

104, 1930

In The Privy Council

No. of 1930.

ON APPEAL FROM THE SUPREME COURT OF ONTARIO (APPELLATE DIVISION)

BETWEEN

FORT FRANCES PULP & PAPER COMPANY LIMITED,
(Plaintiff) APPELLANT,

AND

SPANISH RIVER PULP & PAPER MILLS LIMITED,
ONTARIO PAPER COMPANY LIMITED,
CHARLES JACKSON BOOTH, JOHN FREDERICK BOOTH
and HELEN GERTRUDE FLECK, Executors and
Executrix of the will of the late J. R. Booth,
ABITIBI POWER & PAPER COMPANY LIMITED,
BROMPTON PULP & PAPER COMPANY LIMITED,
PRICE BROS., & COMPANY LIMITED,
ST. MAURICE PAPER COMPANY LIMITED,
LAURENTIDE COMPANY LIMITED,
CANADA PAPER COMPANY LIMITED,
DONNACONNA PAPER COMPANY LIMITED,
BELGO-CANADIAN PAPER COMPANY LIMITED, and
BELGO-CANADIAN PULP & PAPER COMPANY LIMITED,
(Defendants) RESPONDENTS.

RECORD OF PROCEEDINGS

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for the Respondents

TORONTO:
THE HUNTER-ROSE COMPANY, LIMITED
1930

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BELGO-CANADIAN PULP & PAPER COMPANY LIMITED,
(*Defendants*) RESPONDENTS.

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No. 1.

Statement of Claim.

IN THE SUPREME COURT OF ONTARIO.

WRIT ISSUED THE 28TH DAY OF DECEMBER, 1923.

BETWEEN :

FORT FRANCES PULP AND PAPER COMPANY, LIMITED,

Plaintiff,

AND

10 SPANISH RIVER PULP & PAPER MILLS, LIMITED,
 ONTARIO PAPER COMPANY, LIMITED,
 J. R. BOOTH,
 E. B. EDDY COMPANY, LIMITED,
 ABITIBI POWER & PAPER COMPANY, LIMITED,
 BROMPTON PULP & PAPER COMPANY, LIMITED,
 PRICE BROS. & COMPANY, LIMITED,
 ST. MAURICE PAPER COMPANY, LIMITED,
 LAURENTIDE COMPANY, LIMITED,
 CANADA PAPER COMPANY, LIMITED,
 20 DONNACONNA PAPER COMPANY, LIMITED,
 NEWS PULP & PAPER COMPANY, LIMITED, AND
 BELGO-CANADIAN PULP & PAPER COMPANY, LIMITED.

Defendants.

STATEMENT OF CLAIM.

1. The plaintiff is an incorporated Company with its head office at Fort Frances in the Province of Ontario. The defendants other than J. R. Booth, are incorporated Companies having head offices at various places in the Provinces of Ontario and Quebec. The defendant, J. R. Booth, resides
 30 and carries on business at Ottawa, in the Province of Ontario.

2. The plaintiff and defendants at the times hereafter referred to were and still are manufacturers of newsprint paper in Canada. Some of the defendants manufacture entirely for newspapers published in the United States and almost all of the others market the bulk of their product in the United States. The plaintiff's mill, owing to its location, largely supplies the publishers of newspapers in Western Canada and in the Western States. Prior to the war about 87 per cent. of all the newsprint paper manufactured in Canada was sold in the United States.

3. During the war the demand in the United States for Canadian newsprint paper became so great that Canadian newspapers had great difficulty in securing sufficient for their needs, market prices advanced rapidly and the

*In the
 Supreme
 Court of
 Ontario.*

No. 1.
 Statement
 of Claim,
 17th Decem-
 ber, 1924.

*In the
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No. 1.
Statement
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—continued.

publication of many Canadian newspapers was stopped or seriously threatened. It was regarded by the Government as a matter of National importance that the established newspapers should continue publication during the war because of the service they could render in stimulating recruiting and work in munition plants, in promoting the successful flotation of war loans, in assisting in food conservation, and in sustaining the general morale of the people.

4. During the latter part of the year 1916, and the early part of the year 1917, representatives of the newspaper publishers of Canada appealed to the Dominion Government alleging that they were unable to obtain an adequate supply of newsprint paper at reasonable prices. Following this appeal conferences took place between representatives of the Government and the Manufacturers as a result of which the Manufacturers agreed to supply the Canadian Publishers with newsprint paper at \$50 per ton for a period of three months from 1st March, 1917. 10

5. A measure of price control was established in the United States but the controlled price there was higher than \$50 per ton and the open market price in the United States (at which large quantities of newsprint paper were sold) was still higher. The result was that the Canadian manufacturers received less for paper supplied in Canada than they would have received had they sold the paper in the United States. It was impossible or exceedingly inconvenient for each Canadian Manufacturer to supply his exact proportion of the requirements of the Canadian publishers whereby such manufacturer would bear his pro rata share of the loss involved by selling in Canada at the lower rate, so it was agreed by the plaintiff and defendants that an adjustment would be made so that those Manufacturers who supplied more than their proportion of the Canadian demand would be compensated for their extra loss by those who supplied less than their share. 20

6. Subsequently and on or about the 16th day of April, 1917, the Governor-in-Council, by an order or regulation under the powers conferred by section 6 of the War Measures Act (5 Geo. V., Cap. 2) or otherwise vested in him, conferred on the Minister of Customs powers with regard to the supply and price of newsprint paper furnished or to be furnished to the Publishers in Canada as therein set out from March 1st to June 1st, 1917. Under this authority the Minister of Customs on 8th May, 1917, made an order fixing a price for the said period of \$50 per ton for newsprint paper in rolls in carload lots. To provide for compensation to those supplying more than their share in Canada the order contained the following provision : 30

“AND WHEREAS under existing conditions the supply of newsprint paper to Canadian publishers by the manufacturers is not proportionately distributed between them, and by reason of the fact that the prices fixed are considerably below those the manufacturers are receiving from export business I do order that each manufacturer should bear his due proportion of the cost so entailed in complying with the above, and that if arrangements are not made between the manufacturers for the pooling of such cost and for adjustment between themselves in proportion to the percentage of their output supplied to Canadian 40

publishers that an accounting be made and the manufacturer or manufacturers who have supplied a greater percentage of Canadian tonnage than properly attributable to them shall be paid by the other manufacturers sufficient to place them in the same position as the manufacturer or manufacturers who have not supplied their proper percentage of paper to the Canadian publishers."

7. By another Order-in-Council also passed on 16th April, 1917, R. A. Pringle, K.C., was appointed a Commissioner under Part I. of The Inquiries' Act to conduct an enquiry into and concerning the manufacture, sale, price
10 and supply of newsprint within the Dominion of Canada.

8. By further Orders-in-Council dated 25th May and 1st September, 1917, the authority of the Minister of Customs to fix prices of newsprint was continued until 1st December, 1917, and by Order-in-Council passed on 3rd November, 1917, the said R. A. Pringle, K.C., was appointed Controller, as well as Commissioner, and was authorized to fix prices after 1st December, 1917, and his authority continued until some time in the month of January; 1920.

9. By the terms of the Order-in-Council of 3rd November, 1917, all prices fixed by the said Controller were subject to the approval of the Governor-in-Council, but on 16th September, 1918, an Order-in-Council was passed
20 revoking this provision, appointing a Paper Control Tribunal and giving a right of appeal to such Tribunal from any order of the Controller.

10. By an Act of Parliament (9-10 George V., Chap. 63) assented to on 7th July, 1919, the powers, jurisdiction and authority of the Commissioner and Controller and of the Paper Control Tribunal under the various Orders-in-Council relating thereto were confirmed and extended.

11. Pursuant to the various Orders-in-Council hereinbefore referred to, orders were made by the Controller and the Tribunal by which the following prices were finally fixed for the period from 1st March, 1917, to 31st Decem-
30 ber, 1919.

1st March, 1917, to 31st January, 1918.	\$50 per ton.
1st February, 1918, to 30th June, 1918.	\$57 per ton.
1st July, 1918, to 30th November, 1918.	\$66 per ton.
1st December, 1918, to 31st Dec., 1919.	\$69 per ton.

These prices were lower than the prices prevailing in the United States during the same periods.

12. The Controller and Paper Control Tribunal also made orders adjusting the amount payable to the plaintiff by the manufacturers who supplied less than their proper share of newsprint to Canadian newspapers for the period
40 from 1st March, 1917, to 31st December, 1917, and the amount fixed was paid to the Plaintiff but the amount payable for any subsequent period has not been ascertained because of the refusal of the defendants or some of them to furnish to the Controller any information for such subsequent period as to their total sales of newsprint and the quantities sold and the prices realized therefor in Canada and the United States respectively; the amount payable in respect of such period could not be determined without this information.

*In the
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Court of
Ontario.*

No. 1.
Statement
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17th Decem-
ber, 1924.

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—
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of Claim,
17th Decem-
ber, 1924.
—continued.

13. All price-fixing orders down to and including an order of the Controller dated 30th August, 1918, contained a provision similar to the clause set out in paragraph 6 hereof. Subsequent orders of the Controller did not contain the express clause, but all such subsequent orders were made on the assumption that the practice of adjusting differentials amongst the Manufacturers would still prevail if the Canadian price was lower than the price in the United States and the plaintiff and defendants acted on said orders on that understanding. An order of the Controller dated 24th December, 1919, revising prices fixed by previous orders was expressed to be made "without prejudice to the rights of any interested parties in regard to differentials for any period prior to the date of this order." The Controller forwarded his resignation to the Minister of Finance on 16th January, 1920. Before the resignation was accepted or before the acceptance was notified to the Controller he made an order dated 23rd January, 1920, directing G. T. Clarkson to prepare statements showing the amounts payable to the Manufacturers, who, during the period when the price of newsprint was controlled by the Government, had supplied to the Canadian Publishers more than their proportionate shares, but no action was taken under such last-mentioned order. 10

14. The proceedings for controlling the supply and price of newsprint paper came to an end without any action having been taken to determine the amount payable to the plaintiff for differentials for the period from 1st January, 1918, to 31st December, 1919, and nothing has been paid and no accounting has been made to the plaintiff for such period. 20

15. Under the orders hereinbefore referred to the plaintiff was compelled to supply to Canadian newspaper publishers, newsprint paper which the defendants or some of them were under liability to supply and the plaintiff, to the extent of the difference between the Canadian fixed price and the export price of the newsprint which it supplied over and above its proportionate share, is entitled to recover from the defendants or some of them as for money paid to their use. 30

THE PLAINTIFF THEREFORE CLAIMS :—

- (a) A declaration that such of the defendants as supplied less than their proper share of newsprint to Canadian Publishers during the period from 1st January, 1918, to 31st December, 1919, are liable to pay to the plaintiff the loss suffered by the plaintiff in supplying more than its proper share of newsprint to Canadian Publishers during the said period;
- (b) An accounting between the parties for the said period;
- (c) Payment of the amounts found owing to the plaintiff upon such accounting. 40
- (d) The costs of the action.
- (e) Such further and other relief as the circumstances of the case may require.

The plaintiff proposes that this action shall be tried at the City of Toronto.

DELIVERED this 17th day of December, 1924, by Tilley, Johnston, Thomson & Parmenter, 255 Bay Street, Toronto, Solicitors for the above-named plaintiff.

No. 2.

Statement of Defence of Defendants, Abitibi Power and Paper Company, Limited, and St. Maurice Paper Company, Limited.

*In the
Supreme
Court of
Ontario.*

1. These defendants admit the allegations contained in the first paragraph of the Statement of Claim in this action, and deny all other the allegations therein contained, except insofar as hereinafter specifically admitted.
2. These defendants admit that certain Orders-in-Council were passed under the provisions of The War Measures Act, to which Orders-in-Council these defendants crave leave to refer in full upon the trial or other disposition of this action, and admit that certain powers were by the said Orders-in-Council conferred upon the Minister of Customs, and later upon the Paper Controller and Paper Control Tribunal therein referred to, including the power to fix prices and to distribute the proportion of supply between the manufacturers, and that the said Minister and the said Controller assumed the power to adjust, as betwen manufacturers, the claims of manufacturers who should sell to Canadian customers more than their due proportion of the total amount of newsprint paper necessary to comply with the Orders, against those who should sell to Canadian customers less than their due proportion of such newsprint paper. The adjustments under the said assumed power are commonly referred to as "differentials," but these defendants deny that any legal authority to make such adjustments by means of payment in money was ever conferred.
3. These defendants admit that each Order fixing prices down to and including that of 30th August, 1918, contained certain provisions for payment of differentials, but expressly denies the subsequent allegation in paragraph 13 of the Statement of Claim that there was any Order, understanding or arrangement that the practice of adjusting differentials among the manufacturers would still prevail after the said date, or that the subsequent orders were made on any assumption that any such practice would prevail. These defendants say that on the contrary, it had then been found that the practice of adjusting differentials by money payments was without proper authority and was altogether unsatisfactory and unjust, and that the provisions for such differentials were deliberately omitted in the Orders of the Controller made subsequent to 30th August, 1918.
4. These defendants say that if any Order was made by the late Robert A. Pringle, Esquire, K.C., formerly Paper Controller, on the 23rd day of January, 1920, as alleged in the 13th paragraph of the Statement of Claim herein, such Order was made after he had ceased to be Controller, and when he was without any authority to make any such Order.
5. These defendants say that any Order made by the Minister or Controller for payment in money of differentials was without authority and was not binding on these defendants, and in the alternative that any Orders made by the Minister or Controller were ineffective in any event unless and until an account had been taken as provided in such Order. No such account was taken and no moneys ever became payable to the plaintiff by these defendants pursuant to the terms of any Order affecting the period after the 31st day of December, 1917.
6. These defendants say that during the period of time in question in this action, they obeyed all Orders in so far as they were legally and properly

No. 2.
Statement of
Defence of
defendants,
Abitibi
Power &
Paper Com-
pany, Ltd.,
and St.
Maurice
Paper Com-
pany, Ltd.,
12th Feb-
ruary, 1925.

*In the
Supreme
Court of
Ontario.*

No. 2.
Statement of
Defence of
defendants,
Abitibi
Power &
Paper Com-
pany, Ltd.,
and St.
Maurice
Paper Com-
pany, Ltd.,
12th Feb-
ruary, 1925.

—continued.

made by the Minister, the Controller or the Paper Control Tribunal, and that no sum of money became or is payable by them to the plaintiff pursuant to the terms of any of the said Orders.

7. These defendants submit that except in so far as the said Orders created rights or liabilities as between them and the plaintiff, nothing was ever done or occurred to create any such rights or liabilities, and that, other than under the terms of such Orders, no relationship exists between them and the plaintiff to entitle the plaintiff to make the claim set up in this action.

8. These defendants say that all orders made by the said Controller were subject to appeal to the Paper Control Tribunal, and that appeals thereto were taken from all Orders made after the 31st day of December, 1917, and are still pending. 10

9. These defendants submit that all questions arising out of or by reason of the Orders referred to in this action, and all matters in issue in this action have been dealt with by or are pending before the Minister, the Controller for the time being, and the Paper Control Tribunal, these being tribunals especially set up for the purpose, and that this Court has, therefore, no jurisdiction to entertain this action, or, alternatively, should in the exercise of its proper discretion, refuse to entertain this action.

WHEREFORE these defendants submit that this action should be dismissed with costs. 20

10. On or about the 6th day of August, 1918, R. A. Pringle, Esquire, K.C., formerly Paper Controller, made an order directing payment of moneys to the plaintiff as follows :

By Abitibi Power & Paper Company, Limited	\$ 11,147.96	
By J. R. Booth	6,163.29	
By Brompton Pulp & Paper Company, Limited	7,375.80	
By Donnaconna Paper Company, Limited	11,332.12	
By Price Bros. & Company, Limited	8,768.53	
By Ontario Paper Company, Limited	9,090.80	30
By Spanish River Pulp & Paper Mills, Limited	35,389.54	
By St. Maurice Paper Company, Limited	11,529.67	
Total	<u>\$100,797.71</u>	

Notwithstanding the fact that an appeal was launched from the said Order of the said R. A. Pringle, Esquire, K.C., to the Paper Control Tribunal, the said defendants were compelled to pay the same to the said R. A. Pringle, Esquire, K.C., for the account of the plaintiff by reason of threats made by the said R. A. Pringle, Esquire, K.C., that their licenses for the exportation of newsprint would be cancelled unless such payments were made. Such payments were made to him for the account of the plaintiff under protest and by reason of duress. 40

11. Subsequently, the last mentioned Order of the said R. A. Pringle, Esquire, K.C., was reviewed by the Paper Control Tribunal and, by Order dated the 18th day of August, the Paper Control Tribunal, consisting of the Honourable Mr. Justice White, the Honourable Mr. Justice Archer and the Honourable Mr. Justice Middleton, made an Order reducing the amounts

to be paid by the aforesaid companies to the amounts set forth as follows :

	By Abitibi Power & Paper Company, Limited.....	\$ 7,915.39
	By J. R. Booth.....	4,302.13
	By Brompton Pulp & Paper Company, Limited.....	5,026.88
	By Donnacona Paper Company, Limited.....	8,051.24
	By Price Bros. & Company, Limited.....	6,544.56
	By Ontario Paper Company, Limited.....	6,554.46
	By Spanish River Pulp & Paper Mills, Limited.....	25,846.03
	By St. Maurice Paper Company, Limited.....	8,266.43
10	Total.....	<u>\$72,507.12</u>

*In the
Supreme
Court of
Ontario.*
—
No. 2.
Statement of
Defence of
defendants,
Abitibi
Power &
Paper Com-
pany, Ltd.,
and St.
Maurice
Paper Com-
pany, Ltd.,
12th Feb-
ruary, 1925.

and, therefore, the said defendants paid to R. A. Pringle, Esquire, K.C., for the account of the plaintiff the sum of \$28,290.59 in excess of the amounts found due to it by the Paper Control Tribunal.

THEREFORE, the said defendants, Abitibi Power & Paper Company, Limited, Charles Jackson Booth, John Frederick Booth and Helen Gertrude Fleck, executors and executrix of the Will of the late J. R. Booth, Brompton Pulp & Paper Company, Limited, Donnacona Paper Company, Limited, Price Bros. and Company, Limited, Ontario Paper Company, Limited, Spanish River Pulp & Paper Mills, Limited, and St. Maurice Paper Company, Limited, say that the plaintiff, at the commencement of this action, was and still is in-

20	debted to each of these defendants in the following sums, namely :	
	Abitibi Power & Paper Company, Limited.....	\$ 3,128.86
	J. R. Booth.....	1,729.83
	Brompton Pulp & Paper Company, Limited.....	2,070.14
	Price Bros. & Company, Limited.....	3,180.55
	Donnacona Paper Company, Limited.....	2,461.04
	Ontario Paper Company, Limited.....	2,551.49
	Spanish River Pulp & Paper Mills, Limited.....	9,932.68
	St. Maurice Paper Company, Limited.....	3,236.00
	Total.....	<u>\$28,290.59</u>

30 together with interest thereon from the date of the payment in each case of the amount mentioned in paragraph 10, at such rate of interest as the Court may allow, as damages or otherwise.

And the said defendants say that they are entitled to have the amounts aforesaid set off against any amount that may be found due by them, or any of them, to the plaintiff in the event of the plaintiff succeeding in this action.

12. The said moneys directed to be paid to the plaintiff by the said Order of R. A. Pringle, Esquire, K.C., formerly Paper Controller, dated the 6th day of August, 1918, included an allowance to the plaintiff for and in respect of customs duties paid on liquid and sulphite pulp used in the manu-
40 facture of newsprint which was furnished by the plaintiff to consumers in Canada and the payments made to the plaintiff or to the said R. A. Pringle, Esquire, K.C., for the account of the plaintiff, pursuant to the said order included the payment of such allowance.

13. In December, 1918, an Order in Council was passed remitting to the extent of ninety-nine per cent all duties paid by the plaintiff on liquid and

—continued.

*In the
Supreme
Court of
Ontario.*

No. 2.
Statement of
Defence of
defendants,
Abitibi
Power &
Paper Com-
pany, Ltd.
and St.
Maurice
Paper Com-
pany, Ltd.,
12th Feb-
ruary, 1925.

—continued.

sulphite pulp, used as aforesaid, and subsequently thereto the moneys paid for such duties to the extent of ninety-nine per cent. thereof, were refunded to the plaintiff by the proper department of the Government of Canada.

THEREFORE, the said defendants, Abitibi Power & Paper Company, Limited, Charles Jackson Booth, John Frederick Booth and Helen Gertrude Fleck, Executors and Executrix of the Will of the late J. R. Booth, Brompton Pulp & Paper Company, Limited, Donnacona Paper Company Limited, Price Bros. and Company, Limited, Ontario Paper Company, Limited, Spanish River Pulp & Paper Mills, Limited, and St. Maurice Paper Company, Limited, say that, at the commencement of this action, the plaintiff was and still is indebted to each of these defendants in the sums paid by them and each of them to the plaintiff in respect of the customs duty on liquid and sulphite pulp insofar and to the extent that such duty was remitted and repaid to the plaintiff, and the said defendants say that they are entitled to have an account taken of the amount due to them and each of them from the plaintiff, and to have the same set off against any amount that may be found due by them or any of them to the plaintiff in the event of the plaintiff succeeding in this action. 10

DELIVERED this 12th day of February, 1925, by Kilmer, Irving & Davis, of 10 Adelaide Street East, in the City of Toronto, in the County of York, Solicitors for the said defendants, Abitibi Power & Paper Company, Limited, and St. Maurice Paper Company, Limited. 20

No. 3.
Statement of
Defence of
defendants,
Spanish
River Pulp
& Paper
Mills, Ltd.,
et al.
17th Febru-
ary, 1925.

No. 3.

Statement of Defence of Defendants,

Spanish River Pulp & Paper Mills, Limited ; Ontario Paper Company, Limited ; Price Bros. & Company, Limited ; Brompton Pulp and Paper Company, Limited ; Laurentide Company, Limited ; Canada Paper Company, Limited ; Donnacona Paper Company, Limited ; Belgo-Canadian Paper Company, Limited, and Belgo-Canadian Pulp and Paper Company, Limited. 30

1. These defendants admit the allegations contained in the first paragraph of the Statement of Claim in this action, and deny all other the allegations therein contained, except in so far as hereinafter specifically admitted.

2. These defendants admit that certain Orders-in-Council were passed under the provisions of The War Measures Act, to which Orders-in-Council these defendants crave leave to refer in full upon the trial or other disposition of this action, and admit that certain powers were by the said Orders-in-Council conferred upon the Minister of Customs, and later upon the Paper Controller and Paper Control Tribunal therein referred to, including the power to fix prices and to distribute the proportion of supply between the manufacturers, and that the said Minister and the said Controller assumed the power to adjust, as between manufacturers, the claims of manufacturers who should sell to Canadian customers more than their due proportion of the total amount of newsprint paper necessary to comply with the Orders, against those who should sell to Canadian customers less than their due proportion of such newsprint paper. The adjustments under the said assumed power are com- 40

monly referred to as "differentials," but these defendants deny that any legal authority to make such adjustments by means of payment in money was ever conferred.

3. These defendants admit that each Order fixing prices down to and including that of 30th August, 1918, contained certain provisions for payment of differentials, but expressly deny the subsequent allegation in paragraph 13 of the Statement of Claim that there was any Order, understanding or arrangement that the practice of adjusting differentials among the manufacturers would still prevail after the said date, or that the subsequent orders were made on any assumption that any such practice would prevail. These defendants say that on the contrary it had then been found that the practice of adjusting differentials by money payments was without proper authority and was altogether unsatisfactory and unjust, and that the provisions for such differentials were deliberately omitted in the Orders of the Controller made subsequent to 30th August, 1918.

4. These defendants say that if any Order was made by the late Robert A. Pringle, Esquire, K.C., formerly Paper Controller, on the 23rd day of January, A.D. 1920, as alleged in the 13th paragraph of the Statement of Claim herein, such Order was made after he had ceased to be Controller, and when he was without any authority to make any such Order.

5. These defendants say that any Order made by the Minister or Controller for payment in money of differentials was without authority and was not binding on these defendants or any of them and in the alternative that any Orders made by the Minister or Controller were ineffective in any event unless and until an account had been taken as provided in such Order. No such account was taken and no moneys ever became payable to the plaintiff by these defendants or any of them pursuant to the terms of any Order affecting the period after the 31st day of December, 1917.

6. These defendants say that during the period of time in question in this action, they and each of them obeyed all Orders in so far as they were legally and properly made by the Minister, the Controller or the Paper Control Tribunal, and that no sum of money became or is payable by them or any of them to the plaintiff pursuant to the terms of any of the said Orders.

7. These defendants submit that, except in so far as the said Orders created rights or liabilities as between them or any of them and the plaintiff, nothing was ever done or occurred to create any such rights or liabilities, and that, other than under the terms of such Orders, no relationship exists between them or any of them and the plaintiff to entitle the plaintiff to make the claim set up in this action.

8. These defendants say that all Orders made by the said Controller were subject to appeal to the Paper Control Tribunal, and that appeals thereto were taken from all Orders made after the 31st day of December, 1917, and are still pending.

9. These defendants submit that all questions arising out of or by reason of the Orders referred to in this action, and all matters in issue in this action have been dealt with by or are pending before the Minister, the Controller for the time being, and the Paper Control Tribunal, these being tribunals especially set up for the purpose, and that this Court has, therefore, no juris-

*In the
Supreme
Court of
Ontario.*

No. 3.
Statement of
Defence of
defendants,
Spanish
River Pulp
& Paper
Mills, Ltd.,
et al.
17th Febru-
ary, 1925.

—continued.

*In the
Supreme
Court of
Ontario.*

No. 3.
Statement of
Defence of
defendants,
Spanish
River Pulp
& Paper
Mills, Ltd.,
et al.
17th Febru-
ary, 1925.

—continued.

diction to entertain this action, or, alternatively, should in the exercise of its proper discretion, refuse to entertain this action.

WHEREFORE these defendants submit that this action should be dismissed with costs.

10. On or about the 6th day of August, 1918, R. A. Pringle, Esquire, K.C., formerly Paper Controller, made an order directing payment of moneys to the plaintiff as follows :

By Abitibi Power & Paper Company, Limited	\$ 11,147.96	
By J. R. Booth	6,163.29	
By Brompton Pulp & Paper Company, Limited	7,375.80	10
By Donnaconna Paper Company, Limited	11,332.12	
By Price Bros. & Company, Limited	8,768.53	
By Ontario Paper Company, Limited	9,090.80	
By Spanish River Pulp & Paper Mills, Limited	35,389.54	
By St. Maurice Paper Company, Limited	11,529.67	
Total	\$100,797.71	

Notwithstanding the fact that an appeal was launched from the said Order of the said R. A. Pringle, Esquire, K.C., to the Paper Control Tribunal, the said defendants were compelled to pay the same to the said R. A. Pringle, Esquire, K.C., for the account of the plaintiff by reason of threats made by the said R. A. Pringle, Esquire, K.C., that their licenses for the exportation of newsprint would be cancelled unless such payments were made. Such payments were made to him for the account of the plaintiff under protest and by reason of duress. 20

11. Subsequently, the last mentioned Order of the said R. A. Pringle, Esquire, K.C., was reviewed by the Paper Control Tribunal and, by Order dated the 18th day of August, the Paper Control Tribunal, consisting of the Honourable Mr. Justice White, the Honourable Mr. Justice Archer and the Honourable Mr. Justice Middleton, made an Order reducing the amounts to be paid by the aforesaid companies to the amounts set forth as follows : 30

By Abitibi Power & Paper Company, Limited	\$ 7,915.39	
By J. R. Booth	4,302.13	
By Brompton Pulp & Paper Company, Limited	5,026.88	
By Donnaconna Paper Company, Limited	8,051.24	
By Price Bros. & Company, Limited	6,544.56	
By Ontario Paper Company, Limited	6,554.46	
By Spanish River Pulp & Paper Mills, Limited	25,846.03	
By St. Maurice Paper Company, Limited	8,266.43	
Total	\$72,507.12	

and, therefore, the said defendants paid to R. A. Pringle, Esquire, K.C., for the account of the plaintiff the sum of \$28,290.59 in excess of the amounts found due to it by the Paper Control Tribunal. 40

THEREFORE, the said defendants, Abitibi Power & Paper Company, Limited, Charles Jackson Booth, John Frederick Booth and Helen Gertrude Fleck, executors and executrix of the Will of the late J. R. Booth, Brompton Pulp & Paper Company, Limited, Donnaconna Paper Company, Limited, Price Bros. and Company, Limited, Ontario Paper Company, Limited, Spanish

River Pulp & Paper Mills, Limited, and St. Maurice Paper Company, Limited, say that the plaintiff, at the commencement of this action, was and still is indebted to each of these defendants in the following sums, namely :

	Abitibi Power & Paper Company, Limited.....	\$ 3,128.86
	J. R. Booth.....	1,729.83
	Brompton Pulp & Paper Company, Limited.....	2,070.14
	Donnacona Paper Company, Limited.....	3,180.55
	Price Bros. & Company, Limited.....	2,461.04
	Ontario Paper Company, Limited.....	2,551.49
10	Spanish River Pulp & Paper Mills, Limited.....	9,932.68
	St. Maurice Paper Company, Limited.....	3,236.00
	Total.....	<u>\$28,290.59</u>

*In the
Supreme
Court of
Ontario.*

No. 3.
Statement of
Defence of
defendants,
Spanish
River Pulp
& Paper
Mills, Ltd.,
et al.
17th Febru-
ary, 1925.

—continued.

together with interest thereon from the date of the payment in each case of the amount mentioned in paragraph 10, at such rate of interest as the Court may allow, as damages or otherwise.

And the said defendants say that they are entitled to have the amounts aforesaid set off against any amount that may be found due by them, or any of them, to the plaintiff in the event of the plaintiff succeeding in this action.

12. The said moneys directed to be paid to the plaintiff by the said
20 Order of R. A. Pringle, Esquire, K.C., formerly Paper Controller, dated the 6th day of August, 1918, included an allowance to the plaintiff for and in respect of customs duties paid on liquid and sulphite pulp used in the manufacture of newsprint which was furnished by the plaintiff to consumers in Canada and the payments made to the plaintiff or to the said R. A. Pringle, Esquire, K.C., for the account of the plaintiff, pursuant to the said order included the payment of such allowance.

13. In December, 1918, an Order in Council was passed remitting to
30 the extent of ninety-nine per cent all duties paid by the plaintiff on liquid and sulphite pulp, used as aforesaid, and subsequently thereto the moneys paid for such duties to the extent of ninety-nine per cent. thereof, were refunded to the plaintiff by the proper department of the Government of Canada.

THEREFORE, the said defendants, Abitibi Power & Paper Company, Limited, Charles Jackson Booth, John Frederick Booth and Helen Gertrude Fleck Executors and Executrix of the Will of the late J. R. Booth, Brompton Pulp & Paper Company, Limited, Donnacona Paper Company, Limited, Price Bros. and Company, Limited, Ontario Paper Company, Limited, Spanish River Pulp & Paper Mills, Limited, and St. Maurice Paper Company, Limited, say that, at the commencement of this action, the plaintiff was and still is indebted to each of these defendants in the sums paid by them and each of
40 them to the plaintiff in respect of the customs duty on liquid and sulphite pulp insofar and to the extent that such duty was remitted and repaid to the plaintiff, and the said defendants say that they are entitled to have an account taken of the amount due to them and each of them from the plaintiff, and to have the same set off against any amount that may be found due by them or any of them to the plaintiff in the event of the plaintiff succeeding in this action.

DELIVERED this 17th day of February, A.D. 1925, by Blake, Lash, Anglin & Cassels, 25 King Street West, Toronto, Ont., Solicitors for the said defendants.

Statement of Defence of Defendant, J. R. Booth.

*In the
Supreme
Court of
Ontario.*

No. 4.
Statement of
Defence of
defendant,
J. R. Booth,
17th Feb-
ruary, 1925.

1. This defendant admits the allegations contained in the first paragraph of the Statement of Claim in this action, and denies all other the allegations therein contained, except in so far as hereinafter specifically admitted.

2. This defendant admits that certain Orders-in-Council were passed under the provisions of The War Measures Act, to which Orders-in-Council this defendant craves leave to refer in full upon the trial or other disposition of this action, and admits that certain powers were by the said Orders-in-Council conferred upon the Minister of Customs, and later upon the Paper Controller and Paper Control Tribunal therein referred to, including the power to fix prices and to distribute the proportion of supply between the manufacturers, and that the said Minister and the said Controller assumed the power to adjust, as between manufacturers, the claims of manufacturers who should sell to Canadian customers more than their due proportion of the total amount of newsprint paper necessary to comply with the Orders, against those who should sell to Canadian customers less than their due proportion of such newsprint paper. The adjustments under the said assumed power are commonly referred to as "differentials," but this defendant denies that any legal authority to make such adjustments by means of payment in money was ever conferred. 10

3. This defendant admits that each Order fixing prices down to and including that of 30th August, 1918, contained certain provisions for payment of differentials, but expressly denies the subsequent allegation in paragraph 13 of the Statement of Claim that there was any Order, understanding or arrangement that the practice of adjusting differentials among the manufacturers would still prevail after the said date, or that the subsequent orders were made on any assumption that any such practice would prevail. This defendant says that on the contrary, it had then been found that the practice of adjusting differentials by money payments was without proper authority and was altogether unsatisfactory and unjust, and that the provisions for such differentials were deliberately omitted in the Orders of the Controller made subsequent to 30th August, 1918. 30

4. This defendant says that if any Order was made by the late Robert A. Pringle, Esquire, K.C., formerly Paper Controller, on the 23rd day of January, A.D. 1920, as alleged in the 13th paragraph of the Statement of Claim herein, such Order was made after he had ceased to be Controller, and when he was without any authority to make any such Order.

5. This defendant says that any Order made by the Minister or Controller for payment in money of differentials was without authority and was not binding on this defendant, and in the alternative that any Orders made by the Minister or Controller were ineffective in any event unless and until an account had been taken as provided in such Order. No such account was taken and no moneys ever became payable to the plaintiff by this defendant pursuant to the terms of any Order affecting the period after the 31st day of December, 1917. 40

6. This defendant says that during the period of time in question in this action, he obeyed all Orders in so far as they were legally and properly made by the Minister, the Controller or the Paper Control Tribunal, and that no sum of money became or is payable by him to the plaintiff pursuant to the terms of any of the said Orders.

7. This defendant submits that except in so far as the said Orders created rights or liabilities as between him and the plaintiff, nothing was ever done or occurred to create any such rights or liabilities, and that, other than under the terms of such Orders, no relationship exists between him and the plaintiff to entitle the plaintiff to make the claim set up in this action.

8. This defendant says that all orders made by the said Controller were subject to appeal to the Paper Control Tribunal, and that appeals thereto were taken from all Orders made after the 31st day of December, 1917, and are still pending.

9. This defendant submits that all questions arising out of or by reason of the Orders referred to in this action, and all matters in issue in this action have been dealt with by or are pending before the Minister, the Controller for the time being, and the Paper Control Tribunal, these being tribunals especially set up for the purpose, and that this Court has, therefore, no jurisdiction to entertain this action, or, alternatively, should in the exercise of its proper discretion, refuse to entertain this action.

WHEREFORE this defendant submits that this action should be dismissed with costs.

10. On or about the 6th day of August, 1918, R. A. Pringle, Esquire, K.C., formerly Paper Controller, made an order directing payment of moneys to the plaintiff as follows :

	By Abitibi Power & Paper Company, Limited	\$ 11,147.96
	By J. R. Booth	6,163.29
	By Brompton Pulp & Paper Company, Limited	7,375.80
30	By Donnacona Paper Company, Limited	11,332.12
	By Price Bros. & Company, Limited	8,768.53
	By Ontario Paper Company, Limited	9,090.80
	By Spanish River Pulp & Paper Mills, Limited	35,389.54
	By St. Maurice Paper Company, Limited	11,529.67
	Total	<u>\$100,797.71</u>

Notwithstanding the fact that an appeal was launched from the said Order of the said R. A. Pringle, Esquire, K.C., to the Paper Control Tribunal, the said defendants were compelled to pay the same to the said R. A. Pringle, Esquire, K.C., for the account of the plaintiff by reason of threats made by the said R. A. Pringle, Esquire, K.C., that their licenses for the exportation of newsprint would be cancelled unless such payments were made. Such payments were made to him for the account of the plaintiff under protest and by reason of duress.

11. Subsequently, the last mentioned Order of the said R. A. Pringle, Esquire, K.C., was reviewed by the Paper Control Tribunal and, by Order

*In the
Supreme
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No. 4.
Statement of
Defence of
defendant,
J. R. Booth,
17th Feb-
ruary, 1925.

—continued.

In the
Supreme
Court of
Ontario.

No. 4.
Statement of
Defence of
defendant,
J. R. Booth,
17th Feb-
ruary, 1925.

—continued.

dated the 18th day of August, the Paper Control Tribunal, consisting of the Honourable Mr. Justice White, the Honourable Mr. Justice Archer and the Honourable Mr. Justice Middleton, made an Order reducing the amounts to be paid by the aforesaid companies to the amounts set forth as follows :

By Abitibi Power & Paper Company, Limited	\$ 7,915.39	
By J. R. Booth	4,302.13	
By Brompton Pulp & Paper Company, Limited	5,026.88	
By Donnacona Paper Company, Limited	8,051.24	
By Price Bros. & Company, Limited	6,544.56	
By Ontario Paper Company, Limited	6,554.46	10
By Spanish River Pulp & Paper Mills, Limited	25,846.03	
By St. Maurice Paper Company, Limited	8,266.43	
Total	<u>\$72,507.12</u>	

and, therefore, the said defendants paid to R. A. Pringle, Esquire, K.C., for the account of the plaintiff the sum of \$28,290.59 in excess of the amounts found due to it by the Paper Control Tribunal.

THEREFORE, the said defendants, Abitibi Power & Paper Company, Limited, Charles Jackson Booth, John Frederick Booth and Helen Gertrude Fleck, executors and executrix of the Will of the late J. R. Booth, Brompton Pulp & Paper Company, Limited, Donnacona Paper Company, Limited, Price Bros. and Company, Limited, Ontario Paper Company, Limited, Spanish River Pulp & Paper Mills, Limited, and St Maurice Paper Company, Limited, say that the plaintiff, at the commencement of this action, was and still is indebted to each of these defendants in the following sums, namely :

Abitibi Power & Paper Company, Limited	\$ 3,128.86	
J. R. Booth	1,729.83	
Brompton Pulp & Paper Company, Limited	2,070.14	
Donnacona Paper Company, Limited	3,180.55	
Price Bros. & Company, Limited	2,461.04	30
Ontario Paper Company, Limited	2,551.49	
Spanish River Pulp & Paper Mills, Limited	9,932.68	
St. Maurice Paper Company, Limited	3,236.00	
Total	<u>\$28,290.59</u>	

together with interest thereon from the date of the payment in each case of the amount mentioned in paragraph 10, at such rate of interest as the Court may allow, as damages or otherwise.

And the said defendants say that they are entitled to have the amounts aforesaid set off against any amount that may be found due by them, or any of them, to the plaintiff in the event of the plaintiff succeeding in this action.

12. The said moneys directed to be paid to the plaintiff by the said Order of R. A. Pringle, Esquire, K.C., formerly Paper Controller, dated the 6th day of August, 1918, included an allowance to the plaintiff for and in respect of customs duties paid on liquid and sulphite pulp used in the manufacture of newsprint which was furnished by the plaintiff to consumers in Canada and the payments made to the plaintiff or to the said R. A. Pringle,

Esquire, K.C., for the account of the plaintiff, pursuant to the said order included the payment of such allowance.

13. In December, 1918, an Order in Council was passed remitting to the extent of ninety-nine per cent all duties paid by the plaintiff on liquid and sulphite pulp, used as aforesaid, and subsequently thereto the moneys paid for such duties to the extent of ninety-nine per cent. thereof, were refunded to the plaintiff by the proper department of the Government of Canada.

THEREFORE, the said defendants, Abitibi Power & Paper Company, Limited, Charles Jackson Booth, John Frederick Booth and Helen Gertrude
 10 Fleck, Executors and Executrix of the Will of the late J. R. Booth, Brompton Pulp & Paper Company, Limited, Ontario Paper Company, Limited, Spanish River Pulp & Paper Mills, Limited, and St. Maurice Paper Company, Limited, say that, at the commencement of this action, the plaintiff was and still is indebted to each of these defendants in the sums paid by them and each of them to the plaintiff in respect of the customs duty on liquid and sulphite pulp insofar and to the extent that such duty was remitted and repaid to the plaintiff, and the said defendants say that they are entitled to have an account taken of the amount due to them and each of them from the plaintiff, and to
 20 any of them to the plaintiff in the event of the plaintiff succeeding in this action.

DELIVERED this 17th day of February, A.D. 1925 by Henderson & Herridge, of the City of Ottawa, in the County of Carleton, Solicitors for the said defendant.

*In the
Supreme
Court of
Ontario.*

No. 4.
Statement of
Defence of
defendant,
J. R. Booth,
17th Feb-
ruary, 1925.

—continued.

No. 5.

Particulars of Paragraph 5 of Statement of Claim.

30

DELIVERED PURSUANT TO THE ORDER OF THE MASTER,
DATED 12TH MAY, 1927.

- (a) The agreement was in writing.
 (b) The date of the agreement was on or about 21st February, 1917.
 (c) The agreement was made at the City of Montreal.
 (d) The parties to the agreement were the Companies represented at a meeting of the Canadian Pulp & Paper Makers' Association held on 21st February, 1917.
 40 (e) The terms and provisions of the agreement are as set out in the so-called differential clause contained in the price fixing orders of the Minister of Customs and Commissioner R. A. Pringle, K.C.
 (f) The parties to the agreement were represented by their executive officers present at the aforesaid meeting.

DATED this 14th day of May, 1927.

TILLEY, JOHNSTON, THOMSON & PARMENTER,
Solicitors for the Plaintiff.

No. 5.
Particulars
of Paragraph
5 of State-
ment of
Claim,
14th May,
1927.

*In the
Supreme
Court of
Ontario.*

No. 5.
Particulars
of Paragraph
5 of State-
ment of
Claim,
14th May,
1927.

To :
MESSRS. BLAKE, LASH, ANGLIN & CASSELS,
Solicitors for certain defendants.
MESSRS. HENDERSON & HERRIDGE,
Solicitors for other defendants.
MESSRS. KILMER, IRVING & DAVIS,
Solicitors for other defendants.
MESSRS. HELLMUTH, CATTANACH & RAMSEY,
Solicitors for other defendants.

Trial Proceedings before Honourable Mr. Justice Grant without a jury
at Toronto, May 26th, 27th, 30th and 31st, 1927.

10

No. 6.
Opening
Proceedings
at Trial,
26th May,
1927.

