
CANADA / JUDGMENT

Beaver Specialty Ltd. v. Donald H. Bain Ltd.

[1974] SCR 903

COURT

Supreme Court of Canada

DECIDED

27 August 1973

Source: decisions.scc-csc.ca · Research copy typeset by Esheria. Not court-issued or certified.

Beaver Specialty Ltd. v. Donald H. Bain Ltd.

Collection

Supreme Court Judgments

Date

1973-08-27

Report

[1974] SCR 903

Judges

Judson, Wilfred; Ritchie, Roland Almon; Hall, Emmett Matthew; Spence, Wishart Flett; Pigeon, Louis-Philippe

On appeal from

Ontario

Subjects

Sale

Decision Content

Supreme Court of Canada

Beaver Specialty Ltd. v. Donald H. Bain Ltd., [1974] S.C.R. 903

Date: 1973-08-27

Beaver Specialty Limited (Defendant, Plaintiff by Counterclaim and Defendant by Counterclaim)
Appellant;

and

Donald H. Bain Limited (Plaintiff, Defendant by Counterclaim)

and

Pacific Inland Express Limited (Defendant, Plaintiff by Counterclaim and Defendant by Counterclaim) Respondents.

1972: November 14, 15; 1973: August 27.

Present: Judson, Ritchie, Hall, Spence and Pigeon JJ.

ON APPEAL FROM THE COURT OF APPEAL FOR ONTARIO.

Sale of goods—Contract for purchase of walnuts—Goods to be delivered to buyer—Walnuts damaged in transit—Buyer deemed not to have accepted goods—Buyer justified in refusing to accept cargo—Liability of carrier—The Sale of Goods Act, R.S.O. 1960, c. 358, s. 33.

The defendant (Beaver) entered into a contract for the purchase and delivery of 2,000 cases of Chinese walnuts through the Toronto office of the plaintiff (Bain). The latter was engaged in the business of wholesale commission merchants and brokers having its head office in Winnipeg and branch offices at both Toronto and Vancouver. The walnuts became unmerchantable in the course of transit between Vancouver from whence they had been shipped by Bain and Toronto where Beaver refused to accept delivery of the cargo.

The trial judge, who proceeded on the basis that the goods remained the property of Bain until delivery “f.o.b. Toronto” to Beaver, dismissed Bain’s claim against Beaver and directed that Bain should have judgment against the carrier (PIX) for \$40,196.90. The Court of Appeal interpreted the evidence as disclosing that the 2,000 cases were transferred to Beaver’s account when they were delivered to the carrier. Accordingly, the Court of Appeal varied the judgment rendered at trial and directed that Bain recover the sum of \$31,616.48, together with interest, from Beaver. From this judgment Beaver appealed to this Court. There was also an appeal by PIX against the finding of the Court of Appeal that Beaver was entitled to recover \$19,269.75 from that company in respect of the loss of value of the walnuts through damage in transit and also for storage charges.

Held: The appeal of Beaver should be allowed, the appeal of PIX dismissed and the judgment of the trial judge restored.

The circumstances surrounding and immediately preceding the issuance of the contract note were such as to support the contention of the appellant that this note evidenced the intention of the parties that the walnuts were to be delivered to Beaver in Toronto and this being the case the provisions of s. 33(1) of The Sale of Goods Act, R.S.O. 1960, c. 358, apply and Beaver which had no reasonable previous opportunity of examining the goods must be deemed not to have accepted them and was therefore fully justified in its refusal of the cargo.

Bain, as held by the trial judge, was entitled to judgment against PIX for the loss sustained by Bain by failure of the completion of the contract with Beaver together with storage charges.

Winnipeg Fish Co. v. Whitman Fish Co. (1909), 41 S.C.R. 453; Steel Co. of Canada Ltd. v. The Queen, [1955] S.C.R. 161, referred to.

