

though he believed that it might be depended on, as he had always found Fred. Smith to be trustworthy.

I think this particular issue presented on the record should be found in favour of defendant, and that the further evidence about safety in buying is not sufficient to satisfy the onus resting on the plaintiffs, even if the words used amount to more than an expression of opinion. It is not proved, I think, that defendant acted fraudulently in what he stated to plaintiffs.

Apart from this issue, the result of which is fatal to the success of plaintiffs, there are many circumstances of a most suspicious character in the transactions as developed in the evidence. . . . The refusal of Archibald Smith to produce the books of the creamery business for 1904 and 1905 has not been justified by any credible evidence. It is not, perhaps, very material whether defendant was owner or Archibald Smith, but I think plaintiffs understood they were dealing with Winger as the owner or an owner chiefly interested. I doubt whether the statement furnished by Fred. Smith is even approximately accurate as to the output of 1905, but, on the other hand, the evidence is halting as to the receipts from the Canadian Pacific Railway Company of butter shipped for the year 1905, being inclusive of all the output for that year. . . . The truth probably is that there was a considerable shrinkage in the operations of 1905, which was not disclosed by the Smiths, but I am not sure that it was known to defendant Winger before the close of the sale. I may suspect, but in a case of this kind the proof should be more satisfactory than I find it here.

The main issue tendered has to be decided in favour of defendant, and as to so much of the litigation he should have his costs. But as to the rest of the contention, I do not find that he or his associates, the Smiths, have so cleared themselves of suspicion or have acted so commendably as to merit an award of costs in their favour. To save the expense and delay of apportionment, I now direct that the action shall be dismissed, and that one-half the costs of litigation shall be paid by plaintiffs to defendant; otherwise no costs to or against either party.