W. N. TILLEY, K.C., and
A. J. THOMSON, *Counsel for Plaintiff.*

GLYN OSLER, K.C., and
G. R. MUNNOCH, *Counsel for Defendants,*

Spanish River Pulp & Paper Mills, Limited,
Ontario Paper Company, Limited,
Brompton Pulp & Paper Company, Limited,
Price Bros. & Company, Limited,
Laurentide Company, Limited,
Canada Paper Company, Limited,
Donnacona Paper Company, Limited.
Belgo-Canadian Paper Company, Limited, and
Belgo-Canadian Pulp & Paper Company, Limited.

20

J. G. GIBSON, also with MR. OSLER, K.C.,
For Spanish River Pulp & Paper Mills, Limited.

I. F. HELLMUTH, K.C., and
LYLE RAMSEY, *Counsel for Defendants,*

E. B. Eddy Company, Limited, and
News Pulp & Paper Company, Limited.

GEORGE H. KILMER, K.C.,
C. C. ROBINSON, K.C., and
L. A. LANDRIAU, *Counsel for Defendants,*

30

Abitibi Power & Paper Company, Limited, and
St. Maurice Paper Company, Limited.

GEORGE F. HENDERSON, K.C., *Counsel for Defendants,*

Charles Jackson Booth, John Frederick Booth and
Helen Gertrude Fleck, Executors and Executrix of
the will of the late J. R. Booth.

MR. TILLEY : I appear with Mr. Thomson for the Plaintiff.

MR. OSLER : I appear with my friend Mr. Gibson and Mr. Munnoch. My friend Mr. Hellmuth appears for the Eddy Company, whose interest is different from that of the others.

MR. HELLMUTH : I appear with Mr. Ramsay for the Eddy Company and the News Pulp and Paper Company. Mr. Kilmer, Mr. Robinson and Mr. Landriau appear for the Abitibi Power and Paper Company and the St. Maurice Paper Company, Limited.

HIS LORDSHIP : And you, Mr. Osler ?

10 MR. OSLER : I appear with Mr. Gibson and Mr. Munnoch, I may say, for all the rest.

HIS LORDSHIP : I glanced at the Record to get an idea of the nature of the action.

MR. OSLER : If your Lordship pleases, there are two points I should mention at the outset. There is one we raised as one of our defences, this arose out of matters that had been referred in the matter of the News Print and Paper Control Tribunal, and therefore not within the jurisdiction of this Court. Unless your Lordship is anxious that I should do so, I think the most convenient course would be to argue that as one of the defences later on, and
20 I do not want to more than mention it at the outset. Then we have served my learned friend with two Notices of Motion to amend our pleadings, the first with a view of raising the question of the amount overpaid in respect of one transaction before the Paper Controller, in which the several companies above paid certain sums which we hold to be more than due, at the time that it was dealt with by the erroneous direction these payments were final and really due. That is the Paper Control Tribunal varied an original order made by the Paper Controller and the result of that is, we say, the Plaintiff has been overpaid a considerable sum. We have put that on the Record so
30 that if the matter should reach the stage of taking an account, that item would be within the account.

HIS LORDSHIP : You are speaking now to amend your pleadings in order to—

MR. OSLER : In order to set out our contention in that respect.

HIS LORDSHIP : Any objection, Mr. Tilley ?

MR. TILLEY : I understand what my friend is asking to do, is to set up that the sum of \$8,000 odd—

MR. OSLER : \$20,000 odd.

MR. THOMSON : The difference between \$72,000 and \$80,000.

MR. TILLEY : Is that being put forward as a counter-claim ?

40 MR. OSLER : No, as a set-off.

MR. TILLEY : I have no objection.

HIS LORDSHIP : This amendment to the pleadings should be drafted.

MR. TILLEY : It is drafted, my Lord.

MR. OSLER : It is drafted in the Notice of Motion.

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No. 6.
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—continued.

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No. 6.
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—continued.

HIS LORDSHIP : The amendment should be made promptly so that before I come to consider it at all, I will have it in definite form.

MR. OSLER : And there was a second motion of a similar character which arises out of an item for a draw-back of duties, with which I won't trouble your Lordship any further for the moment, except that our submission will be before the Master, if it reaches that stage, that that also ought to be reduced.

It will be a second amendment, relating to the duty on the sulphite, withdrawal duty on sulphite—we say if it reaches the Master there will be a further set-off in that respect.

HIS LORDSHIP : Then, if you will see, Mr. Osler, that the Record is amended so that it will be done. 10

MR. OSLER : If your Lordship pleases, in the meantime I tender your Lordship the Notices of Motion which set out the exact items.

MR. TILLEY : They can be fastened to the Record, which would answer the purpose, my Lord.

HIS LORDSHIP : But it makes it a very awkward thing for me to handle, it means that I have to look at both of them, and read one passage here, and then read the other there, in order to see the effect.

MR. OSLER : We will see the Record is corrected, my Lord.

HIS LORDSHIP : If it is done this afternoon or to-morrow——

20

MR. OSLER : If your Lordship will give us until to-morrow —— it will probably have to be re-typed.

HIS LORDSHIP : All right. Then Mr. Tilley.

MR. TILLEY : My Lord, there are many orders made by Mr. Pringle, and Orders-in-Council that will have to be referred to, and I have brought them together in one document which I was proposing to file, subject to any objection that my friends would raise when they examined it as to any particular document, but the most of them are just formal matters. I put it in with that reservation. I think that it is complete, but my friend can look over it, and then if there are any particular ones that he wants to raise an objection to, that can be done. 30

HIS LORDSHIP : Would you tell me, to refresh my memory, how the matter originated? I recall this much, that there was some difficulty or objection raised that certain of the companies were by reason perhaps of geographical situation or otherwise, supplying the Canadian trade, or Canadian Press and others were obtaining a higher price on news print which was being supplied to the United States Press, and that as a result of some intervention or negotiations, or something of that sort affected or were supposed to have affected some modus-operandi by which the companies supplying newsprint were in a sense to pool the loss which might be sustained by reason of the lower prices which certain companies were obtaining for print supplied to Canadian newspapers. 40

MR. TILLEY : Yes, my Lord.

HIS LORDSHIP : And that all were to bear their share of the loss proportioned to the output—

MR. TILLEY :—That each one had, but the idea was that each one would take care of its proportion of the Canadian trade, and then if one supplied more than another it was made good by the one that escaped.

HIS LORDSHIP : I suppose what was meant really was, that the Government, instead of ordering that each one of the pulp and paper companies should supply its proportionate part of the quantity required for the Canadian newspapers or do the equivalent by paying its share of the loss which
10 might be sustained from the lower price.

MR. OSLER : We do not concede that, my Lord.

HIS LORDSHIP : How far do you concede that the matter went, so that I may appreciate the evidence as I am going on?

MR. OSLER : My Lord, in our view, the Government first passed an Order-in-Council fixing the price for a limited time. The first object was to get the paper to supply the publishers in Canada, and there were various negotiations between the different Mills with a view of seeing how the adjustments could be worked out. Mr. Pringle was appointed Controller, and prior to that time the Minister was given authority under an Order-in-Council. He
20 made orders fixing the price. He inserted in these orders a paragraph providing that an accounting in respect of any paper furnished over and above the quota that should have been furnished by each maker. Mr. Pringle, for a certain time, continued to make similar orders. Now, our view is that the authority did not extend to ordering payment over, but there were numerous negotiations as to how the matter should be adjusted and all of the mills, other than the Plaintiff, adjusted these things between themselves on a reasonable basis and settled up their debts. The Plaintiff's situation is rather a peculiar one. The Plaintiff's mill was in Fort Frances ; the western trade was peculiarly his, and the other mills recognized the fact that if those mills
30 that were supplying more than their quota, it was not to their benefit to have the different paper supplied to their customers, and their customers taken away from them and the Plaintiff sought to take advantage of the supply of the paper to the Western trade, and at the same time to ask the eastern mills who were so far away as to have a very heavy freight differential against the supply to the western trade, the other mills were not in a position to supply the western trade and there were some cases where they preferred to supply paper. Mr. Pringle went on making various Orders, all of which were objected to from time to time, and finally there was a general consensus that there should be no more attempt to work out a differential on a cash
40 basis, and I think your Lordship will have to follow the Orders-in-Council and the proceedings that took place from the beginning of 1917 until the matter came to an end, which was really in 1920.

HIS LORDSHIP : Now, I would like to see how far the ground is common,

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—continued.

to start with. All this was done under some Dominion Order, or Orders-in-Council?

MR. OSLER : Yes, my Lord.

HIS LORDSHIP : Is it agreed there is no question as to the right or the authority of the Dominion to pass the Orders-in-Council?

MR. OSLER : I think in view of the decision of the Privy Council I cannot usefully contest that.

HIS LORDSHIP : Then, at least I can start with that.

MR. OSLER : I would like to reserve in that respect the question as to the payment of the cash differential, whether that comes up in your Lordship's Court or not. 10

HIS LORDSHIP : Did the Order-in-Council go the length to provide for a payment of cash?

MR. OSLER : Our submission is not, but that would be a question of the interpretation of the language of the Order-in-Council. The Order-in-Council did provide with dealing with the distribution and supply, but those words—

HIS LORDSHIP : What provision did the Order-in-Council make for adjustment?

MR. OSLER : None, my Lord. The Order-in-Council dealt with the distribution and supply and fixing the quantity and under that it was assumed 20 that they could go ahead and ask us for payment in cash. That we dispute.

HIS LORDSHIP : These Orders for payment were made by Mr. Pringle?

MR. OSLER : The ones before your Lordship were before Mr. Pringle. There were some earlier ones made by the Minister, but they relate to an earlier time, as to which no claim is made.

HIS LORDSHIP : The earlier Orders were obeyed or acted upon?

MR. OSLER : The earlier Orders were all obeyed on the threat of checking the export of pulp.

HIS LORDSHIP : Obeyed under duress?

MR. OSLER : Obeyed under bitter complaints. In other words, the 30 Governor-in-Council could have prevented the export of pulp and prevented us doing business, I mean the export of pulp and paper, so they were submitted to.

MR. TILLEY : Your Lordship will find that these matters have all been adjusted down to a certain date. I think possibly the arrangement that my learned friend says was made between other manufacturers went somewhat beyond the date to which settlement was made with the Plaintiffs under the Orders of the Controller, and the Paper Control Appeal Board, and as my friend says it was thought the differential would come to an end, that was because it was thought the American price would be the same as the Cana- 40 dian price, but later on the American price was increased owing to certain proceedings in the United States with the result that the differential matter bobbed up again even more seriously than it had sometime before, so that for the latter part of the time newsprint paper was under

control, we have not as yet received any settlement for the extra amount we had to supply the Canadian trade.

MR. OSLER : Nor have the other members.

MR. TILLEY : I said extra, over our share, the other companies did not do that.

MR. OSLER : My friend is mistaken.

MR. TILLEY : Your companies did not get what?

MR. HENDERSON : None of the companies got differential, Laurentide, more than you, all of these except Mr. Hellmuth's two clients.

10 MR. OSLER : There were a number of them.

MR. TILLEY : That is to say, all of your manufacturers supplied more than your *pro rata* share?

MR. OSLER : Oh no, some of the manufacturers supplied more than their personal quota to the Canadian trade.

MR. TILLEY : I do not know what my friend's arrangements are between themselves. I suppose there is a *quid pro quo*.

Now, my Lord, I will put in the Exhibit that contains these Orders, and I have not distinguished between those that I would rely upon and those that my friends would rely on, and if there are any that I have omitted, I would be glad to add them to make it complete, or if any are here that my friends want to discuss, we can do so, but I think it would be much more convenient to put them all in, they are in chronological order.

HIS LORDSHIP : If any exception is to be taken to anything that may be in this, it should be taken before I attempt to make any use of it.

MR. TILLEY : Oh yes, my Lord. I was only going to ask if I be allowed to put it in now, and my friends speak to it later.

HIS LORDSHIP : It then may go in as Exhibit 1, subject to the right of the defendant Counsel to take exception to any particular portion of it which they think is not properly admissible.

30 MR. HENDERSON : As long as my friend has an opportunity.

MR. OSLER : We will have to have an opportunity of examining it. For instance, I see you purport to put in an Order by Mr. Pringle after he ceased to be Controller.

MR. TILLEY : The legal effect of it can be discussed. I am not asking you to admit it as an Order that is binding, by having it in there.

MR. OSLER : And I suppose we would object to its being in as it is an ineffective document entirely.

HIS LORDSHIP : Under what Dominion Statute did the Government purport to act?

40 MR. OSLER : May I interrupt for a moment, it is understood our objections to anything in this document are all open to us?

HIS LORDSHIP : Yes, they are all reserved to you. I am admitting as Exhibit 1, copies of certain Orders-in-Council which are submitted as being more or less a commencement.

MR. OSLER : If we had had that before, I might have been ready to say—

HIS LORDSHIP : You have a right to object to anything. The Dominion

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—continued.

Rec.
p. 389

Statute is what, Mr. Tilley?

MR. TILLEY : The Dominion Statute was the War Measures Act of 1914, and the Governor-in-Council purported to act under the powers conferred by it.

HIS LORDSHIP : That is chapter what?

MR. TILLEY : It is really the foundation of everything. It is Chapter 2, and Section 6, of the Dominion Statutes, 1914, second session. Then a second Act was passed in 1919, and that is to be found in Exhibit 1, at page 65, Chapter 63 of 9 and 10 George V. passed 7th July, 1919. That was passed on the termination of the war, section one (I need not read the recital). It says, "The powers jurisdiction and authority of the Commissioner and Controller of paper are hereby confirmed and extended to such extent as may be necessary to enable said Commissioner and Controller to fully complete all work and investigations begun by him under the provisions of the Order-in-Council of April 16th, 1917 (and it gives the different Orders), prior to the declaration of peace and to determine all questions and to make all necessary Orders with respect to matters begun by coming before him prior to the publication in the *Canada Gazette* of the proclamation by the Governor-in-Council delcaring that the war, which commenced on the 4th day of August, one thousand nine hundred and fourteen, no longer exists." 10

"2. The powers jurisdiction and authority of the Paper Control Tribunal under the Order-in-Council of September 16th, 1918 (P.C. 2270) are hereby confirmed and extended to such an extent as may be necessary to enable the said Paper Control Tribunal to finally determine after the declaration of peace all matters pending before and not finally determined by it upon the date of such declaration ; and the powers jurisdiction and authority of said tribunal are further extended to such an extent as may be necessary to enable it to hear and finally determine all matters and questions brought before it, subsequent to the publication of the said Proclamation on appeal from any act done by or order or decision of the Commission and Controller under the provisions of Section 1 of this Act. 20 30

"3. Except for the purpose of finally treating all matters undertaken and determining all questions arising prior to the declaration of peace, the powers, authority and jurisdiction of said Commissioner and Controller of paper and of said Paper Control Tribunal shall cease on the publication of the said Proclamation."

HIS LORDSHIP : The Declaration of Peace was 1919, sometime?

MR. TILLEY : January, 1920, and after that Act had been passed, and after a certain letter had been written by Mr. Pringle to the Government, which my friend, Mr. Osler, referred to as a resignation, and on the acceptance of resignation, there was an Order made by Mr. Pringle that I quite appreciate my friends will want to examine the effect of, whether it has any effect at all, I am not suggesting that any admission is made. I put in this, as I say, all of the documents, I put in the resignation, I have put in the acceptance, so it is all put connectedly there in one volume. If I were proving my case only, I think possibly I might have left that out, and I have put it all there without asking my friends to agree with any Order in it, it is filed. 40

It is there for what it is worth, and my friends will say whether there is anything they think should come out, anything more.

MR. HENDERSON : If we find anything else.

MR. TILLEY : If your Lordship pleases, I would be glad, if I could call one witness who cannot possibly be here tomorrow. It is a little out of order, but he either must return from Minneapolis, or else get finished today.

HIS LORDSHIP : I do not suppose a little more complication is going to make any difference.

MR. TILLEY : It has got about as bad as it can be, it started wrong.

10 EXHIBIT NO. 1. Brief of Orders-in-Council and Orders, etc. Controller Pringle, also Judgments Paper Control Tribunal.

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—continued.

THOMAS L. PHILIPS : sworn

EXAMINED BY MR. THOMSON.

Q. Mr. Philips, you were at one time General Counsel for the Fort Frances Pulp and Paper Company? A. I was.

20 Q. When did you take that position? A. I became General Counsel of the Company on February 1st, 1918, but I had been under retainer by that Company and its affiliated interests in connection with the paper litigation and investigations in both Canada and the United States for some two or three months prior to that time.

30 Q. Then, can you fix the date of your first connection with the Canadian proceedings? A. My first, or the first information that I secured in connection with the Canadian proceedings came from my client sometime during the month of December, 1917, and during the same month, I was present and participated in the conference at which representatives of certain Canadian Manufacturers, I think the majority of them, were present, in New York City.

HIS LORDSHIP : What month was that? Did you say in 1917?

A. Yes, in December.

MR. THOMSON : In December, 1917—was there more than one of these conferences which you attended? A. Yes, this one in New York, which was more in the nature of a general discussion and was directed chiefly to the price fixing prospect—

Q. Yes? A. And one in Ottawa, early in January, 1918.

40 Q. Now, just so that His Lordship will have the situation as to the prices of the two countries in mind, I wish you would tell me, in January, 1918, what the American fixed price was? A. So far as there was any fixed price in the United States at that time, paper was being sold by the manufacturers of more than fifty per cent., I won't say how much, but more than fifty per cent. of the rated capacity of the manufacturers of newsprint at that time under a contract with the Attorney General—

MR. THOMSON : I just wanted to get the price?

A. \$60 per ton.

MR. HENDERSON : Wait a moment.

Plaintiff's
Evidence.
No. 7.
Thomas L.
Philips,
Examination
26th May,
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Plaintiff's
Evidence.
No. 7.
Thomas L.
Philips,
Examination
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—continued.

MR. THOMSON : Just a minute, Mr. Philips.

MR. OSLER : Your Lordship, this witness is not qualified in any way to state. His power to prove, or to give evidence as to what the price of newsprint was at different times. He is a lawyer employed by the Plaintiff.

HIS LORDSHIP : I do not know, because he is a lawyer, I am not going to presume he had not the knowledge.

MR. OSLER : But he would have to show he was qualified.

HIS LORDSHIP : The objection was not taken sooner, and I could not see—

MR. OSLER : The objection was taken, and the witness continued to 10 speak?

A. I beg your pardon, Mr. Osler.

MR. THOMSON : Mr. Philips, the American fixed price, so far as there was a fixed price, was what?

A. I cannot give you a qualified answer to that.

MR. OSLER : Will you kindly wait. Surely we are entitled to His Lordship's ruling.

HIS LORDSHIP : I think that since it is objected to you must first show what means he has of knowing whether or not there was a fixed price, and if so, what it was. 20

MR. THOMSON : It would lengthen it very much.

HIS LORDSHIP : I presume so, I cannot help that. Mr. Osler is objecting.

MR. THOMSON : Q. For the moment what I would note is this, there was some sort of price fixation in the United States possibly later than January, 1918, am I right in that? A. Yes, sir, you are, with all the companies.

MR. OSLER : Surely my friend should observe His Lordship's ruling.

MR. THOMSON : I am endeavouring to.

HIS LORDSHIP : You may tell us, first of all, what his means of knowledge are as to fixation of prices for newsprint in the United States at that 30 time?

A. At that time, if your Lordship please, I was General Counsel for the Minnesota and Ontario Power Company.

MR. THOMSON : Q. Explain what that company is? A. It is owned or controlled by the same interests as those controlling the Fort Frances Pulp and Paper Company Limited, which was involved in a price fixing procedure in the United States through which I represented that Company. There were a very large number, or a large number of other paper companies operating both in the United States and Canada who were concerned with, and represented in that price fixing proceedings in the United States. 40

HIS LORDSHIP : Am I to understand?

A. I was Counsel.

HIS LORDSHIP : Am I to understand from what you said, that you personally were concerned in the making of the arrangements as to the fixing of prices there, or are you merely telling us what you heard from somebody else?

A. I am telling you what I saw, which I would have your Lordship see—

HIS LORDSHIP : I want to have it direct.

MR. OSLER : This is limited, I take it, my Lord, to any arrangement in which this witness was a participant.

HIS LORDSHIP : He has not, as I understand, up to the present assumed to give me any evidence of what he merely heard from others. The witness understands that the evidence which I can accept from him will be evidence as to matters of which he has personal knowledge, not merely of what he has read in trade papers or has heard other people say—you understand that?

A. I do, I think. Shall I proceed?

MR. THOMSON : Q. Mr. Philips, what was the first price fixed in the
10 United States proceedings—

MR. OSLER : Should it not be by whom was the price fixed?

HIS LORDSHIP : I would like to have, first of all, before he goes on to tell me what was done, to fix a price, I would like to have the witness's statement as to the proportion of producers in the United States who were concerned with or connected with, or bound by this fixation of price, so that we will have some idea as to the extent to which it applied.

MR. THOMSON : Your Lordship understands the Canadian Companies were also interested.

HIS LORDSHIP : He will tell us.

MR. OSLER : Might I ask your Lordship first, was this a price fixing by
20 agreement or by a Tribunal?

HIS LORDSHIP : He has not got far enough yet to tell us how it was done.

MR. OSLER : But if your Lordship pleases, if he goes on to tell us what the price was—

HIS LORDSHIP : I have not let him get that length yet, I am finding out now how the price was, among whom first of all the fixation of price was affected and then he can tell by whom or by what authority or whether it was by agreement of the parties.

Q. Did you start to say something about the manner in which it was
30 done—first of all tell me, was it by agreement of these parties that the fixation of prices was affected? A. The fixation of prices in the United States was carried out under a contract entered into, as I recall, early in November, 1917, between the Attorney of the United States, who described himself in the United States as the Trustee for the consumers of newsprint paper within the United States, certain manufacturers who were not only manufacturers operating newsprint mills in the United States, but also manufacturers operating a number of newsprint mills in Canada, and producing as was estimated at that time, as I recall to the best of my recollection—

MR. OSLER : I do not wish to be interrupting continuously, but this is
40 travelling outside—is the agreement in writing? It apparently is not produced, and second comes the estimates of somebody who is an alien—surely that is a difficult role?

HIS LORDSHIP : Unless it turns out these conditions of this agreement entered into between the Attorney General of the United States and the users of newsprint is to affect the issue that is before me, I am not going to go into the contents of the contract, or what its purpose, what its effect may be, but

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he, I think, is quite competent that by virtue of a contract a price was undertaken to be agreed on or fixed which governed certain producers.

MR. OSLER : That is subject to our objection.

HIS LORDSHIP : Oh, yes.

WITNESS : These manufacturers, producing approximately seventy-five per cent. of the then newsprint consumption of the United States, and under that agreement the signatory manufacturers agreed to submit to arbitration before the Federal Trade Commission—

HIS LORDSHIP : Now listen—I do not see that that phase of it, which goes on to deal with the contents or effect of the agreement made touches upon the issue which I have here. What they arranged among themselves, I think is to be shown by the contents of the document itself. The document is producible, and if the document is destroyed and cannot be produced, then secondary evidence can only be given as Counsel knows, by following a certain procedure. All we have from the witness, that those who were parties to the arrangement with the Attorney General of the United States, were, according to his evidence, producers of approximately seventy-five per cent. of the newsprint used in the United States. 10

MR. OSLER : This your Lordship understands he knows that is not so. My recollection was he said it was estimated— 20

HIS LORDSHIP : I do not know how any person can at first hand know that certain persons are producers or manufacturers of seventy-five per cent. of the newsprint produced in Canada. I think all any person is going to know would have to know it by information obtained from sources which are open to everybody, or everybody connected or concerned with that sort of thing—if you are going to require that he speak of that only of his own information, he would have to go to each of these Plaintiffs to know how much could be produced. I tell you quite frankly, I am willing to recognize all proper objection, but when a man who has some knowledge of the production of newsprint states in evidence that approximately seventy-five per cent. of the newsprint used in the United States was represented at a meeting, I am not going to say that he cannot give that evidence. I will have to take it for what it is worth. 30

MR. OSLER : My objection did not go so much to that as, here is somebody who has perhaps a brief from one company, that is the extent of his knowledge. He is not connected with the newsprint production—that is why I submit he should have qualified himself.

HIS LORDSHIP : We know from experience that sometimes Counsel who are identified with large manufacturing interests know quite as much of what the manufacturer or manufacturers in that particular line are doing as does the President or Vice President, or sometimes the General Manager or Managing Director of that concern, and that is particularly so in the United States. You may be able, on cross-examination to elicit the lack of direct knowledge or personal knowledge, that may affect the weight of his testimony, but I am prepared to take his testimony as far as it has gone at least. 40

MR. THOMSON : Then, your Lordship, I propose to ask him what price

was fixed in the first instance by this Federal Board Commission he has just mentioned.

HIS LORDSHIP : Now, I want to know, before you do ask that, I think I will ask the witness—

Q. You were present at conferences, and you, of your own knowledge can speak of the fact that the producers of approximately seventy-five per cent. of the newsprint used in the United States were parties to this contract made with the Attorney General of the United States?

A. Subject to the qualification which your Lordship mentioned, had I information?

Q. That is, as to its being seventy-five per cent? A. As to its being seventy-five per cent., yes, sir.

HIS LORDSHIP : I understand. Now then, what, or were the prices fixed for newsprint embodied in the contract itself, or were they fixed as a result of an arrangement, and by virtue of an arrangement on which the contract was made? A. Both.

Q. There was a price fixed by the contract at that time? A. There was a price fixed in the contract at that time in which all of the signatory manufacturers other than the Minnesota and Ontario Power Company and the Fort Frances Pulp & Paper Company agreed to sell paper at a price therein fixed for the first three months of 1918.

HIS LORDSHIP : Now that—?

A. The price subsequent to April 1st, 1918, should be fixed by an arbitration proceedings before the Federal Trade Commission, subject to an appeal to the United States Circuit Judges of the Second Circuit sitting as a Civil Board of Arbitration—

MR. OSLER : I must observe this is getting the men concerned, not what the agreement contained, not the agreement contents.

MR. TILLEY : Your Lordship is probably aware, the price that is fixed by the agreement is the price that entered into a settlement of differentials, that had all been completed and paid, this is only to get the evidence from the witness that is all they have done this afternoon.

HIS LORDSHIP : It is more or less historical.

MR. TILLEY : It is more or less historical.

MR. OSLER : Why have you given the evidence. I do not want to take captious objections.

MR. TILLEY : Why do you do it?

MR. OSLER : My friend calls a witness and does not tell to what his evidence is addressed and proceeds at once.

MR. THOMSON : Proceeds at once to find the difference between the Canadian and the American prices, which has all arisen out of that.

MR. OSLER : My friend suggests it is merely historical, but the only evidence as to dates that have been given so far relate to the first three months of 1918, and subsequent dates, as I understand it, that is the beginning of the period in question before your Lordship. I cannot tell what my learned friend has—

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MR. THOMSON : I wanted to show if there is a difference between the two prices.

MR. OSLER : If the prices are important, surely the proper thing is to call and produce the agreement.

HIS LORDSHIP : When is the period, Mr. Thomson, at which the subject matter of the issue before me evolved?

MR. THOMSON : On the 1st of January, 1918.

HIS LORDSHIP : Up to that time?

MR. THOMSON : Matters are closed up to that date, the 31st December, 1917.

HIS LORDSHIP : And any dispute between the Plaintiff and Defendant would be with respect to what took place after January 1st, 1918?

A. Yes, your Lordship, in the next two years.

HIS LORDSHIP : Now, witness, do you know, first of all, do you know whether or not the price of newsprint was fixed in the United States at the 1st of January, 1918—I do not ask you to tell me what it was?

A. I understand, I do.

Q. And do you know, or by what means it was fixed—was it by Governmental Order or by contract among the parties, or in what way? A. It was fixed for the first three months of 1918 as to certain manufacturers by agreement with the Attorney General of the United States.

HIS LORDSHIP : That is the agreement of which you have already spoken?

A. Yes, sir.

Q. As to certain manufacturers? A. Yes, sir.

There were at all times, if your Lordship pleases, certain manufacturers in the United States who were not subject to these price fixing proceedings.

MR. HENDERSON : Your Lordship notes, the witness has said my friend is not a party to this arrangement.

MR. THOMSON : He has said they did not agree to the price for the first three months.

HIS LORDSHIP : I understood you to say that the price was fixed under the terms of this agreement with the Attorney General of the United States for certain manufacturers of newsprint in the United States?

A. Yes, sir.

Q. Now you have said that the price was not fixed for the Fort Frances Pulp and Paper Company? A. Not by that contract, but it was fixed from the 1st of January, 1918, on by the Arbitration proceedings.

HIS LORDSHIP : When did the arbitration proceedings take place?

A. The Arbitration proceedings, the first hearing before the Trade Commission as I recall was on the 4th of February, 1918.

Q. What led up to the Arbitration? A. This contract which I have referred to.

Q. Then the Arbitration was under the provisions of the contract which you have mentioned? A. It was.

MR. HENDERSON : To which these Plaintiffs were not parties.

MR. THOMSON : To which they were parties.

MR. HENDERSON : He said they were not.

MR. THOMSON : He said the price was fixed for all the parties but his clients, but the price was fixed for his clients at the Arbitration for the whole period starting with the 1st of January.

MR. OSLER : Is there any reason why the agreement, if it is in existence should not be produced?

MR. THOMSON : I think I can produce the agreement if anything turns on it. I think I can produce a copy of it.

Q. Was that not copied out in pamphlet form? A. Yes, sir, it was.

10 Q. Now, will you tell me, Mr. Philips, then what the American fixed price was at the beginning of 1918? A. So far as there was any American fixed price, as I have indicated, it was \$60 a ton for the manufacturers who agreed on that price under that contract, and for the Minnesota and the Ontario Power Company, and its affiliated Company, the Fort Frances Company, so far as paper was sold in the United States, it was later fixed, as the result of the arbitration at \$70 a ton.

MR. OSLER : That, of course, is subject to my objection, that is not the way to prove this.

MR. THOMSON : Q. Coming down to the Canadian proceedings, you 20 spoke of attending a conference in December, 1917—did you attend a further conference in 1918? A. I did.

Q. Was there any discussion then as to this price? A. There was, to some extent.

Q. And what was the discussion, Mr. Philips? A. The discussion—

HIS LORDSHIP : With whom was this?

A. This was—

MR. THOMSON : With whom was that, His Lordship wants to know?

HIS LORDSHIP : With whom was this discussion?

30 A. It was a meeting at which a considerable number of persons were present, Mr. George Calhoun of the Laurentide acted as Chairman, whom I see before me, and Mr. Thomas of the Booth Company were there, and I am not sure whether Mr. Wilson was present on that occasion or not, but I think he was, but there were a number of other gentlemen. We met in a room on the ground floor of the Chateau Laurier at Ottawa, and it was a round table discussion as to the price fixing, proceedings here which were to begin the next day, and also of the differential matter, which had apparently been discussed by some of the other manufacturers before the Fort Frances representatives had arrived.

MR. THOMSON : Q. Then, did you take part in the discussion of the 40 differential matter when you arrived? A. A very small part.

Q. Well, did anything result, as far as your company was concerned?

A. No agreement or decision resulted from that conference. We agreed to disagree, and evidence was submitted to the Controller later.

Q. Then, did you, from that time on, in general represent the Fort Francis Company in the Canadian proceedings? A. I did, in a supervisory capacity, although during the Spring, and down to about the first of June, 1918—

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Q. Yes? A. I was not present at certain hearings that were had in Ottawa, and I believe also in Montreal, being engaged in the hearings before the Federal Trade Commission at Washington during that period.

Q. Then, is there anything further that bears on this question of differentials down to say the summer of 1919, that you had anything to do with?

A. I think so, yes.

Q. What is there, Mr. Philips? A. There was a hearing at Ottawa, before Controller Pringle, in the latter part of September, 1918. We were all at that time expecting the decision from the United States Circuit Judges in New York on the appeal from the Trade Commission findings in that country. 10
Mr. Pringle had, as he had advised me personally on one or two visits at his office, postponed his final hearing.

Q. Yes? A. Before fixing the price in the hope that the decision of the Judges in New York would be handed down.

HIS LORDSHIP : In the New York Court of Appeal?

A. It was the Judges of the United States Court of Appeal sitting in New York. They were not sitting, I think I made it clear to your Lordship, as a Court, but as a Board of Arbitration under the terms of this contract. Mr. Pringle, however, had this hearing and evidence was put in, and there were some arguments for about three days. In the course of that, Mr. Pringle 20
desired—

MR. OSLER : Where?

MR. THOMSON : The Record will show.

MR. OSLER : We had better refer to the Record.

MR. TILLEY : He was there and heard it.

MR. THOMSON : Q. You were present? A. I was, and implicated to a very considerable extent.

MR. HENDERSON : Not necessarily by way of objection, but are we to understand that representations made to Mr. Pringle are to be taken in evidence in this way, or from the Record. I see no particular objection to their 30
being read in the Record, my Lord.

WITNESS : I think I can finish that without referring to anything Mr. Pringle said. At the conclusion of that hearing Mr. Pringle announced late in the evening his Order with respect to new prices on newsprint, and then within a day or two thereafter, a very short time thereafter, the Judges in New York handed down their decision.

Q. Yes? A. Which resulted in a higher price in the United States than either of the prices fixed by Mr. Pringle at that time.

MR. THOMSON : Q. Now, let me get this, if I am right, the price fixed on this September 1918 hearing was \$69 for the Canadian Mills other than 40
Fort Frances, and \$73 a ton for Fort Frances—am I right? A. Correct, subject to certain possible deductions in the case of the Fort Frances price.

HIS LORDSHIP : Let me get that again, Mr. Pringle's Order was what?

MR. THOMSON : \$69 a ton, your Lordship, for the mills other than Fort Frances, and Fort Frances was given a special price of \$73 which was subject to reduction in certain events.

MR. OSLER : What was the date of that Order?

MR. THOMSON : 26th September, 1918.

HIS LORDSHIP : Was that for newsprint to be furnished to Canadian Consumers?

MR. THOMSON : Yes, your Lordship.

HIS LORDSHIP : \$73 for Fort Frances?

MR. THOMSON : \$73 for Fort Frances—\$69 for the others.

HIS LORDSHIP : Fort Frances being the Plaintiff?

MR. THOMSON : Yes, your Lordship.

10 Q. At that time, Mr. Philips, the American fixed price, so far as it was a fixed price, was what? A. \$64 as fixed by the Trade Commission, subject, I believe to an addition to about in the neighbourhood of \$3.50 on account of increases in labour costs, which had taken effect the 1st of May, and certain increases in freight rates, which became effective about the 1st of July.

Q. Then you cannot make it more definite than that, you cannot say whether or not immediately after that Order of the 26th of September, 1918, the Canadian price was higher or lower than the American fixed price?

A. The day the Canadian price was fixed, it was higher than the American fixed price, but the American price was then pending on Appeal before the
20 Judges, and was changed within a very few days after Mr. Pringle's Order.

Q. Now, is there anything, have you knowledge of anything else that bears—

HIS LORDSHIP : On the 26th of September, the prices fixed by Mr. Pringle's Order were actually higher than the prices which then stood in the United States?

A. Which then stood under the Orders of the Trade Commission. Your Lordship will understand that there were market prices of course, that were outside,—manufacturers not bound by these contract proceedings,—that were much higher.

30 MR. THOMSON : Q. Now, anything else that bears on this question in your knowledge, up to the summer of 1919? A. In April—

HIS LORDSHIP : Just a minute, you gave Mr. Thomson a price which ruled after the decision of the Judges came out, and I did not get it. I thought you did state that.

A. I think I can state that was approximate—

HIS LORDSHIP : I do not want any evidence I will leave it to Counsel to bring out what he thinks is material.

Q. As far as you want to say was, the price was increased? A. Yes, sir.

MR. THOMSON : Now, coming to the summer of 1919—

40 MR. HENDERSON : We are willing to state, my Lord, the price the witness speaks of was \$3.50, the witness's price being \$3.45. We have it in a pamphlet.

HIS LORDSHIP : What does that apply to?

MR. HENDERSON : As a matter of—we are speaking of the prices for rolls—Mr. Pringle's price on the 26th of September, 1918, as in the Orders.

MR. HENDERSON : The witness did not know the full figure. It is in the Order.

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MR. TILLEY : We would like to get on with this witness.

MR. HENDERSON : His Lordship asked a question.

MR. THOMSON : Q. Where were you in the early summer of 1919?

A. I was a considerable portion of the time in Ottawa.

Q. In Ottawa, and I ask you whether that is a copy of a letter dated 13th May, 1919, that seems to have been sent by you and Senator W. B. Ross, on behalf of the Fort Frances Company?

MR. OSLER : To whom?

MR. THOMSON : To Mr. Pringle?

A. It is.

10

MR. OSLER : How is this evidence?

MR. THOMSON : Something follows as a result of this. I tender that, your Lordship.

HIS LORDSHIP : I have not heard, as yet, what it is?

MR. THOMSON : It is a statement of the grievances of the Fort Frances Company and ends with a statement—

HIS LORDSHIP : You said it was a letter?

MR. THOMSON : Yes, my Lord.

HIS LORDSHIP : It is a copy of a letter, I presume, sent by whom to whom?

20

MR. THOMSON : Sent by this witness and the Honourable W. B. Ross on behalf of the Fort Frances Company to Mr. R. A. Pringle, the Paper Controller.

HIS LORDSHIP : How is a letter sent to him evidence against these Defendants?

MR. THOMSON : It is only leading up. This is in the nature of an ultimatum, they will cease supplying paper unless their claim for differentials is dealt with, and as a result of this, certain things happened.

HIS LORDSHIP : What you say is, at this particular time the Plaintiff notified by letter the Paper Controller, Mr. Pringle—

30

MR. THOMSON : Yes.

HIS LORDSHIP : "That unless certain things were done, we would not go on further, or we would do this, or would not do that."

MR. THOMSON : Yes, your Lordship.

HIS LORDSHIP : And you say, in consequence of that, something else eventuated?

MR. THOMSON : Yes, my Lord, and I am sure, if I got the witness to give certain information, I would have been met—

MR. OSLER : What these people may have said privately to Mr. Pringle and their negotiations they had privately with Mr. Pringle, are not evidence against us, surely.

40

HIS LORDSHIP : I do not know, they may be helpful to me as indicating the course which was taken by the parties at the time.

I suppose, if there was a meeting before the Paper Controller in Ottawa and this witness as Counsel for the Plaintiff Company got up and made certain complaints or took certain objections, and demanded certain alterations

in the arrangement and so on, and these were made, that evidence could be given here to show that he did so.

MR. OSLER : If they had sent copies of these letters to the Defendant companies? If this had been made in open hearing before the Commission, or before Mr. Pringle, I suppose I could have had no objection, or my clients could not, but surely it is going beyond anything to introduce a private communication which this Plaintiff tried to press the Commissioner to do something. It is not evidence against us.

10 HIS LORDSHIP : I understand that Mr. Thomson purposes giving it to show that as a result of this letter, something was done by Mr. Pringle which did affect and bind the Defendant, or that he brought pressure to bear upon the Defendant as a result of which the Defendant undertook something or other.

MR. THOMSON : That is exactly the situation.

HIS LORDSHIP : I can get at it another way. Mr. Thomson can go on and have this witness, or whatever other witness can give the information, or documents can furnish the information and show what was done by Mr. Pringle, and then this witness can say "that was the result of the letter which I wrote to Mr. Pringle, and pressure which I brought to bear." I do not see
20 that anything is going to be gained, it is not going to prove anything except the witness says the Plaintiff made complaint or made demands.

MR. OSLER : I suppose there is no doubt they were pressing Mr. Pringle, here and there.

HIS LORDSHIP : It may be of some use in its historical application. It is not binding, its contentions are not binding on me. It is evidence only of the fact presumably that the Plaintiff was complaining or was demanding, or was obtaining, or doing something or other.

MR. OSLER : My submission, my Lord, it is not evidence against us.

HIS LORDSHIP : It is not evidence binding.

30 MR. OSLER : Surely, if it is not binding it should not be produced.

HIS LORDSHIP : I do not know. Somebody or other no doubt is going to have the privilege of paying for a copy of the evidence, and going on to another Court. There are several other Courts. If they think the letter is hurting anybody, they can refuse to read it. I will allow it in subject to the objection.

What is the date, Mr. Thomson?

MR. THOMSON : The date, my Lord, is the 13th of May, 1919. I propose to bring out it was sent at a very much later date. It was dated the 13th of May, 1919, I think the actual date of sending this letter was the 25th of June, was it not, Mr. Philips?

40 HIS LORDSHIP : From this witness?

MR. THOMSON : And Senator W. B. Ross to the late Mr. R. A. Pringle.

WITNESS : Senator Ross and I delivered the original of that in person on the morning of the 25th of June, 1919. It is shown on the last page of the copy which you have is the date on which we would cease shipment having been corrected to read. Subsequent to the 25th of June.

HIS LORDSHIP : The letter will be Exhibit No. 2.

EXHIBIT No. 2. Carbon copy letter dated May 13th, 1919, from T. L.

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Philips and W. B. Ross, Attorneys for Fort Frances Pulp and Paper Company, Limited, to Honourable R. A. Pringle, Commissioner and Controller of Pulp and Paper, Ottawa.

“Dear Sir, on behalf of the Fort Frances Pulp and Paper Company, Ltd., we beg to offer . . . “With assurances of the highest personal regards, we are, Very respectfully, (Sgd.) T. L. Philips, (sgd.) W. B. Ross, Attorneys for Fort Frances Pulp and Paper Company, Ltd.”

MR. HENDERSON : Of course, your Lordship does not accept these *ex-parte* statements of fact.

HIS LORDSHIP : I am not accepting the contents of the letter as being 10 statements of fact, which are evidence here.

MR. HENDERSON : It is a letter by the party Plaintiff.

MR. OSLER : I understand it is taken entirely subject to our objection.

MR. THOMSON : I understand the last date, the date on the last page was changed on account of the letter having been held over for a month?

A. Yes, it was changed to two or three days after the 25th of June.

MR. THOMSON : Q. Then, what happened after this letter, Exhibit 2, was presented to Mr. Pringle? A. Mr. Pringle sent a representative to Fort Francis, and also assured Senator Ross—

MR. OSLER : Surely, my Lord, this cannot be permitted. 20

HIS LORDSHIP : I do not think what Mr. Pringle said can be of use.

MR. THOMSON : Your Lordship, it is only a question which bears on the differential. Your Lordship will see it is a demand for settlement of further differentials. They complained and insisted something be done, or they would stop supplying the Canadian Trade—now, in consequence of that, was anything done?

MR. THOMSON : Q. Now, did your company act on that letter? Send shipments to Canadian publishers? A. I was so advised by the Officials. I was not present at the mill, I was in Ottawa.

Q. What happened when you got that advice as to the Company's ac- 30 tion? A. We were, Senator Ross and I were solicited by several representatives of the Government, and Mr. Pringle—

MR. THOMSON : Well, shall I proceed?

HIS LORDSHIP : They came to you and implored or insisted and did something, as a result of which your company went on and did something—what did you do?

