IN THE MATTER OF THE PETITION OF RIGHT OF

1902
Dec. 5.

THE DOMINION IRON AND STEEL COMPANY (LIMITED) .... | SUPPLIANTS;

AND

HIS MAJESTY THE KING.....RESPONDENT.

Bounties on manufacture of "pig-iron" and steel—60-61 *Vict. c.* 6—62-63 *Vict. c.* 8—*Interpretation.*

It is a general practice in the art of manufacturing steel to use the iron product of the blast furnaces while still in a liquid or molten form for the manufacture of steel, the hot metal being taken direct from the blast furnaces to the steel mill. Among iron-masters and those who are familiar with the art of manufacturing iron and steel, the term "pig-iron" has come to mean that substance or material in a liquid as well as in a solid form. A question having arisen as to whether iron when used in a liquid or molten form for the manufacture of steel was "pig-iron" within the meaning of the term as employed in the Acts 60-61 Vict. c. 6 and 62-63 Vict. c. 8.

Held, that it was, and that a manufacturer of steel ingots therefrom was entitled to the bounties provided by the said Acts in respect of the manufacture of pig-iron and of steel ingots.

PETITION OF RIGHT for the recovery of moneys claimed to be due as bounties on the manufacture of pig-iron and steel under 60 & 61 Vict. c. 6, and 62 & 63 Vict. c. 8.

The facts are stated in the reasons for judgment.

August 26th and 27th, 1902.

The trial of the case was begun at Sydney, N.S., and adjourned to Ottawa.

October 27th to 31st, 1902.

The trial was continued and the case argued at Ottawa.

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F. H. Chrysler, *K.C.*, and *W. B. Ross*, *K.C.*, for the suppliants;

A. B. Aylesworth, *K. C.*, and *C. A. Moss* for the respondent.

F. H. Chrysler, *K.C.*, for the suppliants;

The claim of the suppliants is for bounties, first, upon the manufacture of pig-iron and, secondly, upon the manufacture of steel ingots.

By section I of the Act, 60 & 61 Vict. c. 6, it was provided as follows:

"The Governor in Council may authorize the payment of the following bounties in steel ingots, puddled iron bars, and pig-iron made in Canada, that is to say:—

"On steel ingots manufactured from ingredients of which not less than 50 per cent. of the weight thereof consists of pig-iron made in Canada, that is to say:—

"On steel ingots manufactured from ingredients of which not less than 50 per cent. of the weight thereof consists of pig-iron made in Canada, a bounty of $3 per ton;"

"On puddled iron bars manufactured from pig-iron made in Canada, a bounty of $3 per ton;"

"On pig-iron manufactured from ore, a bounty of $3 per ton on the proportion produced from Canadian ore, and $2 per ton on the proportion produced from foreign ore."

Section 2 of this Act fixed the time within which such steel ingots, puddled iron bars and pig-iron should be made; and section 3 authorized the Governor in Council to make regulations in relation to such bounties.

By the statute 62 & 63 Vict. c. 8, the time mentioned in section 2 of the first mentioned Act was extended, and the bounty on pig-iron produced from

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Canadian ore was reduced to $2.70 per ton, and upon that produced from foreign ore $1.80. The bounty upon steel ingots was fixed at $3 per ton, on ingots manufactured prior to the 23rd April, 1902, and at $2.70 on steel ingots manufactured after 22nd April, 1902, and prior to 1st July, 1903.

The principal question is, what is meant by "pig-iron" in these statutes, and in these regulations?

The other question which I apprehend will be raised is whether, granting it is pig-iron, we are not obliged to make it in its marketable form?

The principal question is of very great importance to the suppliants. It is perhaps the question of the success or failure of this business, and of other businesses like it. It is a question of a very large amount of money, even as the matter is now present before the court. The literature on the subject, to which I intend somewhat extensively to refer, is I think even more definite and clear than even the most favourable of the witnesses, showing that this is not a new term, or an outgrowth of recent conditions; but the only term, the original term, in the trade during the whole history of it in modern times. I think the argument as to the meaning of the word will incidentally remove a great deal of the difficulty of dealing with any question as to its being the proper use of the term in the trade, and in the conditions which must have been present to the mind of the legislature, and to the mind of every person seeking to take advantage of the Act.

The contention then will be that "*pig-iron*" *is the product of the process of reduction from ores of iron, which takes place in a blast furnace.*

I think that definition is comprehensive and practical. The production is complete when the fused iron falls to the hearth of the blast furnace. It is pig-iron before tapping within the blast furnace, and it is

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also pig-iron after it is tapped, whether solidified into pigs or not.

Pig-iron is the generic term for crude or raw iron in the first stage of its manufacture or reduction from the ore, whatever shape it may be made to assume when solid; or, if not allowed to become solid, when used molten, either for direct casting, for the production of wrought iron by puddling, or of steel by any of the methods for converting pig-iron into steel, of which methods by far the most important are the Bessemer process and the open hearth.

Pig-iron is the product of the smelter; it is obtained by reduction or fusion.

In the strict sense of the word, it is not manufactured but made, or produced.

Pig-iron is not a finished product. It is useless in that state for any purpose, except ballast. It has its use, I believe, in navigation to weight the bottom of ships, but as "iron" it has no value whatever until something more is done with it.

It is only raw material to be further refined and manufactured either in castings, wrought-iron bars, or steel. It is crude or raw iron, and its crudeness consists not only in its being the first step in the direction of the manufacture of useful finished products of which it is the raw material, but also in the fact that it is dirty iron, or iron combined with impurities; which, while giving it many undesirable properties, also give to it its characteristic quality of being fusible or meltable at a much lower temperature than either pure iron, wrought-iron, or steel.

Just in passing, it is not very conclusive, perhaps, but it still has some interest: The only statute which helps us in any way to ascertain what view the legislature had as to what was "pig-iron" is the statute of 1894. Later statutes simply say "pig-iron" and

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we have to find out what it means otherwise; but in the statute of 1894 (1) we find after the first section has fixed a bounty of $2 per ton on all pig-iron, section 3 proceeds:—

"In the case of the products of furnaces now in operation, said bounties shall be applicable only to such products manufactured therein between the 27th day of March, 1894, and the 26th day of March, 1899."

I refer to that as showing that the "pig-iron" was the product of a blast furnace, and "manufactured therein". Whoever penned that section understood clearly the nature of the article and the manner in which it was produced.

Then I refer to *The Customs Act*. Not very significant perhaps in itself, but still when one knows of the conditions, having some significance. There is no duty upon pig-iron. The draughtsman of the schedule to *The Customs Act* knew, I think, that pig-iron did not imply shapes or forms of iron, and therefore he is careful to insert in the appropriate items of the schedule "pigs of iron", so that the Custom House officer would know that the duty was imposed upon a shape; other forms of iron having their appropriate duty or falling under the class of "not otherwise provided for or specified."

It would be possible of course to find a duty for "molten iron" if that became necessary, because it would fall under a schedule of iron "not otherwise specified."

These are the two places in the statute that I have come across in which the word is referred to, and in each case I think the inference to be drawn from the form of words which has been used is at all events not unfavourable.

(1) 57 & 58 Vict. ch. 9, s. 2.

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Pig-iron is the generic name for a substance of variable composition it is true, but still a substance whose nature and properties are well understood; and the substance bears the name of pig-iron quite irrespective of its state or condition as liquid or solid, and quite irrespective of the shape it may happen to assume in its solid condition.

If solid, it is properly and usually referred to as pig-iron, whether it forms part of the sow or of the pigs, or of broken pieces of either; whether it is in the form of sand pigs or moulded pigs, slabs, plates, bars or rosettes, or small spheres or balls, or pulverized into powder.

All these conditions are either referred to by the witnesses, or in the books. Being raw material it necessarily follows that the shape is of no consequence, the shape is to be destroyed, the iron must be melted before it is used, whatever shape it has. The shape disappears, the shape ceases to exist in the process of using it. The only thing that can be said with regard to it is that, commercially, it ought to be in some shape in which it can be handled, not by hand but by machinery, and these shapes are all devised by the iron-masters for the purpose of convenience in handling. "Pig" is not necessarily the most convenient. In many respects it is inconvenient. It may have been convenient at the time it was devised, but it has ceased to be so now because different modes of handling iron are in use, and my proposition in regard to it is that it is pig-iron in any shape or condition, solid or liquid, or any shape, if solid, in which it may be usefully employed for conversion or refining or working into the more finished materials made from it.

There is just another proposition to which I refer now, because it will appear incidentally in some of these references, and I may as well place before your lordship the use which I intend to make of it. I sup-

pose the argument from analogy, or the symmetry, if one may so use the term, of the statute, is not very strong. There may be, as one knows, glaring inconsistencies in statutes, and it is not safe to rely too strongly upon the supposed analogy or symmetry between different parts of this enactment. Still it is worth observing that the steel ingot, for which the bounty is provided in the statute, is very similar in its relation to steel, to the position of pig-iron with regard to the finished iron. It is raw material also. It is not even marketable. The lowest form of advance in the various stages of manufacture which is put upon the market is the "billet" or steel ingot rolled out into fibrous, or at all events, homogeneous iron. The steel ingot is not homogeneous. The outside cools more rapidly than the inside, and the result is that in many ingots, if allowed to cool hard and solid without treatment, a space is left inside from the contraction of the metal, and the steel has a tendency to crystallize; and one can see from the very nature of the operation which takes place that the outside of the steel ingot will be in a very different condition from the inside. Of course that perhaps is removed again when the ingot is reheated, but the steel ingot, if crushed when partially cooled, would be like a tomato or a grape, or some fruit with a hard skin and a soft interior. It requires to be reheated at all events before any further rolling can be done to it. It cannot be rolled cold.

[BY THE COURT.—Your argument on that point will be that the Act does not disclose an intention to place a duty upon a thing that is marketable?]

Quite so.

[BY THE COURT.—That is apparent, you say, in regard to the steel ingot, and you argue that it is equally applicable to pig-iron?]

