"first by the value of what is taken; second by the cost of "mining, extraction, hoisting to the surface, or delivering "it at the pit's mouth.

"If, on the other hand, the defendant takes out the ore, not "as the result of an honest mistake, or an honest intention "but under circumstances that show that he has knowledge "of the situation, he is entitled to no deduction, and he may "not reduce the recovery by proving the cost of mining."

Coming then to the second question, the amount of damages. Now at the outset it is to be remarked that a trespasser finds himself placed in an unenviable position, and has to assume several heavy burdens.

First—"He cannot charge the person whose property he "has invaded with the expenses of the exploration incidental "and necessary to finding it (*i.e.*, ore), or reaching the vein "which he spoilates by his trespass."—*St. Clair v. Cash Co. supra.* p. 529.

Second—He must "show what he did and the value of what "he took."—*Ib.* 530.

Third—He must "respond in damages to the highest "limit of recovery unless able to satisfy the jury of the hon-"esty of (his) purpose and the good faith with which (he) "did the work."—*Ib.* 532.

Fourth—He must, where he has mixed the ore taken by trespass with his own so that the plaintiff is unable to distinguish it, be prepared to do so clearly to the satisfaction of the jury, otherwise the plaintiff may recover the value of all the ore shown to have been taken out, and the plaintiff's recovery is limited only by his own evidence on the subject; nor can the defendant complain if the jury fix a large estimate upon the damages.—*Ib.* 532 Lindley 1605.

"And although the evidence of the defendant may have been "entirely uncontradicted, it by no means follows that the jury "would have allowed the totality of the expenses as exhibited "by the proof offered."—*Ib.* 528.

These consequences are really but the natural result of the application to mining operations of well known principles long ago enunciated in *Armory v. Delamirie* (1722) 1 Strange 504 wherein it is laid down:

"When the nature of a wrongful act is such that it not "only inflicts an injury, but takes away the means of provid-"ing the nature and extent of a loss, the law will aid a "recovery against the wrongdoer and supply the deficiency "of proof caused by his misconduct by making every reason-"able intendment against him in favour of the party injured. "A man who wilfully places the property of others in a sit-"uation where it cannot be recovered, or its true amount or "value ascertained, by mixing it with his own, or in any other "manner, will consequently be compelled to bear all the incon-"veniences of the uncertainty or confusion which he has pro-"duced, even to the extent of surrendering the whole, if the "parts cannot be discriminated, or responding in damages for "the highest value at which the property can reasonably be "estimated."

Applying the foregoing to the case at bar, I find that the defendant has to a greater or less extent mixed its own and the plaintiff's ores, or at least has failed to satisfactorily identify and distinguish between the various shipments, which amounts to the same thing. There is no definite information of the original shape or extent of the confiscated ore body, so the plaintiff has been forced to resort to scientific evidence, and as best it may on the existing meagre evidence of former extent, to reconstruct it, with the assistance of an experienced mining engineer: but in answer to which the defendant submits a counter reconstruction showing a much smaller ore body based on its view of the facts so far as they have been proved.

In such circumstances, and because of the defendant's wrong-doing and failure to furnish precise proof of what was done the whole question of extent becomes almost entirely a matter of inference and estimate, and I see no reason, on the facts which I feel justified in giving effect to, why the contention of the plaintiff as to the amount and value should not be accepted, as calculated by the witness Fowler; *i. e.*, eighty-four and one-tenth tons. It would appear to be a safe rule to adopt in such circumstances that where there is no reason to materially discredit a reconstruction made, as here, by a disinterested mining engineer of high standing having special knowledge of the mineral formations of the locality in question, such a reconstruction may be assumed to be substantially correct.

As to determining the exact value of the ore taken that may here be safely arrived at from the smelter returns of the three cars (Nos. 466-8) admittedly taken from the plaintiff's winze, because if the missing ore body were not part of that which was tapped by the winze it was in all probability the nearest lenticular mass of similar nature and may properly be taken for the basis of an estimate in accordance with the rule above cited.

Applying therefore the severer rule to this case, the cost of mining, estimated at $3.25 per ton, will be disallowed, but the following deductions should be made from the smelter returns:—

Sacking ore	per ton	$ .30
Raising ore from working face to surface	"	.25
From surface to railway, including tramming	"	1.50
Freight and smelter treatment	"	15.00
Total per ton		$17.05

In regard to the claim to increase the value by adding the amount of the Dominion Government lead bonus it is sufficient to say that it was not granted till long after the trespass complained of, and the value, it has been seen, must be taken to be as it was at the time of the trespass.

The matter of calculating the exact value of the ore on the above basis, by taking the prices of silver and lead at the time of the trespass, is referred to the Registrar in case the parties cannot agree on it; and judgment will be entered according to the result of the calculation. In case any difficulty arises before the Registrar the matter may be referred back to the Court.

So far as regards judgment being entered against the defendant McGuigan that may be spoken to, for it was apparently overlooked by counsl on the argument.

Delivered at Nelson, B. C., June 30, 1904.

Signed, A. M., J.

CENTRE STAR *vs.* ROSSLAND MINERS UNION.

Judgment in the case of the Centre Star vs. the Rossland Miners Union, et al., has been handed down by Mr. Justice Duff. The case was heard in Victoria recently before a special jury, and occupied several days, resulting in a verdict for the plaintiffs, damages being set down at $12,500. A great deal of interest centered in the case as it practically involved the responsibility of the union for the actions of its officers. The judgment is as follows:

"I think there was evidence on which the jury could properly find for the plaintiff on all the questions submitted to them. The defendants' application for a nonsuit is therefore dismissed.

"The plaintiff company is, on the findings, entitled to judgment against the Western Federation of Miners, Rossland Branch, both under that name and under the name by which the organization was known, viz., The Rossland Miners' Union, No. 38, Western Federation of Miners, for $12,500, the amount of damages found by the jury; and judgment for this amount should also be entered against all the principal defendants except those joined for conformity only. There will be an injunction against all the defendants as claimed by the plaintiff company at the trial."

LYMAN P. DUFF.

A temporary injunction was afterwards granted restraining the defendants from transferring any of their property, and Mr. C. V. Jenkins was appointed receiver to take charge of all revenue accruing to defendants. An appeal is to be taken on behalf of the Union against the judgment, as above stated.