APPEAL from a judgment of the Court of Appeal for Ontario[1], varying a judgment of King J. Appeal of Beaver Specialty Limited allowed, appeal of Pacific Inland Express Limited dismissed.

G.D. Finlayson, Q.C., and C.L. Campbell, for the defendant, appellant.

I.W. Outerbridge, Q.C., and W.H.O. Mueller, for the defendant, respondent.

W.J. Smith, Q.C., for the plaintiff, respondent.

The judgment of the Court was delivered by

RITCHIE J.—This is an appeal by Beaver Specialty Limited (hereinafter referred to as “Beaver”) from a judgment of the Court of Appeal for Ontario varying the judgment rendered by King J. at trial and directing that the respondent, Donald H. Bain Limited (hereinafter referred to as “Bain”) recover the sum of \$31,616.48, together with interest from February 7, 1963, from Beaver in respect of the purchase price of 2,000 cases of Chinese walnuts which had become unmerchantable in the course of transit between Vancouver from whence they had been shipped by Bain and Toronto where Beaver had refused to accept delivery of the cargo.

There was also an appeal by Pacific Inland Express Limited (hereinafter referred to as “PIX”) the truckers responsible for the carriage of the cargo, against the finding of the Court of Appeal that Beaver was entitled to recover \$19,269.75 from that company in respect of the loss of value of the walnuts through damage in transit and also for storage charges.

This litigation arises out of a contract for purchase and delivery of the 2,000 cases of walnuts entered into by Beaver in Toronto through the Toronto office of Bain which was engaged in the business of wholesale commission merchants and brokers having its head office in Winnipeg and branch offices at both Toronto and Vancouver.

The original order was for 4,000 cases of these walnuts and it was passed on in this form by Bain (Toronto) to its Vancouver office by telephone on January 16, 1963, and by confirmatory letter of the same day, whereupon Bain’s Vancouver office appears to have at once prepared a contract note addressed to Beaver in the following terms:

VANCOUVER, B.C. January 16 1963

CANADA

Messrs. Beaver Specialty Company, Ltd.

Toronto, Ontario.

We have this day booked for you as per your order to—

Donald H. Bain Limited,

159 Bay St., Toronto, Ont. 4,000 cases CHINESE 1961 crop Light Dry Cracked walnut meats
PIECES, packed in veneer cases, parchment paper lined of 55 lbs. net shipping weight each @ per
lb. Can. \$.59

"Seller to supply original Chinese Quality Certificates"

Prices As above f.o.b. Toronto, Ont.

Terms NET CASH

Shipment 2,000 cases to be invoiced and transferred to buyer's account in warehouse January 31,
1963. Balance of 2,000 cases to be invoiced and transferred to buyer's account in warehouse
February 28, 1963.

Yours truly,

DONALD H. BAIN LTD.

Agents

This contract is made subject to terms printed on the reverse side of this form

The 2,000 cases first referred to in this note were not transferred to the buyer's (i.e. Beaver's)
account in the warehouse but by agreement between the parties were delivered to PIX for
shipment to Beaver in Toronto. The agreement between the parties in this regard is evidenced by
the further contract note of the same date which contains the following and was marked ex. 7 at
the trial:

Prices all charges paid Toronto in truckload quantities,

Terms Net Cash,

Shipment To be taken by Beaver Specialty Co., Toronto—2,000 cases by January 31/63—2,000 cases
by February 28/63.

and is further corroborated by the terms of a letter dated January 18, 1968, from Bain Toronto to
Bain Vancouver, which contains the following paragraph:

Our buyer, Beaver Speciality Company, Toronto, has asked that 2,000 cases of their contract be
shipped January 31st, 1963 to them, by Pacific Inland Express trucks. They do not want these
goods before that time, but want them shipped on the date they are to come out. Please invoice
them also, at the same time.