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Yes, my lord. Although one of the witnesses spoke of the practice ten or twelve years ago, that they allowed steel ingots to be cooled, and to be placed in the stock pile, as he called it, that is not the modern practice. No fairly well managed steel works would think of allowing that waste. The steel has to be reheated. It can only suffer injury from allowing it to cool, and in practice it is moved on to the blooming mill or rolling mill for further treatment without allowing it to become cold, and it is not a material which can be handled with the hands. It is not a material which can be loaded into a wagon, or put into freight cars, or put into a shop for sale. It is handled so hot that it can only be handled by cranes and appliances of that kind, just as the molten iron is, and is stored for treatment in the rolling mill, in a chamber intensely heated by a gas flame.

I think these observations present the general view which I desire to support, and I will proceed to cite some scientific authorities which justify the interpretation of the statute in favour of the suppliants.

He cites 13 *Encyclopædia Britannica* (1); *Overman's* "*Metallurgy Mining, &c.*" (2); *Percy's* "*Metallurgy*" (3); *Crooks' and Rohrig's* "*Metallurgy*" (4); *Gruner's* "*Studies of Blast Furnace Phenomena*" (5); *Bauerman's* "*Metallurgy of Iron*" (6); *Bell's* "*Principles of the Manufacture of Iron and Steel*" (7); *Wedding's* "*Basic Bessemer Process*" (8); *Johnson's* "*The Iron and Steel Maker*" (9); *Blair's* "*Chemical Analysis of Iron*" (10); *Campbell's* "*Manufacture and Properties of Structural Steel*" (11); *Journal of the Iron and Steel Institute*

(1) 9th ed. p. 291 et seq.
(2) P. 139.
(3) Pp. 532, 566.
(4) P. 264.
(5) Pp. 5, 27, 30. Also Appx. p. 109.
(6) Pp. 3, 273, 296.
(7) Pp. 19, 27, 30. 45, 359, 405.
(8) Pp. 9, 91, 93, 116, 183.
(9) Preface V, and p. 30.
(10) Pp. 77, 78.
(11) Pp. 16, 62, 68, 75, 83, 93.

(1); *Journal of the American Institute of Mining Engineers* (2).

Mr. Chrysler, continuing his argument, says: I desire to say, before leaving this branch of the subject, that what I have been dealing with in the collocation of these authorities is the meaning of the word "pig-iron," and its use as a term of art.

[BY THE COURT: Instead of going to the dictionaries, you have gone to the source from which dictionaries are made?]

Yes, if I had been framing a definition for a dictionary, I would have to read the works of art dealing with the history of the term in order to summarize them into a few lines. (He here cites *Attorney-General of Quebec* v. *Reed* (3); *Grenfell* v. *Commissioners of Inland Revenue* (4).)

In all we have read, and in the evidence of the witnesses, too, there is a remarkable uniformity of opinion as to the essential nature of the substance with which we have been concerned in this trial.

In the terms "pig-iron" or "crude-iron" or "raw iron," "gusseisen" or "roheisen," as the Germans call it, the essential idea in all is the same. It is a particular kind of iron which has a special property, which makes it valuable, and that property is that it

(1) 1873, pp. 11. 27, 37; 1875, pp. 194, 202 et seq.; 1876, pp. 12. 420; 1877, pp. 108, 183; 1878, pp. 17, 123; 1879, pp. 9, 120, 150, 280; 1881, pp. 12, 15, 397; 1883, (2nd vol.) 639; 1884, (1st vol.) pp. 234, 325, (2nd vol.) pp. 407, 524; 1886, (1st vol.) p. 193; 1887, (2nd vol.) p. 318; 1889, (1st vol.) pp. 18, 97; (2nd vol.) pp. 266, 380; 1890, (1st vol.) pp. 318, 319, (2nd vol.) pp. 95, 141, 791; 1891, (1st vol.) pp. 351, 428, (2nd vol.) pp. 76, 264; 1892, (1st. vol.) 13, 102, 117, (2nd vol.) p. 459; 1893, (1st vol. p. 13, (2nd vol.) p. 472; 1894, (1st vol.) p. 47, (2nd vol.) p. 139; 1895, (1st vol.) pp. 17, 398, (2nd vol.) pp. 8, 43; 1896, (1st vol.) pp. 451 et seq., (2nd vol.) pp. 19, 249; 1897, (2nd vol.) pp. 193, 217, 434; 1898, (1st vol.) pp. 298 485, (2nd vol.) pp. 20, 28; 1899, (1st vol.) pp. 17, 243, (2nd vol.) pp. 160, 173; 1900, (1st vol.) pp. 2, 33, 347, 447.

(2) Vol. 8, p. 156.

(3) 10 App. Cas. 141.

(4) 1 Exch. D. 242.

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is fusible at a low temperature and flows into moulds when used for castings. Being fusible at a low temperature it is also an economical way of manufacturing wrought iron and steel, and it is the raw material from which wrought-iron and steel are manufactured.

But when we have got that far, it is apparent that the state in which it is useful is the melted state for the metallurgist, the iron-master, the foundryman, the puddler, for all who have occasion to use it, the state in which they have to place it before using it in the fluid state. That, for their purpose, is the natural state of the iron. Even if run into pigs, or into other forms in which it is solid, the first thing that is done with it, if in pigs, or sows, is to break it up, and that is only a preliminary step to melting it.

Then just a word with regard to etymology. I do not know that etymology has very much to do with the determination of the question, but still I should like to make a point about the etymology of the word.

It has been assumed that somebody called the runner into which the iron from the blast furnace was allowed to pour out—I use the word "runner" because it appears from the witnesses that is what they now call the trench into which the metal is run from the blast furnace—that somebody called that the "sow", and then that somebody else, perhaps later on, (these things sometimes take generations or centuries in the evolution of a word or a change in the meaning of a term) some one or some class of men seized upon the fanciful idea that the little branches in which the iron was diverted from the sow were pigs.

The question is unanswered as to why the whole mass was originally called a sow. I think the word "sow" was not at first used with reference to the name of an animal. "Sow" is a word which has the

same root as we find in the word "sewer". It is a "drain" or "trench", and I find that in the *Century Dictionary* (1) that idea is supported. "Sew" pronounced "su", also "seugh," is a drain or sewer; and the passage quoted as authority for the use of the expression is from the *Nomenclator* (A.D. 1585), viz: "The town sinke, the common sew".

[BY THE COURT: Perhaps the two terms arose at once; the sow suggesting a litter of pigs.]

I think not, because your lordship will see that the original blast furnace must have been of very small dimensions. The natural method of treating the iron upon tapping it from the blast furnace, is to let it run out in some way upon the floor. Then the first man who did that discovered it was difficult to pick it up again, and it would suggest itself to him that if he confined it within some form it would be more easily handled, and immediately he puts it into a trench, and probably, from the capacity of the first blast furnace, only one small trench would be filled; but as the capacity of the blast furnace and the extent of the casting from it grew, the sewer would have to be enlarged, and branches would have to be made, and then the pigs would come as the outgrowth of more extensive manufacture. That perhaps is fanciful, but at the same time I combat the contention which has been made, that the word "pig" is the original form or title.

[BY THE COURT: I was not suggesting it was the original. It occurred to me, so far as I had examined the dictionaries, that the word "pig" was the survival of the two words, which were very likely used together at the commencement of the industry.]

I think the natural evolution of the art was to have one straight trench, the branches suggesting themselves afterwards.

(1) Vol. vii p. 5534.

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The etymology of the term is explained in the original passing of the iron into a hole in the ground in the form of a "sow" or "sewer", so called from the fact that it was run into a little drain or trench.

[BY THE COURT: The trench is not used in regard to iron only. It is used in regard to lead and other metals.]

Then if that is correct, of course the appellation "pigs" for the smaller branches of iron would be simply a playful application of the word, from the apparent resemblance of the little branches to the pigs lying beside the sow. But, when we get that far, what is it that dictates the form of the iron which is so cast out? As I have said it is only there to be used for something else. Down to about 1870, it was the practice to cast into castings without running on the ground at all, and the casting into these forms, to be afterwards melted, in the cupola, was a later growth. And what I say would dictate the form was, evidently, convenience of handling. The sow is broken up. The sow from a very large pig bed was something that would require considerable strength to lift or to break up, and the dimensions of the smaller pigs, in which it became customary after a time to run the iron, no doubt was governed by the consideration of handling; and in those days I suppose probably what two men could lift would dictate the extreme size to which these pieces would run. Because your lordship will see, although they are broken for melting in the cupola, in the first place they have to be lifted out of the pig bed, and placed away somewhere; and one of the witnesses said that the lifting, where a blast furnace was running, and making a considerable quantity of iron, had to be carried on while the iron was still hot, because if they were making four of five casts a day there would be only four or five hours for the iron to cool

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before it must be taken away, unless they had very extensive beds, and if the same sand bed is to be used over again, that iron has to be lifted and carried away as soon as it is cool enough to handle, and in the earlier days of the art the handling had to be done by manual labour. There is a passage in one of the books referred to which I did not read, but I think it is common knowledge, and I think one of the witnesses speaks of it, viz., that the pigs, even when run into sand-beds, are not now handled in that way. They are picked up by very large cranes or machinery. Therefore, the capacity of two men to lift a pig no longer governs the dimensions of it. It might be in any form that is suitable for a machine to pick up, or lift, or conveniently carry away, and the granulated iron, of which the books, and one of the witnesses, speak was not intended to be handled by men's hands at all. It was intended to be picked up by a machine similar to the dredge which is used in lifting material under water, or the steam-shovel which is used in lifting railway material. That would do away with men's handling altogether.

It follows that it is "pig-iron" in any form in which it may be handled by men or machinery. My learned friend will concede it is pig-iron in any solid form, unless it is in too large a block to be lifted; but if the conditions are such that it can be conveniently handled in its fluid form, then the desideratum which is imposed as a test by the question whether the iron must not be capable of convenient handling is fulfilled if the contract is supposed to be between a vendor who desires to sell fluid pig-iron, and a purchaser who desires to purchase fluid pig-iron, and it is delivered to the satisfaction of the purchaser, then it is handled and the requirement, if that is a necessary condition, to constitute the substance commercial pig-iron, is completely fulfilled.

