 4 dark & threatening	83	Put on the ventilator covers on account unsettled weather.
	5 WSW	(3) Moderate	
	6 (3) Gentle breeze	757.5	
	7 (d.f.) cloudy, very	80	
	8 dark & threatening		
	9 Westerly	(3) Moderate	
	10 (3) Gentle breeze	757.5	
	11 (d.k.) cloudy	83	
	12 with rain		
20	13 Northerly	(2) Slight	
	14 (2) Light breeze	757	
	15 (e.k.) overcast	86	
	16 sky and rain		
	17 Varying	(1) Smooth	
	18 (2) Light breeze	757.5	
	19 (e.k.f.) overcast sky, rain,	80	
	20 very dark & threatening		
	21 Varying	(2) Slight	
	22 (2) Light breeze	758	
30	23 (c.d.k.m.) Half clear,	81	Airing the holds until 23 o'- clock, when ventilator covers put on account rain.
	24 cloudy, rain & thunder		

*In the  
Supreme  
Court of  
British  
Columbia.*

Exhibits.

P. 7.

Extract  
from Log-  
book,  
April 12th—  
June 3rd,  
1936.

—continued.



## Exhibit No. 7.

In the  
Supreme  
Court of  
British  
Columbia.

Extract of Logbook M/V "SEGUNDO"  
On Voyage from Rangoon to Fraser River, B. C.

Exhibits.

Tuesday, April 28th, 1936, vessel's position, Strait of Malacca

P. 7. Extract from Log- book, April 12th— June 3rd, 1936. —continued.	Time	Direction and Force of Wind Weather	Sea		Remarks
			Barometer	Thermometer	
	1	Northerly	(2) Slight		
	2	(3) Gentle breeze	757.5		
	3	(E.G.K.) overcast sky,	80		10
	4	squally, rain			
	5	Varying	(2) Slight		
	6	(3) Gentle breeze	758		
	7	(e.f.k.) overcast sky very dark	81		
	8	& threatening, rain			
	9	South	(2) Slight		
	10	(3) Gentle breeze	758.5		
	11	(c) Half clear	84		
	12				
	13	SE	(1) Smooth		20
	14	(2) Light breeze	758		Airing the holds through ven-
	15	(d) Cloudy	89		tilators, door and hatches.
	16				
	17	SE	(1) Smooth		
	18	(2) Light breeze	758		Airing the holds through ven-
	19	(b) Light clouds	83		tilators, door and hatches.
	20				
	21	ESE	(1) Smooth		
	22	(2) Light breeze	758		Airing the holds through ven-
	23	(b) Light clouds	81		tilators, door and hatches.
	24				30

## Exhibit No. 7.

**Extract of Logbook M/V "SEGUNDO"**  
**On Voyage from Rangoon to Fraser River, B. C.**

Wednesday, April 29th, 1936, vessel's position, Strait of Malacca

Time	Direction and Force of Wind Weather	Sea Barometer Thermometer	Remarks
1	SE	(1) Smooth	
2	(3) Gentle breeze	758	Airing the holds from venti-
10 3	(d.f.m.) cloudy, very dark &	81	lators and hatches.
4	threatening, thunder		
5	Easterly	(1) Smooth	Airing the holds from venti-
6	(2) Light breeze	759	lators and hatches.
7	(b) Light clouds	84	
8			
9	WSW	(1) Smooth	
10	(3) Gentle breeze	758.5	
11	(b) Light clouds	89	
12			
20 13	NNE	(1) Smooth	
14	(2) Light breeze	758.5	
15	(c) Half Clear	87	
16			
17	NE	(1) Smooth	
18	(2) Light breeze	758	Airing the holds from venti-
19	(a) Clear	83	lators and hatches.
20			
21	Easterly	(1) Smooth	
22	(1) Light air	758	
30 23	(b) Light clouds	83	
24			

*In the  
Supreme  
Court of  
British  
Columbia.*

Exhibits.

P. 7.

Extract  
from Log-  
book,  
April 12th—  
June 3rd,  
1936.

—continued.



In the  
Supreme  
Court of  
British  
Columbia.

## Exhibit No. 7.

Extract of Logbook M/V "SEGUNDO"  
On Voyage from Rangoon to Fraser River, B. C.

Exhibits.

Thursday, April 30th, 1936, vessel's position, China Sea

Time	Direction and Force of Wind Weather	Sea Barometer Thermometer	Remarks
1	Northerly	(1) Smooth	
2	(2) Light breeze	758	Airing the holds from venti-
3	(d) Cloudy	82	lators and hatches.
4			10
5	NE	(1) Smooth	
6	(2) Light breeze	758	
7	(b) Light clouds	82	Airing the holds.
8			
9	Easterly	(1) Smooth	
10	(2) Light breeze	758	Airing the holds.
11	(b) Light clouds	85	
12			
13	NE	(1) Smooth	
14	(2) Light breeze	757.5	Airing the holds.
15	(d) Cloudy	86	
16			20
17	NE	(1) Smooth	
18	(2) Light breeze	757	
19	(b) Light clouds	84	
20			Airing the holds.
21	Varying	(1) Smooth	
22	(2) Light breeze	757.5	
23	(b.g.) Light clouds,	81	Closed ventilation at 23.45 o'- 30
24	showery		clock owing to rain.

## Exhibit No. 7.

**Extract of Logbook M/V "SEGUNDO"**  
**On Voyage from Rangoon to Fraser River, B. C.**

Friday, May 1st, 1936, vessel's position, China Sea

Time	Direction and Force of Wind Weather	Sea Barometer Thermometer	Remarks
	1 Varying, Easterly	(2) Slight	
	2 (3) Gentle breeze	757	
10	3 (d.m.k.) cloudy,	83	
	4 thunder, rain		
	5 Easterly	(2) Slight	From 5 o'clock airing the holds
	6 (3) Gentle breeze	757.5	through ventilators and hatches.
	7 (b) Light clouds	84	
	8		
	9 Varying	(2) Slight	
	10 (3) Gentle breeze	758	Airing the holds.
	11 (c.d.) Half clear, cloudy	85	
	12		
20	13 Westerly	(2) Slight	
	14 (3) Gentle breeze	757	Heavy showers from 3.40 p.m.
	15 (d.g.k.) Cloudy, showery,	77	Hatches and ventilators covered.
	16 rain		
	17 Varying	(2) Slight	
	18 (2) Light breeze	757.5	Opening hatches and ventilators
	19 (k.g.b.) Rain, showery,	82	from 7.30 p.m. on for airing
	20 light clouds		of holds.
	21 NE	(1) Smooth	
	22 (2) Light breeze	758	Airing the holds.
30	23 (c) Half clear	82	
	24 (g) showery		

*In the  
Supreme  
Court of  
British  
Columbia.*

Exhibits.

P. 7.  
Extract  
from Log-  
book,  
April 12th—  
June 3rd,  
1936.

--continued.



In the  
Supreme  
Court of  
British  
Columbia.

Exhibit No. 7.

Extract of Logbook M/V "SEGUNDO"  
On Voyage from Rangoon to Fraser River, B. C.

Exhibits.

Saturday, May 2nd, 1936, vessel's position, China Sea

P. 7. Extract from Log- book, April 12th— June 3rd, 1936. —continued.	Time	Direction and Force of Wind Weather	Sea Barometer Thermometer	Remarks	
	1	NE	(2) Slight		
	2	(3) Gentle breeze	758	Airing the holds.	10
	3	(d.g.) Cloudy, showery	81		
	4				
	5				
	6	Easterly	(2) Slight		
	7	(3) Gentle breeze	759	Airing the holds.	
	8	(b) Light clouds	84		
	9				
	10	Easterly	(2) Slight		
	11	(3) Gentle breeze	759	Airing the holds from ventila-	
	12	(b) Light clouds	85	tors and hatches.	20
	13				
	14	Easterly	(2) Slight	Airing the holds.	
	15	(3) Gentle breeze	758		
	16	(c) Half Clear	85		
	17	Easterly	(2) Slight		
	18	(3) Gentle Breeze	758	Airing the holds from ventila-	
	19	(b) Light clouds	83	tors and hatches.	
	20				
	21				
	22	Easterly	(2) Slight	Airing the holds from ventila-	30
	23	(3) Gentle breeze	759	tors and hatches.	
	24	(b) Light clouds	82	Slight swell—some pitching.	

## Exhibit No. 7.

**Extract of Logbook M/V "SEGUNDO"**  
**On Voyage from Rangoon to Fraser River, B. C.**

Sunday, May 3rd, 1936, vessel's position, China Sea

Time	Direction and Force of Wind Weather	Sea Barometer Thermometer	Remarks
1			
2	Easterly	(3) Moderate	Slight swell, some pitching.
10 3	(3) Gentle breeze	759	Airing the holds from ventila-
4	(c) Half Clear	82	tors and hatches.
5			
6	Easterly	(3) Moderate	
7	(3) Gentle breeze	760	Airing the holds.
8	(b) Light clouds	84	
9			
10	North Easterly	(3) Moderate	
11	(4) Moderate breeze	760	
12	(c) Half Clear	84	
13			
20 14	North Easterly	(3) Moderate	
15	(4) Moderate breeze	760	Airing the holds through ven-
16	(c) Half Clear	90	tilators and hatches.
17			
18	North Easterly	(2) Slight	
19	(3) Gentle breeze	759	Airing the holds.
20	(a) Clear	82	
21			
22	North-Easterly	(3) Moderate	
30 23	(4) Moderate breeze	759.5	Airing the holds.
24	(b) Light clouds	82	

In the  
Supreme  
Court of  
British  
Columbia.

Exhibits.

P. 7.  
Extract  
from Log-  
book,  
April 12th—  
June 3rd,  
1936.  
--continued.



## Exhibit No. 7.

In the  
Supreme  
Court of  
British  
Columbia.

Extract of Logbook M/V "SEGUNDO"  
On Voyage from Rangoon to Fraser River, B. C.

Exhibits.

Monday, May 4th, 1936, vessel's position, China Sea

P. 7. Extract from Log- book, April 12th— June 3rd, 1936. —continued.	Time	Direction and Force of Wind Weather	Sea Barometer Thermometer	Remarks	
	1	North Easterly	(3) Moderate		
	2	(4-5) Moderate to	759		
	3	Fresh breeze	80	Airing the holds through ven-	10
	4	(c) Half Clear		tilators and hatches.	
	5				
	6	Northerly	(3) Moderate		
	7	(4) Moderate breeze	759.5		
	8	(a) Clear	85		
	9				
	10	North Easterly	(3) Moderate	Airing the holds through ven-	
	11	(4) Moderate breeze	759.5	tilators and hatches.	
	12	(b) Light clouds	88		
	13				20
	14	North Easterly	(3) Moderate		
	15	(4) Moderate breeze	759	Airing the holds.	
	16	(c) Half Clear	89		
	17				
	18	North Easterly	(3) Moderate		
	19	(3) Gentle breeze	759		
	20	(b) Light clouds	83		
	21				
	22	North Easterly	(3) Moderate	Airing the holds through ven-	
	23	(4) Moderate breeze	759.5	tilators and hatches.	30
	24	(b) Light clouds	81		

## Exhibit No. 7.

**Extract of Logbook M/V "SEGUNDO"**  
**On Voyage from Rangoon to Fraser River, B. C.**

Tuesday, May 5th, 1936, vessel's position, Luzon Strait

Time	Direction and Force of Wind Weather	Sea Barometer Thermometer	Remarks
	1 Easterly	(3) Moderate	
	2 (3-4) Gentle breeze	759.5	
10	3 Moderate breeze	80	Airing the holds through ven-
	4 Half clear		tilators and hatches.
	5		
	6 South Easterly	(3) Moderate	
	7 (3) Gentle breeze	760	
	8 (b) Light clouds	83	
	9		
	10 ESE	(2) Slight	
	11 (3) Gentle breeze	760	
	12 (b) Light clouds	84	
20	13		
	14 SE	(3) Moderate	
	15 (3) Gentle breeze	759	
	16 (c) Half clear	86	
	17		
	18 South Easterly	(3) Moderate	Airing the holds.
	19 (2) Light breeze	759	
	20 (b) Light clouds	79	
	21		
	22 SSW	(3) Moderate	Long easterly swell, some
30	23 (3) Gentle Breeze	760	pitching.
	24 (b) Light clouds	78	Airing the holds

In the  
Supreme  
Court of  
British  
Columbia.

Exhibits.

P. 7.

Extract  
from Log-  
book,  
April 12th—  
June 3rd,  
1936.

--continued.



In the  
Supreme  
Court of  
British  
Columbia.

## Exhibit No. 7.

Extract of Logbook M/V "SEGUNDO"  
On Voyage from Rangoon to Fraser River, B. C.

Exhibits.

