

<p>J. COUGHLAN &amp; SON LIMITED.....SUPPLIANT;</p> <p style="text-align: center;">AND</p> <p>HIS MAJESTY THE KING.....RESPONDENT.</p> <p><i>Crown—Ship-building contract—Arbitration—Boiler water not included in deadweight—Waiver of arbitration clauses by pleading—“Base steel” “Base Price”—Custom of steel trade—Custom of ship-building yards.</i></p>	<p>1935</p> <p>Sep. 24-28, 30.</p> <p>Oct. 1-5,</p> <p>7-12, 14-16.</p> <p>1936</p> <p>Dec. 28.</p>
--	---

By two contracts in writing Suppliant agreed with Respondent, represented by the Minister of Marine and Fisheries, to construct six steel cargo steamers; the first contract covered four ships, and the second contract, two ships.

Both contracts provided that any dispute or difference arising between the parties thereto, during the term of the agreements or within six months after the termination thereof, in relation to the various matters therein set forth, should be referred to three arbitrators to be chosen as therein provided and whose decision should be final and binding. Suppliant claimed that it required certain disputes be sub-

1936  
 COUGHLAN  
 & SON  
 LTD.  
 v.  
 THE KING.  
 Maclean J.

mitted to arbitration but that the Respondent refused to do so. Respondent denied that such request was made or refused, or that any dispute was referred to or settled by arbitration, and contended that the arbitration clause in such contracts was a bar to the various claims set forth in the petition.

Suppliant claimed that in ascertaining the "deadweight" of the ships an allowance should be made for the weight of water in the boilers of the ships.

A term of the second contract reads as follows:

It is hereby mutually agreed upon between the Minister and the contractors that the contractors shall purchase the steel plates entering into the construction of the hulls of the said vessels from the Minister at a base price f.o.b. Mills Sydney that shall be equal to the base price f.o.b. Pittsburgh, U.S.A., of plates manufactured in the United States of similar specifications at the time the specifications are deposited with the Minister, the said price not to be less than \$2.75 per 100 pounds base f.o.b. Mills Sydney.

Suppliant claimed that it had been overcharged for steel supplied for the ships covered by the second contract and also that an excess of steel had been delivered from the United States Mills in connection with the first contract and claimed payment therefor from the Minister.

*Held:* That since Respondent had granted Suppliant a fiat and also had pleaded a defence, the arbitration claims had been waived and another forum substituted.

2. That an objection to the right to bring an action should be taken by interlocutory motion, and if that course is not followed, the Court should not entertain at trial an application to dismiss the action.
3. That boiler water was not "fresh water" referred to in the first contract, and that it was not the custom or usage in Canada to make an allowance for boiler water in computing the deadweight of ships.
4. That "base" in the steel trade refers to steel of certain standard dimensions and shapes, and "base price" means the price for steel within certain standards of size and shape; in the contract entered into therefore the term "base price" means the price of "base" steel products, those ship plates of standard shapes and sizes, and steel other than that of standard dimensions and shapes is liable to an extra charge over "base" steel.
5. That it is a usage of ship-building yards to order slightly more than the precise amount of steel that would enter into the construction of a ship, in order to provide against the contingency of injury to, or destruction of, a plate or plates, and that on a consideration of the evidence it was not shown that the amount of steel delivered to Suppliant was unreasonably excessive.

PETITION OF RIGHT by Suppliant herein to recover from His Majesty the King certain sums of money alleged due it as a result of claims arising from the construction of six steel cargo steamers for Respondent. The case is reported on four points only.

The action was tried before the Honourable Mr. Justice Maclean, President of the Court, at Vancouver, B.C.

*W. Martin Griffin, K.C.* and *A. C. Desbrisay* for Suppliant.

*J. A. Clark, K.C.* and *E. Miall, K.C.* for Respondent.

The facts and questions of law raised are stated in the reasons for judgment.

1936  
 COUGHLAN  
 & SON  
 LTD.  
 v.  
 THE KING.  
 Maclean J.

The PRESIDENT, now (December 28, 1936) delivered the following judgment:

The suppliant in this petition of right is J. Coughlan & Son Ltd., of Vancouver, B.C. The matters in controversy derive from two contracts entered into between His Majesty the King, represented by the Minister of Marine and Fisheries, hereinafter called the "Minister," and J. Coughlan & Sons, and J. Coughlan & Son Ltd., respectively. By several assignments the first contract became vested in the suppliant, J. Coughlan & Son Ltd. It will be convenient hereafter to refer to the suppliant as "Coughlan."

The first contract was entered into on November 22, 1918, and provided for the construction of four steel cargo steamers, the designated yard numbers being 11, 12, 13 and 14. The second contract was entered into on April 7, 1920, and provided for the construction of two steel cargo steamers, the designated yard numbers being 20 and 21. It was contemplated that each of the first four steamers to be constructed under the first contract was to have a total deadweight capacity of 8,100 long tons, and they were to be classed 100 A 1 at Lloyds and to be built under special survey and Government inspection, and to the British Board of Trade and Canadian Steamship Inspection Rules for the survey and inspection of cargo steamers; the contract price to be paid Coughlan was \$198 per ton deadweight, amounting to \$1,603,800 for each steamer. It was contemplated that each of the two steamers to be constructed under the second contract would have a total deadweight capacity of 8,350 long tons, and they were to be classed B. S. British Corporation, and to be built under the survey and inspection rules prescribed in the first contract; the price to be paid Coughlan was \$167.50 per long ton deadweight, amounting to \$1,398,525 for each steamer. The contract price for the six steamers would therefore exceed nine million dollars. The contracts provided that

1936  
 COUGHLAN  
 & SON  
 LTD.  
 v.  
 THE KING.  
 Maclean J.

if the total deadweight capacity of each steamer, as ultimately ascertained, varied above or below the deadweight capacity contemplated, the total price to be paid for each would be modified accordingly.

The hearing of this petition occupied many days, and the evidence is very voluminous. In addition, a vast amount of evidence was taken on discovery, much of which, I think, was hardly permissible on discovery. However, the discovery evidence had, in the end, the apparent effect of reducing Coughlan's total claim as originally set forth in its petition, from about \$750,000 to somewhere in the vicinity of \$250,000. It would not be possible to review fully the evidence pertaining to the individual claims made by Coughlan without extending this judgment to an intolerable length. Coughlan's claims conveniently fall under several distinct heads, as set forth in its petition as amended, and that is true also of the set-offs and counterclaims pleaded on behalf of the Minister. I propose discussing the several amounts claimed by Coughlan, and the several set-offs and items of counterclaim claimed on behalf of the Minister, without regard to the order in which they are pleaded or were introduced in evidence, or in the order of their importance, and consequently no useful purpose would be served by enumerating them at this stage. Before proceeding to a discussion of the several claims of Coughlan, and that of the Minister, a few observations of an introductory nature might usefully be made.

