

26, 1930

IN THE PRIVY COUNCIL

ON APPEAL FROM THE SUPREME COURT OF
BRITISH COLUMBIA

BETWEEN:

ATTORNEY-GENERAL OF BRITISH COLUMBIA,

Appellant
(Defendant),

AND

McDONALD-MURPHY LUMBER COMPANY,
LIMITED,

Respondent
(Plaintiff).

RECORD OF PROCEEDINGS

BOURNE & DESBRISAY,
Solicitors for Appellant,
Vancouver, B.C.

The Hon. Geoffrey Lawrence, K.C.,
Counsel.

E. P. DAVIS & CO.,
Solicitors for Respondent,
Vancouver, B.C.

E. P. Davis, K.C.,
Counsel.

III.

RECORD OF PROCEEDINGS

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IN THE SUPREME COURT OF BRITISH COLUMBIA.

RECORD.

BETWEEN:

No. 1.
Endorsement
on Writ.
April 4th, 1929.

McDONALD, MURPHY LUMBER COMPANY,
LIMITED,

Plaintiff,

AND

THE ATTORNEY-GENERAL OF BRITISH
COLUMBIA,

Defendant.

10

RECORD OF PROCEEDINGS.

No. 1.

ENDORSEMENT ON WRIT.

Writ issued the 4th day of April, 1929.

The plaintiff's claim is for a declaration that it is under no obligation to comply with the demand of the Department of Lands, Forest Branch, purporting to be made by virtue of the provisions of the Forest Act, being chapter 93, Revised Statutes of British Columbia, 1924, or to pay any tax in respect of timber cut by it from Block 75, Cowichan Lake District, and Section 1, Renfrew District, British Columbia, or to make any returns in respect thereof, and that the provisions of the said chapter 93 which purport to affect it in respect of the said timber are *ultra vires* the Legislature of the Province of British Columbia.

RECORD.

No. 2.

No. 2.
Statement of
Claim.
April 4, 1929.

STATEMENT OF CLAIM.

Writ issued 4th day of April, 1929.

1. The plaintiff is a Company incorporated under the laws of the Province of British Columbia and has its head office and chief place of business at 736 Granville Street, City of Vancouver, Province aforesaid. Under its Memorandum of Association the plaintiff has power, *inter alia*, to cut, fell, and carry away sawlogs and timber and to engage in logging operations.

2. The plaintiff or its predecessors in title were, prior to 10 the 7th day of April, 1887, the owners in fee-simple of certain timber lands situate in what is known as the Esquimalt & Nanaimo Railway Belt, Vancouver Island, British Columbia, and more particularly known as Section 1, Renfrew District, Vancouver Island, and Block 75, Cowichan Lake District, Vancouver Island.

3. The plaintiff repeats the last paragraph and says that it, the said plaintiff, now owns the said Section 1, Renfrew District, and has full right to cut, fell, and carry away timber and all trees 20 growing, lying, or being upon the said Block 75, Cowichan Lake District, and upon the said Section 1.

4. The plaintiff conducts logging operations on said Section 1, Renfrew District, and Block 75, Cowichan Lake District, Vancouver Island aforesaid, and has cut, felled, and carried away therefrom certain timber of which it is the owner, to wit, namely:—

Raft No.	Scale and Royalty Acct. No.	Marks.	Number of Pieces.	Scale Measurement.
A H 58.....	115269	M35, B43, and E64	393	383,266
A H 62.....	115324	M35, B43, and E64	361	385,093
A H 61.....	115326	M35, B43, and E64	452	245,000
A H 64.....	115366	M35, B43, and E64	365	397,908

30

5. The said timber was duly scaled pursuant to the provisions of the Forest Act in that behalf by the Department of Lands, Forest Branch, and the accounts were issued therefor, the numbers of which are set out in the preceding paragraph hereof, and the plaintiff on April 3rd, 1929, duly tendered in the usual and customary manner to the Department of Lands, Forest Branch, Vancouver, B.C., payment of the proper scaling fees and expenses 40

due in respect of the said timber and payment of all timber tax payable in respect of timber shown on the said accounts other than timber taken from the said Block 75 and Section 1, which tender was refused on the ground that such tender was not accompanied by a return on Form F.B. 38 hereinafter mentioned, and by the payment of the sum of \$2,025.24, being the amount of timber tax alleged to be due on the said timber cut from said Block 75 and Section 1 as hereinafter mentioned.

RECORD.
No. 2.
Statement of
Claim.
April 4, 1929.
(Continued.)

6. The plaintiff, in the usual course of its business prior to
10 the issue of the writ of summons herein, agreed to sell the timber mentioned in paragraph 4 hereof to Henry McCleary Timber Co., of Shelton, in the State of Washington, United States of America, but by reason of the matters hereinafter complained of has not been able to deliver the said timber to the purchaser, and the said timber is now lying boomed up in the water at Crofton, Vancouver Island.

7. The plaintiff says that the said timber agreed to be sold as aforesaid and more particularly described in paragraph 4 hereof consists of timber suitable for the manufacture of lumber, but
20 that it is not the intention of the plaintiff or of the purchaser, the said Henry McCleary Timber Co., to use the said timber in British Columbia, or to cause same to be manufactured into sawn lumber or other manufactured wood product in British Columbia, or to dispose of the said timber to others who will use the same in this Province or have the said timber manufactured into sawn lumber or other manufactured wood product in the said Province.

8. The plaintiff further says that there is no royalty reserved to the Government of the Province of British Columbia upon the said timber mentioned in paragraph 4 hereof, either by the Forest
30 Act, by the Timber Royalty Act, or otherwise, and that there is no royalty or tax payable to the Government of the Dominion of Canada in respect of the said timber.

9. On or about the 3rd day of April, 1929, the plaintiff informed the official in charge of the Department of Lands, Forest Branch, at Vancouver, British Columbia, of its intention to deliver the said timber to the said purchasers, whereupon the said official demanded from the plaintiff a statement in respect of the said timber on Form F.B. 38, to which form reference will be made at length on the trial of this action, and the said official at the
40 same time also demanded from the plaintiff the sum of \$2,025.24, alleged to be an export timber tax imposed pursuant to section 58 of the Forest Act due and payable to His Majesty in respect of said timber.

RECORD.
 No. 2.
 Statement of
 Claim.
 April 4, 1929.
 (Continued.)

10. The plaintiff refused to make the return demanded in respect of the said timber on Form F.B. 38 on the ground that the said demand was illegal, unauthorized, and *ultra vires*.

11. The plaintiff refused to pay the said timber tax demanded and alleged to be due in respect of the said timber as aforesaid on the ground that the said demand was illegal, unauthorized, and *ultra vires*.

12. The plaintiff repeats the last three preceding paragraphs and says that the said official threatened that if the said return on Form F.B. 38 were not made and the said export timber tax not paid the Department of Lands, Forest Branch, would prevent the plaintiff from exporting or removing the said timber and any of it from the said Province, and the said official further threatened that if the plaintiff made any attempt to export or remove any of the said timber from the said Province the said Department would, pursuant to section 62 of the Forest Act, impose a fine and invoke and promptly exercise the powers of seizure over and in respect of the said timber and any boat which might be towing the said timber, and the said official further threatened that the said Department would under those circumstances procure that a certificate of clearance of any boat seeking to tow or assist in the exportation or removal of any of the said timber would be refused by the Customs Officer appointed by the Government of the Dominion of Canada for the granting of such certificate of clearance, and that accordingly the said Department would procure by force that none of the said timber would be exported or removed from the said Province unless and until the said return had been made on Form F.B. 38 and the said timber tax had been paid.

13. On or about the 3rd day of April, 1929, the plaintiff applied to the proper officers of the Customs Department of the Dominion of Canada at Vancouver, British Columbia, and on April 4th, 1929, prior to the issue of writ of summons herein, again at Nanaimo, B.C., for permission to clear the said timber for Anacortes, the appropriate Customs port in the State of Washington for that purpose, and in order that the said timber might be delivered to its purchaser, but such certificate of clearance was refused by the Customs Department on the ground that the British Columbia Department of Lands, Forest Branch, had not given permission that such timber might be exported or removed from the Province.

14. The plaintiff repeats the last three preceding paragraphs and says that the plaintiff, by reason of the illegal, unauthorized, and *ultra vires* demands of the said Department of Lands, Forest Branch, has been prevented from delivering the said timber mentioned in paragraph 4 hereof to the said purchaser, and that the

said timber is now being held boomed up in Crofton, Vancouver Island, British Columbia, aforesaid, pending delivery.

RECORD.

No. 2.
Statement of
Claim.
April 4, 1929.
(Continued.)

15. The plaintiff alleges the fact to be that it in particular as well as all other owners of timber lands which were granted prior to 7th April, 1887, and situate in said Esquimalt & Nanaimo Railway Belt, enjoy a market for the bulk of their timber cut from the said lands, in the State of Washington, U.S.A., where said timber obtains a better price than it does for use in the Province of British Columbia.

10 16. The plaintiff says that no moneys are due or payable by it to the Government of British Columbia in respect of the timber mentioned in paragraph 4 hereof or otherwise, other than those moneys of which tender has been made as aforesaid.

17. Alternatively the plaintiff says that section 58 of the Forest Act, being chapter 93 of the Revised Statutes of British Columbia, 1924, the return on Form F.B. 38, and other returns provided by the said Act and the provisions of section 62 and section 127 of the said Act, in so far as they refer to the plaintiff in respect of the timber cut and removed from said Block 75 and
20 Section 1, are illegal, unauthorized, and *ultra vires* the Legislature of the Province of British Columbia.

PARTICULARS.

(a.) The tax imposed or attempted to be imposed by said section 58 of the Forest Act is an indirect tax. Timber is a commodity in general use and susceptible of sale and purchase through several intermediaries before consumption. In respect of the timber to which said section 58 purports to apply, and which is sold to purchasers for export or removal from the Province of British Columbia, there is a general tendency to pass on to the
30 purchasers of the said timber the said tax, and the said tax is in fact, in the usual course of business, passed on to and assumed and paid by such purchasers.

(b.) The tax is not direct taxation within the meaning of the British North America Act.

(c.) The tax is in its true nature a customs or impost tax.

(d.) The tax is an excise tax.

(e.) The tax is an interference with and an attempt to regulate trade and commerce.

(f.) The tax is contrary to section 121 of the British North
40 America Act, and section 7 of the Terms of Union of the Province of British Columbia with the Dominion of Canada, and therefore *ultra vires*.

(g.) Such other grounds as Counsel may advise.

RECORD.

No. 2.
Statement of
Claim.
April 4, 1929.
(Continued.)

WHEREFORE THE PLAINTIFF CLAIMS:—

(a.) A declaration that it is not bound to comply with the demand made upon it by the Department of Lands, Forest Branch, in respect of Form F.B. 38.

(b.) A declaration that it is not bound or under any obligation to make to the said Department or any other Department of the Government of the Province of British Columbia, or otherwise under the provisions of the Forest Act, any return of or in respect to the said timber in the Statement of Claim mentioned.

(c.) A declaration that it is not bound or under any obligation to pay, under any of the provisions of the said Act, any tax in respect of the said timber. 10

(d.) A declaration that it is entitled, without let or hindrance from the Government of the said Province, to export or remove from the Province of British Columbia the said timber.

(e.) A declaration that it is not liable to any of the penalties provided by the said Act for failure to comply with the said demand, or to make any return under the said Act in respect of the said timber.

(f.) A declaration that it is not liable to any of the penalties provided by the Act for failure to pay the said tax provided by said section 58. 20

(g.) A declaration that the demand made upon it by the Department of Lands, Forest Branch, for a return as in the Statement of Claim mentioned, is illegal, unauthorized, and *ultra vires*.

(h.) A declaration that the demand made upon it by the said Department as in the Statement of Claim mentioned, for payment of tax upon the said timber, is illegal, unauthorized, and *ultra vires*.

(i.) A declaration that the threats made to it, as in the Statement of Claim mentioned, are illegal, unauthorized, and *ultra vires*. 30

(j.) A declaration that section 58 of the said Act is *ultra vires* the Legislative Assembly of the Province of British Columbia.

(k.) A declaration that section 62 of the said Act, in so far as it purports to affect or be applicable to the plaintiff in respect of the said timber, is *ultra vires* the Legislative Assembly of the Province of British Columbia.

(l.) A declaration that section 127 of the said Act, in so far as it purports to affect or be applicable to the plaintiff in respect 40

of the said timber, is *ultra vires* the Legislative Assembly of the Province of British Columbia.

(*m.*) Costs of this action.

(*n.*) Such further and other relief as the plaintiff may be entitled to obtain.

PLACE OF TRIAL: Vancouver, British Columbia.

DATED at Vancouver, B.C., this 4th day of April, A.D. 1929.

GHENT DAVIS,
Solicitor for Plaintiff.

- 10 This Statement of Claim was filed and delivered by Ghent Davis, of the firm of Davis, Pugh, Davis, Hossie, Ralston & Lett, Solicitors for the plaintiff, whose place of business and address for service is 6th Floor, London Building, 626 Pender Street West, Vancouver, B.C.

RECORD.
No. 2.
Statement of
Claim.
April 4, 1929.
(Continued.)

RECORD.

No. 3.
Statement of
Defence.
April 16, 1929.

No. 3.

STATEMENT OF DEFENCE.

1. The defendant admits the allegations contained in paragraph 1 of the Statement of Claim.
2. The defendant does not admit but denies each and every allegation contained in paragraph 2 of the Statement of Claim.
3. The defendant does not admit but denies each and every allegation contained in paragraph 3 of the Statement of Claim.
4. The defendant admits the allegations contained in paragraph 4 of the Statement of Claim. 10
5. The defendant does not admit but denies each and every allegation contained in paragraph 5 of the Statement of Claim.
6. The defendant does not deny the allegations contained in paragraph 6 of the Statement of Claim as to the agreement to sell and the present location of the timber therein mentioned, but does not admit but denies each and every allegation therein as to the inability of the plaintiff to effect delivery of the said timber, and the reason therefor.
7. The defendant admits the allegations contained in paragraph 7 of the Statement of Claim. 20
8. The defendant admits that, as alleged in paragraph 8 of the Statement of Claim, no royalty or tax is payable to the Government of the Dominion of Canada in respect of the timber therein mentioned, but, save and except as aforesaid, the defendant does not admit the allegations in the said paragraph 8 of the Statement of Claim.
9. The defendant admits that the plaintiff gave information as alleged in paragraph 9 of the Statement of Claim to the official therein mentioned, but otherwise does not admit but denies each and every allegation contained therein. 30
10. The defendant admits that the plaintiff did not make a return as alleged in paragraph 10 of the Statement of Claim, but denies that a return was demanded on Form F.B. 38 as therein alleged, and specifically denies that any demand was made which was illegal, unauthorized, and *ultra vires*.
11. The defendant admits that the plaintiff has not paid a tax upon the said timber referred to in paragraph 11 of the Statement of Claim, but denies that any demand made for the payment of a tax in respect of the said timber was illegal, unauthorized, and *ultra vires*. 40

12. The defendant does not admit but denies each and every allegation contained in paragraph 12 of the Statement of Claim.

13. The defendant does not admit but denies each and every allegation contained in paragraph 13 of the Statement of Claim.

14. The defendant does not admit but denies each and every allegation contained in paragraph 14 of the Statement of Claim, and specifically denies that illegal, unauthorized, and *ultra vires* demands were made by the Department of Lands, Forest Branch, as alleged, or otherwise howsoever.

10 15. The defendant does not admit but denies each and every allegation contained in paragraph 15 of the Statement of Claim.

16. The defendant does not admit but denies each and every allegation contained in paragraph 16 of the Statement of Claim.

17. The defendant does not admit but denies each and every allegation contained in paragraph 17 of the Statement of Claim, and specifically denies each and every allegation set forth under the heading of "Particulars" in subparagraphs (a), (b), (c), (d), (e), and (f) of the said paragraph 17, and specifically denies
20 that the sections of the Forest Act and the returns therein mentioned are illegal, unauthorized, and *ultra vires* the Legislature of the Province of British Columbia.

18. IN THE ALTERNATIVE and in further defence to the Statement of Claim herein, the defendant says that if a demand was made upon the plaintiff by the Department of Lands, Forest Branch, for a return as in the Statement of Claim mentioned (which the defendant does not admit but denies), that such demand was properly made and was legal and authorized.

19. IN THE FURTHER ALTERNATIVE and in defence
30 to the Statement of Claim herein, the defendant says that if a demand was made upon the plaintiff by the said Department of Lands, Forest Branch, for payment of a tax as alleged in the Statement of Claim (which the defendant does not admit but denies), that such demand was proper, legal, and authorized under the provisions of section 58 of the Forest Act.

20. The defendant will upon the trial of this action object
40 that the action is frivolous, vexatious, and an abuse of the process of the Court, and that no reasonable cause of action is disclosed, and that this action does not lie without the plaintiff having first applied for and obtained a fiat that proceedings might be instituted; or in the alternative the defendant will object that the

RECORD.

No. 3.
Statement of
Defence.
April 16, 1929.
(Continued.)

RECORD.
No. 3.
Statement of
Defence.
April 16, 1929.
(Continued.)

subject-matter of this action is properly the subject of a petition of right.

DATED at Vancouver, B.C., this 16th day of April, A.D. 1929.

BOURNE & DESBRISAY,
Solicitors for Defendant,

whose place of business and address for service is 930 Rogers Building, 470 Granville Street, Vancouver, B.C.

To the Plaintiff,
And to Ghent Davis, Esq., its Solicitor.

No. 4.

JOINDER OF ISSUE.

The plaintiff joins issue with the defendant on his defence herein.

DATED at Vancouver, B.C., this 18th day of April, A.D. 1929.

GHENT DAVIS,
Solicitor for the Plaintiff.

To the Defendant,
10 And to Bourne & DesBrisay, his Solicitors.

RECORD.

No. 4.
Joinder of Issue.
April 18, 1929.

RECORD.

No. 5.

No. 5.
 Notice of Motion by
 Defendant to strike
 out Statement of
 Claim.
 April 20, 1929.

NOTICE OF MOTION BY DEFENDANT TO STRIKE
 OUT STATEMENT OF CLAIM.

Take notice that the defendant intends to apply to this Honourable Court before the presiding Judge in Court in the Chambers Room at the Court-house at the City of Vancouver, British Columbia, on Wednesday, the 24th day of April, A.D. 1929, at the hour of 10.30 o'clock in the forenoon, or so soon thereafter as Counsel can be heard on the hearing of an application on the part of the defendant for an order that the plaintiff's Statement of Claim be struck out on the ground that it discloses no reasonable cause of action and is frivolous and vexatious, and that the plaintiff's action be dismissed. 10

And further take notice that in support of the above application will be read the Writ of Summons and the Statement of Claim herein.

Dated this 20th day of April, 1929.

BOURNE & DESBRISAY,
Solicitors for the Defendant.

To E. P. Davis & Co.,
 Solicitors for the Plaintiff.

20

IN THE SUPREME COURT OF BRITISH COLUMBIA.
(Before the Honourable the Chief Justice.)

RECORD.
No. 6.
Proceedings at
Trial.
May 1, 1929.
Plaintiff's evidence.
Discussion, Court,
and Counsel.

M c 471/29.

Vancouver, B.C., May 1st, 1929.

BETWEEN:

MCDONALD, MURPHY LUMBER COMPANY,
LIMITED,

Plaintiff,

10

AND

THE ATTORNEY-GENERAL OF BRITISH
COLUMBIA,

Defendant.

PROCEEDINGS AT TRIAL.

(Before the Honourable the Chief Justice at Vancouver, B.C.,
May 1st, 1929.)

MESSRS. D. N. HOSSIE and C. M. O'BRIAN, K.C., appearing
for the Plaintiff.

20 MESSRS. A. C. DESBRISAY and MARTIN GRIFFIN, K.C.,
appearing for the Defendant.

MR. O'BRIAN: This is in the nature of a test action by
which the plaintiff is seeking by means of a declaratory judgment
to test the validity of certain sections of the Forestry Act—namely,
section 58 and section 62 and section 127. If your lordship will
turn to section 58, you will observe that the Legislature by that
section purports to impose a tax according to the scale fixed upon
all timber cut upon certain lands, with a proviso of a rebate if the
timber is cut or manufactured in British Columbia.

30 MR. GRIFFIN: If your lordship pleases, I am requested
on behalf of the Attorney-General to request that the right of the
plaintiff to include him in this kind of an action for the purpose
indicated be determined, and it has not only been raised on the
pleadings, but a motion—so your lordship will have before you not
only a motion, but also the plea, and it is therefore before you, and
it seems to me, and to my friend with me, that this ought to be
determined first. It is a separate question of importance, apart
entirely from the main issue in this case, and it was raised in the
previous case of *Little v. The Attorney-General*, but not deter-

RECORD.

No. 6.

Proceedings at
Trial.
May 1, 1929.

Plaintiff's evidence.

Discussion, Court,
and Counsel.
(Continued.)

mined, as I will show your lordship in a few minutes, and it depends on the case of *Dyson v. The Attorney-General in England* whether that can be applied or be used, where the purport is to test the constitutionality of the Canadian Statute on the ground of its being passed by the Royal Legislature under our Federal Constitution, and there are various authorities to be referred to, and we request your lordship to take it up now and determine it, because if you so determine it in favour of the Attorney-General, certain evidence that my learned friend seeks to give will not be necessary.

10

THE COURT: But, Mr. Griffin, I presume that any determination I might make of that preliminary question would necessitate the postponement of the trial, and if it were left until the end of this trial it might obviate the necessity of a new trial and bringing back all these witnesses again. Now, I submit that to you, but you may preserve your right and go on subject to that, or do you desire to have that question first determined?

MR. GRIFFIN: Yes, my lord, the Attorney-General does desire it, and we are instructed to ask it to be done on his behalf subject to your directions to the contrary, and we would like to have it determined.

20

MR. HOSSIE: Well, I have a large number of witnesses here to-day—not particularly lengthy, but they have been brought a considerable distance and at a great inconvenience to themselves, and if this point is argued now it would take up all this morning and probably longer, and some of these witnesses would not probably get away to-night, and then if my learned friend's point should meet with your lordship's approval and you decide against me, it would necessitate an appeal; but in the event of its being decided that I was right, in bringing the action in this way, it would mean a new trial, and it is really not more than a nonsuit which can be determined at the conclusion of the evidence.

30

THE COURT: You see, Mr. Griffin, I have been trying to accede to your submission, but if my view did not determine the matter finally, it would only add costs to the proceedings.

MR. GRIFFIN: If your lordship pleases, I would ask to make an amendment to paragraph 8 to the defence.

THE COURT: Have you a copy of it?

MR. HOSSIE: My learned friend gave me notice first of all in his defence he admitted paragraph 8, which contained two facts, and he now seeks to withdraw the admission of one of those facts and set up a denial, and the denial of that fact amounts to an assertion on his part that a certain royalty is payable on particular logs in this action, and as soon as I received the notice of intention to amend, I asked him for particulars, and I have not yet received those particulars, and without them I must say I feel I must object to that amendment.

40

THE COURT: Well, should we go on? You have them now, have you?

MR. HOSSIE: I have received no particulars of it at all, merely the form of the proposed amendment, and without that I feel I must object to the amendment.

MR. GRIFFIN: I never heard of this question of particulars, but if you will look at the amendment you will see it is quite in order.

THE COURT: Which paragraph?

10 MR. GRIFFIN: Paragraph 8 of the Statement of Claim—and the paragraph to which it is in reply should first be read. (Reading same.) I will read the paragraph in the Statement of Claim first.

THE COURT: You admit that last part?

MR. GRIFFIN: Yes, we admit the last part—both originally and now; but we wish to withdraw the admission that there is no royalty reserved to the Province on this timber, and wish to put in a phrase like this: “The defendant admits that as alleged in paragraph 8 of the Statement of Claim no royalty or tax is payable to the Government of the Dominion of Canada in respect of the timber therein mentioned, but save and except as aforesaid the defendant does not admit the allegations in the said paragraph 8 of the Statement of Claim.” In other words, we don’t wish to have an admission, on reconsideration, that this timber is not liable to royalty. It may be. The effect of this decision may make it so, and the effect of the Statute is not entirely clear, and we do not feel, my friend and I, that the Government should be committed to an admission of that kind, and therefore, as we see it, we have a perfect right—

30 THE COURT: I do not take it that Mr. Hossie is objecting to the amendment, but he does want particulars of it.

MR. GRIFFIN: I cannot imagine what particulars he would want of that. It is a mere statement that this timber is not liable to royalty. We say it is liable to be taxed, but whether it is liable to royalty or otherwise is a matter which does not concern this case at all, and we think we have a right to withdraw that admission after consideration of the full purport of it.

MR. HOSSIE: I think the position is as I have stated. My learned friend is now asserting that there is certain royalty due in connection with this timber. He has not given me particulars of what that royalty is, and my submission is that there is no royalty due in respect of it, and I would like to know what he says is due. It is a very late date to make an amendment to the pleadings which were delivered after serious consideration.

THE COURT: Well, I suppose he could have asked you for particulars of your paragraph 8 if he had chosen to do so.

RECORD.

No. 6.

Proceedings at
Trial.
May 1, 1929.

Plaintiff's evidence.

Discussion, Court,
and Counsel.
(Continued.)

RECORD.

No. 6.
Proceedings at
Trial.
May 1, 1929.

Plaintiff's evidence.

Discussion, Court,
and Counsel.
(Continued.)

MR. HOSSIE: He might have done so. Section 8 of the Statement of Claim and paragraph 58 of the Act correspond, because the tax is only levied upon timber in respect of which no royalty is payable, and we allege no royalty is payable and therefore section 58 would apply to us.

THE COURT: Well, Mr. Griffin is simply denying that, and that has reference to the schedule in paragraph 58. You allege that there is no royalty there, and he does not admit that. He denies that.

MR. HOSSIE: Section 58 does not impose a royalty, my 10
lord.

THE COURT: You plead 58, do you not? I am not referring to the contents—

MR. HOSSIE: We are making it clear that those logs, if subject to any tax, must be subject to it by virtue of section 58 of the Forestry Act, because section 58 of the Forestry Act is complied with, and we do not come within any other section of the Act, and when my learned friend withdraws that admission I think I am entitled to have particulars of what royalty he says we are 20
subject to.

THE COURT: Well, you make a specific allegation in paragraph 8 that there is no royalty reserved to the Province of British Columbia, and he denies that. Supposing that were in the original pleadings, would you ask him for particulars?

MR. HOSSIE: If it were in the original pleading, I think I would have been in a rather different position, he having admitted it at that time, and changing his position suddenly, I want to know why.

THE COURT: If it does not embarrass you, why not go on? You see, he is locking horns with you on that, and it is for him to 30
make his case out when he comes to it.

MR. HOSSIE: I think I should be given particulars of what he now asks.

THE COURT: If you demand it, I will give you an adjournment.

MR. HOSSIE: No, I do not wish an adjournment.

THE COURT: Well, it would involve an adjournment of the trial, and the pleadings seem to be very simple. All right, then, the amendment is granted and the other question is reserved.

MR. HOSSIE: My lord, the position is very shortly this: 40
that there are four booms of logs, cut from lands granted prior to April 7th, 1887, now lying boomed up at Crofton, on Vancouver Island, awaiting delivery to the purchaser, who resides in the United States and who had agreed to buy these logs.

They have not been delivered to the purchaser because in the first place the Dominion Customs authorities in Vancouver and at Nanaimo refused to clear the ship and the logs unless the British

Columbia Government issued in respect of these logs an export permit under the terms of the Forest Act, and in the second place because the British Columbia Government demanded from the owner of the logs (the plaintiff) a return showing the details of the logs and the payment of a certain tax. The return is known as F.B. 38, and the tax amounted to \$2,025.24. The plaintiff refused to make the return and to pay the tax on the ground that both the demands for the return and the tax were illegal and *ultra vires* and they were not bound to make them.

10 This action was then brought for a declaration that that position is sound and the British Columbia Government has no authority to impose such an export tax because we should be permitted to export them free. The Dominion Government has no reason for refusing clearance other than its desire to help the British Columbia Government according to a previous arrangement. The facts I will prove shortly by four witnesses who are familiar with the matter.

I will call Mr. E. V. Munn.

No. 7.

20 EWART VINCENT MUNN, a witness called on behalf of the plaintiff, being first duly sworn, testified as follows:—

DIRECT EXAMINATION BY MR. HOSSIE:

Q.—You live in Vancouver, Mr. Munn? A.—I do.

Q.—And are engaged in what business? A.—I am in the lumber business—log salesman and brokerage.

Q.—Just speak out so that his lordship can hear you?

THE COURT: Yes, I can hear you now.

30 MR. HOSSIE: Q.—How long have you been engaged in that business in British Columbia? A.—Well, I have been in the lumber business and various branches of it for fifteen years in British Columbia and for four years as log salesman and brokerage in Vancouver.

Q.—What connection have you with the plaintiff Company? A.—I am engaged by the McDonald-Murphy Lumber Company selling logs—log salesman.

Q.—That is the plaintiff Company? A.—The plaintiff Company.

40 Q.—And do you operate independently as well? A.—Yes, I sell logs—buy and sell—sell on commission and purchase on commission.

Q.—Are there other people in the same business in British Columbia? A.—Yes.

Q.—In the same business as yourself? A.—Yes.

Q.—The plaintiff Company own certain timber limits, I believe, of which proof will be made shortly, on Vancouver Island.

RECORD.

No. 6.
Proceedings at
Trial.
May 1, 1929.

Plaintiff's evidence.

Discussion, Court,
and Counsel.
(Continued.)

No. 7.
Ewart Vincent
Munn, direct
examination.

RECORD.
 Plaintiff's evidence.
 No. 7.
 Ewart Vincent
 Munn, direct
 examination.
 (Continued.)

Has the plaintiff Company any sawmill or manufacturing operation? A.—No.

Q.—What is the nature of its operations? A.—It is engaged in cutting timber off the limits in question, logging them and selling the logs on the open market.

Q.—I forgot to say—you have an office in Vancouver, associated with the plaintiff Company? A.—Yes.

Q.—And you draw a salary from them, I believe? A.—Yes, I draw a salary.

Q.—Are you a shareholder in the plaintiff Company? A. 10
 —No.

Q.—And these logs which the plaintiff Company cut are sold in what market? A.—Principally in the United States—in the State of Washington.

Q.—Are there any sold in the local market? A.—A small percentage.

Q.—And these logs which you say you yourself buy and sell independently are used where—and where do they go? A.—My deals are made principally with mills in the United States. I buy logs in British Columbia and sell them to mills on the other side; 20
 or sometimes I buy logs here for mills on the other side or sell for logging companies here to mills on the other side.

Q.—Your operations, then, are always in respect of British Columbia logs for sale locally or in the United States? A.—Yes.

Q.—You are familiar with the procedure adopted by the Forest Branch of the Department of Lands of the British Columbia Government in respect of the export of logs to the United States? A.—Yes.

Q.—Just state briefly what procedure is in force in respect of that export and collection of tax? A.—On Crown-granted 30
 lands?

Q.—Yes? A.—Well, the custom has been to make application to the B.C. Forest Branch for a permit to export, and that with other papers, the manifests and ship's clearance, and so forth, are taken to the Customs.

Q.—By that you mean the export permit—that is, the document you get? A.—Yes.

MR. GRIFFIN: I think my learned friend had better confine himself to the timber in question in this case, because what may have been done in other cases may not in any way elucidate 40
 the construction of the Statute, and all that my learned friend need do is to bring out the facts in this particular case.

MR. HOSSIE: I have another purpose which I shall disclose in due course, which makes it important that I should establish the procedure adopted by the Department at the present moment.

THE COURT: Yes, I am curious to know that, anyway.

MR. HOSSIE: There was one point I wish to start from— in the first place the logs are cut in the woods and there is a royalty on them? A.—When they are put into the water—in salt water before towing or before sale—they are scaled by the Forest Branch, and the Government scale bill is issued covering those particular logs.

Q.—Now, at that time is there any distinction made between logs for local consumption or for export? A.—When you are going to export a boom?

10 Q.—No; I say at that time when the scale is first made?
A.—No.

THE COURT: There is a scale made for export or otherwise.

MR. HOSSIE: Yes.

Q.—Then the scale and royalty account is issued by the Department and those logs which may be used locally may be bought and sold on the local market? A.—Yes.

Q.—There is no tax for those? A.—No.

20 Q.—Other than when it is intended to export them, and then what is the procedure with regard to any of those logs? A.—You give the B.C. Forest Branch the number of the scale bill and request that a permit be made to export and then with that permit—

Q.—Well, just a minute; before you get the permit do you have any documents to sign? A.—When you go for the permit you are requested to sign a form.

Q.—What is the name of that form? A.—F.B. 38.

THE COURT: The form in question.

30 MR. HOSSIE: Yes, the form in question in the action,
F.B. 38.

Q.—And when that is signed, is there any other request made of you? A.—We are asked for a cheque, a marked cheque, for the taxes and scaling fees and the usual scaling expenses.

Q.—And on signing the Form F.B. 38, and on payment of or on the handing-over of the marked cheque, you are given what document? A.—We are given the permit to export.

40 Q.—And after that what happens? A.—Well, we take that permit, with export entries and manifest, to the Dominion Customs Officer and ask for clearance on the logs, and he grants that and we then proceed to take the boom down to the United States.

Q.—And make delivery to the purchaser? A.—Yes.

Q.—Now, at any time is there a second set of scale and royalty accounts made out or anything done to the ones which are originally issued? A.—When we ask to export the boom the scale and royalty account is changed.

Q.—In what way? A.—It is made out for export, and on timber that comes off these Crown lands in question the tax is

RECORD.

Plaintiff's evidence.

No. 7.
Ewart Vincent
Munn, direct
examination.

(Continued.)

RECORD.

Plaintiff's evidence.

No. 7.

Ewart Vincent
Munn, direct
examination.

(Continued.)

added according to the grade. The scale bill is changed and the tax is put on the new scale bill—the export tax.

Q.—That export tax is of course not shown on the original scale bill? A.—No, not when it is used in the local market; the export charge is not shown—merely the scaling fees.

Q.—Now in the course of your business, while you were selling logs for the plaintiff, and while you were selling logs for other B.C. owners, or buying them for other manufacturers, or selling them for yourself, what happens to the export tax? Who pays it?

THE COURT: What do you say? 10

MR. HOSSIE: Q.—Who pays the export tax on timber from Crown-granted lands? A.—The sale price is reckoned accordingly.

MR. GRIFFIN: The witness appears now to be not addressing himself to this particular transaction but to other transactions which he might have carried out in regard to timber, and that would not be helpful in determining this matter in dispute. Your lordship has allowed him to give the practice in making out those forms—

THE COURT: Why not begin by having this witness tell us what they did in respect of this transaction. 20

MR. HOSSIE: I will not press that question.

THE COURT: I want you to confine yourself to the pleadings first.

MR. HOSSIE: Q.—Now, Mr. Munn, you are familiar with the matters in question in the action here? A.—Yes.

Q.—Having to do with them from the outset? A.—Yes.

Q.—And you know about the four booms in question here? A.—Yes.

Q.—I would ask my learned friend to produce the scale and royalty accounts on those four booms? A.—I have them here. 30

Q.—You have duplicates of them.

THE COURT: What do you call them? A.—Scale bills—scale and royalty accounts.

(Documents marked Exhibit No. 1.)

MR. HOSSIE: Q.—Well, you had the original scale bills at one time, had you? A.—I have the original scale bills attached to the invoices here.

Q.—Oh, you have them? A.—Yes.

Q.—Now, just for the purpose of marking the scale bills and for use on reference later, I think we might keep the bundle together and we will just mark the scale bills first. 40

THE COURT: Mr. Hossie, throughout the thing it would be better to keep his things intact if you can. They do disappear, you know, inadvertently.

MR. HOSSIE: Q.—Now, you produce the four original scale bills? A.—Yes.

Q.—Covering the four booms in question in this action? A.—Yes.

THE COURT: Well, you have marked them as one exhibit?

MR. HOSSIE: Yes, Exhibit 1—we will call the scale bills Exhibit 1 and for identification “A, B, C, and D”—in case anything turns on them afterwards, and attached to each scale bill I see a form which appears to be a tally-sheet? A.—Yes, that is the tally-sheet made by the scaler at the time of scaling.

10 Q.—That will likewise be marked Exhibit 1, because it is identified by the like numbers. Now, when those logs were scaled, and the scale and royalty accounts issued, what next happened to the logs or to the documents? A.—Well, we invoiced them to the McCleary Timber Company on account of a sale made to them and proceeded to take steps to ship them.

Q.—Now, the invoices are these invoices attached to this? A.—Yes.

Q.—They are in duplicate in each case? A.—Yes.

20 Q.—Were these invoices issued in the regular course of business? A.—Yes.

MR. GRIFFIN: Just a minute until we have a glance at them. We haven't seen these before. Go ahead.

MR. HOSSIE: I want to have these invoices marked now. They will be Exhibit No. 2 and will be marked A, B, C, and D, to correspond with the scale bills.

(Invoices marked Exhibit No. 2.)

Q.—Then, having made out these invoices, what step did you next take? A.—We——

30 Q.—By “we” you mean whom? A.—Mr. A. D. Munn, the accountant in the plaintiff's office, and Mr. Aitken, of the St. Clare Towing Company—the company that was going to tow the logs—and Mr. Burke, of the Thomsen & Clark Timber Company——

Q.—That is a Vancouver company? A.—Yes, a Vancouver company. The four of us, after making out the export entries and manifest, we proceeded to the Dominion Customs Office and saw Mr. Green, the outward-manifest clerk, and presented our papers asking for clearance.

Q.—For what place? A.—For Anacortes, an American port of entry.

40 Q.—And for what boat? A.—For the tug “St. Claire.”

Q.—That is Mr. Aitken's boat? A.—Yes.

Q.—Did you secure that clearance? A.—Mr. Green looked over the papers——

Q.—But did you secure the clearance? A.—No.

Q.—For what reason?

MR. GRIFFIN: Are you going to call Mr. Green?

MR. HOSSIE: We are going to call Allen.

RECORD.

Plaintiff's evidence.

No. 7.

Ewart Vincent
Munn, direct
examination.

(Continued.)

RECORD.

Plaintiff's evidence.

No. 7.

Ewart Vincent
Munn, direct
examination.

(Continued.)

THE WITNESS: Mr. Green looked over the papers and said that he must have a permit from the B.C. Forest Branch before we could get clearance, and I asked him what authority he had for asking for that, and he said that he had instructions from the Department that no logs should be exported without that clearance or that permit from the B.C. Forest Branch. I asked him——

THE COURT: You said he had instructions from the Department—which Department did he say? A.—The Department that the Customs comes under—the Customs Department. 10

MR. HOSSIE: That would be the Dominion Department at Ottawa? A.—Yes, the Dominion Department. He informed me that there was a circular in the files that gave him instructions, but he did not want to get it out. He said there was an arrangement that existed between the B.C. Government and the Dominion Government whereby the B.C. Government had requested the Dominion Government to issue that order to protect them.

Q.—Mr. Green, by the way, holds what position in the Customs? A.—Mr. Green, I believe, is the outward-manifest clerk.

MR. GRIFFIN: If my learned friend is going to prove it 30 in that way, I cannot agree to it.

MR. HOSSIE: Well, who is Mr. Allen?

THE WITNESS: Mr. Allen is the Chief Collector of Customs—of Inland Revenue.

Q.—Mr. Green finally introduced you to Mr. Allen? A.—Well, Mr. Green could not produce this order and suggested I should go to Mr. Allen, and said that would be all right, so——

THE COURT: You say “so” what? A.—We went to Mr. Allen's office, and Mr. Allen was out. Then we came up——

MR. HOSSIE: Well, just a minute. 20

Q.—Before you left the office did you secure your clearance or was it refused? A.—It was refused to us.

Q.—And were your papers otherwise in order? A.—Yes, everything was in order except all that we lacked were the papers from the Forest Branch.

Q.—And then you went where? A.—We went to the Forest Branch in the Court-house here.

Q.—And the other three gentlemen were with you? A.—Yes, the four of us. Then we went to the Forest Branch and asked them to make out a permit, and that process takes a little time and 40 we said we would return later.

Q.—Who did you speak to there? A.—We spoke to Mr.—to one of the clerks in the office—Mr. Assen, I think it was.

Q.—And you returned later? A.—I think it was Mr. Assen.

Q.—And you returned later? A.—We returned at 2 o'clock, the four of us, and they had the permit—Mr. Joseph McKay had the permit ready and Form F.B. 38.

Q.—I would ask my learned friend to produce F.B. 38, the one in question.

MR. GRIFFIN: Haven't you got it?

MR. HOSSIE: You have it.

Q.—When this Form F.B. 38 was presented to you, were there any demands made on you? A.—We were asked to sign the Form F.B. 38 and to pay the tax.

THE COURT: The export tax? A.—Yes.

MR. HOSSIE: Q.—Were you told how much it was? A. 10 —It was \$2,025.14, plus——

Q.—24 cents—— A.—24 cents plus scaling fees of \$96.59 and a tax on all logs in those booms that did not come off our own lands, which came to \$46 and some cents—I have forgotten the exact number—\$46.03, or something like that.

Q.—And what answer did you make in respect of the form? A.—I refused to sign the form.

THE COURT: That will be Exhibit 3.

MR. HOSSIE: I have asked my learned friend to pro- 20 duce it.

THE COURT: You can check it up later on.

MR. HOSSIE: You had a copy made while you were in the office, did you not? A.—Yes.

Q.—And is that the copy that was made? A.—Yes.

Q.—Except the word "specimen"? A.—Well, that was written at the time.

(Form marked Exhibit No. 3.)

Q.—I didn't get your answer? A.—We were asked to sign Form F.B. 38, which I refused to do, and I tendered marked 30 cheques for the \$96.59 and covering the scaling fees.

Q.—Is that the cheque you presented? A.—Yes, that is the cheque and \$46.03 covering the tax on all logs——

(Cheques marked Exhibits Nos. 4 and 5.)

Q.—Those are Exhibits 4 and 5? A.———covering the tax on all logs that did not come from our lands.