Wednesday, May 6th, 1936, vessel's position, Central Pacific Ocean

Time	Direction and Force of Wind Weather	Sea Barometer Thermometer	Remarks	
1				
2	SSE	(3) Moderate	Easterly swell.	
3	(3) Gentle breeze	760	Airing the holds	10
4	(c) Half clear	77		
5				
6	SSE	(3) Moderate	Airing the holds through ven- tilators and hatches.	
7	(3) Gentle breeze	760		
8	(a) Clear	83		
9				
10	Southerly	(2) Slight	Heavy East North Easterly swell, some pitching.	
11	(3) Gentle breeze	760.5		
12	(b) Light clouds	85		
13				20
14	SW	(2) Slight	Airing the holds through ven- tilators and hatches.	
15	(3) Gentle breeze	760		
16	(b) Light clouds	89		
17				
18	NW	(2) Slight		
19	(2) Light breeze	760.5	Airing the holds through ven- tilators.	
20	(b) Light clouds	78		
21				
22	Varying	(2) Slight	Easterly swell, some pitching.	
23	(1) Light Air	761		30
24	(c) Half clear	76		

## Exhibit No. 7.

**Extract of Logbook M/V "SEGUNDO"**  
**On Voyage from Rangoon to Fraser River, B. C.**

Thursday, May 7th, 1936, vessel's position, North Pacific Ocean

Time	Direction and Force of Wind Weather	Sea Barometer Thermometer	Remarks
1			
2	NE	(3) Moderate	Easterly swell, some pitching.
10 3	(3) Gentle Breeze	761	Airing the holds through ventilators.
4	(d.g.) Cloudy & Showery	74	
5	NE	(3) Moderate	Airing the holds through ventilators.
6	(3) Gentle Breeze	761	
7	(d.f.) Cloudy, very dark	75	
8	& threatening.		
9	NE	(4) Rough	Airing the holds.
10	(5) Fresh breeze	762	
11	(d.f.k.) Cloudy, very dark &	76	
12	threatening — rain		
20 13			
14	NE	(4) Rough	Airing the holds through ventilators.
15	(5) Fresh breeze	762	
16	(d) Cloudy	76	
17			
18	NE	(4) Rough	Airing the holds through ventilators.
19	(5) Fresh breeze	762	
20	(b) Light clouds	72	
21			
22	NE	(4) Rough	Airing the holds through ventilators, some pitching.
30 23	(5) Fresh breeze	763	
24	(d) Cloudy	72	

*In the  
Supreme  
Court of  
British  
Columbia.*

Exhibits.

P. 7.

Extract  
from Log-  
book,  
April 12th—  
June 3rd,  
1936.

—continued.



## Exhibit No. 7.

In the  
Supreme  
Court of  
British  
Columbia.

Extract of Logbook M/V "SEGUNDO"  
On Voyage from Rangoon to Fraser River, B. C.

Exhibits.

Friday, May 8th, 1936, vessels position, North Pacific Ocean

P. 7. Extract from Log- book, April 12th— June 3rd, 1936. —continued.	Time	Direction and Force of Wind Weather	Sea Barometer Thermometer	Remarks	
	1				
	2	ENE	(4) Rough	Heavy easterly swell. Vessel pitching.	10
	3	(5) Fresh breeze	762½	Airing the holds through ventilators.	
	4	(b) Light clouds	69		
	5				
	6	ENE	(4) Rough		
	7	(5) Fresh breeze	762.5	Heavy head seas, much pitching.	
	8	(c) Half clear	72		
	9	Easterly	(4-5) Rough to very rough	Easterly swell, much pitching.	
	10				
	11	(6) Strong breeze	762	Airing the holds through ventilators.	20
	12	(e) Overcast sky	74		
	13				
	14	Easterly	(4) Rough		
	15	(5) Fresh breeze	762	Heavy head seas, much pitching.	
	16	(e) Overcast sky	71	Airing the holds through ventilators.	
	17	Easterly	(4) Rough	At 19.30 o'clock put covers on ventilators owing to rain.	
	18	(5) Fresh breeze	762		
	19	(e.j.f.) Overcast sky, drizzle,	70	Heavy head seas, some pitching.	30
	20	very dark & threatening.			
	21	Easterly	(5) Very rough		
	22	(6) Strong breeze	762	Much pitching, some spray over the forepart of the vessel.	
	23	(e.f.j.) Overcast sky, very dark	70		
	24	and threatening drizzle			

## Exhibit No. 7.

**Extract of Logbook M/V "SEGUNDO"**  
**On Voyage from Rangoon to Fraser River, B. C.**

Saturday, May 9th, 1936, vessel's position, North Pacific Ocean

Time	Direction and Force of Wind Weather	Sea Barometer Thermometer	Remarks
10	1 Easterly	(5) Very rough	Heavy head seas, pitching and spray over decks and hatches.
	2 (7) Half a gale	762	
	3 (e.g.k.) Overcast sky,	69	
	4 showery, rain		
	5 Easterly	(5) Very rough	Heavy head seas, pitching and spray over decks and hatches.
	6 (7) Half a gale	762.5	
	7 (e.f.g.) Overcast sky, very	63	
	8 dark, & threatening, showery		
	9 Easterly	(6) High	Much pitching, spray over the fore-part of the vessel.
	10 (8) Fresh gale	763	
	11 (e.f.k.h.) Overcast sky, very dark	64	
	12 & threatening, rain, gloomy		
20	13 Easterly	(6) High	Vessel pitching heavily and shipping lots of spray over the decks.
	14 (8) Fresh gale	762.5	
	15 (e.h.k.) Overcast sky,	63	
	16 gloomy, rain		
	17 Easterly	(5) Very rough	Heavy head seas, hard pitching, some spray over the fore-part of the vessel.
	18 (7) Half a gale	762	
	19 (e.f.g.) Overcast sky, very dark,	66	
	20 & threatening, showery		
30	21 Easterly	(6) High	Hard pitching with spray over the fore-deck.
	22 (8) Fresh gale	762	
	23 (e.f.k.h.) Overcast sky, very dark	62	
	24 & threatening, rain, gloomy		

*In the  
Supreme  
Court of  
British  
Columbia.*

Exhibits.

P. 7.  
Extract  
from Log-  
book,  
April 12th—  
June 3rd,  
1936.

—continued.



## Exhibit No. 7.

In the  
Supreme  
Court of  
British  
Columbia.

## Extract of Logbook M/V "SEGUNDO"

## On Voyage from Rangoon to Fraser River, B. C.

Exhibits.

Sunday, May 10th, 1936, vessel's position, North Pacific Ocean

P. 7. Extract from Log- book, April 12th— June 3rd, 1936. —continued.	Time	Direction and		Sea Barometer Thermometer	Remarks
		Force of Wind	Weather		
	1	Easterly		(6) High	
	2	(8-7) Fresh gale,	Half a gale.	761	Continuous heavy head seas
	3	(e.g.k.) Overcast sky,		63	with spray over the fore-deck. 10
	4	showery, rain			
	5	ENE		(5) Very rough	
	6	(7) Half a gale		761	Continuous heavy head seas
	7	(e.f.k.) Overcast sky, very dark		65	with spray over the fore-deck.
	8	& threatening, rain.			
	9	NE		(6-7) High. Very high	
	10	(9-10) Strong gale,		759.5	Rough, choppy seas, much
	11	Whole gale.		62	pitching, very dim account
	12	(e.f.k.i.) Overcast sky, very dark			rain, sounding regular signals,
		& threatening, rain, foggy.			watchman on the fore-castle. 20
	13	NE Easterly		(6-7) High. Very high	
	14	(9-8) Strong gale,		760.5	Hurricane-like squalls, with
	15	Fresh gale		65	spray over the fore-part of
	16	(e.g.k.) Overcast sky,			the vessel.
		squally, rain.			
	17	Easterly		(6) High	
	18	(8) Fresh gale		761.5	Tremendous rolling and pitch-
	19	(e.f.) Overcast sky, very dark		65	ing, shipping some seas over
	20	& threatening.			the fore-part of the vessel.
	21				
	22	ENE		(6) High	
	23	(7) Half a gale		763	Very heavy easterly swell,
	24	(c) Half clear		63	much pitching and rolling,
					with spray over the fore-deck.

## Exhibit No. 7.

**Extract of Logbook M/V "SEGUNDO"**  
**On Voyage from Rangoon to Fraser River, B. C.**

Monday, May 11th, 1936, vessel's position, North Pacific Ocean

Time	Direction and Force of Wind Weather	Sea Barometer Thermometer	Remarks
1			At one o'clock removing the covers from ventilators to air the holds. Hard pitching and rolling.
2	ENE	(6) High	
3	(5) Fresh breeze	763.5	
4	(d) Cloudy	63	
5			
6	Easterly	(4) Rough	Continuous heavy swell, rolling and pitching. Airing the holds through ventilators.
7	(4) Moderate breeze	765.5	
8	(d) Cloudy	63	
9			
10	NE	(3) Moderate	Heavy easterly swell, much pitching.
11	(3) Gentle Breeze	766	
12	(c) Half Clear	66	
13			
14	ENE	(3) Moderate	All hatches open for airing.
15	(3) Gentle breeze	765.5	
16	(c) Half clear	66	
17			
18	ENE	(3) Moderate	Airing the holds through ventilators and hatches.
19	(3) Gentle Breeze	765.5	
20	(a) Clear	61	
21			
22	SE	(1) Smooth	
23	(1) Light air	766.5	Airing the holds through ventilators and hatches.
24	(a) Clear	59	

*In the  
Supreme  
Court of  
British  
Columbia.*

Exhibits.

P. 7.  
Extract  
from Log-  
book,  
April 12th—  
June 3rd,  
1936.  
--continued.



In the  
Supreme  
Court of  
British  
Columbia.

## Exhibit No. 7.

## Extract of Logbook M/V "SEGUNDO"

## On Voyage from Rangoon to Fraser River, B. C.

Exhibits.

Tuesday, May 12th, 1936, vessel's position, North Pacific Ocean

Time	Direction and Force of Wind Weather	Sea Barometer Thermometer	Remarks
1			
2	Varying NE	(1) Smooth	Easterly swell. Airing holds
3	(1) Light Air	766.5	through ventilators and hat- 10
4	(a) Clear	59	ches.
5			
6	NW	(1) Smooth	Airing the holds through ven-
7	(1) Light Air	767	tilators and hatches.
8	(a) Clear	65	
9			
10	NW	(2) Slight	
11	(2) Light breeze	767.5	Airing the holds through ven-
12	(a) Clear	66	tilators and hatches.
13	Westerly	(2) Slight	
14	(2) Light breeze	767	Airing the holds through ven-
15	(a) Clear	71	tilators and hatches. 20
16			
17	NW	(2) Slight	Some bags in No. 3 lower hold
18	(2) Light breeze	767	under the samson tops were
19	(a.f.) Clear, very dark and	63	found to be wet through
20	threatening		sweat. These bags were im-
			mediately brought onto the
			tween deck and placed on can-
			vas to be dried. 30
21			Airing the holds from ventila-
22	Westerly	(2) Slight	tors, hatches and samson tops.
23	(2) Light breeze	767	
24	(a) Clear	62	

## Exhibit No. 7.

**Extract of Logbook M/V "SEGUNDO"**  
**On Voyage from Rangoon to Fraser River, B. C.**

Wednesday, May 13th, 1936, vessel's position, North Pacific Ocean

Time	Direction and Force of Wind Weather	Sea Barometer Thermometer	Remarks
	1		
	2 Westerly	(2) Slight	Airing the holds from ventilators and hatches.
10	3 (2) Light breeze	767	
	4 (c) Half clear	62	
	5		
	6 Westerly	(2) Slight	Airing the holds through ventilators and hatches.
	7 (1) Light Air	767	
	8 (c) Half clear	64	
	9		
	10 Westerly	(1) Smooth	Airing the holds through ventilators and hatches.
	11 (1) Light Air	767.5	
	12 (b) Light clouds	68	
20	13		
	14 Varying Southerly	(2) Slight	Big easterly swell, airing the holds through ventilators and hatches.
	15 (2) Light breeze	767.5	
	16 (b) Light clouds.	69	
	17		
	18 Varying	(3) Moderate	Airing the holds through ventilators and hatches.
	19 (2) Light breeze	767.5	
	20 (d.e.) cloudy, overcast sky	60	
	21		
	22 South Westerly	(2) Slight	Airing the holds through ventilators and hatches.
30	23 (3) Gentle breeze	767.5	
	24 (d) Cloudy	57	

*In the  
Supreme  
Court of  
British  
Columbia.*

Exhibits.

P. 7.

Extract  
from Log-  
book,  
April 12th—  
June 3rd,  
1936.

--continued.



## Exhibit No. 7.

In the  
Supreme  
Court of  
British  
Columbia.

## Extract of Logbook M/V "SEGUNDO"

## On Voyage from Rangoon to Fraser River, B. C.

Exhibits.