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Now, turning to the statement in defence, the Crown charges that we are manufacturing steel ingots direct from iron ore. That, of course, has been completely disproved by the evidence. The blast furnace plant is in a complete and entirely separate establishment, where the pig-iron is made; and that iron is conveyed to another entirely distinct and separate establishment, a steel mill, in which steel ingots are made from the pig-iron. Then, if that contention is disposed of what remains? The residue of the averment in the statement of defence is, that we have not manufactured pig-iron within the meaning of the statutes and the regulations.

[BY THE COURT: That narrows the issue very much. That is not an allegation that it is not "pig-iron."]

If it is "pig-iron," and we have got that far, what is meant by saying it is not "manufactured pig-iron"?

[BY THE COURT: Is it not substantially a plea that it is not pig-iron in a shape on which it was the intention of Parliament that a bounty should be paid?]

I could understand the difference if there were some difficulty about carrying it out in practice. For instance, if molten pig-iron could not be weighed until it was cold. The evidence is that they take the ladle to a certain point on its route between the blast furnace and the steel mill, weigh it, then pour a quantity of iron out of it into the reservoir at the steel-mill, and then come back and weigh it again.

[BY THE COURT: Then your argument is that the point at which the bounty becomes payable is the point at which the weight of the iron is ascertained.]

That is my contention in a nut-shell. We cannot claim the bounty until the amount is ascertained. We could not claim it as it pours from the blast furnace, because we do not know what the quantity is.

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Then, as to its being manufactured. It is "manufactured," in the method I have described, in the proper technical sense of the word. The statute says the Governor in Council may authorize the payment of bounties on "steel ingots, puddled iron bars, and pig-iron made in Canada." Then the statute goes on to say "on steel ingots manufactured," etc.; so that both words are used, and my contention is that no particular stress is to be laid upon the use of the word "manufactured." The draftsman who penned that statute presumably wanted to avoid the repetition of the word "made" over and over again. I think if people who are penning statutes would not be so particular about avoiding the repetition of words, and would use the same word in every place where it occurs, it would be very much better. The word "made" is the first and substantial word. I do not think any inference can be drawn from it, if there is any difference between the words "made" and "manufactured," in favour of the defence at all.

Pig-iron consists of four grades, "forge pig," "foundry pig," "Bessemer pig," and "basic pig," and these varieties are as different as chalk is from cheese in their utility for different purposes. The foundrymen say that the "foundry pig" is the only pig that would be of any use to them, they could not make use of the other material; but "Bessemer pig" may be as valuable or more so. "Basic pig" may be as valuable or more valuable, but it is not valuable to the foundryman. Therefore, when we are making pig-iron, we are not pretending necessarily to produce a commercial commodity suitable for anyone who chooses to apply to us for it, unless we happen to be making the particular kind the man needs. When we are making pig-iron in a furnace for further conversion into steel, we do not necessarily make a commodity

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that is suitable for the use of the foundryman at all. But if it is in the shape in which the steel manufacturer wishes to have it, and in which it is most useful to him, then it is completely "manufactured," and answers all the requirements which the statute imposes upon us to earn the bounty.

Now, it is contended on behalf of the Crown that the trade in contemplation of the statute is the pig-iron trade, and it is said that the ordinary manufacturer of pig-iron produces a commercial commodity known as pig-iron, having it for sale to any one who chooses to apply to him to buy. I submit that the statute does not contemplate the foundry trade, but the trade of the metallurgist. That is the trade whose knowledge of the subject, and of the terms employed in the statute, is of the most importance. This statute addresses itself principally to the iron-masters, to those who are willing to invest their capital in making iron or making steel. If there is a difference between the foundryman and the iron-master, or steel-maker, as to the meaning of the term "pig-iron" in the statute, the view of the latter must be adopted; because the iron-masters or steel-makers are the persons who are invited to enter into this contract by accepting the offer of the bounty held out by the Government. But the evidence here shows that it is common knowledge even with foundrymen that iron to be manufactured into steel is used in the molten state, and is not necessarily cast into pigs. It is admitted on all hands that the process in use at the steel works of the claimants is modern, and is in accordance with the best recent practice, in accordance with the practice which has been gradually approaching its present state through many experiments and trials spreading over thirty odd years.

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That the use of what is called the "direct method", the direct conveyance of liquid pig-iron from the blast furnace to the steel works, is the modern practice is established by the witnesses, and by the numerous extracts which I have read from the *Journal of the Iron and Steel Institute* (1) showing the practice all over the world.

In the extracts which have been referred to, we have instances of the practice in, I think, every country in Europe where iron is made except Italy. In Great Britain, in Belgium, in France, in Germany, in Austria and Hungary, in Styria, in Southern Russia, in Russia on the Ural, in Sweden, and even in far away Japan. The works referred to comprise some of the largest and best known in the world. The English works which are referred to are known to all of us by reputation, such as the works at Barrow, at Ebbervale, at Middlesborough, the Balckow-Vaughan Works, and the works of Bell Brothers at Port Clarence. The works at Creusot in France, the Krupp works in Germany, and the works in Sweden are among some of the others that are best known to the English readers, but I think the fair inference is that by far the largest number of works now in existence practice this method.

One witness, I think, said that it was in general use, he could scarcely limit the expression; that he found it in general use everywhere he went.

In the United States it is admitted to be in use almost everywhere. There are very few works that do not use it, and the works of the largest companies. Works like the Carnegie Company, which comprise, as we hear from the evidence of Mr. Thompson, who was their assistant auditor, forty-three works handled from their office, and a large number of these are steel mills and blast furnaces. The ones most frequently

(1) See *ante* p. 115.

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spoken of in this evidence, and in those extracts that were referred to, were the Edgar Thompson works, the Homestead works, and others of this Company; the Pennsylvania Steel works at Steelton, a very large establishment, and at Maryland, at South Chicago, at Joliet, at Cleveland, and almost every place were we made enquiry we find this was the practice.

No one who has any knowledge of the subject, and I think scarcely a single witness, has said that it is not now at all events usual, and probably the better way —to avoid the waste of heat involved in casting the iron from the blast furnace into pigs, and then re-melting; but the Crown, through its counsel, here, asks you to put a construction upon the statute that involves the result that the Crown are supposed to offer a bounty to manufacturers of steel from pig-iron who will revert to what is almost an obsolete practice, who will encounter a certain amount of waste, who will expend in producing the iron and steel which the Government desires to have produced, in an industry which it desires to foster, a larger amount of money than is necessary for the purpose of carrying out literally what they say is the meaning of the Act. "We must have cold pigs, even if it cost a dollar or two a ton more, although no earthly purpose can be served by casting them cold, except that we carry out the literal, narrow interpretation of the statute," which we say is not the true one. And so I say that the whole trade, even embracing the foundrymen with all the other workers in iron, is what must be appealed to if we are to find the meaning of the trade term, and not the narrow meaning given to it by one small branch of the great iron trade.

With regard to the obligation, if any, upon the suppliants to manufacture the pig-iron in a marketable form, the Crown has directed its evidence to a large

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extent in support of the theory that the case is one of a contract between the Crown and the suppliants for the delivery of so much iron and steel, and that having to deal with such a contract it was an implied contract that the article to be supplied was to be merchantable under the terms used in the contract. I submit that such is not the nature of the transaction, or the proper construction of the statute. The Government say to manufacturers, or intending manufacturers of iron and steel: Make pig-iron under regulations which we will impose, and we will pay you so much bounty. It does not matter whether the Government does or does not get any value from our production of the article. So long as we produce it we are entitled to the bounty. He cites *Carlill* v. *Carbolic Smoke Ball Company* (1)

The intention of the Act is not solely to foster or encourage the production or manufacture of pig-iron. In the same Act, as part of the same system of legislation, is contained a series of provisions for encouraging also, in a cumulative way, the manufacture of steel, and the manufacture of puddled bars. It is an offer to the iron trade that, if they manufacture pig-iron, they will receive so much; if they manufacture steel from ingredients of which at least fifty per cent. is pig-iron made in Canada, they will receive so much more; and also if they manufacture puddled bars from pig-iron made in Canada, they will receive an additional bounty to that upon pig-iron. The only alternative placed upon the cumulative effect of the bounty is that a man shall not get three bounties. He is not to get a bounty upon pig-iron, and then upon wrought iron bars, and then upon steel made from wrought iron bars, but he may get two only. That is the policy of the Act.

W. B. Ross, K.C., followed for the suppliants:

(1) (1893) 1 Q.B. 256.

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I would like to add to the books Mr. Chrysler read a reference to two others. I desire to refer to *Chambers' Encyclopædia*, and to the title "Bessemer." I refer to that, not as containing anything new, but as shewing that what has already been read with regard to Sir Henry Bessemer is found in an encyclopædia that is perhaps more popular, and less technical, than the *Encyclopædia Britannica;* a book of universal circulation and use, which shows that as far back as 1857 the article "molten pig" was used direct from the iron furnace into Bessemer's furnace. It had a set-back on account of the bad quality of pig-iron, and it was not until the "seventies" that it became almost universally used in England, although it had never failed in Sweden.

In the "eighties" it became the most common form of making steel in the United States. Facts are shewn which would strike the popular imagination with regard to that discovery. For instance, that it decreased the cost of manufacturing steel in the proportion of one-tenth. The consequent development in the manufacture of steel is simply phenomenal.

It appears that out of about one hundred and twenty-four patents relating to the manufacture of iron and steel, a jury that sat in Paris, and afterwards in London, in connection with the exhibitions there, found that Bessemer's was practically the only one that added anything material to the development of the iron industry.

I think, my lord, that Bessemer, who made this great change, must be taken to have been almost as universally known, as Darwin, as Newton and all such men are known. I do not see how we can exclude that knowledge from the Canadian Parliament. I do not think it would be fair to our parliamentarians to say

they knew nothing about him, or about his process, which we find described in all the books.