Q.—By the way, in making payments to that Branch previously, in what way had they been made? A.—In exactly the same manner.

Q.—In what way? A.—Marked cheques.

Q.—And these cheques were marked, of course? A.—Yes.

Q.—And what answer was made by you? Why did you re- 40 fuse to sign F.B. 38? A.—I told them that we had been advised that we should have that permit to export without paying the export tax, but the officials said that no permit could be issued without paying those taxes and signing this form.

Q.—By the way, the officials with whom you were carrying on this conversation were whom? A.—Mr. Joseph McKay, and Mr. McKay called in Mr. Barclay.

RECORD.

Plaintiff's evidence.

No. 7.
Ewart Vincent
Munn, direct
examination.
(Continued.)

RECORD.
 Plaintiff's evidence.
 No. 7.
 Ewart Vincent
 Munn, direct
 examination.
 (Continued.)

THE COURT: Who is Mr. McKay? A.—He is the Chief Clerk for the District Forestry Branch.

MR. HOSSIE: Is he the man you always did that business with before? A.—Yes.

Q.—And Mr. Barclay was called in? A.—Yes.

Q.—Mr. Barclay is here in Court now? A.—Yes.

Q.—Was he present when you refused to sign F.B. 38? A.—Yes.

Q.—What answer did he make to you? A.—He said that we must sign that form and pay that tax in order to get the permit, and I said that I had been advised—or that we had been advised that we should have the permit without paying the tax and signing the form. 10

Q.—Did you give any reason? A.—I said that we considered that the Act was illegal.

Q.—Did you refer to the nature of the lands from which the timber had been cut? A.—Yes.

Q.—What did you say about it? A.—That they were Crown-granted lands—granted before 1887; and I think both the officials knew the lands in question. 20

Q.—That would be indicated to them in what manner? A.—By the marks on the logs, they would identify them as coming off certain lands.

Q.—Would that be indicated on the scale and royalty accounts? A.—Yes.

Q.—I show you Exhibit 1. What mark on that indicates the date of the grant of the land? A.—M-35 identifies the timber coming off Block 75, Cowichan Lake, and B-43 identifies the timber coming off Section 1, Nixon Creek, Renfrew, and E-64 identifies that coming off Block 75, Cowichan Lake. 30

Q.—Was there anything else said to you then after you had refused to do those two things? A.—I said that we had nothing to do but to take the logs down, anyway, and Mr. Barclay said that we could not possibly pass the Customs Officer with them because we could not get clearance.

Q.—That is the Dominion Customs Officer? A.—Yes, because we could not get clearance from the Dominion; and I said that we proposed to proceed with them, anyway, and he warned me that the tug was liable to seizure and also the logs if we did that. I asked him why, and he said that was covered in the Act by section 62, which provided for that penalty. 40

Q.—That was the Forest Act of British Columbia? A.—Yes, section 62.

Q.—Yes? A.—And then we went out.

Q.—Did he show you the Act? A.—He showed us the Act and read us section 62.

THE COURT: Section 62 of the——

MR. HOSSIE: Of the Forest Act of British Columbia.

Q.—Would you recognize the section if you saw it again? A. Plaintiff's evidence.
—I think I would, yes. Yes, that is it.

Q.—Mr. Barclay read that section to you at that time, did he? A.—Yes.

Q.—And then you left the office, did you? A.—We left the Forest Branch Office and went down to see Mr. Allen.

THE COURT: The Chief Customs Collector? A.—Yes, the Collector of Customs.

10 MR. HOSSIE: By the way, did you know who Mr. Barclay was? A.—Mr. Barclay. I wasn't told his official position, but I understood he was from the Chief Forest Branch.

Q.—And then you went back to Mr. Allen, the Collector of Customs this time? A.—Yes, and I told him that we wanted to get clearance on these four booms of logs; that we had been to the Forest Branch to request a permit, and that they had refused to give it to us unless we paid the tax and sign Form F.B. 38, which we had refused to do as we considered it illegal. And Mr. Allen said that it would be impossible to get a clearance without the
20 permit to export. I asked Mr. Allen if he would mind telling me his authority or showing me his authority, and he sent for a file and read out a circular from it giving him instructions to demand a permit from the B.C. Forest Branch.

THE COURT: Have you that?

MR. HOSSIE: Mr. Allen has been subpoenaed to produce it, but I have a rough copy of it here, my lord.

THE WITNESS: And then I asked Mr. Allen if we could get clearance—if this was all that we lacked to get clearance, and he said yes, except that he had understood that the logs were cut
30 on Vancouver Island and for that reason came within the jurisdiction of the Port of Nanaimo and should be cleared from that port.

Q.—And had you cleared logs coming from Vancouver Island from Vancouver before? A.—Yes.

MR. GRIFFIN: That would not be evidence against the Government of British Columbia.

MR. HOSSIE: Q.—And then you left his office at that time? A.—Yes, we left his office.

Q.—You didn't yourself go to Nanaimo afterwards? A.—No.

40 Q.—Now, when these invoices were made out to the Henry McCleary Timber Company, Mr. Munn, I notice they show that the export tax has been paid by the plaintiff; at least, that is indicated on the bottom. But the original invoices, however, were never sent forward, were they? A.—No.

Q.—For what reason? A.—For the reason we could not send the logs.

RECORD.

Plaintiff's evidence.

No. 7.

Ewart Vincent
Munn, direct
examination.

(Continued.)

RECORD.
 Plaintiff's evidence.
 No. 7.
 Ewart Vincent
 Munn, direct
 examination.
 (Continued.)

Q.—Well, where are they now—these logs? A.—They are tied up at our booming-grounds on Vancouver Island, at Crofton.

Q.—And they haven't been sold to anybody else? A.—No.

Q.—Nor any change taken place in regard to them? A.—No.

Q.—Now, in the course of your business dealings with British Columbia logs for export, in buying and selling them, what have you found to be the tendency in regard to the ultimate payment of the export tax imposed by the B.C. Government? By whom is it ultimately paid?

MR. GRIFFIN: That is, I suppose, a matter for his lordship to decide. 10

THE COURT: If counsel will agree that this witness will settle that—

MR. HOSSIE: No; I think, my lord, I am entitled to prove this fact. No matter who pays the tax here, that it is passed on to others. I think that as a fact is capable of proof. But what effect it has on the legality of this particular tax, it is for your lordship to decide. But the business relations of the commercial world in this Province, I can tender evidence on that phase of it, and I submit it is admissible, that the export tax, while paid by one man, is passed on to others and it isn't borne by the man who himself pays it originally. 20

THE COURT: Might that not be inferred from the prices of the commodity after it leaves the hands of the producer or the manufacturer?

MR. HOSSIE: Yes, that is one way of proving it, and the other way of proving it is by these invoices.

THE COURT: Perhaps it would not be open to the same objection. Mr. Griffin thinks your present question is.

MR. HOSSIE: I think I am entitled to ask this question of this witness as he is in the business of buying and selling export logs for five years, and I submit he is in a very favourable position to say what happens in the commercial world, whether it is paid by the person on whom it is levied or whether it is passed on to others. 30

THE COURT: Do the books show that?

MR. HOSSIE: Yes.

THE COURT: Well, you can produce the books later and you can see what happens. It seems to me that is the proper evidence from which I could determine whether it was paid by anybody else. 40

MR. HOSSIE: Q.—Now, you have had charge of the sales for the plaintiff Company, for instance? A.—Yes.

Q.—And you have your own records? A.—Yes.

Q.—Have you any records with you showing past transactions indicating by whom the tax was ultimately paid? A.—I haven't any records with me, but I can produce records which will

show the various transactions which I have had, and in some cases those transactions have been where I have sold logs and merely got a commission for selling them, but I could give the names of the companies and they could produce the invoices.

10 THE COURT: Mr. Hossie, in this case there are some two or three thousand dollars which was demanded of him and which he did not pay, but had he paid that amount, what becomes of it? Does he get it back, and, if so, from whom and when? I suppose that is what you would have to show and then from that you would submit that that tax is really passed on to the consumer.

MR. HOSSIE: Q.—Well, in this particular case the \$2,025.24 which was assessed to you, was it intended to be borne by you or by whom?

MR. GRIFFIN: My learned friend is now endeavouring to get out the terms of the bargain upon which the logs were sold, and if he means that, let him make it clear and we can discuss it. Is that the meaning you want to get at?

20 MR. HOSSIE: I want to get at something much broader than that. I want to get at this fact: In the commercial world here this export tax is passed on to the purchaser in the regular course of business. Now, this witness has testified to that, but if my learned friend wants me to give it more specifically I will do that.

THE COURT: Have you finished your question?

MR. HOSSIE: Well, I just want to be sure it is in the right form.

Q.—The invoice you have in front of you, Exhibit 2, Mr. Munn, shows at the bottom the statement in regard to the export tax? A.—Yes.

30 Q.—Now, the price of the logs is also given. Will you tell me what is included in that price?

MR. GRIFFIN: I object to that.

THE COURT: But does that document show that?

MR. GRIFFIN: No.

THE COURT: Just wait a moment, I am asking the witness. As I understand it, Mr. Hossie is asking you to tell the contents of the document. Do you follow the question? A.—Yes, I think so.

Q.—And you understand it? A.—Yes.

40 Q.—Does that exhibit which you have in your hand enable you to answer Mr. Hossie's question? A.—Yes.

Q.—From the document? A.—Yes.

Q.—And which I can see if I look at it myself, assuming I can understand it? A.—Yes.

Q.—Then the document shows it? A.—Yes.

MR. GRIFFIN: Then it shuts out the evidence.

RECORD.
Plaintiff's evidence.
No. 7.
Ewart Vincent
Munn, direct
examination.
(Continued.)

RECORD.
 Plaintiff's evidence.
 No. 7.
 Ewart Vincent
 Munn, direct
 examination.
 (Continued.)

THE COURT: No; Mr. Hossie has what he wants. Now, what is your next question? Pardon me, Mr. Griffin.

MR. GRIFFIN: I just want to have a look at the document.

THE COURT: He will start on another question—that incident is passed, isn't it?

MR. HOSSIE: Yes.

THE COURT: Now, what is the next question?

MR. HOSSIE: I will continue to tender considerable evidence in support of the contention.

THE COURT: We are getting along very well so far, but 10 what is the next question?

MR. HOSSIE: I will ask this question, my lord.

Q.—In the course of your business here have you known of any instances in which the export tax was absorbed and paid by the B.C. log producer and exporter?

MR. GRIFFIN: I object to that entirely, my lord. There is no issue of that kind in this case.

THE COURT: Mr. Griffin, have you witnesses here, who, if that question were answered, would be prepared to either agree 20 to it or contravert it?

MR. GRIFFIN: Not so, my lord.

THE COURT: Then you say you are not prepared to deal with it. Does it arise out of the pleadings?

MR. GRIFFIN: No, my lord.

MR. HOSSIE: I would refer my learned friend to paragraph 17 and particularly to Item "A," right at the top of the page. We say in the particulars: "The tax imposed or attempted to be imposed by said section 58 of the Forest Act is an indirect tax." That is the fact which I have alleged and I am tendering this witness in proof of it. 30

MR. GRIFFIN: That, to my mind, my lord, is merely a definition taken from a previous law case as to what an indirect tax is or may be. It has no reference to the facts of any one particular transaction.

THE COURT: But he has pleaded it.

MR. GRIFFIN: Yes, but it is only a pleading of a definition.

THE COURT: Well, Mr. Griffin, the pleading is evidently good because it has not been removed, and you join issue on that, and he can go into the history and the character of a particular 40 line of business.

MR. GRIFFIN: You see, this is given as particulars under a substantive paragraph No. 17.

THE COURT: Yes, but it is part of the pleadings.

MR. GRIFFIN: Yes, but I am not discussing that, only the meaning to be properly attributed to it. "Alternatively the plaintiff says that section 58 of the Forest Act, being chapter 93

of the Revised Statutes of British Columbia, 1924, the return on Form F.B. 38, and other returns provided by the said Act and the provisions of section 62 and section 127 of the said Act, in so far as they refer to the plaintiff in respect of the timber cut and removed from said Block 75 and Section 1, are illegal, unauthorized, and *ultra vires* the Legislature of the Province of British Columbia." And in that we get the particulars that they are *ultra vires*. They set out all these particulars. They are *ultra vires* because (a)—and he gives the reason in this long paragraph.

10 That is an interference with trade and commerce and the tax is an excise tax. Those are not stated as facts in this case, but as principles of law, and what this witness is being asked in this case is what he knows of other transactions and who paid the tax, and leads to a cross-examination on these other incidents, and I submit they are irrelevant.

THE COURT: Well, of course, the Court must know the nature of the particular business—and this phase of the lumber business or various business activities respecting lumber. Now, may he not tell all that and tell us how they carry on their business.

20 How do they deal with these logs, referring to this particular commodity—not only himself, but others in the same line of work who export and have exported and are attempting to export logs.

MR. GRIFFIN: Well, I submit the practice prevailing—

THE COURT: Assuming he knows and has had experience with other concerns in the same line of business—

MR. GRIFFIN: I am not suggesting the witness will give something he doesn't know, but he is now going to give his conclusions from things going on around him; and I submit the practice prevailing between his office and the McCleary Company, or that prevailing between his office and some other named person in Seattle, does not assist your lordship in interpreting the Statute. They may carry on their business in any way they like. Take the land tax—whether it is direct or indirect, it would not matter whether the owner of the property had passed it on to the tenant by having a covenant in the lease—

30

THE COURT: Well, that argument may be very important after I have heard the evidence.

MR. GRIFFIN: Well, you will make a note of my objection because I think it will lead us very far afield.

40

THE COURT: What you are afraid of is whether Mr. Hossie is going to ask the witness if it is a direct tax or indirect tax.

MR. HOSSIE: I will submit that to your lordship later. All I want is to get the facts from the witness.

THE COURT: You may proceed.

RECORD.
 Plaintiff's evidence.
 No. 7.
 Ewart Vincent
 Munn, direct
 examination.
 (Continued.)

RECORD.

Plaintiff's evidence.

No. 7.

Ewart Vincent
Munn, direct
examination.

(Continued.)

MR. HOSSIE: Q.—Mr. Munn, in the course of your business here, in the export of logs in British Columbia, what do you find to be the marketing practice, or the practice as to marketing in respect to these logs? A.—Are you referring to the Crown-granted logs?

Q.—Yes, in respect of which an export tax is levied by the B.C. Government? A.—In making a sale to people on the other side of the line we add an export tax, and if the logs are to be delivered we add the towing; but the basis on which we work is always the price in British Columbia plus the tax—the export tax that the B.C. Forest Branch demands from us. 10

Q.—That is, the price you receive is a price greater than you can get in British Columbia by at least the amount of the tax? A.—Yes.

Q.—And the purchaser—whoever buys the logs from you is charged the amount of the tax—that is included in the price? A.—Yes.

Q.—Now, the particular invoices you have in front of you show a price of \$21 for No. 1. What was the price in British Columbia for that timber at that time? A.—The list price was ten, fifteen, and twenty. These logs were a little higher up here because they are a special kind of log, but the list price was ten, fifteen, and twenty, and then to that we added the tax, which was our usual custom. We put the British Columbia price above and then the added tax to the invoice. 20

Q.—And the tax on that particular invoice 2-A was how much? A.—\$2 on the No. 1 grade.

Q.—What is the amount shown on that invoice? A.—It is \$22 on this particular boom.

Q.—Here is a red pencil. Draw a circle around it. And the other invoices are made up similarly? A.—There is an invoice covering each boom. 30

Q.—Now, have you known of any case in your experience whereby the export tax was borne by the B.C. exporter?

THE COURT: I take it your objection lies to this line of evidence?

MR. GRIFFIN: Yes, my lord.

THE COURT: What is that, Mr. Hossie?

MR. HOSSIE: Q.—Have you known of any instance in all your experience whereby the export tax was borne by the B.C. exporter and paid by him and not charged on to somebody else? A.—No. 40

THE COURT: Would it be good business not to add it? A.—No, because we could get that price in British Columbia without the tax.

MR. HOSSIE: Q.—Can you tell me how many logs, or what quantity of logs, you have exported to the United States, in

your experience—just approximately? A.—My personal experience?

Q.—Yes?

MR. GRIFFIN: I submit that is not of any assistance to us.

THE WITNESS: I haven't got the exact figure.

MR. HOSSIE: Q.—But you could get the exact figures if you were required to do so? A.—Yes, approximately; but a good many of my deals have been selling logs on commission, and it would not be——

10 THE COURT: Just wait. That would not be admissible.

MR. HOSSIE: Q.—You don't know how many you have dealt with? A.—Not exactly.

Q.—How many have you dealt with, with the Henry McCleary Timber Company, or the plaintiff Company? A.—Well, in the four years we have exported I would say offhand——

MR. GRIFFIN: I take my objection——

THE COURT: I would like the exact amount.

MR. HOSSIE: Q.—That is capable of proof? A.—Yes.

20 THE COURT: Before the end of the trial you can produce a memo. of that. Mr. Griffin will not object to that.

MR. HOSSIE: Q.—Will you also look up the number of logs you have exported yourself? A.—Yes.

Q.—And give me that afterwards, the exact amount? A.—Yes.

Q.—I think before my learned friend starts his cross-examination I might file an admission of facts which may save you some little difficulty.

MR. GRIFFIN: That is all O.K.

MR. HOSSIE: I think it should be filed.

30 (Document marked Exhibit No. 6.)

MR. HOSSIE: And the abstract of title of Block 75, which is certified to by the Registrar.

(Document marked Exhibit No. 7.)

MR. GRIFFIN: This is new to us; just wait a moment.

MR. HOSSIE: And the abstract of title to Section 1.

MR. GRIFFIN: I cannot agree to this abstract going in as proof of title, because there is one statement in it that we have already noticed that we do not agree with—that there was a grant made on the 18th of December, 1884.

40 MR. HOSSIE: That is in Section 1.

MR. GRIFFIN: Well, the objection I make can be withdrawn.

MR. HOSSIE: It is my fault because I showed him the wrong one first.

THE COURT: I want counsel to say whether they have the right one and then mark it, and then I will look at it later on.

MR. HOSSIE: This is Block 75.

RECORD.

Plaintiff's evidence.

No. 7.

Ewart Vincent
Munn, direct
examination.

(Continued.)

RECORD.

Plaintiff's evidence.

No. 7.
Ewart Vincent
Munn, direct
examination.
(Continued.)

THE COURT: Make sure we have got the right Exhibit 7.

MR. HOSSIE: My friend has it in his hand.

THE COURT: Just wait a moment and do not let us get mixed up. We had Exhibit 7—where is Exhibit 7, and what is it?

MR. HOSSIE: Exhibit 7, my lord, is the abstract of title.

THE COURT: No; I am just asking you have you got it?

MR. HOSSIE: Yes.

THE COURT: It is marked?

MR. HOSSIE: It is not marked yet.

THE COURT: Well, do let us get it in sequence. 10

MR. GRIFFIN: There is an objection to the one which the Registrar now has.

THE COURT: Just wait. To what are you referring, Mr. Griffin?

MR. GRIFFIN: The new one. My friend, Mr. Hossie, switched the papers.

THE COURT: We had 7—and we haven't got beyond 7 yet. Get 7 marked first. Surely you two gentlemen can do this without all this confusion. We have Exhibit 7—where is Exhibit 7, is it marked? Mr. Registrar, have you Exhibit 7? 20

THE REGISTRAR: I haven't marked it yet only with a pencil.

THE COURT: Just wait. No other exhibit should be marked until you get No. 7 in. Are you objecting to that?

MR. GRIFFIN: Yes.

THE COURT: What is your objection to Exhibit 7, or what is sought to be called Exhibit 7?

MR. GRIFFIN: This document which was tendered as Exhibit 7 is a document in regard to the title to Block 75 and it states that the title is derived from a grant dated 21st of April, 1887, 30 and the case which my learned friend has brought before your lordship and which he pleads in section 2 of the Statement of Claim—

THE COURT: Paragraph 2.

MR. HOSSIE: I think my learned friend will save a little time if he will read the document again. He will find a statement that it commences with the Act of 1883.

MR. GRIFFIN: It is a question of law we are arguing.

THE COURT: Just wait a moment. What is your objection to the reception of that document marked Exhibit 8? 40

MR. GRIFFIN: The case brought before the Court is under paragraph 2 of the Statement of Claim. The claim is that the plaintiff or its predecessors in title were prior to the 7th day of April, 1887, the owners in fee-simple of certain timber lands. And the document tendered in support of that shows the first document of title in favour of the E. & N. Railway dated the 21st of April, 1887, two weeks after—

THE COURT: Instead of the 7th of April?

MR. GRIFFIN: Yes; therefore it is irrelevant and does not support the allegation that there ever was a person who owned this property prior to the 7th—

THE COURT: What do you say to that?

MR. HOSSIE: Looking at the document, I see it says this: "Act of Parliament, Chap. 14—1884 Vesting lands in the Dominion Government." "Grant, 21st of April, 1887, from the Dominion Government to the Esquimalt & Nanaimo Railway Company." And the chain of title commenced in 1884 by an Act of the Government of this Province which vested the lands in the Dominion Government.

THE COURT: And that was prior to the 7th of April.

MR. HOSSIE: By three years.

MR. GRIFFIN: I do not suggest that that Act had not been passed, but that is not a transference of title to a subject. It is merely a transference of title between the Crown Provincial and Crown Dominion. The allegation in the Statement of Claim is entirely different, that they were predecessors in title who derived title earlier than a certain important date and the document shows that they didn't, but that they derived a title which came out of a grant first on the 21st of April, 1887.

THE COURT: Where does that appear?

MR. GRIFFIN: It appears by the Act tendered. My learned friend says by Act of Parliament these lands were transferred from Crown Provincial to Crown Dominion, but they were never transferred to any subject or person or passed out of the title of the Province until the 21st of April.

THE COURT: Where does that appear?

MR. GRIFFIN: Right on the document itself—grant from the Crown (Dominion) to the E. & N. Railway.

THE COURT: And who are the predecessors of the plaintiff?

MR. GRIFFIN: Yes.

THE COURT: But where do you get the 7th of April?

MR. GRIFFIN: Out of paragraph 2 of the Statement of Claim.

THE COURT: No, Mr. Hossie—where do you get that, or do you want to amend that?

MR. HOSSIE: I think in the first place I am entitled to prove my title, such as it is, and my friend can pick holes in it when we come to argue it later.

THE COURT: But it may help you—

MR. HOSSIE: Yes, it may; I am learning a lot. And the next point is this title was granted by the Government of this Province on the 18th of December, 1884, and the Crown Dominion, according to the abstract my friend is now perusing, acquired its

RECORD.

Plaintiff's evidence.

No. 7.

Ewart Vincent
Munn, direct
examination.

(Continued.)

RECORD.
 Plaintiff's evidence.
 No. 7.
 Ewart Vincent
 Munn, direct
 examination.
 (Continued.)

title prior to the 7th of April, 1887, and that particular date, the 7th of April, is important, because after that date certain royalties were imposed.

THE COURT: Well, it will go in subject to your objection and Mr. Hossie will know what objections you have to it. That will be Exhibit 8. Now, Exhibit 8 is what?

MR. HOSSIE: Abstract of the other piece of property.

THE COURT: Have you any objection to that?

MR. GRIFFIN: No; that is all right, my lord.

(Document marked Exhibit No. 8.)

10

MR. HOSSIE: In connection with that I think I might put in a certified copy of Crown Grant No. 316.

(Document marked Exhibit No. 9.)

MR. HOSSIE: And Crown grant (Dominion) to the E. & N. Railway Company.

(Document marked Exhibit No. 10.)

MR. HOSSIE: And I will put in—I haven't a spare copy with me at the moment—an excerpt from the B.C. Gazette.

THE COURT: What is that?

MR. HOSSIE: The incorporation of the plaintiff Company and its right to own timber. 20

MR. GRIFFIN: That is admitted.

MR. HOSSIE: I don't wish to clutter up the record, but we have a cutting agreement on Block 75 and I think my learned friend admits that.

MR. GRIFFIN: We have never seen it.

MR. HOSSIE: I would suggest that that be given a number now.

THE COURT: Yes.

MR. HOSSIE: It is a cutting agreement.

30

THE COURT: It will be marked 11 for identification.

(Document marked No. 11 for identification.)

MR. HOSSIE: Q.—Just to identify it: You are familiar with the two original documents there? A.—Yes.

Q.—They are produced from the plaintiff's records? A.—Yes.

MR. HOSSIE: Your witness.

CROSS-EXAMINATION BY MR. GRIFFIN:

Q.—There is just one question I want to ask you about your conversation with Mr. Barclay. Is it correct that Mr. Barclay at the time you were discussing this Form F.B. 38 advised you that the form itself was of no special importance, but the information contained in it was the thing that the Department required? A.—Yes, Mr. Barclay did make that remark, but at the same time I was requested to sign it. 40

No. 7.
 Ewart Vincent
 Munn, cross-
 examination.

Q.—But you were advised that it was not obligatory to sign it as long as the information was given? A.—Well, I did not understand that it was not obligatory to sign it.

Q.—I am asking you if you were not carefully so advised that it was not obligatory to sign it? A.—No.

Q.—Do you deny that? A.—I was told——

THE COURT: Let him answer.

THE WITNESS: I was told by Mr. Barclay that the form was not important, but that I was to sign it. I understood I had
10 to sign it before I got the permit and pay the tax.

MR. GRIFFIN: Q.—Now, you were asked—or you stated in your testimony—that you did not give it in detail—that a small percentage of your cut was sold to mills in British Columbia. I would like you to give me the percentage as near as possible. A.—Sometimes 10 per cent. and sometimes 20 per cent.

Q.—What did they sell in 1928 in British Columbia? A.—I cannot give you the exact figures, but I can get it from the books.

THE COURT: He can get that later on.

MR. GRIFFIN: Q.—And your sales abroad are confined to
20 Washington? A.—Yes.

Q.—I am not speaking of you personally, I am speaking of the McDonald-Murphy Company? A.—The only export sales they make are in the State of Washington.

Q.—That is to Puget Sound ports? A.—Yes.

Q.—Or points to which they can tow logs? A.—Yes.

Q.—They don't send it to Cape Flattery or down the coast?
A.—No.

Q.—So for the purpose of this discussion we can limit it to
30 Puget Sound points? A.—Yes, those are the only points where we sell for export.

Q.—And their customers (that is McDonald-Murphy's customers) are mills, are they? A.—Yes.

Q.—They are either mills local, B.C., or Washington? A.—Yes; occasionally we sell to one or two companies in town that export these logs to Japan, but in all other cases it is to mills.

THE COURT: That is, the plaintiff sells to the mills? A.—Yes, in almost all cases.

MR. GRIFFIN: Q.—Except an occasional sale to people who export to Japan? A.—Yes.

Q.—And these logs in question are logs suitable for lumber
40 and shingles? A.—Yes.

Q.—And if taxable they come within that first part of that schedule.

THE COURT: Section 58.

MR. GRIFFIN: They come within section 58 if taxable at all.

THE WITNESS: I didn't understand the question.

RECORD.
 Plaintiff's evidence.
 No. 7.
 Ewart Vincent
 Munn, cross-
 examination.
 (Continued.)

Q.—My question is whether the logs in question are suitable for lumber and shingles to bring them within "No. 1." A.—Yes, the logs would be suitable for lumber and shingles.

Q.—Now, in discussing the matter of price, you made the remark that the list price on a certain date in British Columbia was ten, fifteen, and twenty for the different grades of logs? A.—Yes.

Q.—Whose list is that? A.—That is a list established by the loggers of British Columbia—the recognized list of prices prevailing. 10

Q.—And that is made up by whom? A.—The Association.

Q.—Just give me the correct name of this Association? A.—Well, the loggers have an association called the B.C. Loggers' Association.

Q.—And that is the one you refer to? A.—Yes.

Q.—Are you an official of it? A.—No.

Q.—Were you at one time? A.—No.

Q.—Who is the secretary of it? A.—Mr. Stewart at the present time.

Q.—And does he circularize the price from time to time, advising them of the list price? A.—I believe he does. When there is any change I guess the members are advised of it. 20

Q.—Well, then, they know the price. And if there was no change in the price there would be no need to circularize them? A.—No.

Q.—And does it have a committee—this Association? A.—I am not very familiar with the workings of the Association; I don't belong myself.

Q.—Then how do you learn the price? A.—Our Company is a member of the Association. 30

Q.—Then some member of the McDonald-Murphy Company gets this information from the Association? A.—Yes, all members get the information.

Q.—Well, that must be written—a circular? A.—Yes, it would be.

Q.—Have you ever seen them? A.—I have seen some, yes.

Q.—Then that would be for three grades of logs? A.—Yes.

Q.—Which are commonly called Nos. 1, 2, and 3? A.—Yes.

Q.—The No. 1 being a better log and carrying the highest price? A.—Yes. 40

Q.—And the No. 1's there are variations— A.—No.

Q.—They aren't all the same grade? A.—No.

Q.—Now, is this list price binding on the members of the Association? A.—No; we can ask more.

Q.—Is he allowed to take less? A.—If the quality justifies it. He is permitted to do so. There is nothing binding at all.

Q.—But it is a standard then? A.—Yes.

Q.—Now, have they an institution of the same kind in Washington? A.—I am not very familiar with what Association the loggers have got in Washington, or how that list price is established down there, but they have a list price.

Q.—Yes, I am so advised. And it is published in the trade journals, for example? A.—Yes, it is published in the trade journals, but not always accurately, though.

Q.—And the information you have regarding it would be out of the trade journals—on the Washington price? A.—The information I have of the Washington price is from my connections on the American side.

Q.—They give it to you, how? A.—By telephone or letter or some similar form of communication.

Q.—And do they continually keep you advised of the price in Washington? A.—Yes.

Q.—And have you those communications on file? A.—Yes, any that I had by letter; but then it is usual to get them by telephone.

Q.—But you have had some by letter? A.—I don't recall any specific instance where I did have anything by letter, but I might be able to find one.

Q.—But you have them frequently by telephone? A.—Yes.

Q.—Who is the person who telephones them to you? A.—There is a man in Seattle by the name of—do you want his name?

Q.—Yes? A.—A Mr. Conklin. He knows the market down there pretty well.

Q.—Who is he? A.—He is a man I work with considerably.

Q.—Well, what connection has he with the McDonald-Murphy Company? A.—No connection whatever.

Q.—He is a log-broker, is he? A.—Yes.

Q.—Well, he telephones you the prices from time to time and keeps you posted? A.—Yes.

Q.—And that is the way you keep in touch with the market down there? A.—Sometimes I talk with the owner or manager of a mill down there and he tells me.

Q.—But you keep in touch by personal communications with the millmen and brokers? A.—Yes.

Q.—And you don't know the conditions in Washington well enough to say whether they have an Association there or not? A.—I know they have an Association, but I don't know how the prices are set.

Q.—Well, do the prices emanate from an Association as they do here? A.—They must.

THE COURT: Mr. Hossie, perhaps some of the other witnesses you are calling might be able to give Mr. Griffin this information, because Mr. Munn does not pretend to.

RECORD.
 Plaintiff's evidence.
 No. 7.
 Ewart Vincent
 Munn, cross-
 examination.
 (Continued.)

RECORD.

Plaintiff's evidence.

No. 7.

Ewart Vincent
Munn, cross-
examination.

(Continued.)

MR. HOSSIE: Yes, I think my learned friend can have better opportunities to get that information later.

THE COURT: Because if this is of any importance I want the best information available.

MR. GRIFFIN: I am just going to ask him a few questions further.

Q.—Is this "The Timberman," of Portland, Oregon, a recognized trade journal for the lumber business? A.—Yes.

Q.—In fact, it is the recognized timber journal? A.—It is a trade journal that is most widely read among the loggers, I believe. 10

Q.—And this is where you would go to get the information in so far as it is contained in trade journals? A.—Well, I have always found trade journals to be very inaccurate as regards prices.

Q.—Yes, I quite follow you there; but so far as you do or can resort to a trade journal, this is the one you would recommend? A.—Yes.

THE COURT: I take it that it is a reputable trade journal?

MR. GRIFFIN: Q.—Now, I see it contains at the same time and in the same numbers, on some occasions, the B.C. prices and the Puget Sound prices? A.—Yes. 20

Q.—And, roughly speaking, the difference appears to be about \$3 higher in Washington than in British Columbia? A.—As a rule.

Q.—That is about it? A.—Yes.

Q.—And that \$3 is practically made up of the \$2 B.C. tax, or is represented by the B.C. tax and the \$1 American tax? A.—It isn't higher for that reason, because when we export logs, with the tax, the price isn't the same as the Washington price—it isn't always a \$3 spread; it might be \$2 and it might be \$4. 30

Q.—But the price is higher in Washington than in British Columbia? A.—Yes.

Q.—And has been for a year—in fact, more than a year? A.—Yes.

Q.—And looking at that journal you will note the difference in the price is \$3, on the date that that journal speaks of. That is correct, isn't it, roughly? A.—Where is the price there?

Q.—There are some prices here. I will have to look over your shoulder to look at them. And there is Seattle, isn't it. Aren't those the prices there? A.—Yes, that is 1926. That is correct. 40

Q.—And isn't this the Vancouver one on the opposite page—British Columbia here? A.—Yes.

Q.—Ten, fifteen, and twenty? A.—Yes.

Q.—So that is, roughly speaking, a difference of \$3? A.—Yes.

Q.—On that date, being roughly in April, 1929? A.—Yes, that would be roughly a \$4 difference.

Q.—Now, there are other lands besides these old Crown-granted lands from which you habitually export logs, is there not?
A.—Yes, but the plaintiff Company at the present time only exports logs from these lands in question.

Q.—But other owners export them from lands on which there is a 50-cent royalty basis? A.—Yes.

Q.—And those logs also go down into the State of Washington? A.—Yes.

Q.—And are sold in competition with those you speak of, coming off old Crown-granted lands? A.—Yes.

Q.—Now, assuming that the conditions are the same, the prices would be equal? A.—Yes.

Q.—So that the fact that one pays a 50-cent royalty and the other a \$2 tax, it has no effect on the price in Washington? A.—We don't always sell on the Washington list price, you know.

Q.—Well, answer my question. The price you get or ask is in no way affected by the fact that one class of this timber pays a \$2 tax and the other a 50-cent royalty? A.—No.

Q.—Now, the price in Washington, in so far as it is not affected by the Loggers' Association, is fixed by supply and demand, is it not? A.—Yes.

Q.—Just as it is here? A.—Yes.

Q.—And I suppose your position is that you sell in the market that gives you the best price? A.—Yes.

Q.—And what decides you to sell, to Washington or here, is the prevailing market price in either place? A.—We sell our logs to the mill that can make the best use of them and pay us the best price, whether it is in Washington or British Columbia, but we never sell in Washington unless we can get as much or more than we can get in British Columbia for the logs.

Q.—Certainly not, because it would be easier for you to sell them here, and therefore you resort to Washington, when, after paying the tax, you can make more money in Washington than in Vancouver without paying it? A.—What is that question again?

Q.—You go and resort to the Washington market when it is high enough to give you a greater profit after paying the tax than selling in British Columbia without the tax? A.—We don't always get a greater profit over the tax. It depends on the market down there.

Q.—I say the motive in taking you into the Washington market is when they give you as good a profit as in British Columbia? A.—Yes.

Q.—Now, the Government tax incoming logs \$1? A.—Yes. They tax those logs that would bear a tax on this side.

Q.—Those that bear a tax here bear a tax over there? A.—Yes.

RECORD.

Plaintiff's evidence.

No. 7.

Ewart Vincent
Munn, cross-
examination.

(Continued.)

RECORD.
 Plaintiff's evidence.
 No. 7.
 Ewart Vincent
 Munn, cross-
 examination.
 (Continued.)

Q.—So all the logs going into Washington bear a \$2 tax? A.—No. 1's do.

Q.—And the other ones in proportion all the way down?

MR. HOSSIE: My learned friend is misleading him. He says all logs.

MR. GRIFFIN: Q.—All logs that come from Crown-granted lands? A.—Yes, that have a Provincial permit tax.

Q.—Now, the definitions of the various grades, that is also fixed by the Loggers' Association? A.—By the Scaling Department of the Forest Branch.

Q.—They fix the grades, do they? A.—They fixed the grades a long time ago.

MR. O'BRIAN: They fixed it by the schedule to the Timber Royalty Act.

MR. GRIFFIN: Are you familiar with the quantity of logs produced in Washington now in one year? A.—No, I don't know exactly what the quantity is.

Q.—Would you be in a position to agree with me that the total production of logs in Washington in one year would be about 8,000,000,000 feet? A.—Well, that sounds about right, but I am not in a position to say.

THE COURT: Mr. Griffin, there would be trade returns for that—official returns.

MR. GRIFFIN: This is taken from a trade return given to me.

THE WITNESS: Well, I am not in a position to answer that question accurately.

THE COURT: Mr. Griffin and Mr. Hossie, there is no objection to your putting in extracts from official returns. There will not be any trouble in putting them in.

MR. GRIFFIN: I don't want to put anything in just for the moment.

Q.—Do you know the official returns in Vancouver?

THE COURT: Surely those are all in official returns.

MR. O'BRIAN: We would very much like to have them in if they are going to be referred to.

THE COURT: How could the witness be expected to carry all that in his head?

MR. GRIFFIN: He might have records of it.

THE COURT: These are Government returns and they are available, and you get them for nothing.

MR. GRIFFIN: All right, I will drop it.

THE COURT: Why take up time with him when he doesn't know.

MR. GRIFFIN: Q.—Now, Japan was referred to—I suppose you know nothing about the conditions that fix the market

price of logs in Japan? A.—I am not familiar with the market conditions in Japan. That is a separate business.

Q.—Now, in referring to the prices in these various transactions, I notice the price of the No. 1's that you were to obtain from the McCleary Company was \$21. A.—Yes.

Q.—And the other grades at reduced prices? A.—Yes.

Q.—So at that date you were getting after paying the tax of \$3—the purchaser pays the American tax, doesn't he? A.—Yes.

10 Q.—So you were getting out of this particular transaction for No. 1's \$19 net after paying the tax? A.—No, we were getting \$21—and we paid the tax.

Q.—Therefore you would have \$19 left, wouldn't you? A.—No. We charge them with the tax. The tax is charged on the invoice besides the \$21.

Q.—So they were paying you then \$23? A.—Yes.

Q.—On the 30th day of March? A.—Yes.

Q.—Well, now, will you just look up and tell me the list price on the 30th day of March? A.—The list price was thirteen, nineteen, and twenty-six.

20 Q.—In Washington? A.—In Washington, yes.

Q.—And the Washington price for No. 1's on that date was \$26? A.—Yes.

Q.—And you were selling these at \$23 then? A.—We were selling those at \$21, plus the tax which would be \$23, and it would cost the purchaser another dollar for a tax and plus his towing.

Q.—He pays for the towing? A.—Yes.

Q.—Which is the other \$2, I suppose? A.—Yes.

Q.—So this was a sale at the Washington list price on that particular day? A.—Well, this deal——

30 Q.—Well, was it or was it not? A.—No; that sale was made before that list came in.

Q.—But it was actually made on the list price that prevailed that day? A.—That sale was made before that list came into effect.

Q.—Well, answer my question and I will go into that with you, too.

THE COURT: Well, I follow him. It happened to be the price of \$26.

40 THE WITNESS: But that was arranged before the price of \$26 came into effect.

Q.—But on that date it happened to be the same price? A.—Yes.

MR. GRIFFIN: And this transaction was arranged some time before? A.—Yes.

Q.—How long before? A.—Is that invoice dated March 30th?

RECORD.

Plaintiff's evidence.

No. 7.

Ewart Vincent
Munn, cross-
examination.

(Continued.)

RECORD.
 Plaintiff's evidence.
 No. 7.
 Ewart Vincent
 Munn, cross-
 examination.
 (Continued.)

Q.—Yes? A.—We arranged for three months ahead from the first of—for a certain quantity, on the first of the year.

Q.—At a fixed price? A.—Yes.

Q.—And that would be confirmed in writing? A.—Yes.

Q.—And you must have the list in writing—the confirmation? A.—Yes.

THE COURT: Q.—What would be that date? What does he establish that price, and what would be the price in the State of Washington that day?

MR. GRIFFIN: Q.—When did you arrange that price? 10
 A.—The price was arranged between Christmas and New Year's—I think about the 27th of December. I met the representatives of the McCleary Timber in Seattle and made the sale.

Q.—And do you know what the Washington list price was at that time? A.—I believe the Washington list price at that time was twelve, eighteen, and twenty-four.

Q.—And can you verify that by any records that you have got? A.—For the reason that it is not usual to sell B.C. logs on B.C. scale at the Washington list prices, it would be hard for me to produce that. You would have to get that information in 20
 Washington.

Q.—I can get that in Washington? A.—I suppose so. I don't know what the price was on that date, but as far as I know the list price was \$26.

Q.—\$26 for the No. 1's? A.—Yes.

Q.—And you say that these logs would be \$2 over what the prevailing price was? A.—Yes.

Q.—For delivery at a future date? A.—Yes, because they were a special log. They weren't just a camp-run log. They were a special log. 30

Q.—And you got a higher price? A.—Yes, because certain low grades were taken out.

Q.—And you say that was all in writing and the contract was confirmed by letter? A.—Yes.

Q.—And the Company has got it? A.—Yes.

Q.—Now, you were saying you found these trade journals inaccurate. I take it that that only means occasionally. You would not like to go so far as to say they are more inaccurate than accurate? A.—I merely said that because as a matter of business I would not want to take them as the last word in regard to prices. 40

Q.—Would you think it would be a fair method for me to look up "The Timberman" on the 26th of December as to the price on that day? A.—Well, to be honest, I have never followed the trade prices in those journals and I do not know how accurate they are, but I presume they are fairly accurate.

Q.—Where do you keep your record of the prices? A.—In my head.

Q.—Entirely? A.—Yes.

Q.—So you have no record in your office giving the exact price? A.—No, there was no record kept that I know of.

Q.—I should think you would have a memorandum-book giving prices? A.—No, there are only a few commodities in selling logs, and it is easy to remember them.