In 1917, the Minister embarked upon the policy of constructing steel cargo ships, which eventually turned out to be sixty-four in number, in order to meet Canadian shipping requirements for which there was then believed to be a great shortage, owing I assume, to the loss of British tonnage during the war. About the same time the Government of the United States also embarked upon an extensive ship-building program, with the consequence that there was an abnormal demand for ship-building materials in that country, and ship-builders in Canada who had entered into contracts to construct ships for the Minister found it practically impossible to obtain such materials, ship plates particularly, from the United States, where normally they would obtain the same. The Minister was able, however, to arrange with the United States Government that a

specified tonnage of ship-building material, some 80,000 tons I believe, would be made available to the Minister, which in turn would be made available to the contractors engaged in building ships for the Minister. At that time steel mills in the United States were under Government control, and while later the United States Government abandoned such control yet such steel mills were permitted to supply, under licence from the Government as I understand it, any steel required in the carrying out of the Minister's ship-building program in Canada. In the first contract the Minister undertook to supply Coughlan with all plates, sections and boiler plates, necessary for the construction of the four ships therein mentioned, at a base mill price of three and one-quarter ( $3\frac{1}{4}$  c.) cents per pound, or \$3.25 per hundred pounds, it being agreed that in the event of the said price of steel being increased or decreased the price of the ships as defined in the contract would be modified accordingly. The material required for the building of these four ships would therefore come from United States mills to the yards of Coughlan at Vancouver, on the requisition of the Minister. Later, the Minister induced the Dominion Steel Corporation, of Sydney, N.S., to erect a plate mill, the Minister himself contracting to purchase a minimum tonnage of ship plates, at a price of \$3.75 per hundred pounds. That price it will be observed was slightly in excess of the price at which Coughlan was to be supplied steel by the Minister under the first contract. When the second contract was entered into the Minister was in a position to supply Coughlan with ship plates from the Sydney mill, upon the terms as to price stipulated in that contract.

There is but one point in dispute in connection with the ship plates supplied Coughlan from the Sydney mill and that relates to the price to be paid therefor by Coughlan to the Minister. It is claimed by Coughlan that an excess of steel was delivered it by United States mills in connection with the first contract, and for this alleged excess delivery of steel payment is claimed from the Minister.

There was frequent reference throughout this case to terms peculiar to ship construction contracts, and particularly to certain measurements of ships and the method of ascertaining the same, and it may be convenient to define

1936  
 COUGHLAN  
 & SON  
 LTD.  
 v.  
 THE KING.  
 Maclean J.

1936  
 COUGHLAN  
 & SON  
 LTD.  
 v.  
 THE KING.  
 Maclean J.

briefly some of such terms. The "lightweight" or "light displacement" of a ship is the weight of the hull and machinery all ready for sea, with boilers at working level, but without stores, fresh or salt water, fuel or cargo, on board. "Deadweight" means the quantity of cargo, expressed in tons, a ship will take on board without sinking below her proper load line, and usually is expressed in the specification to comprise cargo, fuel, fresh and salt water, reserve water, provisions and stores, and officers' and crews' effects, and is the difference between the light displacement of a ship when ready for sea with boiler water at working level, and the same ship when ready for sea with cargo and the other necessary supplies and equipment on board. The "load displacement" of a ship is made up of the ship's "lightweight," plus the "deadweight" as defined in the specification; in other words it means the total weight of the equipped ship ready for sea together with her cargo. The "moulded depth" of a ship is the measurement taken amidships from the base line, or top of the keel, to the line of the top of the upper deck beams, at the side. "Freeboard" is the measurement from the top of the deck line to the top of the load line mark. Frequent reference was also made to taking the "condition" of a particular ship and this, I might add, is for the purpose of ascertaining the "lightweight" of that ship.

A point raised by both parties, and which is of general application, might conveniently be disposed of at this stage. Both contracts provided that, in the event of any dispute or difference arising between the parties thereto, during the agreement or within six months thereof, in relation to the various matters therein set forth, every such dispute, as the same arose, should be referred to three arbitrators to be chosen as therein provided and whose decision should be final and binding. Coughlan, in its petition, alleges that disputes did arise between it and the Minister and that it required that the said disputes be submitted to arbitration but that the Minister refused to submit or permit the same to be submitted to arbitration. In the statement of defence it is denied that the Minister refused to submit or permit such disputes to be submitted to arbitration, or that Coughlan requested submission of such disputes to arbitration within the prescribed period,

or that any dispute or difference was referred to or settled by arbitration, and it is pleaded that the Minister would object that such a reference within the prescribed period was a condition precedent to any payment or allowance.

Mr. Clarke contended that the arbitration clause in each contract was a bar to the various claims set forth in the petition, on the grounds set forth in the statement of defence. I think that view is an erroneous one in the situation here. If an action is brought by a plaintiff, one of the parties to a contract, and a clause in the contract provides for the settlement of disputes by arbitration, and the defendant, the other party to the contract, relies upon the form mentioned in the arbitration clause, he should move for a stay of proceedings, before delivering any pleading. The principles to be derived from the authorities are that an objection to a right to sue as is here taken, should be taken not at the trial but by introductory motion; and that if such procedure is not adopted the court need not, and ordinarily should not, entertain such an objection at the trial: *Bristol Corporation v. John Aird & Co.* (1); *Metropolitan Tunnel and Public Works Ltd. v. London Electric Railway Co.* (2); and *John Shaw & Sons Ltd. v. Shaw* (3). That procedure could not well have been adopted in this case because the Crown, the Minister, had granted a fiat and, I think, thereby submitted himself to another forum. Not only was a fiat granted, but the Crown has pleaded a defence. Logically, this seems to me to constitute a waiver of the arbitration clauses and the substitution of another forum. When "Let right be done" is affixed to the petition of right, that means, I think, that the matters in issue are to be tried out regardless of the arbitration clause in the contracts and that the same no longer affords a ground of defence in this proceeding. It is, I think, however, possible that inferences may properly be drawn from the fact that the arbitration clauses were not resorted to by either party within the prescribed period. Whatever be the facts, it is my opinion that the failure to require or to submit to arbitration, any of the disputes between the parties, is no longer of importance in this proceeding.

