

ings, unearned pension cannot be reached either by that procedure, or by the appointment of a receiver.

Semble, that the plaintiff was a "creditor" within the meaning of s. 12, of the Police Benefit Fund Act, and on that ground also, her application must fail.

O'Neal, for plaintiff. *Godfrey*, for defendant.

Province of British Columbia.

SUPREME COURT.

Full Court] LE ROI MINING CO. v. NORTHPORT SMELTING CO. [June 22, 1903.

Smelting contract—Sampling ores—Automatic or hand sampling—Mine owner's representative at smelter—Authority of—Ores improperly sampled—Method of estimating values of.

Appeal from judgment of HUNTER, C.J., awarding the plaintiffs judgment for \$3974.70 and costs.

A contract between mine owners and smelter owners provided *inter alia* that the ores supplied by the former to the latter should be sampled within one week after shipment. The evidence shewed that "automatic" or machine sampling had displaced the old method of "grab" or "shovel" sampling and had been in vogue for about twenty years:—

Held, per HUNTER, C.J., and WALKEM, J., that the contract was entered into on the footing that the sampling was to be done automatically.

Per DRAKE and IRVING, JJ.: The contract permitted any mode of sampling so long as it was done properly and the true value of the ore was arrived at.

A mine owner's representative at a smelter for the purpose of watching the weighing and sampling of ores so that the mine owner may be satisfied as to the correctness of the weight and sampling, has no authority to consent to a method of sampling not allowed by the contract.

Where the smelter returns of ore of average character sampled either negligently or in a manner not contemplated by contract, shew a value below the average, the probable value of the ore will be estimated by the Court by taking the average value of a certain number of lots immediately before and after the lots in dispute.

Amount of judgment reduced to \$2,550.58.

C.R. Hamilton, for appellant. *J.A. Macdonald*, for respondent.