Q.—Now, in this particular case, if the tax is held to be illegal, you can sell for the same price in Washington, can you not—you meaning the plaintiff? A.—If what?

10 Q.—If this tax is declared to be not collectable the price in Washington will be the same? A.—Do you mean the list price in Washington?

Q.—No; the saleable price in Washington will be the same whether this tax is collectable or not? A.—If the tax is held illegal?

Q.—Yes; the Washington mills will still give you the same price for the logs? A.—Yes, they will give us the prices they are giving us now until this contract is filled.

20 Q.—No; I mean the Washington price for logs will be the same whether the Court decides this tax to be collectable or not collectable? A.—That is a question I could not answer, because it is impossible for me to tell what effect it would have on the market.

Q.—It would not affect the market at all? A.—That would be merely an opinion on my part.

Q.—Well, the price in Washington is fixed by Washington, isn't it? A.—Yes.

Q.—And is governed by the conditions down there? A.—Yes.

30 Q.—So whether this country taxes the logs or not would not affect the price of logs down there? A.—I don't know whether it would or not.

Q.—Can you suggest to me in any way how it possibly can? A.—I don't know just what effect lifting the tax would have.

Q.—It would not have any, would it? A.—The lifting of the tax?

Q.—Yes? It would not have any effect on marketing of logs in Japan, for instance? A.—It probably would have no effect on that market.

40 Q.—And it wouldn't have any in the State of Washington? A.—I don't know.

Q.—Well, can you suggest any way by which it could have any effect on the price? A.—I don't imagine I could—but it might have some effect.

Q.—But in your opinion, though, it wouldn't? Is that not your opinion? A.—No; I have not really gone into the thing very thoroughly and I don't know.

RECORD.

Plaintiff's evidence.

No. 7.

Ewart Vincent
Munn, cross-
examination.

(Continued.)

RECORD.

Plaintiff's evidence.

No. 7.

Ewart Vincent
Munn, cross-
examination.

(Continued.)

Q.—Well, just address yourself to it as a matter of straightness and frankness? A.—I don't wish to express an opinion.

Q.—Well, I will go at it in a different way. If the price of logging in British Columbia was raised \$1 you would not get \$1 more in Washington, would you? A.—No.

Q.—And if the cost of towing in British Columbia was raised \$1 you would not get any more for them in Washington? A.—No.

Q.—And if the cost of transportation was raised \$1 in British Columbia you would not get any more for them in Washington, would you? A.—No. 10

Q.—And if taxation were reduced \$1 in British Columbia you would not get any less for them in Washington? A.—No.

Q.—And therefore if it went down \$2 in British Columbia you would not get any less in Washington? A.—No, I don't suppose you would.

Q.—Now, these are just for conformity—the lands which are in question in this action, Sections 1 to 75; those are timber lands, aren't they? A.—Yes.

Q.—They aren't in any municipality? A.—No.

Q.—That is all. 20

RE-DIRECT EXAMINATION BY MR. HOSSIE:

Q.—In the United States market they use the Doyle scale, do they not? A.—Yes.

Q.—It is a different one to that used in British Columbia? A.—Yes, it is a different one to the one in British Columbia.

Q.—And does it show the same quantity, or is there a differential? A.—There is a difference in the scale—in the method of measurement and the method of grading and the content of the scale.

Q.—That is all, thank you. 30

MR. GRIFFIN: Now, wait a minute. If there is anything turns on the question of scale I want to go into it sufficiently to see if it does or not. Does your evidence taken in any way mean that the Americans have a different log scale? A.—Yes, and the scale affects the price.

Q.—Well, just translate the effect of that on these figures?

A.—Well, you cannot translate the effect of it on any particular case, because it varies according to the size of the logs and the quality of the logs. The difference in their scale consists of a difference in grading and the content of the scale. After a log gets to a certain size their scale gives more content than ours, and also there is a difference where they measure the log. They measure it a little different from what we do. 40

Q.—Well, in other words, a quotation in Washington means a quotation on the Scribner rule? A.—It always means on the B.C. rule.

No. 7.
Ewart Vincent
Munn, re-direct
examination.

Q.—Well, are these quotations all based on the B.C. rule? A.—Which?

Q.—The price in British Columbia and the price in Washington? A.—The prices in British Columbia are on the B.C. scale and in Washington on the Scribner scale.

THE COURT: I thought you said they were on the B.C. scale.

MR. GRIFFIN: Well, I am a little confused over what he did say.

10 THE COURT: He referred to the Washington quotations. You did say the Washington quotations were based on the B.C. scale, but what you meant by that was the quotations that you made here to the Washington people? A.—Yes.

Q.—Just watch how we are taking it. Speaking for myself, you see I am not a lumberman, although Mr. Griffin may be.

MR. GRIFFIN: No, I don't claim to be.

THE COURT: And when you get down to the stenographic part of it it may be very different to what you intended to say.

20 MR. GRIFFIN: Q.—When you sell B.C. logs in Washington you sell them on the B.C. scale? A.—When our Company sells logs in Washington they quote a price based on the B.C. scale.

Q.—And are paid on that basis? A.—Yes.

Q.—And these invoices are based on that basis? A.—Yes.

Q.—And if these logs were sold in Washington or Puget Sound they would be sold on the Puget Sound rule? A.—Yes, they would be sold on the American scale.

Q.—And for No. 1's would that give a larger number of feet or less for the same number of logs? A.—That depends on the scaler.

30 Q.—I am trying to get the difference between the scale and not the scaler? A.—Well, the general difference—I cannot give you the exact difference. You would have to get a scaler for that.

Q.—Well, aren't you a lumberman enough to know? A.—Yes, I can tell you my experience. As a rule, the Puget Sound scaler, if he scaled those logs, would give you a less number on No. 1 grade and he would probably give you a less content in the log.

Q.—He would allow you less? A.—Yes; instead of a million feet he would probably find 950,000 feet or 975,000 feet.

40 Q.—In applying his rule? A.—Not applying his rule alone, but applying his judgment.

Q.—Well, you see, you are trying to get the difference between the two scales in order to see to what extent we can intelligently use quotations in Washington and compare them to British Columbia? A.—My experience has been this: that sometimes there is 2 per cent. difference in value and sometimes 10 per cent. in

RECORD.

Plaintiff's evidence.

No. 7.

Ewart Vincent
Munn, re-direct
examination.

(Continued.)

RECORD.
Plaintiff's evidence.

value. It is hard to set an exact difference. It depends entirely on the quality of the logs and a good deal on the scaler.

No. 7.
Ewart Vincent
Munn, re-direct
examination.
(Continued.)

(Witness aside.)

Court adjourned until 2.30 p.m.

2.30 p.m., Court resumed pursuant to adjournment.

No. 8.

No. 8.
William McCleary,
direct examination.

WILLIAM MCCLEARY, a witness called on behalf of the plaintiff, being first duly sworn, testified as follows:—

DIRECT EXAMINATION BY MR. HOSSIE:

Q.—You live where, Mr. McCleary? A.—I live in Olympia, 10
Washington.

Q.—And you are a shareholder in the Henry McCleary Timber Company? A.—Yes, I am vice-president of the McCleary Timber Company.

Q.—And that Company operates mills where? A.—In Shelton and McCleary.

Q.—Both in the State of Washington? A.—Yes.

Q.—How long have you been in the lumber business? A.—Since 1901, in the spring.

Q.—In the State of Washington? A.—Yes. 20

Q.—Continuously since that time? A.—Yes.

Q.—Did you make any purchase of timber on a stumpage basis after you came to Washington? A.—Oh, yes; practically every year, more or less.

Q.—Can you state what was the maximum price of stumpage in or about the year 1903-04 in the State of Washington?

MR. GRIFFIN: How can that relate to any matter in question in this action, my lord?

MR. HOSSIE: I will undertake to show it has a bearing.

MR. GRIFFIN: The stumpage value of timber in 1903— 30

MR. HOSSIE: I will show that that has a bearing on the matter.

MR. GRIFFIN: It has no apparent bearing, and in order that we may have a chance to discuss it I think my learned friend should give me some indication of how it could be relevant, because on the face of it it appears to be totally irrelevant—the value of standing timber in Washington in 1903, that being the year when this tax was applied—how could it possibly apply to this?

MR. HOSSIE: I have no reason to hide anything. The position we take is this: that this tax was an effective embargo 40 on the importation of logs from British Columbia, and that tax

would be apparent if the tax was out of all proportion to the value of stumpage and logs could be had for less in the State of Washington—and if that is so the imposition of a tax of this size would operate as an embargo on the export of logs. Supposing the value of a log is only \$10 and the tax put on is \$100, that would have the effect of stopping the importation of logs from this market, and I think I can submit this evidence of what stumpage was worth at that time.

10 THE COURT: You want this evidence on which to base that submission.

MR. GRIFFIN: One has to have some limit to everything and this is an action involving a tax imposed by British Columbia; and the value of a commodity in Washington——

THE COURT: The same commodity.

20 MR. GRIFFIN: ——cannot elucidate the construction of the Statute. I am not prepared and had not the faintest idea that the question of prices of standing timber in British Columbia and foreign countries twenty-three years ago or twenty-six years ago could come up. How could it be possible for my learned friend and I to be forewarned that such an issue could possibly be raised? We have the Forestry official here, but how could he help us as to what the conditions were at that time? He might as well ask what they were in Japan——

MR. HOSSIE: Certainly, it might be relevant.

MR. GRIFFIN: Well, I only wished to state that it could not be relevant to any issue in question and could not assist you in determining the Statute.

30 THE COURT: There is a difference of opinion between you and Mr. Hossie on that, but so long as you are not embarrassed as to the fact or as to the prices, which I can readily see you are not prepared to go into——

MR. GRIFFIN: Quite.

THE COURT: Just wait—so long as there is no dispute about that I do not see how it could affect you when your submission would hardly be acceptable to me. I can see there can be no dispute at all as to the prices at that juncture.

MR. GRIFFIN: I do not know whether there would be or not, and Mr. McCleary being presumably for the moment the only person who could tell, I have no means of judging——

40 THE COURT: I will take his answer, and if as we go on it appears that you must adduce evidence to controvert his evidence, then I will consider that, of course, but at the present time I imagine there would be no dispute as to the condition of affairs in 1903-04 in Washington. That does not carry Mr. Hossie very far. At least, I do not see that it does.

MR. HOSSIE: Q.—What price did you pay for stumpage in 1903-04, Mr. McCleary? A.—The price was nominal at all

RECORD.
Plaintiff's evidence.
No. 8.
William McCleary,
direct examination.
(Continued.)

RECORD.
 Plaintiff's evidence.
 No. 8.
 William McCleary,
 direct examination.
 (Continued.)

times. It ran from 10 to 50 cents a thousand. The large companies—Weyerhauser Timber Company, I believe—

Q.—Not what you believe, but just your own experience of the fact. At any rate, the highest price you paid was 50 cents?

A.—Yes; as far as I am concerned, that is true.

Q.—Did you buy over any large area in Washington? A.—No, we didn't. We bought in small amounts, because we didn't have money enough at that time to buy any large amounts.

Q.—But you bought all you required for your purposes? A.—Yes.

Q.—Now, at the present time your Company imports logs from British Columbia? A.—Yes.

Q.—For the purpose of sawing them up in your mills? A.—Yes.

Q.—And the particular logs in question in this action as we have heard this morning were invoiced to you by reason of the fact you bought them? A.—Yes.

Q.—Your Company did? A.—Yes.

Q.—That is so, you bought these logs? A.—Yes.

Q.—And they were destined for your mill at Shelton? A.—I believe so, yes.

Q.—And were to be manufactured at the McCleary mill? A.—Yes, finally to be manufactured at McCleary but sawn up at Shelton.

Q.—Did you require those logs at that time, on the 3rd of April, for your purposes? A.—Oh, yes, we use them all the time.

Q.—Did you get any other logs to replace the logs you were to get from here? A.—Yes, we are buying them elsewhere. We don't get enough.

Q.—Well, you buy your logs where? A.—We buy them in British Columbia or any place on Puget Sound—any place we can get them.

Q.—And what factors govern the places where you buy them and what you pay for them? A.—The quality of the logs themselves.

THE COURT: What? A.—The quality of the logs themselves, the different grades.

MR. HOSSIE: Q.—And the logs you buy from British Columbia, what price do you pay for them, or what price have you paid for them up to date? A.—Well, I would have to refer to the invoices. My own man who buys them is here and he can get that from the invoices.

Q.—Well, something has been said this morning of the United States duty of \$1 a thousand—are you familiar with that? A.—Oh, yes.

Q.—What is that duty? A.—That applies to logs from British Columbia that carries an export tax in British Columbia.

Q.—And you have to pay that tax? A.—Yes.

Q.—At what price do you buy these particular logs from British Columbia? A.—At what price?

Q.—At what price, do you remember? A.—No, I couldn't. I would have to refer to the invoices for that. I don't keep it right in my mind.

THE COURT: Any questions, Mr. Griffin.

MR. GRIFFIN: No questions, my lord.

(Witness aside.)

RECORD.

Plaintiff's evidence.

No. 8.

William McCleary,
direct examination.
(Continued.)

10

No. 9.

A. F. GLIDDEN, witness called on behalf of the plaintiff, being first duly sworn, testified as follows:—

No. 9.
Arnold F. Glidden,
direct examination.

DIRECT EXAMINATION BY MR. HOSSIE:

Q.—What is your Christian name? A.—Arnold F. Glidden.

Q.—And you live in Shelton, Washington? A.—No, in Olympia, Washington.

Q.—You operate a mill of the McCleary Timber Company at Shelton? A.—Yes.

20 Q.—And what position do you hold with the McCleary Timber Company? A.—Superintendent.

Q.—And what plant have you charge of? A.—The Shelton mill.

Q.—Are you familiar with the logs in question in this action and the fact that there were two booms tied up here? A.—Yes.

Q.—Those logs, I believe, were purchased by your Company to be imported from British Columbia for use at the Shelton mill? A.—They were.

Q.—What price did you agree to pay for them? A.—Well, we pay eleven, eighteen, and twenty-four—

30 THE COURT: Well, twenty-four is the price we are concerned with.

MR. HOSSIE: Q.—Taking grade No. 1, for instance? A.—\$24.

Q.—F.O.B. where? A.—That is f.o.b. British Columbia.

Q.—And you pay the towage on top of that? A.—Yes.

Q.—How did that price compare with the B.C. price at the time you bought them? A.—How do you mean?

Q.—Well, \$24 f.o.b. British Columbia the No. 1 grade, how did that compare with the B.C. price?

40 THE COURT: Logs that were going to remain in British Columbia.

THE WITNESS: About the same. The price is the same.

MR. HOSSIE: Well, I am referring now to the No. 1 logs that you bought and agreed to pay \$24 for here? A.—Yes.

RECORD.

Plaintiff's evidence.

No. 9.
 Arnold F. Glidden,
 direct examination.
 (Continued.)

Q.—Do you know what price those logs would have fetched in the British Columbia market for manufacture in the Province?

A.—No, I don't know.

Q.—But in importing those logs you had to pay a duty of \$1, I believe? A.—Yes.

Q.—They pay the export tax here? A.—Yes.

THE COURT: Just a minute. When was it you agreed to buy this particular consignment of logs and agreed to pay that price? When was that? A.—That was about in January, I think, of this year. 10

MR. HOSSIE: January of 1929? A.—Yes.

Q.—Did you know whether these logs were subject to an export tax from the Province of British Columbia? A.—Yes.

Q.—Did you know what that was? A.—Yes.

Q.—How much? A.—On No. 1 logs it was \$2.

Q.—And on No. 2 and 3 grades? A.—\$1, \$1.50, and \$2.

Q.—Was that export tax taken into account in the calculation of the price? A.—I don't know what you mean.

Q.—Did you take that into account in calculating the price to be paid for the logs? A.—Oh, yes, surely. 20

Q.—What percentage—

THE COURT: In what way did you take it into your calculation? A.—Well, in comparing the prices.

MR. HOSSIE: Q.—Comparing them with what? A.—With what we would pay on the other side.

Q.—And what were the prices on the other side? A.—Thirteen, nineteen, and twenty-six—\$26 for No. 1 logs.

Q.—That was at the time this first contract was made in January? A.—Well, no. I believe, but I don't remember, but I believe the prices had raised \$1 over there since that contract was made. 30

Q.—Since the contract was made? A.—Yes.

Q.—But at the time the contract was made the No. 1 log would be \$25 and the other prices corresponding? A.—Yes, I believe that is right.

Q.—And the cost of these logs to you would be the same as the cost of the logs in the local market? A.—Yes, practically the same.

Q.—That is, at the time the contract was made? A.—Yes.

Q.—What proportion of your logs do you import from British Columbia? A.—Oh, I would say about 75 per cent. 40

MR. GRIFFIN: I did not catch that question.

MR. HOSSIE: What proportion is imported from British Columbia.

Q.—What proportion of the logs that you use in your mill do you import from British Columbia? A.—About 75 per cent.

THE COURT: You import about 75 per cent.? A.—Yes.

MR. HOSSIE: Q.—Do you buy direct or through any intermediaries? A.—Well, we buy them direct, yes; practically all of them are bought direct. I have bought one or two rafts from a broker, but the most of them are bought direct.

Q.—How many thousand feet, or million feet, of logs do you import on an average?

MR. GRIFFIN: I cannot see that that has anything to do with this case, what this witness imports into Washington.

THE COURT: I suppose it shows the volume of their business and that it is not an isolated transaction.

MR. GRIFFIN: It would not affect the question that we are concerned with here in any way.

THE COURT: There cannot be any dispute about that. The best evidence would be the records. If you are questioning the accuracy of this witness, then I would understand your objection.

MR. GRIFFIN: The objection is as to the relevancy. It is, in other words, a deeper objection than the other. The witness may or may not be perfectly right in his facts, but they do not help to elucidate the point with which we are concerned here.

THE COURT: Well, as long as there is no dispute as to the volume of business—as long as there is no objection to that—

MR. GRIFFIN: But there is, my lord.

THE COURT: Except you say it is superfluous and irrelevant.

MR. GRIFFIN: And, secondly, I have no means of testing it.

THE COURT: Well, then, Mr. Hossie, is there any way of getting that from an official of the Company? If Mr. Griffin chooses to say, "I am going to check that up and I want an opportunity to do so," he would have to have an adjournment to get it, but I will take for granted that this witness is accurate, or substantially so, for the purpose of your argument. But what I do expect controversy about from Mr. Griffin is that it is irrelevant and outside of the issue, and all that. But what you are now asking him is how many million feet—and supposing he said ten or whatever it was—that is that, and we take it for what it is worth, and it is only adding so many words to the record, otherwise I do not see any objection to it. Is that your objection really, Mr. Griffin?

MR. GRIFFIN: I haven't any instructions on it at all. My first objection is that it is irrelevant and could not assist the issue—

THE COURT: But dealing with whether he is accurate or not, are you questioning the accuracy of the quantity to which he may testify?

RECORD.

Plaintiff's evidence.

No. 8.

Arnold F. Glidden,
direct examination.
(Continued.)

RECORD.

Plaintiff's evidence.

No. 9.

Arnold F. Glidden,
direct examination.
(Continued.)

MR. GRIFFIN: I would not suggest that the witness is inaccurate to the extent of being mendacious, but I have no means of testing his testimony as to whether it is valuable or otherwise.

THE COURT: I will allow the question.

MR. HOSSIE: How many feet of logs do you use at your mills per month? A.—Oh, in some months about five million or seven million.

Q.—Of which 75 per cent. are imported from British Columbia? A.—Yes.

THE COURT: Or whatever the volume is—about 75 per cent.? A.—Yes.

MR. HOSSIE: Q.—Now, sir, how many people do you import logs from—B.C. logs—how many producers? A.—Two principally.

Q.—Who are they? A.—Thomsen & Clark and McDonald-Murphy—McDonald-Murphy principally.

Q.—And have you imported logs from any other producers in British Columbia? A.—Yes, we have bought a few rafts from Merrill-Ring—a couple of rafts; and I have bought from some others—I don't remember—I don't recall the name of the Company just at present—but just a couple of rafts or so.

Q.—Have you with you any of your original records showing the price you have paid for any of these logs? A.—Yes.

Q.—Would you mind producing them?

THE COURT: What is that?

MR. HOSSIE: Would you produce a record, for instance, of a sample transaction with the McDonald-Murphy Lumber Company? I don't want to take them all from you—if you will just give me a sample and tell me whether it compares with the others.

MR. GRIFFIN: I wish to enter an objection to it. Any transactions with the plaintiff Company other than the ones in question in this action are not in point. No one could be prepared to deal with them and they are irrelevant.

THE COURT: Why not exhaust the transactions to which reference is made in the pleadings and then we can see how far we can get away from it if necessary.

MR. HOSSIE: Well, I have exhausted that, because by reason of the action of the defendant this Company has not yet received its logs, and they haven't got their invoices and therefore they haven't paid for them, and therefore I have to go back to other previous transactions to show the business with the Company.

THE COURT: You are objecting to this, Mr. Griffin?

MR. GRIFFIN: Yes, my lord.

THE COURT: Proceed.

MR. HOSSIE: I don't want to deprive the witness of his original documents, and I will ask this general question: Will you tell me after examination of your invoices from the different com-

panies whether the export tax imposed by the Province of British Columbia was or was not included in the price to you?

MR. GRIFFIN: I object to that. That is thoroughly leading and it is a conclusion drawn from the documents and the documents are available.

THE COURT: Quite right, the documents will speak for themselves.

MR. HOSSIE: I will have to take these away from you.

10 THE COURT: If you ask the witness anything on the document it only perhaps helps me out and obviates me reading it. There is no jury, you see.

MR. HOSSIE: Q.—You produce an invoice of March 20th, 1929, from the Merrill-Ring Lumber Co., Vancouver, B.C., to your Company? A.—Yes.

Q.—Covering boom No. 16? A.—Yes.

Q.—And another one covering boom No. 84? A.—Yes.

THE COURT: Mr. Hossie, you might mark these for identification and then they can be put in later.

MR. HOSSIE: I will submit them now, my lord.

20 (Invoice marked Exhibit No. 12.)

THE COURT: You call it what?

MR. HOSSIE: It is an invoice, my lord.

Q.—That is an original invoice from your files? A.—Yes.

Q.—And the prices shown on the invoice were paid by you? A.—Yes.

Q.—Now, will you show me a sample invoice from Thomsen & Clark Timber Company to yourself covering any particular boom? I think this is in two parts, is it not? A.—I think so.

30 Q.—Will you put them together, please? March 19th, 1929, covering rafts 13 and 16, and it is an invoice from Thomsen & Clark Timber Company, Limited, to Henry McCleary Timber Company.

(Invoice marked Exhibit No. 13.)

THE COURT: You are objecting to that?

MR. GRIFFIN: Yes, my objection covers all of this.

MR. HOSSIE: There are two invoices—one for the lumber and the other for the export tax.

MR. GRIFFIN: This, surely, is not lumber as you said.

40 MR. HOSSIE: I beg your pardon, logs. I probably should have said timber.

Q.—Have you any sample invoices from the McDonald-Murphy Lumber Company now? I will take one of March 14th, 1929, for instance. That is an original invoice that you received from the McDonald-Murphy Lumber Company? A.—Yes.

(Invoice marked Exhibit No. 14.)

RECORD.

Plaintiff's evidence.

No. 9.

Arnold F. Glidden,
direct examination.

(Continued.)

RECORD.

Plaintiff's evidence.

No. 9.

Arnold F. Glidden,
direct examination.
(Continued.)

Q.—Can you tell me now whether the invoices you produce are similar in form as far as the export tax is concerned to all the other invoices you have from those various producers? A.—Yes.

Q.—And your Company, in each case, has paid the prices paid on the invoices? A.—Yes, they did.

THE COURT: Yes, Mr. Griffin, any questions?

MR. GRIFFIN: Yes, my lord.

No. 9.

Arnold F. Glidden,
cross-examination.

CROSS-EXAMINATION BY MR. GRIFFIN:

Q.—I see by these invoices they indicate a purchase at a certain price per thousand, and then there is a separate invoice for the tax, as in the case of No. 1's, of \$2? A.—Yes. 10

Q.—And the two together make the total price that you paid? A.—Yes.

Q.—Speak out quite loudly. You pay the total of those two? A.—That is right.

Q.—And then you pay, in addition to that, \$1 to your own Government? A.—Yes.

Q.—And the three of these together make the price you pay? A.—Yes.

Q.—And those three together represent in effect the ruling price in Washington for that class and grade of logs at that time? A.—Yes, they do. 20

Q.—So, so far as you are concerned, the source of the timber is a matter of no importance to you? A.—It is in regard to grade.

Q.—No; I will deal with grade and all that separately—the source of the timber—that is, the point of origin is a matter of no importance to you. There is no catch in that? A.—I know.

Q.—It is important to you?

THE COURT: Just give him time to answer the question.

THE WITNESS: I don't quite understand what you mean. 30

MR. GRIFFIN: Well, I don't just speak merely as a member of the public, but I am taking it as a millman. You want logs of a certain quality? A.—That is it.

Q.—And from a business point of view it doesn't matter to you where they come from—they might as well come from one of the other points of origin? A.—No, it doesn't matter.

Q.—And the prices paid in Washington, did you hear the discussion between me, this morning, and Mr. Munn? A.—I could not hear the whole of it from where I sat.

Q.—Well, I don't want to go over the whole of it now, but just shortly he said the price was apparently fixed for the different grades by the Loggers' Association for the State of Washington? A.—I understand that to be the truth. 40

Q.—And of course there is a variation in any particular grade, according to the quality of the different booms? A.—Absolutely.

Q.—And what a seller can get from a millman of the State of Washington is determined by supply and demand? A.—I suppose that is true in any case.

Q.—And you do your business apparently by contracts made ahead? A.—Well, not altogether, no.

Q.—Well, your business with the plaintiff Company—the McDonald-Murphy Company—that all apparently is done by contract, is it not? A.—Yes, we have an agreement with them. Mr. Charlie McCleary made that agreement, but I don't know whether
10 it is in writing or verbal, to tell you the truth.

Q.—But evidently there was an agreement made with them in advance for the supply of logs periodically? A.—Yes.

Q.—And this particular one was made late in December or January for delivery in March, is that it? A.—Yes.

Q.—And the price that appears on this—might I have that original invoice—the first one—that big one over there, No. 1, I think it is. This one reads—I am leaving out the other grades and using No. 1—\$21 for No. 1 and a \$2 tax in addition. Do you see that there? A.—Yes.

Q.—That made the price \$23 for the B.C. end of it—and an extra dollar, making the total price \$24? A.—Yes.

Q.—And that was per contract made late in December. Do you know the terms of that contract? A.—No.

Q.—Do you know whether it was written or verbal? A.—I don't.

Q.—Do you know the price prevailing for that grade of logs? Well, of course you couldn't know that, because we have been told that those logs were of a specially good quality—that particular four booms? A.—Yes, they were.

Q.—So the contract must be one that calls for different prices for different qualities of logs—am I right in that? A.—You are right.

Q.—There must be some definition, then, in that contract as to the price to be paid for these different logs of the one grade.

THE COURT: Well, is the contract available at all?

MR. GRIFFIN: I have asked for it. My learned friend, Mr. DesBrisay, has asked them to produce it for our inspection and to get it from Mr. Munn.

MR. HOSSIE: Well, I will see if I can get it. I have had
40 no notice of it.

MR. GRIFFIN: We could not give notice to produce a document we never heard of. I would like to have it for inspection to see what use I could make of it.

THE COURT: Well, you get it here, because otherwise I have no control over it. You did not seem anxious to take this from Mr. Hossie, who was offering it to you. You are examining the witness about the contract and there it is. At least, it is being

RECORD.

Plaintiff's evidence.

No. 9.

Arnold F. Glidden,

cross-examination.

(Continued.)

RECORD.

Plaintiff's evidence.

No. 9.

Arnold F. Glidden,
cross-examination.
(Continued.)

handed to Mr. DesBrisay. You are not devoting your attention to that contract at the present time?

MR. GRIFFIN: Yes, I was.

THE COURT: Well, there it is.

MR. GRIFFIN: I shall have to have a chance to read it.

THE COURT: Well, then, I presume you are not going to ask the witness any more questions about the contract. You were asking him about a contract that you have in your possession now.

MR. GRIFFIN: After I read it I will know.

THE COURT: I am not forcing you on, only I want to know whether you are going to ask this witness about that contract. The witness says he does not really know what it was. 10

MR. GRIFFIN: Well, we have it here.

Q.—I show you two letters produced by the plaintiff's counsel, one from the plaintiff to your Company of the 31st of December—no, from your Company to the plaintiff Company of the 28th of December last, and a reply of the plaintiff Company of the 31st of December. That is the contract, is it?

MR. HOSSIE: I am told that there is a mistake of \$1.40 there, because a certain item of towage was inadvertently included and the confirmation shows that that \$1.40 should not be in there. 20

THE COURT: Does Mr. McCleary know anything about that?

MR. HOSSIE: No, but Mr. Glidden does.

THE COURT: Well, does Mr. McCleary, because he was in the box. You see, Mr. Glidden says he really doesn't know anything about this. And if there is some witness who does know and who was a party to the contract, you might produce him. Between whom was the contract signed?

MR. GRIFFIN: It is between these two parties, but it is actually signed by a name I cannot myself read. 30

MR. HOSSIE: Well, it is signed by Mr. Harry or Charles McCleary and not by the McCleary who was here to-day.

MR. GRIFFIN: Well, all I want to know is that is from your firm? A.—Oh, yes.

THE COURT: Yes, they produce it.

MR. GRIFFIN: Well, then, I think it had better go in, my lord.

THE COURT: There is no objection to it; they are producing it. 40

MR. GRIFFIN: But I have no right to put it in in my learned friend's case. I will be strict and keep it until my time comes.

THE COURT: Why not put it in now?

MR. GRIFFIN: I thought my learned friend was referring to the fact that I had not any right to it.

THE COURT: I have put it down as Exhibit 15. Have you any objection to it staying as Exhibit 15?

MR. GRIFFIN: Not at all.

THE COURT: I don't know why you are taking it away from the Registrar. If there was a jury here I could understand it, but I cannot see what you are afraid of. Give it to the Registrar to have it marked.

(Document marked Exhibit No. 15.)

MR. GRIFFIN: I would like to read this to your lordship.
10 This is the way it reads. It is from Henry McCleary Timber Company to McDonald-Murphy Lumber Company, Limited.

THE COURT: Give the date.

MR. GRIFFIN: Yes, my lord. 28th of December, 1928.

(Reads Exhibit No. 15.)

Q.—Now, that word—export tax there referred to is the \$2 per thousand charge of the B.C. Government? A.—On No. 1 logs.

Q.—And less amounts on others? A.—Yes.

Q.—And the import tax there referred to is the American import tax? A.—Yes.

20 THE COURT: Mr. Griffin, there is no dispute about that, and I have had it two or three times. There is no dispute about these facts at all.

MR. GRIFFIN: Can you assist me by giving me—are you in a position to give me the total production in the State of Washington in one year—say in the year 1928? A.—No, I am not.

Q.—Do you know anything about it whatever? A.—No, I don't.

Q.—And you don't know, for example, what amount of logs that come in there are imported? A.—No, I don't.

30 THE COURT: I didn't understand, Mr. Griffin, there was any objection to your putting that in. You have it all there.

MR. GRIFFIN: I have certain information here.

THE COURT: Well, I do not think Mr. Hossie will have any objection to your putting it in, and it will be convenient for him in going over the evidence. If you have them there, why not offer them, and I will be inclined to let them in subject to Mr. Hossie's objection. We might as well have them accurate.

MR. GRIFFIN: I want to be absolutely sure my statement is correct before I move in the matter.

40 Q.—Now, I notice that the invoice—give me those two last invoices.

THE COURT: 13 and 14, I suppose.

MR. GRIFFIN: 14 and 15—invoices.

THE COURT: There is 12, 13, and 14.

MR. GRIFFIN: I notice now in the Merrill-Ring one the export tax is simply put in one. It is all included in the one invoice? A.—I believe it is.

RECORD.
Plaintiff's evidence.
No. 9.
Arnold F. Glidden,
cross-examination.
(Continued.)

RECORD.
 Plaintiff's evidence.
 No. 9.
 Arnold F. Glidden,
 cross-examination.
 (Continued.)

Q.—And which was the one that had the invoice separate? In the Thomsen & Clark invoice, the invoice for the tax was separate? A.—There may have been a little difference.

Q.—Exhibit 13 is the Thomsen & Clark invoice and they bill you with the tax separately; is that correct? A.—I believe so, yes.

Q.—And in the case of the one in question in the action here, the tax is included in the invoice again.

THE COURT: They all show that, Mr. Griffin, and you have that already in, and this witness apparently doesn't know anything about it except what he sees there. We have that evidence. You have all that in. 10

Q.—Then the price which you pay to these people is a matter of negotiation with them? A.—Certainly.

Q.—And the price you pay to all your sellers is a matter of negotiation with them? Just say yes? A.—Yes.

Q.—And is governed by the ruling price in Washington for the particular quality of logs which the individual seller tenders you for sale? A.—I beg your pardon?

THE COURT: Do you understand the question? A.—I would like you to ask that question again. 20

MR. GRIFFIN: I say that the price you pay is governed by your opinion of the quality of the product offered to you? A.—Yes.

Q.—By the seller of that product? A.—Exactly.

Q.—And it is not governed by how he makes up his statement of cost, is it? A.—No.

Q.—It isn't governed by the question of whether it has been brought from abroad or procured in the State of Washington, is it? A.—No, sir. 30

Q.—And so the tax is only an element in the seller's statement, isn't it? A.—Yes.

Q.—And, therefore, what you said that the tax was taken into account in calculating the price, I take it it means that it is taken into account by the logger in figuring out the price that he gets from you. That is all you mean by that? A.—Yes, sure.

Q.—But even in that modified sense, witness, are you not wrong in that statement in that what he gets from you is what you are willing to pay him in the competitive market of the State of Washington? A.—Of course. 40

Q.—That is a governing feature? A.—Yes, that is a governing feature, surely.

Q.—So in that sense, whether he pays or does not pay a tax, does not enter into the amount that he gets from you, does it? A.—I believe not.

Q.—What? A.—No.

Q.—That is what I thought. Now, as a matter of fact, you appear to do most of your business for one or two mills? Most of your logging is done for one or two logging firms? A.—Yes; up north, yes.

Q.—Are you and the plaintiff financially associated? A.—No, we are not.

Q.—Are they shareholders in your Company? A.—No, they are not.

Q.—Or you in theirs? A.—No.

10 Q.—You have a totally separate business concern? A.—Totally separate.

Q.—Can you give me the market—I don't know whether you gave it to me before—you may have, but you changed your statement—can you give me the market price of logs in the State of Washington, say in the last week of December, 1928, confining it to No. 1's? A.—Well, I don't know whether the price had raised then or not. I cannot give it to you.

20 Q.—So you are not in a position to say whether the price agreed on in this letter, Exhibit 15—\$24.50 for No. 1 grade, \$19.40 for No. 2 grade, and \$12.40 for No. 3 grade—were the prices prevailing at that time? A.—I could not tell you. I don't know when the prices changed. I know the price changed on the other side along about that time, but I don't know when it was.

Q.—Did it go up or down? A.—It went up \$1.

Q.—Who put it up? A.—Well, I suppose the Logging Association down there—the loggers.

Q.—They ran the price up \$1? A.—Yes.

Q.—And that would be, of course, the same as before, subject to a particular quality in any one boom? A.—Yes.

30 Q.—The running-up of the price only means the standard price? A.—Yes.

Q.—Is this a price that is binding upon the mills? When you speak of increasing the price, what do you mean by that? A.—When the price of logs went up, the loggers charged us \$1 more for their logs.

Q.—And they did that on an agreement between themselves? A.—I don't know.

40 Q.—Well, that doesn't bind you? A.—It binds us to this extent, we cannot buy the logs if we don't pay the price asked for them.

Q.—Well, these prices are minimum which you must pay, but you may have to pay more; is that it? A.—No; the price of lumber is governed a good deal by the price of logs, and when the price of logs is a certain price, such as \$13 and \$16 and \$18 and \$26, why the lumber is sold on that basis.

THE COURT: . And what use do you make of the logs that you buy? A.—I don't quite hear you.

RECORD.
Plaintiff's evidence.
No. 9.
Arnold F. Glidden,
cross-examination.
(Continued.)

RECORD.

Plaintiff's evidence.

No. 9.

Arnold F. Glidden,
cross-examination.
(Continued.)

Q.—What do you do with the logs that you buy from British Columbia in this particular case? A.—We make automobile-body parts.

MR. GRIFFIN: Well, I was going to try and find out, if I could, in a clear way, whether or no when the loggers run the price up, say, \$1, whether that binds you to pay that amount and no more, or that amount and perhaps more? Which is it? A.—Well, we may pay more if we buy a selected log. We would pay more for it.

Q.—That means camp-run then and more if it is selected? 10
A.—Yes.

THE COURT: Are you a member of the Logging Association that fixes the prices? A.—No.

Q.—You are not governed by them? A.—No.

Q.—And you may ignore them? A.—Yes.

MR. GRIFFIN: But it is a difficult thing to ignore them?
A.—Yes.

THE COURT: Do you ever ignore them? A.—No, I don't believe we ever do.

Q.—But you would like to? A.—We would like to. 20

MR. GRIFFIN: Q.—Now, I notice in this Exhibit 15 the price is stipulated at \$25.40 for No. 1 grade; is that an error?

MR. HOSSIE: Yes; I told my learned friend it should be \$24.

MR. GRIFFIN: Well, then, the \$24 is the exact amount which this invoice calls for? A.—It is.

Q.—Although you have it differently transposed into different items? A.—Yes, that is right.

Q.—Was this invoice prepared for the purpose of this lawsuit? A.—No, that is one out of our files. 30

Q.—Is there any merit, or is it any advantage to you to segregate the price in this way into three constituent parts? A.—It is customary.

Q.—There is no particular motive that you can see, is there?
A.—None at all.

Q.—It has the same result? A.—The same result.

RE-DIRECT EXAMINATION BY MR. HOSSIE:

Q.—Arising out of your lordship's questions, there is just one question I would like to ask in regard to the quality of the lumber. What quality of lumber do you require for the purpose you mention—the manufacture of lumber for automobile bodies? A.—Very coarse-grained lumber—a tough type of lumber. 40

Q.—Where is that produced in the largest quantities? A.—In British Columbia.

No. 9.
Arnold F. Glidden,
re-direct
examination.

Q.—Can you purchase it from the State of Washington? A.—Well, not as much as we want—and that we can use.
Q.—Thank you.

(Witness aside.)

No. 10.

CHARLES A. WALLACE, a witness called on behalf of the plaintiff, being first duly sworn, testified as follows:—

DIRECT EXAMINATION BY MR. HOSSIE:

10 Q.—You reside in the City of Seattle, Mr. Wallace? A.—Yes.

Q.—And your occupation? A.—Lawyer.

Q.—You are a member of the Bar of the State of Washington? A.—Yes, sir.

Q.—How long have you been a member of the Bar of that Association? A.—Since 1917.

Q.—And you carry on the practice of law in the City of Seattle? A.—Yes.

Q.—And your firm-name? A.—Goscrop & Wallace.

20 Q.—Mr. Wallace, will you tell me, and produce it, if you can, the Statute covering it, whether there is any duty on the logs which are imported from British Columbia to the State of Washington, and, if so, what is that duty? A.—The Tariff Act of 1922, page 34.

THE COURT: What year?

MR. HOSSIE: 1922.

THE WITNESS: 1922.

THE COURT: Page 4?

THE WITNESS: Page 34, paragraph 104.

30 MR. HOSSIE: Paragraph 401, isn't it? A.—Yes, 401, pardon me. It provides for a tariff of \$1 per thousand feet.

THE COURT: That is what we have been talking about.

MR. GRIFFIN: If your lordship pleases, I wish to note an objection. I cannot see how the law of the State of Washington with regard to their import tax can be of any assistance in deciding the meaning of the British Columbia law.

THE COURT: I take it that Mr. Wallace is now proving what we have been talking about, that there was \$1 import tax.

MR. HOSSIE: Have you a spare copy that you can file? A.—Yes.

40 Q.—This is an official copy of the Statute of Washington? A.—Yes.

Q.—And is official evidence in your Court? A.—Well, we don't put them in Court as evidence. We just cite them as authority and the Court takes judicial notice of the Act itself.

RECORD.
Plaintiff's evidence.
No. 9.
Arnold F. Glidden,
re-direct
examination.
(Continued.)

No. 10.
Charles A. Wallace,
direct examination.

RECORD.

Plaintiff's evidence.

No. 10.

Charles A. Wallace,
direct examination.
(Continued.)

Q.—Now, I notice under the section there is a proviso that there is \$1 a thousand imposed, and a proviso “That any such class of logs cut from any particular class of lands shall be exempt from such duty if imported from any country, dependency, province, or other subdivision of government which has at no time during the twelve months, immediately preceding their importation into the United States, maintained any embargo, prohibition, or other restriction (whether by law, order, regulation, contractual relation, or otherwise, directly or indirectly) upon the exportation of such class of logs from such country, dependency, province, or other subdivision of government if cut from such class of lands.” 10
Will you tell me whether the tax in question in this action, the B.C. export tax, imposed under section 58 has been classified under that Act?

MR. GRIFFIN: I object.

MR. HOSSIE: Q.—And whether it falls within the proviso or not?

MR. GRIFFIN: I object. My learned friend is just trying to get this witness's opinion in a roundabout way of our Statute and is usurping your lordship's function in interpreting our 20 Statute, and I want to interject an objection.

THE COURT: Will you repeat the question again?

MR. HOSSIE: Q.—Will you tell me, Mr. Wallace, whether your officials, or officials of your Government, have come to any decision as to whether the tax in question, the export tax in British Columbia, falls within the proviso of 401 that you have just cited to us.

THE COURT: You are objecting to that.

MR. GRIFFIN: Yes.