Another book I wish to refer to is Johnson's *Universal Encyclopædia* under the title of "Steel," at page 732. It is an encyclopædia published of course before the Act was passed, or I would not refer to it. It shows that a growing practice in Europe and in the United States is to dispense entirely with the remelting of the pig-iron. The molten pig-iron as it is tapped from the furnace is run into ladles, and so on. He says the product of the blast furnace is pig or cast-iron, which tallies very strongly with what a man, Canadian born, acquiring whatever knowledge he did acquire practically in Canada in the iron trade, and a succesful man, Mr. Graham Fraser, who gave evidence in this case, says. He was asked the question what it was. He said "Well, I know of no name for it except cast-iron, most generally pig-iron."

Of course like Henry M. Howe, and all the other witnesses, when you ask whether or not there was ever any particular controversy as to that, of course they say: "No." Naturally enough there has been probably no challenge of that use of the name until this suit. There has been no occasion for it, I suppose.

Then, my lord, I wish to refer to the Act. The Act in providing for the bounty on steel provides that the material out of which the steel is to be manufactured must consist of at least fifty per cent. of pig-iron made in Canada.

My lord, what I say with regard to that is, that when you look at the whole Act you will see that Parliament, in considering the Act, must have come to the conclusion that any person or any manufacturer could take advantage of either part of the Act or of the whole of it. A man could go in for making pig-iron, or he could go in for making steel, or he could go in

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for making both. Then Parliament, assuming it directed its mind to the case of a man who said, I am going to take full benefit of the Act, would not complain of his enterprise. The more he did, the better, presumably, in furtherance of the policy of the Act. Assuming you must use fifty per cent. of your own article in your own article in your steel mill, fifty per cent. of what you use in your steel mill may be from your own blast furnace, and if you are the only man who has a blast furnace going, if you want to keep your steel mill going, it must necessarily be from your own blast furnace. My lord, in the light of what we know now, with regard to the development of the steel and iron trade, particularly with regard to the invention of Sir Henry Bessemer, we are entitled to assume that Parliament knew and contemplated that if any men entering on the business here found Bessemer ores, that he would make steel in accordance with the Bessemer method.

The Bessemer method, in its entirety, that is to say when everything is working well, certainly shuts out the remelting of the pig. You put your ore in at the top of your blast furnace, and it is a continuous process from that until you have steel rails away at a distance from where you put in your ore.

If, for instance, the works at the Canadian "Sault," which I understand have Bessemer ores from Lake Superior, and no doubt will adopt the Bessemer converter instead of the open hearth, had come up for their bounties instead of the Dominion Iron and Steel Company, I submit, my lord, they would be entitled to say: We made this steel under the Bessemer process, which has been a known practice since 1857, successfully in Sweden since 1857, successfully in England since the "seventies," and in the United States since the "eighties," and in all the books, magazines, papers,

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and everywhere, the article that we take from our blast furnace to our Bessemer converter is described as "pig-iron," pig-iron of course in its molten state, or molten pig-iron, and that they would be heard to say, unless there were words excluding the use of molten pig-iron, that they were clearly entitled to the bounty. Unless the statute expressly excluded steel produced from hot pig-iron, the bounty would be payable to them.

Furthermore, with regard to the bounty on the steel ingots. The fact about these steel ingots is that it is the first stage, both in the Bessemer process, and in the open hearth process, in which you get the steel from the mill. The steel is taken out cast, run out, it does not matter whether into large blocks or into small ones, but in that state of course it is brittle, and is altogether a different article from what is known on the street as steel or on the sidewalk by the common people. The idea in the mind of probably the most of us in regard to steel is something that is tough, strong and hard, a material that is compared with the ordinary wrought iron. The practice of the art with regard to these ingots is now almost universal. Instead of allowing them to get cold, as you could physically do, allow them to get cold and pile them up in the yard, they allow them to stand just long enough to form a shell so that you can handle them, and then take it hot and put it through the rolling mill, when you first get what is genuine steel. The whole structure of the thing is changed by the action of the roller. Instead of the brittle article, you get a thing with flexibility. The whole thing is changed. Parliament has chosen to put a bounty upon the steel ingots, a form of steel in which it is not sold. The crudest form in which the steel goes out from a modern steel mill is the billet

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or bloom, that is capable of any use to which steel can be put.

[BY THE COURT: At what stage do you claim the bounty on the ingot?]

It is weighed hot We could not get a cent until it is weighed.

[BY THE COURT: Do you weigh the ingot or the billet?]

The ingot.

[BY THE COURT: They cut a large piece off in rolling it?]

Yes. Of course there is a history to that. Your lordship will remember the first bounty Acts in regard to steel were on the steel billets, but it was changed in 1897. It was changed to the ingots. There is a reason for it. The point I am taking from that is that the same reasoning that you apply to pig-iron in this statute would apply to the steel ingots. We are entitled to say that what Parliament is contemplating there is that you must have a product, and if it wants to encourage the making of certain articles, if it gets to a certain point, why the thing will automatically take care of itself. It is as if Parliament says: When you get to the state of the steel ingot, we will give you your bounty. My lord, the bounty on a steel ingot is a very, very small fraction of what the cost of the ingot is. You cannot go through the form of making a steel ingot for less than some $15 or $16 a ton. The witnesses say they cost from $18 to $20. The bounty on that is so very small that no person can afford to make steel ingots for the mere getting of the bounty, and then throw them away.

A. B. Aylesworth, K.C., for the respondent:

The position the Crown takes in this matter is very distinctly indicated, as it seemed to us who were trying to set down upon paper that position, in the

statement of defence, the claim of the suppliants being devoted to the two subjects of what they call pig-iron, and manufactured steel.

The Crown says by way of answer in regard to the pig-iron, that a large portion of the amount claimed by the suppliants in the petition of right consists of, or is a claim in respect of, material which consists of molten or hot metal in a liquid state, and the allegation or contention of the Attorney-General is that such molten or hot metal in a liquid state is not manufactured pig-iron within the meaning of those words as used in the statutes and regulations referred to; and that, in short, is the issue which is presented for consideration here.

I might freely concede, without in the least militating against the argument I intend to present, every word of what is supposed to have been established by the numerous references to text-writers, and to scientific works of authority, that my learned friend has made.

When we consider what the subject of those treatises, or papers, was, we can understand how, in fault of any better word or phrase to describe the article that the writer was dealing with, he would be driven to speak of the substance that he is discussing as "pig-iron," coupling that description, as is the case in the great majority of instances, with some qualifying word. It is in a sense pig-iron. It is the product of the thing which manufactures pig-iron, the blast furnace. It is pig-iron all but completed in its manufacture. It is on the way, and nearly at the end of the way, towards being actually pig-iron as known commercially. Then if anyone is desiring to write about that substance, and to convey to his reader any idea he can hardly avoid using the expression "pig-iron" when describing it, qualifying, as he naturally will, that expression by something which will indicate exactly what he

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means by speaking of it as liquid or as molten. That is exactly the position the Attorney-General's advisers were in when they came to prepare this statement of defence; but they, in order to make their position abundantly clear, and to emphasize and point the line of distinction between their contention and that of the suppliants, used the paraphrastic expression "molten, or hot metal in a liquid state," thereby avoiding either the use of the word pig, or the use of the word iron; but anyone speaking conversationally, or anyone writing in a letter or a scientific article, could scarcely convey the meaning intended with reference to this molten or liquid material without using some long description, or else compendiously speaking of it in the way these writers do.

So that the voluminous extracts that have been made in tracing the history of the art during the last thirty or forty years do not further the real inquiry here. The court would have found practically the same thing in the testimony, if we look at the phraseology of witnesses, and of counsel as well, in this case. Your lordship will find nearly every witness who seeks to define this substance using some word which involves either pig or iron or often both. The substance of course is mainly iron. It would not be proper to speak of it as carbon, or use any other term referring to its ingredients, because those ingredients are in the main, or in a large proportion, iron.

Then so speaking of it, see how variously witnesses treat it, I mean in their casual references to it, not in the distinct question in regard to what it is to be called. (He here refers to the evidence in detail.)

I submit we have established upon the testimony of the witnesses called in support of the suppliants' case just what indeed the extracts from the various text writers show, viz: that there are various paraphrastic

methods of expression used to describe this article which is not pig-iron as ordinarily known to the people who work with it, and who have, necessarily, daily or hourly occasion to refer to it by some language. They one and all modify the phrase and qualify the phrase in some manner. In the majority of instances they endeavour to get away altogether from the word pig-iron, because they know that they will not convey to the hearer the meaning which is ordinarily attached to the term.

The point of the matter is to my mind not so much the circumstance that everyone who wishes to speak of this material and be understood uses a qualifying adjective, as in the circumstance that very many of the people who have most occasion to use this expression coin a phrase altogether different. The necessity for that coinage demonstrates that the meaning of the term that the suppliants are contending for here was not understood even by the people who are workers in metal.

Now, of course, the delving into the past as to the growth of the meaning is necessarily very largely theoretical. My learned friend's theory that the word "sow" may have been prior in its use to the word "pig" may be well founded. The natural order of events as to the use of the word "pig" when it came to be applied to this metal, or to this form of iron, necessarily must have been that in the first instance the word was a noun. It was "a pig of iron". It would then drift into its adjectival use, as describing the material of which the pig of iron consisted. It would then come to be "pig-iron". It could not have first been pig-iron.

Then, that use of the word "pig" as an adjective qualifying the word "iron" is secondary in its character. The primary meaning is "a pig of iron"; the

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secondary is a describing of the metal which composes the pig. We had had in Mr. Kennedy's testimony a fine illustration of that, as it seemed to me. He told us that there had been used very largely at one time in the history of the manufacture of steel the expression "ingot iron" as descriptive of a certain quality of soft steel. That had had the same history. It had been an ingot of iron in its origin, and then came to be descriptive of the iron itself.

It is quite true, no doubt, that those articles and the use of words by people who speak and who write is the foundation material from which lexicographers manufacture their works; but learned men, such as lexicographers must be, have to digest, as best they are able, the various and numerous uses of words, and to crystallize, into a sentence, the meaning to be attributed to a word as gathered by them from such general use.