A. What did we do?

Q. Yes? A. Ultimately we resumed shipments.

Q. You stopped shipments, at least it was reported that your Company had stopped shipment for a time, and ultimately, as a result of intervention on 40 the part of Mr. Pringle and the Government, you resumed shipments?

A. Yes, sir.

MR. THOMSON : Q. Now, what happened, if you know, to cause the Company to change its position—first it stopped shipment, and then resumed—why did it resume, if you know? A. I know.

Q. Was it because of something in which you took part? A. Yes, sir.

Q. What was it please? A. The first was the passage of a bill which

became an Act, which was referred to by Mr. Tilley, as having been approved on the 7th of July, 1919, authorizing the continuation of the plan of work taken by the Paper Controller, and the Control Tribunal and the promise of the Paper Controller—

MR. OSLER : No.

MR. THOMSON : Yes.

HIS LORDSHIP : You had some sort of assurance from the Paper Controller which you thought would protect you, and you went on, and as a result of it, something—?

10 A. We had—the Paper Controller prepared certain papers and exhibited them to us.

MR. THOMSON : Q. He prepared certain papers and exhibited them to you—is that what you said? A. Yes, he prepared a paper and exhibited it to us.

Q. What was the paper? A. The paper was the draft of an *interim* differential order complete, except as to figure.

Q. Covering what period? A. Covering a period beginning with January 1st, 1919, I believe, and it was supposed to extend down to the time covered by the price which had been fixed the last September, previously, and
20 which was then on Appeal to the Paper Control Tribunal.

Q. I wish you would look at the Order that appears, commencing at page 69 of Exhibit 1, and see whether or not the Order—

MR. OSLER : My Lord.

MR. TILLEY : Let him finish the question. We will have the question first, if you have no objection.

HIS LORDSHIP : Whether or not what?

MR. THOMSON : Q. If that Order is in the form of the draft submitted to you in the summer of 1919?

HIS LORDSHIP : Now, do you wish to say something, Mr. Osler?

30 MR. OSLER : Yes, I object to an attempt to give evidence of a document which was apparently never completed. My friend has referred the witness to what is called an Order at page 69 in the brief of Exhibit 1, which purports to be signed by Mr. Pringle at page 71, but I understand no such order was ever signed, and in that respect this document is incorrect, and my submission is a document of this kind should not be prepared including a document as if it had been signed, when apparently it was a draft discussed between Mr. Pringle and this witness. There is a method of proving the proceedings in Mr. Pringle's office, and surely this witness cannot give evidence of drafts Mr. Pringle may have prepared, and he may have discussed with Mr. Pringle?

40 HIS LORDSHIP : Now, until it is determined whether or not this document which is by the Plaintiff asserted to be an Order made by Controller Pringle is an Order or is not such an Order, or is or is not admissible,—it cannot be known or determined whether or not evidence with respect to it, or how it was obtained should be admitted here; but is any person going to be injured by my allowing the witness, or by the witness being permitted to say that which appears on page so and so of Exhibit 1, whether it is evidence or is not evidence, or whether it is effectual or valid, or is not, appears to be in the form of the

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draft which was shown to him by Mr. Pringle. Now, I am not going to be affected by it if I come to the conclusion ultimately that what purports to be an Order by Mr. Pringle is not really an Order by Mr. Pringle.

If a draft of it is shown to the witness it surely is not going to affect my view—if on the other hand, I come to the conclusion it was a valid Order by Mr. Pringle, and is binding on the parties, I do not see I am going to be hurt very much by the fact he saw a draft Order before hand.

MR. OSLER : I do not suppose your Lordship will, but my objection is the document is put before the witness in the form at page 71 as signed by Mr. Pringle.

10

MR. THOMSON : And he said so. It was an Order which Mr. Pringle says he signed, but never issued. It was handed the Plaintiff Company .It was never enforced by the Control Board though, and there is no doubt what the issue is. The Commissioner said at a later date, "I signed it, but did not issue it."

HIS LORDSHIP : Is it not going to be a question which I am to determine whether or not there was such an Order made by the Paper Controller, and if he purported to make such an Order, if it is valid and effectual.

MR. OSLER : My friend admits it was not issued and—

MR. TILLEY : I do not admit it was not issued.

20

MR. OSLER : In terms.

MR. TILLEY : Might I state our position in regard to this Order of Mr. Pringle's. There is nothing in the appointment of Mr. Pringle which requires him to give out any written order. He can give us directions, and did give us directions which we were required to obey. Now, I desire to put in at this time, I care not what happens about the Order ultimately, but as this was a document shown to him by Commissioner Pringle. I understand the witness says the document was complete except the figures to go in.

HIS LORDSHIP : He has said that.

MR. TILLEY : Now, we want to make clear, what was shown to him, and what Mr. Pringle said to him about it.

HIS LORDSHIP : If he is able to say what appearance it produced by Mr. Pringle, and that Exhibit 1, to the best of my memory is in the same form as the draft shown to me, I do not see why he should not say it.

MR. OSLER : My objection is, the document should not be there. This is a case where we should not have a copy for that purpose. We should have the document.

HIS LORDSHIP : Is there an original?

MR. TILLEY : Your Lordship, we cannot find the original.

MR. OSLER : We have never found it.

40

MR. TILLEY : My friend will pardon me, we cannot find the original, but all we can say is that we were shown that by Mr. Pringle, and copied it. It is the fact of his showing it to us we are proving. The fact that when we had prepared an argument, that after that the Commissioner shows us a document, the document he is making, and we go on on the strength of it, whether it is verbal or written, no matter what happens to it afterwards—it is the fact of showing it to us, and what happened afterwards is what I want to prove.

HIS LORDSHIP : I suppose if the Commissioner showed him a paper writing, and this witness had one of those phenomenal memories which would enable him to say what was on that paper, he was able to say he showed me a document of which this is a copy, and—

MR. OSLER : Where did this come from?

MR. TILLEY : It happened to be in our office with material. The only thing for the moment is, if Mr. Philips can say that is the document which it now professes to be.

HIS LORDSHIP : Witness, have you read the pages as to which you are
10 asked to say whether you can recognize them?

A. I have.

MR. HENDERSON : My Lord, in the event of something of this kind happening, I have here the present custodian of Mr. Pringle's documents with all the documents under subpoena, they are available to my friend.

MR. TILLEY : We will be very glad to avail ourselves of them, but we want to get through with this witness for the moment.

MR. THOMSON : Now, Mr. Philips—?

A. I can only say the document which appears at pages 69, 70 and 71
20 of this Exhibit appear to be substantially the same as the document which, or draft of which document was shown to me by Mr. Pringle about the time I suggested, except for figures, date line and signature, appearing on page 71, and I can give an additional reason for my statement with regard to that statement if it is desired.

HIS LORDSHIP : Never mind, I am not going into reasons. Cross-examining Counsel may if they want to. The document at pages 69 to 71, appears to be substantially the same Exhibit, there were no figures in the draft that was shown to you?

A. I have not any financial memory.

HIS LORDSHIP : And no signature to it?

A. There was no signature to it at the time it was shown to me.

Q. No signature? A. No signature or date or figures.

MR. HENDERSON : Or names of Companies?

A. I did not say that. The names of the Companies—

HIS LORDSHIP : Were there?

A. They were.

MR. THOMSON : Q. What did Mr. Pringle say to you when he showed
you this draft Order?

MR. OSLER : Surely, my Lord, this cannot be given in evidence. I do not want to keep repeating these objections.

HIS LORDSHIP : I do not think so, Mr. Thomson.

MR. TILLEY : Q. Can we not prove that at that time. Mr. Pringle told them to do certain things, on the strength of this because he is the Controller, he is not bound to act in any particular way.

HIS LORDSHIP : He may have given them Orders as Paper Controller, to do something, that is in issue I understand. I understood Mr. Thomson was seeking to give evidence Mr. Pringle said, "Now, you go on and do this and the other thing."

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MR. TILLEY : I submit that would be perfectly good evidence.

HIS LORDSHIP : I am very doubtful of it.

MR. TILLEY : If he said, "If you do this, I will do so and so," and they do it. He is the Paper Controller.

HIS LORDSHIP : Supposing he did not do it.

MR. TILLEY : That is why we are here.

HIS LORDSHIP : If he did not do it, how would these Defendants be bound by Mr. Pringle's failure to carry out the promises made to you?

MR. TILLEY : Because, my Lord, we, certain parties, have rights arising out of transactions that have been set on foot by competent authority. If the authority should come to an end and not be exercised, the rights of the parties do not entirely fall. We are entitled then to come to the Court, it was held in *Cameron v. Cuddy*, 1914 Appeal Cases. We are entitled to come to the Court and say, we did this on certain statements as to what would be done, and Mr. Pringle is dead, the Controller cannot now do it for us, and we want the Court to do it. We do not lose our newsprint paper and our price and everything, merely because Mr. Pringle died. 10

HIS LORDSHIP : I am not convinced at all. I will permit you to tell what Mr. Pringle said subject to the objection of the Defendant. I will reserve my right to reject the evidence altogether if I see fit. 20

MR. THOMSON : Q. Then, what was said? A. Mr. Pringle gave me for the Fort Frances Company, an assurance——

HIS LORDSHIP : What did he say. I do not want the result of what he said. I want the language, what he said to you?

A. I cannot quote his exact words at this time. He said in substance, if the Fort Frances Company will resume shipments of paper to the Canadian Publishers immediately upon the passing of an enactment in the latter part of July which had then been introduced and was pending, I will make a differential Order in this form, and I have already instructed Mr. Clarkson to furnish me the figures to put into that Order." 30

MR. THOMSON : Anything further?

A. There were a number of conversations during those days with Mr. Pringle, but that was the substance. I might say that in substance was repeated to me on several occasions during those few days.

Q. During those few days? A. Yes, sir.

Q. Anything said as to differentials beyond the 1st of July, 1919, or 1918? A. Yes, that this was to be more, this form was merely an *interim* Order, and as soon as the report of the Paper Control Tribunal was handed down, he would take care of the entire situation.

Q. Well then, that is all, that was passed—anything said on that occasion as to the future? A. When I said the entire situation, I was referring to the past and future, both, the future would be dependent on whatever price was fixed by the Paper Control Tribunal, whatever was its price on appeal. 40

Q. You refer to the Paper Tribunal? A. Yes.

Q. I did not get that? A. Mr. Pringle's former prices were then pending on appeal before the Paper Control Tribunal, which had not yet rendered its decision. The Paper Control Tribunal of Canada, I am referring to.

CROSS-EXAMINED : BY MR. OSLER.

Q. Mr. Philips, you were following the proceedings before Mr. Pringle as Paper Controller in 1918, fairly closely? A. Except as stated, that during the first half of the year I was unable to be present at certain hearings on account of the hearings going on in Washington, concurrently.

Q. And do you remember being present at a meeting at Ottawa on the 23rd September, 1918, a hearing before Mr. Pringle? A. I believe so, yes, sir, that was the hearing that lasted three days was it not, Mr. Osler.

Q. That I am not quite sure of, but do you remember the question of
10 differentials being raised, the Commissioner saying in reply to Mr. Orde who represented the Eddy Company, "I will say to you, Mr. Orde now, there will be no more differential"? A. I recollect something of that on the hearing, yes, sir.

Q. Mr. Pringle is reported to have said that, according to the discussion?

A. I think he did say that. In the discussion 2388 to 2390—

HIS LORDSHIP : That there would be no more differential?

MR. OSLER : The quotation is, "I will say to you, now, Mr. Orde, that there will be no more differential."

20 HIS LORDSHIP : What was the date, Mr. Osler?

MR. OSLER : The date is the 23rd September, 1918, my Lord.

Q. And then a few paragraphs later, Mr. Orde says, "I think they got away from that differential scheme which at the time we thought was necessary, but the differential was only to obtain here for a very limited period. If you take the Order-in-Council, and the Order which the Finance Minister made under it, it is apparent on the face of it that the differential was a temporary thing, only providing for the period between the making of the Order, and the time that you were going to make a report, and we all know that was intended to be on the 1st of May, 1917."

30 And the Commissioner—"there is no question but at that time it was thought I would be able to get at the cost of newsprint by the 1st of June, at all events and the differential would then be out of the way"—do you remember that?

A. I think I recollect something of that nature, that was referring it, as I recall it, Mr. Osler, to the original Order of the Minister of Customs, when Mr. Pringle was his appointee to make some investigations and before his appointment as Controller.

Q. Now, at this meeting of the 23rd of September, Mr. Philips, the report shows that besides the Controller there were present, Mr. H. A. Stewart,
40 and I think he represented the Publishers or the Government? A. Mr. Stewart was there as Crown Counsel, and I think I have a sort of recollection that he came into the proceedings about the time, Mr. Tilley, who was representing the Publishers Association dropped out of them.

Q. And then there was Mr. Montgomery, he represented the Manufacturers generally? A. Mr. Montgomery represented the Canadian Paper and Pulp Associations and its members I believe, and the Laurentide—there were other Counsel representing some other individual Companies, Mr. Osler.

Q. When you say the Pulp and Paper Associations, that includes all

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the Defendants here? A. I am not fully advised as to its membership at the present time.

Q. Then Mr. Henderson represented Booths, I think? A. I think so.

Q. And you were present, representing, I suppose, Fort Frances?

A. Yes.

Q. Mr. Orde represented the Eddy Company? A. The Eddy—

Q. And Victor Mitchell represented Abitibi and perhaps St. Maurice?

A. I think only the Abitibi.

Q. And I was there with Mr. M. C. Osborne representing the Ontario Paper Company? A. You were there, Mr. Osler

Q. And you had also Mr. Thomas McLaren, representing Fort Frances?

A. Mr. McLaren was the Comptroller of the Fort Frances Company at that time.

Q. And Mr. H. I. Thomas represented Mr. Booth? A. I think so.

Q. And they were all present? A. I think so.

Q. Now, coming down to the difficulty in the summer of 1919, Mr. Pringle sent a representative out to Fort Frances? A. Yes.

Q. And he virtually took possession of the Fort Frances Company's mill? A. I cannot say what he did after he got there. I was at Ottawa. Mr. McNichol was at Fort Frances.

Q. And an Order-in-Council was made, putting an embargo on the export of paper unless the Orders were complied with? A. I think not at that time, Mr. Osler. My recollection is, I do not recall that there was any embargo placed at that time. In the month of June there was a good deal of talk back and forth, and discussion. I know we had several conferences with a number of Government representatives, including Sir Robert Borden, but I do not recall that there was any embargo placed at that time.

Q. Now, when was the embargo placed? A. To my personal knowledge, I do not know, as I severed my connection with the Company as General Counsel about the middle of August, 1919, but I have been advised that later in the year, perhaps in December, 1919, there was some further difficulty which resulted in the placing of an embargo for a time.

Q. And do you know that the question of this differential settlement of the summer of 1919 was dealt with by the Orders for the delivery of paper?

A. I have no personal knowledge of that, Mr. Osler. As I say, I severed my official connection with the Company, and had nothing more to do with the differential matters after about August 15th, 1919.

Q. You do not know where this copy of a draft Order which Mr. Pringle is said to have shown you in the summer of 1919 came from?

A. I do not know where it came from —

Q. Yes? A. Why, he lifted it off his desk, and showed it to me. I can tell you where the copy in this file is from, if you want to know, it came out of my letter file in Minneapolis.

Q. Did you take a copy from him? A. No, sir, a copy was sent me later, bearing the signature, and the date, and the figures mailed to me from Ottawa, and received by me in my office in Minneapolis, bearing post mark from Ottawa on the 17th of June, and I received it about the 20th of June.

MR. TILLEY : What year?

A. 1919.

MR. OSLER : 1919?

A. Yes, sir.

Q. You never saw the original of that Order? A. I cannot tell you at this time whether what I received at that time was a signed original or was a typewritten copy because I have not been able to locate, in the time since I was advised that I would be asked to come to this proceedings, the original file which I have. I have the copies, certain of the copies which I distributed to the Company's officers, which I have found in the other files, and that is what the copy which appears in this Exhibit was prepared from, and that is why I was able to identify it.

Q. You know, of course, that Mr. Pringle says he never, he never issued such an Order? A. I never heard that statement from Mr. Pringle. I have been advised the late Mr. Pringle did not dispute it.

HIS LORDSHIP : Do I understand you that the one sent you at Minneapolis was signed, or did it purport to have a typewritten signature?

A. I said, I could not, at this moment, recollect positively. I have files which I have been able to locate of the Vice President of the Company, which has in it a letter which I wrote to him enclosing to him a copy of this Order together with a copy of the letter of transmittal from Senator Ross to me, dated July 17th, 1919, and I had copies of this made in my office in Minneapolis, and transmitted them to the Company's Officers and since I have left the office there, the filing case in which my files were located has been moved, and I have been unable to find my old files. I did locate the file of the Vice President in which was this copy that I transmitted to him.

MR. OSLER : Q. But you do not pretend to have seen Mr. Pringle's signature on that Order? A. No, and I do not pretend not to have seen it either, Mr. Osler. I am saying, I cannot recall whether it bore his actual signature or was a typewritten copy, but it was transmitted to me, as I have stated at that time, in my official capacity.

MR. OSLER : Will you let me have the letter dated 9th November, 1921, Mr. Pringle to Mr. Tilley.

MR. TILLEY : May I ask why it is put in, on the ground of what?

MR. OSLER : I am putting it to the witness to show what Mr. Pringle said.

MR. TILLEY : To me? I was not acting for the Fort Frances Company. My friend surely cannot with this witness put in a letter written by Mr. Pringle to me when I was acting for the Publishers and not acting for the Fort Frances Company at all.

HIS LORDSHIP : I do not know how it may be affected by evidence. It may be given subsequently, but what has this witness to do with it.

MR. OSLER : This witness is speaking about a draft Order said to have been shown to him and—

HIS LORDSHIP : You want to show by a letter written to somebody else that it could not have been.

MR. OSLER : Exactly. The letter reads, "Yours of the 8th inst."

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HIS LORDSHIP : I do not understand why it should go in with this witness, Mr. Osler.

MR. OSLER : Surely I can show this to the witness and ask him whether, having read that letter, he has any reason to qualify his evidence.

HIS LORDSHIP : Quite so. You could show him a chapter in the Book of Revelations and ask him if he saw that—and if he said “yes”—I am not going to stop the witness doing it.

MR. OSLER : Have you got the original of the letter there?

MR. TILLEY : No, I have not.

MR. OSLER : It is the furthest paragraph I intend to refer to. 10

MR. TILLEY : Will you just show it to the witness and ask him if it helps him.

MR. OSLER : This is a draft copy.

MR. TILLEY : I object to my friend reading a copy of a letter written to me.

MR. OSLER : We have asked you to produce a copy.

MR. TILLEY : That does not entitle you to read your copy.

HIS LORDSHIP : You can show it to the witness and ask him to read the letter to himself, and ask the witness, “Does that induce you to qualify the evidence you have just given” ? And if the witness says so—but the mere fact the letter was written to Mr. Tilley, or to anybody at that time is not admissible as evidence to show this witness’s recollection of the fact is not correct. 20

MR. OSLER : Then if my learned friend is keeping the letter and won’t produce it, I can perhaps tell the witness what the contents are ?

HIS LORDSHIP : I do not know why. Now, we are not going to go on all night at this sort of thing. The witness may be cross-examined by showing him a letter which he wrote to contradict him, or telling him of a statement which it is supposed that he made to somebody of which evidence is going to be given by somebody, that he made another statement at any time. 30

Now this is a letter which the witness never saw, was not written to him, was not read to him, was alleged to have been written to Mr. Tilley, who was not acting for the witness at that time, and it is offered to show by the contents of this letter that the witness’s recollection of what occurred or what was said or written to him is faulty, that it could not have been said, or written to him, or else to induce the witness to admit perhaps his recollection is not correct.

Now the furthest use that can be made of it is to show this copy of letter to the witness, and ask him, “Having read that, do you still persist in saying so and so” ?

MR. OSLER : That is what I am going to do, my Lord. 40

HIS LORDSHIP : But you cannot read the letter in the Records here as being evidence in any way affecting the question which is before me. You can only use it by allowing the witness to read it and ask if that requires him to modify the evidence he has given, but it is not entitled to go on this Record any more than is a chapter out of the Bible.

MR. OSLER : I submit I can put the question, “Did Mr. Pringle on such a day state so and so” ?

HIS LORDSHIP : That is why I object. We have not any evidence Mr. Pringle ever did say such a thing, and you are not in a position to say he did, and you cannot submit to the witness something as having been proven, or having been stated by somebody else for the purpose of cross-examination unless you are in a position to put it in and prove it.

MR. OSLER : We have asked my friend to produce it. We can subpoena him, but I did not wish to do that.

HIS LORDSHIP : There are means of producing documents.

MR. TILLEY : Contemporaneous documents, written at the time, I would not raise any objection, if it had any bearing on the matter, but it is two years after

HIS LORDSHIP : The letter is not evidence to prove its contents as having anything to do with the issue here.

MR. OSLER : I am not submitting it as such.

HIS LORDSHIP : What you want to do is this, by reading that letter, this witness will modify the evidence he has given.

MR. OSLER : That is what I wish.

HIS LORDSHIP : Now, I am permitting you to show him the copy of the letter which you have, or believe you have, and then, after he has read it, you may ask him, "Having read what I have put before you, do you now qualify the evidence you have already given" ?

MR. OSLER : I will do so, but I am going to submit I can follow that a little further—

Q. Will you read that, Mr. Philips.

(Mr. Osler hands letter to witness).

A. Yes, sir. (Witness reads letter.)

Q. Now, having read that, do you still say that Mr. Pringle made an Order dealing with differentials other than the Order of the 6th of August ?

A. I have not said yet that Mr. Pringle ever did make such an Order. I said that Mr. Pringle showed me a draft and said that he was going to make an Order, and I was later furnished with a copy of what was said to be such an Order. I do not know if he ever deposited copies of that with anybody else or not. I do not see there is anything in that letter you have shown me that has any tendency to make me change anything.

I was going to ask, I see in this, Mr. Pringle says, after referring to the Order of August, 1918—(balance struck out—at direction of his Lordship).

HIS LORDSHIP : Mr. Osler is trying to get in the letter. Mr. Henderson, I will ask you to strike that out of the Record.

MR. OSLER : I asked your Lordship if I might put that question ?

HIS LORDSHIP : No, I did not so understand you. I won't allow any quotation from the letter to go on the Record as being evidence in this case.

MR. OSLER : I thought I made it clear, I was asking if I could put that question, and perhaps the reporters notes will bear me out. I would not have attempted for a moment to put the question without asking your Lordship's permission.

HIS LORDSHIP : I quite accept your explanation.

HIS LORDSHIP : Any other Counsel desire to ask the witness any questions?

MR. TILLEY : That is all, thank you, Mr. Philips.

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Court resumed Friday, May 27th, 1927, 10.30 a.m.

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MR. OSLER : My learned friends and I have not had time to have the Orders-in-Council of Exhibit No. 1 compared. It must be subject to that, of course, because I have noticed at page 54*one or two quite obvious errors. Then it omits some Orders-in-Council relating to the export of pulp, which I think should be included, or else go in as a separate Exhibit.

HIS LORDSHIP : Is there any objection to this going in, Mr. Tilley ?

MR. TILLEY : Not the slightest. It is just a matter of convenience with this, or a separate Exhibit.

HIS LORDSHIP : Will there be any further Orders-in-Council except 10 these ? It would be rather a convenience to have all the Orders-in-Council in one Exhibit.

MR. TILLEY : Except these, my Lord, are on a different subject matter.

MR. OSLER : I do not think it makes any difference, my Lord, we have the original Orders-in-Council.

HIS LORDSHIP : First of all, will these go in ? It matters not to me, will they go in as a separate Exhibit, or as part of this Exhibit ?

MR. OSLER : I am absolutely indifferent.

HIS LORDSHIP : We have a second Exhibit—this will be Exhibit Number 3, the additional Orders-in-Council. 20

EXHIBIT No. 3. Certified copies Orders-in-Council : P. C. 5/2465—4th October, 1918. P. C. 2581—19th October, 1918. P. C. 1388—7th July, 1919. P. C. 2508—15th December, 1919. P. C. 24—5th Jan., 1920.

MR. OSLER : The document that is copied on page 69 of Exhibit 1, I think should come out, and should be a second Exhibit. That is the document which is typed here as if it were a formal Order made by Mr. Pringle, whereas all we have heard of it so far is it is a draft Order Mr. Philips saw, without signature or date. My objection was to the admission of the document at all. Its proof was not sufficient, but it might certainly be very misleading if 30 it were incorporated in such a file as this, and my submission is that it should not go in.

MR. TILLEY : It is quite immaterial to me. I am sure it does not matter whether it is in one or another, and I am quite willing that those three pages should be taken out, and that it should be marked Exhibit 4, put in as the next Exhibit. Exhibit 4 is the document that was referred to yesterday, in the Examination of Mr. Philips, dated the 17th July, 1919.

HIS LORDSHIP : And it was referred to in Mr. Philips' evidence as being found in pages 69, 70 and 71 of Exhibit 1 ?

MR. TILLEY : That is the document. 40

HIS LORDSHIP : That will go in now as Exhibit 4.

MR. OSLER : And, of course, that is subject to our objection.

HIS LORDSHIP : Certainly, it remains subject to the objection made before.

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EXHIBIT No. 4. Copy of Order by Mr. Pringle dated 17th July, 1919, providing payment differentials 1st January, 1919 to 1st July, 1919 (marked pages 69, 70 and 71).

MR. TILLEY : Subject to that, Exhibit 1 will stand for the Orders-in-Council.

MR. HENDERSON : Subject to any correction.

MR. OSLER : I have not mentioned any details, but there are one or two substantial mistakes in copying.

MR. HENDERSON : Your Lordship will remember there were some
10 references made to the fact that an agreement between the manufacturers themselves, as part of Exhibit 1, I think it would be rather more convenient if this Exhibit had been confined to Orders and Orders-in-Council.

At page 34, it is only a matter of convenience, I do not see any objection to it being here. It will have to be proved. It is not proved yet.

Let it remain here merely as a matter of convenience.

MR. TILLEY : My friend says it is not proved. I am taking it that these things are not requiring proof as to signatures.

HIS LORDSHIP : As the Exhibits, or signature ?

MR. HENDERSON : I may tell my friend when this comes to be men-
20 tioned in evidence, it will appear that the actual documents have more signatures on them than appears here. There will be no difficulty between us as to the fact.

HIS LORDSHIP : As to proving execution ?

MR. HENDERSON : I do not intend to stand on that. The only difficulty is the Appellate Court makes different terms and say, "Here is something—"

MR. TILLEY : It is in chronological order, and if we get to an Appellate Court, we print them in chronological order.

MR. HENDERSON : I am not objecting, I am merely calling your attention.

MR. OSLER : My friend says it will be in order. Some of the Counsel
30 though may prefer to have it out.

HIS LORDSHIP : Then, Exhibit 5 is the agreement in addition, admitted to have been executed.

MR. HENDERSON : We do not agree to admit it. It will be talked about in evidence, and explained at the time, it would not do to put it in baldly.

MR. OSLER : In fact the agreement was not signed by the Fort Frances and rejected by the Fort Frances.

MR. TILLEY : That document is not in at all yet, we just picked it out.

HIS LORDSHIP : Yes.

MR. TILLEY : Then, are we all right now ?

40 MR. OSLER : Yes.

WILLIAM DUNBAR TAYLOR, Sworn. Examined by MR. TILLEY :

Q. Mr. Taylor, I understand you are connected with the firm of E. R. C. Clarkson & Co. ? A. Clarkson, Gordon & Dilworth.

Q. Mr. G. T. Clarkson or his firm were retained by the Controller of paper, Mr. Pringle, at one time in connection with accounting ? A. I think it was Mr. G. T. Clarkson personally.

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No. 9.
William D.
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Q. And then it fell to you to do a good deal of the work connected with that? A. Yes.

Q. Now then, just to get some matters——

HIS LORDSHIP : You were retained by the Controller ?

A. Yes, my Lord.

MR. TILLEY : Q. Am I right ? A. Yes, sir.

Q. Mr. Pringle ? A. Yes, sir.

Q. Now, just on some matters that I think are not in controversy, and just to clear the ground for other things, you commenced your work about what date, the exact date is not material. I mean in 1917 ? A. It was 10
sometime in 1917 I made the first survey.

MR. TILLEY : Sometime in 1917, and describe generally what work fell to you, or to Mr. Clarkson, what kind of work ? A. In the first survey we visited a number of the different newsprint mills and examined into their costs, preparing statements of what their costs were over each month during the period covered.

Q. You were examining as to costs as an element that the Controller was considering in connection with prices ? A. Yes.

Q. And then, did you have something to do with regard to what we referred to as differentials ? A. Yes, I did some work on that, too. 20

Q. Now, will you just describe what we mean by differentials, how it works ? A. I do not know the best way to start that. Some of the Canadian Mills were supplying larger tonnages to the United States than others, and there was a difference also in the price.

Q. In the States and in Canada ? A. Between the States and Canada.

Q. Yes ? A. And to equalize matters so that the different mills would be on a fair footing, the differential was——

MR. HENDERSON : Pardon me, is this interpretation of the word, my Lord ?

MR. TILLEY : We must understand the expression. 30

MR. HENDERSON : The Order says what it means.

MR. TILLEY : The Order does not use the word at all.

MR. HENDERSON : It is hardly fair that a lay witness should put an interpretation on what the Controller and the parties meant.

MR. TILLEY : I am not asking what the Controller meant, I am asking what he meant by the word differentials. It is not used in the Order at all.

HIS LORDSHIP : And how the matter arose, it is not seeking to show what the effect of anything that was done might have been on the parties. Go on, Mr. Taylor ? A. The differential was for the purposes of ascertaining the losses which the mills supplying more Canadian tonnage than its 40
quota as compared with mills which were supplying the greater proportion to the American trade.

MR. TILLEY : I gather from that that the Canadian mills supplied, I am treating them as a group, not any particular one, supplied newsprint paper both to Canadian publishers and to United States publishers ? A. Yes.

Q. And on which side of the border was the larger amount of Canadian production used, on the United States side, or the Canadian side, where did

they ship, more to the States or did they sell more to Canada? A. On the whole, more went to the United States than to Canada.

Q. About what per cent. roughly, was used in Canada, I am not asking exactly? A. I guess somewhere around about eight-five per cent. went.

Q. To the States? A. Yes, to the States.

Q. The balance in Canada? A. Yes.

Q. And then I gathered from what you say that the mills did not all sell a pro rata amount in Canada, some sold a great deal more to the States, and some sold a good deal more to Canada than the fifteen per cent.? A. Yes.

10 Q. And then there was a difference in price? A. Yes.

Q. That you say brought about this question of differential—then what did you have to do with that? A. I prepared a statement of differentials for Mr. Pringle. I think first of all for the period covering March to December, 1917.

Q. March to December? A. March to December, 1917, based on a differential for Fort Frances of fifteen dollars being the difference between the Canadian and the American price and plus \$3.15 for sulphite, making a total differential of \$18.15.

20 Q. \$18.15, \$15.00 of which being a difference in price between the States and Canada and the balance being some allowance regarding sulphite?

A. Yes.

HIS LORDSHIP: What was that amount? A. \$18.15.

MR. TILLEY: Q. Now, was that only as to Fort Frances?

A. Well, the figures would first of all be worked out for all the companies, because I had to have all the companies' figures before I could do it.

Q. In order to get at what might be due to any one company, you would have to have the figures of all the companies? A. Yes.

Q. To get their production and where they sold, and so on? A. Yes.

30 Q. But were you working out in fact a differential for each of the companies, or only for Fort Frances in the end? A. In that case it would just be a differential for the Fort Frances company, because none of the other companies that were over-supplying Canada were entitled to \$3.15 rate on sulphite.

Q. None of the other companies? A. None of the other companies that were over-supplying were entitled to the \$3.15 allowed to Fort Frances for the sulphite.

MR. TILLEY: Now, Mr. Taylor, you say that that price was only to Fort Frances, or that differential because Fort Frances was the only mill that was over-supplying the Canadian market with this sulphite item—

40 HIS LORDSHIP: Will you explain what that means. I do not appreciate it. I do not know enough about paper making to grasp it?

A. The Fort Frances plant—

Q. I want you to speak out, Mr. Taylor? A. The Fort Frances plant had no sulphite mill on the Canadian side, they got their supply of sulphite from their mill on the United States side of the border, and they had to pay duty on the sulphite entering into Canada. Then on the tonnage that was sold in Canada, their claim was that they had this extra element of cost,

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\$3.15, which the other mills did not have where they were a complete unit, that is, where the sulphite mill was a part of the mill.

Q. Yes? A. And that therefore they were entitled to this extra to recover of \$3.15.

MR. OSLER: That is, they claimed they were entitled to that? A. Yes.

MR. TILLEY: Q. It was a differential item, and the controversy continued down to what date? A. I do not know what the date was. It was afterwards settled, I think, by their getting a rebate of the duty from the Government.

Q. From the Government? A. From the Government? 10

Q. Then, that means that the item in respect to sulphite was not taken care of as money, but, the money difference itself was taken care of by the Government?

MR. TILLEY: Well, in the end, the Fort Frances did not have to pay the duty on sulphite, the sulphite duty, is that right? A. Yes.

Q. So that, from that time, there would be no allowance to them in respect of that extra cost to them?

A. No, there was no allowance to them.

HIS LORDSHIP: Did they get a refund of duty already paid?

MR. TILLEY: They got no refund, or did they? A. I do not remember 20 whether they did.

MR. OSLER: They did.

MR. TILLEY: I am getting what this witness knows.

Q. At a certain time, they did not have to pay the item? A. That is so.

Q. And that was allowed off, whatever they got, the rebate on what had been paid before, you cannot say? A. I do not remember now.

Q. But then, putting that to one side for the moment—you say that you made this computation down to December, 1917? A. Yes.

Q. And the year after that report was made to the Controller, I believe he made an Order? A. Yes. 30

Q. That is not these orders, so we need not bother you about that—and that Order was appealed to the Control Tribunal? A. Yes.

Q. And the amount that Mr. Pringle had allowed was reduced? A. Yes

Q. I think he had allowed some 100,000 and odd dollars, and it was reduced to some 70,000 odd? A. It was considerably reduced.

Q. Now then, to that—

HIS LORDSHIP: Might I see a copy of that Order?

MR. TILLEY: I will give your Lordship a reference to it—the first one is at page 45.

HIS LORDSHIP: I want to get some idea as to the form or nature of them? 40

MR. TILLEY: Your Lordship will see it is a general Order, I mean, covering various things, and then—

MR. OSLER: The recital covered the order.

MR. TILLEY: The recital gives the history of his appointment, and then he recites this, what he calls the differential clause, it says, "Whereas under existing conditions, the supply of newsprint paper to Canadian publishers is not proportionately distributed between them, and by reason of the fact that

the prices fixed are lower than the manufacturers are receiving from export business, I do order that each manufacturer shall bear his due proportion of the cost so entailed in complying with above, and that if arrangements were not made between the manufacturers for the pooling of such costs, and for adjustment between themselves in proportion to their output supplied to Canadian publishers that an accounting be made, and the manufacturer or manufacturers who have supplied a greater percentage of Canadian tonnage than properly attributable to them shall be paid by the other manufacturers sufficient to place them in the same position as the manufacturer or manufacturers who have not supplied their proper percentage of paper to the Canadian publishers."

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HIS LORDSHIP : Do I understand, Mr. Osler, you take exception to that as being beyond his power and authority ?

MR. OSLER : Yes, my Lord.

MR. TILLEY : Then he says, "And whereas by Order-in-Council dated the 3rd day of November, 1917, I was appointed Commissioner and Controller with full power to make such Order or Orders as I might deem necessary or advisable for the distribution and delivery of newsprint, etc., and to carry out all the terms and conditions of the different Orders made from time to time, by the Honourable the Minister of Customs.

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"And whereas acting under the authority of said Order-in-Council of 3rd November, 1917, I have made Orders from time to time, fixing price of newsprint subject to approval of the Governor-in-Council, which said Orders have been approved by the Governor-in-Council, and in all such Orders there was a provision in regard to the protection of the manufacturer or manufacturers who supplied a greater percentage of Canadian tonnage than properly attributable to them, similar in terms to the Order made to the Honourable the Minister of Customs.

"And whereas the Fort Frances Pulp and Paper Company, Limited, have in obedience to my orders supplied a very much larger proportion of paper to Canadian publishers than properly attributable to them, and are entitled to the differential as set out in the report of G. T. Clarkson, Accountant, said differential covering the months of March, April, May, June, July, August, September, October, November and December, for the year 1917, and which is as follows :—"

30

Then the items are set out, those being what they call the "short" mills, the ones that had not supplied their full allotment of Canadian tonnage ?

A. That was just to the Fort Frances mill, was it not ?

Q. Due the Fort Frances ? A. Due by the other mills to Fort Frances.

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Q. "All of which is shown on the detailed statement, hereunto attached to this my Order."

"I direct and order that the above amount together with interest at the rate of 5 per cent per annum be paid by the above-named companies to the Fort Frances Pulp and Paper Co., Ltd., within thirty days from the date hereof.

"The following statement shows the net amount including interest which will be required to be paid by each of the companies referred to"—

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Then the amount to be paid is set out with the principal and interest, making \$100,797.71.

"I recommend that in the event of any of the above-named companies refusing to comply with this Order, that no license be issued to such company or companies so refusing or neglecting to comply with this Order for export of paper.

"This Order is subject to the approval of the Governor-in-Council, dated at Ottawa the 6th day of August, A.D. 1918."

Then your Lordship will see the next page is 47a, and that is the Order-in-Council that followed.

"P. C. 1963—"His Excellency the Governor General-in-Council."

HIS LORDSHIP : Pardon me, Mr. Tilley. I notice it is referred to "Approved by Order-in-Council P.C. 1663." It should be 1963.

MR. TILLEY : Order-in-Council P.C. 1963.

HIS LORDSHIP : I will correct it in the Order.

MR. TILLEY : "His Excellency the Governor General-in-Council, on the recommendation of the Minister of Finance, is pleased to approve the annexed Regulation issued by the Controller of News Print Paper, etc., on the 6th day of August, 1918, and the same is hereby approved accordingly."

Now, Mr. Taylor, I think the appeal Order is at page 73 of the same Exhibit (Exhibit 1), and it says,

"We do this day adjudge and determine that the said Order so far as it directs to be paid to the Fort Frances Pulp & Paper Company, Limited, by the several manufacturers therein named, the several sums thereby specified for or in respect of differential for the ten months of March, April, May, June, July, August, September, October, November and December, in the year 1917, totalling (including interest) the said order, the sum of \$100,797.71, be varied so that the total amount which the said Fort Frances Pulp & Paper Company, Limited, shall be entitled to receive or retain under the said order shall be the sum of \$72,507.12 instead of the said sum of \$100,797.71, payable by said manufacturers to said Fort Frances Pulp & Paper Company, Limited, in the amounts and proportions following, that is to say :"—and then the items are given. I will return to that in just a moment.

"We think the learned Paper Controller, erred in directing interest to be paid to the Fort Frances Pulp & Paper Company, Limited, on the said amount which he found payable to said company as differential.

"We further adjudge and order that any of said contributing manufacturers who has under and in obedience to said order of the Paper Controller paid to the said Fort Frances Pulp & Paper Company, Limited, as differential covering said ten months period, or as interest thereon, any sum in excess of the amount which we have above specified and adjudged as being properly payable by said manufacturers shall be repaid such excess forthwith by the Fort Frances Pulp & Paper Company, Limited.

"The appeal of the Ontario Paper Company, Limited, from the said Order of the Paper Controller is dismissed."

Q. The Ontario Paper Company was, I think, a company that shipped all its product to the States ? A. Yes.

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Q. And it was making its own appeal—that, I do not know that it is now material—but it was dismissed.

Q. Now, Mr. Taylor, these items, first the interest is disallowed, and then the items of principal are not proportionate one to the other, it does not seem to depend on tonnage, does not seem to depend on mere quantity?

A. The allotment was made in this way, the original figures, as I said before, were based on a loss by the Fort Frances Company, they claimed \$18.15.

MR. OSLER : Claimed of what ?

10 MR. TILLEY : The claim of \$18.15.

Q. Yes ? A. In the later figures, the losses by the mills supplying in Canada and the accounts by the mills supplying the greater proportion to the States were equalized by reducing the one by a certain percentage, and increasing the apparent loss of the other by the same percentage, they were brought together on a common ground.

Q. Instead of approaching it from the standpoint of total loss ?

A. Of the total loss.

Q. The percentage deduction was taken off the profit made in the States to bring it down, and the percentage was allowed on the losses.

20 MR. OSLER : Am I understanding you are asking the witness to say what the Controller did ?

MR. TILLEY : I am asking him what he did—

Q. You did that ? A. I prepared the statement.

MR. TILLEY : I get at sea as soon as I start to talk about figures, but will you just state that again, please, Mr. Taylor.

HIS LORDSHIP : To start with, the basis which you had started with before was the differential of \$18.15 ? A. \$18.15.

Q. And that was made up of \$15, the difference in the price of paper, and \$3.15 in respect of the sulphite duty which had to be brought in ? A. Yes.

30 Q. Now, how did you reduce the \$18.15 ? A. First of all, the sulphite claim disappeared because it had been settled in the meantime.

Q. The \$3.15 was gone ? A. Yes, sir.

Q. That left \$15 ? A. Yes.

Q. Then the apparent loss to the Fort Frances Company—

HIS LORDSHIP : That is the loss which appeared to have been sustained by their having to sell their output to Canadian instead of American consumers ? A. Yes, was scaled down..

Q. How scaled down ? A. Perhaps I had better just explain the process that had to be gone through from the beginning.

40 HIS LORDSHIP : Yes, but you will have to do it in another tone of voice, that Counsel can hear.

A. Returns were got from all the mills to show the production by month, and the sales by month—the sales were divided between their contracted tonnage, and the uncontracted tonnage, and the average prices were given that they received from these sales, both in the States and in Canada. Then the total production of all these mills was ascertained—the total sales in Canada were ascertained, and the percentage relation of the total sales to the

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total production, giving the quantity which each mill should have supplied.

HIS LORDSHIP : That was the way in which you ascertained the prices originally ? A. That applied to both.

MR. TILLEY : Not to price ? A. That is just the quantity.

Q. Yes ? A. Then from that the tonnage which each mill should have supplied in Canada, was ascertained, that is the relation of the total sales to the total production in Canada.

HIS LORDSHIP : The total production and the total sales in Canada, and from that you ascertained what amount each mill should have supplied in Canada ? A. Of its production. 10

Q. Yes ? A. Then the difference between that figure and the figure they actually did supply gave the shortage, or gave the quantity for over-supply or under-supply to Canada.

Q. Yes ? A. Then, there was applied to that the difference between what they were receiving in Canada and what they could have received in the States, and that being the monetary value of what they had apparently lost through selling in Canada instead of the States.