PIX undertook to transport these walnuts from Vancouver to Toronto under protective service at temperatures between 45° and 50°. These shipments arrived at the Federal Cold Storage in Toronto on February 5, 6 and 7, 1963, and there is no dispute, at least between Bain and Beaver that the walnuts arrived in Toronto in seriously damaged condition apparently occasioned by freezing.

The question at issue between Beaver and Bain is as to which company had title to the walnuts while they were in transit and the difference arising between the trial judge and the Court of Appeal is that the trial judge proceeded on the basis that the goods remained the property of Bain until delivery “f.o.b. Toronto” to Beaver, whereas the Court of Appeal interpreted the evidence as disclosing that the 2,000 cases were transferred to Beaver’s account when they were delivered to PIX for transportation. The question is a very narrow one and turns on the interpretation of the contract note, and upon a consideration of the provisions of The Sale of Goods Act. There appears to be no doubt that the contract was for sale by description rather than by sample, and the respondent accordingly invokes the provisions of s. 19, Rule 5 of The Sale of Goods Act, R.S.O. 1960, c. 358. This section reads:

19. Unless a different intention appears, the following are rules for ascertaining the intention of the parties as to the time at which the property in the goods is to pass to the buyer:

Rule 5.—(i) Where there is a contract for the sale of unascertained or future goods by description and goods of that description and in a deliverable state are unconditionally appropriated to the contract, either by the seller with the assent of the buyer, or by the buyer with the assent of the seller, the property in the goods thereupon passes to the buyer, and such assent may be expressed or implied and may be given either before or after the appropriation is made;

(ii) Where in pursuance of the contract the seller delivers the goods to the buyer or to a carrier or other bailee (whether named by the buyer or not) for the purpose of transmission to the buyer and does not reserve the right of disposal, he is deemed to have unconditionally appropriated the goods to the contract.

The appellant on the other hand invokes the provisions of s. 33 of the same Act which read as follows:

33. (1) Where goods are delivered to the buyer that he has not previously examined, he is deemed not to have accepted them unless and until he had had a reasonable opportunity of examining them for the purpose of ascertaining whether they are in conformity with the contract.
- (2) Unless otherwise agreed, when the seller tenders delivery of goods to the buyer, he is bound, on request, to afford the buyer a reasonable opportunity of examining the goods for the purpose of ascertaining whether they are in conformity with the contract.

The appellant contends, as the trial judge found, that the intention of the parties is made manifest by the contract note to which I have referred and by the documents which accompanied its execution and that that intention was that the goods were to be shipped “f.o.b. Toronto, Ont.” and that it was never intended that title should pass to Beaver until its acceptance of delivery in Toronto.

The respondent Bain contends, in conformity with the reasons for judgment of the Court of Appeal, that the words “f.o.b. Toronto, Ont.” as they occur in the contract note have reference entirely to the price of the goods and this is because, as I have indicated, they are found in one line of the contract which reads: “Prices as above f.o.b. Toronto, Ont.”

The absence of any punctuation after the word “above” in this line cannot, in my opinion, be treated as meaning that the words and letters “f.o.b. Toronto, Ont.” were referable only to the price. “Prices as above” is a clear reference to the fact that the prices had been designated in the earlier part of the contract note.

In the course of the reasons for judgment rendered orally by Mr. Justice Kelly on behalf of the Court of Appeal, he expressed the view that the contract

...contemplated that Bain should fulfil it by transferring, in the Vancouver warehouse, to Beaver’s order, successively two lots of 2,000 cases each and that upon each such transfer Bain would be entitled to the payment for the purchase price of such 2,000 cases; that the revised instructions substituted for the first transfer in the warehouse, the physical delivery of the 2,000 cases to the carrier; that when such delivery was made, the contract in respect of that 2,000 cases was fully performed by Bain and Bain was entitled to payment, the cases thereafter being at the risk of Beaver.