[BY THE COURT: None of them go into any given word as exhaustively as the learned counsel has gone in this case. At least, they do not put such results in their dictionaries]

What I was going to use the reference to dictionaries for was just this, that we have there boiled down, so to speak, the researches of such an amount of time as the various lexicographers were able to devote to the subject. Counsel for the Crown have had to confine their researches to the dictionaries.

The important thing as it seems to us, and as we submit, is, that all the dictionaries are absolutely uniform in their definition of the phrase. Without a single exception we have them in every instance using an expression which shows that it is the solid material that is meant by the word. And, without reference to dates, the *Standard Dictionary* (1895) defines the word "pig" as "an oblong mass of metal cast in a rough mold, usually in sand." There, then,

is the idea of the mass of metal, of its being cast, of its being in a rough mold.

The *Imperial Dictionary* (1) defines the word "pig" as applied to iron, as follows: "An oblong mass of unforged iron, lead, or other metal. In the process of smelting, the principal channel along which the metal in a state of fusion runs, when let out of the furnace, is called the "sow," and the lateral channels or molds are denominated "pigs," whence the iron in this state is called pig-iron."

Then the *Century Dictionary* (2) gives this secondary definition of the word "pig": "An oblong mass of metal that has been run while still molten into a mold excavated in sand; specifically, iron from the blast furnace run into molds excavated in sand. The molds are a series of parallel trenches connected by a channel running at right angles to them. The iron thus cools in the form of semi-cylindrical bars or "pigs." That is a definition of "pig." In the same work (3) the definition of "pig-iron" is: "Iron in pigs, as it comes from the blast-furnace."

In the standard works, in the works that are now considered the best dictionaries, the *Standard*, the *Imperial* and the *Century*, we have in every instance the use of the identical expression, "an oblong mass of metal;" and in every instance it is the essential ingredient in the meaning that it should have been cast specifically into molds, excavated in sand or otherwise artificially formed, for the reception and the cooling of the molten material.

Now, we have had a quantity of evidence here, largely obtained, I think I may say certainly as far as I am concerned, with every honest desire for information, as to whether or not there is any distinction in

(1) Ed. 1889 vol. iii. p. 441. (2) Ed. of 1889, vol. vi., 4481.
(3) *Ibid.* vol., vi., 4482.

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the mind of people who use terms accurately between the expression "pig-iron" and "cast-iron," and I think I may say, as the result of it all, that we are told that there is no sensible distinction that can be formed. The only suggestion, and that was rather a suggestion of my own than of any witness, so far as I now recollect it,—the only suggestion of a distinction is that the words "cast-iron" might mean the product of a second melting, and a second casting, or a casting into some definite form for commercial utility; but it is conceded on all hands that chemically speaking there is no difference in the constituent elements of the substance known in ordinary parlance as "cast-iron" and the substance known as "pig-iron."

Well now, if we tested it in that way, those being convertible terms, would any one think of calling the liquid molten material as it comes from the blast furnace "cast-iron?" It may be the material out of which cast-iron will be formed when it takes shape, when it is cast, but not until then. The expression "cast-iron," just like the expression "wrought-iron" indicates that that iron has been cast into a certain shape, indicates shape, and so equally we submit does the use of the word "pig," when it is used as an adjective indicate shape of some description.

I am not surprised that writers on the subject may use the expression "cast-iron" as descriptive of the fluid material. They may qualify it, perhaps, by using some such word as "molten;" but the fact that there is in that phrase the word "cast" cannot be lost sight of, and that word, if one attends to the meaning of things, necessarily implies form and shape, necessarily negatives the fused or liquid condition.

It is not surprising that the steel men, or the scientific men, and in one or other or both of these classes I think everyone of the witnesses my learned friend

called might be put, look upon this question from the standpoint of the steel manufacturer, who now uses as his raw material in America in the great majority of instances the molten substance, and so looking at it, and never having occasion practically to think of the accurate definition of words, it is not surprising that they should one and all say, what indeed they can say with truth, that this is the same material as the cold pig-iron. I do not know what else to call it. I must call it pig-iron, though with some adjectival qualification to indicate it is liquid and not yet solidified. But when you get a man who deals indifferently with iron in all its shapes, in steel, wrought-iron and pig-iron, not himself a manufacturer, but a business dealer in a large way, and so handling all the various forms, you perhaps get a better idea of what the business man would naturally consider the meaning of the expression than you will from either the steel man who uses mainly the molten material, or the foundryman who uses, almost exclusively, the solid material.

Now, as my learned friend has conceded, this is not a case of contract. He has referred to the case of *Carlill* v. *Smoke Ball Company* (1), which was a question of contract made by tender or advertisement, to the world at large, and accepted by the individual; but I do not understand him to be putting this at all as any matter of contract which the suppliants here, or any manufacturer, earns by the work he does.

[BY THE COURT: Mr. Chrysler did not concede it was not a contract. Of course he was not pressing the point very strongly.]

[MR. CHRYSLER: It is an action on the statute, which I think in theory comes under the general class.]

[BY THE COURT: In the practice of the Exchequer Court an action on a statute might either be in tort or

(1) [1893] 1 Q B. 256.

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in contract. *The Exchequer Court Act* gives jurisdiction in respect of a claim under any law of Canada. A statute being "a law of Canada," the action might either be in tort or in contract, but still be under the statute. If there is any distinction, this would be in contract and not in tort., but I do not suppose we gain anything by trying to draw that distinction.]

My learned friend used this language in opening the case to your lordship two months ago: "I suppose the bounty is a bounty. It is not a contract of any sort. We cannot claim payment under its terms unless we comply with the condition upon which the payment is to be made." That is all I was referring to my learned friend's language for. It is a bounty, and the suppliants to entitle themselves to the bounty must show full compliance with every condition precedent that the statute, properly interpreted, fairly calls for.

I seek, indeed, to have applied to a statute of this character a consideration similar in principle to that which obtained under the well known rules as to the imposition of any tax, exactly as the exaction of customs duties is in that sense a tax. The Government taking something from a citizen's private property must show a liability, good *in omnibus*, in every respect. The Government must show that the tax is legally imposed, and just so here, *e converso*, he must show he has fully complied with the requirements of the law. In that way it struck me I might use as a matter of illustration the case which your lordship will be very familiar with, a case which involved a nice point of statutory construction, *The Canada Sugar Refining Company* v. *The Queen* (1). There the holding ultimately was by the Supreme Court, or the majority of the Supreme Court, and by the Judicial Committee, that to entitle the claimant to a return, or to exemption

(1) 27 S. C. R. 395; [1898] A. C. 735.

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from the levy which *primâ facie* they were subjected to under *The Customs Act*, every possible or every necessary condition of the full importation of their product into the country must be satisfied. Until the journey to the ultimate destination of their goods was completed they had not reached land, they could not enter for the purposes of *The Customs Act*.

Now, that is just what we have got here. The full journey is not taken to "pig-iron". The suppliants intercept and stop a step short of that destination just about by as much in proportion as a ship coming from Antwerp to Montreal stops short at Sydney, and just as the stopping short was not permitted by the court to succeed in that case, so we urge it could not here. The statute demands as a pre-requisite to the earning of this bounty, using those words as in the sense of the suppliants entitling themselves to it, that the manufacture shall be completely finished, shall be "manufactured." That is the meaning, in the framing of the sentence, I was attaching to the language used in the statement of defence. We say such molten or hot metal in a liquid state is not "manufactured pig-iron" within the meaning of those words in the statute.

Now see how the statute is framed in that view. It is set out fully in the statement of claim. "The Governor in Council may authorize payment of the following bounties on steel ingots, puddled iron bars, and pig-iron made in Canada." The word used there is "made," but in the remainder of the section the word used is in each instance "manufactured." On steel ingots "manufactured," on puddled iron "manufactured," on pig-iron "manufactured." The important word to be considered in reaching the legislative meaning in that whole clause is, I submit, the word "manufactured" as indicative of the finished product or output of the mill. It is the "manufactured" steel.

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"manufactured" iron bars, the "manufactured" pig-iron that the suppliants must show themselves to have produced before they are entitled to the parliamentary reward.

See what the legislature is saying. They give the bounty on steel in a certain shape. "Steel ingots" is the expression, not steel in the shape of billets or bars, because that is a subsequent stage of the manufacture; but once the manufacture of steel has reached the stage of the material getting into the form or shape of ingots, then it may be weighed, and at that stage, without regard to what happens afterwards. Parliament says the manufacturer is entitled to his bounty. It is on wrought-iron in bars. It is on crude iron in pigs. The three are used just in the same sense. It is not wrought-iron in any preliminary form or shape; but when the wrought or puddled bar has got into the condition of bars, no matter what may be done with those bars afterwards, then the manufacturer has done his part, and at that stage of the process entitles himself to the bounty. So we urge, as the steel must be ingots, and the wrought-iron must be in bars, the crude iron must be in pigs.

The legislature has, in the statute of 1899, guarded against the danger of a double bounty on the same product, at two stages of its manufacture, being claimed. By the second section of the Act of 1899 the legislature has said: "Notwithstanding anything in the statute of 1897, or in this Act, no bounty shall be paid under this Act on steel ingots made from puddled iron bars manufactured in Canada." The manufacturer of steel in other words cannot by going through the puddled iron bar process get a treble bounty. He gets his bounty on pig-iron if he makes pig-iron; he gets his bounty on steel as well, but if after having gotten his bounty on pig-iron he had made puddled

iron bars out of his pig-iron, and then out of his puddled iron bars had made steel, he could not by that device get the treble bounty. Of course the legislature was guarding in that provision against an entirely possible thing, as your lordship will remember. The witnesses at Sydney, Mr. Meisner. and Mr. Moxham both told us that it was practicable to make steel out of puddled iron bars. (He here refers in detail to the evidence on this point.)

So that the legislature taking care to guard against the treble bounty must be understood as intending that there should not be the double bounty which we are here protesting against, except in the case provided for by the statute. If the finished product, pig-iron, is turned out by the steel manufacturer, though he used it himself, he is entitled to the bounty; and no one is for a moment questioning the right in that regard of the suppliants to be paid a double bounty if they do that which the legislature has called for, even though the doing of that may in their particular case be a work of supererogation.