(1) (1913) A.C. 241.

(2) (1926) Ch. D. 371.

(3) (1935) 2 K.B.D. 118.

1936  
 COUGHLAN  
 & SON  
 LTD.  
 v.  
 THE KING.  
 Maclean J.

The first claim I shall discuss raises the issue as to what comprises "deadweight" under the two contracts in question, and the precise question is whether an allowance for deadweight should be made to Coughlan on account of the weight of water in the boilers of the ships. As I have already explained, a ship's "deadweight" capacity means the quantity of cargo, expressed in tons, she will take on board without sinking below her proper load-line. The provision in the specification of the first contract in respect of deadweight appears under the caption "Draft and Deadweight," and is as follows:

The mean draft of the vessel with complete deadweight on board comprising as follows:—

Coal,  
 Fresh Water,  
 Cargo,  
 Provisions and Stores,

Or, about 8,100 tons is not to exceed 25 feet 1 inch.

The corresponding provision in the specification of the second contract is slightly different and is as follows:

The mean draft of the vessel with about 8,350 tons deadweight to be about 25 feet 3 inches Lloyd's Summer Free Board Mark in Salt Water. The deadweight comprises:—

Cargo,  
 Fresh and Salt Water,  
 Coal,  
 Spare Gear,  
 Crew and Effects,  
 Stores and Provisions.

From this it will be seen that in all cases "fresh water" was to be allowed as deadweight, and Coughlan was to be paid for the same at the rate stipulated in the contracts, and the point for decision is whether the water in the boilers is to be treated as "fresh water," and therefore as deadweight.

It was contended on behalf of Coughlan that the water carried in the boilers should, by virtue of the terms of the contracts, be held to fall within the definition of "fresh water," and that the weight of such boiler water to steaming level, should be allowed as deadweight in the case of each ship, and that Coughlan should be paid for that deadweight at the rate stipulated in the respective contracts. The weight of water carried in the boilers in each of the six ships was calculated to be 81 tons. If this claim is a valid one Coughlan would be entitled to a substantial sum thereunder.



It seems to me that the contention that "fresh water" includes boiler water is untenable. The evidence of several very competent men of wide experience, naval architects, ship-builders, representatives of Lloyds, called on behalf of the Minister, was all to the effect that in their experience it was the universal custom or usage not to compute boiler water as deadweight. I was referred to several text books on Naval Architecture and they all support the view that boiler water is not to be treated as deadweight. My recollection is that not one witness was called who had ever heard of boiler water being allowed as deadweight in Canada, or elsewhere. It might be contended that the contracts in question having been entered into and executed in Canada we can only look to custom or usage in Canada in construing the specifications relevant to this point. If that view be thought the proper one, then upon the evidence, I must hold that it was not the custom or usage in Canada to allow boiler water as deadweight. The Minister in carrying out his ship-building program had constructed, in Canada, by various contractors, altogether sixty-four ships, and Coughlan was the only contractor who claimed that boiler water should be allowed as deadweight. The designated yard numbers of the ships constructed by Coughlan for the Minister, under the two contracts in question, would indicate that at least ships numbered from 1 to 10 inclusive, and 15 to 19 inclusive, had been constructed for others in the yards of Coughlan, and possibly further ships were constructed after the Minister's ship no. 21. If in such cases boiler water had been allowed as deadweight we no doubt would have heard of that custom or usage from Coughlan. As the ships 11 to 14 were constructed Coughlan rendered its accounts to the Minister free of any suggestion or claim that boiler water was to be calculated as deadweight, and it was not till a dispute arose over the light displacement of ship no. 20, that such a claim was for the first time advanced. The acts of parties to a contract afford some basis of interpreting the same. Mr. Leitch, Vice-President and General Manager of Collingwood Shipyards Ltd., of Collingwood, Ontario, which company had constructed nine ships for the Minister, gave what seems to me a very sound and practical reason why boiler water is calculated as part of the lightweight

1936  
COUGHLAN  
& SON  
LTD.  
v.  
THE KING.  
Maclean J.

1936  
 COUGHLAN  
 & SON  
 LTD.  
 v.  
 THE KING.  
 Maclean J.

of a ship, and not as deadweight. He stated that boiler water "is one of the first requisites of the ship. An owner cannot take it out and carry cargo in its stead. It is necessary to the operation of the vessel." That reason alone would seem to me conclusive of the controversy.

Paragraph 51 of the specification relating to the first contract, under the head of "Fresh Water Tanks," required two fresh water tanks, with a capacity of 2,500 gallons each, and this, I think, is the "fresh water" that was to be allowed as deadweight under the contract, and Coughlan claimed and was allowed 22 tons as deadweight for such fresh water in the case of each of the first four ships. In the case of ships 20 and 21, the specification under the head of "Fresh Water and Sanitary Tank" states that about 5,500 gallons of fresh water was to be carried in a tank in the double bottom. This fresh water was also allowed and paid for as deadweight. I have no doubt that it was this "fresh water" that was to be allowed as deadweight, and not the boiler water.

Boiler water is not, I think, fresh water in the practical sense, and is not water intended for what is usually called "ship's use." In my opinion, a true construction of the specifications, as well as custom and usage, excludes the calculation of boiler water as deadweight; boiler water was a part of the equipped weight of the ships in question, which were to be delivered at Vancouver ready for ocean service. It would hardly seem necessary to continue further the discussion in respect of this claim which, I think, is entirely without foundation or merit. With such a finding made in respect of boiler water, it was agreed by counsel that this would dispose also of the claims for an allowance of 82.75 and 90 tons as deadweight in connection with ships 20 and 21 respectively, as set forth in the petition.

\* \* \* \* \*

The next claim to be considered relates to the price to be charged Coughlan for the hull plates supplied it by the Minister, for ships 20 and 21, from the Sydney Mills. Coughlan, as will later appear, was ultimately charged \$3.50 per hundred pounds, and, in addition, the premium on New York funds prevailing at the time. The contention advanced on behalf of Coughlan was that the Sydney price should not exceed \$2.75 per hundred pounds, the

minimum price mentioned in the contract, which, it is claimed, was the "base price f.o.b. Pittsburgh, U.S.A." for ship plates, at the material date. This claim is substantial in amount and presents a point difficult of determination, more so perhaps than any other item of the claims set forth in the petition. At the conclusion of the trial I had formed the opinion that the price charged Coughlan was a proper one; since then I have given this claim a most anxious consideration and in the end I find myself unable to depart from that view.