With the greatest respect for this view, it appears to me to ignore the circumstances which surrounded the preparation of the contract note. When Beaver gave its original instructions to Bain (Toronto) Mr. Carter of that firm took a handwritten note regarding the order which was preserved and became ex. 5 at trial. This memorandum reads as follows:

16 Beaver Spec. Co. Toronto

4,000 cs Chinese LDC walnuts

Pe’s 55#—59¢

Dev’d Toronto in truck loads.

2,000 by Jan 31/63 from Vancouver

2,000 by Feb. 28/63 from Vancouver

Invoiced by D.H.B. Ltd. Vancouver. At the hearing before us the abbreviations in this note were explained by appellant’s counsel and were not questioned on behalf of other counsel and are as follows:

In the first line "16" refers to January 16, 1963.

In the 2nd line L.D.C. means "Light Dry Cracked"

In the 3rd line Pe's indicates the price 55 lbs. at 59¢ per lb.

In the 4th line "Dev'd" means "delivered"

In the last line "D.H.B. Ltd." refers to "Donald H. Bain Limited."

When this exhibit was introduced by Mr. Carter it was described as being p. 142 in a blue order book kept in his office and he was then asked:

Q. I also show you a blue book. First of all, you might identify the blue book. What is it?

A. This is where we enter all orders that are taken by our sales staff or when the order's received it is always placed in that book...

Q. I see. Well now, I show you this book, page 142. We point to a particular transaction. Is that your transaction?

A. That is right.

Q. Is that in your handwriting?

A. That is right...

Q. Now, refreshing your memory by looking at your book, you say you made that. Did you make it at the time?

A. When that sale was completed I was happy to put that order in the book.

Q. All right. Now, tell me what the order was?

A. For 4,000 cases.

Q. Yes.

A. Of Chinese Light Dry Crack Walnut Meat Pieces. Now that is not all spelt out there but that is the terms for it short. That is understood by anybody.

...

Q. I see. And what was the terms of delivery? A. There were 2,000 cases to be taken by January 31st, 1963 for shipment from Vancouver and 2,000 cases to be taken by February 28th, 1963, from Vancouver.

Q. I see.

A. And they were to be invoiced by our Vancouver branch.

...

Q. Now, Mr. Carter, when you got that order what contact did you make with your Vancouver office?

A. You are referring to the one of January 16th?

Q. That is right.

A. I naturally would phone our Vancouver office to find whether these can be confirmed.

Q. Were they so confirmed?

A. Yes.

Q. Yes, and I show you letter of January 16th, '63—Carter to Vancouver. Is that your confirmation—Vancouver?

A. This is a letter written by me to our Vancouver office confirming this telephone conversation, yes.

Counsel then read the following letter which was entered as ex. 6:

Gentlemen:

Confirming our telephone conversation with you today, you have confirmed to Beaver Specialty Co., 18 Spadina Ave., Toronto, 4,000 cases Chinese Light Dry Crack Walnut Meat Pieces, each 55 pounds as per our contract note attached.

There is a good possibility we might be able to sell this party additional other varieties, and if so, same will be forwarded into you for your official confirmation.

The witness was then asked:

Q. Now, that letter, Exhibit 6, referred to a contract note and I show you a contract note and also refer you to Exhibit 5 which has a pencil note opposite the note of this order. What is that number?

A. That is our contract note as we issue, or our confirmation of the sale.

Q. And the number is what? A. 8764.

Q. And is that the same number appearing on Exhibit 5?

A. If this is Exhibit 5.

Q. Well, look at it. This is Exhibit 5.

A. Yes, that is right.

Q. All right, is that the document you issued from your office?

A. That is right.

Q. Does that set out the terms of the sale to Beaver?

A. Yes, through our Vancouver office.

It thus appears to me to have been established that when issuing the contract note to Beaver, Bain was carrying out the intention of the parties made manifest by the telephone call from Beaver to Bain (Toronto) and the pencil note made at the time. I am therefore of opinion that the entry “f.o.b. Toronto, Ont.” occurring on the contract note is to be read in conjunction with the pencilled memorandum of the order given by Beaver and accepted by Bain which provided for “delivery Toronto in truck loads”, which in my view means that Beaver was to take delivery in Toronto. This is confirmed by the letter of January 18th and by ex. 7, to both of which I have made reference.