Similarly with the mills that were short on the Canadian supply was ascertained in the same way, what they had gained by selling in the States instead of Canada, and by taking the money values as ascertained in this way, 20 for all the mills that were short, and all the mills that were long; having got the money values, the money values did not agree as the losses of the mills over-supplying in Canada got a different figure from the gains in the mills over-supplying in the States, and to equalize these two figures, I reduced the mills over-supplying in Canada by a percentage figure which varied with each month, and applied that same percentage figure to the gain of the mill supplying in the United States, so as to get them on a common basis. Then after that, it was just the matter of applying these particular figures to the Fort Frances, taken by itself and spreading their apparent loss over the other mills that had not supplied in Canada, so as to get the amount that each of these 30 mills should contribute to the Fort Frances cost.

HIS LORDSHIP : In proportion to their output ? A. No, in proportion to what their losses would have been, on taking all the shorts and all the longs together.

HIS LORDSHIP : As a result of that, the differential was reduced in amount ? A. Yes.

MR. TILLEY : The differential was reduced in amount, and then you say, the sulphite duty, \$3.15, was entirely eliminated ? A. Yes.

Q. Because something had happened to disentitle the Fort Frances Company to receive it ? A. Yes. 40

Q. That is, it had been rebated by the Government, as you understand, is that it ? A. Yes.

Q. So that they did not get, although the \$3.15 was added in the Controller's figures, it was taken out in the Court of Appeal figures ? A. Yes.

Q. Now then, these figures are the resulting figures as shown in the Court of Appeal Order ? A. Yes.

Q. And was it the Court of Appeal that gave you the direction as to how

to figure up the amount, with their approval, was it done? A. I do not remember how that method of dealing with the two opposing factions was arrived at.

Q. Do you not know how that method of making the figures was arrived at? A. But it was an arbitrary method, and submitted to the Court of Appeal, and adopted.

Q. I suppose there were consultations between you and Mr. Clarkson and the Tribunal? A. I would consult with Mr. Clarkson about what was the best method of doing it.

10 Q. Then, if you used the Appeal Tribunal's Order as the figures, nothing has been allowed to the Fort Frances Company for sulphite duty? A. No.

HIS LORDSHIP: Before you go on, Mr. Tilley, do I understand that your claim, or some part of your claim is in respect to this sulphite?

MR. TILLEY: No, your Lordship will remember my friend amended his pleadings yesterday, he was entitled to set off something that was rebated to us by the Government, but I am only pointing out the rebate was taken into account by the Appeal Tribunal, and taken out of our figures at that time.

MR. OSLER: There is nothing to show it was taken out?

MR. TILLEY: Q. You say it was taken out by these figures?

20 MR. HENDERSON: The Paper Control Tribunal gave no reasons.

HIS LORDSHIP: For their decision.

MR. HENDERSON: They simply issued their Order. It is not competent for this witness to say what their Order meant.

HIS LORDSHIP: No, except the witness can give evidence, if he feels competent to do so, the figures show here are the figures which he prepared, and in the preparation of these figures no allowance was made for sulphite.

MR. HENDERSON: Allowance was made for sulphite in the preparation of his figures.

30 HIS LORDSHIP: In the set of figures for the Controller, but he prepared a new set. I do not know what he will say—

MR. HENDERSON: His later practice was to omit the allowance for sulphite, we are all one as to that, but my submission is the witness cannot interpret the finding of the Appeal Tribunal.

HIS LORDSHIP: No, I think the Tribunal would come to the conclusion if they exactly agreed with the figures, without sulphite, those were the figures on which they were based.

MR. TILLEY: Q. Are the figures in the Order, the figures that you made out for the Appeal Tribunal eliminating the \$3.15 for sulphite duty? A. I would like to compare my figures with the figures in the Order.

40 Q. Can you do it here? A. No, I have not the statements here.

Q. Will you do that this morning? A. I will do that, and bring them up.

HIS LORDSHIP: At any rate, you did state, I understood in making your computation, made in respect of the direction of the Appeal Tribunal, you did not put in any item in respect to the sulphite? A. No, that was taken out.

Q. That was right, whether they did or not, or whether their figures agreed with yours or not, you are to find out and let me know? A. Yes, sir.

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MR. TILLEY : Q. Then, Mr. Taylor, an order was signed by Mr. Pringle dated the 23rd of January, 1920, which is at page 90*, in Exhibit 1—now do you remember that order? A. Yes.

Q. Did you receive an Order? A. Yes, I have a copy of it here.

Q. You have it there—signed by Mr. Pringle? A. Yes.

Q. Did you receive it from Mr. Pringle or—?

A. I expect so, it is signed by him, as I understand, and is in our files.

Q. It is sent to you, and on your files?

MR. OSLER : All he knows is it is on his files.

MR. TILLEY : Q. Do you remember the occasion of Mr. Pringle making 10 that Order? A. I remember he was in Toronto at the time it was made.

Q. You remember he was in Toronto at the time it was made, and how soon after did it come to your attention?

A. I suppose almost immediately, because I started to get the information.

Q. You started to get the information? A. Within about a week.

Q. Within about a week? A. Yes.

Q. And did you send out a communication to the manufacturers?

A. We sent out a letter to all the mills concerned.

Q. To all the mills concerned? A. Of which this is a copy, asking for 20 certain information.

Q. Is this the form of the letter? A. That is the copy of the letter that was sent.

Q. A copy of the letter and a list of those to whom it was addressed is given above? A. Yes.

MR. OSLER : What is the date?

MR. TILLEY : 28th January, 1920.

EXHIBIT No. 5. Letter dated 28th January, 1920, G. T. Clarkson to several paper manufacturers. 30

MR. TILLEY : Possibly I should just read it to your Lordship. "28th January, 1920. Abitibi Power & Paper Company, Limited, Montreal, Quebec. Newsprint Differential. We enclose herewith copy of Order in the above matter made on the 23rd of January, 1920, by Mr. R. A. Pringle. I shall be obliged if you will forward me the following information for each month from 1st January, 1918, to 31st December, 1919"—

You had to go back to the 1st of January, 1918, because nothing had been done, or had anything been done with regard to ascertaining differentials from that date? A. Well, we wanted to get the information direct from the mills, from the 31st December, 1917—that was the date which had been 40 settled.

Q. That had been settled down to date, and the Paper Control Tribunal—
HIS LORDSHIP : What information is asked for, Mr. Tilley?

MR. TILLEY : Did I not finish? It says—

"1. Production.

2. Tonnage of roll news sold in Canada under contract.

3. Average price per ton sold in Canada under contract.

4. Tonnage of sheet news sold in Canada under contract.
5. Average price per ton sold in Canada under Contract.
6. Tonnage of roll news sold in Canada not under contract.
7. Average price per ton sold in Canada not under contract.
8. Tonnage of sheet news sold in Canada not under contract.
9. Average price per ton sold in Canada not under contract.
10. Tonnage of roll news sold outside Canada under contract.
11. Average price per ton sold outside Canada under contract.

and so on, that is the necessary information. I am not reading it all. The
 10 necessary information to make up a statement as you had been doing it before?

A. Yes.

Q. And "the figures given in answer to the above should not include shipments made to or on account of any mill in Canada."

WITNESS : There is more on the other side.

MR. TILLEY : "Where paper has been shipped to, or on account of, or received from another mill, the following information is required :

"(a) For paper received from, or placed to your order by other mills.

1. Name of mill shipping.
2. Month in which received.
- 20 3. Quantity each month.
4. Price.
5. Month in which it is included in your shipments reported.

"(b) For paper shipped to or to order of other mills.

1. Name of mill to whom or to whose order shipped.
2. Month in which shipped.
3. Quantity each month.
4. Price.

"The average prices given should be the final prices charged, where there has been any alteration from the price originally billed.

30 "Please acknowledge receipt and state date by which you expect to furnish me with your returns."

Q. Now, Mr. Taylor, what is the significance of asking for the tonnage under contract, and prices under contract—does that mean old contracts?

A. Well, in working out the differential if a company supplied in Canada under contract a greater tonnage than the proportion that they should have supplied, that is taking all the mills together and applying the sales in months of the production—then in preparing my differential statement, I did not allow for the difference loss. I argued they were entitled to differential only on the difference between the contract tonnage if it exceeded their quota. I
 40 got rather mixed up there—they were only entitled to receive differential on the difference between their tonnage under their contracts and—

HIS LORDSHIP : Suppose a mill had made a contract extending for a period of years to supply paper at a certain price or prices, or schedule of prices were you figuring that they were entitled to a differential in respect of that, or bound to supply it anyway under their contract?

A. No, it will work out in this way, in an actual case they have supplied

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one hundred tons under a contract they were to have supplied only fifteen tons as their quota.

Q. That is as their quota according to their proportion of the output?

A. According to their proportion to the output, then on the eighty-five tons of the extra supply under contract, they did not receive any differential.

Q. They did not receive any differential? A. They did not receive any differential, because they were under contract to supply it.

HIS LORDSHIP : In other words, they were under legal obligation to supply it, and did not get any differential. I thought that was what you were coming at. That was my object in asking you that question. 10

MR. TILLEY : Now, Mr. Taylor, did you compare either wholly or to a certain degree, the statement down to the 1st of July, 1918?

A. Yes, we had received certain figures, all the necessary figures from Messrs. Sharp, Milne & Co.

Q. They were Chartered Accountants in Montreal, and they represented a number of these companies? A. Yes, I believe so.

Q. A number of the companies and—

MR. HENDERSON : They were appointed by Mr. Pringle.

MR. TILLEY : One at a time—

Q. Mr. Osler says they were appointed by Mr. Pringle—is that right, 20
Mr. Taylor? A. I do not know how they were appointed.

Q. At any rate, they had the figures of certain mills and forwarded them to you? A. They had the figures of all the mills except Brompton.

Q. When you say all the mills, did you mean all the mills in Eastern Canada, or including Fort Frances? A. All, yes, including Fort Frances.

Q. At any rate, they got the figures for all these and sent them to you.

HIS LORDSHIP : That was figures up to July 1st?

A. July 1st, 1918.

MR. TILLEY : Q. But it excluded Brompton? A. It excluded Brompton except for the month of January. 30

MR. TILLEY : They had the figures for January?

A. 1918.

Q. Then, were you able to prepare the statement, did you know whether Brompton—what attitude Brompton took about supplying figures?

A. Supplying figures?

In sending us the figures, Sharp, Milne & Co., wrote us under date of September 2nd, 1919, "Brompton's figures are not available after January 31st, 1918. They positively decline to give any further information which might lead to an assessment against themselves, which they consider they are not entitled to pay." 40

Q. So you did not get the Brompton figures for that reason, and without all the information would you be able to prepare a definite statement, or I mean an exact statement, or would you need the figures of Brompton in order to get a proper differential? A. I did, but I worked out a statement without Brompton's figures.

HIS LORDSHIP : Would it be correct in its result?

A. It would not be correct.

HIS LORDSHIP : For any one of the Companies?

A. No, it would not be absolutely correct, because——

Q. Because the basis upon which any Company would have to be placed would depend on the production and sales of all of them? A. The production and sales, yes.

MR. TILLEY : Q. So that you could not complete it, but with the information that you got and not incorporating the Brompton figures, what did it show would be due to Fort Frances on this basis you have been describing?

MR. OSLER : Surely, my Lord, we are not going to prove the statement.

10 MR. TILLEY : I am not saying it is an exact amount.

HIS LORDSHIP : Is it of any value, except merely to the extent he might make a statement to show that there was money due to Fort Frances Company, but as to its being any amount, it would not be of any use at all.

MR. TILLEY : Any substantial amount at all?

MR. OSLER : Is it of any use at all?

HIS LORDSHIP : It is not such information as to justify the Court, I should think, in giving a Judgment one way or the other, even if it was not questioned.

20 MR. OSLER : My submission is it was not evidence at all, because the witness says he had compiled a statement which is based on figures which lack an essential factor. Now, my submission is the statement of that account ought not to be received in evidence at all. It is merely confusing.

HIS LORDSHIP : I do not think it would confuse me.

MR. OSLER : Perhaps not, at the same time, it is contrary to the rule evidence should be admitted.

30 HIS LORDSHIP : Mr. Osler, I would accept it only to this extent, that according to Mr. Taylor's computation and figuring, apparently there was some amount shown by these figures, defective as they were, due to the Fort Frances Company. Now it does not go any further than that, and it cannot be of any special value in respect to any Judgment which may be given but it gives generally what the result would be on the figures he got.

MR. OSLER : It can be nothing but a hypothetical question, if your Lordship chooses to take that, but my submission is it should not be taken.

HIS LORDSHIP : Subject to the objection. I take it subject to the objection, not that it will result in a Judgment—one way or the other.

MR. TILLEY : What do you say, Mr. Taylor?

HIS LORDSHIP : Not as to the amount, but as to the figures in this computation, showing a substantial amount is payable to the Fort Frances Company?

40 A. It showed quite a substantial amount.

MR. TILLEY : Q. Now, Mr. Taylor, can you say whether there is an order, or a paper document of Exhibit 4, July 17th, 1919——

HIS LORDSHIP : I would like to ask you just, just with regard to what you were saying a moment ago—you have been dealing with figures of the output and production and so on, of the Brompton Company, as well as with these other companies for the year or two preceding.

MR. TILLEY : Q. 1917? A. They were included for 1917.

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HIS LORDSHIP : You know what their production was?

A. In 1917, yes.

Q. Now, would it be probable that the effect of the Brompton Company's figures could alter the approximate result of the computation you made upon the 1st of July, 1918, as to make your computation in respect of 1918 utterly unreliable—that is to change it from a debit to the Fort Frances Company to a credit to be given by the Fort Frances Company? A. Oh no, it would not have that effect.

Q. To what extent, what percentage, approximately would it make a difference—ten, fifteen, twenty or thirty per cent. of variation? A. I doubt 10 very much whether it could make ten per cent.

Q. You doubt whether it could make ten per cent.—all right.

MR. TILLEY : Q. Then, Mr. Taylor, will you just look at that document of the 17th of July, 1919, and tell me whether you gave to Mr. Pringle the result of that computation about the 17th of July, 1919?

MR. HENDERSON : I would ask my friend not to speak of this as an Order.

MR. TILLEY : I did not say "order" for fear I would have a discussion about it.

MR. HENDERSON : You did, inadvertently.

WITNESS : I cannot connect these figures with anything that I—— 20

MR. TILLEY : I am not asking you to connect the figures for the figures might not be directly related, but did you furnish Mr. Pringle with information of the first half of 1918, before the 17th of July, or can you fix the date?

A. I cannot recollect whether these statements that I have spoken of ever went to Mr. Pringle.

Q. You do not remember? A. I do not recollect them ever going.

Q. Or any verbal information about them? A. I cannot say now.

Q. Will you check that? Will you find that out? You can determine that, I suppose, can you? A. My recollection is that he never saw any of these figures in 1918, at all. 30

HIS LORDSHIP : You did not furnish him with any of them?

A. No, sir.

Q. So far as your recollection serves, is that right? A. No, I did not furnish him with any.

MR. TILLEY : Q. Now, Mr. Taylor, do you remember whether there was any discussion about Mr. Pringle—do you remember whether there was any discussion with Mr. Pringle about the amount that might safely be treated as payable on account?

MR. HENDERSON : That is objected to.

MR. OSLER : Surely, my Lord. 40

HIS LORDSHIP : It is very suggestive, but in view of the fact that he says he has no recollection of the figures ever being furnished by him——

MR. OSLER : If it had not been for my friend's dramatic gesture, no one would have thought of the question.

MR. TILLEY : I suppose the question is leading. I did not think any person would suppose it was objectionable to lead Mr. Taylor.

I am not asking if they were, the figures were anything in particular—they were an estimate.

MR. OSLER : My friend asked if any discussion?

WITNESS : I do not remember any figures being furnished in December, 1917.

HIS LORDSHIP : I may say to Counsel who may not know Mr. Taylor as well as I do, there is not the slightest chance of Mr. Tilley or anybody else getting an answer from Mr. Taylor. Mr. Tilley knows it just as well as I do. It does not make a particle of difference how the question is put to Mr. Taylor, 10 You will get the extract truth from him so far as he knows it. I do not know that I can say anything better of a witness.

MR. TILLEY : Q. Then, did you ever get any information at any time before or after January, 1920, as to production and so on, subsequent to, the 31st of January, 1918—you got their figures for January, 1918, from Mr. Sharp?

HIS LORDSHIP : That is of the Brompton Company?

A. Of the Brompton Company, I think we had further figures from Mr. Sharp, up to June, 1918—

MR. TILLEY : Q. Oh, had you? A. Of the other companies, but not 20 for the Brompton Company.

Q. If I did not limit it to Brompton it was my slip, I mean as to Brompton—did you ever get any figures from them for a period subsequent to January 31st, 1918? A. No.

Q. You have never been in a position then to make an exact statement of differentials? A. Not subsequent to the 31st of December, 1917.

Q. I suppose you could have carried it over one month longer?

A. Yes, just for the one month.

Q. Now, Mr. Taylor, one other point has been raised by an amendment, and that is as to whether, as to the amount that was overpaid to the Fort Frances Company in respect to differentials under the Controller's Order, and which should have been returned under the Control Tribunal's Order— 30 you remember they reduced the amount to \$78,000 or something? A. Yes.

Q. And in the meantime, I understand something had been paid. Now, I will have further evidence about it, but I just want Mr. Taylor to say, and you can wait till we see whether it is objected to, because properly it is not directly proper—did you examine the Fort Frances books, and can you say how much, according to their books had been received by them under that Order? A. Their books showed in September, 1919, a receipt of \$80,000.

Q. \$80,000?

40 HIS LORDSHIP : As of what date?

A. September, 1919.

MR. TILLEY : Q. For differentials? A. For differentials.

HIS LORDSHIP : Up to what date?

MR. TILLEY : The date was September, that was for the 1917 differentials as mentioned by the Tribunal.

Does Your Lordship follow me—Mr. Pringle Ordered \$100,000.

HIS LORDSHIP : I wanted Mr. Taylor, if he can, from his recollection to say

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whether any part of this \$80,000 was for differentials subsequent to the 1st of January, 1918, or was it only in respect of differentials up to the 1st of January, 1918?

A. The Fort Frances books would only show that as being on account of differentials. I do not, at the present time recall the exact description they have of it on their books.

Q. You had made no computation which you had sent out to the different companies subsequent to the 1st of January, 1918, was any computation made by you of differentials sent out to the various companies in respect to the period subsequent to the 1st of January, 1918? A. No.

MR. TILLEY : Mr. Taylor, just to make my point clear—Mr. Pringle, you remember, ordered \$100,000 odd to be paid? A. Yes.

Q. And you found in their books an item of \$80,000 as having been paid? A. Yes.

Q. In September? A. In September, 1919.

Q. That was before the tribunal changed Mr. Pringle's Order because they made the change—what date did they get, of September, 1918?

A. September, 1919, my memory was.

Q. Mr. Pringle's Order was the 6th of August, 1918, and the Appeal Tribunal Order 18th August, 1919—now then was that paid in September, 1918 or 1919? A. In the paper I have in mind, where I have that noted, I think the year distinctly is 1919, I could probably go back to some of my notes made at the time to verify that.

Q. Will you just verify that for me, Mr. Taylor, I do not know whether you can tell us about an agreement as to adjustment of the Canadian tonnage dated 13th March, 1918—had you anything to do with that, or did it come into your hands? A. No, I did not know about that.

MR. TILLEY : That is all, thank you.

30

MR. OSLER : You were asking Mr. Taylor for some statement?

MR. TILLEY : There are just one or two things he was to check. I think there are three things.

HIS LORDSHIP : Could you come back, after lunch, Mr. Taylor?

WITNESS : Yes, my Lord.

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CROSS-EXAMINED :

BY MR. HELLMUTH.

Q. Mr. Taylor, if you will have the returns that were made by the Eddy Company and the News Pulp and Paper Company, when you come back?

A. I have here—

MR. TILLEY : The Eddy Company's return—they were one of the mills that showed over supply on their proportion for Canada?

A. Yes.

Q. And that mill has always been a mill on the long side of the Canadian proportion? A. Yes.

40

MR. TILLEY : That is what you want?

MR. HELLMUTH : Yes.

MR. TILLEY : Do you want anything further?

MR. HELLMUTH : Yes.

Q. And the News Pulp and Paper Company was in the same position?

A. Generally, the mills that were long on Canadian supply were Laurentide, Canada Paper, Eddy Company, News Pulp and Paper Company, Fort Frances—and I think there was one other——

MR. OSLER : Belgo-Canadian? A. Yes, Belgo-Canadian.

10 HIS LORDSHIP : Give me that again ; generally the mills that were long on supply to Canadian consumers were?

A. Belgo-Canadian, Laurentide, Canada Paper, Eddy Company, News Pulp and Paper and Fort Frances.

MR. HELLMUTH : If that is admitted or conceded, I do not know why I should be here any longer.

MR. TILLEY : I will concede it. I had to have you a party in order to have the accounts taken, but I am not expecting to get any money from you but I am from some of the others.

MR. HELLMUTH : Then, my Lord, under these circumstances, so far as
20 my clients are concerned, I ask that the action be dismissed against them.

MR. TILLEY : You should wait around and see what happens.

MR. HELLMUTH : If my friend won't concede it I will have to wait. It will be more expensive, I am afraid.

HIS LORDSHIP : Then those who were long on supplies to Canadian consumers were who? You have mentioned a number of them. I want them all.

A. Belgo-Canadian, Eddy Company, News Pulp and Paper Company, Fort Frances, Laurentide, Canada Paper—that is all.

HIS LORDSHIP : These are some six—six of the producers supplied more than their proportionate part of the quantity consumed by the Canadian
30 trade?

A. Yes, sir.

MR. TILLEY : Then I do not know to what extent it would come to your knowledge, but there was some arrangement made, was there not, between the producers, the paper mills, for mills other than Fort Frances, whereby they took care of their differentials amongst themselves?

A. Yes, I believe so, I do not know anything directly about that arrangement.

Q. You do not know anything directly about that but you did not have to account to each one of the others for what was coming to them—it was only
40 the Fort Frances? A. That was the only one.

HIS LORDSHIP : I do not quite understand that?

A. And the News Pulp and Paper Company—there was a question there that was unsettled.

MR. TILLEY : Q. There was a question unsettled about the News Pulp and Paper Company? A. Yes.

HIS LORDSHIP : In which you say you had only to account for the Fort Frances?

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MR. HELLMUTH : I cannot hear?

WITNESS : I believe the other mills had settled the differential among themselves by the end of January, 1918.

HIS LORDSHIP : They had all agreed?

A. The Fort Frances people had not agreed to the settlement.

Q. The other people had? A. Yes.

MR. TILLEY : The Fort Frances people had not agreed to the settlement amongst the mills themselves, amongst the manufacturers themselves—but all the others except Fort Frances and possibly some question about the News Pulp and Paper—the others had made some amicable arrangement amongst themselves as to settlements between themselves? 10

A. Yes, I believe so. As I say, I was not directly concerned.

Q. But nevertheless you had to keep the figures of all of them, to see what would be coming to the Fort Frances Company? A. Yes.

MR. TILLEY : Now as I say, I am not contending, I have not contended that Mr. Hellmuth's mill is one of the mills that is a contributor because it undoubtedly is not. They are only here for the purpose of having an account taken.

HIS LORDSHIP : Is the situation the same in regard to these other five or six mentioned? 20

MR. TILLEY : There are some, I do not know whether Mr. Taylor can say what ones are definitely on the long side?

HIS LORDSHIP : He has not got absolute figures.

MR. TILLEY : He has figures for some of them?

A. You cannot tell until you get figures from all.

HIS LORDSHIP : You cannot tell unless you have figures from all, as to any?

MR. TILLEY : There is no doubt it will work out in that way for the Eddy, also the News Pulp and Paper Company?

A. Yes, I would think so. 30

MR. HELLMUTH : Do I understand, my Lord, then, the position of my clients, the Eddy Company and the News Pulp and Paper Company, is, no claim whatever is made against them?

MR. TILLEY : We have the claim made that we will be able to get our accounting, in order to bind them to give the accounting—that is all.

HIS LORDSHIP : What I understand, Mr. Tilley, is that these Defendants are made parties to your action because you could not get an accounting without having them parties to the action?

MR. TILLEY : Yes, my Lord.

HIS LORDSHIP : But that you are not claiming any sum of money from them? 40

MR. TILLEY : No.

MR. HELLMUTH : Then the only place we could be brought in was at the Master's Office?

HIS LORDSHIP : Then, could you be brought in to the Master's Office, if not in the action originally?

MR. HELLMUTH : I should think so, my Lord, if it was necessary to get

an accounting by other parties, an order should be made, that we could be brought in.

10 HIS LORDSHIP : I should think your clients would have the right to take the position, in the original action the Plaintiffs are not entitled to any accounting from them at all, and therefore you ought to be a party to the original action, and if you are not to be a party to the accounting you should be dismissed from the original action and not be troubled further—the way it strikes me is this—that for the time being if in view of what Mr. Tilley has said that I should say to you in respect to any Company or Companies as to which he would take the responsibility of repeating his statement that they should not be required to attend further on this trial, and if they are to be brought before the Master on the taking of any account, if an account is to be taken ultimately, that it should be further notified to attend, and that the question of the costs I would reserve, perhaps to be reserved when I come to deliver Judgment in the action, and possibly then I may come to the conclusion that whether you should get your costs of the taking of the account was a matter that would have to be dealt with by the Master, or subject to further directions.

20 MR. HELLMUTH : My Lord, if there is no claim eventually decided against my clients, they should be entitled to their costs.

HIS LORDSHIP : I should think so, if they are not entitled to get any money from you, and are bringing you in for their own convenience or to help them in what they are doing—that would be my present view of the matter.

MR. HELLMUTH : Your Lordship would not alter that?

HIS LORDSHIP : No.

MR. HELLMUTH : I am not making any claim whatever. I am simply brought here, and as the witness has said, we were on the long side ; and if we were here at all it would be to make a claim, and our clients are not making any claim.

30 MR. TILLEY : You are in this settlement.

MR. HELLMUTH : No, there is no settlement after a certain date.

MR. TILLEY : The Eddy Company did make a settlement.

MR. HENDERSON : The Eddy Company were in the settlement.

MR. HELLMUTH : There was a settlement made by which the Eddy Company, so that it may be quite clear, agreed to take fifty per cent. of the amount that was allowed in their favour instead of taking one hundred per cent. they took fifty per cent. up to a certain date—that was the 1st of January—since then they have made no claim, they have made the returns and we are in no default, and it is unnecessary my clients should be put to any further expense.

40 HIS LORDSHIP : I do not think you should be required to attend here any further in view of what Mr. Tilley has said.

MR. TILLEY : Of course, that is reserving my right to have them in the accounting if a Judgment is given to us.

MR. HELLMUTH : Your Lordship would not put us in that position without hearing from us?

HIS LORDSHIP : I will not deal with your client's costs differently from what I have suggested now unless you are notified and I hear you further in

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regard to it, and also in regard to your being brought in in regard to the taking of account.

Now, Mr. Hellmuth, you are representing——

MR. HELLMUTH : The Eddy Company and the News Pulp and Paper Company.

HIS LORDSHIP : With respect to the Eddy Company and the News Pulp and Paper Company their attendance is not further required, and with regard to these two Defendants no further attendance is required unless you are notified subsequently.

MR. TILLEY : Now, that is all, thank you, Mr. Taylor.

10

—continued.

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JAMES BACHELOR McNICOL : sworn

EXAMINED BY MR. TILLEY.

Q. Mr. McNicol, I think you occupied some position by appointment by Mr. Pringle in connection with the newsprint matter? A. Yes, sir.

Q. Or by appointment of some other authority, was it Mr. Pringle appointed you? A. Yes, on his Order.

Q. In what capacity? A. As a sort of general assistant to Mr. Pringle, 20 and also as a pulp and paper expert.

Q. Have you had experience in pulp and paper? A. I think I have, for the last fifty years.

Q. Now, when did you first come into the matter? A. April, 1918.

Q. 1918? A. Yes, I am not so sure of the date, but it was in the month of April.

Q. Now, did you have something to do with the supply of paper by the Fort Frances Company? A. Yes, I was there at different periods.

Q. When were you first there? A. I was there first as accountant I 30 think in June and July, 1918.

Q. June and July, 1918? A. Yes.

Q. Then, was there anything then about supply or refusing to supply, or anything? A. None, whatever.

Q. Then when were you next there? A. I was there, I think in October, 1918, also accompanied by the Accountant.

HIS LORDSHIP : That is at the Fort Frances?

A. At Fort Frances.

MR. TILLEY : I suppose that there were practical matters that the Accountants wanted you there with them, and that was why—anything about production at that time? 40

A. Nothing about production, and nothing about shipments.

Q. Nothing about shipments, they were going into costs? A. Yes.

Q. And you were there in that connection? A. To certify that certain items should go into the cost and that other items should be left out of the cost.

Q. We are not concerned with that now. Now, when did you go there in some other capacity, in connection with something different from that?

A. I think it was in June, 1919.

Q. And what—just tell us what happened on that occasion—who were you sent by? A. I was in the City of Quebec, and I was called back from Quebec to Ottawa by Mr. Pringle.

Q. Yes? A. Who told me that there was trouble in the air in connection with Fort Frances supplying paper to the Western publishers.

Q. Something about supplies at that time? A. Yes.

Q. And Mr. Pringle sent you there, and did he give you the instructions you got? A. Yes, sir.

Q. Now then, just pass from that—when you got to Fort Frances, will you tell us then what happened? A. When I got to Fort Frances, I think it was on the last Sunday of June, 1919, I was met at the railway station by the local lawyer for the Fort Frances Company, Mr. George.

Q. Yes? A. Who told me that the Vice President and the Second Vice President—

MR. OSLER : Just a moment. Should we have your Lordship's ruling? The witness should not speak of hearsay matters.

HIS LORDSHIP : This particular point has not come before me, but properly speaking it is not admissible as evidence.

MR. TILLEY : A representative of the Controller.

HIS LORDSHIP : He is starting to tell us what some solicitor told him at the time.

MR. TILLEY : Q. We do not want all the details, Mr. McNicol, you went there in connection with something, and attended to it.

HIS LORDSHIP : What did you do, not what somebody else told you?

A. When I got to Fort Frances, I got in touch with two officers of the Fort Frances Pulp and Paper Company.

MR. TILLEY : Who were they?

A. S. W. Backus and B. G. Dahlberg.

Q. Is that Mr. Backus, Jr.? A. Yes, sir.

Q. And Mr. Dahlberg, who was the Vice President, I think? A. Yes.

Q. Now, I just come to the point, what was uppermost then, and what was done? A. That being on Sunday, there was nothing done on the Sunday.

Q. Yes? A. Monday, I think was Dominion Day, the 1st of July, the plant was closed.

Q. And what was done that day between you and these two gentlemen?

A. I conveyed to them what instructions Mr. Pringle had given to me verbally in Ottawa.

Q. Now, what did you tell them your instructions were? A. My instructions from Mr. Pringle was to convey to the officials of the Fort Frances Pulp and Paper Company—

MR. OSLER : Your Lordship will note my objection to a communication of this kind. We were not present ; I submit your Lordship should not accept it.

HIS LORDSHIP : I had better hear what he told him. I do not know what it is all leading to.

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MR. OSLER : That is what I am objecting to. I do not want the statement to slip in.

HIS LORDSHIP : Whatever it may be, it is subject to your objection, and it may be objected to altogether.

WITNESS : The instructions I received from Mr. R. A. Pringle, the Controller, and conveyed to the two officials of the Fort Frances Pulp and Paper Company were as follows,—“If you will continue to supply the Western Publishers, as you have been doing, I will, and I have instructed Clarkson to go ahead with the differential matter.”

Q. You say, “I will”, that was Mr. Pringle? A. Mr. Pringle, I meant. 10

Q. Now then, you told them that was what you had been instructed to tell them? A. That was what had transpired between me and Mr. Pringle, which Mr. Pringle will confirm by wire.

MR. OSLER : If my learned friend is attempting to set up a bargain between the Fort Frances Company and Mr. Pringle?

HIS LORDSHIP : No, I gather that Mr. Tilley's idea is as suggested yesterday, that because in Mr. Pringle's documents making his appointment, there was no direction that he should make orders in a certain form, or in writing or otherwise, that therefore, Mr. Pringle would have the right to give an order verbally, and if the order was obeyed it has as much effect as a written order, and that having obeyed it, they are entitled to call upon the other parties—I understand that to be Mr. Tilley's contention. What there is in it, of course, we have to see later on. 20

MR. OSLER : Then I take it, that I have the benefit of the objection to these points without speaking of it again?

HIS LORDSHIP : I may as well state here what my attitude is in regard to a number of these matters, the mere fact that I may accept evidence subject to the objection does not mean I am admitting it for my own use. There is no Jury here. It is a non-jury trial. The case will go to several other Courts, and it may be some other Court will say, “the trial Judge should have allowed this evidence in.” When I come to sift the evidence, I may come to the conclusion certain parts I have admitted, I will disregard altogether, and the other Court may disregard that, and say the evidence is properly admissible, and they are going to base their conclusions in part on that evidence, and it should be heard rather than have the case come back again. 30

MR. HENDERSON : And we have a continuing objection to this class of evidence.

HIS LORDSHIP : Quite so. It would be better, so there is no misunderstanding later when something is put forward now was special, that the objection should be formally made. 40

MR. HENDERSON : But only when something special.

MR. OSLER : That leaves it rather in the difficultys—I may sit still without objection, and then perhaps be told afterwards I did not object.

HIS LORDSHIP : I do not want you to do that. I would rather that you would formally object to the admission of some particular evidence when the questions are being asked, in order that there may not be any possible mistake

or misunderstanding on the part of any Court. That does not mean by any means that I am going to allow everything in that may be suggested.

MR. TILLEY : Now, Mr. McNicol, will you continue—you were saying something about confirming by telegraph—I do not know what you said?

A. Previous to leaving Ottawa on the 25th of June, I asked Mr. Pringle to confirm, either by letter or by telegram, the instructions he had given me, which were simply verbal instructions, as the train was pulling out from Ottawa, and I asked him to confirm them either by telegram or letter.

MR. TILLEY : Did he confirm it?

10 A. Yes, by telegram, I think on the 1st of July.

Q. Did you keep the telegram? A. No, I did not. I kept it till the year 1922. I had a whole bunch of matter in connection with this paper control, and as I was leaving in March, 1918—

Q. What year? A. In the year 1922, for some years residence in Siam.

Q. Yes? A. And thinking that this Paper Control Tribunal and differential was a dead matter and that I would be away for these three years, I destroyed all the papers. I burnt them.

Q. You burnt them? A. Because I had no way of storing them. I had no home here.

20 Q. You destroyed them—now what was the telegram? A. The contents of the telegram, as I recollect, was confirming our conversation in Ottawa of June 25th, 1919.

Q. Yes? A. Advising Fort Frances that “I am taking up with Clarkson the matter of differentials. As soon as I have his figures I will issue an order”—then it went on, “Try and rush shipments to the Western Publishers, and advise the daily tonnage shipped.” That is as far as I can recollect the contents of that telegram.

30 Q. Now, when you say you got that telegram, did you show it, or did you not show it? A. I did not show it, but I communicated the contents of it to the President, E. W. Backus and D. G. Dahlberg.

Q. The contents to whom? A. E. W. Backus and D. G. Dahlberg, the second Vice President.

Q. Anything else said between you and them about that, or does that cover it? A. No, I think they accepted what I said to them as being the actual facts, and they resumed shipments of requirements for the Western Press.

Q. They did? A. At that time, yes.

40 Q. Now then, at that time, how did the Canadian price—I am not asking to a dollar, because we can get it from the record here, but how did it compare with the American price? A. I think at that time, that we are talking of, July, 1919, I think the Canadian price was considerably less than what the American price was, what the actual figure was, I do not recollect.

Q. Now then, that is July, 1919? A. Yes.

Q. Then when next did anything connected with supply or shipment of paper to the western publishers come up between you and Fort Frances and Mr. Pringle in any way? A. I think it was in the latter part of October, the same year.

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Q. The latter part of October in 1919, and did you go out there again?

A. Yes, sir.

Q. And with instructions from Mr. Pringle, I mean? A. With instructions from Mr. Pringle.

Q. Yes? A. To try—

HIS LORDSHIP : Just a minute, tell us what you did.

MR. TILLEY : Q. Tell us what you did when you got there? Did you communicate your instructions? A. Yes, I communicated the instructions to the President of the Company.

Q. What did you tell him? A. I asked him to continue to supply the 10 paper to the western publishers, as they had been doing.

Q. When you arrived there, were they supplying or was it stopped?

A. I would not say there was a stoppage, I would say there was a slowing up.

Q. And that is what took you out there, the slowing up? A. Yes.

Q. And what happened then, what happened on that occasion?

A. From the assurance I gave the President?

Q. What was the assurance?

HIS LORDSHIP : That is E. W. Backus? A. Yes.

MR. TILLEY : Yes? A. Given to me by Mr. Pringle, that he was deal- 20 ing with this differential matter.

Q. Yes? A. And if the Fort Frances Company would continue shipping the full requirements to the Western Publishers, that he hoped to have the matter in such a form as he could issue an order very soon.

Q. Very soon? A. Yes.

Q. Anything else said at that time? A. No, I think shipments were continued until around about the middle of December, or thereabouts.

Q. The middle of December? A. I was there all the time.

Q. Did you stay on the scene? A. Yes.

Q. Seeing that shipments went out? A. Yes, and reporting daily 30 tonnage shipped, to Ottawa, to Mr. Pringle.

Q. To the Controller? A. Yes.

Q. That I gather was the first time that you had remained and seen that it was carried out for any length of time? A. No, the first time I was there in connection with these shipments was in June, 1919, I remained there for nearly a month.

Q. You remained there for nearly a month at that time, and the second time you remained from October until December? A. I remained until the month of February, 1920.

Q. At any rate, you were there in December, and I thought possibly— 40

A. I was there the whole of November.

Q. Did anything happen in December that brought matters to a head in any way? A. Yes.

Q. What happened? A. The Fort Frances Company was objecting to shipping more than their quota of newsprint.

Q. Yes, did they say why? A. Yes, because they had not been paid, or got any settlement *re* differential from the payment of 1918.

HIS LORDSHIP : That was in December, 1919?

A. In 1919.

MR. TILLEY : Yes, what happened?

A. I was authorized by the Minister of Customs, I think, to place an embargo on shipments from Fort Frances to the United States Publishers.

Q. Shipments from the Fort Frances Company? A. Yes.

Q. To the United States, well then, was that communicated, that refusal, or the slowing up of the shipments to the Western Publishers, the Canadian Western Publishers—

10 HIS LORDSHIP : Wait—were you aware of how the question of putting an embargo on their shipments came up at all?

A. Because the Western Publishers were not getting sufficient paper for their requirements.

HIS LORDSHIP : Well, had the Plaintiffs, the Fort Frances Company stopped shipping to the Western Customers or had they lessened their shipments to them, or how were they concerned?

A. I would say that they had slowed up their shipments, they had not actually stopped.

MR. TILLEY : Q. They had not actually stopped, they were slowing up.
20 Did they offer—I won't put the question to you that way—then you were authorized to place an embargo. Did you place an embargo, or give an order to the Fort Frances Company? A. Yes.

Q. What order? A. Prohibiting the export of newsprint to the United States from Fort Frances.

Q. And did you stop the export to the United States? A. Yes, I think for a period of seven days, or something like that.

Q. Then what? A. The Paper Controller gave them assurance, I think to the President of the Fort Frances.

HIS LORDSHIP : Was this in your presence?

30 A. No, sir.

HIS LORDSHIP : We will have somebody else tell us, as a result of something that was said or done, something happened, and can you tell us what happened, if you know about it, not that this man told another man something.

MR. TILLEY : Might I put it this way—

Q. Were you informed that some assurances had been given at Ottawa?

HIS LORDSHIP : Informed by whom?

MR. TILLEY : By the Fort Frances Company?

HIS LORDSHIP : I do not think that would be evidence, Mr. Tilley.

40 MR. TILLEY : Would it not be evidence if they told him?

HIS LORDSHIP : No, they might make it up for themselves.

MR. TILLEY : I am not saying that, but I am saying that is the proof of it.

HIS LORDSHIP : He could say some assurance had been given, what it was, or to whom, he is not saying—as a result of what was done, he did something.

MR. TILLEY : Q. As a result what happened? A. I received a telegram from R. A. Pringle, the Controller, stating he was arranging with

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Spanish River to take care of two hundred tons of the overage of Fort Frances.

Q. When you say overage, over supply? A. Yes, two hundred tons of newsprint weekly.

HIS LORDSHIP : You got a telegram from Mr. Pringle?

A. Yes, and I was authorized to lift the embargo.

MR. TILLEY : Yes?

A. Which was done, I think, on the night of the 23rd of December, 1919.

Q. Yes, anything else? A. Yes, shipments went forward after the 24th.

HIS LORDSHIP : Now, I would like to hear again, what this alleged ar- 10
rangement with the Spanish River Company was?

A. Mr. Pringle conveyed to me by wire—

Q. Speak up so your Counsel can hear you too? A. That he had made arrangements or was about making arrangements with Spanish River?

Q. The Spanish River? A. The Spanish River Pulp and Paper Com-
pany.

Q. Yes? A. To supply to the Order of the Fort Frances Pulp and Pa-
per Company—

Q. That is, to supply a quantity of paper? A. Two hundred tons of
paper per week. 20

MR. TILLEY : Q. To the Order of the Fort Frances Company?

A. Yes.

Q. At any particular place? A. I presume it would be f.o.b. their mill.

HIS LORDSHIP : Do you remember?

A. I think it was for shipment to Chicago.

HIS LORDSHIP : Do you remember where it was to be supplied?

A. From what plant?

Q. No, no? A. From the Spanish River Pulp and Paper Mills.

Q. Why have you no memory as to the point at which the paper was to
be placed on the cars? 30

MR. TILLEY : Q. To be given by the Spanish Company? A. I do
not know whether it was at the Soo, or Espanola.

Q. One or the other? A. Yes.

HIS LORDSHIP : Then, it would be delivered f.o.b. cars by the Spanish
River Company at one or other of its plants?

A. That is as I understand my Lord.

MR. TILLEY : For the Order of the Fort Frances Company delivered at
Chicago—you nod your head? A. Yes.

Q. And that, you say, brings it to the 24th of December, and then what
happened after that? 40

HIS LORDSHIP : On the 24th December?

A. Yes, 1919.

MR. TILLEY : You lifted the embargo?

A. I lifted the embargo on the 23rd.

Q. And the shipments went out on the 24th? A. On the 25th I would
say, not the 24th.

Q. What next? A. Shipments continued along for about another three weeks.

Q. Yes? A. And evidently the amount supplied by Spanish River was not equal to the tonnage named, viz., two hundred tons a week and Fort Frances again objected to shipping more than their quota of Canadian newspaper print.

Q. You say again objected to shipping more than their quota—did they ever object to shipping their quota? A. Never, in my connection with the Paper Controller.