MR. HOSSIE: The section provides that there is a tax of 30 \$1 and there is a proviso that they are exempt in certain cases, and I am just asking this witness to tell me whether these logs come within that exemption or not, and if they do, why, and, if not, why.

THE COURT: That is as they construe this Act in the State of Washington.

MR. GRIFFIN: My submission is, is my learned friend upon his statement, by saying whether the officials of the United States Government—I don't want to bind him by the mere form of words, but the way he put it is the way it really is.

THE COURT: I am not concerned with what he wants, 40 but with the form of the question. Have you any objection to the form of the question put to the witness?

MR. GRIFFIN: Yes.

THE COURT: Did you grasp that question? A.—Yes, my lord.

THE COURT: You are objecting to it.

MR. GRIFFIN: Yes.

THE COURT: What is your answer? A.—The United States Customs Court have so construed the Act that logs that are subject to a tax or embargo or restriction imposed by the Government here carry the \$1 per thousand duty in our country.

MR. HOSSIE: Q.—And what particular tax or embargo or restriction was the subject of that decision?

MR. GRIFFIN: I submit, if my learned friend wants to prove a decision of any Court, there is only one way of doing it.

THE COURT: That is to get the report.

10 MR. HOSSIE: Have you the report there? A.—Yes, Mr. Hossie.

Q.—I am referring now to the B.C.—

THE COURT: What report is that?

MR. HOSSIE: The report of the United States—

Q.—What reports have you got?

THE COURT: How do you cite it for the purpose of my notes? A.—It is published in a Treasury decision, Volume 47, at page 687.

Q.—At what page? A.—Page 687.

20 MR. HOSSIE: Q.—What is the reference to the citation you are now giving us? A.—It is the *Bloedell-Donovan Lumber Mills v. The United States* and decided by the United States Appraisers on May 29th, 1925.

Q.—What is the effect of that decision? A.—The effect of that decision is, where a duty or restriction or embargo has been placed upon logs within twelve months immediately before their importation into the United States \$1 per thousand duty as fixed by section 401 of the United States 1922 Customs Act is applicable and assessable.

30 Q.—Were they dealing with any particular restriction in that decision? A.—In that decision they were dealing with the restriction under subdivision 2 of section 58 of the Land and Forest Act of British Columbia.

Q.—And the provisions with which they were dealing are set out in that report? A.—In the decision.

Q.—And this is an official report, is it? A.—Yes.

Q.—And you cite this in your reports? A.—Yes.

40 Q.—Could you leave this book with us? A.—Well, I have borrowed that this morning from the United States Customs here in your city.

Q.—It is very short and we could have it copied.

THE COURT: We have the American reports here? Would that be included in that? A.—No.

Q.—That would not be considered an American law report, is it? A.—No.

Q.—It is a Treasury report? A.—Yes, it is a Treasury report. It is a Treasury decision, but inasmuch as the Secretary of

RECORD.
Plaintiff's evidence.
No. 10.
Charles A. Wallace,
direct examination.
(Continued.)

RECORD.
 Plaintiff's evidence.
 No. 10.
 Charles A. Wallace,
 direct examination.
 (Continued.)

the Treasury is the head of the entire system of Customs in our country, all those reports are in his decisions.

MR. HOSSIE: Q.—And this report may be cited in your Courts without further proof? A.—Oh, yes. There is another decision in that same volume to the same effect of an appraiser—a general appraiser.

THE COURT: And the name of this particular case? A.—Bloedell-Donovan Lumber Mills.

Q.—They operate in British Columbia? A.—No; they are located at Bellingham, Washington. 10

Q.—But Mr. Bloedell operates up here, too? A.—Yes, I think so.

MR. HOSSIE: Q.—The case to which you refer us is which one? A.—The case of the *Granville Chase v. The United States*.

Q.—What page is that? A.—It is found on page 307 of the reports I have cited.

MR. HOSSIE: Q.—That had to do with what part of Canada? A.—In New Brunswick.

Q.—Shall we leave it this way—that we shall return this volume to the Customs authorities—the United States Customs in Vancouver. 20

THE COURT: How long do you want it?

MR. HOSSIE: I just require it for my argument.

THE COURT: Well, you can borrow it from Mr. Wallace and then take it back to the Customs.

MR. HOSSIE: As a matter of fact, I can get the decision typed out.

THE WITNESS: I shall have to return it.

THE COURT: I think you had better return it to them and Mr. Hossie can have access to it, no doubt. 30

MR. HOSSIE: I think perhaps that is the best way.

THE COURT: You don't remember it immediately?

MR. HOSSIE: No.

No. 10.
 Charles A. Wallace,
 cross-examination.

CROSS-EXAMINATION BY MR. GRIFFIN:

Q.—These gentlemen who make these decisions are not necessarily members of the Bar—not lawyers—these appraisers? A.—The appraisers aren't, but the Customs Court would be.

Q.—No; I am trying to get at these men who made these particular decisions—there are three of them.

THE COURT: Who wrote the decision? A.—Well, I could give you the names if I had the volume. 40

MR. GRIFFIN: Q.—Would you know if he were a lawyer and a member of the Bar and sitting as such, or just an official who also happened to be a member of the Bar and not practising? A.—No, I would not know that. It is a Customs trial court. The gentleman who wrote that decision in the Bloedell-Donovan case is

Weight General Appraiser and then the Customs trial court has written this decision.

THE COURT: Well, do you know enough about it to venture to say they are experts in that particular branch? A.— They investigate the facts and I think, your lordship, that they call on the United States Attorney-General or the Department of Justice for the law and apply it. At least, that is my opinion.

MR. HOSSIE: That is in the nature of an appeal then from a general appraiser's decision?

10 MR. GRIFFIN: My learned friend should not do that.

THE COURT: The report will show all that.

MR. HOSSIE: All right.

(Witness aside.)

MR. HOSSIE: I will call Mr. Meehan.

No. 11.

JOSEPH PETER MEEHAN, a witness called on behalf of the plaintiff, being first duly sworn, testified as follows:—

DIRECT EXAMINATION BY MR. HOSSIE:

20 Q.—Mr. Meehan, you live in Vancouver, I believe? A.—Yes, I do.

Q.—Your occupation? A.—Timberman.

Q.—Do you buy and sell timber? A.—I do.

Q.—Standing timber? A.—Yes, standing timber.

Q.—How long have you been engaged in that business here or elsewhere? A.—All my life.

Q.—Have you had any experience in purchasing stumpage in British Columbia? A.—I have.

30 Q.—When was your first experience? A.—I came over here in 1901 the first time and the second time was in 1906, and then I have been here every year after that up to the present time, and I have lived here.

Q.—Did you go into the purchase of any timber from licensed or Crown-granted lands in 1901? A.—I did on Crown grants, yes.

Q.—And what price was stumpage offered you at that time?

40 MR. GRIFFIN: Before my learned friend goes on I will renew the objection I made before that the value of stumpage in British Columbia, as in Washington, in 1901 is irrelevant to this case, and also one on which, it not being in any way indicated in the pleadings, one cannot be prepared to meet, and I object.

MR. HOSSIE: What was the ruling price at that time? A.—Well, at Victoria—that was before they had a Forestry Branch

RECORD.

Plaintiff's evidence.

No. 10.

Charles A. Wallace,
cross-examination.
(Continued.)

No. 11.

Joseph Peter
Meehan, direct
examination.

RECORD.
 Plaintiff's evidence.
 No. 11.
 Joseph Peter
 Meehan, direct
 examination.
 (Continued.)

and it was known as the old Dunsmuir—and it is now the E. & N. or the C.P.R., or whatever it may be—it was about \$5 an acre.

Q.—And how many thousand feet to the acre? A.—Well, I didn't want to take anything less than 50,000 if I took any.

Q.—Well, was there any that ran 50,000 to the acre? A.—Yes.

Q.—And how much greater? A.—Well, some of it ran as high as 100,000.

THE COURT: Q.—Well, would fifty be an average? A.—Well, that would be the minimum, I would expect.

MR. HOSSIE: Q.—And the average would be what? A.—Well, it is hard to say. Anywhere between fifty and a hundred. Some was a little more and some was less.

Q.—At \$5 an acre? A.—Yes, that was the average.

Q.—And how much stumpage a thousand? A.—Some was 10 cents, but we had to pay for the survey. They made us survey that land after it was picked out.

Q.—How much an acre? A.—Well, there was two prices when we went in there. They compelled us to make a survey with a transit where we had to cut everything down, and it would run all the way from, let me see—somewhere around \$80 a mile they wanted in those days.

Q.—What would that work out per thousand feet board measure? A.—I never figured it out that way. It would be a small amount. The survey would be a small item.

Q.—How would it compare with the price of \$5 an acre, greater or smaller? A.—Oh, a good deal smaller.

Q.—Was there any other method of survey? A.—Well, later on they allowed us to use a compass and not cut down any trees; just blazed the trees through, and that cut the survey down to 400 a section—down to about \$160.

THE COURT: It was cheaper? A.—Yes.

MR. HOSSIE: \$160 a section would be 25 cents an acre, wouldn't it? A.—Yes.

THE COURT: That is for the survey alone? A.—Yes, plus 25 cents an acre price.

Q.—Did you purchase any at that time? A.—No; I wrote our people and I said I thought—

Q.—You need not say that. What timber were you examining at that time—what area on the island? A.—Well, we were up on Cowichan Lake and then we went north of there. Well, I wouldn't remember that as there were no lot numbers at that time where we went. It was all open ground up from Duncan and up from there north.

Q.—But running over an expensive territory? A.—Well, we spent about three months looking round.

Q.—And you came back in 1906? A.—Yes.

Q.—And you purchased some stumpage then? A.—No; I was called out again and I didn't buy any.

Q.—You didn't make any purchases before the war? A.—No.

THE COURT: Any questions?

MR. GRIFFIN: No questions.

(Witness aside.)

MR. HOSSIE: I will call Mr. Burke.

RECORD.
Plaintiff's evidence.
No. 11.
Joseph Peter Meehan, direct examination.
(Continued.)

No. 12.

10 JOHN N. BURKE, a witness called on behalf of the plaintiff, being first duly sworn, testified as follows:—

No. 12.
John N. Burke, direct examination.

DIRECT EXAMINATION BY MR. HOSSIE:

Q.—Mr. Burke, you live in Vancouver, I believe? A.—I do.

Q.—And your occupation? A.—Logging. Secretary of the Thomsen-Clark.

Q.—That is one of the companies we have referred to in evidence here? A.—Yes.

THE COURT: What Company? A.—Thomsen - Clark Timber Company.

20 MR. HOSSIE: Q.—How long have you been engaged in the logging and lumber business? A.—About five and a half years in the logging business.

Q.—During that time when you had anything to do with the exporting of logs from British Columbia? A.—Yes.

Q.—By the way, did your Company export any logs? A.—Yes.

Q.—What proportion of your cut? A.—Roughly, from 30 to 40 per cent.

30 Q.—And the rest of it you disposed of in what manner? A.—Sell locally.

Q.—Does your Company do any manufacturing? A.—None at all.

Q.—Just cuts the logs? A.—Yes, and sells them.

Q.—And the timber you export, what part is it exported to? A.—To the State of Washington, in the United States.

Q.—And in the course of your occupation with your Company do you deal with these exports? A.—I do.

Q.—And are you familiar with the prices which are obtained? A.—I am.

40 Q.—What have you got to say with regard to the export tax of \$1, \$1.50, and \$2? A.—When a buyer comes in—

MR. GRIFFIN: What he said was, what did the witness say to that tax?

RECORD.

Plaintiff's evidence.

No. 12.

John N. Burke,
direct examination.
(Continued.)

THE COURT: Yes, that was too general.

MR. GRIFFIN: Yes, if he would give me an idea what he is trying to get at.

THE COURT: It is just repeating what he has already had in evidence. Have you anything to add to what the other witnesses have said as to the tax? A.—I might.

THE COURT: You didn't put a specific question to him.

MR. HOSSIE: Q.—In the exporting of logs for your Company you get a price for them, I presume? A.—We do.

Q.—And the American buyer pays that price? A.—Yes. 10

Q.—Now, will you tell me what price you obtain? A.—In dollars?

Q.—The what? A.—Do you mean in dollars?

Q.—Just deal with the No. 1's, for the sake of brevity? A.—No. 1 fir, \$19.50 f.o.b. Deep Bay.

Q.—That is a—— A.—A B.C. port.

Q.—Is that plus or minus the export tax? A.—Well, that is what we get for the logs f.o.b. Deep Bay, \$19.50; and we sometimes pay the towage, and then we debit them, and render them a statement for the debit balance. 20

Q.—Yes. A.—\$19.50 was our basic price for the No. 1 logs, or was at the time those invoices were made.

Q.—You issued some invoices to the Henry McCleary Timber Company? A.—Yes.

MR. GRIFFIN: Your lordship will understand my objection to the transactions of this witness's Company, but they are not relevant to the case involved with the plaintiff Company.

MR. HOSSIE: I understand my learned friend so objects.

Q.—I show you Exhibit No. 13. This consists of two invoices. Are you familiar with those? A.—Yes. 30

Q.—And this represents the transaction correctly? A.—Yes, one is an invoice and the other is a debit note.

Q.—And the export charge paid by you was charged to the purchaser? A.—Yes.

Q.—Did you receive payment? A.—We did.

Q.—In all the sales your Company has made while you have been with them, Mr. Burke, do you know of any instance where your Company has absorbed the export tax without passing it on to the purchaser? A.—No. At one time we billed some logs to the other side at a delivery price in which we assumed to pay all the taxes; but for the past two years, I might say (it might be a month or two off), but for approximately two years we have billed no logs unless we billed them f.o.b. our camp and let the other man tow them and pay the tax and everything else. And in case he wanted us to pay the tax or the towage or carry the insurance we did it for his account. 40

Q.—And how did the delivery price that you have referred to bear with the ruling price of the market in British Columbia at that time? A.—Do you mean the delivery price?

Q.—I will give you that again and lead up to it. In the invoice in front of you there is a price shown for No. 1 fir? A.—Yes.

Q.—How does that compare with the B.C. price for fir? A.—It is \$1 less than we would get in Vancouver, being the Vancouver price less the delivery charges.

10 Q.—Then that is the B.C. manufacturers' price as shown on the first page of Exhibit 13? A.—Yes.

Q.—And the export duty is added to it at the back? A.—Yes.

Q.—And you have sold lumber to Washington before that? A.—Yes.

Q.—And what did you do in that case? A.—We would add the tax and the towage and insurance and tell them that was our price.

20 Q.—And the delivery price included the B.C. manufacturing price plus the addition of the export tax and the deliveries? A.—Yes.

Q.—Now, I believe you were present with Mr. E. V. Munn on the 3rd of April, 1929? A.—I was.

Q.—That is on the 3rd of last month, when he went to the Dominion Customs authorities and the B.C. Forest Branch and back again to the B.C. authorities? A.—Yes.

Q.—And you heard his evidence as given this morning? A.—I did.

30 Q.—Have you anything to add to it or do you agree or disagree with it? A.—No, I haven't anything to add to it. He told us as nearly as I call everything that happened and as it happened.

THE COURT: Any questions?

CROSS-EXAMINATION BY MR. GRIFFIN:

Q.—Mr. Burke, you evidently made a change of system two years ago in your logging camps? A.—Yes.

Q.—What was the motive behind the change of system? A.—Somehow or other we heard a rumour, if we sold our logs on the other side we would have a 9-cent income tax, so we didn't propose to do that and we changed our method of invoicing.

40 Q.—And the other dealers of logs are evidently still sticking to the delivery price system? A.—I cannot say that.

Q.—Well, you have heard the discussion this morning? A.—Yes.

Q.—For instance, take No. 1, the invoice in question in this action; they indicate a delivery price, don't they? A.—Well, he

RECORD.
Plaintiff's evidence.
No. 12.
John N. Burke,
direct examination.
(Continued.)

No. 12.
John N. Burke,
cross-examination.

RECORD.
 Plaintiff's evidence.
 No. 12.
 John N. Burke,
 cross-examination.
 (Continued.)

has got his f.o.b. price the same as I have myself, and he adds his export price at the bottom in three items and I add mine on the other page in two items.

Q.—Well, this one indicates a total price. Well, however, it doesn't matter much. The real fact is that, so far as the nature of the transaction is concerned and apart from its consequences in regard to income tax, it makes no difference whether you sell on a delivery price made up of the cost of the B.C. price, plus towing and plus taxes, or bill them with the total of these items separately, does it? A.—Yes, Mr. Griffin, it does. 10

Q.—Why? A.—When a man comes to me from the other side to buy logs I figure what I can sell those logs at on this market—\$21 for No. 1's, and I take a dollar off my cost at Deep Bay and that is my price, \$19 for No. 1's, and then I tell him he can have those logs at \$19 if he wants to pay all the extra charges. Now, if I sell those at a delivery price down there I may get more or less, and I may determine I won't take less than \$19, and if I can't get that I won't sell him the logs, and it has a definite effect on whether I make the sale.

Q.—And that is the motive that decides you in what you will go into—a delivery price sale or a price at your camp—a delivery price or an f.o.b. price? A.—No; the whole thing is I must get \$19 for my No. 1 logs, and if I cannot get that, and they are not willing to pay all the extra charges and want to cut me down to \$18.50, I won't sell them. 20

Q.—I think you and I are in accord. You fix the price at your camp? A.—Yes.

Q.—And the people who want them must pay that price? A.—Yes.

Q.—And if they live in Vancouver they pay that price plus another dollar to have them towed? A.—Yes. 30

Q.—And if they take them at your camp they pay so much? A.—Yes.

Q.—And if they take them to Washington they pay all the extras? A.—Yes.

Q.—And it follows from that that if the Washington price is higher than the B.C. price, with all the agendas, you can make more money by selling on the delivered price in Washington? A.—It is possible.

Q.—Well, that is quite so? A.—Yes; everything considered, yes. 40

Q.—But you don't choose to do that? A.—No.

Q.—Why not, if it were better business? A.—So far there is no reason to believe it would. We have never found we could get more money delivering the logs over there at a delivered price than selling them this way. In fact, I usually get less, and this is a clear-cut deal and I know what I am going to get for my logs.

Q.—Well, you have heard other witnesses indicate that they get a better price for their logs and have a different view of it.

THE COURT: Well, it is just the method.

MR. GRIFFIN: Q.—And whether a Washington millman will buy those logs from you at \$19 depends on what price he can get logs for in Washington? A.—Yes, if he can get enough of them.

Q.—If he can get enough of the kind he wants at home he takes that into account in deciding whether he will come to you?

10 A.—Yes.

(Witness aside.)

No. 13.

JAMES AITKEN, a witness called on behalf of the plaintiff, being first duly sworn, testified as follows:—

RECORD.
Plaintiff's evidence.

No. 12.
John N. Burke,
cross-examination.
(Continued.)

No. 13.
James Aitken,
direct examination.

DIRECT EXAMINATION BY MR. HOSSIE:

Q.—Mr. Aitken, you live in Vancouver? A.—Yes.

Q.—And your occupation is what? A.—A tug-boat operator.

Q.—For what company? A.—For the St. Claire Towing Company.

20 Q.—And you own, among others, what vessels? A.—“ St. Claire No. 1 ” and “ St. Claire No. 2.”

Q.—You are, I believe, familiar with the booms in this action? A.—Yes.

Q.—The four booms? A.—Yes.

Q.—Or at least with the fact that they exist? A.—Yes.

Q.—And you were one of the parties, I believe, who went with Mr. E. V. Munn and Mr. Burke? A.—Yes.

Q.—And you heard the evidence given by E. V. Munn this morning? A.—Yes.

30 Q.—And in so far as you were with him in Vancouver— A.—I agree with the evidence given.

Q.—Have you anything to add to it? A.—I have nothing to add to it.

Q.—Well, then, that was on the 3rd of April? A.—Yes.

Q.—Now, subsequent to that, did you have any further to do with these booms? A.—On the 4th of April I took the papers over to Mr. Good at Nanaimo.

Q.—Who went with you? A.—Mr. A. D. Munn.

Q.—Mr. A. D. Munn? A.—Yes.

40 Q.—What took place over there? A.—Well, I presented the papers for clearance on the “ St. Claire ” with the logs, and the clerk there, of course, refused to clear them without a permit and referred me to Mr. Good.

RECORD.

Plaintiff's evidence.

No. 13.

James Aitken,
direct examination.
(Continued.)

Q.—What permit? A.—The forestry permit—the B.C. export permit—and I had a long talk with Mr. Good, and he said he could not clear the logs without any permit.

Q.—Were the papers in perfect order? A.—Yes.

Q.—Where was the "St. Claire" at this time? A.—It was in Vancouver.

Q.—And what was her position? A.—She was waiting on orders and we changed them then and sent her north.

Q.—Waiting on what orders? A.—Waiting for the papers to go through. 10

Q.—For what? A.—To go down to Anacortes with these logs.

THE COURT: Q.—But you were engaged and ready to tow these logs to the United States? A.—Yes, I was ready to go with them.

MR. GRIFFIN: Who engaged you? A.—The McDonald-Murphy Lumber Company.

THE COURT: Thank you.

(Witness aside.)

No. 14.

No. 14.
Albert D. Munn,
direct examination.

ALBERT D. MUNN, a witness called on behalf of the plaintiff, 20
being first duly sworn, testified as follows:—

DIRECT EXAMINATION BY MR. HOSSIE:

Q.—Just speak out, Mr. Munn. You hold a position with the plaintiff Company, I believe? A.—Yes.

Q.—What is it? A.—Book-keeper.

Q.—And you reside in Vancouver? A.—Yes, sir.

Q.—You were with Mr. E. V. Munn and Mr. Burke and Mr. Aitken on the 3rd of April, I believe? A.—Yes, sir.

Q.—And what have you to say as to the evidence which has already been given of the three interviews? A.—As far as I 30
heard it the evidence was correct.

Q.—And you were in Vancouver with Mr. Aitken? A.—Yes.

Q.—Do you recall the time you saw the officer there? A.—Yes; about fifteen or twenty minutes after the boat got in—the Nanaimo boat—it was a quarter to 1.

Q.—And you left there when? A.—On the 2 o'clock boat or 2.15.

Q.—What have you to say in regard to Mr. Aitken's evidence? A.—It is correct.

Q.—Now, these invoices that have been put in respect of the 40
four booms were put in by you, I believe? A.—Yes, on my instructions.

Q.—And those were prepared in any special manner or how? A.—Well, just the usual way of making out invoices.

Q.—You have prepared others, I believe, on a straight delivery price basis according to the letter of the contract? A.—Yes.

Q.—Was there any particular reason for a change? A.—Well, I don't just understand you. You mean in regard to the delivered price?

Q.—I think, on some occasions earlier some of your invoices have been made out on the delivered price. Was there any reason for the change, or what have you to say on the matter? A.—Well, there is no special reason. It comes down to the same thing.

10 Q.—It comes down to the same thing? A.—Yes.

Q.—You sold logs to purchasers other than the Henry McCleary Timber Company? A.—Yes.

Q.—And you export logs to other purchasers? A.—Yes.

Q.—By the way, you have charge of that branch of the business, have you, for the Company? A.—Yes, I have to handle the papers and have them made out.

Q.—Are there any instances where your Company absorbs the export tax? A.—No, sir.

20 Q.—Can you tell me how many million feet your Company has exported of logs from timber leases granted prior to April 7th, 1887? A.—Well, no, I cannot right offhand. I can tell you how much was exported last year.

Q.—How much was exported in 1928? Have you calculated it accurately from your letters? A.—That is off that Block 75 in Section 1 there were 8,748,290 feet.

Q.—What was your total cut that year? A.—The total cut off Block 75, Section 1—

30 MR. GRIFFIN: I submit this has nothing whatever to do with the matter what his cut was and what he does with it; that cannot assist us and it carries us to a field where he cannot be prepared to meet it. There is no discovery or anything on it.

MR. HOSSIE: It was not sought—

THE COURT: You see, Mr. Hossie, if Mr. Griffin is questioning the accuracy of that I shall have to give effect to his objection.

MR. HOSSIE: I undertook this morning to secure the accurate amount of it and I have done so.

THE COURT: Of course, you say that is substantially correct, if not absolutely so? A.—Yes.

40 Q.—And was taken from your books? A.—Yes.

THE COURT: Q.—Would you want to see the original books from which it was taken?

MR. GRIFFIN: My objection is to the introduction of the evidence at all.

MR. HOSSIE: Q.—Now, in 1928, when the contract with the McCleary Timber Company was made with your Company, do

RECORD.
Plaintiff's evidence.
No. 14.
Albert D. Munn,
direct examination.
(Continued.)

RECORD.
 Plaintiff's evidence.
 No. 14.
 Albert D. Munn,
 direct examination.
 (Continued.)

you know what the ruling price for timber was? A.—Ten, fifteen, and twenty.

Q.—Ten, fifteen, and twenty? A.—Yes.

Q.—That refers now to fir logs? A.—Yes.

Q.—And the price at which you sold to McCleary under the terms of that contract was——

THE COURT: We have had that already.

MR. HOSSIE: Just one other question.

Q.—You sell to others other than the McCleary Timber Company? A.—Yes.

10

No. 14.
 Albert D. Munn,
 cross-examination.

CROSS-EXAMINATION BY MR. GRIFFIN:

Q.—Just a word before you leave. This Exhibit No. 1 is the invoice for the timber in question. That invoice is for timber sold pursuant to this previous contract No. 1. We have had that already. That is correct? A.—This is correct.

Q.—That is the contract for this timber—Exhibit 1.

THE COURT: I understand, Mr. Griffin, that there is something there in Exhibit 1 Mr. Hossie was not putting in, and I understood that you and he would segregate that afterwards.

MR. GRIFFIN: Mr. DesBrisay thinks that the invoices were called Exhibit 2, and I did not want to get a nomenclature that would be afterwards confusing. Yes, my notes are the same, that the scale bills were Exhibit 1 and the invoices were Exhibit 2, and yet the Registrar has put the words "Invoice 1" on the invoices—No. 1.

THE COURT: Well, the numbering would not affect it.

MR. GRIFFIN: We will take that to be 2 instead of 1.

Q.—This Exhibit 15 was the contract in respect of the same lumber shown on Exhibit No. 2 invoice? A.—Yes.

Q.—And so this No. 15 calls for a lump price? A.—Yes. 30

Q.—With the error as explained? A.—Yes.

Q.—Of \$24 delivered price? A.—Yes.

Q.—And therefore if you are correct in saying that is the B.C. price—— A.—That isn't \$24 delivered, you know.

Q.—That is \$24 including everything, isn't it? A.—No; there is the towing on top of that.

Q.—How much is that? A.—Well, that is up to the people buying the logs.

Q.—Well, I want to know is what the price was? A.—\$24 plus the towing. 40

Q.—Well, leaving out the towing, the \$24 is the price plus taxes? A.—Yes.

Q.—Does it include the American tax? A.—Yes.

Q.—So really what it amounts to is this—your Company then would be making \$24 less three? A.—Yes.

Q.—That is \$21? A.—Yes.

Q.—And that is the price you have put in your invoice? A.—Yes.

Q.—\$21? A.—Yes.

Q.—I follow you. But you have other reasons which you have not explained in the change—what was a lump-sum price of \$24; it included the taxes; there was only \$21 for material and the tax was a separate item— A.—Well, that is a clear invoice.

Q.—You didn't wait for my question. I want to get from you what was the motive behind such a change? A.—Well, I was going by my instructions. That is how I invoiced the logs.

Q.—Well, you were told to do this? A.—That is how I always invoice it.

Q.—Well, there was no reason why you should not invoice them at \$24? A.—Oh, no.

Q.—And the invoice would be just as true as this one? A.—It would be the same thing in the long run.

Q.—And doesn't it look as if the obvious reason was to show the tax as a separate item? Wasn't that the real reason? A.—No, I wouldn't say so.

Q.—Well, was that in fact the reason? A.—I couldn't say; I don't follow you at all.

THE COURT: This witness says he was told to do that. Ask him who told him that.

MR. GRIFFIN: Q.—Well, who told you to do that? A.—The manager of the Company.

Q.—What is his name? A.—Mr. A. E. Munn.

Q.—Your brother? A.—My uncle.

Q.—And you don't know the reason? A.—No.

THE COURT: He is here. Why not recall him if there is any point in that. Why not call the witness who knows. I will allow you to call him.

(Witness aside.)

No. 15.

EDWARD LEO KILTY, a witness called on behalf of the plaintiff, being first duly sworn, testified as follows:—

No. 15.
Edward Leo Kilty,
direct examination.

DIRECT EXAMINATION BY MR. HOSSIE:

Q.—You live in Vancouver, Mr. Kilty? A.—Yes.

Q.—You are employed now by what company? A.—Brooks, Scanlon, O'Brien Company, Limited.

Q.—How long have you been working for them? A.—Since July of 1911.

Q.—During that time what were your duties? A.—From July, 1911, until November, 1912, I was the timekeeper and store-

RECORD.
Plaintiff's evidence.
No. 14.
Albert D. Munn,
cross-examination.
(Continued.)

RECORD.
 Plaintiff's evidence.
 No. 15.
 Edward Leo Kilty,
 direct examination.
 (Continued.)

keeper at Stillwater, and from November 1st, 1912, up to the present I have been office manager.

Q.—During that time, from 1912, did you have anything to do with the sale of logs for export? A.—I have taken part in negotiations and prepared invoices and export papers.

Q.—The documents all go through your hands, do they? A.—Yes.

Q.—Now, those logs were exported to the United States, I suppose, for the most part, were they? A.—Yes.

Q.—And at what price? 10

MR. GRIFFIN: Well, now, wait a minute.

MR. HOSSIE: The same objection, I suppose.

MR. GRIFFIN: The same thing.

MR. HOSSIE: They were invoiced to the American purchasers at that price? A.—My first experience in 1912 in preparing export papers was a shipment to the Graten Bay Shingle Company in Blaine at a price of \$12—\$12 per thousand, a flat price.

Q.—F.O.B. where? A.—F.O.B. Blaine.

Q.—And what was the local B.C. price at that time? A.— 20
 There was a sale of logs to the Thurston-Flavelle Lumber Company during the same month on the basis of—there was a shipment of 999,000 feet of cedar logs invoiced on a basis of 80 per cent. of \$12 per thousand and 20 per cent. at \$8 per thousand.

Q.—That brings it down to an average of about \$11? A.— Yes.

Q.—Now, just generally, during the period you were exporting logs to the United States, at what price did you export—f.o.b. price B.C. or U.S.A.? A.—The negotiations were based on an f.o.b. price Vancouver or B.C. market. We very often invoice 30
 them at a price sufficiently in advance over the B.C. market price to take care of the export tax and towing and insurance.

Q.—I see. Well, did you have any instance in which your Company absorb the export tax? A.—Not to my personal knowledge.

Q.—Now, during that time what number of customers did you sell exported logs to? A.—Approximately it must have been eight or ten different customers on the other side.

Q.—Did you sell any logs locally as well? A.—Yes.

THE COURT: You said Thurston & Flavelle. That is a 40
 local company? A.—Yes.

MR. HOSSIE: You sold where you could get the best price? A.—Yes.

Q.—What was your total export, do you know? A.—Approximately 15,000 feet up to date—that is from December, 1912.

Q.—Do you know what your Company obtained for the stumpage? A.—Yes; I know of one particular purchase, a block

of timber, principally Crown-granted timber; there was about 5,600 acres in the block, or as far as the stand of timber was concerned it was estimated at 518,000,000 feet.

Q.—And what did you pay for it? A.—\$400,000.

Q.—During this time did your Company receive any request from the B.C. Government in respect of the 1-cent tax? A.—Yes, we paid the 1-cent tax on some Crown-grant logs.

Q.—That was Crown-grant logs manufactured in British Columbia? A.—Yes.

10 Q.—For how long did you pay that tax? Did you pay it throughout the whole period or not? A.—Well, that tax, according to my recollection, accumulated during the early part of the operations.

THE COURT: What is the purpose of that?

MR. HOSSIE: Section 58 covers this as well. It is material here.

THE COURT: Well, that is the plaintiff Company and this is the Brooks-Scanlon Company.

MR. GRIFFIN: How can it be of any interest here?

20 THE COURT: Why didn't you ask the plaintiff's people where they were operating?

MR. HOSSIE: Because they were not operating when this 1-cent tax was on—not far enough back. That 1-cent tax was discontinued and the plaintiff Company was not operating then and they did not know anything about it.

MR. GRIFFIN: Well, whether or not Brooks-Scanlon paid a 1-cent tax, which is not in question in the case, cannot very well help in deciding whether the plaintiff should pay the \$2 tax which is in question.

30 THE COURT: I do not see the relevancy. What is the relevancy of that? How will that aid me in determining the issue to get at this—in the question of this particular tax—a totally different tax we are dealing with.

MR. HOSSIE: No, it is exactly the same tax under section 58.

THE COURT: Well, let me see.

MR. HOSSIE: Section 58 showed a tax of \$2.

THE COURT: It is a new matter to me.

MR. HOSSIE: It is the same.

40 THE COURT: If it is under another name, perhaps I don't recognize it. If you had referred to it before my mind would have been directed to it. Section 58, where is that?

MR. HOSSIE: Schedule No. 1, the last but fourth line. (Reading same.) That is the 1 cent I am referring to.

THE COURT: Well, it is there. That isn't disputed. It isn't disputed if that is so.

RECORD.
 Plaintiff's evidence.
 No. 15.
 Edward Leo Kilty,
 direct examination.
 (Continued.)

RECORD.

Plaintiff's evidence.
 No. 15.
 Edward Leo Kilty,
 direct examination.
 (Continued.)

MR. HOSSIE: That it is in the Act, but the fact is that the Act is not administered in that way, and I don't like to be called upon to argue my case in bits. Now, the fact is at one time where the logs were used in British Columbia and manufactured in British Columbia, then a cent was charged. That is all I am trying to establish.

MR. GRIFFIN: The point I want to get at is this: No matter how the Act was administered in regard to the 1 cent, it could have no effect on its construction. You might administer it well, or illy, or incorrectly. 10

THE COURT: Or not administer it at all at that period.

MR. GRIFFIN: And I think it is a waste of time.

THE COURT: Well, I will take it that is so.

MR. HOSSIE: Q.—Do you recall when the collection of the 1 cent was discontinued? A.—Do I?

THE COURT: Do you or do you not? A.—Yes.

Q.—When was it? A.—December 31st, 1914.

Q.—That is all he is asking you.

No. 15.
 Edward Leo Kilty,
 cross-examination.

CROSS-EXAMINATION BY MR. GRIFFIN:

Q.—Mr. Kilty, when you are giving evidence, I suppose you have looked up your record to come here and tell these things here to-day? A.—I have had occasion to glance over them from time to time. 20

Q.—In order to give these prices? A.—Yes.

Q.—Have you looked it up? A.—Yes, quite recently.

Q.—And you went back of your records to find out the prices for 1912? A.—I did; not particular for that date, but I happened in looking through the records noticed some of the sales, and it happened to be the first transaction that I dealt with when I entered the employ of the Company here, and possibly for that reason it impressed me more, say, than it might otherwise have done. 30

Q.—I only asked a very simple question. Have you or have you not, for the purpose of coming here, made a careful survey of the work your Company has done in all these years? Did you or did you not do that? A.—I made a casual survey. I would not say I went into all the details.

THE COURT: Well, Mr. Griffin, if there is any answer needed for that the best evidence are the records, and if you want them I will order them to be produced. It does not help me for you to ask this witness these questions. It is quite clear it is his recollection, you see. 40

MR. GRIFFIN: I only wanted to ask a few questions on it.

THE COURT: If you want the records I will order them to be here.

MR. GRIFFIN: I only want to ask one or two very short things.

THE COURT: No; but the witness obviously hasn't the records here and it is only a matter of his recollection, so why take up time bothering with that.

MR. GRIFFIN: I am not going to any more.

THE COURT: It seems to me that you are asking him matters outside of the issue and that will not be of any use to me at all. You were starting in as I thought and you were keeping
10 cross-examining this man as to the accuracy of what he has been telling Mr. Hossie, from his recollection. And you will understand there is no jury.

MR. GRIFFIN: Most of your transactions during this long period of yours have been sales to mills in the State of Washington, have they not? A.—No; the majority of the sales were in sales to mills in British Columbia.

Q.—Your big transactions are in British Columbia? A.—Yes.

Q.—And those are sold at the delivery price or the price at
20 your camp—which, usually? A.—Usually at a price delivered at the mill in British Columbia.

Q.—F.O.B. mill? A.—Yes.

Q.—And then you have what is called a delivered price? A.—Yes.

Q.—Which includes towing, for example? A.—Yes.

Q.—And of course in the case of B.C. deliveries it does not include for any tax? A.—Except the usual royalty that it is subject to.

Q.—No; that is different to a tax—but none of this what
30 you would call an export tax? A.—No.

Q.—And in the case of a foreign purchaser it includes the export tax and American import tax, doesn't it? A.—Yes.

Q.—And the towing? A.—Yes.

THE COURT: Well, Mr. Griffin, is there any dispute between you as to that. You are going over and over that. Do tell me frankly.

MR. GRIFFIN: Yes, my lord; my learned friend has been drawing out of these witnesses one or two statements which I do not think any one of them intended to make.

THE COURT: Well, which? Surely not that. There is
40 no dispute about that—the import tax. Can you find any person importing this commodity to the State of Washington without this tax?

MR. GRIFFIN: Well, now, take this tax—your Company pays it in every case, don't you?

THE COURT: Do you know? You are hesitating?

A.—I was just trying to recall it.

RECORD.

Plaintiff's evidence.

No. 15.
Edward Leo Kilty,
cross-examination.
(Continued.)

RECORD.
 Plaintiff's evidence.
 No. 15.
 Edward Leo Kilty,
 cross-examination.
 (Continued.)

Q.—If you don't know, just say so, but you are hesitating and it takes up time. A.—Well, I would say we have paid it in every case. There was just one or two cases I was wondering how it was handled.

Q.—Well, don't worry about that. If you can say that is so substantially, say yes. A.—Yes.

MR. GRIFFIN: Q.—And in those cases where the price was a lump sum delivered price you nevertheless paid the tax yourself? A.—We paid the tax, yes; but the price at which we delivered the logs or agreed to deliver the logs contemplated the export tax, and we know, or we did know, that we did have to pay the export tax, and therefore we used the Vancouver market price and added to that sufficient to cover the export tax on the logs going to the United States. 10

Q.—And the towing? A.—Yes.

Q.—And the insurance? A.—Yes.

Q.—Now, if the total of all those things was less than the prevailing price in Washington, did you charge the full Washington price if you could get it? A.—I am not just quite sure on that question. Please repeat it? 20

Q.—I say, if when you had taken the B.C. price and added the tax and the towing and the insurance, and the present was less than the Washington price, did you make a present of that price to the Washington mills? That is—

THE COURT: Witness, even if you do not now understand it, you can make Mr. Griffin repeat it.

A.—Well, you say something about making a present to the Washington mills?

Q.—Do you not understand it? Do you see the drift of Mr. Griffin's question? I do, and I am a greenhorn at this business. 30

MR. GRIFFIN: I will try it again.

Q.—I want you to assume the Washington price is a certain figure and the Vancouver price plus this tax and the towing will still fall short of the Washington price. Now, who gets the difference? You or the Washington men? A.—I guess the Washington man can buy for less. He can buy in British Columbia and under the particular circumstances we have to—or I will put it this way: there may be certain conditions where we may have logs which are not suitable for the Vancouver market, and we may, in order to sell the logs and find a market for them, we may sacrifice them on the Vancouver market price, or sell them under the Vancouver market price. 40

Q.—Well, I don't understand what you mean. I will try it again in its simplest form.

THE COURT: It is very mutual; he does not understand you.

MR. GRIFFIN: He doesn't understand me, and I don't understand him. If the Washington price will give you more money than the Vancouver price, will you sell in Washington?
A.—Yes.

Q.—That is what I want to find out. You do that, do you? You are sure of that? A.—Yes, where we have exportable logs.

Q.—Of course, if you have the commodity. But where you have a commodity that you can sell in Washington at more money, do you sell it there? A.—Yes, in the majority of cases.

10 Q.—And if you don't do that it is for some reason? A.—Yes.

Q.—Not a business reason, is it? A.—Well, there may be times when we have customers here at home whom we wish to oblige, having in mind that at some future date we may have to call on them to use some of our unexportable logs.

Q.—Well, isn't this obvious; if you get the best price you can in Washington, your profit is the difference between the cost of production and these taxes, isn't it? A.—Obviously, yes.

20 Q.—So therefore you are absorbing the tax as part of your cost on all those occasions, aren't you? A.—We absorb it, yes; but the price at which we sell for in the United States is sufficiently over the Vancouver market price to take care of the extra tax.

Q.—Yes, just so. But you are paying it and including it in your cost, aren't you? A.—Yes.

Q.—And the same thing applies exactly with any other item of cost—wages, for instance. It is an element of cost, isn't it? Oh, man, do hurry along? A.—Not to the same extent as wages.

Q.—Well, I want to see if you can follow me. Everything that works into the cost is an element in it, isn't it? A.—Yes.

30 Q.—And there is no difference in its effect between one item of cost and another, is there? A.—Except that we are producing a product which we have to market. If we sell in British Columbia we have to sell, or we do sell at the maximum price obtainable. We have at times logs for sale, which, if we could ship them to the United States, we could get a premium for them, but the factor of the export tax is at times prohibitive in making a sale for export. It is in a way what is commonly referred to as an embargo against the export of the timber.

40 Q.—And the Washington price may even drop so low that you cannot profitably sell over there. Isn't that all you mean? A.—Yes, that is just about what it amounts to.

Q.—But it usually is higher, isn't it? A.—Yes.

Q.—And the result is the mills offer more there than they do here? A.—No, I wouldn't say so.

Q.—You think there are bigger quantities sold here? A.—Yes.

RECORD.
Plaintiff's evidence.
No. 15.
Edward Leo Kilty,
cross-examination.
(Continued.)

RECORD.
 Plaintiff's evidence.
 No. 15.
 Edward Leo Kilty,
 cross-examination.
 (Continued.)

Q.—Now, one word more. When you speak of absorbing—that word “absorb” is only another word for “pay,” isn’t it?