In this regard, the case of *Winnipeg Fish Co. v. Whitman Fish Co.*[2] appears to me to be highly relevant. There a contract was made in Winnipeg between the agents of the shippers (Whitman Fish Co.) and the purchasers (Winnipeg Fish Co.) for the shipment of a carload of fish from Canso, N.S., where the shippers’ plant was located to Winnipeg. The sale was by sample and the written order as conveyed by the shippers’ agent in Winnipeg to his company in Canso contained the words “On condition you ship them the same quality haddies as sample”.

Under the terms of the contract the goods were to be shipped “f.o.b. Winnipeg” and in the course of the reasons for judgment rendered by Mr. Justice Davies and concurred in by Mr. Justice Duff, it was said at p. 460:

I agree that the holding of the Court of Appeal that the contract in this case must in the circumstances under which it was made be held to have “required delivery of the fish in Winnipeg and that the property in the fish did not pass until such delivery”. Such a determination does not necessarily follow from the use of the letters and words “f.o.b. Winnipeg” in the contract made. There is room for much contention as to their real effect and the language may be said to be ambiguous. But when we consider the circumstances surrounding the making of the contract, that the agent of the plaintiffs and defendants were both in Winnipeg, when they made it and that the fish were to be shipped from Canso N.S. thousands of miles from Winnipeg and delivered “f.o.b. Winnipeg”, that they were to be in accordance with a sample then and there produced and that the plaintiffs in suing upon the contract in expressly setting forth another claim that their goods were to be delivered in Winnipeg, I agree that the contention [sic] of the parties must fairly be determined to have been that the property in the fish should not pass until they were in Winnipeg ready for delivery to the defendants.

In the course of his reasons for judgment in the Court of Appeal in the present case, Mr. Justice Kelly found himself able to distinguish the *Winnipeg Fish Co.* case on the ground that in that case the plaintiffs included in their statement of claim a paragraph alleging that the fish were “to be delivered at Winnipeg”.

I appreciate that this was an added factor favouring the purchasers’ contention in that case, but in the present case the circumstances surrounding the making of the contract were that the agents of Beaver and Bain were both in Toronto when they made it; that the walnuts were to be shipped from Vancouver thousands of miles from Toronto and delivered “f.o.b. Toronto”; and I

find that the pencilled note taken by Mr. Carter of Bain when the Beaver order was given and specifying that the goods were to be “delivered Toronto in trucks loads” is sufficient to resolve any ambiguity to which the letters and words “f.o.b. Toronto” might give rise in favour of the primary meaning attributed to this phrase by leading authorities on the sale of goods.

In this regard I have reference to what is said in Mr. Williston’s work on *The Law Governing Sales of Goods*, rev. ed., 1948, s. 280(b), where it is said:

As it is a necessary implication in f.o.b. contracts that the buyer is put at all expense in regard to the goods after the time when they are delivered f.o.b., the presumption follows that the property passes to the buyer at that time and not before,...and the further presumption follows that the place where the goods are to be delivered f.o.b. is the place of delivery to the buyer.

(The italics are my own.) Further authority to the same effect is to be found in Vold on the Law of Sales, 2nd ed., s. 33, where it is said:

Under shipment “f.o.b. destination” the presumption is that the property interest was not meant to pass until the goods reached destination.