Our position is simply that the manufacturer of pig-iron, before he entitles himself to this bounty, must complete his manufacture, turning out the finished product as a merchantable commodity capable of being handled, and complete in its manufacture the article known to the trade and to the world as pig-iron.

The words "manufactured" and "made", in the statute of 1897, are convertible terms. I do not seek to distinguish between the two. Possibly the word "manufacture" implies a little more in the process of working with the raw material than merely the word "made", but I cannot in my own mind see that it does. Three times, as applied to each one of these finished products that are to entitle the maker to the bounty, the word used is "manufactured", although, in the

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same section, it says that bounties may be given on ingots, bars, and iron "made" in Canada. I do not, however, attach any difference to the meaning.

In that connection, as interpreting this statute upon which the right is founded, and which is set out in full in the statement of claim, I submit that nothing can be, not only more instructive, but more decisive in this matter, than what I find in the French version. That is our volume of the law just as much as the English. If we were using French here, instead of the English language, there is where we would naturally first go, and that would be the very thing we were discussing, and which the court would be called upon to interpret. I turn to the French version, and I find there the very strongest enforcement of the view which we are contending for in language which I take the liberty of saying to the court contributes very largely to the attitude of the Government in this matter. The language used throughout both these sections in the French version is not pig-iron, but iron in pigs. The expression is *le fer en gueuse*. That being the expression used in every instance it becomes significant, just as the bounty is given by the statute "sur les lingots d'acier" (ingots of steel), and "sur les barres de fer puddlé", (puddle-iron bars,) so it is given upon "le fer en gueuse", (iron in pigs.)

And, if you look at the dictionaries as defining the meaning of that expression, and as defining the expression which would be used if pig-iron was meant, we see emphasized the distinction.

I refer to *Fleming & Tibbins*, (*Français-Anglais et Anglais-Français*) *Dictionary* and in the French-English half, under the head of the word "Gueuse" (1) I find the definition in the French language which I take the liberty of translating. It is "Grosse et longue pièce

(1) P. 524.

defer qui se forme au sortir du fourneau dans une longue rigole faite en terre"—a big, long piece of iron which is formed, or which forms itself in leaving the furnace in a long furrow made in the ground,—just carrying out the definition as found in the English dictionaries.

It is iron in that form, "le fer en gueuse", on which the statute gives the bounty, and iron in the shape of "gueuse" is iron in the shape of a large, long piece, which forms itself, on leaving the furnace, in a long furrow in the ground.

If they had meant cast-iron they had a word to hand. I refer to the same book at the word "Fer":—"A well known metal—iron" (1). Under this word we have the French equivalent for all manner of descriptions of iron, soft iron, brittle iron, wire iron, bar iron, wrought-iron, crude iron, and then "fer fondu" cast iron, pig-iron. If the legislature had understood, such, at least, of the parliamentarians who spoke the French language as their mother tongue—if they had understood that they were giving this bounty upon the material pig-iron as distinguished from iron in pigs they had the ready phrase to hand. They would have said "le fer fondu" instead of "le fer en gueuse."

I find by taking the English-French version of *Fleming & Tibbins* that there is another expression used as describing iron or metal in pigs. That is the word "saumon", and in the French-English version I find "saumon" defined as "masse de plomb, d'étain ou de cuivre, telle qu'elle est sortie de la fonte." It is defined as a pig of lead, tin, or copper.

Then in *Littré* under the head of the word "Gueuse" we have a more elaborate description in the French language of the meaning of the word. Page 1956, volum 2: "Masse de fonte brute, de forme triangulaire, qui se moule dans le sable à la sortie du creuset du

(1) P. 456.

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haut fourneau." And then he gives a citation as showing the use of the expression from a decree of the 4th June, 1639, prohibiting iron-masters from using the said pigs or iron without first having them weighed. The use of the expression which we find repeated here in our statute has the well established meaning of the phrase "le fer en gueuse."

We say then, and submit with the greatest confidence, that where we have the legislature declaring by the very statute upon which this action is founded that the iron must be in the shape of pigs as distinguished from being the very material out of which pig-iron, or of which pig-iron, is afterwards made, that the suppliants do not entitle themselves to this bounty unless they make their iron "en gueuse."

The Act of 1889 contains exactly the same language. Again we have the three phrases: "les lingots d'acier, les barres de fer puddlé, le fer en gueuse."

Then a reference to the regulations, not that they can carry the matter any further, but that the statute expressly authorized the Governor in Council to make regulations regarding these bounties to carry out the intention of the statute. The regulations are divided into three parts. First, as to steel, secondly as to puddled iron bars, and thirdly as to pig-iron; and the conclusion, the last paragraph of the regulations with regard to bounties claimed in respect of pig-iron is that the claim for bounties upon all such pig-iron shall be made and substantiated to the satisfaction of the Minister of Trade and Commerce, within four months after the completion of the manufacture of the pig-iron on which said bounty is claimed. I understand that regulation to mean that you must always have your claim made within four months from any day's output. I suppose one might wait three months and claim at once for all that he had

manufactured during that time, but the point is that it is within four months after the completion of the "manufacture," as emphasizing the position, which we submit is the all important consideration here, that the manufacture must be of a finished and completed thing.

Now, would it not strike any one administering the law as between three manufacturers earning bounties, as an anomalous thing, that the one who saves a dollar a ton at least should get an equal bounty with those who do not, where the saving is not at all by superior excellence of process, or by any trade secret; but where it is by stopping short and not going to the end of the course as the others do? Where the others by the additional outlay and by going through the whole of the process and not stopping at an intermediate stage earn $2.00 a ton, it would seem a discrimination that the suppliants should be allowed to earn the same amount by doing less work.

If the legislature intends this it is for the legislature to say so, and we certainly take the view that it was not intended to give the bounty unless the completed product were turned out as the result of the manufacture of pig-iron, and therefore, it being impossible for us to say you are entitled to two-thirds, or five-eighths, or nine-tenths, or to any fraction of the $2.00, it being all or nothing, it is only the legislature that can by some amendment to the statute provide for the case that is in hand. It is here a mere question of interpretation, and if we are right in the view we have taken, that everything turns upon the question whether or not the process is finished, whether or no the completed product is the output, then, judged by that test, we submit the position taken by the officers of the Crown is the correct one.

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Pig-iron as an article of commerce can be bought in the markets of the world, it can be bought in a foreign country. It is rather in the interests, or supposed to be in the interests, of those who consume it within this country that they should secure it within this country, and in that view, a bounty being but one form of protection to a native industry, the legislature has provided one for that industry.

If we have succeeded in demonstrating to your lordship's mind that the legislature never intended the bounty otherwise than upon the completely finished, completely manufactured, product, we have certainly upon the evidence shown that this product is not that which the suppliants are to-day turning out from their blast furnaces, is not the molten material upon which they claim these bounties. We rely upon that view of the true construction of the statute, and we place a special confidence upon the language which we find used in the other official form of our statutes, the French version, in which plainly the term is "iron in pigs," and not "pig-iron".

C. A. Moss followed for the respondent:

Mr. Chrysler in his argument in opening placed some reliance upon the use of the word "made" in the statute of 1897. He pointed out to your lordship that the word "made" was the first word used, and that the word was alternating with the word "manufactured," and he asked your lordship to draw the conclusion that the draughtsman of that Act had as his original word the word "made" and had simply introduced the word "manufactured" there so as to prevent tautology.

In tracing the history of this case your lordship will see that the original word was the word "manufactured." That was the word in the Act of 1883. That is the word which was carried down, and the word

"made" is only introduced in the Act of 1896 when for the first time there is a bounty paid upon articles other than pig-iron, upon the further products of pig-iron. I submit that whatever there is in the argument from the word "made" is rather in our favour.

I point also to the fact that in the French version the word is "fabriqué," and that that word is carried down from 1883, and appears in the Act of 1887, the word "manufacturé" is used once only, the word "fabriqué" being used I think in every other place. Now, on looking at the dictionary I find that "manufacturé" is said not to be as good a word as "fabriqué," but the dictionary says that they mean exactly the same thing.

Then I would refer your lordship also to the regulations made in July, 1901, and would point out that throughout those regulations in regard to pig-iron the word "manufactured" is the word used and not the word "made."

I say that even now the use of the liquid metal, or rather the use of any name for that liquid metal is but little known. That of course refers with peculiar aptness to Canada. In this country steel was never manufactured by direct process, as some of the witnesses call it, from the molten metal, until December of last year, as Mr. Baker's evidence shows. (He here refers in detail to the evidence.)

Mr. Kennedy, one of the witnesses for the Crown, puts the matter of the making of the steel in a way where it is put nowhere else, and to which I wish to refer. He says that "Steel has from a very small quantity, say up to 2 per cent. of carbon. Pig-iron has about 4 per cent. of carbon." And then he goes on: "The ordinary method of making steel is to transform the ore to pig-iron, and then turn back on your track and bring it part way back to its original form,

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steel being intermediate between wrought-iron and pig-iron."

Now, we say that the suppliants are not doing that at all, they are not going direct from the ore to the steel in a straight line, nor are they going a certain distance and turning back on their track. What they are doing is to make a short circuit, or cutting a corner, and in that way they do not get to the pig-iron at all. They are getting somewhere near to the process of making steel direct from the ore, nearer than what is contemplated by the Act, and of course upon steel made direct from the ore, as has been pointed out, there would be no bounty.

Mr. Chrysler has suggested that this statute is an Act which applies to the trade of steel and iron, and that the words used must be interpreted in their technical sense. With that I do not agree. A Bounty Act is simply another Act in the shape of protection, or a Customs Act. A bounty has been described as the worst form of protection, and although there is only one bounty being given in this Act, yet it would be very different if it were a Bounty Act in directly the opposite way to which a Customs Act is a Customs Act, that is, an Act giving a bounty on a great many objects. A Customs Act directs that a duty should be collected upon many commodities, and the interpretation of that Act to which I shall give your lordship a citation in a moment, says that the words used must be taken to be used in their commercial sense. Then I say, if this were a Bounty Act for which bounties were given upon a number of articles produced, not iron and steel only, then no one could say for a moment that it was an Act relating only to iron and steel, and I submit to your lordship that when you look at the intent of the Act your lordship must come to exactly the same conclusion now. It is an Act which is to

benefit the people at large. That is the intent of the Act. It is not an Act to benefit the iron and steel trade. The intention of this Act is that the public should be benefited. The public are those who are to gain by the pig-iron being manufactured, and the ordinary use of the word is the use which I press upon your lordship in that connection.