10 Q. And then they objected to delivering more than their quota, and what happened then? A. I think it was the Customs that placed an embargo on shipments to the United States again.

Q. Do you know what time? A. It was in the latter part of January, 1920.

HIS LORDSHIP : When was this, the Plaintiff, the Fort Frances Company again declined to ship more than their quota—I did not get that date? Was that in December or January?

A. That was in January, 1920.

20 MR. TILLEY : Q. And then the embargo was placed on again, at what time in January? A. I am not very clear in that. I think it was towards the latter part of January.

Q. Yes? A. It was about the 1st of February, anyway.

Q. Then, what happened? A. After that embargo was placed on, I received a telephone communication from R. A. Pringle saying he had resigned his position as Paper Controller.

HIS LORDSHIP : After the embargo was put on?

A. Yes.

MR. TILLEY : Q. And then what—who was appointed? A. Mr. Breadner.

30 Q. Mr. Breadner was appointed, and did he go up to Fort Frances?

A. Yes, he arrived at Fort Frances early one Saturday morning.

Q. Was the embargo still on? A. Yes, sir.

Q. What was done when he got there? A. He had a conference with the officials of the Fort Frances Pulp and Paper. I was not present at it.

Q. Then, anything else happened, did shipments start again? A. I received instructions from Mr. Breadner that night.

HIS LORDSHIP : Do you remember the date?

A. It was in the month of January, I do not recall the date.

HIS LORDSHIP : The month of January?

40 A. The month of January, the latter part.

MR. HENDERSON : Of course, the same objection to the conversations with Mr. Breadner.

MR. TILLEY : Then what happened?

A. The embargo was lifted, I think on Saturday afternoon, and shipment went forward to both Canadian and American publishers from the Fort Frances Plant.

Q. And you were not present when they were arranged? A. No.

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Q. But all you know was that it happened? A. Yes.

Q. And anything else after that, or did they continue until you came back? A. Oh, I did not get back until, back to Ottawa, I think, until the latter end of February.

Q. In the meantime, from the time that the shipments started up after Mr. Breadner was there, did it continue without any other event of importance? A. Yes, for about a fortnight it continued.

Q. Then, did it stop? A. Then there was another slowing up. Mr. Breadner resigned.

Q. Mr. Breadner resigned, when he got back to Ottawa? A. Yes. 10

And there was an Order made about the Board of Commerce, acting, and then there was a slowing up.

Q. And what happened then? A. Well, it is somewhat hard for me to recollect. After the Board of Commerce came into it.

Q. After the Board of Commerce came into it? A. Yes.

MR. TILLEY : I do not know that much turns on it. I think the Board of Commerce, it was shortly afterwards held by the Supreme Court, the Board of Commerce had no authority?

A. I think that was in March.

Q. Do you mean a sort of stay, a confusion arose, as to the Board of 20 Commerce's jurisdiction, and is that what happened? A. That is so.

Q. And when you got back to Ottawa, nothing happened after that, between you and the Fort Frances, or the Controller? A. None, whatever.

Q. Can you say when Mr. Pringle died? A. The latter part, I think, of January, 1922.

Q. It was January 10th, 1922, if my friend will just agree to that statement? A. I know, I was at his funeral in the Town of Cornwall.

HIS LORDSHIP : January 10th, 1922? A. Yes, sir.

30

CROSS-EXAMINED :

BY MR. OSLER.

Q. When did your employment come to an end in connection with the Paper Control? A. In March, 1920.

Q. So I suppose when the Board of Commerce took hold you dropped out? A. No, I was in connection with it for some few weeks after the Board of Commerce had it in hand.

Q. And when you went to Fort Frances on the first occasion that you have referred to, in July, 1919, was there any question of an embargo being placed on then? A. No, I do not think there was any question at that time. 40

Q. Then, how recently have you read the telegrams that you referred to?

A. I think the last time that I read the telegrams referred to was in the summer of 1920.

Q. In the summer of 1920, so that you are speaking now with reference to transactions that happened in 1919 and you have not refreshed your memory by looking at the original telegrams? A. No, sir.

Q. You are speaking of since 1920—are you sure of the date? A. I am

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positive of the date. I am positive of the date of the telegram because it was Dominion Day I received it. I could not forget that.

Q. And when did you make this so-called arrangement that you have referred to for the resumption of paper supplies to the West? A. Partly on the first of July, and partly on the second.

Q. Do you remember whether the first of July was on Monday or Sunday that year? A. I think it was on Monday.

Q. It was celebrated on Monday? A. I think it was on Monday.

Q. Then you think—you were referring really to documents that came in to you on the 2nd, on Monday? A. No, I think I landed in Fort Frances on the 30th of June which was a Sunday.

HIS LORDSHIP : That was in 1919?

A. In 1919.

MR. OSLER : Q. You think the first of July was on Monday? A. I think Mr. Pringle's file contains some telegrams. In the meantime I will refer to the copy in my brief, apparently Mr. McNicol—

MR. TILLEY : I would like to see these. I have not seen them yet.

MR. OSLER : I have only a copy in my brief, I understand the witness is subpoenaed here. Mr. Pringle telegraphed you on the 2nd of July—I beg your pardon—you telegraphed Mr. Pringle on the 2nd of July? A. I think it was the 1st of July.

Q. You think it was the 1st of July? A. I might be mistaken in the date, it was on the Monday.

Q. Did you telegraph him again on the following day? A. No, I did not.

Q. Just the one exchange of telegrams? A. I sent him a night letter the following day, stating what shipments had gone forth.

Q. Did you telegraph to him first, or he to you? A. I telegraphed asking for a confirmation of the conversation I had in Ottawa.

Q. But you are sure these are the only two telegrams that passed between you on that occasion? A. On that date.

MR. TILLEY : Now just, if my friend will pardon me, my friend is reading a telegram. I am not going to be technical about the proof of these things, but I do want to have some person say they are Mr. Pringle's papers. I am not going to raise a technical objection.

MR. OSLER : I have someone to do that.

MR. TILLEY : You undertake to do that?

MR. OSLER : Yes.

MR. TILLEY : And I would like to have had a copy as we go along, because I have not got them at all.

MR. OSLER : I subpoenaed Mr. McGregor to produce the papers. I understand they are looking for the original just now. The copy in my brief is as follows, "Fort Frances, July 2nd, 1919, R. A. Pringle, Fort Frances Paper Company have assured me that they will supply the Western Press with Paper at \$69.80 subject to adjustments on the price fixed by the Appeal Tribunal. They also ask to be assured that they will be paid the differential fixed by the Appeal Court. Please wire me fully tomorrow what action to take. I have

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seen the Winnipeg Press, and expect to meet other Western Publishers Wednesday"—is that the telegram you refer to?

A. No, sir, that is not the telegram I refer to.

Q. There is another one? A. There is another one prior to that, of, I think it was the 1st of July.

MR. TILLEY : If you have copies as well, let me see them.

MR. OSLER : We will get them for you as quickly as may be.

MR. TILLEY : I would like my friend to wait until I am furnished with the telegram or something that I can see and follow. I cannot let a lot of correspondence go in and try to catch up with it afterwards. I have not seen the telegrams, and my friend has copies of all of them. 10

HIS LORDSHIP : No notice is given, they are to be proven.

MR. TILLEY : No notice given.

MR. OSLER : These are documents we have subpoenaed.

MR. TILLEY : I agree they are. I am not being technical, but I do want to follow the course of the case. I am told by Mr. Munnoch I cannot have the originals and I am told by Mr. Osler they are using their copies.

MR. HENDERSON : I invite my friend to look at my copies.

MR. OSLER : My friend has offered his copies.

MR. TILLEY : I would like to have the copies for the perusal of Mr. Thomson who knows more about this than I do. 20

HIS LORDSHIP : We will have to follow either one or other course. Either Counsel will follow the customary course of supplying copies to an opposing Counsel. If they cannot do that, then I shall have to defer admitting any of it until the witness goes into the box, and produces the material and swears to it. Then I shall probably be put in the unpleasant position I shall not allow it to be dealt with further until the other Counsel have an opportunity of inspecting it, and cross-examination. It should not be necessary to do that. I think perhaps if I should adjourn now, and give a little extra time, perhaps Counsel can arrange something between now and after lunch as to what would be done with regard to it. I am sure Counsel will facilitate one another. 30

MR. OSLER : I do not know what occasion there was for my learned friend's heat.

MR. HENDERSON : Mr. Munnoch's refusal was because it was a new document and not in the brief.

HIS LORDSHIP : I will adjourn now until two o'clock, and that will give Counsel a little extra time in order to have this matter arranged.

Court adjourned at 12.40 p.m. until two o'clock p.m.

Court resumed 2.00 o'clock p.m. 40

MR. OSLER : Before going on with the cross-examination, my Lord, I have had typed the paragraphs amending our pleading as set out in the Notice of Motion, and with your Lordship's permission, I will hand them in, and it can be fastened to the Record later.

HIS LORDSHIP : I understand that these have been attached to the Record.

MR. OSLER : Not yet. They are *verbatim* copies of the drafted paragraphs in the Notice of Motion. I think the Notice of Motion has been now attached.

HIS LORDSHIP : These can now be attached to the Record. They are the amendments.

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JAMES B. McNICOL : CROSS-EXAMINATION CONTINUED BY MR. OSLER.

10 Q. I think, Mr. McNicol, I just read to you the telegram which you sent to Mr. Pringle on the 2nd of July, 1919—do you remember sending that telegram? A. Yes.

Q. Exhibit 6. Telegram dated 2nd July, 1919, to R. A. Pringle from McNicol? A. Yes.

HIS LORDSHIP : You remember sending that telegram?

A. Yes, sir.

HIS LORDSHIP : What is the date of it, please?

MR. OSLER : The 2nd of July, 1919, from McNicol, the witness, to R. A. Pringle, K.C., Ottawa.

HIS LORDSHIP : Will you read it, Mr. Osler?

20 MR. OSLER : "Fort Frances Paper Company has assured me that they will supply the Western Press with paper at \$69.88 subject to adjustment on price fixed by the Appeal Tribunal. They also ask to be assured that they will be paid the differential fixed by Appeal Court. Please wire me fully tomorrow what action to take. I have seen the *Winnipeg Free Press*, and expect to meet other Western Publishers Wednesday. The *Free Press* agrees with terms and conditions named by Fort Frances."

Q. Now, was that telegram sent before or after the one that you refer to? A. I think it was the day following, as well as I remember.

Q. The day following? A. Yes.

30 Q. But you are sure it is not the same telegram that you are referring to?

A. No, it is not the same telegram at all.

Q. At all events, you told us this morning, that as a result of the wires of the previous day, on the 1st of July, you had definitely arranged the matter and told the Fort Frances people that they would be paid the differential?

A. I told the Fort Frances people that Pringle was taking up the differential matter with Clarkson, and hoped to have the figures in connection with the same at an early date, when he would then issue an Order.

Q. Now, what differential figures were you discussing? A. The payment on the over-shipment of the Fort Frances Pulp and Paper to the Western Publishers, I mean the shipments over their quota.

40 Q. But for what period? A. I think from January 1st, 1918, right down to that date.

Q. You were following the proceedings close enough to know that at this time, in July, 1919, the Appeal Tribunal were still considering the appeal from Mr. Pringle's order of the 6th of August, 1918? A. I believe I was. I was present at one sitting of that Appeal Tribunal.

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Q. And do you remember what period was covered by the differentials that were dealt with in Mr. Pringle's Order, and that the Appeal Tribunal was considering? A. I was not present.

Q. Do you know what that period was? A. No, I do not know.

Q. But did you know at that time? A. No, sir.

Q. Do you say that you did not know at that time, what differentials had been dealt with? A. I knew there had been a differential dealt with prior to my connection with the Paper Controller.

Q. That is the differential up to December, 1917? A. Yes.

Q. You knew that had been dealt with by one of Mr. Pringle's Orders? 10

A. Yes, and I understood no differential matter had been settled after that date.

Q. But you knew also that the order settling the differential up to December 1917, was before the Appeal Tribunal? A. I was not aware of that.

Q. You knew there was some——? A. I knew there was something.

Q. And you knew that nothing had been dealt with by Mr. Pringle after the 1st of January, 1918? A. From the conversation that I had with Mr. Pringle in June, 1918, I understood from him that he had an Order made out regarding the differential, but was simply waiting the figures from the Accountant before issuing it. 20

Q. Now, coming back to my question, you knew that Mr. Pringle had made an Order dealing with the differential up to 1917? A. I was told so. I was not present.

Q. And you knew that no order had actually been issued dealing with differentials for any subsequent period? A. No, I did not know of any order being issued.

Q. And you knew that an order dealing with differentials was in appeal before the Appeal Paper Control Tribunal? A. At what date?

Q. At the time of this telegram, July 2nd, 1919? A. I believe I did.

Q. And if Mr. Pringle had not dealt with differentials since 1918, that 30 must have dealt with 1917 differential? A. I do not know if it did or not.

Q. Now, if you had arranged with Fort Frances, as you have told us, to continue the shipments to the Western Publishers on the first of July, why did you wire Mr. Pringle in the telegram of the 2nd of July, Exhibit 6, "Please wire me fully tomorrow what action to take."

A. Well, I was deluged with telegrams at that time, not only from the Controller, from the Publishers, and from some of the Cabinet Ministers *re* the situation, and I was trying to guide the Canadian Government as much as possible in any action I might take.

Q. Is that an answer to my question, do you think, because you have 40 told us that the day before you had given the assurance, and wired for a confirmation of your authority to give it, and that you had got that confirmation?

A. Yes. Well, the assurance was given to me verbally in Ottawa, with the assurance that the Controller would confirm that, either by letter or by wire, which would be at Fort Frances on my arrival on Sunday, it was not there, hence my wiring him on the Monday.

Q. Then, did you get this wire from Mr. Pringle of the 3rd July, 1919?

I will read it to you. It is sent from R. A. Pringle, Ottawa, and addressed J. L. McNicol, Fort Frances, Ontario. "Wire received. Make another demand on Fort Frances Pulp and Paper Company that Orders for supply Western Publishers be obeyed forthwith. If they refuse see District Crown Attorney, lay information under War Measures Act against Backus and Dahlberg, Officers of Fort Frances Pulp and Paper Company for disobedience of Orders made by Controller for supply newsprint. They are both liable to penalty five thousand dollars and imprisonment. Custom officials at Fort Frances will be notified tomorrow morning to prevent any further export. 10 Unfortunate they should disobey my orders this critical time, as was getting through Legislation which would have benefitted all concerned. This now likely be held up unless I hear definitely my orders are going to be obeyed. Government also considering their powers as to cancelling power leases. Cannot understand their action. R. A. Pringle."

A. What is the date of that?

Q. The 3rd of July, 1919? A. I must have received that telegram.

Q. And that as you tell us, was after you had got Mr. Pringle's telegram confirming your authority to make the representations you say you made on which the whole matter was settled? A. I did not say the whole matter was 20 settled, shipments were resumed.

Q. Now, Mr. McNicol, you remember that when you were up in Fort Frances part of the time the Spanish Company were sending paper up to answer the requirements of some of the western newspapers? A. At what time? Not during July, 1919?

Q. I was asking you, when you were up there? A. I have no knowledge of that, July, 1919.

Q. You were up there in July, 1919, then you were up there on some other occasions? A. I was up there from the end of October until the month of February, 1920.

30 Q. Now, during that time, were the Spanish Company furnishing paper?

A. Not that I know of—to the Western Publishers?

Q. Yes? A. Not that I know of.

Q. Did you ever hear at any time of the Western Publishers getting paper from the Spanish Company? A. No, I never did.

Q. Or of Fort Frances getting paper from the Spanish? A. Yes, I did.

Q. Were you the one that arranged the amount that they should furnish

A. No, I think that was arranged by the Paper Controller.

Q. That was arranged by the Paper Controller? A. Through communication with me.

40 Q. And that paper was furnished by the Spanish in relief of the Fort Frances Company? A. Yes, but I cannot tell you the total tonnage it was.

Q. You cannot tell me the total tonnage? A. I know there was a certain amount supplied for Fort Frances.

Q. And in December, 1919, did the Fort Frances Company again refuse to supply the Western papers, and you had to threaten again to shut their mill down? A. I did not threaten shutting their mill down.

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Q. You what? A. I think I was authorized to place an embargo on shipments to the United States.

Q. Did it actually get to the point of placing an embargo on them?

A. Yes, in the latter part of December, 1919.

Q. December, 1919? A. I think about the 14th, but I am not quite positive of the date.

Q. I think you told us this morning the date when the communication from Mr. Pringle telling you he had resigned reached you? A. Yes.

Q. Have you got that date?

MR. TILLEY : The date of what? 10

MR. OSLER : The date of Mr. Pringle's communication to Mr. McNicol

A. It was sometime in the month of January, 1920.

Q. Would this telegram dated the 16th of January, be the communication you refer to? A. No, I received a communication prior to this. I may have received, I think, a telephone communication I had the day previous.

MR. OSLER : This will be Exhibit 8, my Lord. It is from R. A. Pringle to J. B. McNicol, a telegram dated the 16th of January, 1920, "Wires received. Have resigned as Controller. Forwarding your wires to Minister of Finance who will advise you as to course to pursue. In the meantime, do your utmost to get paper to the Western Publishers." A. I received that, my Lord. 20

MR. OSLER : And I suppose these were the last instructions you got from Mr. Pringle? A. Yes, sir.

Q. Mr. McNicol, did you say this morning that Fort Frances never objected to shipping its quota to the Western Newspapers?

A. Not during the time that I was in connection with the paper controller

Q. Then, for what purpose were you sent up to Fort Frances? A. To try and get sufficient paper through to the Western Publishers for their requirements.

Q. And the Fort Frances Company had threatened to close down? 30

A. I believe that statement was made by Mr. Pringle to me in Ottawa.

Q. And they had notified their customers to that effect? A. But as a matter of fact, they did not close down.

Q. No, but then in July, Mr. Pringle sent you a telegram which I read Exhibit 7, telling you to see the Crown Attorney—did you do that, by the way?

A. I believe I did.

Q. You believe you did? A. But there was a message came through from one of the Cabinet Ministers at that time, asking me to delay the proceedings until further instructions were sent. Pringle was absent from Ottawa at that date. 40

Q. And then you went back in December? A. I went back in October.

Q. When you went back in October, was there again difficulty in getting supplies to the Western publishers?

A. Yes, there was the same difficulty as had existed in June and July, there was not a stoppage.

Q. And then when you said that Fort Frances had not objected to supplying the Western trade, this morning, did you mean that there had not

been a stoppage? A. They never refused to supply their quota.

HIS LORDSHIP : That is what I understood you to say, "their quota, they never refused to supply."

MR. OSLER : Q. Then you were distinguishing between Mr. Pringle's Order, and what you considered was the quota of the Fort Frances Company?

HIS LORDSHIP : Do not nod your head. Say "yes" or "no."

A. Yes.

HIS LORDSHIP : The witness just nodded his head, and the reporter did not catch the nod, and I was telling him just to say "yes" or "no," as the
10 case may be.

MR. OSLER : Let me have the letter of Ross and Philips of the 25th
June, 1919.

MR. THOMSON : That was the joint letter?

MR. TILLEY : It is filed.

MR. OSLER : This was a short letter addressed to Pringle by Ross and Philips.

Q. Did Mr. Pringle ever show you that letter, or did you see it before you went up there?

HIS LORDSHIP : Is this an original or a copy?

MR. OSLER : It is a copy, my Lord.
20

Q. Perhaps you had better look at the original. (Mr. McGregor produces it.)

MR. TILLEY : What is the date of it?

MR. OSLER : June 25th, 1919? A. No, sir, I was not shown this letter.

Q. Were you told the substance? A. But Mr. Pringle conveyed to my brother such a letter. He did not say that he had the letter at that time, but I think he conveyed to him that he was expecting such a letter to be handed or mailed to him.

MR. OSLER : Q. This will be Exhibit 9. Signed by W. B. Ross and
30 T. L. Philips, solicitors for the Fort Frances Pulp & Paper Company, Limited.

HIS LORDSHIP : The letter dated when?

MR. OSLER : Dated June 25th, 1919 —

"Referring to letter addressed to you during the month of May last by the undersigned on behalf of the Fort Frances Pulp & Paper Company, Limited, in which you were advised that unless matter of differentials between Canadian and American prices of newsprint paper so far as the same affected said company, was adjusted by you, the Fort Frances Pulp & Paper Company Limited would be obliged to cease shipment of newsprint paper from its mill to Canadian customers after May 26th last, we have to advise that in view of
40 the announcement of the sitting of the Paper Control Tribunal at Montreal on June 16th, the Fort Frances Company decided to forego the suspension of shipments to its Canadian customers on May 26th in the hope that the entire subject might be cleaned up by an early decision of the Paper Control Tribunal. The Tribunal has, however, adjourned without rendering judgment, and the time when such judgment may be expected is wholly indefinite. We beg therefore to notify you that the Fort Frances Pulp & Paper Company Limited must insist upon immediate action by you with respect to matters set

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forth in the communication of the undersigned above referred to, and that unless effective action is taken by you in the matters mentioned, the Fort Frances Company will cease shipment to the Canadian purchasers of its paper on the 27th day of July, 1919."

EXHIBIT No. 9. Letter dated 25th June, 1919, W. B. Ross and T. L. Philips, Solicitors for the Fort Frances Pulp & Paper Company, Limited, to the Honourable R. A. Pringle, Commissioner and Controller of Pulp & Paper, Ottawa.

MR. OSLER : Q. Where are you employed now ? A. I am not em- 10
ployed anywhere at present.

Q. Did you have anything to do with the efforts to get the paper out to the Western publishers, from the East, do anything whatsoever ?

HIS LORDSHIP : I would like to have that more specific—from the East ? What East are you referring to, Mr. Osler ?

MR. OSLER : Let me perhaps develop that with a few questions.

HIS LORDSHIP : Very well. I just want to be sure I understand, that is all.

MR. OSLER : The question of the newsprint control resolved itself into the eastern section in which newsprint mills were situated, and the western 20
section where the Fort Frances mill was, the only mill until you get to British Columbia—do you remember that, Mr. McNicol ? A. I have no knowledge that effort was being made, or any requests being made by the publishers for shipment from the eastern mills.

HIS LORDSHIP : Mr. Osler has not asked you that. He has asked you if you were active in endeavouring to get shipments from the producers in the East ? A. No, I was not.

MR. OSLER : Q. You knew what I meant when I referred to producers from the East ? A. Yes.

Q. That is a well understood term ? A. Yes, that is from the Spanish 30
River to the Quebec boundary.

Q. And Fort Frances was the only mill in the West ?

MR. TILLEY : I wonder if he included Spanish River ?

A. Yes, and Abitibi.

MR. OSLER : Q. I was just going to ask you if the Fort Frances was not the only mill that was regarded as a western mill ? A. I think it was.

Q. In other words, the mills on the Pacific Coast were not brought in to it ? A. No, they were not under this control at all, so far as I know.

Q. And of course the freight on paper from the mills of any of the eastern mills to the Western publishers would have been prohibitive ? 40

A. I do not know about being prohibitive, it would have been greatly in excess of what it was from Fort Frances, for the Western publishers.

Q. I have been told it would have been approximately ten dollars a ton ?

A. I think it would have been more than that in some instances from mills down in Quebec.

Q. At all events, at least ten dollars a ton from the eastern mills ?

A. I do not know what the freight from the east to Winnipeg, Saskatoon,

and those points would be, but I believe that it would be ten dollars more than Fort Frances.

Q. And for that reason the Western publishers naturally looked to Fort Frances for their supply of paper? A. Yes.

Q. And the Western papers were the only market of the Fort Frances Company in Canada? A. I cannot commit myself to say that they were the only natural market.

Q. Well, what other market, what other manufacturers can you suggest who could compete in that market with the Fort Frances Company, in regard to freight rates?

A. Well, as regards to freight rates, I do not think any of them could.

Q. And is it not fair to say that the freight rate situation made it so that the Western publishers were a market that exclusively belonged to the Fort Frances Company so far as Canadian tonnage was concerned?

A. No, I won't take it upon myself to say that.

Q. But you won't suggest anybody who could have sold paper there?

A. Any mill could have sold them paper.

Q. On competitive terms with the Fort Frances mill?

A. When you talk about competitive terms, mills which are manufacturing a ton of newsprint might have been able to supply at the same price and derive as much profit from the tonnage as Fort Frances did, more in some instances, a low cost mill.

Q. But can you suggest one mill whose costs were so much lower than Fort Frances that they could have done that?

A. At the present time I cannot, not having the Records before me.

Q. At the present time you cannot?

A. No, not without going through the costs at the mill.

Q. Was there any mill that could have done so at that time?

A. I am not prepared to say there was or was not.

Q. Don't you remember that the Western publishers did not want to have the paper taken from the eastern mills because of the freight rate they would have to pay? A. I am perfectly well aware of that.

MR. TILLEY : That is all, thank you, Mr. McNicol.

HIS LORDSHIP : Now has Mr. Taylor the data information we want? If he has, perhaps you could finish his examination now.

MR. TILLEY : I think he has it, my Lord.

WILLIAM DUNBAR TAYLOR, Recalled.

Examination continued by MR. TILLEY :

Q. Mr. Taylor, have you fixed the time that \$80,000 was paid? A. It was sometime before December, 1918.

Q. Another question, have you checked the prices or the differential amounts in the Order of the Paper Control Tribunal with the figures that you compiled for them?

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A. The figures that I compiled was a total of \$72,507.12. That is the same as at page 73.*

HIS LORDSHIP : Yes, the exact amount.

MR. TILLEY : Yes, and I presume the details are the same and—Abitibi, \$7,915.39; J. R. Booth, \$4,302.13; Brompton, \$5,026.88; Donnacona, \$8,051.24; Price Brothers, \$6,544.56; Ontario Paper, \$6,554.46; Spanish River, \$25,846.03; and St. Maurice, \$8,266.45.

MR. TILLEY : Q. I see the Ontario Paper Company and Price Brothers reduced—

HIS LORDSHIP : Except for the transposition of a figure or two.

MR. OSLER : May I see the statement a moment, if he is done with it. 10

MR. TILLEY : Is this statement you have produced here a computation that shows how you arrived at the amounts ?

A. Yes, this is our office copy of the statement that went to the Appeal Tribunal.

Q. And then there is a memoranda in the front to show how it is done ?

A. Yes.

Q. Have you an extra copy of that ? A. No, this is our last copy. I could have extra copies made.

MR. TILLEY : May we have a copy of that made and filed as Exhibit 10 ? 20

HIS LORDSHIP : Yes, Exhibit 10 will be statement of differentials.

HIS LORDSHIP : Is it a statement or letter ?

MR. TILLEY : It is a statement of differentials prepared for Paper Appeal Tribunal over the period of 1st March to 31st December, 1917.

HIS LORDSHIP : From what date was it, Mr. Tilley ?

MR. TILLEY : From the 1st of March to the 31st of December, 1917.

Q. Now then, you also had a statement showing how you made up the amount of \$100,000 ? A. \$96,000 odd—I did not deal with the interest at all.

Q. Of \$96,000 to which interest was added, making \$100,000 that the 30 Controller inserted in his Order ? A. Yes.

Q. Now, have you any statement showing how that was made up ?

EXHIBIT No. 10. Statement of differentials prepared for Paper Appeal Tribunal for a period 1st March to 31st December, 1917, by Clarkson, Gordon & Dilworth.

Q. Now, have you any statement showing how that was made up ?

A. It is the total at this date, this covers March to September, 1917, and then that statement, October, November and December.

Q. Then we will see. This will be Exhibit Number 11. Exhibit 11 is 40 March to September, 1917, inclusive, and Exhibit 12 will be October, November and December, 1917.

HIS LORDSHIP : What is Exhibit 12.

MR. TILLEY : Exhibit 12 is October to December of the same year, 1917.

HIS LORDSHIP : These two together show how the \$100,000 is made up, less the interest ? A. Less the interest.

EXHIBIT No. 11. Statement of differential payable to Fort Frances Pulp & Paper Company, Limited, on their quota of newsprint over-supply in Canada, 1917—1st March, 1917, to 30th September, 1917.

10 “The attached summary of schedules gives the Differential payable to the Fort Frances Pulp and Paper Company Limited, on the basis that they are entitled to a differential of \$18.15 per ton, being \$15 the difference between the Canadian price of \$50 and \$65 at which their free tonnage was sold in the United States together with an allowance of \$3.15 for the loss of drawback on manufactured sulphite imported from the United States and used in the
20 manufacture of paper sold in Canada. The amount of Differentials so ascertained, has been apportioned among the contributing mills on the basis of the contributions required from them in the adjustments with other mills to September, 1917.”

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EXHIBIT No. 12. Differentials payable to Fort Frances Pulp and Paper Company Limited for the months of October, November and December, 1917.

MR. TILLEY : Q. Now then, you were going to give me one further piece of information, I think—

I see that on July 10th Mr. Pringle wrote to Mr. Clarkson as follows :
20 “Since writing you this morning, it has struck me that if the contributing mills were ordered to pay in at the present time, say \$50,000, that it ought to be satisfactory. You might have Mr. Taylor make me up from Sharpe's statement, what proportion each mill would have to pay to make up the \$50,000”—did you make that up? A. I cannot find any record of having made that computation.

Q. You cannot find any record of having made that computation ?

A. No.

HIS LORDSHIP : What is the date of that ?

MR. TILLEY : That is a letter dated July 10th, 1919.

HIS LORDSHIP : That will be Exhibit 13.

30 EXHIBIT 13. Letter dated 10th July, 1919, R. A. Pringle, Commissioner and Controller, Newsprint, to G. T. Clarkson, Toronto.

MR. TILLEY : Q. Now, he speaks of another letter of the same date.

Then an earlier letter of the same date reads in this way : “July 10th, 1919. Dear Mr. Clarkson:—Re Newsprint Differentials. I am in receipt of letter from Mr. Sharpe enclosing differentials statement. . . . I would like if you could give me your ideas by mail on a differential figure, and save me a trip to Toronto.”

40 HIS LORDSHIP : Lap sulphite—I see that expression, lap sulphite, is that what we are referring to as the item on which duty was paid? A. Lap sulphite or slush sulphite, it came over in both forms.

EXHIBIT No. 14. Letter dated 10th July, 1919. Robert A. Pringle, Commissioner and Controller of Newsprint, to G. T. Clarkson.

HIS LORDSHIP : That is all with respect to the differentials prior to the 1st of January, 1918 ?

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- MR. TILLEY : Oh, no, because we——
- HIS LORDSHIP : Had that been paid yet ?
- MR. TILLEY : Yes, this was July, 1919, and we had been paid \$80,000.
- MR. OSLER : That is subject, of course, to our objection.
- HIS LORDSHIP : There was \$80,000 paid ?
- MR. TILLEY : That is, \$80,000 was paid to the Fort Frances Company, I think your Lordship will hear later that the whole amount was paid to Mr. Pringle, and \$80,000 paid to the Fort Frances.
- HIS LORDSHIP : At the time, when he is writing and suggesting payment and this not the differential which was included in his Order for \$100,000 ? 10
- MR. TILLEY : No, that \$80,000 is the \$100,000 and that was paid in 1918. We are now in 1919, and this is the differential after the first of January, 1918.
- HIS LORDSHIP : Oh, yes, I am wrong there. Mr. Taylor said that the \$80,000 was paid sometime before December, 1918.
- MR. TILLEY : Yes, my Lord.
- MR. OSLER : Will Mr. Tilley put in Mr. Clarkson's answer ?
- MR. TILLEY : I will, if I could get it.
- MR. HENDERSON : Mr. Pringle was consulting Mr. Clarkson as to the way of doing this—it is not an official act. He had not made up his mind. 20
- A. I think I can get the reply.
- MR. TILLEY : Then, will you be good enough to get the reply.
- MR. HENDERSON : I happen to know what the reply was, discouraging Mr. Pringle to make the Order.
- MR. TILLEY : I am getting it from Mr. Taylor as well as I can.
- MR. TILLEY : Q. You are going to let us have copies of this, and if Mr. Clarkson's reply is procurable, would you please let us have that.
- A. Yes.
- HIS LORDSHIP : That is, Mr. Clarkson's reply to this letter of July 10th. That is the letter where Pringle encloses the statement from Sharpe and is writing regarding payment of differentials. 30
- MR. TILLEY : Q. Then, Mr. Taylor, Mr. Pringle apparently enclosed you a draft of an Order that he was going to make, with this letter of the 10th July ? A. Yes.
- Q. And I would like to have that, if I can ? A. I have not found that, in going over the files.
- MR. HENDERSON : The reply is dated the 23rd.
- We will no doubt be able to get a copy of Mr. Clarkson's reply ?
- A. Yes, my Lord.
- HIS LORDSHIP : It can go in as Exhibit 14-A, so it will be identified as an answer to this Exhibit 14. 40
- MR. TILLEY : Apparently my friend has a copy of Mr. Clarkson's letter, so I may be able to get it now.
- (Letter produced.)
- I have the letter now—it is a letter of July 23rd, 1919, to Pringle.

EXHIBIT No. 14-A. Letter from Mr. G. T. Clarkson, dated 23rd July, 1919, to R. A. Pringle, as answer to Exhibit 14.

“Re newsprint investigation. I herewith return draft Order you propose to make in this matter. It appears to me that the Fort Frances Company is practically taking the attitude that it will not refund the rebate of duty unless you enforce collection of a differential from the manufacturers, but it is willing to pay over the rebate of duty if you make the manufacturers make payment on account of differential. The point, of course, which I see in the position is that the Fort Frances Company is bound to make repayment of the
10 refund of duty to the publishers. At the same time, the manufacturers will undoubtedly vigorously object to any further payment of differential until the Appeal Tribunal gives its finding as to whether the basis adopted by you shall be upheld or varied. The whole situation makes a very awkward predicament to my mind, and I do not see how trouble can be avoided either one way or another unless the Appeal Tribunal can be persuaded to give its finding.”

MR. TILLEY : Q. Now the rebate, the refund of rebate.

A. The refund of the rebate of duty, that is referred to in this letter of Mr. Clarkson is an item that was brought into the account by the Paper Control Tribunal in respect of the 1917 differential.

20 Q. They did not deal with that ? A. They did not allow that \$3.15 to the Fort Frances.

Q. They did not allow that \$3.15 to the Fort Frances, as part of its costs ?

A. The \$3.15—

MR. TILLEY : It did not affect costs ? A. The allowance of \$3.15 per ton did not affect costs.

HIS LORDSHIP : I could not get that, Mr. Taylor, I am afraid Counsel could not hear you ? A. The \$3.15 sulphite allowance did not affect costs at that time.

MR. TILLEY : Did not affect costs, but it was being used by Mr. Pringle
30 in his computation of the \$100,000 ? A. Oh, yes, it was included in that.

Q. In this \$100,000, and then the Government had ordered some sort of refund or rebate, as I understand ? A. Yes.

Q. And then it was being said, “Now this ought to be returned to us, or an adjustment made,” and that adjustment was made by the Paper Control Tribunal ? A. No.

Q. Now straighten me out, I thought that was it.

A. The refund on the sulphite would be made, not by the Paper Control Tribunal, but I suppose by the Department of Excise.

MR. TILLEY : But when they were considering the question of differential
40 between the manufacturers, Mr. Pringle had treated the \$3.15 as an item to be taken into consideration, as being the duty paid, and the Paper Control Tribunal took it into consideration in the differentials ? A. It did not take it into consideration. It had been settled in the meantime.

HIS LORDSHIP : And in what way was it settled ?

A. They had got the allowance of \$3.15 a ton.

HIS LORDSHIP : Who had ? A. The Fort Frances Company.

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Q. Yes, got the allowance from whom? A. From the Government, I suppose, it would be a rebate of the duty that they had paid. They got that back.

HIS LORDSHIP: But the other newsprint manufacturers did not have to make any payment in respect of that \$3.15? A. No, they were not in the same position, they did not have that as an element in their costs.

HIS LORDSHIP: The Fort Frances Company had got a rebate from the Government of \$3.15? A. Yes.

Q. And the Government wanted the Fort Frances Company to pay that back, did they? A. No, I—

10

HIS LORDSHIP: Tell us who wanted the \$3.15?

MR. TILLEY: Q. Will you just let me see if I can state this whole matter, and see if I am stating it correctly, Mr. Taylor, with your assistance. In what he ultimately treated as the proper differential, he included in favor of the Fort Frances Company, \$3.15 for duty that they had to pay the Government? A. Yes.

Q. Before the Court of Appeal passed upon the question of differentials, the Government had rebated to the Fort Frances Company that item, \$3.15?

A. Yes.

Q. Or ninety-nine per cent. of it, or whatever was coming back, it rebated to them, therefore in the \$100,000 that was covered by Mr. Pringle's order there was included \$3.15 which, after the Order was made, the Fort Frances Company got back? A. Yes.

Q. From the Government, and then the publishers were suggesting that there was some allowance to be made on these differentials, because the \$3.15 had been rebated by the Government—I do not mean the publishers, but the manufacturers? A. The manufacturers.

Q. And that being the situation, when it came before the Paper Control Tribunal, did they discard and throw out the item of \$3.15? A. Yes.

Q. So that it was never charged against the other manufacturers?

30

A. Not in the whole—

MR. OSLER: I do not assent to the statement that it was never charged against the manufacturers?

MR. TILLEY: "I return herewith the draft Order"—this letter was written before the Paper Tribunal had made its Order. This was July 23rd.

HIS LORDSHIP: They did not make this Order until August, 1919.

MR. TILLEY: It being in this state of confusion the manufacturers were saying this differential is made up and includes \$3.15, that should not be there now, because they have got a rebate.

"It appears to me that the Fort Frances Company is practically taking the attitude that it will not refund the rebate of duty unless you enforce collection of the differential from the manufacturers, it is willing to pay over the rebate of duty if you make the manufacturers make payment on account of differential. The point, of course, which I see in the position is that the Fort Frances Company is bound to make repayment of the refund of duty to the publishers. At the same time the manufacturers will undoubtedly vigorously object to any further payment of differential until the Appeal

40

Tribunal gives its findings as to whether the basis adopted by you shall be upheld or varied. The whole situation makes a very awkward predicament to my mind, and I do not see how trouble can be avoided either one way or the other, unless the Appeal Tribunal can be persuaded to give its finding."

Now, Mr. Taylor, when the price that was being paid for paper was fixed, at the instance of the publishers, these questions of costs were discussed before Mr. Pringle, and considered? A. Yes.

Q. So there were disputes between the publishers and the manufacturers, and then there were disputes between the manufacturers themselves?

10 A. Yes.

Q. On this question of differential? A. Yes.

Q. And as I follow it, at the time Mr. Clarkson wrote that letter, he was referring to the differential? A. Yes.

Q. When he speaks about "the manufacturers will oppose further payment of differentials"—he was referring to the payment of differential after 1st of January, 1918, because they had already paid the differential for 1917?

A. Yes, I would gather so from that letter.

Q. So he is saying that they would refuse to pay any further differentials after the 1st of January, until something is straightened out about the \$3.15
20 for sulphite rebate, and until the Paper Control Tribunal has said how these differentials are to be computed, that is what he was saying? A. Yes.

Q. And then the Paper Control Tribunal gave its judgment about a month later, and in their computation of differentials, they did not allow Fort Frances anything for duty, because it had been rebated? A. Yes.

Q. And from that time the objection Mr. Clarkson was raising disappeared? A. Yes.

Q. They had given their Award, and they had taken into account the fact that the sulphite duty had been rebated? A. Yes.

Q. That is right? A. Yes.

30 Q. Then there was one other matter. I spoke about the price being fixed for publishers. I suppose the Appeal Tribunal would have to deal with the question of the prices the Canadian publishers were to pay to the Canadian manufacturers, before you could really determine what the differentials would be? A. Yes.

Q. And that was being held up by the Paper Control Tribunal? A. Yes.

Q. I mean, judgment was reserved on that, so there were these difficulties that Mr. Clarkson was pointing out?

HIS LORDSHIP : Mr. Osler ?

CROSS-EXAMINED by MR. OSLER :

40 I have a few questions to ask Mr. Taylor.

Q. Mr. Taylor, these letters, Exhibits 14 and 14-A seem to refer to matters as between the publishers, and also matters with regard to the differentials—if you will look at 14, Mr. Pringle says, "I am enclosing you copy of an Order which I am likely to make in connection with the Western situation. It seems to me that this is fair, an adjustment has to be made in regard to lap sulphite, and the whole matter is still under consideration by the Paper

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Control Tribunal" ? Have you got a copy of the draft order enclosed here ?

A. No, in the reply of Mr. Clarkson he says that he returned it.

Q. And you did not get a copy ? A. No.

Q. And you do not know whether that dealt with the mere matter of prices, or with differential as well ?

A. I do not know what it dealt with.

Q. And as a matter of fact, at one stage during these proceedings, there were in force orders by which prices were fixed, and a portion of the price was paid in to the Bank instead of going direct to the manufacturers, so that it would be available for a return to the publishers, if the prices should be reduced, you remember there was a difference at one time, of price, and a price was authorized, and part of it was to be empounded pending the decision as to whether the maximum price fixed should be final. 10

MR. TILLEY : That is in the Orders, is it not ?

MR. OSLER : I am just asking—it is there ? A. I have forgotten what the details were.

MR. OSLER : Q. You do not remember the fact of there being some money impounded ? Perhaps I may recall it to you, there was a contention for quite a long time, on the part of the manufacturers to have this portion of the price released to them, and the publishers were claiming to have the whole of it ? A. I remember there was something of the kind, but I have forgotten what the details were. 20

Q. The details have passed from you ? A. Yes.

Q. Then when you made the calculation on which Mr. Pringle's Order of the 6th of August, 1917, was passed, by which he ordered the various mills who were ordered to contribute a flat amount, that payment included undoubtedly the addition of \$3.15 for duty on sulphite ? A. Yes.

Q. So that when the mills paid that sum, they had actually paid that money over ? A. Yes.

MR. TILLEY : Q. They had paid what ? 30

MR. OSLER : They had paid the money over, \$3.15.

MR. TILLEY : To Mr. Pringle—

MR. OSLER : They had paid it in accordance with the Order.

Q. Then there is no doubt, Mr. Taylor, I take it that the several mills who were ordered to pay by that order of the 6th of August, 1918, did, in fact, pay the whole amount ? A. I presume they would. I do not remember now definitely.

Q. But you have your records that would fix that, have you not ?

A. Not necessarily, because when we were going around the different mills, we were only dealing with their costs, that would not be an element of cost for that. However, that payment of the differentials. 40

Q. Were you not called on to assist in these calculations and to see whether the moneys were paid ? A. No, after we had made the calculation, that was the end of it so far as I was concerned.

HIS LORDSHIP : You had nothing to do with the actual collection of the moneys ? A. Nothing to do with the actual collection of moneys.

HIS LORDSHIP : Nor it did not pass through your hands ? A. No.

MR. TILLEY : Is this the differential ?

HIS LORDSHIP : The \$80,000.

MR. OSLER : The \$100,000, but you did understand the whole \$100,000 had been paid ?

