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NOTES ON LOSS OF PROFITS AS DAMAGES.

Editor, CANADIAN BAR REVIEW.

SIR:—I am much indebted to Dean Falconbridge for his comments on my article on the above-named subject. My note on the case of *Patrick v. British-Russo Grain Co.*,¹ referred to by him, had already appeared in the March number of the REVIEW.

I am very ready to admit that I did not dwell over long in my article on the heading of "Inferior Goods." I felt, and still feel that this properly ought not to be included more than incidentally in a discussion on loss of profits. That decision may be questioned, but I believe that the distinction can clearly be drawn—that I did not do so in anticipation was from a desire to refrain from trespass; to discuss the heading at all would demand considerable space.

The point as to the reality of the distinction between *Wertheim v. Chicoutimi Pulp*² and *Williams v. Agius*³ is well taken, but the most direct answer is that the former is a Privy Council decision, and so of great weight; added to that I feel that it would bear logical dissection without collapse. The case was distinguished and the decision questioned in an obiter in *Slater v. Hoyle*,⁴ but one of the criticisms of that case is that obiter seems to prevail. For instance, it might conceivably be argued that the whole discussion on the "sub-contracts" was irrelevant since on the facts there were really no sub-contracts.

Dean Falconbridge's suggestion that the analogous question as to how far transactions between the buyer and third parties may or may not be admitted is a valuable one, and in view of many utterances thereon, the subject is as difficult as it is inviting. However, that may come later, from my pen or that of some one more capable than I.

Yours very truly,

R. GUSHUE.

St. John's, Newfoundland.

¹ [1927] 2 K.B. 535.

² [1911] A.C. 301.

³ [1914] A.C. 510.

⁴ [1920] 2 K.B. 11.