It will later be seen that Coughlan obligated itself to purchase from the Minister the steel plates required for the construction of the hulls of ships 20 and 21, at a price "equal to the base price f.o.b. Pittsburgh, U.S.A., of plates manufactured in the United States of similar specifications at the time the specifications are deposited with the Minister," but in any event that price was "not to be less than \$2.75 per hundred pounds base f.o.b. Mills," and by "Mills" I assume it was the Sydney Mills that was meant. There is some dispute as to the exact date when Coughlan's specifications were deposited with the Minister but it transpires that this is not of material importance; it may be assumed that the specifications were deposited with the Minister in July, 1920. As earlier stated, the Minister induced the Dominion Steel Corporation to construct a plate mill at Sydney, N.S., and the Minister agreed to purchase from that corporation a certain tonnage of steel plates over a certain period, at the price of \$3.75 per hundred pounds, but it would seem clear in view of the terms of the contract here that this price was not to control the price to be charged Coughlan, except as to the minimum price.

It was Mr. Clark's submission that "base price," under the contract, was the going market price quoted at Pittsburgh, which Coughlan would have had to pay United States mills, in July, 1920, for ship plates deliverable at such times and in such quantities as would enable it to construct and deliver the two ships in question within the contract period; and that the word "base" in the steel trade relates to recognized standards of dimensions, shapes and qualities, of steel products, and not to price. Mr. Griffin relied upon a strict interpretation of the contract

1936  
 COUGHLAN  
 & SON  
 LTD.  
 v.  
 THE KING.  
 Maclean J.

1936  
 COUGHLAN  
 & SON  
 LTD.  
 v.  
 THE KING.  
 Maclean J.

and he contended that the Pittsburgh "base price" was the price quoted to the trade as "base price," by Pittsburgh mills, for standard steel plates, ship plates, in this case, to be manufactured conformable to order and deliverable within the time or times and in the order and quantities normally usual in the practice of steel mills; and that such quoted "base price" had at the material time no reference to any price quoted for guaranteed deliveries in advance of normal deliveries, that is, deliveries to be made at the convenience of any producing mill.

I shall attempt now to state, at some length, I fear, the material facts relative to this claim. Paragraph 11 of the contract is the one referable to this claim and it is as follows:

It is hereby mutually agreed upon between the Minister and the Contractors that the Contractors shall purchase the steel plates entering into the construction of the hulls of the said vessels from the Minister at a base price f.o.b. Mills Sydney that shall be equal to the base price f.o.b. Pittsburgh, U.S.A., of plates manufactured in the United States of similar specifications at the time the specifications are deposited with the Minister the said price not to be less than \$2.75 per 100 pounds base f.o.b. Mills Sydney.

As the ship plates went forward from Sydney, N.S., to Coughlan, at Vancouver, it was billed for the same at the minimum base price mentioned in the contract. In December, 1920, Mr. Tibbits, Acting Assistant Deputy Minister, at that time in charge of this branch of the Minister's ship-building program, directed a letter to Coughlan on the subject of the price of Sydney steel plates, and also to Collingwood Shipbuilding Co. Ltd., Nova Scotia Steel & Coal Co. Ltd., Port Arthur Shipbuilding & Repairing Co. Ltd., Davie Shipbuilding & Repairing Co. Ltd., Tidewater Shipbuilders Ltd., and Wallace Shipbuilding & Dry Dock Co. Ltd., all of which concerns were then building ships for the Minister. That letter had better be quoted in full, because it explains why the Minister's contractors were billed originally for Sydney steel plates at the rate of \$2.75 per hundred pounds, and later at \$3.25 per hundred pounds. That letter is as follows:

We have been billing you as steel shipments have come along from the Sydney mills, for the last ships contracted for by you, at the minimum base price mentioned in that clause of your contract for the construction of these ships which specifies that steel plates required for same were to be ordered by you from this Department. This was to obviate delay while we were ascertaining, by enquiries from producers in the

United States, the actual market value of this plate at the time your specifications were placed with us, based on the Pittsburgh base price plus the current premium demanded for equivalent delivery. We have now ascertained this, and have fixed the ultimate price of \$3.25 per hundred pounds; this is made up of the Pittsburgh base of \$2.75, plus a premium based on the price obtained by United States mills for actual sales made with such deliveries as you have obtained, plus the premium on New York exchange. We have made sales of this plate to general commercial consumers, and for shipment to Europe, at a much higher price than that now fixed for shipbuilding, but the Department has felt that it was best not to take advantage of the conditions of the market, by demanding the full premium from shipbuilders that has been demanded by United States mills during the period deliveries were being made to you, and, as a consequence, has fixed the price of \$3.25 as a fair average under the circumstances—with which on consideration, we feel satisfied you will agree. Kindly note, therefore, that we are now debiting your account with the difference between the base of \$2.75 at which this steel was originally billed to you, and the price as now fixed at \$3.25 on the total tonnage delivered to date, and you will be forwarded a debit memorandum by our Accounting Department to this effect. Payment of the amount will be deducted when the next instalment payment is made you, while from this date steel yet to be delivered on your orders will be billed at the price, as now fixed, of \$3.25 per hundred pounds.

1936  
 COUGHLAN  
 & SON  
 LTD.  
 v.  
 THE KING.  
 Maclean J.

It is to be observed that Mr. Tibbits states that the price of \$3.25 per hundred pounds “is made up of the Pittsburgh base of \$2.75, plus a premium based on the price obtained by United States mills for actual sales made with such deliveries as you have obtained, plus the premium on New York exchange.” But apparently the price thus fixed by Mr. Tibbits was not to be final. On June 14, 1922, after ships 20 and 21 had been delivered, Mr. Tibbits wrote Coughlan in part as follows:

Referring to the correspondence exchanged regarding the price of \$3.25 charged your firm for steel supplied in connection with the construction of the ss. *Transporter* and ss. *Freighter*, I have to point out that the clause of the contract relating to price to be charged for steel plates supplied by the Department reads as follows:

\* \* \* \* \*

The Department has since ascertained from the United States Steel Products Co. that on the date your specifications were deposited with the Honourable the Minister, in July, 1920, the base price for steel plates f.o.b. mills Pittsburgh, U.S.A., was \$3.50 instead of \$3.25 per 100 pounds as charged you; further, the Department of Justice advises that the American exchange should have been added to the base price f.o.b. mills, \$3.50.