Thursday, May 14th, 1936, vessel's position, North Pacific Ocean

Time	Direction and Force of Wind Weather	Sea Barometer Thermometer	Remarks
1			
2	South Westerly	(2) Slight	Airing the holds through ventilators and hatches.
3	(3) Gentle breeze	767	
4	(d) Cloudy	58	
5	South West	(2) Slight	
6	(3) Gentle breeze	767	Airing the holds through ventilators and hatches.
7			
8	(d) Cloudy	65	
9	Southerly	(3) Moderate	
10	(3) Gentle breeze	767	Fog from 11.20 on, sounding regular signals, Watchman on the fore-castle. Airing the holds through ventilators and hatches.
11	(d.h.i.) Cloudy,	66	
12	hazy, foggy		
13	Southerly	(3) Moderate	
14	(3) Gentle breeze	766	Fog during the whole watch, watchman on the fore-castle.
15	(e.i.) Overcast sky	57	Sounding regular signals and taking precautionary measures as prescribed. At 15.20 engines at half speed. Airing the holds.
16	foggy		
17			
18	Southerly	(2) Slight	Airing the holds through ventilators and hatches. Fog during the whole watch, watchman on the fore-castle. Sounding regular signals and observing precautionary measures as prescribed. Engines at half-speed.
19	(2) Light breeze	766	
20	(i) Foggy	51	
21			
22	South Westerly	(2) Slight	Airing the holds through ventilators and hatches. Fog during the whole watch, watchman on the fore-castle. Sounding regular signals and observing precautionary measures as prescribed. Engines at half-speed.
23	(3) Gentle breeze	766	
24	(i) Foggy	50	

10

20

30

40

## Exhibit No. 7.

**Extract of Logbook M/V "SEGUNDO"**  
**On Voyage from Rangoon to Fraser River, B. C.**

Friday, May 15th, 1936, vessel's position, North Pacific Ocean

Time	Direction and Force of Wind Weather	Sea Barometer Thermometer	Remarks
1			Airing the holds through the hatches. Continuous fog during the whole watch. All precautionary measures taken as before. Engines at half speed.
10 2	South West	(2) Slight	
3	(2) Light breeze	766	
4	(i) Foggy	49	
5			Airing the holds through the hatches. Continuous fog during the whole watch. All precautionary measures taken as before. Engines at half speed.
6	Varying	(2) Slight	
7	(2) Light breeze	766	
8	(i) Foggy	48	
9			Airing the holds through ventilators and hatches. Continuous fog during the whole watch. Taking precautionary measures as prescribed.
20 10	Southerly	(2) Slight	
11	(3) Gentle breeze	766.5	
12	(i) Foggy	63	
13			Still foggy. Engines at half-speed, taking precautionary measures as prescribed. Airing the holds through ventilators and hatches.
14	Southerly	(2) Slight	
15	(2) Light breeze	765	
16	(i) Foggy	53	
30 17	ESE	(2) Slight	Put the covers on ventilators owing to humidity of fog. Otherwise no change.
18	(2) Light breeze	765	
19		48	
20			
21	SSE	(2) Slight	Fog lifted at 11.20 p.m. Engines at full speed ahead.
22	(3) Gentle breeze	765	
23	(i.b.) Foggy	44	
24	Light clouds		

*In the  
Supreme  
Court of  
British  
Columbia.*

Exhibits.

P. 7.  
Extract  
from Log-  
book,  
April 12th—  
June 3rd,  
1936.  
—continued.



## Exhibit No. 7.

In the  
Supreme  
Court of  
British  
Columbia.

Extract of Logbook M/V "SEGUNDO"  
On Voyage from Rangoon to Fraser River, B. C.

Exhibits.

Saturday, May 16th, 1936, vessel's position, North Pacific Ocean

Time	Direction and Force of Wind Weather	Sea Barometer Thermometer	Remarks
P. 7. Extract from Log- book, April 12th— June 3rd, 1936. —continued.	1 SSE	(3) Moderate	
	2 (3) Gentle breeze	763	At 2.15 fog, engines at half-speed, taking all precautionary measures as prescribed.
	3 (e.i.) Overcast sky	44	Airing the holds through hatches.
	4 Foggy		
	5		Dense fog during the whole watch. Engines at half-speed.
	6 South East	(2) Slight	Airing the holds through ventilators and hatches.
	7 (3) Gentle breeze	762.5	
	8 (i) Foggy	45	
	9		
	10 SSE	(3) Moderate	Dense fog during the whole watch. Engines at half-speed.
	11 (4) Moderate breeze	760	Airing the holds through ventilators and hatches.
	12 (i) Foggy	48	
	13		Boat drill was held at 1 p. m.
	14 SSE	(3) Moderate	Everybody present except those on watch and the drill was carried out very satisfactorily. Fog during the whole watch. Taking all precautionary measures as prescribed.
	15 (4) Moderate breeze	758	Engines at half-speed.
	16 (i) Foggy	45	
	17 SSE		
	18 (4) Moderate breeze	(3) Moderate	Fog during the whole watch. Engines at half-speed. Ventilators and hatches covered and battened down. Some spray over deck.
	19 (i.k.) Foggy, rain	755	
	20	44	
	21 SSE	(5-6) Very Rough	
	22	to High	The fog lifted at 8.10 p.m. Engines at full speed. Some rolling and vessel shipping some spray over deck.
	23 (7) Moderate gale	750.5	
	24 (i.k.) Foggy, rain	44	

## Exhibit No. 7.

**Extract of Logbook M/V "SEGUNDO"**  
**On Voyage from Rangoon to Fraser River, B. C.**

Sunday, May 17th, 1936, vessel's position, North Pacific Ocean

Time	Direction and Force of Wind Weather	Sea Barometer Thermometer	Remarks
	1 Southerly	(5) Very Rough	
	2 (6) Strong breeze	746	
10	3 (e.k.) Overcast	42	Vessel rolling and shipping
	4 sky, rain.		spray over the deck.
	5 Southerly	(5) Very Rough	
	6 (6) Strong breeze	741	Much rolling—shipping spray
	7 (k.i.) Rain,	42	over deck.
	8 Foggy		
	9 WNW	(4) Rough	
	10 (5) Fresh breeze	738.5	The fog lifted at 10.30 a.m.,
	11 (k.d.) Rain,	42	full speed in the engines. Air-
20	12 Cloudy		ing the holds through venti-
	13 WNW	(5) Very Rough	lators.
	14 (6-7) Strong breeze	740.5	Partly foggy, half to full speed
	15 Moderate gale	40	all according to circumstan-
	16 (h.i.) Hazy, foggy		ces. Clear again at 3.30 p.m.
			and engines put at full speed.
			Wind and sea increasing in
			force. Lashed No. 1 and 5 hat-
			ches. Covers removed from
			ventilators to air the holds.
	17 Westerly	(6) High	
30	18 (7-8) Moderate gale,	741.5	Airing the holds through ven-
	19 Fresh gale	38	tilators. It is blowing half a
	20 (f.h.) Very dark & threatening, hazy.		gale, high, choppy seas. Tre-
			mendous rolling, shipping
			some spray over the decks.
	21 Westerly	(7) Very high	
	22 (9-8) Strong gale	743	Airing the holds through ven-
	23 Fresh gale	37	tilators. Tremendous rolling,
40	24 (e) Overcast sky		shipping some water over the
			decks.

*In the  
Supreme  
Court of  
British  
Columbia.*

Exhibits.

P. 7.

Extract  
from Log-  
book,  
April 12th—  
June 3rd,  
1936.

—continued.



## Exhibit No. 7.

In the  
Supreme  
Court of  
British  
Columbia.

Extract of Logbook M/V "SEGUNDO"  
On Voyage from Rangoon to Fraser River, B. C.

Exhibits.

Monday, May 18th, 1936, vessel's position, North Pacific Ocean

Time	Direction and Force of Wind Weather	Sea Barometer Thermometer	Remarks
1	WNW (7-8)	Very high. Precipitous	Big southerly swell, gale with heavy squalls and precipitous seas. Vessel rolling tremendously and shipping lots of spray over the decks. 10
2	(9-10) Strong gale,	744	
3	heavy gale	37	
4	(e.g.) Overcast sky, showery		
5	WNW	(8) Precipitous	Big southerly swell, gale with heavy squalls and precipitous seas. Vessel rolling tremendously and shipping lots of spray over the decks. Placing covers over the ventilators.
6	(9) Strong gale	746.5	
7	(e.g.) Overcast sky,	37	
8	showery		
9			Airing the holds through ventilators. Tremendous rolling. 20
10	WNW	(8) Precipitous	
11	(10) Heavy gale	746.5	
12	(d) Cloudy	39	
13	WNW	(8) Precipitous	Continuous tremendous rolling with precipitous seas. Airing the holds through ventilators and hatches
14	(10) Heavy gale	747.5	
15	(d.g.) Cloudy,	39	
16	showery.		
17	WNW	(8) Precipitous	Airing the holds through ventilators. Precipitous seas with tremendous rolling. Vessel shipping spray over deck. 30
18	(10) Heavy gale	748.5	
19	(e.g.) Overcast sky,	38	
20	showery		
21	Westerly	(8) Precipitous	Tremendous rolling, some spray over deck. Airing the holds through ventilators.
22	(10-9) Heavy gale	749	
23	strong gale	38	
24	(d.g.) Cloudy, showery		

## Exhibit No. 7.

**Extract of Logbook M/V "SEGUNDO"**  
**On Voyage from Rangoon to Fraser River, B. C.**

Tuesday, May 19th, 1936, vessel's position, North Pacific Ocean

Time	Direction and Force of Wind Weather	Sea Barometer Thermometer	Remarks
	1 WNW	(8) Precipitous	
	2 (10-9) Heavy gale	749.5	Continuous precipitous sea with tremendous rolling. Shipping some spray over fore-deck. Airing the holds through ventilators.
10	3 strong gale	38	
	4 (e.g.) Overcast sky, showery.		
	5 WNW	(7) Very High	
	6 (9) Strong gale	752.5	Continuous precipitous sea with tremendous rolling. Shipping some spray over fore-deck. Airing the holds through ventilators and hatches.
	7 (e.g.) Overcast	40	
	8 sky, showery		
	9		
20	10 WNW	(7) Very High	Tremendous rolling. Shipping some spray. Airing the holds through ventilators and hatches.
	11 (8) Fresh gale	753.5	
	12 (i) Foggy	43	
	13		
	14 WNW	(7) Very High	Tremendous rolling. Shipping some spray. Airing the holds through ventilators and hatches.
	15 (8) Fresh gale	754.5	
	16 (e) Overcast sky	41	
	17 WNW	(5) Very Rough	
30	18 (7) Moderate gale	755	Airing the holds through ventilators. Continuous high sea. Tremendous rolling.
	19 (e.g.) Overcast	39	
	20 sky, showery		
	21 WNW	(5) Very Rough	
	22 (7) Moderate gale	755.5	Airing the holds through ventilators. Continuous high sea. Tremendous rolling.
	23 (d.g.) Cloudy,	39	
	24 showery		

In the  
Supreme  
Court of  
British  
Columbia.

Exhibits.

P. 7.  
Extract  
from Log-  
book,  
April 12th—  
June 3rd,  
1936.  
—continued.



## Exhibit No. 7.

In the  
Supreme  
Court of  
British  
Columbia.

Extract of Logbook M/V "SEGUNDO"  
On Voyage from Rangoon to Fraser River, B. C.

Exhibits.

Tuesday, May 19th, 1936, vessel's position, North Pacific Ocean

P. 7. Extract from Log- book, April 12th— June 3rd, 1936. —continued.	Time	Direction and Force of Wind Weather	Sea Barometer Thermometer	Remarks
	1	WNW	(5) Very Rough	Changing date—24 hours back.
	2	(7) Moderate gale	755.5	Continuous high seas, much
	3	(d.f.) Cloudy, very dark	39	rolling. Airing the holds 10
	4	& threatening		through ventilators.
	5	WNW	(4) Rough	
	6	(6) Strong breeze	756	High sea, much rolling. Air-
	7	(e.g.) Overcast	41	ing the holds through ventila-
	8	sky, showery.		tions and hatches.
	9			
	10	North West	(5) Very Rough	Airing the holds through ven-
	11	(6) Strong breeze	756.5	tilators and hatches. Much
	12	(d) Cloudy	44	rolling.
	13			
	14	North West	(5) Very Rough	High sea, much rolling. Air-
	15	(6) Strong breeze	756.5	ing the holds through ventila-
	16	(d) Cloudy	45	tors and hatches.
	17			
	18	WNW	(4) Rough	Wind and sea decreasing in
	19	(5) Fresh breeze	757	force. Airing the holds
	20	(e) Overcast sky	40	through ventilators.
	21			
	22	WNW	(4) Rough	
	23	(5) Fresh breeze	757.5	Airing the holds through ven-
	24	(d) Cloudy	40	tilators. 30

## Exhibit No. 7.

**Extract of Logbook M/V "SEGUNDO"**  
**On Voyage from Rangoon to Fraser River, B. C.**

Wednesday, May 20th, 1936, vessel's position, North Pacific Ocean

Time	Direction and Force of Wind Weather	Sea Barometer Thermometer	Remarks
1			
2	WNW	(4) Rough	
10 3	(5) Fresh breeze	757.5	Some rolling. Airing the holds through ventilators.
4	(d) Cloudy	39	
5			
6	WNW	(4) Rough	
7	(5) Fresh breeze	760	Airing the holds through ventilators and hatches.
8	(e) Overcast sky	41	
9			
10 10	Westerly	(4) Rough	
11	(5) Fresh breeze	760.5	Airing the holds through ventilators and hatches.
12	(e) Overcast sky	42	
13			
20 14	Varying South West	(4) Rough	Airing the holds through ventilators and hatches.
15	(5) Fresh breeze	761	
16	(e) Overcast sky	43	
17			
18	WSW	(4) Rough	
19	(5) Fresh breeze	761	Airing the holds through ventilators.
20	(e) Overcast sky	41	
21			
22	WSW	(4) Rough	
30 23	(5) Fresh breeze	761.5	Airing the holds through ventilators.
24	(d) Cloudy	41	

*In the  
Supreme  
Court of  
British  
Columbia.*

Exhibits.