In the case of *Steel Co. of Canada Ltd. v. The Queen*[3], certain manufactured goods had been shipped by the appellant in Montreal and delivered by it to Canada Steamship Lines Ltd. for shipment to various companies beyond the head of the Lakes and the contract contained a printed heading: “f.o.b.” under which was typed “Hd. of Lakes”. The vendors, like Bain in this case, relied on the provisions of s. 20 of the Manitoba Sale of Goods Act and particularly Rule 5 thereof. (This section is the almost exact equivalent of s. 19, Rule 5 of the Ontario Sale of Goods Act hereinbefore referred to). In the course of his reasons for judgment which he delivered on behalf of himself and Mr. Justice Fauteux, Kerwin C.J. had occasion to say, at p. 165: I agree with the contention on behalf of the appellant that, while it might have been argued that the goods were unconditionally appropriated to the contracts by the marks, or tags, and by the delivery of them to the carrier, if “F.O.B. HD. OF LAKES” had not appeared in the invoices, the presence of these words brings the case within the opening part of s. 20 of The Manitoba Sales of Goods Act “Unless a different intention appears”. The authorities justify the statement in the 8th edition of Benjamin on Sale, p. 691:—

The meaning of these words (F.O.B.) is that the seller is to put the goods on board at his own expense on account of the person for whom they are shipped; delivery is made, and the goods are at the risk, of the buyer, from the time when they are so put on board.

This does not mean that in all F.O.B. cases the property in the goods contracted to be sold passes only when the goods are so put on board, but the circumstances in the present instance do not take it out of the general rule. The duty of the appellant to pay the freight to the Head of the Lakes is one that would usually accompany the obligation to put the goods Free on Board.

Having regard to all the above, it will be seen that I take the view that the circumstances surrounding and immediately preceding the issuance of the contract note are such as to support the contention of the appellant that this note evidenced the intention of the parties that the

walnuts were to be delivered to Beaver in Toronto and this being the case the provisions of s. 33(1) of The Sale of Goods Act to which I have already referred, apply and Beaver which had had no reasonable previous opportunity of examining the goods must be deemed not to have accepted them and was therefore fully justified in its refusal of the cargo.

Alternatively to its suit against Beaver, Bain sued PIX for damage arising from its carriage of the goods. Beaver counterclaimed against Bain for freight charges in the event that it should be held liable to PIX for such charges, and Beaver also claimed against PIX for damage to the goods in transit should it be found that the title to these goods had passed to it from Bain. PIX counterclaimed against both the other parties for its charges for transporting the goods and its additional expenses for storing and handling.

The learned trial judge made the following findings:

- (1) I find that these Chinese walnuts were delivered by Bain to PIX in such a condition that they met the description of the Chinese walnuts ordered by Beaver and they were entirely in accordance with the contract note between Bain and Beaver.
- (2) The evidence is and I accept this evidence that the 2,000 cases on arrival in Toronto at Federal Warehouse were considered to be distress cargo.
- (3) I find these walnuts as they were on arrival at Federal warehouse, Toronto, on February 5th, 6th and 7th, 1963, were not merchantable. They first had to be skilfully unfrozen and dried. This treatment would extend over a period of days and at best it would be an attempt to restore the nuts to their original condition. "Merchantable" has reference to the merchandise being such that a reasonable man would accept in the circumstances. I am of the opinion that no reasonable man in the position of Mr. Sherman would accept or pay for those truckloads of Chinese walnuts as they arrived at Federal warehouse, Toronto, on February 5th, 6th and 7th, 1963, because of the condition in which they arrived and to which reference has been made. These walnuts as to two shipments had to be first thawed out and this had to be skilfully done and in addition all these shipments had to be dried and this had to be carefully done. While this was being done, Beaver could not use the walnuts which it had purchased. There had to be work done on these walnuts before they could be used for any purpose. Beaver wasn't buying frozen walnuts or walnuts in wet or damp cases none of which could be used until thawed and dried and which when thawed and dried were then of less market value. Professor Woodroof who is doing research work on frozen foods for the American military authorities says that the freezing does not hurt the walnuts if they are thawed properly and that dampness does not matter if it is not too extensive and does not last too long. I do not doubt that his experimental work leads to this conclusion.
- (4) No buyer could be found willing to pay more than 30¢ a pound for these thawed and dried walnuts at the time they were sold. Bain quite properly sold them at 300 a pound.