A.—We pay——

Q.—Just please answer my question?

THE COURT: Pardon me. It was you who used the word “absorb.”

MR. GRIFFIN: No; I got it out of Mr. Hossie’s question.

THE COURT: It was counsel who were using it.

MR. GRIFFIN: Q.—The word “asborb” means in effect to pay? A.—I suppose that is the definition of it. 10

Q.—Is that the one you meant by it? A.—Not in the sense of the export tax, no.

Q.—Well, forget the export tax entirely and answer my question?

THE COURT: No; let him finish. I want to know whether the witness understands what he is talking about?

A.—As far as the export tax on logs is concerned, and during my time it has always been customary to invoice the logs at a price delivered either at the mill in Vancouver or at some destination in the United States, with the possible exception of one or two sales—one or two contracts, the reason for that being that the exporter has to make application, or at least it is my understanding that the exporter has to make application to the United States Government for an export permit, and therefore it isn’t reasonable to expect the purchaser to handle the exportation and prepare the papers for clearance of the logs from British Columbia to the United States. And that has been our reason for handling it and invoicing it in that way. 20

Q.—In what way? A.—Invoicing at a price delivered at its destination. 30

Q.—Well, I want to ask you about very much simpler things than what you have dealt with. When you speak of absorbing a thing, you mean being forced to pay it? A.—Yes.

Q.—When you speak of absorbing things—take towing, for example, it would mean having to pay it out of your funds? A.—Yes, we would pay it out of our funds.

Q.—Well, you confuse me by your apparent difficulty. Therefore is it not correct to say that every single dollar you pay out in the marketing of your logs from the time you cut them down in the woods until they are finally sold is all absorbed by you, and in that sense you have paid the whole of it yourself, haven’t you? 40

THE COURT: Well, the witness is hesitating. That is the reason I am interfering. Why use the word “absorb”?

MR. GRIFFIN: Because he used it, and that is an important point to which my learned friend led him.

THE COURT: Well, until you began to cross-examine him the witness thought, because Mr. Hossie used the word “absorb,”

that it was quite all right for him to use it, and then you began to question him on it and so maybe now he has some doubts as to what that word "absorb" means.

Q.—Is it a word that you use generally in your business? Do you or do you not? A.—No, it isn't customary.

Q.—Is it a familiar word to use in this connection? A.—Yes, I would say it is.

Q.—Well, then, if it is, you should really answer Mr. Griffin's question.

10 MR. GRIFFIN: Well, then, if you do, I do not think you have been answering with the rapidity you should have. The word "absorb" is well known to you? A.—Yes.

Q.—Well, then, "absorb" in connection with the costs of production is to pay out, isn't it? A.—Yes.

Q.—I will start with the beginning of the transaction; when you buy back your log on the tree you absorb the cost of it? A.—Yes.

Q.—And you absorb the cost of wages by cutting it down? A.—Yes.

20 Q.—And when you pay the tax you absorb that by paying it to the Government? A.—Yes.

Q.—And then you get your money back in a lump sum from the buyer? A.—Yes.

(Witness aside.)

THE COURT: How many more witnesses have you?

MR. HOSSIE: I have three more, but there is one here for a special purpose and he will not take very long.

No. 16.

30 JOHN STERLING YUILL, a witness called on behalf of the plaintiff, being first duly sworn, testified as follows:—

RECORD.
Plaintiff's evidence.
No. 16.
Edward Leo Kilty,
cross-examination.
(Continued.)

DIRECT EXAMINATION BY MR. HOSSIE:

Q.—Mr. Yuill, you live in Vancouver, I believe? A.—Yes.

Q.—And are engaged in the lumber and logging business? A.—Yes.

Q.—And at the present moment I believe you are with the B.C. Logging Association? A.—Yes.

Q.—What was your earliest connection with the logging business in the Province of British Columbia? A.—January, 1901.

40 Q.—And you were then employed by whom? A.—McIntyre —Mr. McIntyre.

Q.—By whom else were you employed? A.—The E. J. Wood Lumber Company of Bellingham.

RECORD.
 Plaintiff's evidence.
 No. 16.
 John Sterling Yuill,
 direct examination.
 (Continued.)

Q.—When did you first operate in Vancouver for that Company? A.—I was working for them in Bellingham and I came over here on December 23rd, 1923.

Q.—And what were your duties here? A.—They called me their agent.

Q.—What did you do—not what they called you, but what did you do? A.—I looked after their camps and scaled their logs and got them ready for the tug-boat.

Q.—Now, what timber did your Company own at that time? A.—Well, the particular timber that I had to do with was at French Creek, just above Nanaimo, about 30 miles, and another block at Comox. 10

Q.—And what was the nature of the land on which it grew? A.—E. & N. land.

Q.—Old Crown-granted land? A.—Yes.

Q.—That timber, then, was cut by your Company and exported where? A.—To Bellingham.

Q.—To the mill at Bellingham? A.—Yes.

Q.—And any of it sold—

MR. GRIFFIN: The same objection, my lord. It relates to other property that is not in question here. 20

MR. HOSSIE: Any of it sold? A.—Not that I remember of.

Q.—Do you know how much your Company paid for the stumpage on those two pieces? A.—Roughly, around 65 cents. That was on a cruise.

Q.—Then how did the cruise work out? A.—In one instance it did not quite cut out and in the other instance it ran over.

Q.—It evened up then? A.—Yes.

Q.—So the stumpage was about 60 cents a thousand? A.— Yes, but we charged it off on our books at 50 cents. 30

Q.—Now, your Company had bought logs previously in British Columbia in the years 1901 and 1902 and 1903, had it not? A.—In 1901 and 1902 and I am not so certain about 1903.

Q.—At that time there was no export tax passed? A.—No.

Q.—And in 1903 did you ship any of the logs from these pieces of timber? A.—We acquired one boom between Christmas and January, or between Christmas and New Year's in 1903. I believe it appears on our records. Our records show when it arrived down there. 40

Q.—And did you pay a tax on that? A.—Yes, sir.

Q.—Do you recall the relative dates when you made your first shipment and when this tax came into operation? A.—Oh, they got us first. We paid the tax first.

Q.—You were here then when this tax was first put on? A.—Yes.

Q.—You heard of it? A.—Yes, we heard of it and we tried to get that boom out before the damage was done, but we weren't quick enough.

Q.—And during the time that operation continued, all your logs were shipped out, were they? A.—Yes, as I remember.

Q.—And the tax paid on each one? A.—Yes.

Q.—Did you have any difficulty with the Government in connection with the payment of the tax? A.—Yes, they seized one boom on us.

10 MR. GRIFFIN: Surely, my lord, that is getting too far away.

MR. HOSSIE: For non-payment of the export tax? A.—Yes.

THE COURT: You are objecting to that?

MR. GRIFFIN: Yes.

THE COURT: Objection sustained.

MR. HOSSIE: Q.—Ultimately, how long did this operation continue? A.—We wound it up in July, 1905.

20 Q.—Since that, has your Company operated here? A.—No, sir; we sold the timber.

Q.—You sold the timber in British Columbia? A.—Yes.

Q.—Sold it standing or cut? A.—Sold it standing.

THE COURT: Thanks.

MR. HOSSIE: Just one question.

Q.—What was the price of logs in British Columbia at that time?

THE COURT: Do you know?

A.—Well, the records show that we bought them and what we bought them at.

30 Q.—But do you know yourself? A.—Only from the records.

MR. HOSSIE: Q.—And what do your records show? A.—\$4 and \$6.

THE COURT: Are you objecting to that?

MR. GRIFFIN: Yes, I am objecting to the whole thing.

THE COURT: If you are referring to that you should refer to the documents.

MR. HOSSIE: I think with an experience of twenty-five years the witness should be able to look up his records for it.

40 THE COURT: Well, that was his objection, that the evidence should be based on the written documents.

(Witness aside.)

Court adjourned until 11 a.m., May 2nd, 1929.

RECORD.

Plaintiff's evidence.

No. 16.

John Sterling Yuill,
direct examination.
(Continued.)

RECORD.

May 2nd, 1929, 11 a.m.

Plaintiff's evidence.

Court met pursuant to adjournment.

No. 17.
George Alpheus
Allan, direct
examination.

MR. HOSSIE: I call Mr. Allan.

No. 17.

GEORGE ALPHEUS ALLAN, a witness called on behalf of the plaintiff, being first duly sworn, testified as follows:—

DIRECT EXAMINATION BY MR. HOSSIE:

Q.—Mr. Allan, you live in Vancouver? A.—I do.

Q.—You hold the office of Collector of Customs in Vancouver?

A.—Yes.

Q.—Under the Dominion Government? A.—Yes.

Q.—On the 3rd of April, 1929, I believe there were four gentlemen attended at your office requesting clearance of certain booms of logs? A.—I haven't kept track of the date, but—

Q.—Do you recall the incident? A.—I recall the incident, and was consulted on the matter, yes.

Q.—And I believe you refused clearance of the vessels for the purpose of taking these logs to the United States? A.—We did.

Q.—On what ground? A.—We believed that we had no authority to clear, unless the exporters produced a permit to export.

Q.—From what authority? A.—From the Provincial Government.

Q.—You had instructions to that effect from your Department, had you? A.—I did.

Q.—Would you mind producing the instructions under which you were acting at that time in refusing this clearance? A.—I have a copy here of a circular which I have certified as a true copy. The original is pasted in a book with other instructions.

Q.—You have compared this with the original? A.—I have compared that, and it is a verbatim copy of the instructions we have.

Q.—I may keep this copy, then, Mr. Allan? A.—You may keep that one.

THE COURT: That will be Exhibit 17.

(Document marked Exhibit No. 17.)

THE WITNESS: Copy of Departmental Circular 5771½-C.

MR. HOSSIE: I notice that circular is dated 8th March, 1927, Mr. Allan. Was there any circular preceding that?

THE COURT: 87?

MR. HOSSIE: 1927, my lord.

10

40

A.—There was a circular letter—not a numbered circular—from the Department, but a letter containing identically the same instructions.

Q.—Do you remember the date of that, Mr. Allan? A.—No, I do not; it was several years previous, though.

Q.—How long have you been in receipt of similar instructions from your Department, do you recall? A.—As contained in this circular?

Q.—Yes? A.—I believe the original one was 1921; I am
10 not sure.

MR. HOSSIE: 1921.

MR. GRIFFIN: No questions, thank you, my lord.

THE COURT: Thank you.

(Witness aside.)

MR. HOSSIE: I call Mr. F. J. Wood.

No. 18.

FREDERICK JOHN WOOD, a witness called on behalf of the plaintiff, being first duly sworn, testified as follows:—

DIRECT EXAMINATION BY MR. HOSSIE:

20 Q.—You live where, Mr. Wood? A.—Bellingham.

Q.—In what business? A.—Lumber.

Q.—How long have you been engaged in the lumber business?
A.—Since about 1891.

Q.—Pardon? A.—Since 1891.

Q.—Since 1891? A.—Yes.

Q.—In British Columbia and Washington? A.—No; most of the time in the States, part of the time in—

Q.—How long on the Pacific Coast? A.—Well, practically all that time on the Coast.

30 Q.—On the Pacific Coast? A.—Yes, sir.

Q.—Your firm had what name? A.—E. K. Wood Lumber Company.

Q.—And during what period were you engaged by that firm?
A.—All the time, all the time.

Q.—Your firm operated a mill, I believe, at Bellingham? A.—Yes, sir.

Q.—Where did you get your logs for that mill? A.—Well, we got some in the States, some in British Columbia.

40 Q.—Since what time have you been purchasing logs for your mill from British Columbia? A.—Well, we didn't start that mill till 1900. We started buying logs in B.C. about 1901.

Q.—Did you ever purchase any stumpage in British Columbia? A.—Yes, sir.

RECORD.
Plaintiff's evidence.

No. 17.
George Alpheus
Allan, direct
examination.
(Continued.)

No. 18.
Frederick John
Wood, direct
examination.

RECORD.

Plaintiff's evidence.

No. 18.
 Frederick John
 Wood, direct
 examination.
 (Continued.)

Q.—When did you purchase it?

MR. GRIFFIN: Now, the objection I made yesterday, of course, I still maintain.

MR. HOSSIE: Q.—Do you recall when you purchased stumpage in British Columbia? A.—I would have to look at the records. I have the records here to show exactly.

Q.—You did buy some stumpage here? A.—Yes, sir.

Q.—You forget the date for the moment. Do you recall what you paid for it? A.—There was one tract we paid \$15,000 for. The other tract I have forgotten. 10

Q.—Is this an original record of your Company? (Handing document to witness.) A.—Yes, sir.

Q.—Who made the purchase for your Company? A.—I made it.

Q.—Will you refresh your memory as to the price paid?

THE COURT: Paid?

MR. HOSSIE: Q.—What you paid? A.—Yes, sir.

Q.—And the quantity of timber purchased for the price, and then compute, if you will, the average price per thousand feet board measure. 20

THE COURT: Mr. Hossie, have you other witnesses with similar evidence?

MR. HOSSIE: No—

THE COURT: You might have asked this man to compute it before he came in the box.

MR. HOSSIE: No; I just want a general—

THE COURT: It will not take long.

MR. HOSSIE: No, it will not take long.

A.—Tract at Nanoose District, we paid \$15,000 for it—

THE COURT: What acreage? A.—Date? 30

THE COURT: What acreage?

MR. HOSSIE: Q.—What acreage?

THE COURT: \$15,000, what did you get for that? A.— There was 1,968 acres.

THE COURT: 1,968 acres, yes.

MR. HOSSIE: Q.—What year did you buy it? A.—I have got to look at the—I will have to look at the later book on that.

Q.—All right; while we are getting it, do you know how many million feet there were in this bit of property? A.—Our cruise was nearly twenty-three million. There is twenty-two million— 40

THE COURT: Oh, well, that is approximately.

MR. HOSSIE: Q.—Yes, approximately twenty-three million; and what was the other piece of property you purchased, while we are waiting for the date. What did you pay for it and how many million feet?

THE COURT: Give the date and the amount.

A.—I am afraid I will have to take a little time to look through the letter book to find that.

THE COURT: Well, Mr. Hossie, if you do not mind, supposing you tell Mr. Wood what you want and then call another witness.

MR. HOSSIE: Yes, I will call another witness.

THE COURT: He can find that out in the meantime.

MR. HOSSIE: Yes, I think that will be better.

THE COURT: Yes, because he would do it more satisfactorily to himself, would he not.

(Witness withdrawn.)

No. 19.

MR. HOSSIE: Now, I have to put in some documents, and I call on my friend for some productions. I ask my friend to produce the document requested yesterday, the original permit for "B-38" which was prepared in connection with these logs. We have for the moment only a copy, but the original is in my friend's file. In the meantime I will file a letter from the Deputy Minister of Justice acknowledging receipt of notice of this action and stating that he does not desire to be heard at the trial of this action, and he reserves the right to intervene in case the litigation be carried—

THE COURT: Are those all separate exhibits?

MR. HOSSIE: This will be a separate exhibit.

THE COURT: Form "B."

MR. HOSSIE: Form No. 38-B is in, my lord—my copy is in.

THE COURT: This will be Exhibit 18.

MR. HOSSIE: This will be Exhibit 18.

30 (Document marked Exhibit No. 18.)

MR. HOSSIE: I ask my friend to produce export permit prepared in connection with these particular logs.

MR. GRIFFIN: My memory is it was already produced.

MR. HOSSIE: Prepared, but not issued—no, it was not produced.

MR. GRIFFIN: We only have a copy.

MR. HOSSIE: Well, the original will be in the office. May we put in the copy in the meantime?

MR. GRIFFIN: Yes, go ahead, put in the copy.

40 MR. HOSSIE: So as to give it a number in exchange for the original letter.

THE COURT: Exhibit 19.

(Document marked Exhibit No. 19.)

MR. HOSSIE: I ask my friend to produce records of the acreage as set forth in my notice to produce: Records of the acre-

RECORD.
Plaintiff's evidence.
No. 18.
Frederick John
Wood, direct
examination.
(Continued.)

No. 19.
Documentary
evidence and
discussion,
Court and Counsel.

RECORD.
 Plaintiff's evidence.
 No. 19.
 Documentary
 evidence and
 discussion,
 Court and Counsel.
 (Continued.)

age of Crown-granted land in the Province granted prior to April 7, 1887, the timber which has been cut from that acreage, and of that timber how much has been exported, and the estimate of the timber which is left standing on that acreage.

MR. GRIFFIN: No, that information is not being produced. We take the view that it is not relevant to this issue, and have nothing to say further.

MR. HOSSIE: I would ask my friend to produce the annual reports of the Forest Branch for the year 1928 and preceding years.

MR. GRIFFIN: I have here these reports back to the years 1924 to 1928, inclusive, which are very cheerfully produced so far as their mere physical existence is concerned, I taking the submission that the report of the Forest Branch should not be relevant to this case or assist your lordship in any way. I have no idea what they contain, or what my friend seeks, but it appears to us they could not assist.

MR. HOSSIE: I tender these as exhibits for what they are worth. They are official publications of this Department of the Government.

MR. GRIFFIN: My friend must surely at least give your lordship some idea and give me a chance to rebut that contention—show in some way how they can apply. They can't be simply tendered as documents; some relevancy must be indicated by them, because, if not, I can't discuss their relevancy.

THE COURT: Well, I suppose the legend on the cover would give some indication; what does it say?

MR. GRIFFIN: It says "Report of the Forest Branch."

MR. HOSSIE: It is reports of the Forest Branch, and they contain information as to all the timber in British Columbia. I am only concerned with the timber, although they also contain reports—

THE COURT: Location, area, and so on.

MR. HOSSIE: Location, area, quantities—

MR. GRIFFIN: Here, my lord, is an interesting feature about forest fires, but I submit it does not become evidence. Now, I don't know a single thing in this book—

THE COURT: No; I am taking it you object.

MR. GRIFFIN: But, you see, my friend may be asking something and then I have no idea how to deal with it.

THE COURT: You take that at the time—if necessary you can take ample time.

MR. HOSSIE: Perhaps I really should have shown my friend my brief as to what I intended to claim later, but I don't choose to do that.

THE COURT: No, I have that. Do not take up time on that aspect; I have all that.

MR. HOSSIE: We have now the original permit "F.B. 38," my lord, which will be substituted for the copy——

THE COURT: Exhibit 19.

MR. HOSSIE: No; it is not Exhibit 19.

THE COURT: No; it is Exhibit 3.

MR. HOSSIE: It is Exhibit 3, my lord.

THE COURT: Yes.

MR. HOSSIE: Exhibit 3 takes the place of the one which was in before as Exhibit 3. I ask my friend to produce letter from
10 the Chief Forester, Mr. H. R. McMillan, dated on or about the year 1914 or 1915, dealing with the collection or remission of this particular tax or part of it.

MR. GRIFFIN: I have no such letter, my lord.

MR. HOSSIE: I gave my friend notice to produce it. I also ask my friend to produce the report of the Royal Commission, 1909-10, appointed on the 9th July, 1909, under chapter 99 of the Revised Statutes of British Columbia, 1897.

MR. GRIFFIN: I have had no such report submitted to me.

MR. HOSSIE: I gave my friend notice to produce it, and
20 I have here a copy of it printed by the King's Printer and it is the official report of that Commission.

MR. GRIFFIN: My lord, I don't know what my friend now seeks to put in.

MR. HOSSIE: It is an official document.

MR. GRIFFIN: That doesn't make it evidence. It is stated to be an official report of a Royal Commission of Inquiry on Timber and Forestry in the years 1909-10. It may have related to forest fires; it may have related to anything. I have no idea what it is about, and how it could become evidence in this case is
30 beyond me, and I simply say for the moment I can't see where it can relate to any matter in question.

THE COURT: Well, this is Exhibit 21, subject to your objection.

(Document marked Exhibit No. 21.)

MR. HOSSIE: I think I can satisfy your lordship.

THE COURT: Well, there is no use reading it now. Unless you read the whole report, I suppose you could not safely conclude what it is about.

MR. HOSSIE: As an official report of a Royal Commission
40 it is admissible in evidence.

THE COURT: Well, I suppose it depends upon the relevancy of the subject-matter; but I am taking it.

MR. GRIFFIN: I would like to make a second objection; in any case the report of a Royal Commission, even if relating to the subject-matter, would not be in any sense evidence for the Court.

RECORD.

Plaintiff's evidence.

No. 19.

Documentary evidence and discussion, Court and Counsel.
(Continued.)

RECORD.
 Plaintiff's evidence.
 No. 19.
 Documentary
 evidence and
 discussion,
 Court and Counsel.
 (Continued.)

THE COURT: Well, we will postpone consideration of your objection. If you choose to elaborate it I will hear you later.

MR. HOSSIE: I will ask my friend to produce report of the Honourable Minister of Justice to the Governor-General in Council approved on the 8th October, 1912, copy of which—

THE COURT: 1912?

MR. HOSSIE: 1912, a copy of which was transmitted to the Lieutenant-Governor in Council of British Columbia for the information of his Government, dealing with the particular legislation in question in this action. 10

MR. GRIFFIN: That one fills me with astonishment. We can't find it—

THE COURT: Have you not exhausted your store of astonishment and surprise?

MR. GRIFFIN: Well, here is the report of the Minister of Justice of Canada which he tenders against the Government of British Columbia; I would like to be informed upon what ground it could be taken to be evidence against His Majesty's Crown Provincial.

THE COURT: Doubtless the ground situated within the Railway Belt—this ground is involved in the Railway Belt, on which Mr. Hossie is standing. 20

MR. HOSSIE: The copy I have is from the Provincial Library, my lord, and I have given an undertaking to return it. I am having copies actually—typewritten memorandum prepared, and will file a copy of that. I don't wish to have this book marked.

THE COURT: All right.

MR. GRIFFIN: I would raise the second objection that if the document is relevant as evidence, the original must be produced. 30

THE COURT: He is producing it.

MR. GRIFFIN: No, that is not the original.

THE COURT: But you do not know?

MR. GRIFFIN: This is only a copy itself.

THE COURT: I am now dealing with the book, you see.

MR. GRIFFIN: But I am speaking of the document—

THE COURT: No; but the objection lies to the extract from it as well, and then you object that he should leave the whole book here.

MR. GRIFFIN: No, my lord, the book would not improve matters. The book is itself a copy. 40

THE COURT: Your objection lies to the extract from it. What he is seeking now to do is to put in an extract upon which he relies.

MR. GRIFFIN: No, I am not going to make objections on that point; I don't mind my friend if he can.

THE COURT: Now your objection is all there. What is this objection?

MR. GRIFFIN: My objection is not, my lord, to my friend's putting in a typewritten copy of the book, but that the book itself does not purport to be an original document.

THE COURT: Oh, no, I have that.

MR. HOSSIE: Well, that is covered by this that I gave my friend notice to produce the original. He has not seen fit to do so; therefore I am at liberty to prove the thing.

10 MR. GRIFFIN: My friend must show the document to be in my possession before he can use a copy. The rules are clearly, well-known.

THE COURT: I know; but surely that is when Mr. Hossie attempts to argue before me, basing his submission upon this evidence, which you say should not be considered by me at all.

MR. GRIFFIN: Yes.

20 THE COURT: Well, now, I will assume that is so, but I thought it would be just as well to deal with all these aspects at that juncture, instead of keeping witnesses whilst we were discussing the matter; that is all. Really, your objection—you are safeguarded.

MR. GRIFFIN: Very well, my lord; that is all.

THE COURT: That is all I mean by letting this in; otherwise there will be trials within trials and the trial would be interminable, would it not?

(Document marked Exhibit No. 22.)

MR. HOSSIE: I would ask my friend also to produce the report of the Chief Forester, Mr. P. Z. Caverhill, of 1926 to the Minister of Lands dealing with the legislation in question.

30 MR. GRIFFIN: No such document has been submitted to me, and, even if it were, the report of Mr. Caverhill would not be binding upon the Government.

THE COURT: Your objection lies to all that.

MR. HOSSIE: I haven't a copy of that report with me at the moment, but I think I can produce one a little later. I would also ask my friend to produce map of the forest area of British Columbia showing the area granted prior to the 7th April, 1887. I understand my friend has not—

40 THE COURT: No, he has none of these and he is not producing them; I have that.

MR. HOSSIE: I also ask my friend to produce the petition of right and the correspondence dealing with it, which petition was launched and filed on behalf of Brooks, Scanlon & O'Brien Company, Limited, on or about 1914 or 1915, seeking relief from the particular tax in question in this action, and the correspondence on which the petition was refused.

RECORD.
 Plaintiff's evidence.
 No. 19.
 Documentary
 evidence and
 discussion,
 Court and Counsel.
 (Continued.)

RECORD.
 Plaintiff's evidence.
 No. 19.
 Documentary
 evidence and
 discussion,
 Court and Counsel.
 (Continued.)

MR. GRIFFIN: Firstly, I do not produce it; and, secondly, I do not concur in the statements my friend makes about it, because as far as my instructions go they are not correct.

THE COURT: Have you those?

MR. HOSSIE: I will recall Mr. Wood now.

No. 20.

No. 20.
 Frederick John
 Wood (recalled),
 direct examination.

FREDERICK JOHN WOOD, recalled on behalf of the plaintiff, testified further as follows:—

DIRECT EXAMINATION CONTINUED BY MR. HOSSIE:

Q.—What year did you purchase this stumpage, Mr. Wood? 10

THE COURT: That is the \$15,000, is it—or the twenty-three million feet?

MR. HOSSIE: Well, the two lots.

A.—July 6th, 1903.

THE COURT: Bought what year—1903?

MR. HOSSIE: Q.—You bought what then? A.—That was in the Nanoose District—

THE COURT: No; you gave us an acreage, did you not, of some twenty-three million feet.

Q.—What year did you buy that? A.—That is July 6th, 20 1903.

THE COURT: I cannot hear you.

MR. HOSSIE: Q.—Speak up, Mr. Wood; July 6th, what? A.—July 6th, 1903.

THE COURT: Yes.

MR. HOSSIE: Q.—What did that average per thousand feet board measure? A.—It would average about 66 cents.

THE COURT: Q.—What?

MR. HOSSIE: 66.

A.—66 cents. 30

THE COURT: Q.—Per what? A.—Per thousand feet board measure.

MR. HOSSIE: Q.—Then what was the other piece of property you purchased? A.—Comox District.

Q.—What date?

THE COURT: I did not catch.

MR. HOSSIE: Comox District.

THE COURT: Q.—Mr. Wood, when you talk, do not turn your back; I cannot hear you. Well, Mr. Wood, why not do it; turn round this way; I really cannot hear you. Comox, you say? 40 A.—Comox.

MR. HOSSIE: Q.—When did you buy it? A.—Bought that on June 12th, 1903.

Q.—What did you pay for it? A.—Paid \$16,000.

Q.—And the scale? A.—The scale was—

- THE COURT: Q.—Acreage? A.—Acreage, 2,207 acres.
 Q.—Yes? A.—Footage——
 Q.—What, footage? A.—Footage.
 Q.—Oh, the footage? A.—25,700,000.
 MR. HOSSIE: Q.—What does that average at per thousand feet? A.—Well, about 60 cents.
 Q.—Now, what was the nature of the grant to both of these lands? A.—Crown grant.
 Q.—Prior to what date?
 10 MR. GRIFFIN: Oh, my friend surely is not intending to prove it in that way. If there is anything in the merit, the document should be produced.
 MR. HOSSIE: Q.—Do you know——
 THE COURT: Oh, well, Mr. Hossie, really, just wait. I sustain your objection.
 MR. HOSSIE: Q.—Mr. Wood, these pieces of land were bought in 1903, you say; did you cut any timber thereon? A.—Yes, sir.
 Q.—And what did you do with it? A.—That is part of the
 20 E. & N. grant that was exported to the States.
 Q.—It was part of the E. & N. grant? A.—Yes, sir.
 Q.—And when you exported to the States, did you have any royalty or duty to pay to the British Columbia Government? A.—No, sir.
 Q.—Then when did you start to export it? A.—We started export——
 THE COURT: Well, the year will do.
 A.—We started in the latter part of 1903.
 MR. HOSSIE: Q.—Did you pay any royalty on that timber
 30 to the B.C. Government? A.—No, sir.
 Q.—Did you—— A.—Royalty?
 Q.—What payments, if any, did you make to the B.C. Government.
 THE COURT: Q.—Just wait. You repeated “royalty”; did you understand the question? A.—He said——
 Q.—Royalty; he said royalty? A.—I wanted to know if it was royalty.
 THE COURT: He said royalty.
 MR. HOSSIE: Q.—Did you pay any money to the B.C.
 40 Government in respect of this timber? A.—We paid no royalty.
 Q.—Did you pay any money to British Columbia in respect of these logs?
 THE COURT: Exported.
 A.—Not until we were forced, no——
 THE COURT: Q.—No, that is not the question. You said you did not. Did you or did you not; then you can explain? A.—No.

RECORD.

Plaintiff's evidence.

No. 20.

Frederick John
Wood (recalled),
direct examination.
(Continued.)

RECORD.
 Plaintiff's evidence.
 No. 20.
 Frederick John
 Wood (recalled),
 direct examination.
 (Continued.)

Q.—You apparently did, did you not?

MR. HOSSIE: Q.—Did you pay any money to the British Columbia Government in respect of these logs at any time? A.—Yes.

Q.—What did you pay? A.—We paid what I term an export tax.

Q.—Of how much? A.—It ran from one—

THE COURT: Just wait now; I have got to take my notes out. You did say that you did not pay duty, so I am scoring that out; you did pay duty. You now say you did pay duty. Make 10 no mistake now if you did not mean, Mr. Wood—if you did not understand, say so. I have you down as saying that you did not pay duty. Now you say you did pay duty; I want to know just— A.—I would like to put it this way: we paid no royalty, but we paid a tax.

MR. HOSSIE: Q.—Of how much? A.—It ran from \$1 to \$2 a thousand.

Q.—When did you pay it with relation to the movements of the logs? A.—Before they were taken out of the country.

Q.—Did you make any protest against the payment of that 20 money? A.—Yes, sir.

MR. GRIFFIN: I object to that, my lord, what he did.

THE COURT: Objection sustained; you are not cross-examining. If the witness would only frankly tell himself what he did, I could follow? A.—Your honour—

Q.—No, do not say that, unless you are doing it in answer to a question.

MR. HOSSIE: Q.—You said it was in the latter part of 1903, I think, Mr. Wood, that you commenced to ship logs from this particular timber land that you had purchased in British Co- 30 lumbia? A.—Yes, sir.

Q.—Where did you ship them to? A.—To Bellingham.

Q.—Did you ship any logs free of this tax you have referred to? A.—We shipped some; we shipped some logs before the law went into effect.

Q.—To what law do you refer? A.—Oh, I don't know what law you call it, but there was a special tax applied to these lands that we were taking timber off from.

Q.—A tax of how much? A.—It ran from \$1 to \$2 a thou- 40 sand.

Q.—How long did you continue to cut timber from these lands? A.—Well, we didn't cut very long after that because we figured it was confiscation; we couldn't stand paying more tax than what we paid stumpage.

Q.—Did you complete the logging-off of these two areas? A.—Not both of them, no.

Q.—Where did you buy the other logs for the operation of the mill at Bellingham? A.—Well, we bought some in the States and some in—some came up from these lands in B.C. that we were logging.

Q.—And did you buy the B.C. logs in the market? A.—We bought the B.C. logs—

Q.—Where did you buy them? A.—Bought them delivered in Bellingham.

Q.—But from whom did you buy them or how did you acquire them? A.—We bought them delivered from different concerns.

Q.—Buy them all from the same person? A.—No, sir.

Q.—Have you your records showing— A.—Yes, sir.

Q.——where you bought them? A.—Yes, sir.

Q.—And what they cost you? A.—Yes, sir.

Q.—Can you tell me—you have checked over these records recently, have you? A.—Yes, sir.

Q.—And you have them here with you? A.—The log book, yes.

Q.—Tell me what was the regular price you paid for the logs in 1903? A.—I don't know as I have it in 1903.

Q.—Well, 1901 or 1902, then?

MR. GRIFFIN: If your lordship please, I feel myself entirely incapable of taking part in a discussion with this witness as to prices of logs in 1903; there being no pleadings to which this is addressed, I could not be prepared, and there is no issue to which I could point these prices paid in Bellingham in 1903.

MR. HOSSIE: I think I can tie that in ultimately if I can establish the fact.

THE COURT: But, Mr. Griffin, you say you cannot cross-examine on this?

MR. GRIFFIN: I think I could not be ready.

THE COURT: I beg pardon?

MR. GRIFFIN: I could not be ready, because I had no knowledge such a thing could ever be brought in, because I can find nothing in the pleadings to which it could be addressed; therefore I could not be prepared—never even dreamt of it. There is the pleading containing other appropriate allegations as to the relevancy of the tax, but there is no suggestion that any point would be raised which would bring in, even in the most general way, the price of logs in a foreign country in 1903.

THE COURT: In Washington, in the course of business, would it not be relevant on that ground?

MR. GRIFFIN: The course of business in Washington could not be anticipated.

THE COURT: No, no; he is buying the timber in British Columbia.

RECORD.
Plaintiff's evidence.
No. 20.
Frederick John
Wood (recalled),
direct examination.
(Continued.)

RECORD.
 Plaintiff's evidence.
 No. 20.
 Frederick John
 Wood (recalled),
 direct examination.
 (Continued.)

MR. GRIFFIN: He might buy the timber in British Columbia, but he is conducting business in Washington.

THE COURT: No, he is an importer in Washington of a commodity on which he says he is taxed by the Provincial Government. I suppose, in order to get at what will enable one to determine the incident of the tax, in order to determine whether it is a direct or indirect tax, which is the point here. The point is, how far can he go back in this case in the dealings of this commodity by the Government?

MR. GRIFFIN: That would not, as I say, as it relates to a situation in a foreign country— 10

THE COURT: No; the situation, just as we have been hearing, dealing in a commodity in British Columbia which is exported to the foreign country. I do not quite grasp the situation. It does appear to me to be encumbering the record, having regard to the neat point, I think, with which I shall be confronted, which is whether it was a direct or indirect tax. However, go on.

MR. HOSSIE: Q.—What did you pay for British Columbia logs in 1901? A.—I have a record in the books here from Atkins & Company, July 1st, 1901, that we paid \$4 and \$6.25. 20

Q.—\$6.25 for the top grade; is that right? A.—\$6.25 for the two higher grades; at that time it was taking merchantable logs, what we call them, that is differently grade lengths.

Q.—That was the delivered price in Bellingham? A.—That was delivered in Bellingham, less 2 per cent. for cash.

Q.—What was the towage on them? A.—The towage; that would be—I don't remember the towage. We didn't pay the towage; they paid the towage, probably—possibly 75 cents.

Q.—In 1902—by the way, you bought these logs yourself, did you, Mr. Wood, in 1902— 30

THE COURT: Just wait, Mr. Hossie.

Q.—What did you do with these logs when you got them? A.—We used them up—sawed them all in our sawmill.

Q.—Yes, I know, you sawed them up in the sawmill, but why did you saw them up? What is your business? A.—Lumber business.

Q.—Yes; well, would you tell shortly, assuming that neither Mr. Hossie nor I know a thing about that, where does this product go? What do you do with it; burn it after you saw it, or what? A.—After it is sawn up— 40

Q.—Yes? A.—It may have gone foreign or—

Q.—In your business, now; what is your business, not the physical part, sawing up and running machinery; that of course I don't mean at all; but what— A.—Well, generally we are in the lumber business.

Q.—How do you make your money, if you do make it? A.—Buying—

Q.—Assuming you make some? A.—Buying logs and manufacturing.

MR. HOSSIE: Q.—Manufacturing what, Mr. Wood?

THE COURT: Yes, manufacturing what?

A.—Manufacturing logs, manufacturing logs into lumber.

THE COURT: Yes, well, logs—

MR. HOSSIE: Q.—What kind of lumber?

THE COURT: Yes, what happened to the lumber; did you sell it as fuel or what? A.—Well, that is—

10 Q.—Well, now, you must understand, unless you are not accustomed to giving evidence, Mr. Wood. I do not understand your hesitancy? A.—Well, I am used to giving evidence.

THE COURT: Well, you are a business man, surely.

MR. HOSSIE: Q.—For what purpose was the lumber used, Mr. Wood? A.—Well—

THE COURT: Q.—No secret about it, Mr. Wood? A.—No, sir.

Q.—Is there a secret about what you do with the logs that come to you in Bellingham; is there? A.—No.

20 Q.—Is there that element in it? A.—I don't know just—

MR. HOSSIE: Q.—In 1901, Mr. Wood, to what purpose was the lumber put in the United States; what use was made of it? A.—Well, it was for building purposes.

Q.—Building what? A.—Houses.

Q.—In 1902, what did you pay for your B.C. logs?

THE COURT: Well, Mr. Wood, this is taking a lot of time; would you want some time— A.—Here is one—

30 THE COURT: Just wait. Mr. Wood, you may do all that during the lunch hour. Mr. Hossie, I thought Mr. Wood had been told—because really I do not want to sit here and have this gentleman sit down turning over leaves, really looking up, hunting up.

MR. HOSSIE: My lord, there is only one entry in one and he has got it open before him.

THE WITNESS: I have it right here.

THE COURT: Well, I say there is a lot of time wasted.

MR. HOSSIE: Q.—What did you pay for it? A.—It is \$4.50 and \$7.

THE COURT: In 1902, \$4.50 what? A.—\$4.50 a thousand for one grade, \$7 for the two higher grades of logs.

40 MR. HOSSIE: Q.—Delivered price in Bellingham? A.—That was the delivered price in Bellingham, and that is on July 21st, 1902.

Q.—Now, how did the prices of the other logs you purchased for your mill at Bellingham compare with those—more or less or approximately the same? A.—Just about the same.

MR. HOSSIE: Thank you.

RECORD.

Plaintiff's evidence.

No. 20.

Frederick John
Wood (recalled),
direct examination.
(Continued.)

RECORD.

CROSS-EXAMINATION BY MR. GRIFFIN:

Plaintiff's evidence.

No. 20.
 Frederick John
 Wood, cross-
 examination.

Q.—What did you mean by that last—why did you speak of those other logs, Mr. Wood? A.—Logs from other loggers.

Q.—Well, do you mean from B.C. loggers? A.—Well, what are you referring to—the price?

Q.—No; from whom had you—what did you mean by the words “other logs”? A.—Other logs were logs we bought from other loggers.

Q.—Well, do you mean from B.C. loggers or from loggers anywhere? A.—From loggers in the States. 10

Q.—In the States; so that, in other words, the prices of logs, which originated in Washington, like those that originated in B.C., are much the same? A.—We paid practically the same prices, yes, sir.

Q.—And that would apply to everybody in the territory, wouldn't it—in this region? A.—Well, I don't know whether—I don't know.

Q.—Speak up, please, would you? A.—I don't know what the others were paying.

Q.—No; I am only meaning this: from your knowledge of the logging business and lumber business, the mills in Washington would pay the same price for B.C. logs and Washington logs of the same grade and quality? A.—I think they would, yes, sir. 20

Q.—And I suppose they still do, don't they? A.—Yes, sir.

Q.—And the effect would be this: that—you have no interest in B.C., have you? A.—Yes, sir.

Q.—What have you got over here? A.—I am president of the Wood-English Logging Company.

Q.—I see. So you really operate on both sides of the line? A.—Yes. 30

Q.—Could you limit, therefore, your evidence, because it is the district which is taxed; that is the only thing I want to get at. I am speaking to you as a millman of Washington; if this tax is reduced you will pay for the logs you get the same price as you do now, will you not? A.—I think so.

Q.—So that the effect of it will be that the man over in British Columbia who sells them to you will make \$2 a thousand more on the No. 1 grade, will he not? A.—Yes, some person will get it.

Q.—What? A.—Somebody has got to get it.

Q.—Please speak up. I don't hear it? A.—Somebody will get the difference in price. 40

Q.—I just want you to tell me; the person who will make it will be the British Columbia seller, won't it? A.—Yes, he will get the most of it.

Q.—He will get all of it, won't he? A.—He will get the most of it.

Q.—Answer my question, please, Mr. Wood. He will get it all, won't he? A.—I couldn't—I couldn't answer it any other way.

Q.—Well, just try once or twice more. If it costs him \$2 less for his logs he will get \$2 more net profit, won't he? A.—He should; but whether—it is all in selling the logs on the other side.

Q.—But I am asking you, assuming for the purpose of a short discussion the same quality of logs goes forward in the boom, and in one case the tax is paid and in the other case it is not paid, will
10 not the same price be obtained in Washington? A.—It should.

Q.—Well, it will; that will be so, will it not? A.—I don't like to answer that question.

Q.—But I am afraid I have to ask you to answer it. You came here to give testimony for both sides, Mr. Wood, didn't you—or only for one side? A.—Both sides.

Q.—Well, now, this is a question asked of you as a merchant in both countries, for which a frank answer, I think, is called, and that is this: that if two booms go from here of identical quality and grade, and on one of these booms a \$2 tax is imposed, and on
20 the other there is none, the seller gets \$2 a thousand more, doesn't he? A.—Yes, sir, but I would like to—I would like to explain. Sometimes we might buy rough logs at 50 cents for the logs, or might pay \$2 for the logs.

Q.—Surely, I agree; but you are only speaking of one thing now, changing the discussion from a general one into a particular one—about one particular boom, aren't you? A.—Yes, sir.

Q.—And I only want to put it in general lines: Two booms of certain grade or quality, whatever it is, two of them identical; now, they are here, one taxed and one not taxed; the seller of one
30 gets \$2 a thousand more net profit than the other man, doesn't he? A.—Yes, sir.

Q.—And that will be the effect if this tax is held to be illegal; the seller of this Crown-granted timber will make \$2 per thousand more, won't he? A.—Yes, sir.

MR. GRIFFIN: Well, that is all.

MR. HOSSIE: Thank you, Mr. Wood. I call Mr. Andrews.

MR. GRIFFIN: Q.—Mr. Wood, will you stay for one more question that I think of. There has been reference made to the fact that there is a tax on these logs in any event of 1 cent per
40 thousand. I take it that a small quantity is of no moment either way. Am I right? A.—Yes, sir.