P. 7.

Extract  
from Log-  
book,  
April 12th—  
June 3rd,  
1936.

--continued.



## Exhibit No. 7.

In the  
Supreme  
Court of  
British  
Columbia.

Extract of Logbook M/V "SEGUNDO"  
On Voyage from Rangoon to Fraser River, B. C.

Exhibits.

Thursday, May 21st, 1936, vessel's position, North Pacific Ocean

Time	Direction and Force of Wind Weather	Sea Barometer Thermometer	Remarks	
1				
2	WSW	(4) Rough	Airing the holds through ven- tilators.	10
3	(4) Moderate breeze	761		
4	(d) Cloudy	42		
5				
6	WSW	(4) Rough		
7	(4) Moderate breeze	761	Airing the holds through ven- tilators.	
8	(d) Cloudy	46		
9				
10	South West	(4) Rough		
11	(4) Moderate breeze	761		
12	(d) Cloudy	50		
13				20
14	South West	(4) Rough	Local showers — airing the holds between showers	
15	(4) Moderate breeze	761	through ventilators and hat- ches.	
16	(d.g.) Cloudy, showery	50		
17				
18	South West	(3) Moderate		
19	(3) Gentle breeze	761	Airing the holds through ven- tilators and hatches.	
20	(b) Light clouds	43		
21				
22	West	(2) slight		30
23	(3) Gentle breeze	761	Airing the holds through ven- tilators and hatches.	
24	(b) Light clouds.	40		

## Exhibit No. 7.

**Extract of Logbook M/V "SEGUNDO"**  
**On Voyage from Rangoon to Fraser River, B. C.**

Friday, May 22nd, 1936, vessel's position, North Pacific Ocean

Time	Direction and Force of Wind Weather	Sea Barometer Thermometer	Remarks
1			
2	WSW	(3) Moderate	Airing the holds through ventilators and hatches.
10 3	(3) Gentle breeze	761	
4	(c) Half clear	42	
5			
6	Varying	(2) Slight	
7	(2) Light breeze	762	Airing the holds through ventilators and hatches.
8	(b) Light clouds	47	
9			
10	South-easterly	(1) Smooth	
11	(2) Light breeze	763	Airing the holds through ventilators and hatches.
12	(a) Clear	47	
20 13			
14	Southerly	(2) Slight	Airing the holds through ventilators and hatches, stopped Port Engine at 13 o'clock to change valves. At 13.30 full speed ahead on Port Engine and stopped Starboard engine same purpose. At 13.52 both engines full speed.
15	(2) Light breeze	763	
16	(b) Light clouds	47	
17			
18	Southerly	(3) Moderate	
30 19	(3) Gentle breeze	762.5	Airing the holds through ventilators and hatches.
20	(e) Overcast sky	45	
21			
22	Southerly	(3) Moderate	
23	(4) Moderate breeze	762	Airing the holds through ventilators and hatches.
24	(e) Overcast sky	45	

*In the  
Supreme  
Court of  
British  
Columbia.*

Exhibits.

P. 7.  
Extract  
from Log-  
book,  
April 12th—  
June 3rd,  
1936.  
—continued.



## Exhibit No. 7.

In the  
Supreme  
Court of  
British  
Columbia.

Extract of Logbook M/V "SEGUNDO"  
On Voyage from Rangoon to Fraser River, B. C.

Exhibits.

Saturday, May 23rd, 1936, vessel's position, North Pacific Ocean

Time	Direction and Force of Wind Weather	Sea Barometer Thermometer	Remarks
P. 7. Extract from Log- book, April 12th— June 3rd, 1936. —continued.	1 South-easterly	(3) Moderate	
	2 (4) Moderate breeze	761.5	Airing the holds through ven- tilators and hatches.
	3 (e.j.h.) Overcast sky,	44	
	4 drizzle, hazy		10
	5		
	6 Southerly	(3) Moderate	
	7 (4) Moderate breeze	761.5	Airing the holds through ven- tilators and hatches.
	8 (e) Overcast sky	45	
	9 Southerly	(3) Moderate	
	10 (4) Moderate breeze	761.5	Airing the holds through ven- tilators and hatches.
	11 (d.j.) Cloudy,	48	
	12 drizzle.		
	13		20
	14 Southerly	(3) Moderate	
	15 (4) Moderate breeze	761.5	Airing the holds through ven- tilators and hatches.
	16 (d) Cloudy	49	
	17		
	18 Southerly	(3) Moderate	Airing the holds through ven- tilators and hatches.
	19 (4) Moderate breeze	761.5	
	20 (e) Overcast sky	48	
	21 Southerly (4-5) Rough Very Rough		
	22 (6-7) Strong breeze,	760	Airing the holds through ven- tilators. Vessel rolling and
	23 moderate gale	47	shipping some spray over
	24 (e.j.) Overcast sky, drizzle		deck. 30

## Exhibit No. 7.

**Extract of Logbook M/V "SEGUNDO"**  
**On Voyage from Rangoon to Fraser River, B. C.**

Sunday, May 24th, 1936, vessel's position, North Pacific Ocean

Time	Direction and Force of Wind Weather	Sea Barometer Thermometer	Remarks
10	1 Southerly	(5) Very rough	
	2 (6-7) Strong breeze,	760.5	Airing the holds through ventilators. Shipping some spray over the decks
	3 moderate gale.	48	
	4 (e.h.j.) Overcast sky, hazy, drizzle		
5			
10	6 Southerly	(5) Very rough	Airing the holds through ventilators.
	7 (6) Strong breeze	760.5	
	8 (g.k.) Showery, rain	49	
20	9 SSE	(5) Very rough	Airing the holds through ventilators.
	10 (6) Strong breeze	761.5	
	11 (d.h.) Cloudy	52	
12 hazy.			
10	13 SSE	(5) Very rough	Airing the holds through ventilators and hatches.
	14 (5) Fresh breeze	761.5	
	15 (d.h.) Cloudy,	57	
	16 hazy.		
10	17		Airing the holds through ventilators and hatches.
	18 Southerly	(3) Moderate	
	19 (4) Moderate breeze	762	
20 (e) Overcast sky	49		
30	21 South west	(3) Moderate	At 23.15 put on ventilator covers owing to rain.
	22 (3) Gentle breeze	762	
	23 (e.k.) Overcast sky,	48	
	24 rain.		

In the  
Supreme  
Court of  
British  
Columbia.

Exhibits.

P. 7.

Extract  
from Log-  
book,  
April 12th—  
June 3rd,  
1936.

—continued.



## Exhibit No. 7.

In the  
Supreme  
Court of  
British  
Columbia.

Extract of Logbook M/V "SEGUNDO"  
On Voyage from Rangoon to Fraser River, B. C.

Exhibits.

Monday, May 25th, 1936, vessel's position, North Pacific Ocean

Time	Direction and Force of Wind Weather	Sea Barometer Thermometer	Remarks	
1	SSW	(2) Slight		
2	(2) Light breeze	762.5	Ventilator covers on owing to	
3	(e.j.k.) Overcast sky,	48	rain.	10
4	drizzle, rain			
5	South West	(2) Slight		
6	(2) Light breeze	762.5	No airing of holds owing to	
7	(e.j.) Overcast sky,	49	rain.	
8	drizzle			
9	Westerly	(2) Slight		
10	(3) Gentle breeze	762.5	No airing of holds owing to	
11	(d.k.) Cloudy,	54	rain.	
12	rain.			
13	Westerly,	(2) Slight		20
14	North-easterly	762	Airing the holds through ven-	
15	(2) Light breeze	51	tilators and hatches.	
16	(c) Half clear			
17				
18	Northerly	(2) Slight	Ventilator covers off for air-	
19	(2) Light breeze	760	ing.	
20	(d) Cloudy	48		
21	NNW	(2) Slight		
22	(3) Gentle breeze	759	At 22.15 ventilator covers put	
23	(e.k.) Overcast sky,	48	on owing to rain.	30
24	rain.			

P. 7.  
Extract  
from Log-  
book,  
April 12th—  
June 3rd,  
1936.  
—continued.

## Exhibit No. 7.

**Extract of Logbook M/V "SEGUNDO"**  
**On Voyage from Rangoon to Fraser River, B. C.**

Tuesday, May 26th, 1936, vessel's position, North Pacific Ocean

Time	Direction and Force of Wind Weather	Sea Barometer Thermometer	Remarks
1	Northerly	(3) Moderate	
2	(4) Moderate breeze	757.5	No airing of holds on account
10 3	(e.k.) Overcast sky	48	of rain.
4	rain.		
5	Northerly	(3) Moderate	
6	(4) Moderate breeze	757	No airing of holds on account
7	(e.d.k.) Overcast sky,	49	of rain.
8	cloudy, rain.		
9	Northerly	(3) Moderate	
10	(4) Moderate breeze	755	
11	(e.k.) Overcast sky	49	
12	rain.		
20 13	Northerly	(3) Moderate	
14	(4) Moderate breeze	754.5	No airing of holds on account
15	(e.k.) Overcast sky	50	of rain.
16	rain		
17	Northerly	(3) Moderate	
18	(4) Moderate breeze	753	From 17.30 to 18 o'clock fog.
19	(e.h.j.) Overcast sky,	51	Sounding regular signals.
20	hazy, drizzle.		From 19.15 on airing the holds through ventilators.
21			
22	SSE	(3) Moderate	From 19.15 on airing the holds
30 23	(4) Moderate breeze	752.5	through ventilators.
24	(d) Cloudy	51	

In the  
Supreme  
Court of  
British  
Columbia.

Exhibits.

P. 7.

Extract  
from Log-  
book,  
April 12th—  
June 3rd,  
1936.

—continued.



In the  
Supreme  
Court of  
British  
Columbia.

## Exhibit No. 7.

Extract of Logbook M/V "SEGUNDO"  
On Voyage from Rangoon to Fraser River, B. C.

Exhibits.

Wednesday, May 27th, 1936, vessel's position, North Pacific Ocean,  
Strait of Fuca

P. 7.

Extract  
from Log-  
book,  
April 12th—  
June 3rd,  
1936.

—continued.

Time	Direction and Force of Wind Weather	Sea Barometer Thermometer	Remarks
1			
2	ESE	(3) Moderate	Stopped Starboard engine 10 from 0.05 to 0.25 to change valve. Airing the holds through ventilators.
3	(4) Moderate breeze	752.5	
4	(e) Overcast sky	52	
5			At 7.30 sighted land on the Port side. All discharging tackle — bolts, wheels, shack- les, mantles, etc., thoroughly examined and found to be in splendid condition.
6	SSE	(3) Moderate	
7	(4) Moderate breeze	753	
8	(d) Cloudy	54	
9	Varying	(1) Smooth	20
10	(1) Light air	755	
11	(c.d.) Half clear,	60	
12	cloudy		
13			Airing the holds through ven- tilators and hatches.
14	North West	(1) Smooth	
15	(2) Light breeze	754.5	
16	(d) Cloudy	58	
17			Pilot boarded at Race Rocks at 4.45 p.m. Stopped at 5.20 p.m. for Quarantine inspec- 30 tion at Williams Head. Doctor discharged at 5.35 p.m. and voyage continued to Pilot's directions.
18	North West	(1) Smooth	
19	(2) Light breeze	754	
20	(b) Light clouds	50	
21			Airing the holds through ven- tilators and hatches. Changed Pilot at 23.20 o'clock at Sand Heads and continued up the river to his directions. 40
22	Varying	(1) Smooth	
23	(1) Light air	754	
24	(c) Half clear	50	

## Exhibit No. 7.

**Extract of Logbook M/V "SEGUNDO"**  
**On Voyage from Rangoon to Fraser River, B. C.**

Thursday, May 28th, 1936, vessel's position, Fraser River, B. C.

Time	Direction and Force of Wind Weather	Sea Barometer Thermometer	Remarks
1	North East	(0) Calm	Anchored with Starboard anchor at 0.35 o'clock at Gilmore Is. in the River. Anchor 45 fathoms out. Waiting for daylight.
2	(1) Light Air	745	
3	(e.g.) Overcast sky,	54	
4	drizzle.		
5			At 6.30 weighed anchor and continued to Canadian Rice Dock. Moored alongside the Pier at 7.30 with strong moorings fore and aft. Draught on arrival: Forward 19' 7"; aft 19' 4".
6			
7			
8			

20 AT 9 A.M. Surveyor came onboard to inspect hatches and cargo. Twelve bags are spoiled by sweat. Everything else in apparent good order.