MR. TILLEY : I object, unless he knows something about it. I do not want his understanding ?

WITNESS : I have not any definite company in mind where I saw that payment going through. I have no doubt I would probably see it going through at the time, but it is so long ago now, I do not recall it.

10 MR. OSLER : Q. Would you have a record at your office showing that ?

A. I think it is quite possible we might, in one or two of the cases, but it is not a fact that is essential for me to know in connection with the costs.

Q. Would you mind looking to see whether you had a record, whether that was paid, and if so, let us know ? A. Yes, sir.

Q. And you do know that, that \$80,000 was paid to the Fort Frances Company ? A. Yes, they got it.

Q. And you do know that much of that, \$80,000 was paid to the Fort Frances Company ? A. Yes.

20 Q. From whom did you get instructions ? A. To prepare the statement ?

Q. To prepare the statement which was Exhibit 10 ?

A. It would probably come from one of the members of the Appeal Tribunal.

Q. And is there anything in this showing any reference to the \$3.15 sulphite duty ? A. No, there is no reference to it here. Here is the Fort Frances Company—

MR. TILLEY : I object.

Q. This is the month of March. There is a separate page for each month.

30 The differential from what they were getting was fifteen dollars, that is what your computation would work out on, the difference between \$65 on the average price sold to the United States, and \$50 the Canadian price ?

HIS LORDSHIP : On what page is the Fort Frances ?

MR. OSLER : There is one of every month.

WITNESS : This is for March, showing the computation of the differentials for each month.

HIS LORDSHIP : Each page has the month, and contains the figures for each of the various companies ?

40 MR. TILLEY : Mr. Taylor, would you just show his Lordship that column that you are saying shows Fort Frances ?

WITNESS : What I was saying, the Fort Frances differential was \$15, the difference between \$65 the average price received on paper in the United States, and \$50 the Canadian price.

HIS LORDSHIP : For instance, I was looking down this column for differential—I see here is the Canada Company, their differential was \$20 ?

A. Yes, they were getting seventy dollars on their own contracted tonnage sold to the United States.

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HIS LORDSHIP : Theirs was the highest differential of all the companies, apparently in that month ?

MR. TILLEY : I do not know that differential is just to show it—that is the difference between the average American per ton price that they got, and their Canadian price.

HIS LORDSHIP : It doesn't really amount to anything, because the quantity was small.

MR. TILLEY : Yes, my Lord.

MR. OSLER : I am right then, there is no reference to the \$3.15 rebate in this at all ? A. No.

Q. And it really means this calculation has been worked out on a basis which excluded that from the computation altogether ? A. Yes.

Q. Until or perhaps when the Government paid the \$3.15 refund of that rebate to the Fort Frances Company and when they did get the amount ordered by Mr. Pringle, it meant in fact, that the other mills had paid the \$3.15 twice.

MR. TILLEY : The other mills had paid it twice ?

Q. It had been included in the first \$96,000.

MR. OSLER : It had been included in the first \$100,000 ?

A. \$100,000, including interest.

Q. And then when that was paid, the mills had already that allowance to the Fort Frances Company ?

A. They had got it there, I do not say they had got it twice.

The Fort Frances Company had got that money.

Q. When they got the money, when Mr. Pringle ordered them to be paid, that calculation, as I understood it, included the payment of this \$3.15 ?

A. Yes.

Q. And, therefore, I take it that the Fort Frances Company got that \$3.15 when they got the money that Mr. Pringle ordered the other mills to pay them ? A. They would get the proportion of it, anyway, in the \$80,000, some portion of it would come in the \$80,000 they got.

Q. Then, when the Fort Frances Company got the \$3.15 from the Government, they would have been in the happy position of having received it twice—once from the mills, and once from the Government ?

A. Well, I do not see that you can definitely tie up the \$3.15 to the \$80,000—that \$80,000 was simply a payment on account, If they had got the full \$96,000, they would undoubtedly have gotten it.

MR. OSLER : Q. You really mean the \$100,000 ? A. Including the interest, if they had got the full amount, they would have gotten the \$3.15 twice.

MR. OSLER : Q. When the mills paid the \$100,000 to Mr. Pringle, they had paid the whole of the \$3.15 once ? A. Yes.

Q. Do you know why Mr. Pringle did not pay over the whole amount to Fort Frances ? A. No, I do not.

Q. Then, when you sent out the statement calling for information following Mr. Pringle's Order of the 23rd January, 1920, what attitude did the mills take ? A. We got replies from Laurentide, from Eddy and from the News Pulp & Paper Company.

Q. The Booth, did you say ?

HIS LORDSHIP : The News.

A. The News Pulp & Paper, and we got information from Fort Frances. Our men were up there then taking costs, and they got information themselves. Booth wrote us that they——

MR. OSLER : Have you got Mr. Booth's letter there ?

A. Yes, I find I left it down in the office when I was there in the middle of the day.

MR. OSLER : I have a copy here in my brief, of the 31st of January, 1920, which reads as follows :

“Messrs. Clarkson, Gordon & Dilworth. Dear Sirs,—I have your letter of the 28th inst. requesting me to send you information to enable you to comply with the figures relative to the newsprint differentials.

“I may say that I do not see any advantage in furnishing these figures, as I do not consider that I am subject to the payment of any differential. I wrote to the former Controller in January, 1918, and explained to him that I was anxious to make my quota of Canadian tonnage, and I could not see my way to pay any differential. I suggested to him that to avoid any question of freight rates, he could transfer to this mill some of the excess of Canadian tonnage then being manufactured by the Eddy Company. Subsequently a certain amount of this tonnage was transferred to this mill; whether this was sufficient to make up my quota, I cannot of course say. However, in any event, I consider that having placed myself on record as desiring to make the paper, and not paying the differential, I am not liable for any claim of this kind. Yours truly, (sgd.) J. R. Booth, per H. I. Thomas.”

EXHIBIT No. 15. Letter dated 31st January, 1920, J. R. Booth to Clarkson, Gordon & Dilworth.

HIS LORDSHIP : Is Mr. Taylor going to produce the letter, or are you going to put in the copy you have there ?

MR. OSLER : I understand there is a copy in Mr. McGregor's file ?

A. I remember that letter, I can identify it as being a copy.

HIS LORDSHIP : What is the date ?

MR. OSLER : January 31st, 1920.

MR. OSLER : Mr. MacGregor has on his file Mr. Booth's letter of the 28th January, 1918, to Mr. Pringle, the one referred to in that letter from Mr. Booth.

MR. TILLEY : I submit it is not proper to put this in with this witness. I would like to get through with my witnesses as soon as I can.

HIS LORDSHIP : I should think when you are putting the gentleman in who is producing Mr. Booth's file ?

MR. OSLER : I thought it might be convenient, my Lord.

HIS LORDSHIP : It was, but if Mr. Tilley objects, we cannot put it in at this stage. It may be more convenient to him.

MR. OSLER : If my learned friend objects.

HIS LORDSHIP : In other words, it never went through the hands of Mr. Taylor or his firm.

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MR. OSLER : No, my Lord, it was merely a matter of convenience.

Q. And generally speaking, Mr. Taylor, the mills refused to give any information? A. Well, it was never, I have looked through the correspondence, and there does not seem to be any answering letter refusing to give the information. The matter just seems to have dropped.

HIS LORDSHIP : You have this answering letter from Booth?

A. There was no answering letter from Spanish River.

HIS LORDSHIP : Refusing or furnishing information?

A. Asking for further information as to what was required in the letter enquiry we had sent out. 10

HIS LORDSHIP : Did the data come forward afterwards?

A. Nothing came forward.

MR. OSLER : Q. But no one, I think, furnished the information.

A. No, we had no further information except this from the four.

HIS LORDSHIP : : The four? A. The four companies that I have named, that is, Fort Francis, Laurentide, News Paper & Pulp Company, and Eddy, were the four I remember answers from.

MR. OSLER : Q. The Laurentide did furnish information? A. Yes.

Q. These being receiving mills? A. Yes. 20

Q. Or mills long on Canadian tonnage—now, you were aware of the questions that were raised in connection with the difficulties in settling these differentials in regard to the allocation of tonnage to different customers in different districts? A. Well, I did not have anything to do with the allocation of tonnage.

Q. But you were aware that was one of the difficulties in dealing with this differential? A. I do not know that I ever heard the matter discussed from the view of differential at all.

Q. From the point of view of what? A. From the point of view of the differential.

MR. OSLER : Q. Did you hear the question of the Western publishers 30 discussed, and the question of which mills could supply them with paper on an economical basis?

A. I do not think I can give you any information on that at all.

Q. Were you not present at the various hearings when the question of who was going to look after the Western market was considerably discussed as compared with who was going to look after the Eastern market?

A. I was present at the different hearings and if the matter was discussed, then I probably heard it.

Q. And you remember the discussion as to the advantages that a company who was supplying rather more than its quota might have in retaining the 40 customers which it had prior to that time?

A. I do not remember that phase of it specially.

Q. You do not remember what? A. I do not remember that phase of it specially.

Q. You do not remember that at one stage some of the companies said to the Eddy Company, for example, "We will take some of your companies off your hands," and the Eddy Company took the position, the last thing in

the world they wanted to do was to lose their customers. That must have been dealt with by Mr. Clarkson, whether you knew of it or not.

HIS LORDSHIP : Did you hear such matters spoken of, in the hearings ?

A. It is probable, I was present.

HIS LORDSHIP : Do you recall hearing them ? A. I do not remember at all, specially.

Q. Do you remember at all hearing these matters discussed in the hearings ? A. No, I do not recall now.

10 MR. OSLER : Q. You were aware, of course, that after a certain time in 1918, there was a general understanding that differentials were going to be abolished ?

A. I knew at that time, that in January, 1918, with the exception of Fort Frances, the other manufacturers, after a settlement they had made, then up to that date, had agreed there would be no further differential between themselves.

HIS LORDSHIP : That they had which ?

A. They had agreed.

HIS LORDSHIP : That the others, apart from Fort Frances ?

A. Apart from Fort Frances.

20 Q. That there would be no adjustments of differentials between themselves ? A. Between themselves.

MR. OSLER : In other words, the mills that were long on Canadian tonnage were no longer pressing for payment of differentials from those who were short ? A. Yes.

Q. And do you know why that arrangement was made ?

A. No, I do not know. I was not present when that arrangement was made.

30 Q. Does it recall it to you, it was an exceedingly complicated and difficult question to work out ? A. It was quite complicated to work out, that I know.

Q. That was an important part, the difference between the American and Canadian prices was getting less.

MR. TILLEY : Is this cross-examination, my Lord ?

MR. OSLER : And that if a mill supplied its quota and no more, it would not get the benefit of increasing its list of Canadian customers—do you remember this point being discussed, Mr. Taylor ? A. I do not recall these points now at all.

Q. But at all events, you do know that for some considerations that were submitted to them, the other mills agreed to abolish differentials ? A. Yes.

40 Q. And were you present when Mr. Pringle made the direction that was quoted from, the proceedings of one that is here, the 23rd September, 1918, when he said there would be no more differentials ?

A. I do not get that question, Mr. Osler.

Q. Were you present at the hearing when Mr. Pringle said there would be no more differentials, which was quoted yesterday, Mr. Philips remembered the incident, I think, on the 23rd September, 1918, that they had been discussing (page 3183) they had been discussing the differential order of the past

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year, 1918, that is the one that ordered the payment of this \$100,000 to Fort Frances, and the Commissioner—

MR. TILLEY : Is the witness saying he said this ? We had one witness yesterday who said he remembered it ?

MR. OSLER : I am asking the witness whether he does.

WITNESS : I do not remember that particular passage, as to whether I was present there or not. I was present at most of these hearings.

HIS LORDSHIP : But, Mr. Taylor, you apparently are not clear in your mind as to what is meant by your being asked if you remembered this, that or the other thing happening, the fact that you were present at the hearing is one thing, and therefore, if the thing was said, you doubtless heard it, but the question that you are being asked here is, "Do you remember now that such a thing was said at such a time ? A. No, I do not remember that. 10

HIS LORDSHIP : If you bear that in mind, you will have less difficulty in answering the questions put to you.

MR. OSLER : You do remember that in the various price fixing orders— which, by the way, have not been read to your Lordship—the Orders were made fixing the prices—prices for a limited period, and then renewed from time to time ? A. Yes.

Q. And this Order that was made on the 26th of September, two or three days after that hearing, do you remember whether that contained any reference to differential ? 20

A. I do not remember. I have not a note of it here.

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RE-EXAMINED by MR. TILLEY :

Q. Do you remember at one time the Canadian price got higher than the American price, according to the existing orders, but that there were appeals pending from both, and later on it was reversed ?

A. I do not remember that, Mr. Tilley.

No. 12.
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EDWARD W. BACKUS, Sworn. Examined by MR. TILLEY :

Q. Mr. Backus, are you connected with the Fort Frances Pulp & Paper Company ? A. I am. 30

Q. In what capacity ? A. The President.

Q. And do you give the affairs of the Company active attention ?

A. I do.

Q. And are you familiar with newspaper print conditions on the American side and the Canadian side from time to time ?

A. Very familiar with it, yes, sir.

Q. Now, is your market in both countries for your newsprint ?

A. Yes, sir.

Q. And has been for how long ? A. Seventeen years. 40

Q. Then, during the time that the Paper Control was established in Canada, I believe, that for some portion of the time you were ill ?

A. I was ill. I was taken ill late in 1917.

Q. Yes ? A. And was away from Minnesota most of the time, until the last of July, 1918.

Q. 1918? A. Yes, but I kept in touch with the situation by correspondence all the time.

Q. You kept in touch with the situation—then, when the control was established by Order-in-Council, I believe that certain discussions and negotiations had already taken place, or took place soon after, amongst some of the manufacturers themselves, meeting some of the persons in official positions in Ottawa—is that right?

A. Well, I say I gave this matter my personal attention up until the very last of 1917.

10 Q. Until the very last of 1917? A. Yes, sir.

Q. Then, did you have a meeting early in that year?

A. We did, yes, sir.

Q. And when you say, “we did,” who do you mean, Mr. Backus?

A. Canadian manufacturers; and in fact with some of the United States manufacturers.

Q. Can you remember in part some of those present—if you cannot remember all, what companies were represented?

A. You are now referring to the meeting in February of 1917?

Q. Well, whatever month it was, early in 1917, yes?

20 A. Well, the Laurentide.

HIS LORDSHIP: Where was this? A. At the Ritz-Carlton Hotel, Montreal.

MR. TILLEY: Q. Yes? A. The Laurentide Company, the Belgo-Canadian, Donnacona were the principal ones.

Q. And what took place at that meeting? A. That meeting followed several informal conferences that we had had previously.

Q. “We,” the manufacturers? A. “We,” the manufacturers.

Q. Yes? A. And one or two, especially that were held at Ottawa, at which the Canadian Government officials, one or two of them were present.

30 Q. Yes? A. And we had been requested by the Government officials to try to work out a plan to take care of the Canadian press during the war shortage of paper.

Q. Yes? A. And at the meeting in Montreal, referred to, we discussed the matter quite fully, and I remember Mr. R. W. Breadner was present with the most of us at the luncheon that day at the St. James’ Club.

Q. Yes? A. And it resulted in agreeing that for the first three months of 1917 a differential of ten dollars a ton would be allowed to the longs, that is those who had shipped more than their quota to Canada.

Q. More than their quota for Canada? A. To Canada, yes, sir.

40 HIS LORDSHIP: That is the first three months of 1917?

A. For the first three months of 1917.

MR. TILLEY: Q. Were the first three months from the beginning of the year, or from the time you had your meeting?

A. No, for the first three months of the year. You see this was a continuation of the meeting held in the Fall of 1916.

Q. Yes. A. But at that meeting we were supposed to reach an understanding which would go back to the first of the year.

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Q. I see? A. The result was—

Q. Mr. Backus, when you say, "go back to the first of the year," do you mean date back to the first of the year for the three months, or for three months from the time you made the agreement and also back to the first of the year? A. You see, this was in February.

Q. Yes? A. And my recollection was, it was for the first three months of the year.

HIS LORDSHIP: That would be, January, February, March.

MR. TILLEY: Q. Yes? A. The result was, Mr. Montgomery, assisted by Mr. Sharpe, as I remember it, drew up an agreement, and submitted it, and then some question came up as to the advisability of having this agreement passed on or approved of by the Government at Ottawa, as I remember it; Mr. Montgomery and some others were to do that, and have it approved. 10

MR. TILLEY: Q. Have it approved by the Government?

A. Yes, by the Government.

Q. You spoke of it as an agreement—was it signed?

A. No, it was not signed for that reason, and never was signed.

Q. You say it was to be in writing, is what you mean?

A. Yes, put in writing. 20

Q. The terms, or understanding was put in writing? A. Yes.

Q. Did you get a copy, or have you a copy of it? A. I have not.

Q. You have not? A. I do not think copies were distributed that day.

Q. And your recollection is that some person was to see the Government, you think it was Mr. Montgomery, or some person? A. Yes, sir.

MR. TILLEY: Q. I do not know why I should have comment made by Counsel when I am examining a witness—running comments.

MR. OSLER: I do not want to make a running comment, but I quite object to my learned friend leading, and if he will refrain from it perhaps it will be more satisfactory for everybody. 30

MR. TILLEY: Q. Did anything else happen at that meeting, Mr. Backus? A. Well, it was a meeting that lasted practically all day.

Q. Yes? A. But that was, as I stated, was the result of the meeting.

Q. Now, will you tell us what it was that was in the writing—

MR. TILLEY: Q. Have you got it, Mr. Montgomery?

WITNESS: Briefly, it provided that the "longs," in other words, those manufacturers who shipped more than their quota to the Canadian press would be reimbursed at the rate of ten dollars a ton.

Q. Ten dollars a ton? A. Yes, now there was quite a little talk about fifteen dollars and twelve dollars and fifty cents, and more than fifteen dollars, and all that, and the arguments that would come up, pro and con, but however, the understanding was that the differentials for the first three months to be paid to the "longs" was ten dollars a ton. 40

HIS LORDSHIP: Three months? A. The first three months of the year.

HIS LORDSHIP: Did this written agreement cover a longer period than the three months, or only three months? A. My recollection is it was three

months, I cannot say, your Lordship, now, as to that, whether the agreement was to carry longer or not, but the price agreement—

MR. TILLEY : That is the differential amount, ten dollars was to be for three months.

MR. OSLER : Now, please, do not lead.

MR. TILLEY : I am not leading, if I merely repeat a statement of the witness that has been stated three or four times.

MR. OSLER : If it has been stated three or four times.

WITNESS : Will you repeat the question, please.

10 MR. TILLEY : I think we will pass on.

HIS LORDSHIP : The witness has already stated he cannot recollect whether the agreement was or was not for more than three months, but he does remember the ten dollars differential agreed upon was for the three months only ? A. Yes, sir.

MR. TILLEY : You say there was something to take place now, when next did anything occur about it ? A. Well, the next thing that occurred was a recommendation by the International Joint Commission of the United States, recommending that certain manufacturers both of the United States and Canadian, that it signed an agreement with them fixing price at \$50 in the
20 United States.

Q. There was a price of \$50 in the United States ?

A. Recommended; it never was made effective.

Q. Now, Mr. Backus, what was the price in Canada at the time you say this meeting took place in Montreal ? A. Fifty dollars.

Q. When you speak of fifty dollars ? A. Fifty dollars a ton.

Q. Where ? A. F.O.B. mills.

Q. F.O.B. mills ? A. At any rate, F.O.B. our mill.

Q. I beg pardon ? A. I say, at any rate, F.O.B. our mill. I won't say
30 some of the manufacturers with long freight rates like Price Bros, who always equalized to a certain extent their freight rates, must have absorbed five cents a hundred, or something of that kind.

Q. Then, you say there was a fifty dollar price suggested, not made effective ? A. In Canada.

HIS LORDSHIP : Tell me, at what time was this, that there was a price fixing of fifty dollars F.O.B. at your mills ? A. In February, at Montreal.

HIS LORDSHIP : That was February, 1917 ? A. Yes. At the same time, our contract price with our customers in the United States was sixty-five dollars.

MR. TILLEY : Your contract price—when you say “contract” do your
40 contracts run for a time ? A. One year.

Q. Did they then ? A. Yes.

Q. One year ? A. Yes, sir.

Q. That was a custom of the trade ? A. We made it a custom, but it was the ordinary custom that the contracts ran for one year. We had contracts running longer, of course.

Q. And then you say—

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HIS LORDSHIP : That was your contract price for shipments to customers in the United States ? A. Yes, sixty-five dollars a ton.

HIS LORDSHIP : Sixty-five dollars a ton, F.O.B. ?

A. F.O.B. So that agreement upon a ten dollar differential, I agreed that our company would sacrifice the five dollars.

MR. TILLEY : Q. Then, what happened next ? A. The next task was, this suggested or tentative agreement fell by the wayside.

Q. That is ? A. For the differential of ten dollars.

HIS LORDSHIP : With respect to the three months ?

A. With respect to the three months. Then the next task was to work out some plan to take care of the Canadian press, and I was in conference with Mr. Breadner, and Mr. Pringle, and various manufacturers at various times in an attempt to work out a plan. To accomplish that, so far as our customers were concerned, I met Mr. Pringle in New York, also in Minneapolis and in New York on two or three occasions. 10

Q. Now what time of the year are you referring to ?

A. Well, I think, if I remember correctly, the first time was May.

Q. In May, and it was for how long ? A. Well, it was continuous on two or three meetings, that I mentioned between May and I think October.

Q. October ? A. It might have been late in September. 20

Q. Yes. A. And at these meetings, with Mr. Pringle, Mr. George H. Meade.

Q. Who was he ? A. The President of the Spanish River Company, was present on at least two occasions, but after deliberating on the matter during six months, Mr. Pringle finally asked me to meet him in New York, with Mr. Alexander Smith.

Q. Who was Mr. Alexander Smith ? A. Of the Abitibi Company.

Q. Yes ? A. And George H. Meade of the Spanish River Company with the idea that—

Q. Was he the President of the Abitibi Company, was Mr. Smith 30 President ? A. He was Vice-President.

Vice-President, Mr. Frank Howden was President, but Mr. Smith was the controlling factor of the company.

Q. Yes ? A. With the idea that we could work out a plan in which our long shipments to Canadian customers would be absorbed and taken care of by the Spanish River Company and the Abitibi Company.

Q. When you say "our long shipments," you mean—

A. The Fort Frances.

Q. Yes ? A. And the result of that meeting—

HIS LORDSHIP : They met with you ? 40

A. We met, and at that time.

MR. OSLER : Excuse me ?

HIS LORDSHIP : What is it, Mr. Osler ?

MR. OSLER : If my friend is going to attempt to give evidence of an agreement arrived at at this meeting, I must object. There was apparently a very acute difference of opinion as to what did take place at this meeting. My friend has pleaded the agreement. We asked him for particulars of it, and

in lieu of examining for Discovery, and an Order was made on May 12th, 1927, requiring particulars as to the agreement alleged, and these particulars were given, and they refer only to an alleged agreement made at this meeting of the Pulp & Paper Makers' Association, on the 21st February, 1917, and I did not bring either Mr. Smith or Mr. Meade here to speak about this meeting that my learned friend is talking about in New York, because in lieu of these particulars I was satisfied that the evidence would not be given. However, our instructions are, of course, that no arrangement was arrived at, still, I do not know, if I should be prepared.

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10 HIS LORDSHIP : There is no need to go into what your instructions are unless some question may arise as to an alleged agreement entered into at this time. In other words, I am not going to have the statement go on the Record as containing what one said unless the other has it too. Am I to understand, Mr. Tilley, you are seeking to put in evidence of some agreement entered into at this time, at this conference ?

MR. TILLEY : I propose to show by evidence that my statement in paragraph 13 of my statement of claim is amply justified.

HIS LORDSHIP : Let me see what paragraph 13 is.

20 MR. TILLEY : I am attempting to show, at any rate, from the beginning the basis on which they were all working.

HIS LORDSHIP : Your paragraph 13, in the statement of claim does not contain any reference to an alleged agreement or contract entered upon——

MR. TILLEY : I am only putting it in that this was the foundation upon which they all carried on.

HIS LORDSHIP : It is not going in as evidence.

MR. TILLEY : Of any binding contract.

HIS LORDSHIP : Of any binding contract among these parties.

MR. TILLEY : No.

30 HIS LORDSHIP : But of which you were bound to give particulars or furnish particulars.

MR. TILLEY : No, I am putting it in, and I ask your Lordship to say on the evidence it was the foundation upon which they all proceeded throughout, and I am putting this in as evidence of that, right from the beginning they had that arrangement among themselves.

HIS LORDSHIP : Then, your contention would be that what was done, was done as a result of an understanding, even if it was not a binding agreement ?

MR. TILLEY : Yes.

40 HIS LORDSHIP : And that the understanding resulted from conferences, and so on, they are estopped now from denying them. They ought to make it good; in other words, it was not a binding contract, but something which would operate as an estoppel ?

MR. TILLEY : As an estoppel, but it might be said to be an agreement. I mean it enters into the agreement because it was the foundation upon which they were all dealing, and I propose to show that. Now, what my friend was asking for was particulars of another agreement, in another paragraph 5.

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HIS LORDSHIP : Have you the notice, the request, or the demand for particulars ?

MR. OSLER : The Order, my Lord, and the particulars (handed to his Lordship.)

HIS LORDSHIP : That is, particulars of the allegation contained in paragraph five of the statement of claim names, so it was agreed by Plaintiff and Defendants that adjustments should be made so those manufacturers who supplied more than their proportion of the Canadian demand would be compensated for their extra loss by those who did not supply Canadian newspapers.

MR. TILLEY : That was the agreement. They asked me as to paragraph 5 and I gave them particulars of that, and your Lordship will see : "The result was that the Canadian manufacturers received less for paper supplied in Canada than they would have received had they sold the paper in the United States. It was impossible or exceedingly inconvenient for each Canadian manufacturer to supply his exact proportion of the requirements of the Canadian publishers whereby such manufacturer would bear his pro rata share of the loss involved by selling in Canada at the lower rate, so it was agreed by the Plaintiff and Defendants that an adjustment would be made so that those manufacturers who supplied more than their proportion of the Canadian demand would be compensated for their extra loss by those who supplied less than their share." There was that understanding between them for three months. Now, I propose to show, if I may, that while the Paper Controller was in charge, they proceeded on the same basis. Your Lordship will see that the first agreement I refer to was before April, 1917. Now, I am dealing with the orders, and I say that we acted under all these orders, on the same understanding that the witness is going to speak about. I will be ready to argue at the end, what the evidence is worth, but I cannot do that unless I get it in.

MR. HENDERSON : My Lord, no one who was not present would be bound by any understanding, and we were not at either of the meetings or any meeting.

HIS LORDSHIP : Of course, it would be limited unless it could be shown that those three, or the three who were there had authority to arrive at an understanding on behalf of themselves as well as those absent.

MR. TILLEY : Mr. Pringle, did you say he was there?

A. Mr. Pringle—

MR. OSLER : I have not heard your Lordship's ruling?

HIS LORDSHIP : I am not ruling. He said before it was an arrangement to meet Mr. Pringle in New York.

MR. OSLER : I submit, my Lord, in my learned friend's pleading, paragraph 5, he specifically alleges an agreement as to dealing with adjustments. He does not say how long it is to continue or what it is in detail, but he alleges, that is the only agreement referred to in his pleadings.

In Paragraph 13 he mentions the Orders of the 30th August, 1918. He says they contain provisions similar to what is set out in paragraph 6. The subsequent Orders of the Controller did not contain the clause, but all the Orders were on the assumption that the practice that differentials among

Manufacturers should still prevail if the Canadian price was lower, and the Plaintiffs acted on that understanding. I do not know how my friend will finally put his contention here. He says he is not pleading the agreement. He is pleading the understanding—not a legal understanding. We are surely here to deal with legal obligations. If this is an agreement which results in a legal obligation either by way of estoppel or otherwise, but my submission is it would be most unfair when we had asked for particulars of the only agreement my learned friend refers to. The Master has ordered them, and when my learned friend has expressly limited himself to a specific agree-
 10 ment made on a specific date, that we should be met here with an alleged understanding or an agreement or whatever you call it, but it is quite obvious that what he is attempting to put on the record is some consensus of opinion by which, in the future the transaction shall be gathered, if that is not the agreement, I do not know what is, and my learned friend in coming to clause 13 is not coming to a paragraph alleging an agreement of that kind. It is said Mr. Alexander Smith and Mr. Meade were at that meeting—I did not arrange to have them here as witnesses, I did not so arrange that their evidence would be available after once getting the particulars, because it seemed to be quite obvious it was not necessary, but I certainly am not prepared to plead a case
 20 of that kind without having their evidence.

HIS LORDSHIP : So far as the latter part of what you are saying, you will perhaps be able to get them here, for the early part of the week, if you think it is of consequence ; but apart from that, the evidence which is being tendered, as I understand it, is not evidence of an alleged contract or agreement entered into by these parties, and binding their respective companies at that time, what was, or the evidence which was sought to be put in is of some understanding which was reached and which it would be contended by the Plaintiff was followed, or perhaps lent colour to the course which was
 30 adopted later by the parties, and is perhaps only one element in the evidence which the Plaintiff hopes, all combined would be sufficient to satisfy the Court there was ultimately an agreement which was binding on the Defendants and for which the Defendants would be answerable.

Now, it may be it may have some bearing upon the matter, it does not strike me at the present time, in view of the pleadings, that it can have very much weight, but I am not prepared to say it is not admissible as evidence for what it may be worth ultimately, but it is not evidence, as I take it, of any agreement that was entered into, which was, at that time, a binding agreement or arrangement, but merely as something pointing in the aggregate with all the other things to an agreement which the Plaintiff will contend was
 40 binding.

MR. OSLER : My Lord, the only agreement reached is in the pleading. The only agreement we came here prepared to meet today is the agreement on the 23rd of February, and to allow my friend to call evidence of something that occurred later on, on a different occasion, when different parties were present, is, it seems to me, simply allowing him to ignore the order for particulars.

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HIS LORDSHIP : Suppose, Mr. Osler, just bearing on what you are saying suppose evidence could be given, that Meade of the Spanish River, if it was the Spanish River he belonged to, in conversation with Backus, or Pringle, or somebody else referred to the understanding they had, and said, "Well, that is all right, you can go ahead on that"—would you say that evidence would not be admissible to sustain the claim that the Plaintiff might make that there was an agreement entered into? Earlier or later as the case may be.

MR. OSLER : No, my Lord, if this were the evidence relating to the agreement of the 21st of February, the alleged agreement, that would be different.

HIS LORDSHIP : As I understand it, the evidence is being offered to show that the conduct, if I may put it in that way, the conduct of Meade as representing Spanish River, and of Smith as representing the Abitibi, supports or colours such other evidence as the Plaintiff may be able to give, or try to put in, to show there was an agreement. 10

MR. OSLER : Of the 21st of February?

HIS LORDSHIP : I do not know, I have not heard of any agreement as yet.

MR. OSLER : This is the point. My learned friend calls the witness to speak of something that occurred on the 21st of February, and it shows, when he fails to establish an agreement by his own witness, the witness himself says it fell by the wayside. 20

HIS LORDSHIP : If he does not show the agreement, he cannot succeed on the agreement. He will have to rely on something else.

MR. OSLER : Then, my Lord, how am I to meet the evidence which he is allowed to give with reference to something else, not having had an opportunity to meet it?

HIS LORDSHIP : I do not say you are not to have an opportunity of meeting it. If you satisfy me that you have been taken by surprise, or something of that kind, then, of course, I would probably have to consider the question whether I would not allow an adjournment, even a longer adjournment than the beginning of the week if necessary to meet the evidence, I have not dealt with the evidence. 30

MR. OSLER : I do not know how I can say, your Lordship, I am not taken by surprise.

HIS LORDSHIP : If you say now you are taken by surprise and want an opportunity—

MR. OSLER : I wanted these particulars instead of an examination for discovery so I would know exactly what cases I had to meet in a transaction extending over a considerable period of time. My learned friend in answering it has given me these particulars, and now he turns back to a paragraph which relates to a certain demand, or Orders made by Commissioners, and says, "I am going to give evidence of something which was arranged, which I won't call a legal agreement, and which he puts in an indefinite way, which, if there had been any intention of proving, should have been referred to in the particulars, and then I would have been ready to meet it with my two witnesses. 40

HIS LORDSHIP : What I understand Mr. Tilley is endeavouring to do, with what success, I am not saying at the present time, but what I under-

stand he is suggesting to do is, to start with, he alleges, would amplify or legally establish by orders later on ; that that was a practice which had been followed by some more or less indefinite arrangement, perhaps not legally binding—I do not say what weight it may have with me, or what weight it may have with another Court, but I am not prepared to say it should not be admitted in evidence at all, but that is only dealing with that phase of it.

Now, you say, and of course, I am very pleased to accept your statement, that the giving of this evidence is a surprise to you, and you have not your witnesses here prepared to meet with it, or deal with it, or answer it, and I will be pleased to hear from you what you want to suggest as to what is necessary to enable you to do so.

MR. HENDERSON : I suggest, your Lordship, the different orders were made after evidence was taken over months of tremendously bulky evidence, in the course of which the question of differentials was discussed again, and again and again, with arguments, and I say, without fear of contradiction that nowhere in that evidence is there the slightest reference to this conversation.

HIS LORDSHIP : That may all be.

MR. HENDERSON : And the Commissioner acted upon evidence.

HIS LORDSHIP : It might quite be, after what you are stating to me now, if the evidence is put in, which shows that this—while I am not prejudging it at all, for I have not heard it, but the probability is I will come to the conclusion the Order was made on the evidence before the Commissioner, and not on any understanding or anything else ; but that does not say at this stage I would be justified in refusing to hear this.

MR. HENDERSON : The only thing, my Lord is, we are getting very far afield, unless my learned friend points out some legal proposition, I fail to see any, and here are two or three gentlemen who happen to be interested in this, three of them happen to meet away off somewhere in the States, and the Controller happened to be there.

HIS LORDSHIP : This witness does not say it happened—he says it was at Pringle's request he got these men and took them there to meet this man.

MR. HENDERSON : I say, without fear of contradiction that Mr. Pringle had no power to bind my client at a meeting he has down in New York.

HIS LORDSHIP : You are representng whom, I have forgotten?

MR. HENDERSON : The Booth Estate.

HIS LORDSHIP : What these men may have done, may not even bind their own companies.

MR. HENDERSON : Probably not, there was an awful lot of wayside conversation in this matter—it is a long story.

HIS LORDSHIP : I have no doubt there was—what about the question?

MR. OSLER : Well, I have to make enquiries as to Mr. Meade, and Mr. Alexander Smith, they are both men who are very busy and who are going so much about the country, it is not always easy to get them.

HIS LORDSHIP : You are not in a position to say whether you can get them for the beginning of the week or not?

MR. OSLER : I cannot say at all.

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HIS LORDSHIP : It will simply mean this, if you find you are unable to get the necessary evidence to answer it for the beginning of the week, I will have to try and hear the evidence some other time.

MR. TILLEY : I suppose we will deal with that when the question arises.

HIS LORDSHIP : When Mr. Osler advises me that he has been able to get that evidence.

MR. TILLEY : I will have something to say whether my friend should be surprised or not. There is no need of embarking on that until necessary.

MR. TILLEY : Q. Now, Mr. Backus, will you just state what happened at that interview when Mr. Pringle was there? 10

HIS LORDSHIP : You say that Pringle was there and that Smith of the Abitibi Company, and Meade of the Spanish River Company and yourself were there?

A. Yes, sir.

HIS LORDSHIP : When was it?

A. I went there at the request of Mr. Pringle who notified me that he had arranged a meeting with Mr. Alexander Smith, and Mr. George H. Meade.

HIS LORDSHIP : Pringle had arranged with them?

A. Yes, sir.

Q. When was this? A. This was either in September, or October, 20 1917.

MR. OSLER : Q. When? A. Either in September or October, 1917, I remember—

MR. TILLEY : Q. In New York? A. Yes, I have not my memorandum with me, but I know it was after I had been taken ill, and was very ill, and went to the Belmont Hotel, and Mr. Pringle came to my room where I was lying down. He asked me if I could possibly manage to meet them at the office of these gentlemen in the afternoon, I remember it, 52 Vanderbilt Avenue, at that time.

Q. And you met, and what happened? A. We met there, and Mr. 30 Pringle advised us of what he had hoped to be able to work out to simplify the solution rather of the problem of taking care of the situation so far as the Western Canadian Publishers were concerned, and that he had gotten Mr. Smith and Mr. Meade to agree to take care of our surplus shipments, which simplified the matter, and not involve the carrying out the general agreement with all the manufacturers, so that our over shipments would not be a matter of figuring with all of the mills.

Q. Well now? A. And wanted to know whether that would be satisfactory to me.

Q. Now, before you go on with that— 40

HIS LORDSHIP : That is surely not evidence of the agreement that you are having to meet, Mr. Osler.

MR. OSLER : Oh, no.

HIS LORDSHIP : This is not the agreement on which this action is based.

MR. OSLER : Why give it.

HIS LORDSHIP : Merely historical showing the course followed by these people, and leading up to what they claim is an agreement, if I understand

the witness's evidence, he is not saying that Pringle's statement was to the effect he had got Smith and Meade to agree that their two companies would take care of the overplus that the Fort Frances people were having to ship.

MR. OSLER : That would eliminate the necessity for any differential.

MR. TILLEY : Q. Now, Mr. Backus, you spoke of the Spanish River, and the Abitibi—what condition were these mills in with regard to being short or long mills with respect to Canadian trade? A. They were short, they were among the shorts.

Q. They were among the shorts? A. Yes, sir.

10 Q. Do you mean substantially? A. Yes, they were not supplying the Canadian press with their quota.

Q. Of the press requirements. Are they large mills, large manufacturers? A. Large manufacturers, yes, sir.

Q. Then, what happened, you have said this was what Mr. Pringle told you, then what happened? A. Mr. Pringle told these two gentlemen that I had stated to him in the forenoon, and in previous meetings with him, that the Fort Frances Company would prefer to take paper rather than money, and that as he understood it, I was prepared first, to accept paper from the "Soo" mill, and failing in that, that was because it could go to our United
20 States customers in exchange for the surplus we would ship to our Canadian customers—that is—

Q. That is from the "Soo" mill because of its location? A. Because of its location.

Q. There being more than one mill owned by that company? A. Yes, the Spanish River Company had mills at the "Soo", Espanola and Sturgeon Falls.

Q. Sturgeon Falls? A. But the other two paper mills' plants were remote, and their freight rates to our customers—

30 Q. In the States? A. In the States, was prohibitive, would prohibit our accepting paper from those mills.

Q. Yes? A. Or failing getting an exchange of paper I had agreed that we would accept cash.

Q. Cash? A. In lieu of paper.

Q. Yes? A. We discussed it *pro* and *con* for a while and Mr. Smith and Mr. Meade both agreed that they would not give us paper, that they would give us money and take care of the account monthly.

Q. Yes? A. At that stage of the game, I told Mr. Pringle, I was not willing to take Mr. Smith and Mr. Meade that way, they were all there, we were all facing each other.

40 Q. Yes? A. In the making of settlements, and that I would insist on the settlements coming through Mr. Pringle as he assured me that the Government would stand behind this settlement.

Q. Yes? A. So that it was left that way, that we should render him our bills monthly, and he would bill the Spanish River and Abitibi.

Q. Yes? A. And shortly after that I gave instructions to our office at Fort Frances, that they make up these bills monthly, which I think you have memorandums that they did bill to Mr. Pringle, giving the amount of

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tonnage they shipped to Canadian customers in excess of our quota and the price we were getting on our United States contracts, and billing on him for the differential.

MR. TILLEY : Q. Well now, Mr. Backus, you spoke of your quota—Mr. Taylor, I think, this morning gave an estimate, or Mr. McNicol, one or other of them, of the percentage of the Canadian section of newsprint paper sold in Canada, and I think he said about fifteen per cent.—was that your understanding? A. The percentage was between eleven and twelve per cent.

Q. Between eleven and twelve per cent.? A. At the last not, just a trifle over eleven per cent. 10

Q. You mean, then, that the quota changed as time went on?

A. Yes, as there was a greater production brought into being in Canada, there would be less.

Q. That is to say the percentage Canadian would be less of the whole?

A. Of the whole.

Q. And the production increased substantially during the time of control? A. Well, quite a little, not anything like it has the last six or eight years.

HIS LORDSHIP : But I understand you to say the arrangement then was these statements were to be sent to Mr. Pringle? 20

A. Monthly.

MR. TILLEY : Q. Then, Mr. Backus, was that all that took place there?

A. At that meeting?

Q. Yes? A. Well, that was the net result of it.

Q. I mean that is the net result? A. I cannot repeat all of the conversations.

Q. Then, Mr. Backus, something has been said here about the position of your mill as being the western mill, describing all the other mills east of you as eastern mills—would you just describe to the Court the situation in that regard, and what it means as a matter of fact as a practical business proposition? A. Yes, I would be very glad to. 30

Q. Yes? A. From the standpoint of the United States shipments we include the "Soo" mill of the Spanish River in the middle west, my Lord, we call it the middle west.

Q. The middle west? A. Yes, but from the standpoint of middle western Canadian customers—

Q. Is correct? A. For the reason.

Q. Mr. Backus, before you pass that, you have used the expression, "middle western Canadian customers"—do you mean the Prairies?

A. Yes, the Prairie Territory, we call the territory between the Great Lakes and the Mountains the middle west. 40

Q. Now, I was going to ask you, just to clear it up as we go along, one mill has been referred to, I think the Powell Mill? A. That is on the Pacific Coast. They do not send anything east of the Mountains.

Q. They have a local area so far as they serve Canada? A. Yes, sir.

Q. Do I understand you to say the "Soo" mill, so far as Canadian Middle West is concerned, it is an eastern mill? A. Yes.

Q. But so far as the United States, it is looked upon as the West?

A. Yes, it enjoys about the same average freight rate as our Fort Frances, International Falls Mills, Indiana and South Western Territory.

Q. Is that the distinguishing feature, you both get to the same territory at about the same price? A. Yes, sir.

HIS LORDSHIP : It is nothing further than a question of transportation?

A. That is all.

Q. Purely? A. Purely transportation.

MR. TILLEY : Q. Nothing in the product, in the paper? A. Not at all.

10 Q. Then keeping to the Canadian situation, what distinguishes your situation from the eastern mills is the competitive market, and that sort of thing, and is the freight and so on? A. Until the first of this present year, we have been situated, or I might say have been in command of the situation of what I term the middle western Canadian territory.

Q. Yes? A. From even as far east as the head of the Lakes.

Q. Yes? A. Port Arthur and Fort William, if you would like to have me give you the differentials, I mean the difference in freight?

20 Q. Yes? A. I should say that all during the War period, the freight rate from the "Soo" mill to Winnipeg was approximately twelve dollars a ton higher than Fort Frances.

HIS LORDSHIP : The freight rate from where?