Then I would say this, that although it has been held that if you get an Act applying to a technical subject you must interpret the words by the meanings which they have to those who know about the subject, even if your lordship should hold that that construction was to be supplied here, I say your lordship would have some trouble in applying to a word a meaning which is not found in any dictionary whatever. It is one thing when you have several meanings given in a dictionary; but it is altogether a different thing to give a meaning to a word in an Act of Parliament when that meaning cannot be found in any dictionary whatever, because Parliament and the draughtsman can only go to dictionaries to find out what the word must mean.

He cites *Hardcastle on Statutes* (1); *The Queen* v. *Peters* (2); *Maxwell on Statutes* (3); *Ex parte Copeland* (4); *Brown* v. *McLaughlan* (5).

After all, it comes down to the question of what the words mean as used in the statute. We do not really, with all these references, and everything that can be said in regard to them, get any further than that. The intent and the true meaning of the Act, and the object of it, is what your lordship will have to consider.

F. H. Chrysler, K.C., replied:

(1) 3rd ed. pp. 82, 83, 129, 166, 167, 179.
(2) 16 Q.B.D. 636.
(3) 3rd ed., p. 24.
(4) 22 L. J. (Bankcy.) 17.
(5) L.R. 4 P.C. 543.

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The case of the *Attorney-General v. Carlton Bank* (1) enunciates a canon of construction which I think is the correct one to apply to the legislation here in question. There is no special rule that statutes of this class are to be construed either more strictly against, or more strictly in favour, of the Crown.

He cites *The Interpretation Act*, R. S. C. c. 1 sec. 7, sub-sec. 3.

The Crown cannot read into the Act terms and conditions which are not really there. If the Act says we are to produce merchantable pig-iron, then we must produce it; but clearly the Crown cannot add the word "merchantable" to the statute in order to modify its meaning. The suppliants are entitled to take the Act of 1897 or that of 1899, which are the two statutes we have to deal with here, and read them in the sense in which they would be understood the day they were passed, without regard to previous Acts.

I will not follow my learned friend into the discussion of the French meaning of the word or the French translation. I suppose if the meaning of the English translation is clear that is probably sufficient for our purposes. I do not think there is any room for doubt as to the fact that pig-iron means pig-iron as it issues from the blast furnace. My learned friend does not deny that. He says it requires something else to make it a completely manufactured pig-iron. He says in fact the statute is improperly drawn. He contends that what should have been done by the framer of this statute, if he wanted to give it the meaning which he says it has, was to have written "pigs of iron". He says there are three different objects grouped in this statute. One is "pigs of iron", the other is "bars of iron", and a third, to be consistent, should be "ingots of steel". But these are not the terms which we find

(1) (1899) 2 Q.B. 158.

in the statute. We find "pig-iron", "steel ingots", and "bars of iron"

The Customs Act of 1897, although not *in pari materiâ*, may be referred to with advantage. I have a right to ask the court to assume that the man who framed the statute under which we claim, when he spoke of "pig-iron" knew that pig-iron was a commodity, a substance differing from "pigs of iron"—as described in *The Customs Act*, another statute passed in the same session of Parliament.

Everyone of the witnesses who has been examined, and every author who has discussed the subject, if he were asked to use a word which would describe the metal, whether hot or cold, would say "pig-iron", and if "pig-iron" is not the name of the hot substance there is no other name.

The intention of Parliament was to assist the iron and steel industry, in is early stages in this country by bounties. When these establishments get upon their feet, they will be expected to go alone—to get along without such assistance. What would be more opposed to the policy of the legislature than to require these people to build old-fashioned plants which would be inevitably killed as soon as the bounty ceased by reason of the competition of newer and more modern estabishments in other countries. To compete with any hope of success, our manufacturers were obliged to adopt the most approved and advanced methods in use elsewhere. They were not previously in existence in Canada.

THE JUDGE OF THE EXCHEQUER COURT now (December 5th 1902) delivered judgment:

The petition in this case is filed to recover the sum of $196,967.15 for bounties on pig-iron and steel ingots manufactured by the suppliants, which it claims to

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be entitled to by virtue of the provisions of the Acts of Parliament 60-61 Victoria, Chapter 6, and 62-63 Victoria, Chapter 8, and of the regulations made under such Acts. The defence is that a portion of the iron on which the bounty is claimed was used in a molten or liquid state for the manufacture of steel ingots, and that in this form it was not pig-iron within the meaning of the statutes referred to.

The first Act passed in Canada to encourage the manufacture of pig-iron to which my attention has been called was passed in the year 1883. By this Act (46 Vict. c. 14) the Governor in Council, under regulations to be made by him, was authorized to pay out of the Consolidated Revenue Fund a bounty on all pig-iron manufactured in Canada between certain prescribed dates, the bounty to be one dollar and fifty cents per ton where the pig-iron was made from Canadian ore, and in other cases one dollar per ton. By the Act 49th Victoria, Chapter 38, the time within which such bounties could be earned was extended. In 1890 the bounty on pig-iron manufactured from Canadian ore was increased to two dollars per ton (53rd Victoria, Chapter 22). Up to this time the bounties were offered to encourage the production in Canada of pig-iron, and especially of pig-iron manufactured from Canadian ore. In 1894 a further step was taken, and bounties were offered for the manufacture in Canada of iron and steel from Canadian ore. By the Act of that year 57-58 Victoria, Chapter 9, the Governor in Council was authorized to pay a bounty of two dollars per ton on all pig-iron made in Canada from Canadian ore, and a like bounty on puddled iron bars made in Canada from Canadian ore, and on steel billets manufactured in Canada from pig-iron made in Canada from Canadian ore and such other ingredients as were necessary and usual in the manufacture of

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such steel billets, the proportion of such ingredients to be regulated by an order of the Governor in Council. By the second section of the Act, it was provided that in the case of the products of furnaces then in operation the bounties should be applicable only to such products as were manufactured therein between March 27th, 1894 and March 26th, 1899; and that in the case of any furnace which should commence operations thereafter and before March 27th, 1899, such bounties should be applicable to the products manufactured therein during a period of five years from the date of commencing operations. None of these statutes are directly in issue in this case, but they have been mentioned to show what preceded the statutes on which the question to be determined turns, and as showing a general intention of Parliament during the years mentioned, not only to stimulate the production of pig-iron by furnaces then in existence, but to encourage the erection of other furnaces for that purpose and for the purpose of manufacturing such pig-iron into puddled iron bars and steel billets.

Coming now to the first of the two statutes under which the present claim arises, it will be seen that by the first section of the Act (60-61 Victoria, Chapter 6) it is provided as follows:—

"1. The Governor in Council may authorize the payment of the following bounties on steel ingots, puddled iron bars and pig-iron made in Canada, that is to say:—

"On steel ingots manufactured from ingredients of which not less than fifty per cent. of the weight thereof consists of pig-iron made in Canada, a bounty of three dollars per ton;

"On puddled iron bars manufactured from pig-iron made in Canada, a bounty of three dollars per ton;

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"On pig-iron manufactured from ore, a bounty of three dollars per ton on the proportion produced from Canadian ore, and two dollars per ton on the proportion produced from foreign ore."

The second section of the Act prescribed the time within which such steel ingots, puddled iron bars, and pig-iron should be made in order that the bounty might be earned; and the third section gave the Governor in Council authority to make regulations in relation to such bounties and to carry out the intention of the Act. By the Act 62-63 Victoria, chapter 8, the time mentioned in the second section of the Act 60-61 Victoria, Chapter 6, was extended, and a gradually diminishing scale of bounties prescribed; and it was also provided that no bounty should be paid on steel ingots made from puddled iron bars manufactured in Canada. A bounty could be earned on pig-iron, and then on either puddled iron bars or on steel ingots made therefrom; but the manufacturer could not earn a third bounty by making the puddled iron bars into steel ingots. In the manufacture of iron and steel from the ore two bounties, but not three, might be payable with respect to the same material in a different form or state of manufacture. The regulations made by the Governor in Council respecting the payment of such bounties are in evidence, but no question arises thereon which does not equally arise upon the statutes under which they were made, and it is not necessary to refer more particularly to these provisions.

The company, has, at Sydney, Cape Breton, four blast furnaces for the manufacture of pig-iron, and an open hearth steel plant consisting of ten "H. H. Campbell Tilting Open Hearth Furnaces" for the manufacture of steel. The construction of these furnaces was commenced in the year 1899, and they have since been completed at a great cost and are now in operation.

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Part of the product of these blast furnaces is cast in a sand bed in the usual way; part is run in moulds that form what is called the pig machine; and a part is conveyed in a molten or liquid state from the blast furnaces to the steel mill and is there poured into a mixer or reservoir for holding this liquid metal, and from which a supply is drawn whenever a charge is required for one of the steel furnaces. The liquid metal is taken from the blast furnaces to the reservoir in large ladles set on trucks, and are moved by an engine on an ordinary railway track. While in these ladles the metal is weighed. That may be, and is done with convenience and accuracy. This practice of taking the metal in a liquid state from the blast furnaces direct to the steel plant was not in 1899 or in 1897 a new practice or process in the manufacture of steel from pig-iron. As shown by Mr. Chrysler, the practice has been followed for a number of years in almost every country in which iron and steel are manufactured. It has been followed in the United States, in Great Britain, in Sweden, in Germany, in Belgium, in France, in Austria, in Hungary, in Russia, in Styria and in Japan. And although this practice has in general been adopted only in cases where the blast furnaces and steel plant were under the same management, the evidence discloses a few instances in which a manufacturer of pig-iron has sold part of the product of his furnaces to another manufacturer of iron or steel and delivered it to him in a molten or liquid state. Of course that is only possible within limits. The blast furnaces and the steel plant must be near enough to each other to permit of the ladles being moved from the one to the other without giving the metal time to cool.

