

NOVA SCOTIA COURT OF APPEAL  
Cite as: MCP Generating Equipment Ltd. v. Prime Material Handling  
Equipment Ltd. 1997 NSCA 156

**Chipman, Hart and Pugsley, JJ.A.**

**BETWEEN:**

MCP GENERATING EQUIPMENT  
LIMITED, a body corporate

Appellant

Rubin Dexter  
for the Appellant

**- and -**

PRIME MATERIAL HANDLING  
EQUIPMENT LIMITED, a body  
corporate

Respondent

Geoffrey Saunders  
for the Respondent

Appeal Heard:  
September 25, 1997

Judgment Delivered:  
September 25, 1997

**THE COURT:**

The appeal is allowed with costs and a new trial ordered as per oral reasons for judgment of Chipman, Hart and Pugsley, JJ.A., concurring.

The reasons for judgment were delivered orally by:

**CHIPMAN, J.A.:**

This is an appeal from a decision in Supreme Court determining the terms of a rental/consignment agreement respecting a crane owned by the appellant.

We have reviewed the record and considered the written and oral submissions of counsel.

We are satisfied that the trial judge erred in determining the length of the rental on the basis of his opinion of what was reasonable instead of determining this issue on the conflicting evidence before him. A new trial is necessary so that all necessary findings of fact can be made.

The appeal is allowed, the decision and order of the trial judge are set aside and a new trial ordered. The respondent will pay to the appellant the cost of this appeal which are fixed at \$800.00, plus disbursements to be taxed.

Chipman, J.A.

Concurred in:

Hart, J.A.

Pugsley, J.A.