I therefore enclose herewith accounts for balance due the Department, and will request you to be good enough to forward cheques for \$24,998.62 and \$20,432.25.

While it is not clear, one, I think, may assume a similar letter was forwarded to each of the other contractors already mentioned.

1936  
 COUGHLAN  
 & SON  
 LTD.  
 v.  
 THE KING.  
 Maclean J.

On April 19, 1922, Mr. Duguid inquired of the United States Steel Products Company, the exporting organization of the United States Steel Corporation, the variations in base prices of steel plates f.o.b. Pittsburgh mills, from July, 1919, to July, 1921. I had better quote the reply to Mr. Duguid's inquiry, signed by Mr. Maxson, one of the officers of the United States Steel Products Company, and which is as follows:

Receipt is acknowledged of your telegram of the 19th instant which was received too late to answer last night, asking us to give you all variations in base prices of steel plates f.o.b. Mills Pittsburgh with dates of change in price since July, 1919, to July, 1921.

It is rather difficult to compile such a report with absolute accuracy as the market conditions varied considerably during the period mentioned as each purchase had to be considered on its merits but we can outline a general Pittsburgh list which is probably accurate enough for your needs and take pleasure in detailing it below.

	1919	1920	1921
January .....	....	\$3 10	\$2 65
February .....	....	3 70	2 30
March .....	....	3 75	2 00
April .....	....	3 65	2 15
May .....	....	3 50	2 20
June .....	....	3 50	2 00
July .....	\$2 65	3 50	1 85
August .....	2 65	3 50	1 75
September .....	2 60	3 50	1 65
October .....	2 65	3 20	1 60
November .....	2 65	3 00	1 55
December .....	2 70	2 65	1 50

Maxson gave evidence in this case and he stated that the United States Steel Corporation never exacted during the material period a premium over its quoted Pittsburgh base price, that is, the price was constant, and he stated that "base" related entirely to dimensions. The United States Steel Corporation would quote its base price in response to customers' inquiries or orders but the latter would have to accept the former's terms as to the date or dates of delivery, or cancel the order if one were made; apparently this was the practice with many other steel mills in the United States but if prompt deliveries and in commercial quantities were required it was at a higher price. Maxson stated that the base price per hundred pounds quoted by the United States Steel Corporation for the first six months of 1920 was \$2.65 per hundred pounds, and \$2.75 for the last six months, but in that period orders would be filled

only after eight or nine months of their receipt whereas ordinarily deliveries would commence within two or three weeks. It would appear, as in fact stated by Maxson, that by December, 1920, or January, 1921, the "backlog" of steel orders filed with the United States Steel Corporation was being caught up with, and that company was getting into a position to make early deliveries and its prices then began to fall, and other mills then dropped their prices to meet that of the United States Steel Corporation. It will be observed from the prices quoted in Maxson's letter that for almost every month during 1920, the market prices for steel in the United States, accompanied, I assume, by reasonably prompt deliveries, substantially exceeded those of 1919 and 1921, which lends weight to the contention that, in 1920, steel plates were not manufactured by United States mills for prompt deliveries except at a price over the quoted Pittsburgh base price. There is no doubt, I think, that in 1920 it was practically impossible to obtain prompt deliveries of ship plates in substantial quantities from United States mills, except at a price higher than that quoted by the United States Steel Corporation, generally referred to as the Pittsburgh base price.

Under the contract in question ship 20 was to have been delivered on or before December 1, 1920, and ship 21 on or before December 15, 1920. The keel plates for these ships, which Coughlan was to purchase itself, and which it ordered from the United States Steel Corporation, were not delivered to Coughlan until after the contract date of delivery of both ships to the Minister had expired; and for a time and for this reason, the Minister treated the contract as at an end. In fact ships 20 and 21 were respectively delivered to the Minister only in October and in November, 1921. Coughlan was purchasing steel, other than ship plates, from United States mills and in a letter to the Minister, as late as January 14, 1921, accounting for certain delays, it mentions the fact that it was experiencing difficulty in getting delivery of such steel. Apparently the price of \$3.50 per hundred pounds charged Coughlan for ship plates, as stated in the second letter of Tibbits, was founded upon the information supplied by Maxson, of the United States Steel Products Company, to Duguid. The prices mentioned in Maxson's letter were extracted from a

1936  
 COUGHLAN  
 & SON  
 LTD.  
 v.  
 THE KING.  
 Maclean J.

1936  
COUGHLAN  
& SON  
LTD.  
v.  
THE KING.  
Maclean J.

responsible trade journal published in the United States, the *Iron Trade Review*, and not from the records of the United States Steel Products Company itself, but it may be accepted that these figures represent the average market price charged for ship plates manufactured by United States mills in 1920, and accompanied with reasonably prompt deliveries. Another equally reliable trade journal, the *Iron Age*, quoted practically the same figures for the same period.

Mr. Paxton, manager of the heavy steel department of Drummond, McColl & Co., of Montreal, testified that the price of steel plates advanced considerably in 1920 and that there was great difficulty in that year in obtaining supplies of steel plates, and other steel products, accompanied by prompt deliveries, and that United States steel mills in a position to furnish reasonably prompt service demanded their own prices. He stated that in December, 1919, he signed a contract with the United States Steel Products Company for 5,000 tons of plates, shapes and bars, to be specified during the first half of 1920; the price of the portion which was to be taken out in steel plates was to be \$2.65 base per hundred pounds f.o.b. Pittsburgh. Orders against this contract were placed only on account of customers who could await postponed or indefinite shipments, as the United States Steel Corporation declined to commit themselves to any specific date of shipment, and the terms of the contract only required them to make shipment at their convenience; some orders against this contract were delivered only after a lapse of eight or more months. On June 2, 1920, an order for steel plates, angles and beams was placed with the United States Steel Products Company and shipments of this material were not made till January 24, February 16, March 18, and April 22, respectively, in 1921. Other orders, in the first half of 1920, met with the same result. Paxton gave orders for steel in 1920, to some six or seven other well-known United States mills, some of which were cancelled owing to non-delivery, and in other cases the steel was delivered as much as ten to twelve months after the order was placed. From June to September, 1920, he paid such companies, for such deliveries as were made, prices ranging from \$3.50 to \$4 per hundred pounds f.o.b. mills. He paid the Worth Steel Company, a