- (5) PIX now says Bain could have sold these walnuts earlier at 40¢ a pound when Mr. Sherman offered to find a buyer at that price. Bain took that offer to PIX or its insurers when it was made and PIX was not interested in any such sale. That was the time for PIX to have said Bain should sell for 40¢ a pound and not now. Considering that PIX had caused all the damage I find that Bain acted reasonably throughout.

In conclusion the learned trial judge, having found that Bain must bear the loss as between it and Beaver, went on to say:

If it had not been for the failure of PIX to carry out its contract of carriage Bain would have received for these walnuts the contract price in full from Beaver. The damage that Bain has sustained is its loss by failure of the completion of the contract together with the storage charges it was required to pay Federal warehouse until the walnuts were finally sold at 30¢ a pound.

With all respect for the judgment of the Court of Appeal, I can find no reason for differing from the findings of fact to which I have just referred. Mr. Justice King not only had the advantage of being able to assess the evidence as it was given from the witness box, but he also rendered a careful and well-reasoned decision. As I have indicated, I agree with his conclusion that Bain's action should be dismissed with costs and that the counterclaim of PIX should be dismissed.

As I would dismiss the claim against Beaver, it is not necessary for me to consider the reasoning which led the Court of Appeal to conclude that that company would only have been entitled to recover \$19,269.75 from PIX even if judgment had been rendered in Bain's favour. Nor can I agree that PIX is entitled to recover its claim for freight. I accept the computation of damages as determined by the learned trial judge from which it will appear that the freight from Vancouver to Toronto and the proceeds of the sale of the walnuts at 30¢ per pound were both deducted from the contract price of 2,000 cases at 59¢ per pound in arriving at the damages recoverable against PIX. It thus appears that the cost of freight having already been deducted in the trial judge's award, it cannot be recovered a second time by PIX.

The argument was made on behalf of PIX on appeal to this Court to the effect that the finding made against it by the trial judge was in respect of "imaginary economic detriment" and as this had not been pleaded the finding could not be sustained without amendments to the pleadings which should not be given at this stage. I can find no merit in this submission as I understand the finding to be that the walnuts deteriorated and became unmerchantable while under the control and "protective service" of PIX acting as a common carrier.

In the result, I would allow Beaver's appeal, dismiss the appeal of PIX and restore the judgment of the learned trial judge whereby he dismissed Bain's claim against Beaver and directed that Bain should have judgment against PIX for \$40,196.90. Bain is entitled to interest on this amount from the date of the judgment at trial. It follows that PIX's appeal and cross-appeal are dismissed.

The appellant Beaver Specialty Limited will have its costs of the appeal against Donald H. Bain Limited in this Court and in the Court of Appeal, and is also entitled to its costs against Pacific Inland Express Limited in both Courts and on both appeals, and Donald H. Bain Limited will have its costs of this appeal against Pacific Inland Express. I would not disturb the disposition of costs of the action at trial made by the trial judge. Bain's appeal and cross-appeal to this Court are dismissed, but without costs.

Appeal of Beaver Specialty Limited allowed with costs; appeal of Pacific Inland Express Limited dismissed without costs.

Solicitors for the defendant, appellant: McCarthy & McCarthy, Toronto.

Solicitors for the defendant, respondent: Thomson, Rogers, Toronto.

Solicitor for the plaintiff, respondent: W.J. Smith, Toronto.

[1] [1970] 2 O.R. 555, 11 D.L.R. (3d) 432.

[2] (1909), 41 S.C.R. 453.

[3] [1955] S.C.R. 161.

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://decisions.scc-csc.ca/scc-csc/scc-csc/en/item/4253/index.do>

CASE PAGE <https://chat.esheria.ai/case-law/canada/beaver-specialty-ltd-v-donald-h-bain-ltd-1973>

Prepared on 27 October 2026 · Esheria