A. From the "Soo". All during the war the freight rates from the "Soo" Mill to Winnipeg was approximately twelve dollars a ton higher than Fort Frances.

HIS LORDSHIP : From where?

A. From the "Soo" mill of the Spanish River Company to Winnipeg was approximately twelve dollars a ton higher than the freight rate from International Falls or Fort Frances.

HIS LORDSHIP : The "Soo" mill is the nearest?

30 A. And the "Soo" mill was the nearest, had the most advantageous freight rate of any of the Canadian mills.

HIS LORDSHIP : You say it was about twelve dollars difference?

A. As I recollect it, without checking up, I think it was about twelve dollars, that of course was after the advance in the freight rate during the war period.

MR. TILLEY : Q. Yes, then, that being your situation, what is the situation in eastern Canada? A. Well, the situation in eastern Canada was that we could not get into that market at all from the standpoint of freight rates.

40 Q. Then as between eastern mills and eastern Canada? A. Well, as between eastern mills and eastern Canada, they were largely in the same boat, that is, there might have been a little difference in freight rate, for instance, to Toronto, but very little between, I mean between the Eastern Canadian mills to Toronto.

MR. TILLEY : That is to say, to their large market for eastern mills, they would all have some eastern large market, relatively the same for all?

A. That is true.

Q. Or the same for many of them? A. That is true.

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HIS LORDSHIP : That is, that I may understand it—I want to be sure that I understand it, as between any two of the eastern mills, there was no such marked difference of transportation costs as there was between your mill and the “Soo” mill with respect to Winnipeg and the middle west?

A. That is true.

MR. TILLEY : Then, something has been said about the question—you have been asked about the desirability of sacrificing something to retain customers. You have been asked, I think Eddy was spoken of, whether they would not give up the differential rather than lose their customers—now would you just tell His Lordship what was said? 10

HIS LORDSHIP : The statement made by one witness who said, “You give us your customers, or let us have your customers, and we will supply them.”

MR. TILLEY : “Let us have your customers and we will supply them”?

A. That was not a factor that entered into consideration with us at all, because there was no other mill that could supply our customers without equalizing about a twelve dollar freight rate.

Q. When you say equalizing? A. I mean absorbing.

Q. To the mill? A. Yes, they would have to take that much off their price, that is if it was f.o.b. the mill. 20

Q. Now then, is the price fixed f.o.b. the mill? A. The price of the paper?

Q. That is, if it was f.o.b. the mill? A. Yes.

Q. Now then, was the price fixed by the Controller f.o.b. mill?

A. That is true.

Q. So that the purchasers had to stand freight charges? A. Yes, sir, that is true.

Q. Then you say that the situation with you differed in that respect from Eastern Canada, with the mills in Eastern Canada? A. Yes, it did.

HIS LORDSHIP : In other words, again that I may be sure that I am ap- 30
preciating it, a mill down in the Province of Quebec that was going to be required to supply some concern that was a customer of your mill in Winnipeg would be bound to supply it at the price which was fixed by the Paper Controller, or Control Tribunal, whoever it may have been, and that was f.o.b. the manufacturer's mill, and then to that \$50 if that was the price fixed would be added the freight rate to Winnipeg?

A. The Publishers would have to pay the freight charges.

Q. And you say? A. The Publisher could not, that is why this differential matter was discussed.

MR. TILLEY : That is what I wanted to bring out? 40

A. I say—that was the view, that this differential matter was to try to furnish the publishers from the mill with the lowest freight rate to their printing presses.

Q. That is what I wanted, there would be a degree of difficulty, I suppose in getting a Calgary publisher to pay a freight rate from the Laurentide Mill? A. There certainly would.

MR. OSLER : Naturally.

MR. TILLEY : Q. Just a natural aversion to paying out money?

A. Of course in that market you cannot come to the dividing line between where the mills on the Pacific Coast can bring paper as far east as Calgary and Edmonton.

Q. Yes? A. And speak about the same freight rates as Fort Frances.

Q. Just as Kenora is from the "Soo", so that is battle territory again. Just to clear up that point, does the Powell River, does it distribute to the United States in large quantities, or does it ship to foreign markets?

A. A very large shipper to the United States on the West Coast.

10 Q. To the United States on the West Coast? A. On the West Coast.

Q. Do you know whether Mr. Pringle had examined into that Company—do you know what happened to that Company? A. I know, he went out there, and adjusted the matter so that they would take care of the local western demand.

Q. But do you know what their quota was, or how it was compared with the rest of you? A. No, I do not. They were in a class by themselves, I think that was agreed on.

Q. You say that being the cause of this differential? A. Well, it was one of the causes.

20 Q. One of the causes? A. Yes.

Q. Was there a discussion, and if so, when did it arise, how soon did it arise about supplying paper—you have referred to one occasion where you met Mr. Meade and Mr. Smith, and you said there was a discussion about supplying you with paper and the suggestion was that they preferred to pay the differential in cash—now was that the end of that kind of discussion, or did it come up? A. Well, I think it came up once or twice or three times later on, but it was really a flat proposition, because the mill would say, we would furnish paper, and they were told the customer at Winnipeg, or Regina, some place like that, that we were going to ship them some paper from Sturgeon Falls and the freight rate would be fifteen dollars, or eighteen dollars higher, they would say, "Nothing doing, we cannot."

30 Q. Now did the question of supplying you paper by the "Soo" come up?

A. Yes, sir.

Q. In what way? A. Well, at this meeting I spoke of in Chicago, I told Mr. Smith and Mr. Meade—

Q. We have not heard of a meeting in Chicago? A. I should say in New York.

40 MR. TILLEY : Q. Yes? A. That we would square accounts with them entirely, by taking paper from the "Soo" mill to be shipped to our United States customers in exchange for the paper I would ship from Fort Frances for our Canadian customers.

HIS LORDSHIP : They would not assent to it.

MR. TILLEY : Did that come up again? A. I think the matter came up in that way on two or three occasions, by a little correspondence.

Q. From your standpoint? A. Later on, I will go on and finish up now. Later on, in 1919 and early in 1920 it came on when the Spanish River

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did agree to ship paper from their "Soo" mill to our customers in Chicago, in fact, I think they did ship some.

Q. That is towards the end of 1919? A. Yes, sir.

MR. OSLER : Q. They agreed, or were ordered to?

MR. TILLEY : Q. Mr. Osler wants to know whether they agreed to do it, or whether they were ordered by Mr. Pringle to do it? A. Well, they agreed that, not because they were ordered to do it by Mr. Pringle, and I guess they agreed with him to do it, and we were so notified.

HIS LORDSHIP : They did not make any agreement with you?

A. No, they did not make any agreement with us. 10

MR. TILLEY : Q. Now, Mr. Backus, Mr. McNicol has referred to a visit he made to your plant in June or July, 1919? A. Yes, I heard what he said.

Q. Now then, I do not want to ask you about that in detail, possibly you would just tell His Lordship what happened in that connection from your standpoint as you recollect it why the trip was made, and what happened when it was made? A. Well—I have got to go back a little.

Q. Yes? A. The payment of the differential for 1917.

MR. TILLEY : Q. By the way, how much were you paid? A. \$80,000 late in 1918.

Q. Yes? A. I was ill, late in 1918. 20

Q. Yes? A. I say late, somewhere about December.

Q. Yes? A. We kept getting promises from Mr. Pringle.

Q. Promises? A. Promises that further settlement would come along.

Q. Yes? A. And it was all promises, so on two or three occasions we shut down, I mean we simply said, "We will furnish no more paper, no more than our quota."

Q. No more than your quota, yes——? A. Yes, and this was one of the times that Mr. McNicol came up. A little shortly before that, we had taken the plan, we were going to limit our shipments to our quota, and not take promises any longer. 30

Q. Some letters were put in, I believe Senator Ross was acting for your Company in Ottawa? A. He was.

Q. And letters have been put in of May 13th, 1919, and June, 1919, from him to Mr. Pringle? A. Yes, that is true.

Q. And was there another, have the you the one in December, at any rate, we will come to that—that happened in June—you say that was one of the times you raised an objection? A. Yes.

Q. And with what result? A. With the result that we secured some legislation in Ottawa and Mr. McNicol came up to Fort Frances the last, about the last week in June. 40

Q. Yes? A. And our boys, I did not happen to be there at the time and our boys notified me he was there, and wanted to know if they should resume shipping the full requirements of our western customers, so I went up to the mills and met Mr. McNicol, and got his assurances—promises at that time, that we were going to get \$50,000 or about that, in the near future, and asking me to order shipments to be resumed to meet the requirements of the customers and I did that.

HIS LORDSHIP : That was June of 1919?

A. Well, I think he got there in June, but I think it was the first week in July before I got there.

MR. TILLEY : He was there before you returned? A. Yes.

MR. HENDERSON : Our objection to this class of evidence is still running, my Lord.

HIS LORDSHIP : The promises were not fulfilled anyway.

MR. TILLEY : Q. Mr. Backus, did Mr. McNicol tell you, say anything to you about what authority he had to make statements to you of that kind?

10 A. Yes, he did.

Q. What did he say? A. Well, he told me that——

MR. OSLER : Is your Lordship taking all this?

HIS LORDSHIP : McNicol has told us that Pringle authorized him, and nobody else can contradict him.

MR. TILLEY : Q. I just want to clear it up—did he make the statement to you as being the statement merely of his own. A. Oh, no.

Q. Or as a statement by the Commissioner? A. By the Commissioner.

Q. By the Controller? A. By the Controller.

20 Q. And what did he promise then? A. He promised the differential matters would be cleaned up to date and kept up in the future.

Q. Kept up in the future? A. Yes.

Q. And then, was there some mention of——? A. Yes, he said that he understood definitely from Mr. Pringle that he was going to arrange to send us \$50,000 on account, that was all figured up.

Q. Figured up? A. Yes.

Q. And now, that is June, or July—on that did you commence shipments again? A. Oh yes, we did.

30 MR. TILLEY : Q. Now the custodian of Mr. Pringle's papers has handed me a letter from Mr. Ross, as Counsel, for your company, about December 2nd——

MR. OSLER : On what ground do you put that in?

MR. TILLEY : As a letter from Mr. Pringle to the Fort Frances Company.

MR. OSLER : My friend is making it very difficult. I thought to put in a letter when Mr. Taylor was in the box, I cannot imagine on what real ground my friend can put in against my clients a letter addressed by this gentleman's solicitor to Mr. Pringle.

40 HIS LORDSHIP : Only as showing what the attitude of the Fort Frances Company was with regard to what was being done, and what they were contending they were entitled to. Suppose Mr. Pringle being more or less in the position of an intermediary?

MR. OSLER : If he can show that it came to us, or that we were a party, of course—but in the absence of that, I do not think it should be permitted.

HIS LORDSHIP : It is in the same class as the correspondence between Pringle and the various parties—I do not know that any of it is going ultimately to affect the question of the legal liability or rights of the parties, but it goes to show the situation, that is all.

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MR. TILLEY : It is dated December 2nd, 1919, written from Ottawa to "Mr. R. A. Pringle, Paper Controller, Dear Sir, The Fort Frances Pulp and Paper Company, Limited, has as you know, since the year 1917 loyally carried out . . . the use of which was had by the eastern mills and of which this company was deprived.

"Respectfully submitted, Fort Frances Pulp and Paper Company, Limited (sgd.) W. B. Ross, Counsel."

MR. TILLEY : Q. And you say, Mr. Ross, who signed it, was your Counsel? A. Yes, sir.

MR. OSLER : Did you say 1918? 10

MR. TILLEY : 1919.

HIS LORDSHIP : You said 1918.

MR. TILLEY : Now, that is Exhibit Number 16.

EXHIBIT NO. 16. Letter dated 2nd December, 1919. Fort' Frances Pulp and Paper Company, Limited, by W. B. Ross, Counsel to R. A. Pringle, Paper Controller, Ottawa.

MR. OSLER : Subject to our objection.

HIS LORDSHIP : Yes, I have marked it subject to objection.

MR. TILLEY : Q. Now, Mr. Backus, in that letter you refer to your willingness to supply your quota or share, and I think you say your share was 20 eleven per cent.? A. That is true, we never declined for a moment to furnish our quota.

Q. You never declined? A. Never.

Q. But you were declining what? A. The amount over the quota.

Q. The amount over the quota—then what happened.

HIS LORDSHIP : And your quota would be approximately, according to that letter eleven per cent. of your total output? A. Yes, sir.

MR. TILLEY : Q. I suppose the way that was figured up, it would be eleven per cent. of all the manufacturer's output? A. Oh, yes.

Q. Because the Canadian Trade took eleven per cent. of the total pro- 30 duction in Canada? A. Yes, the Government originally took the position they were going to compel the Canadian mills, each one to supply its full quota of the newsprint paper required for use by the Canadian Press publishers. That was the quota at this time.

Q. Well now then, you told us what happened in June, July. Mr. McNicol says he went up in October and stayed till December.

HIS LORDSHIP : Stayed until February.

MR. TILLEY : Q. At any rate, through December—what happened then? A. Well, we were promised relief, and we had got about to the point where we did not think there was any prospect of getting money, so we noti- 40 fied them that we were going to ship our quota and no more, and Mr. Pringle then notified us that he had arranged with the Spanish River to exchange paper, ship us some paper from the "Soo" mill to Chicago, and we,—whatever paper he could secure from the Spanish River, we would supply that much additional paper to the Winnipeg, Manitoba, or Canadian customers.

Q. Yes? A. And it did not work out very well, Spanish River did not supply, did not furnish very much paper, and it got to the point where the

Canadian publishers were in dire distress, and Mr. McNicol came over during that time.

Q. During that time, how much paper were the western publishers getting at the time they got in distress? A. What were they getting? They were getting about three times from us the quota, we were supposed to supply.

Q. Yes? A. Yes, sir, and it got along to the point where Mr. McNicol came over and saw me, and told me he had instructions to place an embargo on United States shipments.

Q. Yes? A. And I told him there was an easier solution to that, and 10 that was for Mr. Pringle to get busy and pay us some money.

Q. Yes? A. So they finally got some paper shipped from Spanish River, and we shipped paper in return for it, to the Canadian customers, and they lifted the embargo, and we started on again, and then in January, there was a repetition of it.

Q. That I gather from what you say, started in what time in 1919, the paper from them? A. Oh, I should say between the 15th and the end of December.

Q. Of December? A. Yes.

Q. And then you say? A. Then there was another embargo in Janu- 20 ary.

Q. And did the Spanish River keep up? A. The Spanish River furnished a little more paper.

Q. And then after that? A. Well, the culmination, Mr. Tilley—

Q. Yes? A. Of the matter was Mr. Breadner came out and made an adjustment whereby we were to be taken care of, all our surplus, by the Spanish River, and they did supply some paper after that, and from that time on, the situation eased up.

Q. You are making no claim after December? A. No, we are not.

HIS LORDSHIP : In 1919? A. 1919, yes.

30 MR. TILLEY : Q. Then, Mr. Taylor, or some person told us that some question arose about that time as to the Board of Commerce—they were appointed—do you know about that? A. Yes, they began to give orders after Mr. Breadner stepped out.

Q. Did you know about the proceedings, that the validity of what they were doing was attacked? A. I know of the decision in the Price Brothers case.

Q. That is, where the Price Brothers had refused to obey the Order of the Board of Commerce? A. Yes, sir.

Q. And had gone to the Supreme Court, and it was decided that they 40 were not bound? A. Yes, sir.

MR. TILLEY : Your Lordship will find—

HIS LORDSHIP : The Board of Commerce, that is that Board of Commerce?

MR. TILLEY : There were two Boards of Commerce cases, one of the Price Brothers *v.* Board of Commerce in 60 S.C.R. at p. 265 and there it was held that a direction by the Board of Commerce to the Price Brothers to

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supply such paper to a particular company or publisher was invalid, and need not be obeyed ; and then in the same volume in page 266, the validity of the Board of Commerce that is possibly not so important from our standpoint, but your Lordship possibly should have a reference to it ; that went to appeal, and the Privy Council Judgment will be found in 1922—1 A.C. p.191.

MR. TILLEY : Q. Now, Mr. Backus, you had some litigation of your own, I think too, as to the validity of these Orders? A. Yes, that is true, the publishers made claims on us for a large amount, and we tested it, the validity of the Price Brothers Case, so that we were coming to a debt of about \$140,000 at the end of it. 10

Q. Yes? A. And then we took up this Act—

Q. Now, just to make that clear, you say that the claim was made against you by the Publishers under one of those Orders, that will be in, then, Exhibit 1? A. Yes, sir.

Q. On the appeal against prices, were they changed by Mr. Pringle, as to price? A. Yes.

Q. And then they were—just on this question of validity, or invalidity of orders? A. Mr. Pringle—

MR. OSLER : May I ask, my Lord, has this any bearing?

MR. TILLEY : It was just accounting for the delay. 20

A. Mr. Pringle was no doubt apparently after the Price Brothers decision and—

MR. TILLEY : No doubt as to what?

HIS LORDSHIP : Is there any object in our going into this, Mr. Tilley?

MR. TILLEY : Just one question or two—

Q. You say Mr. Pringle—

HIS LORDSHIP : No, no. For what purpose? Is there any object in our going into this?

MR. TILLEY : Only for the delay in these proceedings, because Mr. Pringle died in 1922, and this action was brought in 1922 and after Mr. Pringle's death, and I am showing why the matter was standing during Mr. Pringle's lifetime. 30

HIS LORDSHIP : He says there was some litigation in which they were involved, and then subsequent to that brought this action.

MR. TILLEY : I meant it referred to the validity or invalidity of the proceedings of the Controller? A. Yes, sir.

HIS LORDSHIP : That will be sufficient without giving me the details of it.

MR. TILLEY : I have given your Lordship the references to the Fort Frances and *Manitoba Free Press* Case, in the Privy Council, 1923 A.C. at p. 695. 40

HIS LORDSHIP : Is that the *Winnipeg Free Press*?

MR. TILLEY : Yes, my Lord, the *Winnipeg Free Press* and other publishers, my Lord.

MR. TILLEY : That is all, thank you.

HIS LORDSHIP : There is not much use, Mr. Osler, in starting a cross-examination at this time.

Now, as I said at noon, I have arranged to resume this case at 10.30, not eleven o'clock—at 10.30 Monday Morning in the King's Bench Court room at Osgoode Hall, and we will adjourn until that time.

May 30th, 1927, 10.30 a.m.

King's Bench Courtroom, Osgoode Hall, Court resumed.

HIS LORDSHIP : Mr. Tilley, you had a witness in the box, I think.

MR. TILLEY : Mr. Backus.

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10 EDWARD W. BACKUS : CONTINUED.

HIS LORDSHIP : You have already been sworn, Mr. Backus.

MR. TILLEY : I had finished the examination, but there was one item I did not ask about.

Q. Mr. Backus, are you able, either from recollection or examination of the record to state what the American prices were from time to time?

A. Yes, sir.

Q. You have prepared a statement, have you? A. Yes, sir.

Q. I understand something is being typed, and if my friend agrees, and if your Lordship thinks it is wise, we might leave just that one item for the witness to cover at a later stage. I will show the memorandum to my friend, and I do not suppose it will be controverted at all.

HIS LORDSHIP : Have you not anything with which you can finish your examination, and put the typewritten memorandum in afterwards.

MR. TILLEY : Q. Mr. Backus, I am afraid I am not just aware how clear a statement you can make—can you make a statement with regard to it?

A. Yes, sir.

Q. Probably you can do so? A. Yes, sir. Now, do I understand you want me to state the different prices at different periods?

MR. TILLEY : That is the point.

30 HIS LORDSHIP : And then you will summarize these in a statement which you will put in for my use.

MR. TILLEY : I will have the statement made, and if it turns out, my friend finds any errors in it, we will adjust it, because it can easily be done.

WITNESS : The price we received in the States for 1917 was \$65 throughout the entire year. In 1918, on the 18th of June, 1918, the Federal Trade Commission fixed the price at \$64 per ton for January, February, March—

Q. 1918? A. 1918, at \$62 a ton for the months following, including September.

Q. Of 1918? A. Of 1918.

40 Q. Yes? A. On October 2nd, the Circuit Court—

MR. TILLEY : Q. On appeal? A. On appeal fixed the price at \$70 retroactive from January 1st.

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Q. Retroactive to January 1st, 1918? A. Retroactive to January 1st, 1918, and on October 18th, a supplemental finding was made fixing the price at \$72.65 retroactive to May 1st. From May 1st to July 1st, 1918.

HIS LORDSHIP : On what date was that further retroactive decree made?

A. On the 19th October, 1918.

HIS LORDSHIP : The first Order on the 2nd October, and the next on the 19th? A. Yes.

HIS LORDSHIP : By the same Court?

A. I cannot say whether both the Federal Trade Commission, and the Court were handling this matter, and I am not sure whether that final decree 10 was made by the Court, or by the Federal Trade Commission.

HIS LORDSHIP : \$72? A. \$72.65, retroactive to May 1st to July 1st, 1918.

HIS LORDSHIP : Just for the two months?

A. Yes, sir, and from July 1st on at \$75.05.

MR. TILLEY : Q. And when was that changed? A. That was at the same time they covered—

Q. But how far now have you carried us down to? A. I have carried you down to the end of the year.

Q. The end of the year, 1918? A. 1918, yes, sir. 20

Q. And then was there not a change of five cents? A. Well, Mr. Tilley, I do not remember whether the Court made any change on that, the way I think that came about, we had a meeting with our customers late in 1918, to agree upon the price for 1919, and that was an odd five cents, and we agreed upon the price for 1919, with our customers at \$78, and I think we said to them, "we will drop off that five cents during the month of December, 1918."

Q. That was just one month? A. Yes, sir.

Q. So that, you dropped five cents for the month of December, and took on \$2.95 for the next year, that seemed to be a very good trade? A. Well, it 30 was a trade, they were very well satisfied with, Mr. Tilley, I want you to understand that five cents, and as my recollection, I do not say that there was not an Order, but I do not remember there being any Order by the Federal Trade Commission or the Court changing that \$75.05 for the last month.

Q. Do I understand, Mr. Backus, from what you are saying now, the price was controlled by orders down to the end of 1918? A. Yes, sir.

Q. And that for 1919, it was mutual agreement between your publishers and yourselves? A. Between our publishers and our company.

HIS LORDSHIP : Just a moment, I want to be sure—you have been speaking about seventy-five dollars and also about \$78—did I misunderstand you 40 that it was \$75 from July 1st to December 31st, 1918, or was that right?

MR. TILLEY : It was \$75.05 from July 1st to the end of November, for the month of December only it was exactly \$75 either by arrangement or by Order, and then for 1919, it was \$78 throughout the year, by agreement.

HIS LORDSHIP : But the witness stated in his first statement, he stated it was fixed \$75 to the end of the year from July 1st to the end of the year, and he afterwards said that there was some change made in December.

MR. TILLEY : He said \$75.05.

WITNESS : That is true, Mr. Tilley, it was made to the end of December, and we dropped off the five cents.

MR. TILLEY : You said it was made? A. \$75.05.

Q. \$75.05 for the last half of the year? A. Yes, sir.

Q. Except in the last month of the year, December, by some means it was \$75? A. Yes, sir.

Q. And throughout the following year it was \$78 exactly? A. Yes, sir.

Q. And then in 1917 you say the price throughout was \$65—was that 10 by agreement or by Order? A. By agreement, yes, sir.

Q. So that the Orders were made for the year 1918? A. Yes, sir.

Q. In the United States, I mean? A. Yes, sir.

Q. The Canadian prices are shown by the Orders, and these are all in—so that we can gather these and probably put in a statement of both? A. I could give you the Canadian prices at the same time.

Q. All right? A. 1917 the price was fixed at \$50. In 1918, or late in January, 1918, the Controller fixed the price at \$70, effective as of February 1st, 1918.

Q. \$70.00 or \$57? A. \$50.

Q. You said \$70? A. \$57. January was \$50 the same as 1917.

Q. January, 1918? A. Yes, sir.

HIS LORDSHIP : The price was effective February 1st?

A. Was effective 1st of February as of February 1st.

MR. TILLEY : Q. Yes? A. On September 26th, 1918, the Controller fixed the price at \$73, retroactive to July 1st, 1918.

HIS LORDSHIP : \$73? A. \$73, retroactive to July 1st, 1918. On August 18th, 1919, the Paper Tribunal ordered a reduction retroactive from July 1st to December 1st, 1918, to \$66.

HIS LORDSHIP : What date in August was that?

A. August 18th, 1919.

MR. TILLEY : Q. You say, July 1st to December 1st? A. \$66.

On July 8th, 1920, the Paper Tribunal fixed the price at \$69, retroactive to December 1st, 1918.

Q. That carried you through to the end of 1919? A. Yes, sir.

Q. And I think the Paper Control Tribunal did not make any order with regard to price after the end of 1919? A. No, I think not.

Q. And did it not make that Order until on in 1920 as you have said?

A. July 8th, 1920.

HIS LORDSHIP : Pardon me, give me the last two again, Mr. Backus—on 40 August 18th, 1919, they reduced the price to \$66?

A. Effective from January 1st to December 1st, 1918.

Q. Yes? A. And on July 8th, 1920, the Tribunal fixed the price of \$69 retroactive to December 1st, 1918.

HIS LORDSHIP : Dating back to December 1st?

A. December 1st, 1918.

Now, I could make that very plain to the Court, Mr. Tilley, if I would now read the prices fixed for us by the various Tribunals, and finally followed out.

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MR. TILLEY : All right.

A. The Canadian prices in 1917 at \$50, in January, 1918, at \$50, and for the month of February, March, April, May and June \$57.

For the months of July, August, September, October, November, \$66 ; for the month of December, 1918, and the whole of 1919, \$69.

Now, for the same period our United States prices for the entire year, 1917, was \$65—

MR. OSLER : Have you copies of the documents you are filing.

MR. TILLEY : I have a copy of what he is reading now.

WITNESS : For the month of January, February, March and April, 1918, 10 \$70 ;

For the months of May and June, 1918, \$72.65 ;

For the months of July, August, September, October and November, \$75.05 ;

For December, 1918, \$75 ;

For the entire year of 1919, \$78.

MR. TILLEY : Q. Those are the prices? A. The final prices.

Q. As ultimately fixed? A. Yes, sir.

Q. And at a certain stage in 1918, but only temporarily, the Canadian price was over the American price, and that was turned about as the result of 20 the final orders made? A. Yes, sir.

Q. The American prices then became higher all through the whole period? A. Yes, sir.

HIS LORDSHIP : Mr. Tilley, could you arrange to give me a copy of that list, as finally reached, for my own use. It does not need to be marked as an Exhibit, but as a matter of convenience for me.

MR. TILLEY : That part of it I can give you now, but I do not show on that when the changes were made.

MR. OSLER : I thought my friend was going to file some statement.

MR. TILLEY : It will be put in in a few minutes to confirm this. I do 30 not know that it is necessary now.

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CROSS-EXAMINED : BY MR. OSLER.

Q. Mr. Backus, these prices you refer to, both in the case of the Canadian and American prices, were the prices specially applicable to the Fort Frances Company? A. Yes, sir.

Q. And for example, in the Canadian prices, there were differences by which the Fort Frances, at some stage, you got higher prices than the other 40 companies in the East? A. I think that is true.

Q. And the benefits that you got through these higher prices was reflected in these prices which you have referred to in this statement?

A. Yes, sir, where there was any benefit.

MR. TILLEY : Just—I do not suppose we want to get into confusion, ultimately, after the orders were made there were no higher prices for Fort Frances than the other mills. Some orders made different prices, but the

Paper Control Tribunal ultimately wiped it out, it made the same price for the Fort Frances as the others, at the time.

MR. OSLER : Q. They brought it back to this rate, the prices that were applicable to the Fort Frances from time to time? A. Yes, I think so, I do not claim to know what they fixed the other prices at, I say, if we, if our prices were higher than fixed for the other mills, we got that much benefit, that is all I have said.

MR. OSLER : Q. Let me understand, Mr. Backus, you were away from active touch with the situation during the greater part of 1917? A. No, sir.

10 Q. Was it during the greater part of 1918? A. It was from the Fall of 1917, along in December, until the summer of 1918.

Q. And I take it, that this statement that you have been reading from is merely a summary that you have made from the various orders that you had made? A. Well, it is a statement I made from our Accounting Department, our books, and checked up.

Q. It is not anything that you had any special personal knowledge of at the time? A. Of course, I was kept posted all the time.

Q. You have simply gone back to your books to get the information?

A. To get the definite rates fixed.

20 Q. And do you remember in connection with the American prices that somewhat early in 1917 the Federal Trade Commission fixed the price at \$50 at that time? A. No, not early in 1917—let me see, well, yes—yes, I think it was along about March—

Q. And let me ask you, before you go on, all of these prices that you have been giving, refer to the first quality paper in rolls? A. Standard newsprint in rolls.

Q. So, for the comparative purposes, we can ignore these prices in feet, and that sort of thing? A. Yes.

30 Q. So that the Federal Trade Commission fixed its price at \$25 to mills doing business in the United States, did not recognize the authority of the Federal Trade Commission, to impose that price on your products?

A. We did not, I know.

Q. And you continued to charge a higher price to your customers in the United States? A. Yes, sir.

Q. And as a result of that, a number of the representatives of the mills that were doing that, and charging a higher price, were indicted by the United States Attorney General? A. I do not know that it was as a result of that. I think it was a result of a scheme to frighten the manufacturers by the Woodrow Wilson Administration.

40 Q. We won't investigate the motives of the Government, but the effect was? A. Yes, they indicted the select seven, we always called them the select seven.

Q. Of which you were one? A. Yes, sir.

Q. And as a result of the pressure brought upon the select seven, an arrangement was made fixing a price? A. Early in 1917. But did I understand you?

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Q. I did not ask you when the date of that agreement was, but my question was whether or not, as a result of the indictment, an agreement was entered into with the Attorney General? A. Yes, sir, late in the Fall of 1918, late in the Fall.

Q. Are you sure it was not in the Fall of 1917—are you sure it was 1918

A. Wait, I will change that, it was the Fall of 1917.

Q. And the price then fixed of that agreement was how much?

A. The price for Fort Frances was fixed at \$64 for January, February March, April, and May, \$62.

Q. January, February, March and April? A. \$64. That is, I am talk- 10
ing now about the price fixed by the Federal Trade Commission.

Q. No, I am talking of the price fixed by this Commission? A. No, I have already testified that to Mr. Tilley.

Q. What was it? A. The first price by the Federal Trade Commission?

Q. You put it as a result of this agreement, but fixing a single price—there was a price fixed pending the investigation? A. You mean the price stated in the contract?

Q. I presume it was stated in the contract? A. I do not think it was, I do not remember that it was.

Q. My instructions are that it was—have you got a copy of the agree- 20
ment? A. No, I have not. There must be one in the room.

MR. OSLER : I thought you said you saw it? A. No.

MR. TILLEY : I had a witness here who was perfectly conversant with all that evidence. My friend objected to that evidence when I had him in the box.

MR. OSLER : I objected to giving this evidence *viva voce*. I thought the proper way to prove it was to bring the agreement.

MR. TILLEY : That would be the proper way still.

MR. OSLER : The evidence was given subject to my objections. I would have thought it was a better way still. But you have not got a copy? 30

MR. TILLEY : No, I have not got a copy.

HIS LORDSHIP : This is all applicable only to a period prior to January, 1918.

MR. HENDERSON : No, my Lord, this is January of 1918.

A. The agreement provided machinery for fixing the price first by the Federal Trade Commission, and then on appeal to the Higher Court of New York, the Circuit Court of Appeals as Arbitrators, the Judges.

MR. OSLER : My instructions are it provided a price pending the decision of these judges?

A. I do not remember, Mr. Osler, they did it, and I started to read to 40
you the price that was fixed pursuant to that agreement by the Federal Trade Commission, and then show you how it was changed by the Court—

HIS LORDSHIP : That was subsequently, that was in June that change was made. Still the witness says it was retroactive to the first of January, and therefore covering the period in which we are interested.

MR. OSLER : Q. Have you got the ruling of the Federal Trade Commission, and the decision of the United States Circuit Court? A. I have not.

MR. OSLER : Have you, Mr. Tilley?

MR. TILLEY : What is this?

MR. OSLER : Have you the ruling of the Federal Trade Commission and the Judgment of the United States Circuit Court?

MR. TILLEY : This is said to be a copy.

MR. HENDERSON : This is a publication by the Canadian Press Association.

MR. OSLER : I would like to look at that at my leisure.

MR. HENDERSON : It is not an official document, my Lord.

10 MR. TILLEY : My friend has called upon me for the document, and I think he should put it in.

HIS LORDSHIP : I am not going to go on in this way. I am dealing with the trial of this action, and not with questions Counsel are asking one another—let us get on with the evidence.

MR. OSLER : My suggestion is that I have an opportunity of seeing what is in the document that is submitted.

HIS LORDSHIP : It is not submitted, Mr. Osler. Mr. Tilley has not offered to put it in. He has not offered to put it in. It is you that asked for it, that apparently is what you asked for. I have not anything to do with what
20 you just talk between yourselves.

MR. HENDERSON : Put in this side.

MR. OSLER : Pardon, my friend's, Mr. Henderson's suggestion is a good one. The document has on one side of it, "The full text of Judgment", which I presume is an accurate statement of it. On the other side are comments of the Canadian Press Association on the Judgment, and with your Lordship's permission we will put in the text of the Judgment, what I asked for.

HIS LORDSHIP : Very well, if Counsel are satisfied. You will put in the Judgment and then it will go in, the text of the Judgment will go in as Exhibit
30 No. 17. What is it?

MR. OSLER : It is headed, "Full text of Judgment", and the reverse page does not give any date.

HIS LORDSHIP : A Judgment of what Court?

MR. OSLER : Of the United States Circuit Court, dated 2nd October, 1918, and that date is in pencil, but it corresponds with our information as to what the date was.

EXHIBIT No. 17. Reverse page of single page bulletin Number 488 of October 19, 1919, "Full text of Judgment of the United States Circuit Court Judges."

40 MR. OSLER : Q. Now, Mr. Backus, before the appointment of Mr. Pringle as Commissioner before the Minister of Customs was authorized by the Orders in Council which we are dealing with in this case, to fix the Canadian Control prices—who was furnishing paper to publishers in the Middle West, that is, the Prairie section of Canada? A. Fort Frances Pulp and Paper Company to a large number of them, not all.

Q. What percentage? A. Oh, I should, offhand would say, at least eighty-five per cent.

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Q. At least eighty-five? A. That is, not going as far west as Calgary and Edmonton.

Q. And who was furnishing the balance? A. Well, I think Fall River was furnishing a large portion of the requirements of Calgary and Edmonton, and I think Eddy was furnishing some paper, and I am not sure but what Booth through the Martin Paper Company was furnishing some of the others ; and there may have been some of the other manufacturers furnishing small quantities, but it is true that a large portion of the tonnage was supplied, that is, from the head of the Lakes to the Mountains, was supplied by the Fort Frances Pulp and Paper Company.

10

Q. And of the fifteen per cent. which you roughly estimated that you were not supplying, what proportion was supplied by the Fall River, who was a Pacific Coast Mill? A. Well, I would not undertake to even make a guess at that. In fact, I did not say fifteen per cent. I said possibly eighty-five per cent.

Q. Well, what is your best estimate as to how much of the paper in that territory came from the Eastern Mills prior to the control? A. A comparatively small amount, a small tonnage.

Q. A fraction of one per cent.? A. Oh, I cannot guess, I cannot undertake to guess. There were a few old customers of Eddy's, as I remember it, and some publications supplied by, I think it was the Martin Paper Company of Winnipeg from the Booth Mill. I am not sure, but at any rate, the best I can help you out on that is to say that perhaps, eliminating the trade at the foot of the Mountain, Calgary and Edmonton, and in that vicinity, that a very large portion of it was supplied by Fort Frances, my guess would be over ninety per cent.

20

Q. Over ninety per cent., even taking into account what the Pacific Mills supplied? A. No, I mean that the Eastern mills did not supply over ten per cent., now maybe they did.

Q. Do you think they supplied as much as five per cent.? A. Well, I cannot say.

Q. And after the control was removed, how did the proportions run? A. Well, about the same, with the exception that the *Free Press*, at Winnipeg, shortly afterwards, made a contract with Spanish River. Spanish River equalized the freight rates which they did not want to do before.

Q. And apart from that, then we have it that afterwards that ninety per cent. apart from the Pacific Mills to the Western Mountain territory was supplied by Fort Frances, and after the Control the same situation except the odd occasion? A. No, I say about the same situation continued, and does today.

40

Q. Does today? A. With the exception, the only large publication that Fort Frances is not supplying now, that they did supply then, is the *Free Press* of Winnipeg.

Q. And I suppose that was due to the little difficulty that took you to the Privy Council in their case? A. It might have been.

Q. It may have had some effect? A. Yes.

Q. And what supply did go into the middle west from the east was due to old association, and perhaps personal contact and friendship between those who purchased it, and the few of the Eastern Mills that did any of that business? A. Well, that was partly the reason. The real chief reason though was because Fort Frances could not supply them, was over-supplying their quota.

Q. But I am not speaking about the quota at all, now, Mr. Backus, I am speaking of the period before control, and after control, if the associations, if it was sentiment, then sentiment has disappeared because we have got quite
10 a number of old customers that were getting their paper from the East prior to the War.

Q. In other words, the proportion of the business that you are transacting was larger than it was before the Control? A. No, sir.

Q. Outside the *Free Press*? A. Oh, yes, yes, sir.

Q. And as a matter of fact, while the Control was on, your organization was anxious to consolidate the good will of that business, and to get that middle western business? A. Well, were anxious—we were always ready to help the publishers in the Middle West to the end that they would get their supply of paper, and be served at the lowest cost to them.

Q. Oh yes, but that is not an answer to my question—your mill was
20 anxious to have this middle western business? A. Yes, anxious to have all business.

Q. Including particularly the middle western business? A. Including everybody. We usually hold our customers.

Q. And I have before me a copy of a letter from Mr. Macklem—who was he of the *Manitoba Free Press*? A. The Manager of the *Manitoba Free Press*.

Q. To Mr. Pringle, dated the 16th February, 1919. While it is being looked for, I will read it from my brief—

30 MR. TILLEY : Now, I do not want to be objecting again. If my friend is asking this witness—reading it for the purpose of asking whether some statement in it is true. I am quite willing of course that he should read it for that purpose, but I do not want him to be putting in his case, with a witness of mine who knows nothing about his case. I am not finally objecting to him putting it in, but I am objecting to him putting it in as part of my case with this witness.

HIS LORDSHIP : I have not yet heard to what it applies to see whether it is evidence.

40 MR. OSLER : It relates to this particular subject I have been asking the witness about.

HIS LORDSHIP : What is the purpose of it with this witness ?

MR. OSLER : The purpose is to see whether the letter correctly, the writer, who was an officer of his company, correctly represents the policy of his company in that respect.

HIS LORDSHIP : Of whose company ?

MR. OSLER : Of the Plaintiff's company.

HIS LORDSHIP : Does this purport to be a letter written by an officer of the Plaintiff Company ?

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MR. OSLER : No, my Lord, but what the manager of the Free Press states was said to him by the officer of the Plaintiff Company.

HIS LORDSHIP : You want to show him a statement made by the officer of the Plaintiff Company to the Free Press, and ask if that is correct ?

MR. OSLER : I cannot see there is any possible objection to that.

HIS LORDSHIP : On cross-examination, you can ask him that, of course, the letter does not become evidence in that way, at all.

MR. OSLER : I am not concerned in reading the whole of the letter, my friend may want that done.

HIS LORDSHIP : I would leave it to you, so far as you are concerned, but 10
you are entitled to read to him what the officer of his company is alleged to have said.

MR. TILLEY : I have not seen the letter. I understood we were furnished with the copies of the documents, but my friend seems to have it in his brief, but we have not seen it.

HIS LORDSHIP : The only possible use it can be put to would be possibly cross-examination on the policy of the Plaintiff Company. It cannot be evidence in any other way.

MR. OSLER : Q. The statement that I refer to, Mr. Backus, is : "Mr. McLaren of the Fort Frances Pulp & Paper Co., whose official title, I understand, is 'Comptroller,' but who is, apparently, in the absence of the President, Mr. E. W. Backus, and the Vice-President, Mr. S. W. Backus, in full charge of the property, arrived in Winnipeg this morning from Fort Frances (the letter is dated 16th February, 1918) and the writer had a long talk with him, in the course of which in no uncertain terms he expressed his appreciation of an account like that of the Free Press, and intimated very plainly how loath his company would be to lose it, so clear did he make this to me, and to Mr. McCurdy, of our company, who was in my office during the visit of Mr. McLaren, that I found it extremely difficult to reconcile his attitude with the statement contained in your telegram that his mill desired to be relieved of 30
furnishing further supplies to us" —

Now, Mr. Backus, I put it to you, that your Company, during this control period desired to keep this western business ? A. That is true.

Q. Of which they had ninety per cent.? A. That is true.

Q. And——? A. We always tried to keep all of our business, I told you, and get more.

Q. And I take it that what you would like to get out of this proceeding is to get all the business of the Middle West to the extent of upwards of ninety per cent., as you have put it, and at the same time get the other mills to contribute the cost of keeping that business to the extent of the difference between 40
what would have been your quota and the whole of the business that you could get and keep ? A. Now, repeat that question.

Q. I put it to you, Mr. Backus, that your object in this proceeding, what you would like to get out of this proceeding is to get all the business of the Middle West to the extent of upwards of ninety per cent., as you have put it, and at the same time get the other mills to contribute the cost of getting

that business to the extent of the difference between what would have been your quota, and the whole of what you could get and keep?

A. It is too involved. I cannot fully comprehend it.

Q. You say—

MR. OSLER : What it means, briefly, witness, is, you would like to keep all the business you had before of your customers, and get all the new business you could get, and get all the money from other people to help you doing it, you could—I suppose that is so?

A. That was the agreement. Yes, I think that is fair, Mr. Osler.

10 HIS LORDSHIP : I have no doubt any of the defendant's presidents in the witness box would make the very same frank admission. They are all in the business to make what money they can.

MR. OSLER : Q. You say that was the agreement—what agreement do you refer to? A. I refer to the Order of the Government, we have adopted the policy that all Canadian mills should furnish their quota of paper at a lower price than they could sell it for in the United States, and everybody was to take his share of the loss.

Q. When you said agreement, you referred to the Order? A. Yes, sir.

20 Q. Now, you have spoken on Friday about the agreement that you say was arrived at at the meeting of the Newsprint Association on the 20th of February, 1917? A. I think I said—I do not know as I gave the date, Mr. Osler, but it was in February, I said.

Q. It was in February, and you said that a number of the defendants were represented there, but you did not give the name of the gentlemen who represented them—can you do that? A. Well, I can give some of the names, Mr. Chahoon was there, and, now, I am not sure who represented Spanish River at that meeting, it may be Mr. Wilson, it might have been Mr. Meade, I do not think it was Mr. Meade—and I do not think that he was at that meeting—I am not sure about that, though. Have you got a list
30 of those who attended. I can tell you who I remembered there. I won't be guided by that, I will simply refresh my memory.