FROM 11 A.M. on the whole vessel is fumigated. Holds as well as cabins. Whole crew sent ashore with the exception of the Chief Officer. "Cyanide" used in fumigating.

AT 1.15 P.M. all hatches and holds opened to be aired. No discharging.

FRIDAY MAY 29th, 1936. (Fraser River):

30 AT 8 A.M. discharging of rice cargo commences with 4 gangs and winch-drivers in Nos. 1, 2, 3 and 4 hatches.

AT 1.30 P.M. shifting gang from No. 3 to No. 5 hatch.

AT 5.30 P.M. finished work for the day. 1/2 hour stop for lunch. Ordinary seaman Sveinung Forberg reports for duty. Night watchman from shore.

*In the  
Supreme  
Court of  
British  
Columbia.*

Exhibits.

P. 7.

Extract  
from Log-  
book,  
April 12th—  
June 3rd,  
1936.

—continued.



*In the  
Supreme  
Court of  
British  
Columbia.*

*Exhibits.*

*P. 7.  
Extract  
from Log-  
book,  
April 12th—  
June 3rd,  
1936.*

*—continued.*

SATURDAY MAY 30th, 1936. (Fraser River):

FROM 7.30 A.M. discharging continues with 3 gangs. Stop between 12 and 12.30 for lunch.

AT 4 P.M. No. 5 hatch discharged.

AT 4.30 P.M. No. 1 hatch discharged.

AT 6 P.M. Stop for 1 hour's meal.

AT 7 P.M. Discharging continues in No. 4 hatch. At this time working gangs from shore also arrived to do the necessary lining in No. 1 and 5 hatches for loading of wheat.

AT 2 A.M. This work is completed. All bilges and strainers are properly cleaned, dunnaged and all openings well covered. 10

AT 2.30 A.M. shifted from No. 4 to No. 2 hatch and continued discharging there until 4.30 a.m. Stopped for rain between 1.30 and 2.30 during the night.

The crew has ½ day off. Watchman from shore for the night.

SUNDAY MAY 31st, 1936. (Fraser River):

AT 6.30 A.M. made necessary preparations to move up the River to Fraser River Elevator, where May wheat is to be loaded.

AT 7 A.M. the pilot arrived, let go the moorings and continued up the River to pilot's directions. 20

AT 9.20 A.M. moored alongside of Elevator. Surveyor came onboard to inspect No. 1 and 5 hatches for loading and found everything in proper order. Draught on arrival Forward 14'; Aft 14' 11".

AT 10.17 A.M. loading started in No. 1 hatch and completed at 11.25 a.m. Loaded 500 tons. Continued in No. 5 hatch until 12.20 p.m. when another 500 tons loaded. Total quantity now onboard 1000 tons. Vessel's draught was checked by Chief Officer and found to correspond with quantity loaded. Draught Forward 16'; Aft 17' 4". The rest of the day observed as holiday. Watchman 30 from shore.

MONDAY JUNE 1st, 1936. (Fraser River):

AT 5.30 A.M. the crew turned to for necessary preparations to proceed down river to discharging berth.

AT 6 A.M. the pilot arrived, let go moorings and vessel proceeds to his directions.

AT 8 A.M. moored again alongside of Rice Mill Dock. Discharging continues in three remaining hatches.

AT 6 P.M. Work ceased for 1 hour.

AT 7 P.M. Discharging continues with one gang in No. 2 and 4 hatches respectively, until 4.30 a.m. Stopped for one hour to rig up awnings to protect cargo from rain. Watchman from shore.

TUESDAY JUNE 2nd, 1936. (Fraser River):

AT 7.30 A.M. Discharging continued with 3 gangs. Occasional rain. Working 2 gangs only from noon on as shed congested and dock cannot handle cargo as quickly as vessel delivers.

AT 4.30 p.m. Finished for the day. No night work. Watchman from shore.

WEDNESDAY JUNE 3rd, 1936. (Fraser River):

20 AT 8 a.m. Discharging continues in No. 2, 3 and 4 hatches.

AT 9.30 A.M. No. 3 completely discharged.

AT 1.45 P.M. No. 2 completely discharged.

AT 3.45 P.M. Vessel completely discharged.

WEDNESDAY JUNE 3rd, 1936. (Fraser River):

I, HERCULES WORSOE, Marine Agent, of 991 Hastings Street West, Vancouver, B. C. hereby certify the foregoing is a true and correct translation from the original Logbook of the Motor Vessel "Segundo", written in the Norwegian language.

30 Vancouver, B. C. February 18th, 1937.

Hercules Worsoe

In the  
Supreme  
Court of  
British  
Columbia.

Exhibits.

P. 7.

Extract  
from Log-  
book,  
April 12th—  
June 3rd,  
1936.

—continued.



*In the  
Supreme  
Court of  
British  
Columbia.*

Exhibits.

P. 17.  
Certificate  
of Stowage,  
April 20th,  
1936.

**Exhibit No. 17.**  
**Certificate of Stowage**

PORT OF RANGOON,  
20th April, 1936

R. P. R. TAYLOR,

Messrs. Steel Bros. & Co. Ltd., attend daily on board the M.V. "SEGUNDO" during the time she was loading at this port, for the purpose of superintending on their behalf the stowage and ventilation of 2000 tons of rice.

I NOW HEREBY CERTIFY that during the intake of the 10  
said cargo great care was taken to see that same was well stowed,  
dunnaged and ventilated throughout in accordance with the cus-  
tom of the port.

R. P. R. Taylor,

PORT OF RANGOON,  
20th April, 1936.

R. P. R. TAYLOR,

Messrs. R. R. Kahn Rice Mills & Trading Co. Ltd., attend daily  
on board the M.V. "SEGUNDO" during the time she was loading  
at this port, for the purpose of superintending on their behalf the 20  
stowage and ventilation of 100 tons of Special Quality Rangoon  
Loonzain Rice.

The bags are marked      INTERCO  
   BROSE                      RK  
   ALZ

I NOW HEREBY CERTIFY that during the intake of the  
said cargo great care was taken to see that same was well stowed,  
dunnaged and ventilated throughout in accordance with the cus-  
tom of the port.

R. P. R. Taylor.

**Exhibit No. 17.**  
**Certificate of Stowage**

*In the  
Supreme  
Court of  
British  
Columbia.*

PORT OF RANGOON,  
20th April, 1936.

Exhibits.

R. P. R. TAYLOR,

P. 17.

Messrs. R. R. Kalm Rice Mills & Trading Co. Ltd., attend daily on board the M.V. "SEGUNDO" during the time she was loading at this port, for the purpose of superintending on their behalf the stowage and ventilation of 150 tons of Special Quality Rangoon Loonzain Rice.

Certificate  
of Stowage,  
April 20th,  
1936.

—continued.

The bags are marked

INTERCO	
BROSE	RK
ALZ	

I NOW HEREBY CERTIFY that during the intake of the said cargo great care was taken to see that same was well stowed, dunnaged and ventilated throughout in accordance with the custom of the port.

R. P. R. Taylor.

PORT OF RANGOON,  
20th April, 1936.

R. P. R. TAYLOR,

Messrs. R. R. Kalm Rice Mills & Trading Co. Ltd., attend daily on board the M.V. "SEGUNDO" during the time she was loading at this port, for the purpose of superintending on their behalf the stowage and ventilation of 500 tons of Special Quality Rangoon Loonzain Rice.

The bags are marked

INTERCO	
BROSE	RK
ALZ	

I NOW HEREBY CERTIFY that during the intake of the said cargo great care was taken to see that same was well stowed, dunnaged and ventilated throughout in accordance with the custom of the port.

R. P. R. Taylor.



In the  
Supreme  
Court of  
British  
Columbia.

**Certificate of Stowage**

**Exhibit No. 17.**

Exhibits.

PORT OF RANGOON,  
24th April, 1936.

P. 17.  
Certificate  
of Stowage,  
April 24th,  
1936.  
—continued.

R. P. R. TAYLOR,

Messrs. Blackwood Ralli & Co. Ltd., attend daily on board the M.V. "SEGUNDO" during the time she was loading at this port, for the purpose of superintending on their behalf the stowage and ventilation of 750 tons of Loonzain Rice.

I NOW HEREBY CERTIFY that during the intake of the 10 said cargo great care was taken to see that same was well stowed, dunnaged and ventilated throughout in accordance with the custom of the port.

R. P. R. Taylor.

PORT OF RANGOON,  
24th April, 1936.

R. P. R. TAYLOR,

Messrs. Blackwood Ralli & Co. Ltd., attend daily on board the M.V. "SEGUNDO" during the time she was loading at this port, for the purpose of superintending on their behalf the stowage and 20 ventilation of 1560 tons of Loonzain Rice.

I NOW HEREBY CERTIFY that during the intake of the said cargo great care was taken to see that same was well stowed, dunnaged and ventilated throughout in accordance with the custom of the port.

R. P. R. Taylor.

---

**Exhibit No. 12.**  
**Survey Report**

*In the  
Supreme  
Court of  
British  
Columbia.*

Post Box No. 92  
619 Merchant Street,  
RANGOON, 25th April 1936.

Exhibits.

P. 12.

Survey  
Report,  
April 25th,  
1936.

**SURVEY REPORT**  
**LOONZAIN**

No. 156

We the undersigned at the request of Messrs. Blackwood Ralli  
10 & Co. Limited have examined and surveyed at time of milling and  
again at time of shipment several parcels of Rice said to consist  
of 1,822 Bags each 224 lbs. net packed in single gummies, Marked :—

**INTERCO**  
**BROSE**

and shipped from here to CANADA RICE DOCK FRASER  
RIVER, B. C. PER S.S. "SEGUNDO."

We certify that, in our opinion, the said Rice is fair average  
quality in all respects of :—

20 SPECIAL QUALITY RANGOON LOONZAIN AS PER  
SAMPLE BROSE CONTG: NOT MORE THAN 15%  
BROKENS 1935/36 CROP.

for time of season and is fully equal to the average quality now  
obtainable on this market.

We further certify that during the course of shipment the  
weight of the bags was checked by us and found to be 224 lbs. nett  
and that the Rice was in good and sound condition.

**MORRISON & CO.**



In the  
Supreme  
Court of  
British  
Columbia.

Exhibits.

P. 12.

Survey  
Report,  
April 25th,  
1936.

--continued.

**Exhibit No. 12.**  
**Survey Report**

Post Box No. 92,  
619 Merchant Street,  
RANGOON, 25th April 1936.

**SURVEY REPORT**  
**LOONZAIN**

No. 157

We the undersigned at the request of Messrs. Blackwood Ralli & Co. Limited have examined and surveyed at time of milling and again at the time of shipment several parcels of Rice said to consist of 5,678 Bags each 220½ lbs. nett packed in single gummies, Marked:—

**INTERCO**  
**BROSE**

and shipped from here to CANADA RICE DOCK FRASER RIVER, B. C. PER S.S. "SEGUNDO."

We certify that, in our opinion, the said Rice is fair average quality in all respects of:—

**SPECIAL QUALITY RANGOON LOONZAIN AS PER SAMPLE BROSE CONTG: NOT MORE THAN BROKENS 1935/36 CROP for time of season and is fully equal to the average quality now obtainable on this market.**

We further certify that during the course of shipment the weight of the bags was checked by us and found to be 220½ lbs. nett and that the Rice was in good and sound condition.

**MORRISON & CO.**

**Exhibit No. 4.****Invoice**

INVOICE NO. 143

BLACKWOOD RALLI &amp; CO. LTD.

P. O. Box No. 828

RANGOON

By order of Messrs. The International Rice Co. Ltd., London.  
Shipped per S.S. "Segundo." Bound for Canada Rice Dock,  
Fraser River, B. C.

10 For account and risk of Messrs. The Canada Rice Mills Ltd.,  
VANCOUVER, B. C. Date 27th April 1936.

In the  
Supreme  
Court of  
British  
Columbia.

Exhibits.

P. 4.

Invoice,  
April 27th,  
1936.

**INTERCO BROSE**

7,500 bags (Singles) Special quality Rangoon Loonzain as per  
Sample Brose containing not more than 15% Broken 1935/36  
crop F.O.B. RANGOON.

Bags	Packing	Cwts.	Price per cwt.			
1822	224 lbs. nett	3644.0.0	sh. 6/7½	£1207	1	6
5678	220½ " "	11178.2.7	" 6/7½	"3702	18	0
				<u>£4909 19 6</u>		

20 501 ½ Average

Insurance to be effected by  
Messrs. The Canada Rice Mills Ltd.,  
Vancouver, B.C.

3 Copies Stamped Bills of Lading	Unloading	412.02
5 " Canada Customs Invoices.	Cost	24629.66
3 " Gunny Certificates	Entry	1.50
3 " (2 sets) Survey Certificates.	Jackson Comn.	123.15
2 " Lloyds Loading Certificates attached.	L/C "	92.36
	Insurance	138.59
	Freight	3375.00
		<u>28772.28</u>

30

E. & O. E. Debit to Jackson for  
extra freight paid  
on 5678 Bags - £7 19/8 @ \$5 - 39.92

Less allowance - 34.52 for 2000  
32.50 Average 26982.36

Paid 2501½ - 24623.52  
Com. 92.34

24715.86  
24722.02

off 6.16

6.16 off  
cost

40

Order No. 198 Dated 12th Feb. 1936.  
Bill of Lading dated  
DAS:APS

26976.20  
For BLACKWOOD RALLI & CO. LTD.  
Director.



In the  
Supreme  
Court of  
British  
Columbia.