MR. GRIFFIN: That is all.

THE COURT: Q.—Mr. Wood, if you can get these logs as cheaply in Washington as you can in British Columbia, why bother coming across and buying these logs in British Columbia? A.—There is the difference in the timber.

Q.—Oh, I see, you would have regard to that? A.—Yes, sir.

RECORD.

Plaintiff's evidence.

No. 20.

Frederick John
Wood, cross-
examination.

(Continued.)

RECORD.

Plaintiff's evidence.

No. 20.
 Frederick John
 Wood, cross-
 examination.
 (Continued.)

THE COURT: Thank you.

MR. GRIFFIN: My lord, may I ask another question.

Q.—The place where you sell your lumber is the United States of America, I take it? A.—And foreign.

Q.—And foreign? A.—Yes, sir.

Q.—But not Canada? A.—No, sir.

MR. HOSSIE: Mr. Andrews.

(Witness aside.)

No. 21.

No. 21.
 Leonard Robb
 Andrews, direct
 examination.

LEONARD ROBB ANDREWS, a witness called on behalf of the 10
 plaintiff, being first duly sworn, testified as follows:—

DIRECT EXAMINATION BY MR. HOSSIE:

Q.—Where do you live, Mr. Andrews? A.—In Vancouver.

Q.—Your occupation? A.—I am a forester; forest engineer.

Q.—How long have you been engaged in that business?

THE COURT: Q.—That is, for the British Columbia Government, or not? A.—Not at the present time, your honour. I have been engaged in that business since 1912 in British Columbia.

MR. HOSSIE: Q.—During part of that time I believe you were engaged by the British Columbia Government, Department 20
 of Lands, Forest Branch? A.—Yes.

Q.—During what period? A.—I was District Forester in Vernon from 1912 until the war, and District Forester in Vancouver from 1919 until 1924, I think it was.

Q.—And since 1924? A.—Since 1924 I have been occupied part of the time with the logging industry and part of the time as superintendent of a big logging company on Vancouver Island.

Q.—What position did you occupy with the Department of Lands while you were with it? A.—I held the title of Forester, and was regional forester in Vancouver for the Vancouver Dis- 30
 trict.

Q.—You have recently, I believe, made some researches into the records of the Department of which you were formerly employed and refreshed your memory on quantities and some other points? A.—I have.

Q.—Can you tell me the extent approximately of the lands in British Columbia granted prior to April 7th, 1887?

MR. GRIFFIN: My lord—just before you answer that, Mr. Andrews—I see another objection to that. This witness could only answer that from the records, and if they are not here it is not 40
 competent, I submit, to state things which are a mere matter of record. Secondly, and quite independently, that the question itself, if answered, is not a relevant fact. The number of acres that come within these grants is quite all right, but the number of acres

that come within other grants is not relevant, I submit, to any issue in this action.

MR. HOSSIE: Taking the last point first, I think I shall show your lordship, and I have no doubt my friend and his colleague, that this fact would be important, and I submit that I am entitled to prove it. In the next place, I have asked my friend by giving notice to produce the record to show the acreage of this granted land. He has refused to do that; now I am taking the only means that is open to me, of calling a former employee of this Department and asking him to tell me what those records disclose—
10 the records which my friend will not produce to me.

THE COURT: Q.—Have you made extracts? A.—I have—

Q.—Written extracts? A.—No, your honour; I have the official report here in which this information is contained.

MR. HOSSIE: Q.—You have the official reports of the Forest Branch? A.—Yes.

THE COURT: Let me see them. Produce them.

MR. HOSSIE: Q.—Produce them, yes.

20 THE COURT: Q.—The information is contained in that report? A.—The information is contained in this report.

THE COURT: Oh, well, submit them and see what Mr.—

MR. HOSSIE: Q.—These reports are of what nature; where do they emanate from? A.—The Forest Branch of the Department of Lands.

THE COURT: Q.—The Provincial Government? A.—Yes, your honour.

MR. HOSSIE: Q.—Which ones are you referring to, Mr. Andrews? A.—Annual reports of the Forest Branch.

30 Q.—1928? A.—1928.

MR. HOSSIE: That is already in, marked as an exhibit.

THE COURT: We have that, Mr. Hossie, assuming that these reports contain all that information.

MR. HOSSIE: I don't think they contain it—I must ask this witness to point it out.

Q.—The other document to which you referred, Mr. Andrews, was what? A.—It is called "Forests and Forestry in British Columbia," by the Chief Forester, Minister of Lands, and Mr. Naden—Deputy Minister of Lands.

40 Q.—That is an official publication of the Department of Lands? A.—It is.

Q.—Bearing what date?

MR. GRIFFIN: That surely is not an accurate statement. It is not an official publication in one sense.

THE COURT: Pamphlet, is it?

MR. GRIFFIN: It is a pamphlet emanating from the Department of Lands, no doubt.

RECORD.

Plaintiff's evidence.

No. 21.

Leonard Robb
Andrews, direct
examination.

(Continued.)

RECORD.

Plaintiff's evidence.

No. 21.
Leonard Robb
Andrews, direct
examination.
(Continued.)

THE COURT: Being authorized officially, and based, I suppose, upon material which he gets from the Government.

MR. GRIFFIN: I have no doubt, but you see they are not intended to be——

THE COURT: Mr. Griffin, I understand that really the substance of this question is the priority of the thing, is it not? You see, Mr. Hossie, really it will help Mr. Griffin and help me—why multiply records, because really one would not have the time or disposition to go over all this; why multiply it if all the information you want is in this? Now, I am afraid, Mr. Hossie, 10 if you want to put this in, that really, as it were, having regard to the contents—I am afraid that will be crowding—and if it is already what you have put in, that it is four, under Mr. Griffin's objections, containing this material; then why go and put in another one to supplement? I am inclined to try and keep this a little smoother.

MR. HOSSIE: My lord, I wasn't seeking to put any further documents in. I asked this witness, as a result of having examined records and reports and publications of this particular department, which have not been produced to me—asking this witness to give me shortly and in a concise form the particular points I want. If your lordship will permit me I will boil it down to very little. 20

THE COURT: No; but the witness says it is in this, and he produces—well, in answer to that produces an official report, four copies of which are already in, and he says it is in that. Well, now, Mr. Hossie, if it is, why supplement it by a lot of verbal evidence from the witness?

MR. HOSSIE: Well, I would like the witness to point it out, my lord. 30

THE COURT: You have said that.

Q.—Witness, you are saying, am I right in understanding you to say, when you say in answer to Mr. Hossie that that information—you want to answer by producing that blue book that you have here. Why do you do that? A.—I think, your honour——

Q.—No; but why did you produce the book in answer to Mr. Hossie? In a word, was it because the answer was there or not? A.—The answer is there, yes, your honour.

THE COURT: Well, that is the whole thing, and that is already in. Yes, well, he says it is in there, Mr. Hossie; therefore, Mr. Griffin, I give effect to your objection. 40

MR. HOSSIE: Q.—Will you point out to me on Exhibit 20 the page on which will be found the record of the amount of lands granted prior to April 7th, 1887, which will assist the Court in examining the exhibit? A.—It is——

THE COURT: Q.—Well, really, you have to look at it, witness, I suppose, before you answer that? A.—It is not in this particular report, your lordship. It was in one of the other exhibits that was put in by Mr. Hossie.

Q.—Yes; show it to him? A.—This is it.

MR. HOSSIE: Q.—Exhibit 21 (handing document to witness)? A.—Yes.

THE COURT: Q.—The report of the Royal Commission? A.—Report of the Royal Commission, your honour.

10 THE COURT: Well, all that is in.

MR. HOSSIE: Q.—Can you refer us to the page, Mr. Andrews, please? A.—Page D 23, your lordship.

THE COURT: Would you mark that—put something in?

MR. HOSSIE: Q.—Will you give me the page on which will be found the quantity of timber left standing? A.—On page 32 of the report.

Q.—That yellow-backed report? A.—Yes.

MR. HOSSIE: That is not yet in.

THE COURT: Exhibit what?

20 MR. HOSSIE: That particular document is not yet in, my lord.

THE COURT: Oh, this is another one?

MR. HOSSIE: This is another one.

THE COURT: Well, I have got to keep that right, now, otherwise I cannot understand my notes.

Q.—What is it you are now looking at? A.—Report on the Forests and Forestry in British Columbia, my lord.

MR. HOSSIE: I tender that document as an exhibit, my lord, as the witness has referred to it. It is one published by the
30 Minister of Lands, the Deputy Minister, and the Chief Forester, 1928.

MR. GRIFFIN: It might be wrong.

THE COURT: Q.—Is that blue book—would you call that the official blue book you have in your hand now? A.—I would, your lordship, yes.

Q.—You would? A.—Yes.

(Document marked Exhibit No. 23.)

MR. HOSSIE: Q.—Now, what page in Exhibit 23? A.—Page 32.

40 MR. HOSSIE: This is a note attached on the outside.

THE COURT: Of the covers?

MR. HOSSIE: Of the cover, making reference to page 32.

THE WITNESS: (Indicating.)

Q.—Now, would you also give me the page on which will be found the figures showing the amount of timber exported from Crown-granted lands of a date earlier than April 7th, 1887? A.—That is on page D 31.

RECORD.
Plaintiff's evidence.

No. 21.
Leonard Robb
Andrews, direct
examination.
(Continued.)

RECORD.
 Plaintiff's evidence.
 No. 21.
 Leonard Robb
 Andrews, direct
 examination.
 (Continued.)

THE COURT: Put it on the back.

MR. HOSSIE: Q.—In Exhibit 20? A.—In Exhibit 20.

MR. HOSSIE: D 31.

Q.—What is that memo. there? A.—Export of timber from old Crown grant.

Q.—What page are you referring to now?

THE COURT: D 21?

MR. HOSSIE: D 31. And he also shows on what page will be found the amount of revenue collected by the British Columbia Government, the amount of tax collected in a given period of years 10 under section 58.

THE COURT: Put it on the back. Is there any way of indicating this?

MR. HOSSIE: Q.—Yes; what page? A.—Page D 33.

THE COURT: Mark it in some way, because that goes down—I am not going to encumber my notes.

MR. HOSSIE: Please take a red pencil and mark on the cover the page, and on the page itself put a red mark opposite the reference to which you make reference, please. Just the whole thing, D 31 in red. You have got it there now in black lead. 20

THE COURT: Q.—Witness, the whole point is to mark that so that a person picking it up would know really without going to look for it? A.—Yes, my lord.

Q.—Otherwise you are only wasting time, you see. Do not be afraid of spoiling the book, mark it as fully as you can so that when I get hold of it I will know where to go? A.—Yes, my lord.

MR. HOSSIE: Q.—On what page is the record to be found of the amount of money collected by way of an export tax? A.—It is on page D 33.

Q.—Just put a red line opposite the item to which you draw 30 attention. Mark them plainly.

THE COURT: Mark the book as much as you like. Do mark it, please.

MR. HOSSIE: Q.—Mark them plainly to indicate. A.—(Indicating.)

THE COURT: Just wait. Is there an advantage in this kind of evidence, because I think in fairness to the witness, and in fairness to me, Mr. O'Brian and you might go over this while in recess, mark it, and then produce it and we have it; but really now he is working this thing out in Court and taking a lot of time 40 at it.

MR. HOSSIE: The only reference to which I wish to make reference, for instance, the Royal Commission; I have had a copy and I have that here in typewritten form for ease and convenience.

THE COURT: Well, put that in.

MR. HOSSIE: For your lordship's convenience.

THE COURT: Otherwise we will get hopelessly mixed up. I do not see how we could possibly follow that. It gets one's mind away from the main issue of the whole thing.

MR. HOSSIE: Q.—Have you a copy of the report of Mr. Caverhill, Chief Forester in 1926? A.—I have.

Q.—Will you produce it, please? A.—(Producing document.)

THE COURT: Have you ever seen that before, Mr. Griffin, or Mr. DesBrisay?

10 MR. GRIFFIN: No, my lord, I have never.

THE COURT: Really I do not think that I care to sit here whilst you go through a long report like that and inspect it. It is no use to me; it is only taking the time of the Court.

MR. HOSSIE: This is a document which I asked them to produce.

THE COURT: Well, it is put in. I do not think I shall sit here and have counsel for the first time go through a long report like that.

20 MR. GRIFFIN: Will your lordship consider this for a minute? I don't know what this document is.

THE COURT: I know you do not know what it is.

MR. GRIFFIN: I don't know anything about it. Suppose Mr. Caverhill did report something; it might be wrong. How does he make it, upon what ground? My friend seems to have a theory that any document emanating from a department, even a special department of His Majesty's Government, is binding upon His Majesty.

THE COURT: Well, you can object, assuming that it is wrong.

30 MR. GRIFFIN: Oh, no; it may be perfectly authentic—

THE COURT: Just wait. You surely must put some reliance in a Government department.

MR. GRIFFIN: Yes, my lord; but they might be in error as to particular facts.

THE COURT: Very often they are, of course.

MR. GRIFFIN: And I don't know which portion of this very long report, of which information is—

THE COURT: Let it go in and we will take time to look at it.

40 (Document marked Exhibit No. 24.)

MR. HOSSIE: Have these other exhibits marked when you leave the box.

Q.—Mr. Andrews, while you were engaged by the Department here have you any knowledge as to the collection of the 1 cent per thousand of timber cut from Crown-granted lands?

MR. GRIFFIN: Now, my lord, I might interpose again—I am sorry to be interrupting. I think these things here could

RECORD.

Plaintiff's evidence.

No. 21.

Leonard Robb
Andrews, direct
examination.

(Continued.)

RECORD.

Plaintiff's evidence.

No. 21.
Leonard Robb
Andrews, direct
examination.
(Continued.)

have been marked; would it be a matter of what this witness knows of the collection of the 1 cent tax, which is not in question? I put it either way so we will make my objection simple: Assume that the witness will say either that it was collected or that it was not collected, and give the reasons either way; it would not make a bit of difference which he says for the purpose of my objection. Now, why should he get this witness's testimony as to what was done by him or any other official to affect the construction of a Statute?

THE COURT: Well, what he was asked was if he had any knowledge, which I would assume would be hearsay knowledge. 10

Q.—Have you yourself collected this? A.—I did, your lordship.

MR. GRIFFIN: If he collected, or didn't collect; but my point was—he is not saying he did collect?

THE COURT: Yes.

MR. GRIFFIN: Well, I would say it would be just as important on another matter if he said he did not; my argument would be, whether he did or not, they are departmental matters which could not in any way affect the construction of a public Statute, and to allow it in, even subject to objection, leaves me in an awkward position in cross-examination because of what your lordship might think in the end. 20

MR. HOSSIE: I think it can be shown that it has a very important bearing upon the construction of this Statute.

THE COURT: Yes.

MR. HOSSIE: Q.—You say you did collect the 1-cent tax? A.—I did collect it for a while, and discontinued collecting it under instructions.

Q.—When? A.—In 1914. 30

Q.—Under instructions from whom? A.—From the Chief Forester.

Q.—Who was at that time who? A.—Mr. H. R. McMillan.

Q.—What form did you receive these instructions? A.—Circular letter to all district foresters.

THE COURT: Q.—Have you got that particular letter? A.—I have not.

MR. HOSSIE: Q.—That letter is not in the file, I suppose? A.—It is not.

MR. HOSSIE: I asked my friends to produce the original, 40 which is not here.

THE COURT: Well, Mr. Hossie, I suppose—is this of any importance, a circular letter?

MR. HOSSIE: Q.—Do you remember the date of that letter, Mr. Andrews? A.—I do not, definitely.

Q.—But it is from what date? A.—About 1914 some time.

Q.—In your experience with the Government, were any returns ever demanded under section 127 of the Act; by that I mean returns from the owner of old Crown-granted lands showing the cut per month? A.—From time to time these returns were demanded, but they were not collected as a regular thing.

Q.—And when were payments received for the cut from lands granted prior to April 7th, 1887; at what point of time with relation to the amount of logs was that tax collected? A.—On timber used in the Province or exported?

10 Q.—Either one? A. If exported, payment was made before they were allowed out of the country; if not exported, if used in the Province, there was no collection made.

Q.—Was there any collection made on a monthly basis? A.—No.

Q.—Have you any maps showing the area of timber in the Province on the date of the grant, or is there any such map in existence? A.—There is no map showing the date—there is a map showing the area of Crown grant, but—

20 THE COURT: Q.—Just wait. Have you got that? A.—I have not.

MR. HOSSIE: Q.—Where is that map? A.—It is in the Forest Branch office in this Court-house, your lordship.

THE COURT: Q.—It is available? A.—It is available.

MR. HOSSIE: Q.—How is it described?

THE COURT: Q.—Can you get it?

MR. HOSSIE: Well, I haven't tried from the Forest Branch.

30 THE COURT: You have not; but surely that is quite important. There can be no objection at all to the Forest Branch producing this if you can tell them what it is you want.

MR. HOSSIE: Q.—You can identify the map by pointing out the places? A.—Yes, my lord.

THE COURT: Oh, you can get it.

MR. HOSSIE: We will have it here as soon as you go over the books. A.—Yes, my lord.

THE COURT: In view of Mr. Griffin's objection.

MR. HOSSIE: Q.—Are you familiar with logging prices in British Columbia? A.—I am.

40 Q.—And with logging prices in the United States, Washington and to the south of us? A.—In a general way, yes.

Q.—How do they compare on the average? A.—Oh, fair; there is usually a differential of from \$3 to \$4 a thousand between the logging prices in British Columbia and the logging prices on Puget Sound in favour of the logs on Puget Sound.

THE COURT: Could you put that into a word? What is the question, Mr. Hossie?

RECORD.

Plaintiff's evidence.

No. 21.

Leonard Robb
Andrews, direct
examination.

(Continued.)

RECORD.

Plaintiff's evidence.

No. 21.
Leonard Robb
Andrews, direct
examination.
(Continued.)

MR. HOSSIE: Q.—How do your two prices compare; which is the higher, on the average? A.—On the average, Puget Sound logs are \$3 to \$4 a thousand higher than British Columbia.

THE COURT: Q.—In what market? A.—In the open market in British Columbia and the open market on Puget Sound.

MR. HOSSIE: Q.—By the open market you mean what? A.—Logs which are for sale to any purchaser who comes along.

Q.—Who buys and sells logs in British Columbia? A.—The purchasers sell, the mills buy, and there are also logs purchased by brokerage. 10

Q.—Does that apply to the cedar logs? Is there any difference in cedar prices? A.—Cedar prices are different from fir prices, but—

Q.—How do they compare between Washington and British Columbia? A.—Cedar prices, I think, at the present time are about the same relation.

THE COURT: Q.—In both countries? A.—Yes.

MR. HOSSIE: Q.—Do you know what is the particular species of timber grown in the E. & N. Railway Belt? A.—The principal species is fir. 20

Q.—To what use is it put? A.—It is sawn up into timbers and building material.

Q.—Timbers for what purpose? A.—Timbers for construction purposes.

MR. HOSSIE: Thank you.

MR. GRIFFIN: I just want one question if my friend is through.

MR. HOSSIE: Yes.

CROSS-EXAMINATION BY MR. GRIFFIN:

Q.—Mr. Andrews, all the logs that are purchased go into the mills and are sawn up, are they not? A.—Not all the logs. 30

Q.—Well, except those that are exported?

THE COURT: They would go into the mills, too.

MR. GRIFFIN: Q.—They go into the mills in the end, of course, for sawing, don't they? A.—I presume they do, yes.

Q.—You presume they do?

THE COURT: Q.—Have you any doubt? A.—Some logs, your lordship, go to Japan and are used in Japan in the log condition, I think.

MR. GRIFFIN: Q.—But in this country those sawlogs that come within the grade of logs that go into sawlogs, shingles; that is all available to be used in its natural state, and is inevitably sawn up, is it not? A.—Yes. 40

MR. GRIFFIN: Thank you.

No. 21.
Leonard Robb
Andrews, cross-
examination.

MR. HOSSIE: Q.—Mr. Andrews, will you mark those pages in the four exhibits and indicate them on the cover and the page itself in each instance? A.—Yes.

Q.—Also indicate in addition to the points mentioned to you before, indicate the page on which will be found the total output of logs in British Columbia, and the number of logs cut in British Columbia.

THE COURT: There is that map.

MR. HOSSIE: And bring the map.

10 THE COURT: Q.—I suppose they will let you have it? It is very informal, I do not think you will have any trouble? A.—I think they will let me have it, your lordship.

Q.—You have no right to take it, of course; but you know them, you see? A.—Yes.

THE COURT: It will be returned.

MR. HOSSIE: Q.—Yes, you will be able to bring the map. The only other thing was, is there any reference in these exhibits showing the number of firms or companies or individuals engaged in the export of logs from British Columbia? A.—Not that I
20 know of.

Q.—Do you know yourself how many are engaged, approximately? A.—Offhand—

THE COURT: Oh, the trade return would show that, surely.

MR. HOSSIE: Q.—Do you know? A.—Offhand, no.

MR. HOSSIE: All right. Thank you, Mr. Andrews.

(Witness aside.)

MR. HOSSIE: I call Mr. Battle.

No. 22.

30 CHARLES SMITH BATTLE, a witness called on behalf of the plaintiff, being first duly sworn, testified as follows:—

DIRECT EXAMINATION BY MR. HOSSIE:

Q.—Mr. Battle, you live in Vancouver? A.—Yes, sir.

Q.—And you have been engaged in what business? A.—Timber and lumber.

Q.—For how long in British Columbia? A.—Well, about twenty-six years.

Q.—During that time, Mr. Battle, you have on occasion bought some standing trees, what is called stumpage? A.—Yes,
40 sir.

Q.—And have you bought and sold any logs? A.—Yes, sir.

Q.—Do you recall whether you bought or sold any standing timber in or about the year 1902, or 1903, or 1904? A.—I bought logs; I don't think I bought the standing timber at that period.

RECORD.
Plaintiff's evidence.

No. 21.
Leonard Robb
Andrews, cross-
examination.
(Continued.)

No. 22.
Charles Smith
Battle, direct
examination.

RECORD.
Plaintiff's evidence.

No. 22.
Charles Smith
Battle, direct
examination.
(Continued.)

Q.—When did you buy the standing timber? A.—Well, a little later—a year or two later.

Q.—And what did you pay for the stumpage on standing timber at that time? A.—Well, the prices varied; from 10 cents a thousand up to 25 about that time, if I remember correctly.

Q.—Over what nature of land? A.—That was land—Government land taken up—licences, you know, from year to year, I think.

Q.—Did you buy or sell any timber in the E. & N. Railway Belt? A.—Not at that period; I did later on. 10

Q.—What did you pay for it later on? A.—I paid \$10 an acre.

Q.—How many feet to the acre on the average? A.—Average about 50,000 or better.

Q.—When did you buy that, Mr. Battle? A.—I beg your pardon?

Q.—What year was that?

THE COURT: How many feet to the acre did you say?

MR. HOSSIE: 50,000,000.

THE WITNESS: 50,000. 20

Q.—Yes, 50,000? A.—That was shortly after the C.P.R. took over—bought the E. & N. Railroad and put the land on the market.

Q.—Do you recall what year that was, approximately? A.—No, sir, I do not.

Q.—Before the war, in any event? A.—Oh, yes, before the war, very much—quite a while before the war.

Q.—Now, you said you bought and sold some logs in the year 1903, I believe, Mr. Battle? A.—About 1903.

MR. GRIFFIN: This is all covered by my objection. 30

THE COURT: Yes.

MR. HOSSIE: Q.—Where did you buy or sell those logs? A.—I bought them in Vancouver.

Q.—And sold them where? A.—Well, I sawed them up in the mill.

Q.—You were in charge of what mill at that time? A.—The Old Oracle (?) Mill, which I transferred to the Vancouver Lumber Company—they had the name changed.

Q.—It was a predecessor of the Vancouver Lumber Company? A.—Predecessor of the Vancouver Lumber Company. 40

Q.—What was the market price at that time for those logs? A.—It varied from two and a half to seven dollars.

Q.—For what grades? A.—Delivered at the mill—well, different grades, depending on the grades and variety.

Q.—Delivered price at your mill? A.—Delivered price at the mill, yes. I might say about the average price of hand-loggers' logs were about four and a half at that period.

Q.—To what use did you put those logs when you bought them? A.—I sawed them in the mill, made lumber out of them, and sold the lumber.

Q.—To what purpose was the lumber put? A.—Building homes, railroad bridges, sidewalks, and different usages—construction purposes.

MR. HOSSIE: Thank you.

MR. GRIFFIN: No questions.

THE COURT: Thank you.

10

(Witness aside.)

MR. O'BRIAN: I call Mr. R. D. Stuart.

No. 23.

REGINALD DICK STUART, a witness called on behalf of the plaintiff, being first duly sworn, testified as follows:—

RECORD.
Plaintiff's evidence.

No. 22.
Charles Smith
Battle, direct
examination.
(Continued.)

No. 23.
Reginald Dick
Stuart, direct
examination.

DIRECT EXAMINATION BY MR. O'BRIAN:

Q.—What is your occupation, Mr. Stuart? A.—I am secretary and manager of the B.C. Loggers' Association.

Q.—What is your Association? A.—It is an organization of loggers who have joined up to protect their interests and obtain trade information, and matters of that kind.

20 Q.—And how long have you held that position? A.—Two years.

Q.—Have you had any knowledge or contact with the timber industry? A.—Yes.

Q.—What? A.—I was in the Forest Service for thirteen years.

THE COURT: Q.—In the Province of British Columbia? A.—Yes, sir.

30 MR. O'BRIAN: Q.—What period? A.—From 1914 to 1927.

Q.—In connection with the work of your Association, have you or did you have any duties pertaining to obtaining information regarding log prices? A.—Yes, sir.

Q.—What? A.—One of my duties is to keep the prices of our Association uniform and the prices that logs are actually being sold at.

Q.—Where? A.—In the Vancouver market, British Columbia, the Coast generally, and Puget Sound market.

40 Q.—What percentage of the log purchasers of British Columbia belong to your Association? A.—About 70 per cent. of the Coast purchasers.

Q.—Is that in number or with relation to production? A.—In regard to production.

RECORD.
 Plaintiff's evidence.
 No. 23.
 Reginald Dick
 Stuart, direct
 examination.
 (Continued.)

Q.—In regard to the production of logs here, let us say in British Columbia, how does the manufacturer stand? What I mean by that, does the log purchaser manufacture his own logs? A.—He does in some cases.

Q.—What is the proportion?

MR. GRIFFIN: My lord, I object to that because that would involve the very tedious discussion as to ownership of mills and camps, and so on, and logs. I object to the whole line of evidence, my lord, in accordance with the general objection, but in particular I think that seems to me to be almost—— .10

THE COURT: Could you reframe your question?

MR. O'BRIAN: Yes, my lord.

Q.—Generally speaking, Mr. Stuart, does the log purchaser manufacture his product, or is it sold on the open market? A.—About 70 per cent. of the logs purchased——

MR. GRIFFIN: That is my objection.

THE COURT: Just wait. Let him finish—would you be kind enough? I cannot grasp it unless I hear the answer.

MR. O'BRIAN: Of course, at that time there was——

THE COURT: Well, reframe the question; put your ques- 20
 tion again.

MR. O'BRIAN: Q.—Yes. I was asking you, Mr. Stuart, if you can give in a general way as to the number of log purchasers who manufacture their product into lumber.

THE COURT: That is, sawn.

A.—Can I have——

THE COURT: Q.—No; you answer the question—50, 10, 5, or what; that is all he is asking.

A.—70 per cent.

THE COURT: 70 per cent. 30

MR. O'BRIAN: Q.—70 per cent.? A.—That is, loggers——

THE COURT: Q.—But, witness—I am going to give you a little advice which will not cost you a cent. It seems to me you have answered the counsel's question; that it is 70 per cent. A.—Yes, my lord——

THE COURT: Q.—What is the difficulty? A.—The question was not a clear question.

Q.—Well, you had better now take that advice. The counsel will get it out of you, anyway, and it will save me trouble in ruling, too. 40

MR. O'BRIAN: Q.—How did the British Columbia log prices compare with the Washington prices? A.—There is always a variation.

Q.—Is that as regards species? A.—Yes, sir.

Q.—What would be the extent of that variation? A.—At the present time fir and cedar prices are higher in Washington than

they are in British Columbia. Hemlock is approximately the same.

Q.—How long has that condition prevailed? A.—So far as I know, since I have been with the B.C. Loggers' Association—two years.

THE COURT: Q.—That is what, how long; that difference, how many years? A.—Two years.

Q.—How many? A.—Two years.

MR. O'BRIAN: Q.—What determines log prices in British Columbia and in Washington? A.—The law of supply and demand.

Q.—Can you explain, or is there a difference, between the British Columbia log scale and the American log scale? A.—There is a difference.

THE COURT: I thought we had that.

MR. O'BRIAN: Yes, although Mr. Stuart perhaps can tell that a little more fully. I don't know any point to it, but—all right, Mr. Stuart, we won't—

THE COURT: I understand it, I should think, already.

MR. O'BRIAN: Q.—In your capacity as District Forester here, was it your duty to collect this so-called export tax under section 58? A.—Yes, sir.

Q.—Did you at any time endeavour to collect that tax before the logs were exported in any case? A.—We always collected it before the logs were taken out of the country.

Q.—Did you ever endeavour to collect it where the logs were not exported? A.—No.

Q.—Did you collect the 1-cent tax or a tax amounting to 1 per cent. on logs in particular—

MR. GRIFFIN: Do you mean 1 cent or 1 per cent.?

MR. O'BRIAN: 1 cent a thousand feet.

A.—I didn't collect it.

Q.—Was that before your time, or had it stopped? A.—The tax was in effect a short time after I went in the Forest Service.

Q.—What happened about it?

THE COURT: Q.—Do you know yourself, of your own knowledge? A.—Yes, my lord.

MR. O'BRIAN: Q.—What were the circumstances of the case? A.—The collection of the tax was discontinued about the end of the year 1914.

THE COURT: I have that; it is shown from the circular issued by the Department; I have that.

THE WITNESS: Yes, my lord.

MR. O'BRIAN: Q.—Do you know anything about the operation of this so-called export tax in regard to prices?

MR. GRIFFIN: What was that question?

MR. O'BRIAN: In regard to prices of the commodity.

RECORD.

Plaintiff's evidence.

No. 23.
Reginald Dick
Stuart, direct
examination.

(Continued.)

RECORD.
Plaintiff's evidence.

No. 23.
Reginald Dick
Stuart, direct
examination.
(Continued.)

MR. GRIFFIN: May I have the whole question?

(Question read.)

MR. GRIFFIN: Surely, my lord, that is for your lordship. That is just the very point of the case, is it not?

THE COURT: Just wait. Would you reframe it again?

MR. O'BRIAN: Yes, my lord.

Q.—In your experience as an actuary, secretary-manager of your Company, did you come in contact with sales of logs that are exported to the United States? A.—Yes, sir.

Q.—Do you know how the tax is carried, or what the incidence 10
of the taxes, how it is borne?

MR. GRIFFIN: That is exactly——

A.—I have a knowledge——

MR. GRIFFIN: Wait a minute.

MR. O'BRIAN: I don't mean, of course—I mean in actual working out, so far as the actual——

THE COURT: No; just wait. Let us have the question, Mr. O'Brian—I mean, tell Mr. Griffin, is it custom?

MR. O'BRIAN: Yes.

THE COURT: What is the method? 20

MR. O'BRIAN: Q.—What is the mode, Mr. Stuart?

THE COURT: The modus operandi.

MR. O'BRIAN: Q.—In selling or exporting logs from your Crown-granted timber?

THE COURT: Speaking from your own knowledge.

MR. GRIFFIN: Well, my lord, I make the further objection; this witness has not qualified himself to give any evidence on such matters; he was official of the Forestry Department. He is now secretary of the Loggers' Association; he is not qualified to express an opinion upon merchants, even if their habits were 30
relevant.

THE COURT: Mr. O'Brian, you used the word actuary; I did not understand him to say he was an actuary.

MR. O'BRIAN: Well, in this specific instance.

THE COURT: Q.—Do you call yourself an actuary? A.
—No, my lord.

THE COURT: No, he does not, you see. It depends upon his duties just what knowledge he would have.

MR. O'BRIAN: Q.—Will you explain that a little more fully? You understand the point, Mr. Stuart. We want to find 40
out how it came to your information, and from where you got the information? A.—In my capacity as secretary-manager of the Loggers' Association I receive every week a large number of invoices of log sales, from which I compile my weekly sales reports, and I have a knowledge of the terms under which these logs are sold, and I can judge the number in selling logs both in this market and on Puget Sound.

Q.—What would be the extent of these invoices and documents of that kind that you receive? A.—Our invoices vary from 40 to 70 per cent. of the logs sold on the open market.

MR. GRIFFIN: My friend has now thoroughly proved that this is secondary evidence—mere hearsay, from his point of view.

MR. O'BRIAN: I submit, my lord, that—

THE COURT: Well, yes, you see he derives his knowledge from invoices and documents.

MR. O'BRIAN: No, my lord—

10 THE COURT: I think I have all that. Really, it is simply repeating; I have all that. There is no dispute at all, or any secret about it.

MR. O'BRIAN: No, my lord.

CROSS-EXAMINATION BY MR. GRIFFIN:

Q.—Mr. Stuart, when you were in the Forestry Department I take it that this 1-cent tax was what one might fairly describe as a departmental nuisance, wasn't it? A.—I think that is a fair description of it.

20 Q.—And it was discontinued because it was not worth troubling about? A.—I couldn't say as to that.

Q.—You don't know the reason; but for all that appears, that would appear to be a very good reason? A.—It might have been.

Q.—I mean from your point of view, if that was the reason it would appear to be a good reason, wouldn't it? A.—It depends on how much it amounted to.

Q.—Yes; I am only putting to you that the amount that came in in your department apparently was so small as to leave it still, in your opinion, a departmental nuisance, wasn't it? A.—I couldn't say.

30 THE COURT: Well, Mr. Griffin, really do you think, with all due deference to the witness, would it help me as to what his opinion was? I suppose the opinion of the administration would have some bearing upon it. Thank you.

MR. GRIFFIN: Yes; one more question if my friend permits me.

Q.—You are in touch with conditions in Washington, are you not? A.—Yes.

40 Q.—Can you give me—I have got it out of an American publication here and I just want to put it in record—reading from United States Department of Agriculture, Statistical Bulletin No. 21 of American Forests and Forests Protection, in which it is stated year by year, that the production of lumber in the State of Washington was in the year 1928 just over seven billion feet. Is that correct? A.—I couldn't say.

Q.—Well, if this was—

THE COURT: Well, Mr. Griffin, surely—

RECORD.
Plaintiff's evidence.
No. 23.
Reginald Dick
Stuart, direct
examination.
(Continued.)

No. 23.
Reginald Dick
Stuart, cross-
examination.

RECORD.
 Plaintiff's evidence.
 No. 23.
 Reginald Dick
 Stuart, cross-
 examination.
 (Continued.)

MR. GRIFFIN: I only want to know from this witness—whether from his opinion you can support that opinion by the knowledge that you obtained in the way you have obtained your knowledge that you did obtain? A.—I would say that it is generally correct.

Q.—Generally correct? A.—Might be out half a billion or so.

THE COURT: Q.—I suppose you could rely fairly on anything you got from any Government report of any civilized country, would you not? A.—Yes, my lord.

THE COURT: Well, you need not produce that in evidence; I mean as to what is the value, or what you would attach to a document, you need not produce that. 10

MR. GRIFFIN: The only thing is I doubt whether any of these publications of a foreign country would be evidence.

THE COURT: Oh, well, his opinion of it would not make it evidence.

MR. GRIFFIN: I will just put it shortly to him.

Q.—Can you give me the approximate quantity of logs produced in Washington in 1928? A.—No, sir.

Q.—You have no idea, then? A.—No, sir. The U.S. Government does not collect statistics of logs. 20

Q.—On logs? A.—On gross log production, to the best of my knowledge.

Q.—You mean these are lumber productions, is that it? A.—Yes, sir.

THE COURT: And, Mr. Griffin, as far as I am concerned, you will have no difficulty producing reports from the Departments of the United States, subject to any objections that Mr. Hossie may make.

MR. HOSSIE: Thank you, Mr. Stuart. 30

(Witness aside.)

MR. HOSSIE: Mr. Andrews informs me that there are quite a number which would be required, and I don't know—if he checked up quite a number they could be brought up as required.

THE COURT: Yes.

MR. HOSSIE: And they need not be put in actually at the moment.

THE COURT: Or if Mr. Griffin—Mr. DesBrisay would consent to Mr. Andrews making the extracts.

MR. GRIFFIN: I will look at them during the lunch hour, my lord, and decide. 40

THE COURT: Yes.

MR. HOSSIE: That is all.

THE COURT: The point, Mr. Griffin, as I say, and Mr. Hossie, that as to the relevancy—that I will likely have to say, as to the permanency of the source of this commodity, if, for instance,

the commodity is open or only running for a year or two, you can readily see you would possibly submit the dual question whether it is a direct or indirect tax. Well, that is a thing that is going to be consumed and also out of existence in a year or two—suppose Mr. Hossie wants to show this is an inexhaustible supply, and the Government must have had in their mind certain things; otherwise of course—in regard to these maps, I am not going to say as to the relevancy of them and the information which they are supposed to give.

RECORD.
Plaintiff's evidence.

10 MR. HOSSIE: Yes, my lord; we have Exhibit No. 25, the maps, or the collection of the evidence from them which Mr. Andrews will prepare during the lunch hour.

THE COURT: I suppose so.

MR. HOSSIE: And I will endeavour to keep it in as small compass as possible.

THE COURT: Have you any more witnesses?

MR. HOSSIE: I have no more witnesses.

(Document marked Exhibit No. 25.)

20 THE COURT: Well, half-past 2—or are you ready to go on?

MR. GRIFFIN: We have no testimony, my lord; I might be ready—

THE COURT: And then this evidence of Mr. Andrews's will go in?

MR. GRIFFIN: I should prefer to hear from my friends first, my lord, acting for the Crown. Having no testimony, I would like to hear their argument first.

THE COURT: Oh, you say you have no testimony—I thought you said you had?

30 MR. GRIFFIN: I have no testimony.

THE COURT: I have no objection to adjourning until half-past 2.

MR. HOSSIE: I think that would be as well. Do I take it my friend has abandoned his motion?

THE COURT: No, he does not say he has abandoned; he simply says he has no testimony to adduce, and then he thinks you should make your submission.

MR. HOSSIE: I assume either my friend's motion comes on to be argued, or is abandoned.

40 THE COURT: The motion?

MR. HOSSIE: The motion to strike out our statement of claim. If it is abandoned, relying on the paragraph in his defence, then of course he will be forced to go first.

MR. GRIFFIN: No; my friend is under a misapprehension. The motion will be argued together with the pleading which supports it, and the other matters involved, all in due course, and my friend can address himself to that as he sees fit; but I will

RECORD.
Plaintiff's evidence.

reserve the right—the motion is of very little value now because the point being raised on the pleadings also it comes up as a point of law. We reserve the motion further simply so as to have both remedies; and as we have no testimony to offer on behalf of the Crown my friend should proceed with his argument.

THE COURT: Oh, well, it is comparatively immaterial now, Mr. Hossie.

MR. HOSSIE: I am not concerned a little bit about that, my lord, but I am in this position: that my friend seeks to fix upon me the method of procedure; well, of course, in the defence which he sets up it is substantially a defence to this action; the other is substantially a motion which he brought before this Court a week before the trial in an endeavour to quash our action. 10

THE COURT: Yes?

MR. HOSSIE: Now, either he must proceed with that motion now, my lord, or he must abandon the motion and rely upon his defence.

THE COURT: You do expect that to be dealt with?

MR. HOSSIE: Yes, that is the position I take; and if my friend wishes to proceed with his motion, and the only way he can preserve it is by proceeding with it, then of course he must go first. If he does not want to go first he has the alternative of abandoning his motion. I just wish to know which he is going to do. 20

THE COURT: I quite expect Mr. Griffin to proceed with his motion, which, strictly speaking, I should have dealt with at the first day, on the opening of the trial; but having so many witnesses, and business men, I thought that by the arrangement we made it would save costs and expedite the termination of the trial if we postponed that which perhaps should have been done at the very opening of the trial. So the situation is not altered at all, unless Mr. Griffin chooses to abandon his motion. If he does, then you will go on; and I take it that is what perhaps Mr. Griffin desires to do. 30

MR. GRIFFIN: No, my lord, I do not abandon the motion; I am proceeding with the motion.

THE COURT: Well, you do not have to, but are you?

MR. GRIFFIN: Yes, my lord; the only thing is this: that we on behalf of the Crown have the reply, anyway; therefore why have two speeches?

THE COURT: Well, I am not going to hear two speeches on the same subject-matter if I can prevent it. 40

MR. GRIFFIN: But you see, my lord, the position is on behalf of the Crown we always have the final reply, acting for the Attorney-General.

THE COURT: I am not dealing with that, but I will hear your motion, Mr. Griffin.

MR. GRIFFIN: Shall I proceed with it now, my lord?

THE COURT: Yes.

MR. GRIFFIN: I don't mind doing it——

THE COURT: I really do not see why these things come up, they are so simple; I only suggested that if it would suit your convenience to go on, I have no objection to adjourning; but if you are ready to go on——

MR. GRIFFIN: I think that would probably shorten things; I might get things in shape quicker.

THE COURT: That is really what I thought. I do very often find it does shorten things. Half-past 2.

Court adjourned at 12.45 until 2.30 p.m. of the same day.

RECORD.
Plaintiff's evidence.

—————
May 2nd, 1929.

2.30 p.m., Court resumed pursuant to adjournment.

(Argument.)

4.30 p.m., Court adjourned until Tuesday, May 7th, 11 a.m.

—————
May 7th, 1929.

11 a.m., Court resumed pursuant to adjournment.

(Argument.)

1 p.m., Court adjourned until 2.30 p.m.

20 2.30 p.m., Court resumed pursuant to adjournment.

(Argument.)