There is no controversy about that portion of the product of the company's furnaces that is cast in the

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sand bed or run into the pig machine. The question in issue is raised in respect of the metal that is taken in a liquid state from the furnaces to the reservoir or mixer. As to that it is argued for the respondent that this metal in this state or condition is not pig-iron within the meaning of the statutes, that have been referred to; and that no bounty is payable in respect thereof, or in respect of the steel ingots manufactured there from. That is the question to be determined.

But before coming directly to that question it may, perhaps, be found convenient to refer to some rules that have been laid down to guide in the construction of terms occurring in Acts of Parliament. And with respect to statutes generally I do not know that I could do better than to adopt the language used in *Maillard* v. *Lawrence* (1), where it is said that the popular or received import of words furnishes the general rule for the interpretation of public laws, as well as of private and social transactions; and wherever the legislature adopts such language to define and promulgate its action, or its will, the just conclusion must be that it not only comprehended the meaning of the language it has selected, but has chosen it with reference to the known apprehension of those to whom the language is addressed, and for whom it is designed to constitute a rule of conduct, namely, the community at large. That is a general rule. But in the case of tariff laws it has been held that in imposing duties the legislature must be understood as describing the articles upon which the duty is imposed, according to the commercial understanding in the markets of the country, of the terms used in the statute. The commercial designation, the use of the term by merchants and importers, is in such cases the first thing to be ascertained. (*Arthur* v. *Morrison* (2),

(1) 16 How. at p. 261. (2) 96 U. S. 108.

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Robertson v. *Salomon* (1), *Nix* v. *Hedden* (2). And where a term has not acquired any special meaning in trade or commerce it is to be taken and received in its ordinary meaning in the common language of the people. In the present case we have to deal with statutes that must, I think, be taken to be addressed in the first instance to manufacturers of iron and steel. It is to them that the bounties prescribed are offered. And while persons engaged in other branches of the same industry or in other industries, as well as the community at large have an interest in the matter, it does seem that any enquiry that would leave out of account the meaning attributed by such manufacturers to the terms used in such statutes would be incomplete and might be misleading.

Pig-iron is the product of a blast furnace used for the purpose of reducing iron ores. It contains, among other things, a larger proportion or percentage of carbon than either steel or puddled iron bars. And one of the principal objects to be attained in the manufacture of steel ingots or puddled iron bars from pig-iron is to get rid of this excess of carbon. The term "pig-iron" was derived from the shape which the iron assumed in the sand beds in which it was first cast; and when first used had reference no doubt to a particular shape or form. It has since acquired a larger meaning, and as used at present includes, it is conceded, any product of the blast furnace that is cast in any convenient form or shape without reference to what that form or shape may be. So far the parties to the present controversy are agreed. It has also happened that among iron-masters and those who are familiar with the processes by which iron ores are reduced and made into pig-iron and then manufactured into wrought-iron or steel, that the term "pig-iron"

(1) 130 U. S. 413. (2) 149 U. S. 304.

REPORTER'S NOTE: See also *Unwin* v. *Hanson* [1891] 2 Q.B. at p. 119.

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has come to mean and include as well that substance in a molten or liquid state; it being usual to prefix to that expression some adjective such as "molten" or "liquid" when the speaker or writer wishes to distinguish between solid pig-iron and liquid pig-iron. But as in the nature of things difficulty and expense are involved in maintaining iron in a liquid state, and as there is in general no object in overcoming the difficulty or incurring that expense except for an inconsiderable length of time, most men see pig-iron in a solid form, and that form is in general necessary to the handling of it as an article of trade and commerce. So it must, I think, be conceded that in common speech the term "pig-iron" carries with it the meaning of something that is solid and not liquid. If one turns to the dictionaries to ascertain the meaning of the term, he will, I think, come away from the enquiry with the same impression. That of course may be because one lexicographer follows another, and does not make the original research into the modern literature of the subject that Mr. Chrysler has, with such great industry, made. Of the result of his researches, of which I have had the advantage, it is not possible with fairness to his argument and a proper regard for brevity, to make any present use further than to say that I do not think any one sitting down to make a new dictionary from original sources, and reading the extracts that Mr. Chrysler read, would adequately interpret the term "pig-iron" if he failed to make it clear that the term is now, and has for a considerable number of years, been used in a sense that includes that metal in a liquid as well as in a solid state. And if the only question were whether the metal which the company used in a liquid state for the manufacture of steel ingots was or was not pig-iron, there could, I think, be only one answer to the question,

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and that is, that it was pig-iron. But the question is somewhat narrower than that. Perhaps it would be more exact to say that there are two questions, and that one of them is narrower than that stated. With regard to the bounty on steel ingots that may be the question: Were or were not the steel ingots in question made from pig-iron? With regard to the bounty on pig-iron the question is not perhaps whether liquid pig-iron is pig-iron, a question that suggests its own answer, but whether it is pig-iron on which a bounty is payable under the statute? The steel ingots in question were undoubtedly steel ingots within the meaning of that term as used in the statute. There is no dispute about that; and they were manufactured from ingredients of which not less than fifty per cent. of the weight thereof consisted of something made in Canada, and when one asks what that something was, there is only one answer possible, namely, that it was pig-iron used in a molten or liquid state, but none the less pig-iron; for as to that there is nothing to suggest that it can make any difference in what form or condition the pig-iron was when so used. If the pig-iron as it came from the blast furnace had been allowed to cool it would have been necessary to melt it before it could be used in the further process of making steel. If it were suggested that the manufacturer who uses the liquid metal for making steel, has an advantage over one who is not in a position to do so, and that the latter would for that reason be placed in respect of the bounty in a position of inequality, the answer is that the statute does not disclose any intention on the part of Parliament in any way to equalize the conditions under which different manufacturers would earn the bounties in question. I do not know that any one could properly attribute any intention to Parliament, except that it was its intention to encourage the manu-

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facture in Canada of pig-iron, puddle iron bars and steel ingots; and the erection in Canada of furnaces and mills in which these things would be produced. But if one were to go beyond that and speculate as to matters not appearing upon the face of the statute it would, I think, be reasonable to conclude that Parliament intended (if as to that it intended anything) to encourage the erection of furnaces and mills using the most modern, efficient and best appliances and processes known to the trade or business. But for myself I am not sure that Parliament intended anything more than to leave each manufacturer to carry on his own business and to earn the bounty in his own way. All I do say, is that I do not see anything in the statute, to lead me to the conclusion that Parliament intended to handicap progress and economy in the art of making iron and steel by withholding the bounty on steel ingots manufactured from liquid pig-iron in the manner described.

But when one has said that the company has earned and is entitled to the bounty on the steel ingots that it has made from such pig-iron, it does not follow as a matter of course that it has also earned and is entitled to the bounty on the pig-iron itself. That, as has been stated, raises in some of its aspects a different question. The pig-iron, the product of the blast furnace, is as much pig-iron while it is in the blast farnace as it is when it has been run off into the ladles; but no one would suggest that the manufacturer could, with any hope of succeeding, say to the Governor in Council here are my blast furnaces full of pig-iron, pay me the bounty on that pig-iron. The answer would no doubt be, if it is pig-iron it is not in the state or condition in which a bounty is payable on it. Something more must be done. The amount of the bounty is to be determined by reference to the number of tons of

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pig-iron produced. The pig-iron must be weighed. It must also, I think, be something that can be used. Not that anyone to earn the bounty must make use of it, but no bounty is, it seems to me, payable in respect of any pig-iron that cannot be put to some use. That ought I think to be implied. The bounty is payable on pig-iron manufactured in Canada from ore. The pig-iron must be weighed before any bounty is payable, and it must be in a state or condition in which it can be used. These, it seems to me, are the conditions to be observed to entitle the manufacturer to this bounty. Have the suppliants observed them? I think they have. As stated, the material produced is pig-iron. There is no difficulty in weighing it while in the ladles. It has in fact been carefully weighed. In the molten state in which it then was, it was fitted for one of the uses pointed to in the statute itself, namely, the manufacture of steel ingots. It was used for that purpose, and in my judgment the company was entitled to the appropriate bounty prescribed by the statute.

But before leaving the subject I ought to add that I have not overlooked two arguments against the view that I have expressed, to which I have as yet made no reference. It is said that in the earlier statutes, when the bounty was confined to pig-iron, that term meant what was known generally and commonly as pig-iron, and possibly that may be so. And then it is said that the same term used in the later statutes must be taken to have the same meaning, and not a wider one. Some weight is no doubt to be given to that consideration, but it is not conclusive. Other considerations are involved. Then it is said that the term used in the French version of the statute, namely "le fer en gueuse" shows that it was the intention of Parliament to confine the bounty to pig-iron having some

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shape; and that if it had been its intention that it should also be payable on pig-iron used in a liquid state for the manufacture of puddled iron bars or steel ingots, there was not wanting a more appropriate term such as "le fer fondu" to give expression to that intention. That too, is an argument entitled to consideration, but again it is not conclusive, if, as I think, the larger meaning is to be gathered from the statute as a whole. And as to that it does seem to me that Parliament was dealing with a substance or material, and was not particularly concerned with its shape or form or condition, so long as it was pig-iron and could be weighed and put to some use; and with respect to the uses to which it could be put a special encouragement by way of bounty was offered to any manufacturer who would use it to manufacture in Canada steel ingots or puddled iron bars, and I do not think that it was intended to draw any distinction between its use in a solid or in a liquid state. The suppliants are in my opinion entitled to the relief sought by the petition. The amount claimed is as stated, one hundred and ninety-six thousand nine hundred and sixty-seven dollars and fifteen cents (196,967.15) and no question was raised as to the amount. But that an opportunity may be given to make that matter more certain, if there is any question about it, the judgment will be entered for the sum mentioned, and costs, with leave to either party to move to strike out the sum so stated and to substitute therefor such an amount as the company may on further enquiry be found to be entitled to.

Judgment accordingly.

Solicitors for the suppliants: *Chrysler & Bethune.*

Solicitor for the respondent: *A. B. Aylesworth.*