Exhibits.

P. 8

Report of  
Port  
Warden,  
June 13th,  
1936.

**Exhibit No. 8.**

**Report of Port Warden, New Westminster, B. C.**

OFFICE OF PORT WARDEN

Department of Marine  
New Westminster, B. C.

I HEREBY CERTIFY that the attached Inward Survey of Hatches and Rice Cargo of the M/S "Segundo" dated the 13th of June, 1936, and under my hand and the seal of my office, is a true copy of the matters recorded in the books of my office with respect to the said Inward Survey of Hatches and Rice Cargo of the said Ship, which I made on the dates therein stated. 10

IN WITNESS WHEREOF I have hereunto set my hand and affixed the seal of my office this 18th day of May, A.D. 1938.

J. SLATER,

Port Warden of the Harbour  
of New Westminster.

New Westminster, B. C.  
13th June 1936

OFFICE OF PORT WARDEN  
Department of Marine

20

M/S "Segundo"

Inward Survey of Hatches and Rice Cargo.

Gross Tons 4414      Net Tons 2668      Capt. H. C. Hansen

On May 28th, 1936 at 8 a.m.,

I, the undersigned at the request of the Agents (Messrs. Anglo Canadian Shipping Co. Ltd.) boarded the M/S "Segundo" of Oslo lying at Canada Rice Mills dock with 5,080 tons of brown rice from Rangoon for discharge at Canada Rice Mills and made an examination of the hatches, stowage, and general condition of the cargo prior to discharging. 30

Found Nos. 1, 2, 3, 4, & 5 hatchways covered with good hatches and each hatchway was covered with three good tarpaulins.

Stowage of cargo in sight:—

*No. 1 Hatch viz. No. 1 Hold:*—There was no 'tween deck in this hold. There was a Samson-post ventilator on the fore-castle and an ordinary cowl ventilator on the after end of the hold. The cargo was found to be stowed in two blocks with an 18 to 24 inch space between them, and said space extended from side to side of the ship for the depth of the blocks thereby forming a natural air space between the blocks of rice. The cargo was stowed between 18 and 24 inches from the forward bulkhead and the same from the after bulkhead. There was approximately 12 feet of head-room between the top layer of cargo and the deck head.

10

Cargo ventilation:—There were eight wooden vertical trunk ventilators through the cargo, and there were the ordinary wooden rice ventilators placed every fourth tier of bags in depth and spaced three to five bags apart horizontally. Said small wooden ventilators were stowed fore and aft between the bags in the cargo and they coupled up with the vertical cargo trunk ventilators and with the atmosphere by means of the natural air space on the forward and after end of each block of bagged rice.

20

The vertical trunk cargo ventilators in this ship measured twelve inches inside and they extended from the bottom of the hold to the top of the cargo thereby forming vertical air shafts.

The ordinary wooden rice ventilators in this ship measured  $6\frac{1}{4}$  x 8 inches inside dimensions and they were all stowed horizontally thereby acting as fore and aft air ventilators leading to the atmosphere either through the trunk ventilators or through the air spaces at the forward or after ends of each block of cargo.

30

Vertical dunnage was lashed to the spar ceiling and said dunnage was very closely spaced.

There were tarpaulins on top of the cargo covering a small surface directly underneath the Samson-post ventilator and there were drums on top of the tarpaulins for the purpose of catching sweat from the ventilator. No sweat was observed in the ventilators or on the deck head during the hatch survey, but the sides of the ship from the waterline down were very wet from sweat.

40

*Nos. 2 & 3 Hatchways viz. No. 2 Lower Hold:*—There were two cowl ventilators and two Samson-post ventilators to this hold.

In the  
Supreme  
Court of  
British  
Columbia.

Exhibits.

P. 8

Report of  
Port

Warden,

June 13th,

—continued.

1936.



In the  
Supreme  
Court of  
British  
Columbia.

Exhibits.

P. 8.

Report of  
Port  
Warden,  
June 13th,  
1936.

—continued.

The cargo was stowed in four blocks with an 18 to 24 inch air space between them and said air space extended from side to side of the ship as in No. 1 hold.

The cargo was stowed from 18 to 24 inches from the forward bulkhead and the same from the after bulkhead.

There was approximately 8 feet head-room between the top layer of cargo and the deck head.

There were 12 vertical trunk wooden ventilators, and the ordinary horizontal rice ventilators were laid fore and aft and spaced as described in No. 1 hold. 10

Vertical dunnage was lashed to the spar ceiling as in No. 1 hold.

Tarpaulins and drums were placed under the Samson-post to catch the sweat as in No. 1 hold.

No sweat was observed in the ventilators or on the deck head during the hatch survey but the sides of the ship from the waterline down were very wet from sweat.

*No. 2 Hatchway viz. forward end of No. 2 T.D.:*—No cargo was stowed in the hatch square nor in the forward end of the midship section. Cargo was stowed in the wings, and across the midship section on the after end of the T.D. hatch square. There was sweat on the deck head under the saloon on the after end of No. 2 hatchway, but a tarpaulin protected the cargo, and on examination the cargo was found free from damage. There were ordinary wooden rice ventilators all through the 'tween deck cargo. The deck of the 'tween deck was heavily dunnaged with lumber and said dunnage was covered with mats. 20

*No. 3 Hatchway viz. after end of No. 2 T.D.:*—No cargo was stowed on the hatch square, but cargo was stowed in the wings and in the forward and after midship sections. The cargo was ventilated and dunnaged as in the forward end of the T.D. No sweat was observed. 30

*No. 4 Hatchway viz. No. 3 Lower Hold:*—This hold had three cowl ventilators. The cargo was found to be stowed in two blocks, with an 18 to 24 inch space between them, and said air space extended from side to side of the ship as in No. 1 hold.

The cargo was stowed from 18 to 24 inches from the forward bulkhead and the same from the after bulkhead. 40

There was approximately 10 feet headroom between the top layer of cargo and the deck head.

There were in all 8 vertical wooden trunk ventilators and the ordinary horizontal rice ventilators were laid fore and aft and spaced as described in No. 1 hold.

Vertical dunnage was lashed to the spar ceiling as in No. 1 hold.

No sweat was observed in the ventilators nor on the deck head during the hatch survey, but the sides of the ship from the waterline down were very wet from sweat.

No. 4 Hatchway viz. No. 3 T.D.:—No cargo was stowed in the hatch square but cargo was stowed in the wings and across the after midship section. The cargo was ventilated and damaged as in the forward end of No. 2 T.D. No sweat was observed.

No. 5 Hatchway viz. No. 4 Hold:—There was no 'tween deck in this hold.

There was a cowl ventilator on the forward end of the hold and a Samson-post ventilator on the after end of the hold.

The cargo was found to be stowed in two blocks with an 18 to 24 inch air space between them, and said air space extended from side to side of the ship as in No. 1 hold.

The cargo was stowed from 18 to 24 inches from the forward bulkhead and the same from the after bulkhead.

There was approximately 8 feet headroom between the top layer of cargo and the deck head.

There were in all 8 vertical wooden trunk ventilators, and the ordinary horizontal wooden rice ventilators were laid fore and aft and spaced as described in No. 1 hold.

Vertical dunnage was lashed to the spar ceiling as in No. 1 hold.

Tarpaulins and drums were placed under the Samson-post to catch the sweat as in No. 1 hold.

No sweat was observed in the ventilators nor on the deck head during the hatch survey, but the sides of the ship from the waterline down were very wet from sweat.

During the hatch survey 13 bags of rice were found damaged from sweat.

No other damage was observed during the hatch survey as all the rest of the cargo then examined felt cool and appeared to be in good condition.

28th. May: Ship was fumigated immediately after hatch survey.

A.M. May 29th. Commenced discharging cargo.

P.M. May 29th. Cargo reported being discharged from the vessel in a very heated condition.

8 A.M. May 30th. Examined cargo and found the cargo in Nos. 1 & 4 holds and in Nos. 2 & 3 lower holds to be quite heated, and the heat being evolved was a very damp

In the  
Supreme  
Court of  
British  
Columbia.

Exhibits.

P. 8

Report of  
Port  
Warden,  
June 13th,  
1936.

—continued.

10

20

30

40



In the  
Supreme  
Court of  
British  
Columbia.

Exhibits.

P. 8.  
Report of  
Port  
Warden,  
June 13th,  
1936.

--continued.

heat as the bags were damp and hot. Some of the rice in said holds smelt quite musty. The cargo in the 'tween decks felt cool and appeared to be in good condition. The bottom of No. 4 L.H. was dunnaged with a double athwartship layer of inch lumber and a fore and aft layer of inch lumber making 3 inches in all, and said dunnage was covered with mats. The sides of the tunnels were well and closely dunnaged and said dunnage was covered with mats. The limber boards in No. 1 hold were double and close dunnaged with lumber and the said dunnage was covered with mats. 10

P.M. Saturday May 30th. Completed discharging Nos. 1 & 4 holds.

Sunday May 31st. No cargo was discharged on this day.

Monday A.M. June 1st. Again examined cargo in Nos. 2 & 3 lower holds and the bags of rice were found damp and heated to about the same degree as they were on May 30th. On this occasion I took temperatures of the rice and found:—

	<u>Intero</u>	
No. 2 L.H. Bags marked	<u>Brose</u>	Temperatures F. 103, 20 103½, 104, 106 & 106 degrees.

	20	
No. 2 L.H. Bags marked	<u>N.L.Z.</u>	Temperatures F. 106 & 106 degrees.

	<u>Steel</u>	
No. 3 L.H. Bags marked	<u>Loonzain.</u>	Temperatures F. 106½ & 105½, 106½, & 106 degrees.

Some of the rice in No. 2 L.H. was yellow evidently from 30 heat. The rice smelt very musty in some parts of Nos. 2 & 3 lower holds.

Visited the vessel June 2nd & 3rd, and found Nos. 2 & 3 limber boards and tank ceiling to have been heavily dunnaged, and said dunnage was covered with mats.

3:45 P.M. June 3rd. Completed discharging.

All dunnage and mats were lifted and the loose rice in the holds was swept up, bagged and delivered to Canada Rice Mills.

Apart from 13 bags mentioned as damaged by sweat 40 from ventilators there were no other bags damaged by wet.

*Figures on out-turn quantities received from Canada Rice Mills.*

	13 bags wet and damaged	
	148 bags slacks, gross weight 21,744 lbs. showing loss in weight of 11,741 lbs.	
	90 bags ship sweepings, gross weight 13,863 lbs.	
	17 bags dock and warehouse sweepings, gross weight 2,048 lbs.	
	50,338 bags of rice.	
10	Total <u>50,606</u> bags of rice.	

In the  
Supreme  
Court of  
British  
Columbia.

Exhibits.

P. 8.

Report of  
Port  
Warden,  
June 13th,  
1936.

—continued.

For particulars of voyage see Mate's Log Book.

I kept quite a close check on this cargo while it was being discharged and I could find no fault whatever with the stowage which I have described in detail, and it would appear to me that this cargo had been stowed in strict compliance with the approved practice governing the stowage of rice cargoes.

The damage to this cargo although extensive has not as yet been ascertained.

“J. SLATER”

Port Warden

20 Seal of Port Warden  
New Westminster, B. C.

**Exhibit No. 34.**

**Cable — Canada Rice Mills Ltd. to Jackson Son & Co.**

NLT  
IMPERJACK  
LONDON

Vancouver B C  
March 9th 1936

D. 34.  
Cable—  
Canada Rice  
Mills Ltd. to  
Jackson Son  
& Co.,  
March 9th,  
1936.

30 THINK SHOULD BE POSSIBLE DETERMINE APPROXIMATELY PERCENTAGE YELLOWS KALAGYEE  
AND MILLING PRICE MUST BE AFFECTED ASCERTAIN PERCENTAGE APPROXIMATELY AND LOWEST PRICE OBTAINABLE FOR RECONDITIONED RICE UP TO TWO THOUSAND TONS IF CAN BE RECONDITIONED IN TIME STOP WOULD INTERCO BE IN POSITION SECURE BETTER QUALITY OR IF RICE LOW ENOUGH THEY MIGHT SECURE BALANCE RECONDITIONED UP TO TWO THOUSAND TONS STOP WRITE GIVING EXACT TERMS INSURANCE BRAZILIAN SHIP-  
40 MENT OR COPY POLICY IF POSSIBLE.

Charge Canada Rice Mills Ltd.



In the  
Supreme  
Court of  
British  
Columbia.

Exhibit No. 41.

Letter — Canada Rice Mills Ltd. to Jackson Son & Co.

March 23, 1936

Exhibits.

Messrs. Jackson Son & Co.,  
Cereal House, Mark Lane,  
London, E.C. 3, England.