2.30 p.m., Court adjourned until Wednesday, May 8th, 11 a.m.

—————
May 8th, 1929.

11 a.m., Court resumed pursuant to adjournment.

(Argument.)

12.45 p.m., Court adjourned until 2.30 p.m.

2.35 p.m., Court resumed pursuant to adjournment.

(Argument.)

30

—————
(C.A.V.)

RECORD.

No. 24.

No. 24.
Reasons for
Judgment.
The Chief Justice.
May 23, 1929.

REASONS FOR JUDGMENT OF THE HONOURABLE THE CHIEF JUSTICE.

This is in the nature of a test action by which the plaintiffs are seeking by means of a Declaratory Judgment to test the validity of certain sections of the Forestry Act—namely, section 58 and section 62 and section 127.

The plaintiffs, a Company incorporated in the Province of British Columbia, are the owners in fee-simple of certain timber lands on Vancouver Island in what is known as the Esquimalt & Nanaimo Railway Belt, and particularly Section 1, Renfrew District, and also Block 75, Cowichan Lake District, and have the right to fell trees growing upon the said areas and to remove the timber. In the conduct of their logging operations they have complied with the provisions of the Forestry Act promulgated in that behalf by the Department of Lands of the Province, Forest Branch, paying the scaling fees and expenses and all proper taxes payable in respect of the timber shown in their accounts, other than that upon the timber taken from Block 75 and Section 1, which when they came to tender was refused on the ground that the tender was not accompanied by a return on what is known as Form F.B. 38 or by the further sum of \$2,025.24, being the amount of a timber tax alleged to be due on the timber cut from Block 75 and Section 1, referred to also at the trial as an export tax.

The plaintiffs in the course of their business had entered into contracts to sell the timber in question to a concern in the State of Washington, who manufacture timber into various articles of commerce, and were prevented from carrying out their contract by the acts aforesaid of the Department. The timber is suitable for and is used in the manufacture of various articles of commerce. It was not the intention of the plaintiffs, or the purchaser, in Washington to use the said timber in British Columbia, or to cause it to be manufactured into sawn lumber or other manufactured wood product in British Columbia, or to dispose of the said timber to any one who would use the same in British Columbia. It also appears that there is no royalty reserved to the Province of British Columbia upon the said timber and that there is no royalty or tax paid to the Dominion of Canada in respect of it.

When the plaintiffs informed the Department of their intention to deliver this commodity to the purchasers in the State of Washington they were asked to sign Form F.B. 38 and to pay the sum of \$2,025.24 as a timber tax pursuant to section 58 of the Forestry Act, to which there are four schedules. The plaintiffs refused to make the return or to pay the tax demanded. The defendants took prompt and effective steps to prevent the logs being taken across the Border. They are now assembled in booms

in British Columbia waters pending eventualities. The plaintiffs also claim damages. An old branch of trade is the purchase and sale of standing timber in British Columbia. The traffic in logs has been and still is an important feature in the trade and commerce of the Province, both foreign and domestic, in which are engaged producers, middlemen, manufacturers, and buyers of logs, both in British Columbia and the State of Washington.

The plaintiffs submit that section 58 of the Forestry Act, being chapter 93 of R.S.B.C. (1924); the return on Form F.B. 38 and other returns provided by the Act, as well as section 62 and section 127 of said Act, in so far as they refer to the plaintiff, are *ultra vires* the Legislature of the Province of British Columbia. Section 58 enacts:—

“There shall be due and payable to His Majesty a tax upon all timber cut within the Province, save and except that upon which a royalty is reserved by this Act or the ‘Timber Royalty Act,’ or that upon which any royalty or tax is payable to the Government of the Dominion, which tax shall be in accordance with the following Schedules:—

20

“*Schedule No. 1.*”

“Timber suitable for the manufacture of lumber and shingles, two dollars per thousand feet, board measure, on No. 1 grade; one dollar and fifty cents per thousand feet, board measure, on No. 2 grade; and one dollar per thousand feet, board measure, on No. 3 grade: Provided that a rebate of all the tax over one cent per thousand feet, board measure, shall be allowed when the timber upon which it is due or payable is manufactured or used in the Province.”

Section 62:—

30

“(1.) No person shall export or remove from the Province any timber in respect of which any royalty, tax, or revenue is payable to His Majesty in right of the Province, unless a permit is obtained from an officer of the Forest Branch certifying that the timber has been scaled, and all royalty, taxes, and revenue so payable in respect thereof have been paid.

40

“(2.) Every contravention of the provisions of this section shall render the offender liable to forfeit and pay to His Majesty the sum of one thousand dollars, to be recovered, with all costs as between solicitor and client, in an action brought in the name of His Majesty in any Court of competent jurisdiction.

“(3.) The Minister, or any person authorized by him, may do all things necessary to prevent a breach of the provisions of this section and to secure compliance therewith, and

RECORD.

No. 24.
Reasons for
Judgment.
The Chief Justice.
May 23, 1929.
(Continued.)

RECORD.

No. 24.
Reasons for
Judgment.
The Chief Justice.
May 23, 1929.
(Continued.)

may for such purpose take, seize, and hold all timber which is, or is suspected to be, in course of transit out of the Province in contravention of the provisions of this section, and may also take, seize, and hold every boat which is towing any such timber; and if the Minister decides that it is not the intention of the holder, owner, or person in possession of the timber to use it in the Province, or to manufacture it or cause it to be manufactured into sawn lumber or other manufactured wood produce in the Province, or to dispose of the timber to others who will use the same in the Province, or have the same so manufactured in the Province, the Minister may sell or cause to be sold such timber and boat by public auction, and the proceeds of the sale shall be the property of His Majesty and shall form part of the Consolidated Revenue Fund.” 10

It is submitted on behalf of the plaintiff that these provisions are restrictive and tend to prohibit freedom of export trade in this article of commerce. As an inducement to the producer of the logs, the Provincial Government relaxes and offers a rebate if the logs are not exported. Should it be sought to export them the tax is demanded, which, if paid, it is perforce added by the purchaser to the cost of the commodity. The Act does not in terms state that this tax is an export tax. The defendants contend that the tax is a tax intended to be imposed upon timber after being cut. That it is a “timber tax,” the levying of which is within the power of the Legislature. The plaintiffs, on the other hand, contend that it is in effect, though perhaps not in form, an export tax. Applying epithets does not as a rule disclose the true character of a transaction or of a statutory enactment. Both parties invoke the opposite and well-known clauses of the B.N.A. Act in their contentions as to whether this tax is direct or indirect. The two latest pronouncements by the Privy Council are cited, viz., *Atty.-Gen. for B.C. v. Canadian Pacific Railway*, L.R.A.C. 1927, p. 934, and *City of Halifax v. J. P. Fairbanks and Another*, L.R.A.C. (1928), p. 117. In my judgment, following the trial of the first case (*Attorney-Gen. for B.C. v. Canadian Pacific Railway*), I dealt at length with the authorities which up to that time had, in my opinion, any useful bearing on this aspect of the case and which were also cited at the present trial. No purpose can be served by now again referring to them in leading up to the ultimate judgments in the Privy Council in these cases. The Lord Chancellor in *City of Halifax v. J. P. Fairbanks, supra*, at p. 126, expresses the opinion, which is to be taken as a guide in determining whether a tax is direct or indirect, that “It is the nature and general tendency of the tax and not its incidence in particular or special cases which must determine its classification and validity,” and his Lordship observes that the established classification of the old and 20 30 40

well-known species of taxation should not be disturbed by attempting to apply a new test to every particular member of those species —“ the imposition of taxes on property and income, of death duties, and of municipal and local rates is, according to the common understanding of the term, direct taxation, just as the exaction of a customs or excise duty on commodities or of a percentage duty on services would ordinarily be regarded as indirect taxation; and although new forms of taxation may from time to time be added to one category or the other in accordance with Mills' formula, it would be wrong to use that formula as a ground for transferring a tax universally recognized as belonging to one class to a different class of taxation.” If the meaning is that a tax may be placed in a category or bloc, such as the Trade & Commerce Bloc; the Customs & Excise Bloc; the Personal Prop. Bloc, and so forth, which are separated by border lines not very clearly defined, I find no difficulty in assigning this tax to one of the blocs upon which the Province must not trespass. I find that the nature and general tendency of the tax assailed is to pass it on to the purchaser, and is an indirect tax which is *ultra vires* the Legislature of British Columbia.

The preliminary question, as to whether the plaintiff should not have proceeded by way of petition of right, was spoken to briefly, and if Counsel desire to be heard further, I shall fix a day.

AULAY MORRISON,
C.J.

Vancouver, B.C.,
May 23, 1929.

RECORD.
No. 24.
Reasons for
Judgment.
The Chief Justice.
May 23, 1929.
(Continued.)

RECORD.

No. 25.

No. 25.
Judgment.
The Chief Justice.
May 23, 1929.

JUDGMENT OF THE SUPREME COURT OF BRITISH
COLUMBIA.

BEFORE THE HONOURABLE THE CHIEF JUSTICE. Thursday, the 23rd day of
May, A.D. 1929.

This action coming on for trial before the Honourable the Chief Justice on Wednesday, the 1st day of May, 1929, and being continued on Thursday, the 2nd day of May; Tuesday, the 7th day of May; and Wednesday, the 8th day of May, in the presence of C. M. O'Brian, Esq., K.C., and Mr. D. N. Hossie, of Counsel for the plaintiff, and W. Martin Griffin, Esq., K.C., and Mr. A. C. DesBrisay, of Counsel for the defendant; UPON reading the Notice of Motion herein dated the 20th day of April, 1929; UPON hearing read the pleadings herein; UPON hearing the evidence adduced by the plaintiff; and UPON hearing what was alleged by Counsel aforesaid and judgment being reserved to this date: 10

THIS COURT DOTH ORDER AND ADJUDGE that the said motion be and the same is hereby dismissed.

THIS COURT DOTH FURTHER DECLARE THAT:

(a.) Section 58 and the Schedule thereto of the Forest Act, 1924, being chapter 93 of the Revised Statutes of British Columbia, 1924, is *ultra vires* the Legislative Assembly of the Province of British Columbia. 20

(b.) Sections 62 and 127 of the said Act in so far as they purport to implement any tax levied by the said section 58 are *ultra vires* the said Legislative Assembly.

(c.) The plaintiff is not liable to pay in respect of any timber cut from Section 1, Renfrew District, or Block 75, Cowichan Lake District, both on Vancouver Island, in the said Province, any tax under section 58 of the said Forest Act. 30

(d.) Any demand upon the plaintiff by the Forest Branch of the Department of Lands or other Department or officer of the Government of the Province of British Columbia for any return in respect of timber cut from the said lands to implement the collection of any tax levied by section 58 of the said Forest Act is *ultra vires*.

(e.) The plaintiff is entitled to export or remove from the Province of British Columbia any timber cut from the said lands without let or hindrance from the Government of the said Province

or any Department or officer thereof in respect of any claim to any tax or to royalty under said Forest Act.

BY THE COURT.

J. F. MATHER,
District Registrar.

RECORD.
No. 25.
Judgment.
The Chief Justice.
May 23, 1929.
(Continued.)

Supreme Court
of
British Columbia,
Vancouver Registry.

10

(Seal.)

A. M., C.J.

Minute filed.
Entered
Jun. 1, 1929.
Order Book, Vol. 73, Fol. 55.
Per L. J. B.

RECORD.

No. 26.

No. 26.
In the Privy
Council.

ORDER IN COUNCIL GRANTING SPECIAL LEAVE TO
APPEAL TO HIS MAJESTY IN COUNCIL (EXTRACT).

AT THE COURT AT BUCKINGHAM PALACE.

The 15th day of August, 1929.

PRESENT,

THE KING'S MOST EXCELLENT MAJESTY.

Lord President.
Lord Thomson.
Lord Passfield.
Lord Muir-Mackenzie.
Mr. Greenwood.

10

WHEREAS there was this day read at the Board a Report from the Judicial Committee of the Privy Council dated the 18th day of July, 1929, in the words following, viz. :—

“ WHEREAS by virtue of His late Majesty King Edward the Seventh's Order in Council of the 18th day of October, 1909, there was referred unto this Committee a humble Petition of the Attorney-General of the Province of British Columbia in the matter of an Appeal from the Supreme Court of British Columbia 20 between the Appellant Petitioner and the McDonald Murphy Lumber Company, Limited, Respondents, setting forth (amongst other matters).

“ THE LORDS OF THE COMMITTEE in obedience to His late Majesty's said Order in Council have taken the humble Petition into consideration and having heard Counsel in support thereof and in opposition thereto Their Lordships do this day agree humbly to report to Your Majesty as their opinion that leave ought to be granted to the Petitioner to enter and prosecute his Appeal against the Judgment of the Supreme Court of British 30 Columbia dated the 23rd day of May, 1929.

“ AND Their Lordships do further report to Your Majesty that the proper officer of the said Supreme Court ought to be directed to transmit to the Registrar of the Privy Council without delay an authenticated copy under seal of the Record proper to be laid before Your Majesty on the hearing of the Appeal upon payment by the Petitioner of the usual fees for the same.”

HIS MAJESTY having taken the said Report into consideration was pleased, by and with the advice of His Privy Council, to approve thereof and to order as it is hereby ordered that the 40 same be punctually observed, obeyed, and carried into execution.

Whereof the Lieutenant-Governor or Officer administering the Government of the Province of British Columbia for the time being and all other persons whom it may concern are to take notice and govern themselves accordingly.

COLIN SMITH.

RECORD.

No. 28.
In the Privy
Council.

Order in Council
granting special
leave to appeal to
His Majesty in
Council (extract).
July 18th, 1929.
(Continued.)

RECORD.

Exhibit No. 9.

Crown Grant No.
316, of Section 1,
Renfrew District,
Province of
British Columbia.
Dec. 18, 1884.

PART II.

EXHIBITS FILED ON TRIAL.

EXHIBIT No. 9.

(Plaintiff's.)

CROWN GRANT No. 316, OF SECTION 1, RENFREW
DISTRICT, PROVINCE OF BRITISH COLUMBIA.

I HEREBY CERTIFY the following three sheets of type-
script, together with tracing attached, to be a true copy of Crown
Grant No. 316 deposited in my office at Victoria under No. D.D.
3401.

10

L.R.O. SEAL.

B. F. J. WARD,
Deputy Registrar.

DATED this fourth day of April, 1929, at the Land Registry
Office, Victoria, B.C.

CROWN GRANT.

(Coat of Arms.)

SEAL.

CLEMENT F. CORNWALL,
Lieutenant-Governor.

PROVINCE OF
BRITISH COLUMBIA.
No. 316.

WM. SMITHE,
Chief Commissioner of Lands
and Works.

20

U. S. GORE,
Surveyor-General.

VICTORIA, by the Grace of God, of the United Kingdom of Great
Britain and Ireland, Queen, Defender of the Faith, and so
forth.

To all to whom these presents shall come, GREETING:

KNOW YE, that WE do by these presents, for US, Our Heirs
and Successors, in consideration of the sum of Four hundred 30
Dollars, to US paid, give and grant unto William Archibald
Robertson, Gideon C. Gerow and John Braden their heirs and
assigns, All that Parcel or Lot of land situate in Renfrew District,
said to contain Four hundred acres, more or less, and more par-
ticularly described on the map or plan hereunto annexed and

coloured red, and numbered section One (1) on the official plan or survey of the said Renfrew District in the Province of British Columbia, to have and to hold the said parcel or lot of land, and all and singular the premises hereby granted, with their appurtenances, unto the said William Archibald Robertson, Gideon C. Gerow and John Braden their heirs and assigns for ever, as tenants in common.

PROVIDED NEVERTHELESS, that it shall at all times be lawful for US, Our Heirs and Successors, or for any person or
10 persons acting in that behalf by Our or their authority, to resume any part of the said lands which it may be deemed necessary to resume for making roads, canals, bridges, towing-paths, or other works of public utility or convenience; so nevertheless that the land so to be resumed, shall not exceed one-twentieth part of the whole of the lands aforesaid, and that no such resumption shall be made of any lands on which any buildings may have been erected, or which may be in use as gardens or otherwise for the more convenient occupation of any such buildings.

PROVIDED, also, that it shall at all times be lawful for US,
20 Our Heirs and Successors, or for any person or persons acting under Our or their authority, to enter into and upon any part of the said lands, and to raise and get thereout any gold or silver ore, or coal which may be thereupon or thereunder situate, and to use and enjoy any and every part of the said land, and of the easements and privileges thereto belonging, for the purpose of such raising and getting, and every other purpose connected therewith, paying in respect of such raising, getting, and use, reasonable compensation.

PROVIDED also, that it shall be lawful for any person duly
30 authorized in that behalf by US Our Heirs and Successors, to take and occupy such water privileges, and to have and enjoy such rights, of carrying water over, through, or under any parts of the hereditaments hereby granted, as may be reasonably required for mining or agricultural purposes in the vicinity of the said hereditaments, paying therefor a reasonable compensation to the aforesaid William Archibald Robertson, Gideon C. Gerow and John Braden their heirs or assigns.

PROVIDED also, that it shall be at all times lawful for any
40 person duly authorized in that behalf by US, Our Heirs and Successors, to take from or upon any part of the hereditaments hereby granted, without compensation, any gravel, sand, stone, lime, timber or other material which may be required in the construction, maintenance, or repair of any roads, ferries, bridges, or other public works.

IN TESTIMONY WHEREOF, We have caused these Our Letters to be made Patent, and the Great Seal of Our Province of British Columbia to be hereunto affixed.

RECORD.

Exhibit No. 9.

Crown Grant No.
316, of Section 1,
Renfrew District,
Province of
British Columbia.
Dec. 18, 1884.

(Continued.)

RECORD.

Exhibit No. 9.

Crown Grant No.
316, of Section 1,
Renfrew District,
Province of
British Columbia.
Dec. 18, 1884.
(Continued.)

WITNESS HIS HONOR CLEMENT FRANCIS CORN-
WALL Lieutenant-Governor of Our Province of British Columbia
and its Dependencies, at Our Government House, in Our City of
Victoria, this Eighteenth day of December, in the year of Our Lord
One thousand eight hundred and eighty-four and in the Forty-
eighth year of Our Reign.

By Command.

F. ELWYN,
Deputy Provincial Secretary.

No. 7716-G registered the 3rd day of December 1887.
In Absolute Fees Book Vol. 9, Fol. 871.

10

L.R.O. SEAL.

CHAS. JAS. LEGGATT,
Registrar-General.

EXHIBIT No. 8.

(Plaintiff's.)

ABSTRACT OF TITLE, SECTION 1, RENFREW DISTRICT,
PROVINCE OF BRITISH COLUMBIA.

3rd April, 1929.

I HEREBY CERTIFY the following to be an Abstract of Title of Section 1, Renfrew District, containing 400 acres, more or less.

RECORD.

Exhibit No. 8.

Abstract of Title
of Section 1,
Renfrew District,
Province of
British Columbia.
April 3, 1929.

Instrument.	Date.	Date of Application.	Register.	Grantor.	Grantee.
Grant	18 Dec. 1884	24 Nov. 1887	A.F.B. Vol 9 Fol 871 No 7716-A	The Crown	{ William Archibald Robertson Gideon C. Gerow John Braden
Conveyance	22 Nov. 1887	"	" " " "	William A. Robertson } Gideon C. Gerow } John Braden }	{ Edgar Crow Baker William Redmond John Braden
Conveyance of undivided 1/3 interest	9 Aug. 1895	14 Aug. 1895	" " 17 " 389 No. 849-C	John Braden	{ Edgar Crow Baker William Redmond
20 Conveyance	11 Dec. 1906	7 Jan. 1907	" " 23 " 429 No. 13779-C	Edgar Crow Baker & William Redmond	{ F. H. Price—2/5 interest H. Keast —2/5 " " E. A. Price—1/5 " "
Conveyance	10 Sept. 1910	4 Oct. 1910	" " 28 " 84 No. 24671-C	F. H. Price, H. Keast & E. A. Price	William Edgar Oliver
Will	probated	1 Sept. 1920	D.F. 10995	William Edgar Oliver (deceased)	
Transmission		10 Nov. 1920	Indefeasible Title No. 40946-I	"	Mary Eleanor Oliver & Beatrice Lydia Catherine Oliver
30 Conveyance	22 Feb. 1926	26 Feb. 1926	" " No. 63086-I	Mary Eleanor Oliver & Beatrice L. C. Gillespie (Formerly Oliver)	McDonald Murphy Logging Company Limited
Mortgage for \$30,000 at 7%	22 Feb. 1926	26 Feb. 1926	No 57691-G	McDonald Murphy Logging Company Limited	Mary Eleanor Oliver & Beatrice L. C. Gillespie
Cancellation of above Mtge.	27 Oct. 1927	3 Nov. 1927	"	Mary Eleanor Oliver & Beatrice L. C. Gillespie	McDonald Murphy Logging Company Limited
Mortgage for \$60,000 at 8%	9 March 1928	3 April 1928	No. 64224-G	McDonald Murphy Logging Company Limited	Mossom DeGrassi Boyd

L.R.O. SEAL.

B. F. J. WARD,
Deputy Registrar.

40 Messrs. E. P. Davis & Co.,
Vancouver, B.C.

G.F. V.L.G.

EXHIBIT No. 10.

(Plaintiff's.)

CROWN GRANT (DOMINION OF CANADA) TO ESQUIMALT & NANAIMO RAILWAY COMPANY OF INTER ALIA BLOCK 75, COWICHAN LAKE DISTRICT, PROVINCE OF BRITISH COLUMBIA.

RECORD.
Exhibit No. 10.
Crown Grant (Dominion of Canada) to Esquimalt & Nanaimo Railway Company of inter alia Block 75, Cowichan Lake District, Province of British Columbia. April 21, 1887.

I HEREBY CERTIFY the following eight sheets of type-script to be a true copy of a Deed of Conveyance from The Crown (Dominion) to the Esquimalt & Nanaimo Railway Company, as recorded in my office in Record of Conveyances Vol. 2, folios 285 to 288.

DATED at the Land Registry Office, Victoria, B.C., this 5th day of April, 1929.

L.R.O. SEAL.

B. F. J. WARD,
Deputy Registrar.

Compared by
H.R.S. & V.L.G.

THE CROWN (DOMINION)

TO

THE ESQUIMALT & NANAIMO RAILWAY COMPANY.

CANADA.

[L.S.]

“ John J. McGee ”
Deputy Governor.

VICTORIA, by the Grace of God, of the United Kingdom of Great Britain and Ireland, Queen, Defender of the Faith, etc etc etc.

To all to whom these presents shall come—GREETING.

WHEREAS by an Act of the Legislature of British Columbia passed in the forty seventh year of Our Reign, Chapter 14 and intituled an “ Act relating to the Island Railway, the Graving Dock and Railway lands of the Province,” after reciting as is therein recited, there was by Section Three of the said Act, granted to The Dominion Government, for the purpose of constructing and to aid in the construction of a Railway between Esquimalt and Nanaimo, and in trust to be appropriated as they may deem advisable, but save as is therein excepted: ALL that piece or parcel

RECORD.

Exhibit No. 10.

Crown Grant
(Dominion of
Canada) to Esqui-
malt & Nanaimo
Railway Company
of inter alia Block
75, Cowichan Lake
District,
Province of
British Columbia.
April 21, 1887.
(Continued.)

of land situate in Vancouver Island, described as follows:—
Bounded on the South by a straight line drawn from the head of
Saanich Inlet, to Muir Creek on the Straits of Fuca: On the West
by a straight line drawn from Muir Creek aforesaid, to Crown
Mountain: On the North by a straight line drawn from Crown
Mountain to Seymour Narrows: and on the East by the Coast
line of Vancouver Island to the point of commencement: and in-
cluding all coal, coal oil, ores, stones, clay, marble, slate, mines,
minerals, and substances whatsoever thereupon, therein and
thereunder.

10

AND WHEREAS by section Four of the said Act, there was
excepted out of the tract of land granted by the said section Three,
All that portion thereof, lying to the Northward of a line running
East and West, halfway between the mouth of the Courtenay
River (Comox District) and Seymour Narrows.

AND WHEREAS by Section Five of the said Act, it was pro-
vided that the Government of Canada should be entitled out of
such excepted tract, to lands equal in extent to those alienated up
to the date of the said Act, by Crown Grant, Pre-emption or other-
wise, within the limits of the Grants mentioned in the said Section
Three. 20

AND WHEREAS by Section Six of the said Act, it was pro-
vided that the Grant mentioned in Section Three of the said Act,
should not include any lands then held under Crown Grant, Lease,
Agreement for sale, or other alienation by the Crown, nor should
it include Indian Reserves or Settlements, or Naval or Military
Reserves.

AND WHEREAS by Section Twenty-three of the said Act,
it was provided that the Company which might acquire, the said
lands from the Dominion Government for the construction of the
Railway should be governed by Subsection (F) of the agreement
in the said Act recited, and that each bona fide squatter who had
continuously occupied and improved any of the lands within the
tract of land to be acquired by the Company, from the Dominion
Government for a period of one year prior to the first day of
January 1883, should be entitled to a grant of the freehold of the
surface rights, of the said squatted land to the extent of One hun-
dred and sixty acres to each squatter, at the rate of One dollar
an acre. 30

AND WHEREAS by Subsection (F) of the Agreement in the
said Act recited, it is provided that the said lands should, except as
to coal and other minerals, and also except as to timber lands, as
thereinafter mentioned, be open for Four years from the passing
of the said Act, to actual settlers for Agricultural purposes at the
rate of One dollar an acre, to the extent of 160 acres to each such
40

actual settler, and that in any grants to settlers, the right to cut timber for Railway purposes, and rights of way, for the railway and Stations and workshops, should be reserved.

10 AND WHEREAS by Section Twenty four of the said Act, it was enacted that the Company should, at all times, sell coals gotten from the lands, that might be acquired by them from the Dominion Government to any Canadian Railway Company, having the terminus of its Railway on the Seaboard of British Columbia, and to the Imperial Dominion and Provincial Authorities, at the same rates as might be charged to any Railway Company owning or operating any Railway in the United States, or to any foreign customer whatsoever.

AND WHEREAS by Section Twenty five of the said Act, it was provided that all lands acquired by the Company from the Dominion Government, under the said Act, containing belts of timber fit for milling purposes should be sold at a price to be thereafter fixed by the Government of the Dominion or by the Company.

20 AND WHEREAS by Section Twenty six of the said Act, it was provided that the existing rights, if any, of any persons or corporations, in any of the lands so to be acquired by the Company, should not be affected by the said Act, nor should it affect Military or Naval Reserves.

30 AND WHEREAS by an act of the Parliament of Canada passed in the forty seventh year of Our Reign, chaptered Six and intituled " An Act respecting the Vancouver Island Railway, the Esquimalt Graving Dock, and certain railway lands of the Province of British Columbia granted to the Dominion " after reciting as is therein recited it is, amongst other things in effect enacted, that the Governor in Council may grant to the Esquimalt and Nanaimo Railway Company in in aid of the construction of a Railway from Esquimalt to Nanaimo, British Columbia, and of a telegraph line of the said Railway, besides the subsidy in money mentioned in the said Act. All of the lands situated on Vancouver Island, which has been granted to Us, by the Legislature of British Columbia, by the Act hereinbefore in part recited in aid of the construction of the said line of Railway in so far as such land shall be vested in Us, and held by Us for the purposes of the said Railway or to aid in the construction of the same; and also all 40 coal, coal oil, ores, stones, clay, marble, slate, mines, minerals, and substances whatsoever in, on, or under the lands so to be granted to the said Company as aforesaid, and the foreshore rights in respect of all such lands as aforesaid, which are to be granted to the Company as aforesaid, and which border on the sea; together with the privilege of mining under the foreshore, and sea, opposite

RECORD.

Exhibit No. 10.

Crown Grant
(Dominion of
Canada) to Esqui-
malt & Nanaimo
Railway Company
of inter alia Block
75, Cowichan Lake
District,
Province of
British Columbia.
April 21, 1887.
(Continued.)

RECORD.

Exhibit No. 10.

Crown Grant
(Dominion of
Canada) to Esqui-
malt & Nanaimo
Railway Company
of inter alia Block
75, Cowichan Lake
District,
Province of
British Columbia.
April 21, 1887.
(Continued.)

any such land, and of mining and keeping for their own use, all coal and minerals herein mentioned under the foreshore or sea opposite any such lands, in so far as such coal, coal oil, ores, stones, clay, marble, slates, mines, minerals, and substances whatsoever and foreshore rights, are vested in Us, as represented by the Government of Canada: AND FURTHER that no land shall be conveyed to the said Company until the road is fully completed and equipped: and further that the land grant shall be made, and the land, in so far as the same shall be vested in Us and held by Us for the purposes of the said Railway, or to aid in the construction of the same, shall be conveyed to the said Company upon the completion of the whole works to the entire satisfaction of the Governor in Council, but so nevertheless that the said lands, and the coal oil, coal and other minerals and timber thereunder, therein or thereon, shall be subject in every respect, to certain provisions set out in the Seventh Section of the said Act. 10

AND WHEREAS it has been agreed by and between the Government of Canada, the Government of British Columbia, and the said Company, that the Grant of the said lands to the said Company, shall be by the description hereinafter contained, that the exact boundaries of the lands covered by such Grant, shall be as settled and agreed upon, by and between the Government of British Columbia, and the said Company, and further that it shall not be necessary for settlers under Subsection (F) of the agreement recited in the said Act of the Legislature of British Columbia, to pay the price of lands pre-empted by them, in full, before the expiry of four years from the passing of the said Act, and that the terms of payment by such settlers for their land shall be those provided by the laws affecting Crown Lands in British Columbia, and that the Company shall grant them their conveyances upon demand, when such price shall have been paid in full. 20 30

AND WHEREAS the whole work under taken by the said Company has been completed to the entire satisfaction of Our Governor in Council, and Our Governor in Council has recommended that the land grant provided for by the said Act, should now be made, subject however to the stipulations and conditions hereinafter mentioned, and we deem it expedient that such Grant shall be so made.

NOW KNOW YE that We do by these presents in consideration of the premises, and under and by virtue of the said Acts of the Parliament of Canada and of the Legislature of British Columbia, hereinbefore in part recited and by virtue of every other power Us in that behalf enabling, and by and with the advice of Our Privy Council of Canada, GRANT, ASSIGN and CONVEY unto the Esquimalt and Nanaimo Railway Company its successors and assigns, ALL and SINGULAR the land situated on Van- 40

couver Island which has been granted to Us by the Act of the Legislature of the Province of British Columbia, passed in the Forty Seventh year of Our Reign, Chaptered Fourteen, and intituled " An Act relating to the Island Railway, the Graving Dock and Railway lands of the Province " in aid of the construction of the said line of Railway in so far as such lands are vested in Us and held by Us for the purposes of the said Railway or to aid in the construction of the same, and also all coal, coal oil, ores, stones, clay, marble, slate, mines, minerals, and substances whatsoever
 10 in on or under such lands, and the foreshore rights in respect of such of the said lands as border on the sea: together with the privilege of mining under the foreshore and sea opposite any such land, and of mining and Keeping for its and their own use all coal and minerals herein mentioned, under the foreshore or sea opposite any such lands in so far as such coal, coal oil, ores, stones, clay, marble, slate, mines, minerals and substances, and foreshore rights, are vested in Us as represented by the Government of Canada. AND ALSO the full benefit and advantage of the rights and privileges granted to Us by Section Five of the said Act of the
 20 Legislature of British Columbia.

TO HAVE AND TO HOLD the said lands, coal, coal oil, ores, stones, clay, marble, slate, mines, minerals and substances, and the said foreshore rights and privileges of mining, and the said Rights and privileges in the said Section Five of the said Act of the Legislature of British Columbia referred to, UNTO AND TO THE USE of the said Company its successors and assigns forever, SUBJECT NEVERTHELESS to the several stipulations and conditions affecting the same hereinbefore recited and which are contained in the Acts of the Parliament of Canada and
 30 of the Legislature of British Columbia hereinbefore in part recited, as such stipulations are modified by terms, hereinbefore recited, of the Agreement so made as aforesaid by and between the Government of Canada, the Government of British Columbia and the said Company.

GIVEN under the Great Seal of Canada :

WITNESS, John Joseph McGee, Esquire, Deputy of Our Right Trusty and Entirely Beloved Cousin, the Most Honorable Henry Charles Keith Petty Fitzmaurice, Marquess of Lansdowne in the County of Somerset, Earl of Wycombe, of Chipping Wycombe, in the County of Bucks, Viscount Calne and Calnstone in
 40 the County of Wilts, and Lord Wycombe, Baron of Chipping Wycombe, in the County of Bucks in the peerage of Great Britain; Earl of Kerry and Earl of Shelburne, Viscount Clanmaurice and Fitzmaurice, Baron of Kerry, Lixnaw, and Dunkerron, in the peerage of Ireland: Knight Grand Cross of Our Most Distin-

RECORD.
 Exhibit No. 10.
 Crown Grant
 (Dominion of
 Canada) to Esqui-
 malt & Nanaimo
 Railway Company
 of inter alia Block
 75, Cowichan Lake
 District,
 Province of
 British Columbia.
 April 21, 1887.
 (Continued.)

RECORD.

Exhibit No. 10.

Crown Grant
(Dominion of
Canada) to Esqui-
malt & Nanaimo
Railway Company
of inter alia Block
75, Cowichan Lake
District,
Province of
British Columbia.
April 21, 1887.
(Continued.)

guished Order of St. Michael and St. George: Governor General of Canada, and Vice Admiral of the same etc etc etc

AT OTTAWA, this Twenty first day of April, in the year of Our Lord, One thousand eight hundred and eighty seven, and in the fiftieth year of Our Reign.

By Command.
" G Powell "
Under Secretary of State.

" A M Burgess "
Deputy of the Minister of the
Interior.

Received for Record at Victoria B.C. the 20th day of May 10
1887 at 3.30 PM

" Chas Jas Leggatt "
Reg Genl.

Recorded the 25th day of May 1887 In Record of Conveyances
Vol 2 Fol 285.

Chas Jas Leggatt
Registrar General

EXHIBIT No. 7.

(Plaintiff's.)

ABSTRACT OF TITLE OF BLOCK 75, COWICHAN LAKE
DISTRICT, BRITISH COLUMBIA.

20 April 1929.

I HEREBY CERTIFY the following to be an Abstract of
Title of Block 75, Cowichan Lake District, containing 8538.20
acres, more or less.

10 ACT OF PARLIAMENT CHAP. 14—1884—VESTING LANDS
IN THE DOMINION GOVERNMENT.

Instrument	Date of Instrument	Date of Application	Register	Grantor	Grantee
Grant	21 April 1887	20 May 1887	A.F.B. Vol 9 Fol 693 No. 7434-A	The Crown (Dominion)	Esquimalt & Nanaimo Railway Company.
Conveyance	20 March 1908	30 Sept 1908	I.F.B. Vol 1 Fol 312 No. 1034-I	Esquimalt & Nanaimo Railway Company	The States Lumber Company
Conveyance Subject to conditions & reservations in favor of E & N Rly Co.	20 July 1912	16 Oct. 1912	„ „ 5 „ 405 No. 7249-I	States Lumber Company	North American Timber Holding Company
Mortgage to secure bonds for \$500,000 at 7%	1 August 1918	15 Oct. 1918	No. 36766-G	North American Timber Holding Company	Ray Nyemaster (In Trust)
Cancellation of above Mortgage	24 Feb. 1928	1 March 1928	„	Ray Nyemaster	North American Timber Holding Company.

L.R.O. SEAL.

B. F. J. WARD,
Deputy Registrar.

30 To: Messrs. E. P. Davis & Co.,
Vancouver, B.C.

G.F. V.L.G.

RECORD.

Exhibit No. 7.

Abstract of Title
of Block 75,
Cowichan Lake
District,
British Columbia.
April 20, 1929.

EXHIBIT No. 1.
(Plaintiff's.)

SCALE AND ROYALTY ACCOUNT ISSUED BY FOREST
BRANCH, GOVERNMENT OF THE PROVINCE OF
BRITISH COLUMBIA, TO McDONALD-MURPHY LOG-
GING COMPANY.

F.B. 37—20M-1128-4449

Possession of this Scale Bill
does not constitute ownership.

(Original.)

FOREST BRANCH.

(Coat of Arms.)

SCALE AND ROYALTY ACCOUNT.

Scaled at Crofton

Account No. 115269

Vancouver, B.C.,

Mar. 24/29
(Date of Scaling.)

RECORD.

Exhibit No. 1.

Scale and Royalty
Account issued by
Forest Branch,
Government of the
Province of
British Columbia,
to McDonald-
Murphy Logging
Company.
Mar. 24, 1929.

10

Raft No. A.H. 58

Scaled for.....

Address.....

Vendor McDonald Murphy Logging Co.

Address.....

20

30

Stumpage Account Number.	Lot or Licence No. from which Timber has been cut.	Marks on Timber.	Number of Sections.	Number of Pieces.	DESCRIPTION OF TIMBER. No. 205.	Grade.	Scale Measure- ment.	Rate per	Timber Royalty.	Timber Tax.	Trespass and Penalties.	SCALING FUND.		TOTAL.
												Fees.	Expenses.	
20	Bk. 75, Cowichan Lake	M35		11	Fir	1	24779	2.00						
				147	"	2	172048	1.50						
				14	"	3	8503	1.00						
	Sec. 1, Nixon Creek Renfrew	B43			18	"	2	14129	1.50					
					5	"	3	3156	1.00					
	Bk. 75, Cowichan Lake	E64			2	"	1	3380	2.00		56 32			
					174	"	2	144399	1.50					
					19	"	3	11856	1.00					
					2	Pine	2	838	1.50		497 12			
					1	"	3	178	1.00					
30		F6		16	Fir BS	3	7695	1.00	Scaled					
				9	" SS	3	2335	1.00	prev.	33 72				
		no mark	8	1	" BS	2	811	Export tax paid						
				1	" "	3	522	Permit No. 68 66						
				420			394629			587 16		23 68	1 80	612 64
												46 chains E & O E	\$612 64	

Name of Scaler A. C. Heard

Certified correct R. C. St. Clair
District Forester.

EXHIBIT No. 3.

(Plaintiff's.)

APPLICATION FOR PERMIT TO EXPORT TIMBER, FORM F.B. 38 OF THE FOREST BRANCH, GOVERNMENT OF THE PROVINCE OF BRITISH COLUMBIA, FILLED OUT BUT NOT COMPLETED.

★ F.B. 38—2M-228-1020

To District Forester.

FOREST BRANCH.

(Coat of Arms.)

Vancouver, B.C., Apr. 3, 1929

APPLICATION FOR PERMIT TO EXPORT TIMBER.

Account No. 7853

RECORD.

Exhibit No. 3.

Application for permit to export timber, Form F.B. 38 of the Government of the Province of British Columbia, filled out but not completed. April 3, 1929.

10

I HEREBY apply for permission to export the following described timber, and enclose herewith cheque for \$.....in payment of the following accounts:—

Date of Scaling.	Raft Number.	Scale and Royalty Account No.	Lot or Licence No. from which Timber has been cut.	Date Lands alienated by Crown.	Marks on Timber.	Description of Timber.	Number of Sections.	Number of Pieces.	Scale Measurement.	Rate of Royalty, Tax, or Fees, per M. Feet.	Timber Royalty.	Timber Tax.	Scaling Fees.	Scaling Expenses.	TOTAL.
Mar. 24	AH58	115269	M35 B43	E64	F6	Fir	8	418	393296	2.00, 1.50, 1.00		587 16	23 68	1 80	612 64
26	AH62	115324	" "	"	"	"	8	388	396164	"		599 27	23 77	1 80	624 84
27	AH61	115326	" "	"	" K21	"	8	480	258236	"		284 62	15 51	1 80	301 93
					"	Culls		8							
30	AH64	115366	" "	"	"	Fir	8	392	408915	"		600 22	24 53	3 70	628 45

20

I purpose to employ the Tug St. Clair to tow the above-mentioned timber to Shelton, Wash.

I, A. D. Munn for McDonald Murphy L. Co. of Vancouver, B.C., do solemnly declare that the above statement is true and correct. And I make this solemn declaration knowing that it is of the same force and effect as if made under oath and by virtue of the "Canada Evidence Act."

DECLARED before me at Vancouver this 3 day of April, A.D. 1929.

.....
A Notary Public in and for the Province of British Columbia.

Less amount paid Scale and Royalty Account No.....
Less amount paid Scale and Royalty Account No.....
Less amount paid Scale and Royalty Account No.....
BALANCE DUE - \$2167 86

30

.....
(Applicant.)

EXHIBIT No. 19.

(Plaintiff's.)

PERMIT TO EXPORT TIMBER.

ORIGINAL

FOREST BRANCH.

(Coat of Arms.)

PERMIT TO EXPORT TIMBER.

Date of Issue Apr. 3, 1929.

Date of Expiry May 2, 1929.

RECORD.

Exhibit No. 19.

Permit to Export
Timber.
April 3, 1929.

No. 7853

NOTICE

- 10 This permit is good only until the above date of expiry, after which it becomes null and void. Forest officers on launch patrol are instructed to seize any boom (and the tug towing the same) which arrives in the neighbourhood of the International Boundary without a permit or with a time-expired permit.

I HEREBY AUTHORIZE McDonald Murphy Lbr. Co. Ltd. of Vancouver, B.C., to export the following described timber, to be towed by the Tug St. Clair or by the Tug.....
to Shelton, Wash.

20 Raft Number.	Number of Sections.	Marks on Timber.	Number of Pieces.	Description of Timber.	Scale Measurement.
AH 58	8	<u>M35</u> <u>B43</u> <u>E64</u> <u>F6</u>	418	Fir	393296
AH 62	8	" " " "	388	"	396164
AH 61	8	" " " " <u>K21</u>	480	"	258236
			8	Culls	
AH 64	8	" " " "	392	Fir	408915

- I HEREBY CERTIFY that royalty or tax has been paid in full on the above-mentioned timber under Scale and Royalty Account No. 115269.324.326.366, and Application for Permit to export Timber
30 No. 7853, Vancouver, B.C.