Delaware mill, \$3.75 for a substantial tonnage of ship plates, for two ships being built for the Minister by Canadian Vickers Company at Montreal, and a similar price for ships being built by the Davie Shipbuilding and Repairing Company, at Levis, Quebec. The Jones, Laughlin Steel Corporation, of Pittsburgh, during the same period, charged a similar price for ship plates for a balance of an order which the Worth Steel Company were unable to deliver. Evidence much to the same effect was given by Mr. Gordon, sales manager of Luken Steel Company, an old and large steel concern operating in the State of Pennsylvania. Gordon stated that the base price of one mill might vary from that of another; that in January, 1920, the base price of Luken Steel Company was \$3.50 per hundred pounds base f.o.b. Pittsburgh, and that price moved to \$4 where it remained fairly steady from February to September when it fell to \$3.50. He also stated that during the period in question it was difficult to obtain prompt deliveries of steel; that mills making deliveries at a distant date might quote lower prices, but that mills in the United States which undertook to make reasonably early deliveries would quote about the same prices as the Luken Steel Company. Mr. Leitch, vice-president and general manager of the Collingwood Shipbuilding Company, of Collingwood, Ont., testified that in the early part of 1920 his company was unable to purchase a certain quantity of urgently required steel plates from the United States Steel Corporation, even though his company had been an old customer of that corporation, and notwithstanding that a vice-president of his company had made a personal appeal to the president of the United States Steel Corporation; later in that year, I should point out, the Collingwood Shipbuilding Company did succeed in making a purchase of some steel from this corporation.

I do not think it necessary to make further reference to the evidence upon this point. I think it may be accepted as a fact that quotations for steel plates, in July, 1920, and earlier and later, might be obtained from the United States Steel Corporation, and probably from other steel mills, at a price of not more than \$2.75 per hundred pounds, but there could not be any assurance of prompt delivery, in any substantial quantities. It may also be accepted as a

1936  
 COUGHLAN  
 & SON  
 LTD.  
 v.  
 THE KING.  
 Maclean J.

1936  
 COUGHLAN  
 & SON  
 LTD.  
 v.  
 THE KING.  
 Maclean J.

fact that many United States mills in that period were demanding and receiving as much as \$3.50 per ton, and sometimes more, if undertaking to make early deliveries to suit the requirements of customers. I think also that it must be conceded that Coughlan could not, in July, 1920, have secured a contract with any United States mill for the supply of its steel requirements with an undertaking of reasonably early deliveries, without paying a price above the United States Steel Corporation's quoted Pittsburgh base price. And the United States Steel Corporation at that time would not accept orders for ship plates except on the understanding that the same were to be delivered at its convenience though there may have been some exceptions to this.

It does not appear to be in dispute but that the word "base," in the steel trade, is understood to refer to steel products of certain standard dimensions and shapes; "base price" means the price for steel within certain standards of size and shape, and, I think, quality as well. It also indicates to the trade, according to the evidence, that steel, other than that of standard dimensions and shapes, was liable to an extra charge over base steel, and such extra charges are usually classified and periodically published to the trade by mills. In the contract therefore, the "base price" means the price of base steel products, and that is made rather clear by the last sentence of para. 11 of the contract which states that the price is not to be less than "\$2.75 per hundred pounds base," and there "base" undoubtedly refers to ship plates of standard sizes and shapes and not to price. The price might vary but "base" had a constant meaning in the trade.

The price Coughlan was to pay the Minister was the price it would have had to pay United States mills for plates to be manufactured, as of the date when it filed its steel specifications with the United States mills. Ship plates would not be carried in stock by United States mills and would have to be manufactured in conformity with the requirements of the customer, and the deliveries would have to meet the requirements of the customer, otherwise we may assume the plates would never be manufactured. In normal periods in the steel trade, ship plates would be manufactured and forwarded by instalments and in the

order in which the plates would enter into the construction of a ship, and ordinarily deliveries would commence within two or three weeks after the manufacture was begun. The words "manufactured in the United States at the time the specifications were deposited with the Minister" in the contract are of special significance. The word "specifications" here, I think, must refer not to the contract specification which formed a part of the contract, but to the specifications of the ship plates required of the Minister, and which of course would have to be filed or deposited with any United States mill had Coughlan been purchasing its steel requirements there, and not from the Minister. The words just quoted from the contract also imply, I think, that the price of the plates "manufactured in the United States" would be the price charged for the equivalent deliveries which Coughlan would require of the Minister, in order to enable it to proceed by successive steps to the completion of the ships and their delivery at the specified dates. Coughlan was to be paid by instalments on the basis of the work done as set forth in para. 11 of the contract.

The only real difficulty in this controversy arises from the fact that, during 1920, the United States Steel Corporation did not increase its price for steel products, as did other United States mills, and during that period it declined to accept steel orders for deliveries which did not suit its convenience, unless possibly where small quantities only were involved. It was its policy to lay down one constant price for its customers, applicable at all times. The enhanced price charged by other mills over the normal price for prompt deliveries was referred to frequently during the trial as a "premium," and such mills as "premium mills," but whether these are correct terms matters little; such prices were quoted by steel trade journals in the United States as the going market price; and corresponding or even higher prices were exacted by the Minister for Sydney steel sold to others than Coughlan. That the Pittsburgh market price of ship plates at the material date was uncertain is indicated by the fact that the parties to the contract fixed only a minimum price, which at that date was slightly in excess of the price then quoted by the United States Steel Corporation. If the United States Steel Corporation price

1936  
 COUGHLAN  
 & SON  
 LTD.  
 v.  
 THE KING.  
 Maclean J.

1936  
 COUGHLAN  
 & SON  
 LTD.  
 v.  
 THE KING  
 Maclean J.

were to be the price to Coughlan, it might have been so stated in the contract because that was then known, and it apparently was not a fluctuating price.