D. 41.  
Letter—  
Canada Rice  
Mills Ltd. to  
Jackson Son  
& Co.,  
March 23rd,  
1936.

*Re Kalagyee Rice*

Dear Sirs:—

We awaited the outcome of our cables to you regarding Messrs. Steel's contract with us, before writing you on the subject. 10

We are glad to be informed that our contract will be filled by Messrs. Steel Bros. with rice equal to the best that can be obtained in Burmah. We would have been placed in a very difficult position if this rice had not been shipped. We do not require any more rices of other kinds, at least we have already bought up to our requirements so far as we can foresee at the present time. Therefore, if this Kalagyee rice had not been shipped, we would have had the space on our hands.

The East Asiatic Company have again been pressing us to purchase the thousand tons from them. Their Seattle Manager 20 arrived here a few days ago, and again pressed us for a firm offer, if we could not see our way to pay them 6/11½ per cwt. We were of course not in a position to deal with them, and were therefore very much relieved to receive your cable advising us that our contract will be filled.

We presume you mean that it will be filled with rice, free from yellow grains and good milling quality, such as was offered us by the East Asiatic Company. No doubt the rumors of damage to crop had been exaggerated.

In our cable we suggested that you try the International Rice 30 Company, but you do not mention having approached them on the matter. Do they not handle this grade?

We trust everything will now be in order.

Yours very truly,

THE CANADA RICE MILLS LTD.

DG/G

**Exhibit No. 45.****Extract from Correspondence of Witness Cotterell****EXTRACT FROM OFFICIAL CORRESPONDENCE BETWEEN RANGOON & H/O LIVERPOOL.**

*RANGOON, dated 4th April 1936.* Weather. Thunderstorms are prevalent.

*RANGOON, dated 25th April 1936. PADDY & WEATHER.* The former is quoted as Rs. 94/95 with an indication that there is more desire to sell in the districts which may result in increased  
10 supplies at a lower rate especially since the storm in the Bay has brought widespread showers in the Lower Delta and as further rain is forecasted it would appear as though the early rains are approaching, the temperature having dropped considerably.

*RANGOON, dated 13th May 1936. WEATHER.* A cyclonic storm passed over Rangoon yesterday evening with heavy rain doing considerable damage but we are glad to say that our Mill property has not suffered any harm. The rainfall up to yesterday morning was 4.54 against the normal 4.96 inches.

For JOSEPH HEAP & SONS, LIMITED

20

A. V. Cotterell  
Local Manager

In the  
Supreme  
Court of  
British  
Columbia.

Exhibits.

D. 45.

Extract from  
Correspondence,  
April - May,  
1936.

**Exhibit No. 42.****Letter — Canada Rice Mills Ltd. to Jackson Son & Co.**

April 6, 1936.

Messrs. Jackson Son & Company,  
Cereal House, Mark Lane,  
London, E.C. 3, England.

D. 42.  
Letter—  
Canada Rice  
Mills Ltd. to  
Jackson Son  
& Co.,  
April 6th,  
1936.

Dear Sirs:—

30 We beg to confirm cables exchanged as per confirmations herewith, and acknowledge your letters of the 13th (2) and 20th (4) ultimo.

*CREDITS*:—When your cable of 31st ultimo was received requesting credits be made assignable, we could not understand your request and advised you credits opened in favour of suppliers under contract to us, and we could not see any reason for



In the  
Supreme  
Court of  
British  
Columbia.

Exhibits.

D. 42.

Letter—

Canada Rice  
Mills Ltd. to  
Jackson Son  
& Co..  
April 6th,  
1936.

—continued.

authorizing transfer to outside parties. However, upon receipt of your reply we had the Royal Bank of Canada cable their London office to change credits available by beneficiaries' or assignees' drafts. No doubt you will advise us in your letter the reason for the request as we have never had to change our credits before which have been in favor of sellers. We also had the credit covering the 200 tons Supex Rice amended allowing Bills of Lading to be made out to order and blank endorsed.

*KALAGYEE*:—We note your remarks regarding rains occurring during harvest, causing serious damage and making it difficult to obtain a sufficient quantity of sound grain and conditioning it in time for shipment, hence Steel Bros. request for part cancellation. As you state, they have now obtained suitable grain, we trust this shipment will turn out satisfactorily. We asked the steamer's agents here to arrange to have this rice stowed at the top and give ample ventilation. We have also requested stowage in between decks if possible. 10

*PARBOILED PATNA PADDY*:—We confirm our purchase of 25 tons at 7/9 per cwt. f.o.b. for shipment per S.S. "Mapia" April 23, and note space has been engaged for this parcel. 20

*BRAZILIAN JAPANESE PADDY*:—As the insurance policy to be supplied by sellers was F.P.A. terms, we advised you we accepted allowance of ¼ per cent off contract price for insurance and would insure the shipment under our open policy. Our insurance company requested Lloyd's certificate be furnished certifying as to ventilation and stowage, and upon receipt of your advice that sellers stated this impossible to obtain, as no competent authority, they advised they would not insist on it.

*M.S. "SEGUNDO"*:—Regarding Lloyd's certificate for the shipments per this vessel, we cabled you it would be satisfactory to cover only ventilation and stowage. We understand from their agent here that while he cannot give a certificate as to quality and condition of a shipment, he can authorize a competent surveyor to do so and certify personally, but not as Lloyd's agent, that said surveyor is a properly qualified person to issue certificate. 30

Yours very truly,

THE CANADA RICE MILLS, LTD.

NLL/G

## Exhibit No. 44.

Letter — Macaulay, Nicolls, Maitland & Co. Ltd. to  
Union Marine & General Insurance Co. Ltd.

In the  
Supreme  
Court of  
British  
Columbia.

Exhibits.

June 6th 1936

Union Marine & General Insurance Co. Ltd.  
114 Sansome Street,  
SAN FRANCISCO, Cal.

P. 44.

Letter—  
Macaulay,  
Nicolls,  
Maitland &  
Co. Ltd. to  
Union Marine  
& General Insce.  
Co. Ltd.,  
June 6th,  
1936.

Dear Sirs:—

Re—S.S. "SEGUNDO—OUR LOSS U-1015

10 With reference to the above case we beg to acknowledge receipt of your wire reading as follows:—

20 "SEGUNDO YOURS SECOND HAVE ASSURED FILE IMMEDIATE CLAIM IN WRITING AGAINST CARRIER IN SUCH MANNER AS TO PROPERLY COMPLY TERMS BLADING SUGGEST YOU FORWARD COPY BLADING AIR MAIL ALSO COPY CLAIM LETTER STOP SUGGEST YOU ALSO ARRANGE OBTAIN COPY SHIPS LOG STOP KEEP US FULLY ADVISED APPROXIMATE AMOUNT CLAIM ALSO NATURE DAMAGE AS MAY BE NECESSARY LIBEL VESSEL BEFORE LEAVING PORT"

We had already requested our Assured to file a claim against the carriers, and for your information we have pleasure in enclosing herewith a copy.

30 With regard to your request for copies of all Bills of Lading, we regret that we are unable to send you these at the present time as in some instances our Assured only have one copy. However, for your immediate guidance we enclose herewith one Bill of Lading of the Blackwood Ralli & Co. Ltd. covering 18,600 bags selected Delta Grain and dated Rangoon, April 23rd, 1936.

Our Surveyor has already obtained the ship's Log and has had extracts made, and they will be included in his report when issued.

It is absolutely impossible at the moment to give you any information as to what the claim, if any, may amount to as the shipment involved is such a large one that it will be some time before a thorough examination of all cargo has been made.



*In the  
Supreme  
Court of  
British  
Columbia.*

Exhibits.

P. 44.

Letter—  
Macaulay,  
Nicolls,  
Maitland &  
Co. Ltd. to  
Union Mar-  
ine & Gen-  
eral Insce.  
Co. Ltd.,  
June 6th,  
1936.

—continued.

Further, while it is obvious that some of the rice has not out turned in as good a condition as the remainder, it is still impossible to say whether the inferior rice will form the subject of a claim until such time as our Assured has had an opportunity of appraising the extent of the damage and offering it to the trade for the purpose of seeing if they will accept it on the same basis as that rice which has arrived absolutely sound.

We shall of course be very glad indeed to keep you fully posted of all developments, and with reference to that section of your wire dealing with libelling the vessel we have no knowledge of your reasons for wishing to take this action but presume if you wish to proceed further in this matter you will act from your own end.

Yours very truly,

MACAULAY, NICOLLS, MAITLAND & CO. LTD.

Per T. W. Warkman.

TWW/BMe.

---

**Exhibit No. 35**

**Cable—Canada Rice Mills Ltd. to Jackson Son & Co.**

D. 35.  
Cable—  
Canada Rice  
Mills Ltd. to  
Jackson Son  
& Co.,  
June 8th,  
1936.

CANADIAN PACIFIC TELEGRAPHS

20

Vancouver B. C.  
June 8 1936

NLT  
IMPERJACK  
LONDON

BROSE SHIPMENTS CONTAIN CONSIDERABLE  
YELLOW GRAINS PARTICULARLY LOT MARKED IN-  
TERCO BROSE MAILING MILLED SAMPLE OF LATTER  
STOP ORIGINAL SAMPLE AND FORMER SHIPMENT  
DID NOT CONTAIN YELLOWS PROTECT OUR INTER- 30  
ESTS AS TO ARBITRATION

Charge Canada Rice  
Mills Limited.

---

**Exhibit No. 36****Letter—Canada Rice Mills Ltd. to Jackson Son & Co.**

June 12, 1936

Messrs. Jackson Son & Co. Ltd.,  
Cereal House, Mark Lane,  
London, E.C. 3, England.

Dear Sirs:—

We sent you a sample of Interco Brose by Air Mail last night. This is a sample milled as we usually mill this grade of rice, and will serve to show you its appearance after the usual shrinkage is allowed for.

The sample we sent forward on the 8th inst. by ordinary mail will show you the result after very high milling, which of course results in a heavier percentage of loss and a slowing up of our daily returns from our mill.

The above two samples will no doubt reach you about the same time, and we await your report after examination.

Yours very truly,

THE CANADA RICE MILLS LTD.  
President.

20  
DG/G

*In the  
Supreme  
Court of  
British  
Columbia.*

Exhibits.

D. 36.

Letter—  
Canada Rice  
Mills Ltd. to  
Jackson Son  
& Co.,  
June 12th,  
1936.

**Exhibit No. 40****Letter—Canada Rice Mills to Jackson Son & Co.**

July 25, 1936.

Messrs. Jackson Son & Co.  
Cereal House, Mark Lane,  
London, E.C. 3, Eng.

Dear Sirs:—

We are in receipt of your letter of the 10th inst. contents of which have been noted.

Regarding the Brose Rice, as already advised you, we took this up fully with Mr. Luthke and are willing to await his report for the International Rice Company's decision.

D. 40.  
Letter—  
Canada Rice  
Mills Ltd. to  
Jackson Son  
& Co.,  
July 25th,  
1936.



In the  
Supreme  
Court of  
British  
Columbia.

Exhibits.

D. 40.

Letter—  
Canada Rice  
Mills Ltd. to  
Jackson Son  
& Co.,  
July 25th,  
1936.

—continued.

We are sending you, under separate cover, sample of the Kalagye Rice. We might advise that this shipment seemed to carry very well on the boat. We note, however, in milling this rice, that there are quite a number of pecky or damaged grains which do not show up in the sample of the No. 18 Rice which you forwarded us last year.

RE: *SETA RICE PER SILVERPALM*:

We have already written you regarding this rice being smaller than the original sample and took this matter up with Mr. Luthke when he was here and he agreed with us. We do not wish however, 10 to be making claims for small differences. We felt at the time that we were entitled to some allowance when this shipment arrived, but, as the amount would be small, did not make claim. We will leave it up to the International Rice Company as to whether they make us any allowance on this shipment.

Regarding the *BRAZILIAN RICE*, we note your remarks as to the advance and that the crops are turning out smaller than expected owing to drought. Your information does not agree with that contained in the Federal State Market News Service, California Department of Agriculture, San Francisco. They advise 20 shipment of Brazilian Bluerose Rice into world trade, from present indications will be smaller than was expected earlier in the season since floods and heavy rains have seriously damaged or carried away 30 to 40% of the crop.

We shall be glad to hear from you as to which information is correct.

Yours very truly,

THE CANADA RICE MILLS LTD.

NLL/G

---

**Exhibit No. 37****Cable—Canada Rice Mills Ltd. to Jackson Son & Co.**Vancouver B C  
Sept. 11th 1936

## CANADIAN PACIFIC TELEGRAPHS

NLT  
IMPERJACK  
LONDON*In the  
Supreme  
Court of  
British  
Columbia.*Exhibits.D. 37.Cable—  
Canada Rice  
Mills Ltd. to  
Jackson Son  
& Co.,  
September  
11th, 1936.