(Signature) R. C. St. Clair
District Forester.

RECORD.

Exhibit No. 17.

Circular from
Department of
Customs and
Excise, Canada,
to Collector of Customs and Excise in
British Columbia.
March 8, 1927.

EXHIBIT No. 17.

(Plaintiff's.)

CIRCULAR FROM DEPARTMENT OF CUSTOMS AND
EXCISE, CANADA, TO COLLECTOR OF CUSTOMS
AND EXCISE IN BRITISH COLUMBIA.

No. 5771½ C.

CIRCULAR

DEPARTMENT OF CUSTOMS AND EXCISE, CANADA.

Ottawa, March 8, 1927.

To Collector of Customs and Excise in British Columbia: 10

EXPORT OF UNMANUFACTURED FOREST
PRODUCTS FROM BRITISH COLUMBIA.

The following instructions are issued for the guidance of Officers of Customs and Excise in the place of previous instructions in the above matter as contained in Memorandum of February 3, 1921, which is hereby cancelled.

(1) Persons desiring clearance in respect of timber for export should give the Officer of Customs and Excise timely notice, so that the Officer may have an opportunity to satisfy himself as to the accuracy of the quantities, etc. 20

(2) An export entry is required to be delivered at the Customs House before clearance, showing the quantities and values of timber to be exported. In order to verify the accuracy of the quantities and values in such entry, the Officer of Customs and Excise can take such time as he finds reasonably necessary before accepting same, in cases where delay seems called for, to serve the ends of justice.

(3) A permit from the British Columbia Forest Branch is required for the export of unmanufactured forest products such as logs, poles, piling, shingle bolts, unmanufactured pulp-wood, etc. 30
When application for such export is made to any British Columbia sea or rail ports, outports or stations and the applicant has no Forest Branch permit, the Officer of Customs and Excise is to notify the District Forester concerned by telephone or telegraph, as below.

In respect of the ports marked with an " x " a permit is also required from the Dominion Timber Agent, New Westminster, B.C., for unmanufactured forest products emanating from the Coast District of the Dominion Railway Belt in British Columbia.

(4) The following will notify the District Forester, Prince Rupert:

Prince Rupert,	Anyox, Butedale Port Simpson Stickeen (Via Wrangell), Stewart,	Arrandale, Masset, Pleasant Camp, Silver Heights.
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RECORD.
Exhibit No. 17.
Circular from
Department of
Customs and
Excise, Canada,
to Collector of Customs and Excise in
British Columbia.
March 8, 1927.
(Continued.)

10 (5) The following will notify the District Forester, Vancouver:

x Abbotsford, Nanaimo,	x Aldergrove, Chemainus, Cumberland, Duncan's Station, Ladysmith, Ocean Falls, Port Alberni, Union Bay,	x Huntingdon, Kildonan
20 x New Westminster,	x Ladner x Steveston, x White Rock	x Boundary Bay, x Douglas (Westminster Co.), x Pacific Highway (R.R. No. 2, P.O. Cloverdale, B.C.) Bella Coola Blubber Bay.
Vancouver,	Alert Bay, Britannia Beach, Powell River, Sidney,	Ganges Harbour Bamfield Port Renfrew, Quatsino.
30 Victoria,		

(6) The following will notify the District Forester, Nelson:

Grand Forks,	Carson, Cascade City, Bridenville, Myncaster, Midway, Waneta, Kaslo	Nelway,
40 Nelson	Paterson, Trail, Kingsgate, Rykerts, Newgate, Michel	Roosville,
Rossland,		
Cranbrook		
Fernie,		

RECORD

Exhibit No. 17.

Circular from
Department of
Customs and
Excise, Canada,
to Collector of Customs and Excise in
British Columbia.
March 8, 1927.
(Continued.)

Penticton,

Similkameen,
Osoyoos,
Princeton,
Kelowna.

Certified a true copy of original
Circular 5771/2 C.

G. A. ALLEN.

EXHIBIT No. 16.

(Plaintiff's.)

EXTRACTS FROM TARIFF ACT, 1922, UNITED STATES OF AMERICA.

RECORD.

Exhibit No. 16.

Extracts from
 Tariff Act, 1922,
 United States of
 America.
 September 21, 1922.

(Public—No. 318—67th Congress.)

(H.R. 7456.)

An Act to provide revenue, to regulate commerce with foreign countries, to encourage the industries of the United States, and for other purposes.

10 BE IT ENACTED BY THE SENATE AND HOUSE OF REPRESENTATIVES OF THE UNITED STATES OF AMERICA IN CONGRESS ASSEMBLED,

TITLE I.

Dutiable List.

SECTION I. That on and after the day following the passage of this Act, except as otherwise specially provided for in this Act, there shall be levied, collected, and paid upon all articles when imported from any foreign country into the United States or into any of its possessions (except the Philippine Islands, the Virgin
 20 Islands, and the islands of Guam and Tutuila) the rates of duty which are prescribed by the schedules and paragraphs of the dutiable list of this title, namely:

SCHEDULE 4.—WOOD AND MANUFACTURES OF.

Par. 401. Lots of fir, spruce, cedar, or Western Hemlock, \$1 per thousand feet board measure: PROVIDED, That any such class of logs cut from any particular class of lands shall be exempt from such duty if imported from any country, dependency, province, or other subdivision of government which has, at no time during the twelve months immediately preceding their importation
 30 into the United States, maintained any embargo, prohibition, or other restriction (whether by law, order, regulation, contractual relation or otherwise, directly or indirectly) upon the exportation of such class of logs from such country, dependency, province, or other subdivision of government, if cut from such class of lands.

RECORD.

Exhibit No. 6.

Letter from Bourne
& DesBrisay,
Solicitors for
Defendant, to
E. P. Davis &
Company, Solicitors
for the Plaintiff,
admitting facts.
April 27, 1929.

EXHIBIT No. 6.

(Plaintiff's.)

LETTER FROM BOURNE & DESBRISAY, SOLICITORS FOR
DEFENDANT, TO E. P. DAVIS & COMPANY, SOLICI-
TORS FOR THE PLAINTIFF, ADMITTING FACTS.

Vancouver, B.C.
April 27th, 1929.

Messrs. E. P. Davis & Co.,
Barristers &c.,
London Building,
CITY.

10

Dear Sirs:—

Re: McDonald Murphy Lumber Co. Ltd.,
vs. Attorney-General.

With reference to your Notice to Admit Facts, we are pre-
pared to admit the following:—

(1) That the Plaintiff is now the owner in fee simple of Sec-
tion 1, Renfrew District.

(2) That the timber in question in this action was cut from
the said Section 1 and the said Block 75.

20

(3) That the said timber in question in this action was duly
scaled.

(4) That the amount of the scaling fees and expenses in
respect of the said timber was \$96.59, and that the Plaintiff, by
its servant or agent, expressed its willingness to pay same.

(5) That the amount of tax levied in respect of timber in the
booms in question in this action taken from lands other than the
said Section 1 and Block 75, was \$46.03, and that the Plaintiff by
its servant or agent expressed its willingness to pay same.

(6) That Form F.B. 38 is a form prepared by the Depart- 30
ment of Lands, Forest Branch, for convenience.

(7) That the Plaintiff owns the timber in question in this
action.

Yours truly,

BOURNE & DESBRISAY.

ACD/N.

Per A.C.DesB.

EXHIBIT No. 15.

(Plaintiff's.)

LETTER, HENRY McCLEARY TIMBER COMPANY TO
McDONALD-MURPHY LUMBER COMPANY, LIMITED.

RECORD.

Exhibit No. 15.

Letter, Henry
McCleary Timber
Company to
McDonald-Murphy
Lumber Company,
Limited.
Dec. 28, 1928.

McCleary, Wash.

December 28, 1928.

McDonald-Murphy Lumber Co., Ltd.
736 Granville Street
Vancouver, B.C.

10 Gentlemen:

Attention: Mr. E. V. Munn

Confirming our conversation of even date, you may enter our order for four million feet (4,000,000') of logs per month, covering a period of three months, beginning January 1st, 1929, at a price of \$25.40 for No. 1 Grade, \$19.40 for No. 2 Grade and \$12.40 for No. 3 Grade for camp run logs except logs of 18" or less in diameter. The above are prices at Crofton, B.C., including export and import taxes.

Please confirm, and oblige,

20

Yours very truly,

HENRY McCLEARY TIMBER CO.

HMc/W

H.Mc.

RECORDED.

Exhibit No. 14.

Invoice, McDonald-Murphy Lumber Company, Limited, to Henry McCleary Timber Company. March 14, 1929.

EXHIBIT No. 14.

(Plaintiff's.)

INVOICE, McDONALD-MURPHY LUMBER COMPANY, LIMITED, TO HENRY MCCLEARY TIMBER COMPANY.

Telephone:
Vancouver Office: Sey. 732

Camps at
Lake Cowichan, B.C.

McDONALD-MURPHY LUMBER CO. LIMITED

High-Grade Fir, Cedar and Hemlock Logs

736 Granville Street
Vancouver, B.C., Canada

10

March 14th 1929

Sold to Henry McCleary Timber Company,
Shelton, Washington, U.S.A.

20 pcs	33,840 feet No 1 Fir	@	24 00	812 60	
371 pcs	353,217 feet No 2 Fir	@	18 00	6,357 91	
22 pcs	16,516 feet No 3 Fir	@	11 00	181 68	
1 pc	297 feet Hemlock	@	9 00	2 67	
<hr/>	<hr/>			<hr/>	
414 pcs	403,870 feet			7,354 86	
	Import tax 403.87				20
	Boom No 191—Raft No A.H. 42 S&R Account No 114863 8 Sections Fir Logs Marks: <u>M35</u> — <u>E64</u> 44 Boom Chains Price in Boom at Crofton, B.C. Terms: 2% for Cash Export and Import Taxes paid by McDonald-Murphy Lumber Co. Ltd.				30

EXHIBIT No. 13.

(Plaintiff's.)

INVOICE, THOMSEN & CLARK TIMBER COMPANY, LIMITED, TO HENRY McCLEARY TIMBER COMPANY.

RECORD.

Exhibit No. 13.

Invoice, Thomsen & Clark Timber Company, Limited, to Henry McCleary Timber Company. March 19, 1929.

Camps at
Bowser, B.C.

Telephone
Seymour 7114

THOMSEN & CLARK TIMBER COMPANY, LIMITED

1222 Standard Bank Building
Vancouver, B.C.

10

Sold to Henry McCleary Timber Co.,
Shelton, Wash., U.S.A.

March 19, 1929

Terms 2% 10 days from date of invoice

Our Sales Invoice 18

Fir Raft No. 13

15	No. 1 Fir	26,764'	@ \$19 M	- \$ 508.52
350	No. 2 "	305,181'	@ \$14 "	- 4272.53
79	No. 3 "	55,092'	@ \$9 "	- 495.83
5	Culls			

\$5276.88

20

449 387,037'

Fir Raft No. 16

15	No. 1 Fir	28,267'	@ \$19 "	- 537.07
356	No. 2 "	298,321'	@ \$14 "	- 4176.49
63	No. 3 "	41,331'	@ \$9 "	- 371.98
3	Culls			

5085.54

437 367,919'

Totals 886 pcs.

754,956'

\$10,362.42

Add 1/2 scaling fees - - 24.65

30

\$10,387.07

207.25

10,179.82

Sold f.o.b. Deep Bay, B.C.
Buyer's Risk of Tow

O.K.
C.Mc.

RECORD.
 Exhibit No. 13.
 Invoice, Thomsen
 & Clark Timber
 Company, Limited,
 to Henry McCleary
 Timber Company.
 March 19, 1929.
 (Continued.)

Our Raft No. 13 & 16
 Govt. Scale No. 115031 & 115035
 Log Mark Q60
 Scaled by J. Younie
 No. Chains Report on chains to follow

NOTE.—Attached to this Invoice is an accurate count of boom chains on this boom. All our chains are stamped "T. & C." Please keep our chains separate. Advise when ready for return and shipping instructions will be furnished.

Camps at
 Bowser, B.C.

Telephone 10
 Seymour 7114

THOMSEN & CLARK TIMBER COMPANY, LIMITED
 1222 Standard Bank Building
 Vancouver, B.C.

March 19, 1929

Sold to Henry McCleary Timber Co.,
 Shelton, Wash., U.S.A.

Terms Net Cash

Our Sales Invoice.....

DEBIT NOTE

We charge your account for Export Tax paid on Rafts No. 13 and No. 16 20

Raft No. 13	S. & R. No. 115031	-	\$566.39
Raft No. 16	S. & R. No. 115035	-	545.34
			<u>\$1,111.73</u>

Our Raft No.
 Govt. Scale No.
 Log Mark
 Scaled by
 No. Chains

O.K. 30
 C.Mc.

NOTE.—Attached to this Invoice is an accurate count of boom chains on this boom. All our chains are stamped "T. & C." Please keep our chains separate. Advise when ready for return and shipping instructions will be furnished.

EXHIBIT No. 12.

(Plaintiff's.)

INVOICE, MERRILL-RING LUMBER COMPANY, LIMITED,
TO HENRY McCLEARY TIMBER COMPANY.

RECORD.

Exhibit No. 12.

Invoice, Merrill-
Ring Lumber
Company, Limited,
to Henry McCleary
Timber Company.
March 20, 1929.

Phone: Seymour 7044

Vancouver, B.C., Mar. 20th, 1929

Henry McCleary Timber Co.,
Shelton, Wash.

Dr. to MERRILL-RING LUMBER CO., LTD.

10 Boom No. 16.
Account No. 114981
No. of Sections 8

Terms: 2%—10 days on \$6,485.01

No. Pieces	Kind	Grade	No. of Feet	Rate	Total
20	Fir	No. 1	33,883	\$20.00	\$ 677.66
293	"	No. 2	331,663	15.00	4,974.94
117	"	No. 3	83,241	10.00	832.41
3	Culls				
<u>433</u>			<u>448,787</u>		<u>6,485.01</u>
20			Plus 1/2 Scaling Fees -		14.21
					<u>6,499.22</u>
			Plus Export Tax - -		648.50
					<u>\$7,147.72</u>
					Folio 217
		At our Squamish Camp. Squamish Logging A/C.			
	Log Mark	<u>D96</u>			
			O.K. by J. Glidden		
			WM.Mc.		

RECORD.

Exhibit No. 2.

Invoice, McDonald-Murphy Lumber Company, Limited, to Henry McCleary Timber Company. March 30, 1929.

EXHIBIT No. 2.

(Plaintiff's.)

INVOICE, McDONALD-MURPHY LUMBER COMPANY, LIMITED, TO HENRY McCLEARY TIMBER COMPANY.

Telephone: _____ Camps at
 Vancouver Office: Sey. 732 Lake Cowichan, B.C.

McDONALD-MURPHY LUMBER CO. LIMITED

High-Grade Fir, Cedar and Hemlock Logs

736 Granville Street

Vancouver, B.C., Canada

10

Sold to Henry McCleary Timber Co.,
 Shelton, Washington.

March 30, 1929.

13 Pieces	22,907 feet No. 1 Fir @	21 00	481 05		
308 "	336,802 " " 2 " @	15 50	5220 43		
71 "	49,206 " " 3 " @	9 00	442 85		
392 Pieces	408,915 feet		6144 33		
	Plus Export tax				
	22907' @ 2.00	45 81			20
	336802' @ 1.50	505 20			
	49206' @ 1.00	49 21			
	408915'	600 22	600 22		
	Less 2%			6744 55	
				122 88	
				6621 67	
	Boom No. 21—Raft No. A.H. 64 S & R Account No. 115366 8 Sections Fir Logs. Marks: <u>M35</u> - <u>B43</u> - <u>E64</u> 38 boom chains Price in Boom at Crofton, B.C. Terms: 2% for Cash Export taxes paid by McDonald - Murphy Lumber Co. Ltd.				30

EXHIBIT No. 21.

(Plaintiff's.)

EXTRACTS FROM FINAL REPORT OF THE ROYAL COMMISSION OF INQUIRY ON TIMBER AND FORESTRY, 1909-1910, BEING PARTS OF PAGES D 15, D 17, D 20, D 23, D 31, D 33, AND D 73.

RECORD.

Exhibit No. 21.

Extracts from Final Report of the Royal Commission of Inquiry on Timber and Forestry, 1909-1910, being parts of Pages D 15, D 17, D 20, D 23, D 31, D 33, and D 73. Nov. 15, 1910.

REPORT OF THE FORESTRY COMMISSION.

Page D 15.

B.C. Forest in Private Ownership.

10 In British Columbia, up to the year 1896, merchantable forest could be bought from the Government at the ordinary rate for first-class land, and in this manner certain areas passed into private ownership. Various other timber lands were included among the 8,000,000 acres of the Province granted to railway companies in aid of construction. Today we find that there are in private hands some 870,000 acres, and in the possession of the E. & N. Railway Company some 375,000 acres, while the Canadian Pacific Railway Company controls a very large area, the acreage of which we have been unable to ascertain. (1)

20 *Belonging to the Crown.*

The abandonment of the practice of Crown Granting timber land and the adoption of a leasing system marked an important step forward in the Provincial policy. That the change originated in the desire of the Legislature to encourage the establishment of saw mills is made very evident by the Act of 1888 that made the building of a mill an essential condition of every lease. Though the avoidance of this regulation was made possible by subsequent legislation, the same object was kept steadily in view by granting great reductions of rental to lessees who became operators. Apart
30 from this, attempts were made to hasten the local development of both the pulp and tanning industries by concessions of large leasehold areas at nominal rates. In the present year we therefore find that there are 1,005,676 acres held under timber, pulp and hemlock leases at rentals varying from two to twenty-five cents. (2)

Besides the leasehold system that was primarily designed to provide saw mill owners with definite sources of supply, at cheap rates, there existed a method of dealing with the needs of the small operating loggers by the granting of licenses to cut timber at chosen places. For a long time such licenses were annual. Not
40 until 1903 did it become possible to secure them for a five-year period. Soon after this, an agitation among licensees for further extensions brought about the revolution in the whole forest policy of the Government that took place in 1905.

RECORD.

Exhibit No. 21.

Extracts from Final Report of the Royal Commission of Inquiry on Timber and Forestry, 1909-1910, being parts of Pages D 15, D 17, D 20, D 23, D 31, D 33, and D 73. Nov. 15, 1910. (Continued.)

By that year it was becoming obvious that the old leasehold system had served its turn in helping to establish the lumber industry firmly in the Province. The future of that industry would evidently be dictated by market requirements and business laws, and the provision of cheap Crown stumpage as a bonus upon operation had ceased to be necessary.

Page D 17.

Merchantable Timber of B.C.

Upon the above assumptions the estimate for the total stand of merchantable timber in the Province would work out as follows: 10

Tenure	Acreage	Average Stand per acre, ft. B.M.	Total Stand	
Vancouver Island				
Crown Timber	318,000 (5)	35,000	11,130,000,000	
Mainland Crown Grant				
Timber	552,000 say	10,000	5,520,000,000	
E. & N. Ry. Co.	375,000	14,300	5,380,000,000	
C.P.R., unpublished.				20
Timber Leaseholds	619,000	20,000	12,380,000,000	
Special License Timber	9,000,000	12,000	108,000,000,000	
Mill Timber on Pulp, etc. Leaseholds	387,000 at least	12,000	4,640,000,000	
	11,251,000 ac. with a stand of.....		147,050,000,000	
Reserved Timber Land, conjectured to be 1/4 total forest area, under Provincial jurisdiction, say roughly..	3,750,000 say same as on licenses..		45,000,000,000	30
Total.....	15,001,000		192,050,000,000	

Under the control of the Dominion Government in the railway belt, the merchantable stand of timber is supposed to be between 40 and 50 billion, nearly half of which would appear to have been alienated. (6)

Page D 20.

Rising Prices.

The effect upon prices has been remarkable. The cost of 40 stumpage in the States represents one-quarter of the mill price of lumber, and we find that between 1900 and 1907 (1) the average mill price of all lumber rose 49%; the average price of all stump-

age rose 93%. Canadian statistics (2) show us that in comparison with the average for the decade 1890-1900, and in spite of the after effects of the great financial depression—1909 prices for Eastern lumber showed a rise of 55%. Eastern lumber (3), in fact, has risen faster than any other important commodity, with the single exception of furs. (4)

The position of British Columbia.

10 All these facts bear directly on the forest problems of British Columbia. With its 240 billion feet or more of merchantable timber, probably half the stand of Canada, the Province faces a rising market, east, west and south—for exhaustion of local supply will cause the southern tariff barriers to crumble gradually away. The bulk of this timber is Crown property; most of it is under Government control; and the rate of growth upon the Pacific coast is twice the average for the United States. To cap the climax, the Provincial policy has made the Government a sleeping partner in forest exploitation—a sharer in the profits of the lumbering industry.

20 Two things are therefore plain; one, that the value of standing timber in British Columbia is destined to rise to heights that general opinion would consider incredible today; the other, that under careful management heavy taxation need never fall upon the population of the Province.

The profits from a permanent Crown timber business should make British Columbia that phenomenon of state craft and good fortune—a country of “semi-independent means.”

Page D 23.

Mainland.

Assessment of Crown Grant Timber (1) for 1909.

30	District.	Acreage.	Assessed Value.	Average Assessed Value per Acre.
	Revelstoke	49,124	\$652,193	\$13.27
	Kettle River	3,120	13,200	4.23
	Kamloops	2,420	12,100	5.00
	Golden	67,680	293,945	4.34
	Vernon	5,129	16,580	3.23
	Vancouver	7,368	80,158	10.88
	Rossland	17,595	98,160	5.58
	Slocan	47,365	190,600	4.03
	Nelson	172,222	828,232	4.80
40	Fort Steele	179,714	436,617	2.43
	Total	551,737	\$2,621,785	\$4.75
	Total for the Province.....	829,900	\$5,317,335	\$6.41

RECORD.

Exhibit No. 21.

Extracts from Final Report of the Royal Commission of Inquiry on Timber and Forestry, 1909-1910, being parts of Pages D 15, D 17, D 20, D 23, D 31, D 33, and D 73. Nov. 15, 1910.

(Continued.)

RECORD.

Exhibit No. 21.

Extracts from
Final Report of
the Royal Com-
mission of Inquiry
on Timber and
Forestry, 1909-
1910, being parts of
Pages D 15, D 17,
D 20, D 23, D 31,
D 33, and D 73.
Nov. 15, 1910.
(Continued.)

Apart from the territory ceded to the Dominion in the rail-
way belt, the following land grants have been made by the Prov-
ince in aid of railway construction:

Name of Company.	No. of Acres Granted.	
Columbia & Kootenay Ry.	188,593	
Nelson & Fort Sheppard Ry.	550,720	
Kaslo & Slocan Ry.	252,168	
Columbia & Western	1,348,145	
B.C. Southern	3,755,733	10
Esquimalt & Nanaimo Ry.	2,000,000 approx.	
Total	8,095,359	

Railway Timber Lands.

Included in these areas were certain timber lands, many of
which have now been sold by the companies concerned. As, upon
sale, all such lands become subject to assessment and taxation by
the Province, a considerable part of the original area of railway
timber land is included in the acreage given above for Crown
Grant timber. Concerning such as remain in possession of the
companies, our information is very incomplete. From returns 20
furnished by some of the companies we find:

Name of Company.	Remaining Timber Land. Acres.	Total Stand, Feet.	Stand per Acre, Feet.
Esquimalt & Nanaimo.....	375,131	5,381,587,000	14,300
Kaslo & Slocan	None.		
Nelson & Ft. Sheppard	Very small area.		

Page D 31.

Total Forest Revenue.

By Calendar Years.		By Fiscal Years.		
Forest Revenue.	Forest Revenue.	Total Prov'l Revenue.	From Forest Sources.	
1900..... \$142,390	1901..... \$115,594	\$1,605,920	7.2%	
1901..... 155,335	1902..... 161,071	1,807,925	8.9%	
1902..... 198,666	1903..... 298,217	2,044,630	14.6%	
1903..... 405,826	1904..... 405,748	2,638,260	15.4%	
1904..... 455,366	1905..... 486,516	2,920,461	16.7%	
1905..... 574,467	1906..... 643,827	3,044,442	21.1%	
1906..... 859,877	1907..... 1,305,327	4,444,593	29.4%	40
1907..... 1,696,480	1908..... 2,424,668	5,979,054	40.6%	
1908..... 2,785,807	1909..... 1,920,349	4,664,500	41.2%	
	(9 mos.)			
1909..... 2,449,960	1910..... 2,448,150	8,000,000	30.6%	
		(approx.)		

Page D 33.

Export.

In past years no figures are obtainable concerning the total export of logs from Crown Grant Timber lands.

The annual reports show that the timber tax on export was levied upon the following small amounts:

Calendar Year.	Amount of Timber.	Tax Levied.
1904.....	7,815,747 feet paying	\$8,755
1905.....	5,118,050 " "	5,381
10 1906.....	Nil	
1907.....	1,881,400 " "	1,881
1908.....	Nil	
1909.....	3,785,750 " "	3,785
Total	18,600,000 feet	\$19,802

RECORD.**Exhibit No. 21.**

Extracts from Final Report of the Royal Commission of Inquiry on Timber and Forestry, 1909-1910, being parts of Pages D 15, D 17, D 20, D 23, D 31, D 33, and D 73. Nov. 15, 1910.
(Continued.)

Export in 1910.

During the present year records have been kept. In a period of eight months there were exported:

45,417,478 feet paying 50c per M. royalty.
14,843,917 feet paying \$1.00 per M. royalty.

20 Total.. 60,261,395 feet.

In September 36 camps were at work on exportable timber, and most of the timber cut by them was exported.

Tax on Timber Manufactured.

	At 1c. per M.	
1904.....	56,600,000 feet paid	\$566.00
1905.....	42,700,000 " "	427.00
1906.....	50,300,000 " "	503.00
1907.....	49,000,000 " "	490.00
1908.....	47,600,000 " "	476.00
30 1909.....	51,600,000 " "	516.00
Total	297,800,000 feet	\$2,978.00

Page D 73.

Export.

Several witnesses, in giving evidence before the Commission, urged strongly that the export of second and third-class cedar logs should be allowed.

RECORD.

Exhibit No. 24.

Extracts from
Page 9 of Brief
prepared by
Chief Forester.

EXHIBIT No. 24.

(Plaintiff's.)

EXTRACTS FROM PAGE 9 OF BRIEF PREPARED BY
CHIEF FORESTER.

The percentage of royalty to stumpage, of timber under licence shows a tendency to decrease.

Records for Ontario show:—

.....
.....

In British Columbia:

1903 royalty equalled 100% of the total stumpage value.

1915	"	"	50%	"	"	"	"	"	"	10
1925	"	suggested	41%	"	"	"	"	"	"	
1930	"	"	33-1/3%	"	"	"	"	"	"	

We have not yet progressed as far as Ontario, and therefore, our rates are higher.

EXHIBIT No. 23.

(Plaintiff's.)

EXTRACTS FROM PUBLICATION ENTITLED "FORESTS AND FORESTRY IN BRITISH COLUMBIA," ISSUED BY THE MINISTER OF LANDS OF THE PROVINCE OF BRITISH COLUMBIA, BEING PARTS OF PAGES 10, 16, 32, AND 33.

RECORD.

Exhibit No. 23.

Extracts from publication entitled "Forests and Forestry in British Columbia," issued by the Minister of Lands of the Province of British Columbia, being parts of Pages 10, 16, 32, and 33. A.D. 1928.

Page 10.

THE AREA AND CONTENTS OF EXISTING FOREST.

10 The total area of the Province is 372,630 square miles, of which 4,000 is water surface. Much exploration and mapping remains to be done before anything better than an approximate appreciation can be made of the ultimate use of areas as between agriculture, grazing and forestry. It is estimated that 148,000 square miles is situated on mountain-slopes above an elevation where timber of a commercial quality can be produced. Much of this area, however, carries an alpine type of forest and forage suitable for summer grazing; 40,000 square miles, situated at lower levels in open grass rock-slides, is unsuited for the produc-
20 tion of timber.

The area that may be brought under tillage is estimated at 221½ million acres, of which 700,000 acres is now under crop or farm pasture and an additional 10 million acres in use as grazing. The total grazing range is estimated at 160 million acres, which includes 100 million acres of timber range. On this area forest production and grazing will go hand in hand and constitute a joint use of the land.

It is estimated that there is 26,500 square miles bearing timber in commercial stands, or in excess of 850 cubic feet per acre,
30 and 130,000 square miles bears stands of scattered timber which has been cut or burned over and is now in the process of restocking.

Page 16.

In 1884 a grant of 3,000 square miles was made in aid of the construction of the Esquimalt & Nanaimo Railway. This area contained some of the finest of the Douglas fir stands. Probably 650 square miles of this grant has passed into the hands of logging companies, while 900 square miles of mature timber therein are still held by the company.

RECORD. Page 32.

Exhibit No. 23.

Extracts from
publication entitled
"Forests and
Forestry in British
Columbia," issued
by the Minister of
Lands of the Prov-
ince of British
Columbia, being
parts of Pages 10,
16, 32, and 33.
A.D. 1928.

(Continued.)

FOREST RESOURCES OF VANCOUVER ISLAND.—
CLASSIFICATION OF AREAS (IN ACRES).

Drainage-basin.	Total Area.
(East Coast)	
Finlayson Arm	174,400
Cowichan-Koksilah	338,500
Chemainus River	103,600
Nanaimo	224,500
Nanoose	147,800
Cameron-Horne Lake	185,200
Comox Lake	211,200
Sayward-Comox	1,109,500

10

Page 33.

MERCHANTABLE TIMBER.—VANCOUVER
ISLAND.

Drainage-basin.	Total.
Finlayson Arm	473,600
Cowichan-Koksilah	3,866,500
Chemainus River	1,650,000
Nanaimo	3,429,800
Nanoose	1,367,000
Cameron-Horne Lake	1,398,000
Comox Lake	1,808,200
Sayward-Comox	15,141,400

20

EXHIBIT No. 20.

(Plaintiff's.)

EXTRACTS FROM THE REPORT OF THE FOREST
BRANCH OF THE DEPARTMENT OF LANDS OF THE
PROVINCE OF BRITISH COLUMBIA FOR THE YEAR
ENDING DECEMBER 31, 1928, BEING PAGES B 26
AND B 27 AND PARTS OF PAGES B 30 AND B 35.

Page B 26.

SPECIES CUT IN 1928 (IN F.B.M.).

Forest District.	Fir.	Cedar.	Spruce.	Hemlock.	Balsam.	Yellow Pine.	White Pine.	Jack-pine.	Larch.	Cottonwood.	Miscel.	Totals.
Cariboo.....	4,599,574	372,291	182,142			25,000					1,417,500	6,596,507
Fort George.....	8,523,204	3,910,535	92,264,619		5,511,362			23,893,470			400,700	134,503,890
Kamloops.....	10,577,085	35,701,929	4,803,391	4,896	103,687	48,282	69,708	2,229,685	14,800		2,567,078	56,120,541
Southern Interior.....	54,588,427	54,741,149	38,950,743	8,135,803	3,406,969	31,845,807	10,190,260	19,570,080	24,371,523	1,268,466	38,674,255	285,743,482
Totals, Interior.....	78,288,290	94,725,904	136,200,895	8,140,699	9,022,018	31,919,089	10,259,968	45,693,235	24,386,323	1,268,466	43,059,533	482,964,420
Prince Rupert.....	2,526,142	35,713,013	33,734,085	24,217,833	13,273,581			28,855,432		1,483,572	2,369,195	142,172,853
Vancouver.....	1,524,127,494	608,187,565	34,175,520	320,910,202	45,969,123		12,813,299	1,018,700		2,482,794	32,083,496	2,581,768,193
Totals, Coast.....	1,526,653,636	643,900,578	67,909,605	345,128,035	59,242,704		12,813,299	29,874,132		3,966,366	34,452,691	2,723,941,046
Grand totals, 1928.....	1,604,941,926	738,626,482	204,110,500	353,268,734	68,264,722	31,919,089	23,073,267	75,567,367	24,386,323	5,234,832	77,512,224	3,206,905,466
Grand totals, 1927.....	1,411,296,248	656,030,374	188,234,622	306,859,508	70,013,721	34,165,320	35,157,414	63,578,562	27,607,809	1,927,889	58,830,995	2,853,702,462
Grand totals, 1926.....	1,306,615,563	705,409,476	248,706,996	332,691,280	90,419,605	29,368,123	30,079,384	45,565,603	40,696,415		88,566,757	2,918,119,202
Grand totals, 1925.....	1,016,931,573	761,424,202	209,036,148	305,659,173	69,757,874	41,116,018	30,653,478	56,350,628	46,715,296		73,622,137	2,611,266,527
Grand totals, 1924.....	1,036,019,000	610,201,000	267,899,000	322,715,000	66,069,000	38,354,000	25,243,000	75,895,000	56,896,000		50,409,000	2,549,700,000
Grand totals, 1923.....	1,139,149,000	573,615,000	209,017,000	322,217,000	71,538,000	61,790,000	31,183,000	53,491,000	44,887,000		4,848,000	2,521,735,000
Grand totals, 1922.....	846,171,000	461,265,000	149,247,000	238,891,000	38,904,000	43,630,000	34,405,000	43,774,000	39,759,000		3,112,000	1,899,158,000

RECORD.

Exhibit No. 20.

Extracts from the
Report of the
Forest Branch of
the Department of
Lands of the Prov-
ince of British
Columbia for the
year ending
December 31, 1928,
being Pages B 26
and B 27 and parts
of Pages B 30
and B 35.
Feb. 15, 1929.

TOTAL AMOUNTS OF TIMBER SCALED IN BRITISH COLUMBIA DURING YEARS 1927-28.
(F.B.M.)

Forest District.	1927.	1928.	Gain.	Loss.	Net Gain.	Net Loss.
Cariboo.....	7,366,069	6,596,507	.....	769,562	.....	.....
Fort George.....	98,402,837	134,503,890	36,101,053	.....	.....	.....
Kamloops.....	51,315,984	56,120,541	4,804,557	.....	.....	.....
Southern Interior.....	285,186,886	285,743,482	556,596	.....	.....	.....
Totals, Interior.....	442,271,776	482,964,420	41,462,206	769,562	40,692,644	.....
Prince Rupert.....	172,379,899	142,172,853	.....	30,207,046	.....	.....
Vancouver.....	2,239,050,787	2,581,768,193	342,717,406	.....	.....	.....
Totals, Coast.....	2,411,430,686	2,723,941,046	342,717,406	30,207,046	312,510,360	.....
Totals for Province.....	2,853,702,462	3,206,905,466	.....	.....	353,203,004	.....

RECORD.

Exhibit No. 20.

Extracts from the Report of the Forest Branch of the Department of Lands of the Province of British Columbia for the year ending December 31, 1928, being Pages B 26 and B 27 and parts of Pages B 30 and B 35. Feb. 15, 1929. (Continued.)

10

TOTAL SCALE, 1928, SEGREGATED, SHOWING LAND STATUS.

Forest District.	Timber Licences, F.B.M.	Timber Leases, F.B.M.	Hand-logger Licences, F.B.M.	Timber-sales, F.B.M.	Pre-emptions S.R. and Miscellaneous, F.B.M.	CROWN GRANTS, F.B.M.				Dominion Lands, F.B.M.	Totals, F.B.M.
						To 1887.	1887-1906.	1906-1914.	1914 to Date.		
Cariboo.....	.....	.....	.....	4,201,649	1,350,103	.....	12,400	138,155	547,500	346,700	6,596,507
Fort George.....	39,594,387	.....	.....	52,677,972	13,477,348	.....	13,500	10,518,586	18,222,097	.....	134,503,890
Kamloops.....	9,047,557	.....	.....	7,574,245	1,380,985	.....	40,941	1,007,480	1,473,211	35,596,122	56,120,541
Prince Rupert.....	31,011,420	1,594,929	5,099,966	80,967,204	2,676,176	74,224	637,691	9,413,516	10,400,837	296,890	142,172,853
Southern Interior.....	69,846,668	.....	.....	68,912,252	9,091,838	894,076	96,889,105	23,588,336	12,098,843	4,422,364	285,743,482
Vancouver.....	452,086,258	408,789,165	149,890	110,285,490	12,547,044	1,102,236,636	167,240,105	45,077,796	20,788,866	262,566,943	2,581,768,193
Totals, 1928.....	601,586,290	410,384,094	5,249,856	324,618,812	40,523,494	1,103,204,936	264,833,742	89,743,869	63,531,354	303,229,019	3,206,905,466
Totals, 1927.....	575,430,088	383,905,689	5,195,168	291,505,941	28,844,603	905,838,664	249,714,968	74,197,517	52,915,769	286,154,055	2,853,702,462
Totals, 1926.....	553,819,858	424,159,254	7,505,570	293,134,949	35,988,023	860,781,276	269,782,298	118,581,259	58,143,748	293,222,967	2,918,119,202
Totals, 1925.....	530,863,844	342,943,804	10,542,541	315,669,296	60,664,065	615,470,589	281,322,987	106,202,808	44,850,733	302,735,860	2,611,266,527

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Page B 30.

EXPORT OF LOGS DURING 1928.

Species.	Grade No. 1.	Grade No. 2.	Grade No. 3.	Ungraded.	Totals.
	F.B.M.	F.B.M.	F.B.M.	F.B.M.	F.B.M.
Fir.....	16,172,935	62,360,551	16,123,557	.....	94,657,043
Cedar.....	4,249,601	42,651,640	31,579,191	.....	78,480,432
Spruce.....	140,713	1,071,970	291,675	.....	1,504,358
Hemlock.....	.....	.....	.....	30,678,521	30,678,521
Balsam.....	.....	.....	.....	4,172,503	4,172,503
10 Yellow pine.....	.....	.....	.....	1,466,275	1,466,275
White pine.....	.....	.....	.....	961,983	961,983
Cottonwood.....	.....	.....	.....	26,116	26,116
Totals, 1928.....	20,563,249	106,084,161	47,994,423	37,305,398	211,947,231
Totals, 1927.....	36,545,972	144,942,558	51,584,928	48,510,833	281,584,291
Totals, 1926.....	32,195,991	105,322,879	52,113,521	33,845,324	224,477,715
Totals, 1925.....	34,501,748	96,701,737	40,312,806	38,901,670	210,417,961
Totals, 1924.....	23,416,816	111,801,016	49,549,135	55,763,860	240,530,827

RECORD.

Exhibit No. 20.

Extracts from the Report of the Forest Branch of the Department of Lands of the Province of British Columbia for the year ending December 31, 1928, being Pages B 26 and B 27 and parts of Pages B 30 and B 35. Feb. 15, 1929. (Continued.)

Page B 35.

CROWN-GRANT TIMBER LANDS.

	Area of Private Timber Lands (Acres).	Average Value per Acre.
20 1919.....	883,491	\$9.48
1920.....	867,921	11.62
1921.....	845,111	10.33
1922.....	887,980	11.99
1923.....	883,344	11.62
1924.....	654,668	15.22
1925.....	654,016	40.61
30 1926.....	688,372	39.77
1927.....	690,438	39.01
1928.....	671,131	38.62

RECORD.

Exhibit No. 22.

Copy Report of
Minister of Justice
to the Governor-
General in Council
of Dominion of
Canada.
Sept. 25, 1912.

EXHIBIT No. 22.

(Plaintiff's.)

COPY REPORT OF MINISTER OF JUSTICE TO THE
GOVERNOR-GENERAL IN COUNCIL OF DOMINION
OF CANADA.

COPIED FROM VOLUME 2, PROVINCIAL LEGISLATION
1896-1920.

2 GEORGE V, 1912.

(Approved 8 October, 1912).

DEPARTMENT OF JUSTICE, OTTAWA,

10

September 25, 1912.

To His Royal Highness the Governor General in Council:

The undersigned has had under consideration the Statutes of the Legislature of British Columbia, passed in the second year of His Majesty's reign (1912); and received by the Secretary of State for Canada on the 3rd March last; and he is of opinion that these Statutes may be left to such operation as they may have.

With regard to Chapter 17, intituled "An Act respecting Forests and Crown Timber Lands, and the Conservation and Preservation of Standing Timber, and the Regulation of Commerce in Timber and Products of the Forest." 20

The undersigned observes that in so far as this Statute partakes of the qualities which justify its title of "the regulation of Commerce and timber and products of the forest" it is ultra vires of the Legislature, because the regulation of Trade and Commerce is a subject wholly withdrawn from the Local Legislatures.

The undersigned is not satisfied, however, that the title in this respect aptly describes the character of the Act, many of the provisions of which are certainly competent to the Legislature. It contains some provisions with regard to timber scaling and measurement and others which are perhaps questionable but the undersigned considers that it is an Act of the class which may properly be allowed to remain in operation subject to the determination by the Court of any questions which may arise as to special or exceptional provisions. 30

The undersigned recommends that a copy of this report, if approved, be transmitted to the Lieutenant-Governor of British Columbia for the information of his Government.

Humbly submitted.

CHAS. J. DOHERTY

40

Minister of Justice.

EXHIBIT No. 18.

(Plaintiff's.)

LETTER, DEPUTY MINISTER OF JUSTICE TO DAVIS,
PUGH, DAVIS, HOSSIE, RALSTON & LETT.

RECORD.

Exhibit No. 18.

Letter, Deputy
Minister of Justice
to Davis, Pugh,
Davis, Hossie,
Ralston & Lett.
April 26, 1929.

Ottawa, April 26, 1929.

Dear Sirs,

McDonald, Murphy Lumber Company, Limited v.
The Attorney General of British Columbia.

I received the other day through your agent at Ottawa copy
10 of the statement of claim herein, and am to advise you that the
Attorney General of Canada does not desire to be heard at the
trial of this case, but reserves the right to intervene in case the
litigation be carried to a higher court.

Yours truly,

W. STUART EDWARDS,
Deputy Minister of Justice.

Messrs Davis, Pugh, Davis, Hossie, Ralston & Lett,
Barristers,
626 Pender Street, West,
Vancouver, B.C.

20

VICTORIA, B.C.:

Printed by CHARLES F. BANFIELD, Printer to the King's Most Excellent Majesty.
1929.