I am of the opinion that the Pittsburgh price for ship plates manufactured in or about July, 1920, and accompanied by reasonably prompt deliveries, was at least \$3.50 per hundredweight base. The lowest price quotations would not satisfy the needs of Coughlan which required ship plates for the construction of ships to be completed at a definite date. Palgraves Dictionary of Political Economy states that present goods are valued higher than future goods, and I have no doubt that this not unusual fact accounts for the disparity in the steel quotations of the United States Steel Corporation and other United States mills, at the time in question. I am of the opinion therefore that the Minister was justified in charging Coughlan the price of \$3.50 per hundredweight base for the ship plates delivered at Sydney. It may be inferred from the evidence that all other contractors of the Minister, at the material time, paid that price, otherwise I am sure I should have heard of it. If there had been no Sydney mill, and Coughlan had to purchase ship plates from United States mills, I have no doubt it would have been obliged to pay that mill price. Coughlan therefore fails in this claim and the Minister must succeed in his claim for the balance claimed to be due him in the same connection and for which he counterclaims.

Adverting now to the question of the premium on United States funds which prevailed at the time material here. I am unable to see any reason whatever for this charge against Coughlan and it seems to me that there is nothing in the contract to justify it. The contract makes no reference to the matter of exchange, and there is no reason why it should. The Pittsburgh price was to set the price of the Minister's ship plates to Coughlan, f.o.b. at Sydney. That was a mill price and not a delivery price. The cost of remitting funds to the United States could not arise because the Minister was being paid in Canadian funds by debiting the selling price of the ship plates against the contract price, which would mean payment in Canadian funds. The reference to Pittsburgh prices in the contract was merely for the purpose of ascertaining the price which the Minister

should charge Coughlan, for ship plates delivered f.o.b. Sydney, and the cost of purchasing American funds could not have been within the contemplation of either party to the contract. I think therefore that Coughlan is entitled to a credit for any deduction or charge made on this account.

1936  
 COUGHLAN  
 & SON  
 LTD.  
 v.  
 THE KING  
 Maclean J.

Next, there is a claim for a substantial amount on account of an alleged excess of steel said to be supplied Coughlan, for the construction of the four ships under the first contract, the supply of which steel was arranged for in the United States through the agency of the Minister and as already mentioned; no claim on account of excess steel supplied arises under the second contract. The contract provided that "all plates, sections and boiler plates used in the construction of the vessels will be supplied by the Minister," and the word "used" is emphasized on behalf of Coughlan in connection with this claim. The seventh paragraph of the contract as originally drafted required Coughlan to submit in duplicate to the Minister for approval "all detail working drawings on blue prints of the hulls, machinery, auxiliary boilers and fittings." By reason of the facts which I am about to narrate that paragraph of the contract was eliminated before the execution thereof. In November, 1918, Mr. J. J. Coughlan, representing J. Coughlan & Sons, came to Ottawa seeking a contract or contracts for the construction of ships for the Minister, and ultimately he secured for his firm, a contract for the construction of the four ships under discussion and the contract was executed on November 22, 1918. These four ships would be sister ships of one or more already constructed on account of the Minister by Canadian Vickers Company Ltd., of Montreal. Instead of preparing new plans and drawings, and in order to avoid delays, some one suggested, possibly the Minister's chief naval architect, Duguid, that Mr. Coughlan might be able to purchase from Vickers its plans and drawings of the 8,100-ton ships just as other contractors had done. Thereupon Mr. Coughlan at once purchased from Vickers such plans and drawings, which I have no doubt included copies of what is known as the steel order sheets, for the sum of \$10,000, and it was in consequence of this arrangement that paragraph seven of the contract was eliminated. For some

1936  
COUGHLAN  
& SON  
LTD.  
v.  
THE KING.  
Maclean J.

unaccountable reason Mr. Coughlan for a time persistently denied, in his evidence on discovery in this case, that he had any responsibility whatever regarding the acquisition of these plans and drawings from Vickers and that the same were acquired by the Minister for his use and benefit and not that of Coughlan. The steel order sheets, I might say, specified, in detail on sheets, the quantities, sizes and shapes of all the steel required in the construction of any one of the ships in question, and would be abstracted and compiled from the plans and drawings.

The plans and drawings, and, I think, the steel order sheets, were forwarded in due course to the Minister by Vickers for transmission to Coughlan; they were forwarded first to the Minister because Duguid proposed making minor structural alterations in these four ships. The war by this time having ended, certain war-time structural requirements in the sister ships built by Vickers might now be eliminated, and Duguid was interested in seeing that such structural alterations appeared on the acquired plans and drawings and thus avoid possible errors and confusion in the ordering of steel, and otherwise. Coughlan apparently takes the position that the Minister was responsible for not only ordering the steel described in the steel order sheets but for the accuracy of the orders as well, and also for the currency of the steel shipments made by the mills in response to such orders.

The Minister's officers either had copies of the steel order sheets which came from Vickers, on account of Coughlan, or, there were already on hand in the Minister's department copies of the Vickers' steel order sheets, there deposited by Vickers in connection with the contract for the sister ships already constructed, and, in any event, a complete set of such steel order sheets was, I believe, handed to Mr. J. J. Coughlan about the time of the execution of the contract, or, they were forwarded early thereafter to J. Coughlan & Sons at Vancouver. That the necessary steel order sheets were to be forwarded through the Minister to United States steel mills was agreed upon between Coughlan and Duguid when the contract was signed, but some were to be held back in order to make some alterations or corrections therein; there was some delay in forwarding some of the steel order sheets to the United States

mills but that is not now of importance. The ships were to be built according to Coughlan's plans and drawings acquired from Vickers, and the steel was to be ordered by the Minister according to the steel order sheets which Coughlan had acquired through Vickers, or according to the steel order sheets already in the possession of the Minister, and, I think, it matters not which. In my opinion the plans, drawings and steel order sheets were, for our purposes here, those of Coughlan, just as if they all had been prepared originally by it, and, in my opinion, it was the duty of Coughlan to inform itself fully of the same, and if necessary from time to time advise the Minister as to any departure from the same, or as to any discovered errors in the same. The common sense of the situation was precisely the same as if the plans, drawings and steel order sheets had been originally prepared by Coughlan and approved by the Minister, and as if the steel order sheets were being forwarded by Coughlan to the steel mills designated by the Minister, from time to time as required, in which case Coughlan would be responsible for errors of any kind deriving therefrom. In reality the obligation to supply Coughlan with steel was largely one to provide a source of supply.