10 WILL ACCEPT SEVENTEEN HUNDRED AND FIFTY  
DOLLARS SETTLEMENT BROSE BUT OWING POOR  
QUALITY CANNOT USE FOR PURPOSE INTENDED  
THEREFORE CAUSING US FURTHER LOSS STOP CAN  
INTERCO SECURE FOR US FIVE HUNDRED TONS  
FREE FROM DISCOLOURED OR YELLOW GRAINS  
FULLY EQUAL TO LAST YEARS SAMPLE NUMBER  
TWENTY TWO

Charge  
Canada Rice Mills**Exhibit No. 38**20 **Letter—Canada Rice Mills Ltd. to Jackson Son & Co.**

October 7, 1936

Messrs. Jackson Son & Co.  
Cereal House, Mark Lane,  
London, E.C. 3, England.D. 38.  
Letter—  
Canada Rice  
Mills Ltd. to  
Jackson Son  
& Co.,  
October 7th,  
1936.

Dear Sirs:—

We duly received your several cables and also your letters of the 11th and 18th ultimo regarding allowances on Brose and Seeta parcels and beg to thank you for the trouble you took in arranging settlement.

30 It is very unfortunate for us as well as the shippers that the Brose shipments contained yellow grains. As stated in our cables, we wished to settle matter amicably and after considering the matter and cables exchanged, advised you we would accept



In the  
Supreme  
Court of  
British  
Columbia.

Exhibits.

D. 38.

Letter—  
Canada Rice  
Mills Ltd. to  
Jackson Son  
& Co.,  
October 7th,  
1936.

—continued.

\$1750.00 as we wished to meet the International as much as possible. However, owing to the yellow and tinted grains the rice cannot be used for purpose intended and this increases our loss.

In regard to our enquiry for further 500 tons Brose free discoloured or yellow grains we received your reply that shippers advise none is available.

We have received the samples referred to in your letter and also in the International's letter.

**EGYPTIAN PADDY:** We have already written you that we are not interested in purchasing this quality unless guaranteed free of foreign matter and yellow grains. We note Behrend's have written their Alexandria people to see if they are open for business in this rice and on what terms they will offer. We will be interested in learning whether they are willing to offer rice free of seed, mud balls, etc. and also yellow grains.

**SIAM PADDY:** We note what the International write in regard to purchasing this rice and will advise you a little later in this connection.

Yours very truly,

THE CANADA RICE MILLS LTD. 20

NLL/G

**Exhibit No. 39**

D. 39.  
Cable—  
Canada Rice  
Mills Ltd. to  
Jackson Son  
& Co.,  
December  
4th, 1936.

Cable—Canada Rice Mills Ltd. to Jackson Son & Co.

Vancouver B. C.  
December 4 1936

CANADIAN MARCONI COMPANY

PLT  
JACKSON & SON  
MARK LANE LONDON EC3

CAN YOU SECURE FROM BLACKWOOD RALLI RAN- 30  
GOON CERTIFICATE CERTIFYING MOISTURE CON-  
TENT AT TIME OF SHIPMENT BROSE PER SEGUNDO  
OR FAILING THIS THAT IT DID NOT CONTAIN MORE  
THAN DELTA SAME VESSEL

THE CANADA RICE MILLS LTD.

Charge—Post Letter  
Telegram

**Exhibit No. 24**  
**Claim of Canada Rice Mills Ltd.**

*In the  
 Supreme  
 Court of  
 British  
 Columbia.*

Vancouver, B. C. Exhibits.  
 June 23, 1936

Messrs. Union Marine Insurance Company Ltd.  
 c/o Macaulay, Nicolls & Maitland Limited,  
 424 Pender Street, E  
 Vancouver, B. C.

P. 24.  
 Claim,  
 of Canada  
 Rice Mills  
 Ltd.,  
 June 23rd,  
 1936.

Bought of  
 10 THE CANADA RICE MILLS LIMITED

*RE M.S. "SEGUNDO"*

Shipment:

	1822 Bags 224 Net )—	
	5678 Bags 220½ Net )— 830 Tons of No. 2000	
	@ 41% milling produces 340 tons of White Rice	
	Difference between damaged Brose Interco No. 163 and un-	
	damaged Brose Interco A.L.Z./R.K. is 5%,	
	in other words 95%—340 tons	
	100%—358 tons or	
	18 tons White Rice	
20	18 tons loss @ selling price of \$84 per ton—	\$1,512.00
	340 tons white rice produced difference in	
	value a/c damage \$5 per ton—	1,700.00
		<u>\$3,212.00</u>
	Less Meal ¼ ton @ \$18.50—	\$ 4.52
	Less Broken 17¾ ton @ \$25.00—	443.75
		<u>\$2,763.73</u>



In the  
Supreme  
Court of  
British  
Columbia.

Exhibits.

P. 25.  
Second  
Claim of  
Canada Rice  
Mills Ltd.,  
September  
23rd, 1936

Exhibit No. 25

Second Claim of Canada Rice Mills Ltd.

Vancouver, B. C.,  
Sept. 23rd, 1936.

Messrs. Union Marine Insurance Company Ltd.  
c/o Macaulay Nicolls & Maitland Ltd.  
Vancouver

Bought of  
THE CANADA RICE MILLS LIMITED

Re M.S. "Segundo"

10

Shipment:

1822 Bags 224# net ) —830 tons of 2000#  
5678 " 220½# " )

@ 41% milling produces 340 tons of White Rice  
Difference between damaged Brose Intero #163  
and undamaged Brose Intero A.L.K./R.K. which  
returns were 46% or 5%

5% on 830 tons—41.5 tons @ \$84 per ton— \$3,486.00

Less 41.5 tons broken— 1,037.00

\$2,449.00 20

Plus reduced value of White Rice 340 tons  
@ \$5.00 per ton—

1,700.00

\$4,149.00

**Exhibit No. 26**  
**Third Claim of Canada Rice Mills Ltd.**

CANADA RICE MILLS LTD.  
 C L A I M  
 re damaged Brown Rice ex m.s. SEGUNDO

830 tons (166,000 lbs.) @ Insured Value \$30,798.00

Should have produced:— 46% White

83	tons Rice Feed	@ \$20.00	\$ 1,660.00	
365.2	" Broken Rice	@ 25.00	9,130.00	
10 381.8	" White Rice	@ 52.41	20,008.00	\$30,798.00

Actually Produced:

83	tons Rice Feed	@ \$20.00	\$ 1,660.00	
447	" Broken Rice	@ 25.00	11,175.00	
300	" White Rice	@ 52.41	15,723.00	28,558.00

	difference	\$ 2,240.00
Plus reduced value of 300 tons @ \$8		2,400.00

Plus cost of Extra handling Sorting and Milling 830 tons @ \$1.50		1,245.00
--	--	----------

TOTAL LOSS—	\$5,885.00
-------------	------------

*In the  
 Supreme  
 Court of  
 British  
 Columbia.*

Exhibits.

P. 26.  
 Third Claim  
 of Canada  
 Rice Mills  
 Ltd.,  
 Undated.



**Exhibit No. 43.**  
**Statement re Damage Claim**

In the  
Supreme  
Court of  
British  
Columbia.  

---

Exhibits.  

---

P. 43.  
Statement  
re Damage  
Claim,  
Undated.

1,660,127 lbs. Brown Rice:			
Insured Value			\$30,798.00
Sound Value			28,748.35
Sound Value arrived at as follows:			
Cost f.o.b. Rangoon 6/7½ per 112#			
which at the rate of exchange paid			
shows a cost of	\$1.6631 per		
		112#	10
Freight from Rangoon to			
Vancouver	.2250	"	
Insurance	.0093	"	
Unloading	.0277	"	
Commission paid broker	.0145	"	
	<u>\$1.9396</u>	"	
1,660,127 lbs. @ 38.79 per 2240#—			\$28,748.35
			Sound Value
1,660,127# should have produced at 50.03 per 100#—			
166,012 lbs. Meal—10% @ 1c a lb.	\$1,660.12		20
650,603 " Brokens—39.19% @ 1¼c lb.	8,132.53		
830,561 " White—50.03% @ 2.28227	18,955.70		
Rice—a lb.			
12,951 " Loss—.78%			
			<u>\$28,748.35</u> \$28,748.35
Damaged Value:			
1,660,127 lbs. actually produced @ 46.59% :—			
199,879 " Meal—12.04%			
@ 1c per lb.	\$ 1,998.79		
670,027 " Brokens—40.36%			30
@ 1¼c " "	8,375.34		
16,768 lbs. Loss—1.01%			
690,453) " White—46.59% @ 1.5322	10,579.60		
83,000) " Rice @ 1.25	1,037.50		
	<u>\$21,991.23</u>		21,991.23
			\$ 6,757.12
Additional Expenses incurred owing to			
damage. Examination of 830 tons to			
avoid mixing seriously damaged with			
less seriously damaged rice @ 50c per ton		415.00	40
Extra milling account slowing up ma-			
chines @ 94c per ton on 386.72 tons		364.55	
		<u>\$ 7,536.67</u>	

**EXHIBITS OMITTED**

*In the  
Supreme  
Court of  
British  
Columbia.*

---

**Exhibit No. 9.**

Record of maximum and minimum temperatures at Rangoon,  
January to April, 1936 and 1937.

Plaintiff's  
Exhibit,  
No. 9.

Omitted.

---

**Exhibit No. 10.**

Record of relative humidity at Rangoon, January to April, 1936  
and 1937.

Plaintiff's  
Exhibit,  
No. 10.

Omitted.

---

10

**Exhibit No. 11.**

Record of rainfall during month of April 1936, at Rangoon.

Plaintiff's  
Exhibit,  
No. 11.

Omitted.

---

**Exhibit No. 13.**

Request for Surveys, Blackwood Ralli & Co. to Morrison & Co.,  
February 27th and April 25th, 1936.

Plaintiff's  
Exhibit,  
No. 13.

Omitted.

---

**Exhibit No. 14.**

Certificate re gunnies, Blackwood Ralli & Co. to Canada Rice  
Mills Limited, April 27th, 1936.

Plaintiff's  
Exhibit,  
No. 14.

20

Omitted.

---

**Exhibit No. 15.**

Plan of M.S. "Segundo".

Plaintiff's  
Exhibit,  
No. 15.

Omitted.

---

**Exhibit No. 16.**

Extract from notebook of Hardeo Tewari.

Plaintiff's  
Exhibit,  
No. 16.

Omitted.

---



*In the  
Supreme  
Court of  
British  
Columbia.*

Plaintiff's  
Exhibit,  
No. 18.

**Exhibit No. 18.**

Extract from Stock Register, Blackwood Ralli & Co., February  
and April, 1936.

Omitted.

---

Plaintiff's  
Exhibit,  
No. 19.

**Exhibit No. 19.**

Statements from R. R. Khan, February 27th, 1936.

Omitted.

---

Plaintiff's  
Exhibit,  
No. 20.

**Exhibit No. 20.**

Shipping chits, Morrison & Company, April 14th to 20th, 1936.

Omitted.

---

10

Plaintiff's  
Exhibit,  
No. 21.

**Exhibit No. 21.**

Extract from R. R. Khan's Order Book.

Omitted.

---

Plaintiff's  
Exhibit,  
No. 22.

**Exhibit No. 22.**

Extract from Blackwood, Ralli's Shipment Position Book.

Omitted.

---

Plaintiff's  
Exhibit,  
No. 23.

**Exhibit No. 23.**

Milling Records of Canada Rice Mills Ltd. re 163, 102 and Cali-  
fornian and Mexican rice, May 29th, 1936 to May 31st, 1937.

Omitted.

---

20

Plaintiff's  
Exhibit,  
No. 27.

**Exhibit No. 27.**

Sample "A.L.Z."

Omitted.

---

Plaintiff's  
Exhibit,  
No. 28.

**Exhibit No. 28.**

Sample 163.

Omitted.

---

Plaintiff's  
Exhibit  
No. 29.

**Exhibit No. 29.**

Further sample 163.

Omitted.

---

	<b>Exhibit No. 30.</b> Sample of brown rice. Omitted.	<i>In the Supreme Court of British Columbia.</i> Plaintiff's Exhibit No. 30.
	<hr/> <b>Exhibit No. 31-A.</b> Sample 163 from outside of bag. Omitted.	Plaintiff's Exhibit No. 31-A.
	<hr/> <b>Exhibit No. 31-B.</b> Sample 163 from centre of bag. Omitted.	Plaintiff's Exhibit No. 31-B.
10	<hr/> <b>Exhibit No. 32.</b> Sample "A.L.Z." Omitted.	Plaintiff's Exhibit No. 32.
	<hr/> <b>Exhibit No. 33.</b> Anglo-Canadian Shipping Company freight contract, February 27th, 1936. Omitted.	Defendant's Exhibit No. 33.
	<hr/> <b>Exhibit No. 46.</b> Annual Report 1936, Department of Agriculture, Burma. Omitted.	Defendant's Exhibit No. 46.
20	<hr/> <b>Exhibit No. 47.</b> Annual Report, 1937, Department of Agriculture, Burma. Omitted.	Defendant's Exhibit No. 47.
	<hr/> <b>Exhibit No. 48.</b> Statements of Agricultural Department, showing estimates of rice production. Omitted.	Plaintiff's Exhibit No. 48.