Coughlan now contends that the steel order sheets specified more steel than was necessary, or that the Minister caused to be forwarded to Coughlan more steel than was necessary, and that it should be repaid the amounts it paid or was charged for such excess of steel. On the other hand it is contended on behalf of the Minister that no steel was ordered except that specified by Coughlan, or that specified in Coughlan's steel order sheets, and it is even contended that the steel order sheets called for very many tons less steel than was actually used in the construction of the four ships.

Several reasons were advanced, on behalf of the Minister, for doubting the accuracy of the claim that there was an excess of steel supplied, and there are inferences to be drawn from certain facts. Several things seem to have occurred in this connection to create confusion. The Vickers' plans called for plates 29 feet in length, plates to be shaped, but Coughlan's mill facilities could roll only plates not exceeding 26 feet, which fact, of course, would be unknown to the

1936  
 COUGHLAN  
 & SON  
 LTD.  
 v.  
 THE KING.  
 Maclean J.

1936  
COUGHLAN  
& SON  
LTD.  
v.  
THE KING.  
Maclean J.

Minister. These plates, with the exception of a small tonnage, had been ordered and rolled, and, I think, shipped to Coughlan, before the Minister was requested by Coughlan to ask the mills to cease rolling such plates, and a corresponding quantity of plates, 26 feet in length, had to be ordered. For this reason there were added some 328 tons of steel to the original order. Coughlan accepts the blame for this. Then, Coughlan was, or had been, building ships for the Imperial Munitions Board and it discovered nearly five months after signing the first contract with the Minister, that it had in stock a large tonnage, 333 long tons, left over from the Imperial Munitions Board contracts, all to Lloyds requirements, and which might be used in the construction of the four ships under discussion. Coughlan requested leave to use this tonnage and to cancel the corresponding tonnage already ordered, and, as I understood it, the Minister only succeeded in cancelling 44 tons. Then, in January, 1919, Coughlan informed Duguid that no material had been ordered for the L strakes on the bridge sides. Apparently this material was not included in the Vickers' steel order sheets. Duguid requested Coughlan to forward six copies of a list showing the material required for the L strake, and any other items of material found lacking in Vickers' steel order sheets. The Minister supplied Coughlan with the steel requested for the L strake, and it transpires that out of the alleged excess of steel supplied, amounting to some 400,000 pounds, some 120,679 pounds of that quantity related to the L strakes. Coughlan also forwarded to Duguid sheets 94 to 99 and requested that the quantity of steel therein mentioned, 13.5 tons, be ordered from the mills in addition to that already specified. All this amounted to nearly 700 tons of steel above that specified in the steel order sheets, and, it is said, this not only caused confusion but explains why Coughlan possibly had steel left over in connection with the construction of these four ships. During the progress of the construction of the four ships in question Coughlan apparently never complained to the Minister, or his officers, of any over-shipment of steel, or of any error in the steel order sheets; and it was only when the contract was completed that Coughlan filed a claim of \$25,000 for the excess steel said to have been supplied by the Minister.



The Minister apparently was always willing to credit Coughlan for any excess of steel supplied it, if it could be satisfactorily shown that any unreasonable excess of steel had, in fact, been ordered and shipped to Coughlan. At the conclusion of the Minister's ship-building program, Mr. Willsher, Assistant Naval Architect, was directed by the Deputy Minister of Marine to proceed to Vancouver to inquire into various matters relative to the ship-building contracts of Coughlan and others at Vancouver, one of which was to ascertain what excess of steel Coughlan had on hand, in connection with the four ships in question. After, I think, fifteen or more visits to Coughlan's ship-yards, all Willsher could find or be shown in the way of excess steel was a total of 109 plates, or 31 tons, and this he reported to Duguid, giving the character, the size, and the marks on each plate; ship plates always bear the mill mark. Duguid's analysis of Willsher's report was that 62 of the 109 plates, or 24.81 tons, were plates actually rolled and designated for certain positions in the ships, which means, that not having been put into the ships, their places must have been supplied by other plates which Coughlan somehow had in stock; this would leave an excess of steel on hand of 47 plates, or 6.9 tons. Then, Willsher testified that when he inquired of Coughlan why the alleged excess of steel was not produced or shown the answer was: "It probably had been used in the construction of their other ships," that would be ships 20 and 21, or other ships, and this evidence of Willsher I accept. The plates for ships nos. 20 and 21 were of the same size and number as for ships nos. 11 to 14, owing to the fact, as I understand it, that the latter ships turned out on completion to be approximately of 8,350 tons deadweight carrying capacity. Furthermore, very convincing evidence was given that if Coughlan had ordered steel for ships nos. 20 and 21, according to the requirements mentioned in the steel order sheets for such ships, it should have ordered some 228 additional tons of steel, and the contention advanced on behalf of the Minister is that this 228 tons was in stock at the time in Coughlan's yards. It is claimed therefore on behalf of the Minister that any excess of steel plates in connection with the first contract was due either to unnecessary orders for steel made by Coughlan, or that

1936  
COUGHLAN  
& SON  
LTD.  
v.  
THE KING.  
Maclean J.

1936  
COUGHLAN  
& SON  
LTD.  
v.  
THE KING  
Maclean J.

it had in stock the corresponding quantities from other ship-building contracts, which it used.

I think Coughlan must accept the responsibility for any reasonable excess of steel, if excess there were. According to the evidence it was and is a usage of ship-building yards to order slightly more than the precise quantity of steel that would enter into the construction of a ship, in order to provide against the contingency of injury to or destruction of a plate or plates, for example, in the rolling or shaping of the same. The surplusage of some six tons, which I accept as the correct tonnage, was not an unreasonable one considering the total tonnage involved in the construction of four ships, but in any event the steel order sheets were those of Coughlan, and I am not satisfied that the Minister in ordering steel exceeded the quantities designated on the steel order sheets. Furthermore, upon the evidence, I doubt if the alleged excess of plates ever reached Coughlan's yards, but if so, and they were never used or otherwise disposed of by Coughlan, then it would have been possible to have shown most of them to Willsher, the alleged excess being about 275 tons. Coughlan has failed to convince me that this claim is one which should be allowed. The Minister apparently was always quite willing to repay Coughlan for any unreasonable quantity of excess steel if the fact could be satisfactorily established, but the Minister was not so convinced and neither am I convinced. If the Minister, in law or equity, were liable to Coughlan as claimed, then he was entitled to delivery back of the excess of steel, but this could not have been done. This claim is therefore dismissed.

[The learned Judge here dealt with other claims of Suppliant and Respondent.]

*Judgment accordingly.*