Q. In other words, can I put it this way, you have not got any independent recollection of that? A. Yes, we had so many meetings, what one might have been at one, and not at another, and another representative at one meeting, and not at that one. There is no use of my making any statements. I know Mr. Chahoon was there, and Mr. Montgomery was there.

Q. Are you sure of Mr. Montgomery? Mr. Montgomery is not recorded in the minutes? A. I mean in the conference, when I say they spent the afternoon. I say that he was not at the meeting, but at the con-
40 ference as I remember.

Q. When you speak of Mr. Wilson, do you mean Mr. Percy Wilson?

A. Yes, I am not sure about that, though.

Q. He is not recorded as being there, either? A. Then he probably was not there. He probably was at some other meeting. I am telling you that we met at various times, and all the recollection I have as sure, is that on a certain day, a certain man is there, unless he happens to be talking with me, and I remember Mr. Chahoon went to New York with me that night.

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Q. You are also telling me your recollection of the circumstances, that this is practically dependent on what was recorded in the minute, apart from the Record of which you are not very clear? A. No, my recollection is that I spent a day, and I went down to the St. James' Club with, I think, Mr. Breadner, R. W. Breadner, for luncheon. We went back to the hotel, and we spent practically all day trying to work out some plan.

Q. Was Mr. S. J. Campbell there? A. Well, I could not be sure that he was not there.

Q. You would not be sure that he was not? A. No.

Q. What Company does he represent? A. I think it is the Canada 10
Paper Company.

Q. Mr. Dawe—A. L. Dawe? A. The Secretary, do you mean?

Q. Yes? A. I am not sure about that.

Q. Do you think Mr. Meade was there? A. I doubt it.

Q. He is recorded in the Minutes as being there?

A. Now, I would not say that he was not there.

Q. Do you know Mr. Hurlburt? A. Yes.

Q. Of Spanish River, was he there? A. I think he was.

Q. You think Mr. Percy Wilson was there? A. I am not sure about 20
Mr. Wilson.

Q. Was Mr. Howard Smith there? A. I cannot say.

Q. Who was chairman of the meeting? A. I cannot say that. I cannot answer that. I think it was, Mr. Osler, rather an informal meeting, there may have been someone who acted as chairman, and maybe not.

Q. Your suggestion is that it was an informal meeting? A. Yes.

Q. What were you discussing? A. Discussing the problem of trying to take care of the Canadian Press equitably.

Q. Do you pretend that there was a definite agreement arranged there, that the parties to that conference agreed to, on behalf of their companies?

A. Well, there was a definite agreement as far as you could make it by 30
a discussion, it was not signed.

Q. No, but was it agreed to without signature?

A. Yes, at any rate, I agreed to it. I do not know that all there agreed to it, you understand.

Q. Well, now, what did they do? Did they say they would go back and report to their companies, and then decide? A. No, I think it was a matter of whether the matter had better be submitted to the Dominion Government, and if they approved of it, before the contract was actually signed.

Q. Then they did contemplate signing a contract? 40

A. Either signing it or considering it as signed, if approved by the Government.

Q. There is some difference—do you say they were talking about considering something to be signed?

A. I say we considered this matter all day long—

Q. Now, what I am asking you is, did you reach an agreement by which you agreed to something, or did they merely discuss it and then refer back to

their different Boards and Executive Officers? A. Well, my understanding was, and I think it was the general understanding of the different managers, if the Government approved the arrangement, that it was to become effective, if the Canadian Government—

Q. Were the terms agreed? A. Well, as I told you the other day, or I made the statement the other day, that I was not sure about the details of the terms, because it was not carried out, and naturally I dropped that from my mind.

Q. Whatever happened, you are perfectly clear that the agreement did
10 fall by the wayside? A. Yes.

Q. And never became effective? A. That is true.

Q. And did it originally contemplate lasting for more than three months, the suggested agreement that you were discussing? A. I stated the other day, I think, that I was not sure on that point, just how long a period it covered.

Q. But it was to be for a period, a limited time?

A. I cannot say that, sir, if you have a copy of the agreement and let me refresh my memory by reading it, I can testify with ordinary intelligence. I cannot, the way I am now, and the way you are putting the questions to me
20 now.

Q. Now, according to the minutes of the meeting of the Newsprint Manufacturers held at 10 a.m., Montreal, on February 21st, 1917—it is reported “Mr. C. H. Smith reviewed the present situation, and stated that Orders-in-Council, while prepared were not published, and would not be put in effect by the Government providing the solution of problem was forthcoming from manufacturers. Mr. Chahoon was of the opinion that whatever was done should be outside of the Association altogether, and that any pooling arrangement should be in the nature of a separate organization.”

“Mr. Backus stated that three cents a pound as a means of determining
30 an arbitrary would be satisfactory to the Western Mills. Mr. Chahoon, however, differed on this point, stating that an average price should be figured for export business.”

MR. TILLEY: Are those the minutes?

MR. OSLER: Those are part of the minutes.

Q. Do you remember that, Mr. Backus? A. Well, I do not know whether that means an average price of \$50 for Canada, and the United States combined, I know we had a contract at that time for \$60 a ton for our United States business. Now, I cannot reconcile that fact, excepting along the lines that I gave my testimony the other day, that I finally agreed to
40 accept a ten dollar differential for three months, that would be sixty dollars and fifty dollars.

Q. Three cents would be equivalent to a ten dollar differential, taking three cents a pound is sixty dollars a ton, and two and one half cents, the Canadian price, \$50 a ton. There you would have the ten dollar differential?

A. Yes, sir, that is true, but I say I cannot reconcile that, excepting as I said the other day, I agreed to the compromise suggestion of Mr. Chahoon, and the others calling for a differential of ten dollars for three months.

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Q. Yes, the statement is credited to you in the minutes ?

A. Well, I do not entirely agree, because it don't reconcile with the fact that we were getting \$65, unless it is in the way of a temporary arrangement.

Q. Then further down, "The following resolution was proposed by Mr. Chahoon, seconded by Mr. Biermans,"—

"That this meeting assure the Canadian Government through its representative, Mr. R. W. Breadner, that it is prepared to meet the Government wishes and contract with the Canadian Publishers at a price of \$2.50 per one hundred pounds, for rolls, \$3.25 per hundred pounds for sheets, \$3.50 per hundred pounds for sheets, two ton lots, all prices f.o.b. mills"—

10

"Contracts to start on March 1st, 1917, and to be enforced for three months"—does that bring it back to you, Mr. Backus, this was to be an arrangement for three months only ?

A. Well, the price, the differential was to cover three months, but my recollection was, as I stated the other day, it was to begin January 1st, but I may be mistaken as to that.

Q. You may be mistaken as to that ? A. As to the date of its beginning.

Q. It would look from this as though you were mistaken, and the three months was to begin from the 1st of March.

20

MR. TILLEY : 1917.

MR. OSLER : 1917 ? A. 1917.

Q. And according to this minute, Mr. Smith made a proposal to have the whole matter stand over until Monday the 26th inst.—do you remember that ? A. What Mr. Smith is that ?

Q. Mr. C. H. Smith—that is Mr. Howard Smith ? A. To have what ?

Q. Mr. C. H. Smith to have it all stand over until the 26th inst. ?

A. No, I have not any definite recollection of that event.

Q. That it all stand over until the 26th inst ? A. No, I have not any recollection of that event.

30

Q. That Mr. Breadner stated that that was reasonable and agreed accordingly ? A. No, I do not remember that.

MR. HENDERSON : A committee was appointed.

MR. OSLER : Q. Then, do you remember that later on in the minutes, it was then proposed that a committee of seven be formed to meet at two o'clock to discuss ways and means of meeting the Government requirements ?

A. Oh, you are talking now, I beg your pardon, before I answered that, did these other events transpire before luncheon ?

Q. Before luncheon ? I think so from the fact that this was an adjournment to meet at two o'clock.

40

A. Well, what transpired after luncheon is what I would be more interested in.

Q. Do you remember the committee being appointed to discuss ways and means of meeting the Government's requirements ?

A. Well, I think it was an informal committee, I think someone suggested that A, B, C, D, E and F might meet together and work out something and report it back. I do not remember of any formal—

Q. You do not remember any formal? A. This was entirely, as I remember it, an informal meeting, the manufacturers got together and discussed everything together, openly.

Q. Now, tell me when this agreement that you have been referring to was made, was this made according to your story before lunch or after lunch?

A. No, after lunch.

Q. That was made afterwards? A. Yes, sir.

Q. I see, then according to the minutes of the special committee meeting, Mr. Montgomery was then invited into the meeting, and the tentative agreement form was drawn up—for use by Newsprint mills and covering all details appertaining to the pooling and distributing of tonnage to Canadian consumers:

“This agreement to be submitted at a general meeting to be held at six p.m. February 21st, for their approval.”

Mr. Henderson calls my attention to the fact that in the minutes before lunch, it is included in the resolution that this meeting has appointed a committee to work out the details of a distribution scheme; this committee to report back to an adjourned meeting on Monday next, the 26th of February”—do you remember that? A. No sir, I do not.

Q. Well, that was carried by a vote of a number of the mills, including Fort Frances and Donnacona and News Pulp & Paper Company refrained from voting”—do you remember that? A. No, sir.

Q. Then, it was added, “A copy of this resolution to be given to Mr. Breadner”? A. Well, I would not crowd my memory with detail matters of that kind.

Q. No, well then—

HIS LORDSHIP : From what are you reading, Mr. Osler?

MR. OSLER : The meeting of newsprint manufacturers held at 10 a.m. at Montreal, February 21st, 1917.

Q. HIS LORDSHIP : From the original minutes?

MR. OSLER : From the copy in my brief, my Lord. We have the original here.

MR. TILLEY : I have not seen these at all, so I cannot say—

MR. OSLER : We have a witness who will prove them in due course.

MR. TILLEY : They are not produced at all.

HIS LORDSHIP : That is what is bothering me, we are getting on towards noon, and we have not gotten away from the early part of 1917 yet, with which I am not concerned—I understand it deals with the question of credibility, I suppose, and the basis of his agreement, and so on.

Q. MR. OSLER : And he has put forward this claim under this agreement of the 21st of February, my Lord. I will get along as quickly as I can, the only agreement that was pleaded, and of which the particulars—

HIS LORDSHIP : Of course, the evidence has not shown any such agreement. I remarked that, but appreciate your—

MR. OSLER : Then, my Lord, I will get along as fast as I can.

Q. Then, at six p.m. on the 21st of February, at Montreal, Mr. Backus, another meeting at which you were reported to have been present, at a general

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meeting of newsprint manufacturers, "Tentative agreement was submitted by Mr. Montgomery.

"It was agreed that the Committee already elected should stay in force and form directorate if necessary of any company to be formed, and to have full powers of arranging for the operation of pool and distribution of tonnage." Do you remember that? A. Well, I have no definite memory of the resolution being passed, on the writing of these reports, of course, the Secretary, or whoever does it, makes it a little more complete. Is this like a formal meeting, sitting around a table, and discussing every feature of it.

Q. Then, after that, in March and April, there were meetings of the Association which I understand, you did not attend. 10

MR. TILLEY : He was not a member.

MR. OSLER : Q. You were a member of the Newsprint Association, were you not, your company was? A. I think we were for a while, I cannot tell. I do not remember just the period, and if it developed that we were not, I would not be surprised at it. I think we were for a time.

Q. You attended, as being——? A. Oh, all we manufacturers attended, whether they were members of the Association or not, that had nothing to do with the——

Q. But you did say——? A. That had nothing to do with the conferences. 20

Q. You are not suggesting you are a member who did not pay your fee?

A. Oh, no, nothing at all, nothing like that.

Q. You knew that early in April, the Eastern Mills had arranged among themselves, some of the mills that were long on Canadian tonnage, agreeing to waive any claim they might have in that respect, and shorts agreeing to make up the claims of a couple that were taken care of?

A. Just repeat that question.

HIS LORDSHIP : He says you knew, you knew early in April—that is in April of 1917? 30

MR. OSLER : Q. Then you knew that early in April the Eastern mills had arranged among themselves, some of the mills that were long on Canadian tonnage, agreed to waive any claim that they might have in that respect, and some that were short agreeing to make up the claim of a couple that were taken care of? A. Well, Mr. Osler——

MR. TILLEY : That agreement was in writing, wasn't it?

MR. HENDERSON : Oh, no.

WITNESS : I will say that the best answer I can give you to this is that Mr. Pringle told me that he was trying to work out a scheme whereby the Eastern manufacturers would reach an agreement to take care of that business, and that Abitibi and Spanish River would make up for the longs we were to supply, the long tonnage we were to supply, and at several meetings with Mr. Pringle, and representatives of these two companies were held at various places, two or three of them in New York, and the last meeting was, it was understood, well, it was tentatively understood at the first one, that Abitibi and Spanish River would make up for our long shipments, but finally the understanding was, I supposed definite, that that was to be done, and that we were to do our billing through Mr. Breadner, and he was to take care—— 40

MR. TILLEY : Q. Mr. Breadner ? A. I mean Mr. Pringle, and he was to take care of the settlements.

MR. OSLER : Q. When do you say that this settlement was made ?

A. All the way, from the very start, when Mr. Pringle got into, and assumed the office, or before, before really that he started talking about it, when he knew that he was going to be appointed—that was in the Spring of 1917, and continued until in the Fall.

Q. I might cross-examine, my Lord, I take it, with reference to the contracts subsequent to the 21st of February, subject to my objection that my
10 learned friend is limited by his particulars.

HIS LORDSHIP : Very well.

MR. OSLER : Q. Now, what do you say, Mr. Backus, as to having been advised that the Eastern Mills, early in April, 1917, that the Eastern Mills had arranged among themselves, and that your business was going—the Western business was going to be dealt with by Mr. Pringle ?

A. Repeat that question, please.

Q. What do you say, Mr. Backus, as to having been advised that the Eastern Mills early in April, 1917, had arranged among themselves, that your Western business was going to be dealt with by Mr. Pringle ? A. Well, I
20 think I understood that some such arrangement was that was to be made, but that the arrangement included as I said before, the taking care of our long shipments by Spanish River and Abitibi.

MR. OSLER : Let me have the letter from Backus to Pringle and Thomson of April 7th, 1917.

(Letter produced.)

MR. OSLER : I will put this in, my Lord.

EXHIBIT No. 18. Letter dated 7th April, 1917, Fort Frances Pulp & Paper Company, E. W. Backus, President, to Messrs. Pringle & Thomson,
80 Solicitors, Ottawa.

“Attention Mr. Pringle.

“Dear Mr. Pringle,—I herewith enclose confirmation of telegram just sent you. This is brought about by telegram I received to-day from Canadian Pulp & Paper Ass’n dated April 6th and reading as follows :

“At a meeting to-day of the newsprint manufacturers regarding the distribution of Canadian tonnage, the eastern situation was disposed of after conference with Mr. Pringle, who came from Ottawa to meet manufacturers. The western situation, however, not allowing of such a solution was referred to Mr. Pringle and the matter will be taken up from Ottawa.

40 “It goes without saying that we are compelled to supply our pro rata share of the newsprint paper consumed by publishers in Canada. That percentage amounts to approximately 6,000 tons. We are now supplying the Canadian publishers over 12,000 tons. The difference between our United States price and our Canadian price is \$15 per ton, and owing to the attitude of the Government in Customs Duties our extra cost on that item amounts to over \$3.00 per ton, so you will note we are losing \$18 per ton on all of the surplus paper we furnish to Canadian publications.

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“Undoubtedly we are within our rights when we demand that the amount of paper we shall furnish to Canadian publishers shall be limited to our true proportion.

“Will you kindly wire us at Fort Frances upon receipt of this letter that arrangements will be made with other mills to furnish the amount of tonnage we are now supplying above our proportion ?

“In view of the prospect of our having this 6,000 or 7,000 tons of paper available for use in the United States, we have made a conditional sale of the same in the U. S. on a basis which will mean a difference to us of approximately \$10,000 per month, consequently we feel that we are entitled to prompt 10 action on your part.

“Very truly yours, Fort Frances Pulp & Paper Company, Limited, (sgd.)
E. W. Backus, President.”

Q. Now, Mr. Backus, do you say you were relying on an agreement by the mills with respect to the payment of differential ? A. Will you please let me see that letter. I think I wrote it all right, but I want to see it.

(Witness reads letter.)

Now, what is the question ?

(Reporter reads question.)

MR. OSLER : Q. Now, Mr. Backus, do you say you were relying on an 20 agreement by the mills with respect of the payment of differential ?

A. Well, I do not see that the reading of that letter changes the situation any.

Q. Well, what is the situation ? Are you relying on the agreement by the mills ? A. I am quoting the telegram in that letter that we received from the Associates at Montreal which says that the eastern situation is taken care of, which means down east, by mills like Spanish River and others, with a reasonable freight rate, but the United States market could not be met, or is not going to be met. It also states that the arrangement of the eastern mills working together could not be worked out, even if the agreement were in 30 effect.

Q. Now, Mr. Backus, in spite of the long pause, that answer is not an answer to my question ? A. That is a perfect answer. I say that letter has nothing to do with the information by wire that the eastern situation has been worked out, that would not necessarily convince anybody that the agreement that we are talking about was——

Q. Now, do you say at the date you wrote this letter ?

Q. I would have to see a copy of the original, a copy of the agreement as well as that letter. There is a letter which you have read, do you say at the date that you wrote that letter that you had an agreement from the 40 eastern mills or some of them to relieve you of the differential, did you ?

A. I say there never was a minute that the other mills, so far as I was concerned, were not obligated to take care of their proportion, and where are they ?

Q. When you say that, do you mean they were obligated by the agreement or by Order from the Government ? A. By both.

Q. Both? A. I never understood that any of the Canadian manufacturers did not acknowledge that they were obliged to ship their quota of paper to Canadian customers.

Q. When you say by both, when was the agreement made under which they were obligated? A. Why, I am asking you for a copy of the agreement.

MR. HENDERSON: There never was one.

MR. OSLER: You are saying there was an agreement?

A. I say there was an agreement.

Q. Do not let us get off on a side track. You say there was an agree-
10 ment, and you are obligated by the agreement to deal with this question of differential—now when do you say that agreement was made? A. At the time—well, now, go back and cover the ground again—we had several meetings late in 1916 when this thing first was agitated, some were in Ottawa, and some were in Montreal, and then we had meetings in Montreal early in February, in my understanding, and I guess in everybody else's understanding was that the Government would be glad to welcome an agreement to work this solution out by the manufacturers themselves, but we all always realized that we must furnish our quota of the Canadian tonnage, and that is what we did and did really more, and there is no reason why the other manufacturers should not
20 stand their proportion.

Q. Is that all? A. That is all.

Q. Yes, your suggested arrangement at the meeting, which we have had the minutes of, was for a ten dollar differential? A. For three months.

Q. Was the differential ever calculated on a ten dollar basis so far as your mill was concerned, for that period of three months?

MR. OSLER: Then again, subject to my objection that the alleged arrangement was not covered by the particulars, with your Lordship's permission.

Q. You said that you had some meeting in New York, which you put
30 in October, 1917? A. September or October, I said.

Q. September or October? A. Yes.

Q. Are you sure that was not April, 1917? A. Well, I always said that we had several meetings, two, three, or possibly four meetings, and I fixed the date, September and October as the final meeting, because I know, I remember distinctly that Mr. Pringle came down on that occasion, I was in my bed at the Belmont Hotel, and he asked me if I could go to meet him at Mr. Smith's office in the afternoon, that is the reason—at Mr. Smith's office or Mr. Meade's office.

Q. At Mr. Smith's office or Mr. Meade's office?

40 A. They might have had an office together, as I remember it was 52 Vanderbilt Avenue.

Q. This, you say, was in September or October? A. This was September or October, because I was not taken ill until after the very last of July or early in August.

Q. Do you remember that very shortly after that agreement, at that interview at which it was suggested that there was an agreement, that the

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Abitibi Company definitely took the position that there had been no agreement, and that Mr. Meade, and Mr. Smith, both definitely took that position ?

A. Well, I do not know that I can say.

Q. You say, at that meeting ? A. I say that we had, we met two or three or four times, but we followed that up by starting to bill monthly, and that will tell the story as to when the agreement was made—now then you say—

Q. Wait one moment and let us get this—you say you had two or three or four meetings with Mr. Smith and Mr. Meade ? A. I do not say with Mr. Smith and Mr. Meade, and Mr. Pringle and myself were altogether, but 10 at this time, this last final meeting we were all together.

Q. Now let us get this, was there any more than one meeting at which you and Mr. Pringle and Mr. Smith and Mr. Meade were all together ?

A. Now, I am not sure about that, whether there was one or two.

Q. The Mr. Smith that you are referring to is Mr. Alexander Smith of Peabody, Houghterling and Company ?

A. Now, I will have to answer your other question, where you asked if I repudiated such an agreement—

Q. Now, you told me a moment ago that you rendered a statement ?

A. I say we kept rendering monthly statements. 20

Q. And that was after this so-called final agreement ?

A. I do not know if it was after the final agreement or not, but it was after the supposed agreement, or the meeting.

Q. It was after the agreement, you say was made in September or October, 1917 ? A. I won't be sure about that, but whenever we commenced to render our statement, it was the outcome of the agreement, whenever we commenced to render our statement, that measures the time when we thought we had the agreement.

Q. And it was shortly after that, that you discovered that you had not ? A. Well, I do not know that it was shortly after. I know at the time, 30 that we declined to bill on Abitibi and the Spanish River.

Q. Yes ? A. The arrangement we say that we made was to bill through Mr. Pringle.

Q. And that is what you are talking of when you are speaking of billing monthly, well now—? A. Well, I say, that is not what I meant, No, you do not answer that right. I say that they looked to Mr. Pringle or the authority of the Government to see that we got proper settlements.

MR. OSLER : Now, let me have the letter from Mr. Pringle's file of the 11th May, 1917, to Mr. Backus—May 11th.

This is Mr. Backus's letter. I will put this in as Exhibit 19, my Lord. 40

HIS LORDSHIP : The letter of the 7th April was Exhibit 18, and this is Exhibit 19.

MR. OSLER : Addressed to the Honourable R. A. Pringle, Special Commissioner of Paper, Union Bank Bldg., Ottawa, Ont., Canada. "My dear Mr. Pringle : I herewith hand you statement in duplicate showing amount due us, namely, \$23,392.38, on account of the surplus paper which we delivered to Canadian publishers in the months of March and April of this year.

"This statement is made out in details so that there may be no delay in the other Canadian mills who have furnished less than their proportion making payment to us without delay. Will you kindly take this matter up with them and secure payment for us for which we will be duly grateful to you ?

"I do not want this to be considered as a precedent, however, because we would prefer to take paper in return rather than make settlement in cash.

"However, I want to thank you for expediting this matter as you have done. Very truly yours, (sgd.) E. W. Backus, Pres."

EXHIBIT No. 19. Letter E. W. Backus to Honourable R. A. Pringle, dated 11th May, 1917, with statement attached.

And then attached to that letter is the statement, bearing same date, showing calculation, from which it appears, Mr. Backus, that you were calculating your claim for differential at \$15.00 per ton ?

A. Yes, that is true.

HIS LORDSHIP : You are letting that statement go in as part of the same Exhibit ?

MR. OSLER : I think that would be convenient, my Lord.

Q. That is the first statement you made, I would think, under what you say was the arrangement made in New York ? A. Yes, I think so.

20 Q. And do you know what Mr. Pringle did with that ? A. I do not.

Q. Do you know whether he forwarded it to any of the other mills ?

A. I do not.

Q. Did you have any conversation with Mr. Pringle about it ?

A. Oh, yes, repeatedly.

Q. Did not he tell you what attitude he took ? A. No sir, always gave us assurances that our bills would be paid for our surplus tonnage.

Q. Have you got a letter from Mr. Pringle to Mr. Thomas McLaren, dated the 13th June, 1917.

30 MR. TILLEY : You have given us a copy. You can put in a copy, if you have a copy.

MR. OSLER : In the meantime——

This is a letter from Mr. Pringle to Mr. Thos. McLaren, Controller, Fort Frances Pulp & Paper Company, Fort Frances.

"Dear Sir,—Yours of June 6th was received by me on my return from the West on Monday. The position in regard to the newspaper business to say the least is very complicated.

40 "I forwarded to Abitibi and Spanish River the statement you sent to me. They take the position that they are ready to supply paper to the Western trade. In fact they have set aside paper for that purpose. I was surprised at this as I certainly understood when in New York from one whom I considered a representative of the Abitibi that they preferred paying the difference in cash, and not in paper. Now they take the other position. Their representative will be here Tuesday and I will see what can be done in regard to an adjustment.

"One of the members of the Government sent for me this morning and told me that Winnipeg Telegram were not being supplied with paper. Consequently I wired you.

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“I have advised the Daily News of Moose Jaw to pay your draft at the \$3.00 rate and that the difference would be refunded to them.

“I don't want to take any harsh action, but I spoke to one of the Ministers to-day as to the trouble I am having in this matter, and he told me that if there was any further trouble just to have an official go and prevent any export of paper until the paper manufacturers were willing to live up to the regulations and this course I will have to take if there is any further bother.

“I have retained Mr. Clarkson of Toronto, whom I understand is a first-class accountant, and I am going to have him take up the adjustment of difference between your mill, Abitibi and Spanish River and upon his report an order will be made and if it is not carried out then of course other steps can be taken. Possibly if your representative was here on Tuesday to meet representatives of the other mills, matters could be arranged.” 10

Now, do you still say, Mr. Backus, after hearing that letter, that the other mills were agreeing with you ?

Q. Yes, sir, and I think Mr. Pringle, too, as his letter states so.

Q. My question did not relate to Mr. Pringle at all ? A. Yes, sir.

Q. I am asking if the other mills did agree to pay you differential ?

A. Well, I am not claiming that. Now, I am saying now, that he had no dealings, after Mr. Pringle came in, with the other mills. 20

Q. Oh ? A. After Mr. Pringle came in and took charge, we regarded the Government as in command.

Q. So that after Mr. Pringle came in and took charge, you were relying on the orders of the Government ? A. And on his seeing that all agreements were carried out, in other words, I did not go around every week and ask the manufacturers if they still remembered the understanding we had that each was to supply his quota.

Q. Now, what do you mean by that, that there was still an agreement on the part of the other mills ? A. Well, an agreement on the part of the mills that had never been fulfilled, and Mr. Pringle was going to see that it was carried out. 30

Q. And that agreement was, that each should supply his quota ?

A. Yes, sir.

Q. Then you knew that in January, in March, 1918, the eastern mills made an arrangement by which the mills that were long on Canadian tonnage took into account the fact that they were keeping their market and their customers, and adjusted any question of differential as between themselves ?

A. No, I did not know that.

Q. You did not know ? A. No, I was told about it, this telegram from the Press is all I know about it, this telegram, I mean, from the Association. 40

Q. From the Association ? A. Yes.

MR. TILLEY : Q. When was it ?

MR. OSLER : The 13th March, 1918.

Q. You were advised of that ? A. Yes, but that might have been a plan to work out the distribution of tonnage in accordance with the agreement still.

Q. Are you referring to the tentative agreement that was suggested early in 1917, or to the agreement that was finally made between the mills other than your mill in 1918 ?

A. I did not know of any agreement that was made between mills other than our mill.

Q. Did not Mr. Dahlberg report to you that he was present at a meeting at which the other mills made an arrangement to clean up this business ?

A. Only as to the work-out of the shipments of tonnage.

Q. Did not Mr. Dahlberg report to you that he had refused to accede to the proposed agreement, so far as you were concerned ? A. Well, I do not think—yes, I think Mr. Dahlberg told me that he did not agree to the changes the made in the agreement at the outset, owing to the changes which they made at the outset.

Q. Mr. Dahlberg was your second Vice-President ? A. Yes, at the time.

Q. And he represented you to a considerable extent in these proceedings, with respect to price controlling newsprint in Canada ?

A. Well, he conducted certain business in the carrying out of his official position.

Q. Then, on the 13th of March, 1918, there was a meeting of the newsprint section of the Canadian Pulp & Paper Association, held in Montreal, on the 13th of March, 1918, at which representatives of Abitibi and Belgo, Booth, Brompton, Canada Paper, Donnacona, Eddy, Laurentide, Price, Spanish River, St. Maurice and Fort Frances were present, and also Messrs. G. Montgomery, K.C., G. F. Henderson, K.C., V. Mitchell, K.C., and Mr. W. F. Sharpe, and at that meeting the question of differential was discussed at great length which resulted in a proposal on the model of the following tentative agreement, and than an agreement was outlined.

MR. TILLEY : I do not suppose this witness can confirm it.

HIS LORDSHIP : No, no more than I can.

Q. MR. OSLER : I am not proposing to read the agreement in detail, but it was shortly that the mills that were long on Canadian tonnage agreed to accept fifty per cent. of what the statement showed was due them, and Mr. Dahlberg is reported at the conclusion, Mr. Dahlberg for the Fort Frances Company stated that they would not accept the proposal—now, did Mr. Dahlberg report that meeting to you ? A. I think so, yes.

Q. He reported that the other mills had arranged, and that you had refused ? A. I think so, yes.

Q. And I understand that cheques were sent to your company on the basis of that agreement from time to time, and the moneys tendered and you refused ? A. I cannot testify as to that.

Q. You cannot testify as to that ?

HIS LORDSHIP : What period does that refer to, Mr. Osler ?

MR. OSLER : That referred, my Lord, to the period up to the—

MR. HENDERSON : To the 30th September, 1917.

MR. OSLER : Just one moment, my Lord, up to the 30th September, 1917, and then it was to continue until January 31st, 1918, but the figures had not been arrived at up to that time, they were to be calculated.

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MR. HENDERSON : And after that, there was to be no more differential.

HIS LORDSHIP : At any rate, the Fort Frances Company refused to agree.

MR. OSLER : They refused to agree.

Q. You did know, Mr. Backus, that after January, 1918, all of the other mills agreed that there should be no more differential ? A. No, I did not.

Q. Why you have told us——

MR. TILLEY : My Lord, that surely—is that evidence—what some people told him what other people had done, either on cross-examination, or examination-in-chief ?

MR. OSLER : My statement is——

HIS LORDSHIP : It cannot affect the legal situation. There is no doubt about that. There, however, was an agreement, or there was not an agreement which was binding. There either were orders of the Paper Controller and the Appeal Tribunal which were binding, or were not binding. And if there were not either of them, it does not make any difference what he understood of them, or what he knew or anything else, or what the other people said they agreed to, or did not agree to.

MR. OSLER : I would have thought so, too, if it had not been so strenuously alleged that there were these agreements outstanding.

HIS LORDSHIP : We will either have to find the agreement or some control or authority that had power to make such an Order. If we cannot find that, the Plaintiff cannot succeed.

MR. TILLEY : There may be some argument on that.

HIS LORDSHIP : I know what you are doing. You are figuring there may be something which will operate in the same way that the agreement would operate, but when I said agreement, I meant anything which would operate in the nature of an agreement among the parties.

MR. OSLER : I daresay my learned friend's reason for trying to hang a big alleged agreement, will develop later.

Q. Mr. Dahlberg did report to you that Mr. Pringle had announced that there would be no more differential after the 1st of February, 1918 ?

A. Not when I got it. I got it, at that time there was not any occasion for any fixing of any differential, when the Canadian price was higher than the United States price, but it afterwards was modified, so there was occasion for it.

Q. At all events, you did get the report of what Mr. Pringle had said ?

A. No, I did not. I got the report where he fixed the price, and there would not be any necessity for a differential.

Q. So, if there was no discrepancy between what Mr. Pringle said, and Mr. Dahlberg could say, Mr. Dahlberg's report ? A. I cannot answer that.

MR. OSLER : Then, let me have the letter of the 6th of May, 1918, from Mr. Dahlberg to Mr. Pringle (letter produced).

MR. OSLER : This is a letter from Mr. B. G. Dahlberg, second vice-president, Minnesota and Ontario Power Company, to R. A. Pringle, dated the 6th May, 1918.

I will put this in, as Exhibit 21, my Lord.

“My dear Mr. Pringle,—Your letter of the 24th of April is disappointing

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... plus the duty drawback. Yours truly, (sgd.) R. G. Dahlberg, Second Vice-President."

MR. TILLEY : What is the date of that letter ?

MR. OSLER : Dated the 6th of May, 1918.

Q. Now you were there apparently submitting to an Order made by Mr. Pringle ? A. Evidently, yes, sir.

Q. And not basing it on any agreement with the other manufacturers ?

A. No, I do not see what that has to do with it.

MR. TILLEY : Q. Where is that ?

10 MR. OSLER : I have it here.

MR. TILLEY : Q. In your brief ? Where is it produced ?

MR. OSLER : You produced it on the affidavit.

HIS LORDSHIP : I understand this letter of the 6th of May has been put in.

MR. OSLER : I am putting it in now. It is from Mr. Dahlberg, the Second Vice-President of the Plaintiff Company. The original I presume would be on Mr. Pringle's file, it was addressed to him. The copy we have in our brief, came from Mr. Thomson.

HIS LORDSHIP : I think it would be better after this, not to read the letter until the letter is produced and handed to the Registrar, because we will find
20 we have ultimately Exhibits that are lost, that are not in our files at all.

HIS LORDSHIP : This will be Exhibit No. 21. The letter of May 6th.

MR. OSLER : Then the next is a telegram from Mr. Dahlberg to Mr. Pringle, dated the 7th or 8th May, 1918, and the next is Mr. Pringle's reply of the 8th of May.

Perhaps if you will get these out, Mr. Thomson, they will be Exhibits 22 and 23.

I am reasonably sure, my Lord, there are no copies of these that have not gone in yet, and it may perhaps save a little time, if I might read them.

HIS LORDSHIP : The trouble is, they are not arranged beforehand, and
30 when you have half-a-dozen Counsel interested in this, and you are the only one who is actively engaged in the cross-examination, and here are Exhibits, and we have to sit and wait until someone hunts them up from the file, I do not understand why so much time has to be taken over the getting of them. It would not take long to read them, if they have them.

MR. OSLER : The files are very voluminous and very scattered.

HIS LORDSHIP : If you had one Counsel to each of the scattered files, it would not take long to get them. You know what you want. The telegram is forthcoming ?

MR. OSLER : I presume so, my Lord, but that is all, as Mr. Henderson
40 says, it is cumulative. I have got a great deal to the same effect already.

MR. HENDERSON : We will just cancel those references to Exhibits 22 and 23.

MR. OSLER : Mr. Backus, Senator Ross was acting as your solicitor in Ottawa, was he not ? A. From a certain time, yes, sir.

Q. From what time ? A. I do not remember.

Q. I think you have told my learned friend that you were always willing to supply your quota to the western trade ? A. Absolutely true.

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Q. I would like you to look at the Exhibit that I have put in by Mr. Philips, dated originally the 25th of May, 1919.

HIS LORDSHIP : 13th of May, 1919, from Philips and Senator Ross to Pringle, that is Exhibit No. 2. The original letter he said was delivered to Mr. Pringle on the 25th of June, 1919.

MR. OSLER : But was dated May 13th, 1919.

This copy purports to be signed by Mr. Philips and Mr. Ross, Attorneys for Fort Frances Pulp & Paper Company, Limited, and it concludes : "This company will be obliged to cease shipments of newsprint paper from its mill to Canadian customers, May 26th, 1919".

The date was changed to—when I say changed, according to Mr. Philips' evidence, to sometime later, having regard to the fact that that letter was not delivered.

And on the 25th June, 1919, another letter was written by Messrs. Ross & Philips, which is Exhibit No. 9.

HIS LORDSHIP : Of the 25th June, 1919 ?

MR. OSLER : In which they say, at the conclusion, "That unless effective action is taken by you in the matters mentioned, the Fort Frances Company will cease shipments to Canadian purchasers of its paper on the 27th day of July, 1919." Do you say your company was always willing to supply its Canadian quota. A. I certainly do, in a most unqualified manner. There never was a month that I would have permitted our mill to have cut off the shipment of our quota of the paper due to the press.

MR. HENDERSON : This was bluff ? A. I told Mr. McNichol so and told Mr. Pringle so, and our own boys so, all the time.

Q. Then, what do you say as to these statements ? A. I simply think they took it for granted they were going to supply the quota.

Q. It is not what they say ? A. They did not answer the orders beyond our quota, that is all.

Q. And the fact was, as you knew, that officials were sent to Fort Frances, and Orders-in-Council were passed authorizing the embargo upon your export ? A. Yes, I know all about it, but never a minute during that time, that they could not have had the quota every day, excepting one time, through no fault of ours, when they ordered the embargo to the output of the mill to be put on one side track, there was only one track, part of these cars Canadian and part United States, and they got choked up, the yard got so blocked that you could not get the Canadian cars out without getting the American out.

Q. You had that very well arranged ? A. It was not arranged at all. We could not arrange it any other way and there was not any time, I do not believe, we did not tell them, "Now, we will take these Canadian cars out, if you will give us a chance to switch these over on to our property and take yours."

Q. Which was on the American side ? A. On the American side of the bridge, yes.

Q. So, unless they would release the embargo, you could not get it out ?

A. There was not any other way to get them, and that was only, oh, I do not know, a very short period.

MR. TILLEY : What year? A. 1919, and again early in 1920, in December, 1919,-1920, not December, 1919, I do not think that occurred in December, I think that was a matter that happened in January, 1920.

Q. Do you know how long Mr. McNicol was there representing Mr. Pringle? A. Oh, he was there for weeks and weeks.

Q. And the purpose of his being there was to insure the Canadian supply? A. Well, he represented Mr. Pringle. Mr. Pringle said, just the same, as if he were there himself.

Q. And the reason that he kept him there was to make sure the paper
10 would go forward to the Canadian customers.

A. I presume so, but Mr. McNicol, Mr. Osler, never had to worry about the quota, it was only the surplus amount that he ever did any discussing regarding.

MR. OSLER : I would like before concluding, my Lord, to have an opportunity of discussing it with some of the Counsel who were here, some of them have their own views, and have been following it rather closely, and if it was convenient to your Lordship, I would like to adjourn for a moment.

HIS LORDSHIP : You would like to adjourn now? I usually adjourn
20 when sitting here, not until close to one o'clock, but it really does not make any difference to me.

MR. OSLER : If it is not convenient to your Lordship—

HIS LORDSHIP : It may shorten it in the end. We will adjourn until two o'clock.

MR. TILLEY : I was going to suggest that my friend look over, during the adjournment—I understand they have checked it over, so that possibly by two o'clock we will be able to put in a statement that we have both checked, with regard to these prices, but we will not put it in until Mr. Osler is sure that it has been checked.

HIS LORDSHIP : We will adjourn until two o'clock.

30 Court resumed two o'clock p.m.

EDWARD W. BACKUS, Continued.

MR. OSLER : If your Lordship pleases, I have one question to ask Mr. Backus.

Q. Will you tell me whether a considerable part of the business of furnishing newsprint to the western publishers was not under contract, Mr. Backus, during the period of April? A. I do not believe we had any contracts from July, 1907.

Q. 1907? A. 1917 until along after May, 1920.

MR. OSLER : Thank you.

40 MR. HENDERSON : I have no questions, my Lord.

RE-EXAMINED by MR. TILLEY :

Q. Mr. Backus, you were asked about the original fixing of prices in the United States at \$2.50—that is two and one-half cents a pound—\$2.50 per

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hundred pounds, or fifty dollars a ton. I thought you assented to that—when you used the word “fixed,” what did you mean, the price fixed by—I did not know of any fixing? A. Price recommended.

Q. There was a recommendation by the Federal Commission by the Trade Commission, the time of recommendation, it was a purely—

MR. OSLER : Do not lead him.

MR. TILLEY : There cannot be the slightest controversy about these matters.

Q. Had they any jurisdiction? A. They had not.

Q. They had not any jurisdiction at all, over the matter? A. No, sir. 10

Q. And was the recommendation followed? A. No, sir.

Q. Then, you were asked whether the Fort Frances Company got a better price than other companies—I do not know whether the reference was to the United States or Canada—now, dealing with Canada first, had they any better price?

MR. OSLER : He was asked that, that refers to Canada only.

MR. TILLEY : Very well, then, Canada only, the easiest way to hear it I would have thought, we could have argued on it. The question was asked—I want to know at what time they got a better price than the other manufacturers? A. Well, I think the Canadian, I think in Canada, I think the price that was allowed Fort Frances was slightly higher. 20

Q. When? A. Than the Eastern mills. I thought we had the date in on that.

HIS LORDSHIP : When was that? When was the price higher?

A. Now, I do not know that I could say as to that, because I do not know what the other prices in Canada were.

MR. TILLEY : What have you in mind, what Order, or what time?

A. Well, at the time the Controller fixed the price, September 26th, 1918, of \$73.

Q. Yes? A. I think there was. 30

Q. Now, before you get away from that, the Controller fixed the price of \$73—was there an appeal from that? A. Yes, sir.

Q. And what price was ultimately fixed by the Paper Control Tribunal for that period? A. \$66.

Q. Now, then, was the \$66 price higher than the other manufacturers got? A. I think not, I am not sure about that.

Q. Your reference was to an Order made by Mr. Pringle? A. Yes, sir.

Q. And that Order was subsequently reviewed, was it, by the Appeal Court? A. It was.

Q. And the price changed? A. Yes, sir. 40

Q. And are you able to say whether or not the Court of Appeal allowed a higher price for Fort Frances than it did for the other mills? A. No, I am not.

MR. TILLEY : The orders, of course, will show.

Then you were asked about supplying your quota, and you were asked about the desirability of retaining your customers—did you ever have any paper delivered to you prior to the time that you referred to in your examination-in-

chief, when the Spanish River delivered some ? A. No, sir.

Q. About the beginning of 1920 ? A. Or late in 1919.

Q. I mean, just about the end of the year or the beginning of the following year ? A. Yes, sir.

Q. And what has been your attitude about taking paper ?

A. We were always ready and willing and anxious to take paper for shipment to the United States to exchange for paper that we would ship to Middle Western Canada.

MR. OSLER : Which would not interfere with his western customers.

10 MR. TILLEY : Q. Could you have taken paper for your Western customers in Canada ?

MR. HENDERSON : That was gone into in chief.

MR. TILLEY : Q. Could you have taken paper and satisfied your Western Canadian customers ? Could you have shipped it from the east or any place and satisfied your Western Canadian customers ?

A. Not unless the mill had equalized the freight rates.

Q. Not unless the mill had equalized the freight rate ? A. Yes, sir.

Q. Which you described before—and did you ever—you said you did not get any until the end of 1919, did you express a willingness to take paper
20 much earlier ? A. I certainly did, always more anxious to get paper than money.

MR. OSLER : This is particularly trifling beside re-examination.

MR. TILLEY : I submit not. My learned friend has laid a foundation to try and lay an argument for this.

MR. OSLER : The question of supply of paper was gone into in chief.

MR. TILLEY : What ?

MR. OSLER : If my friend will wait.

HIS LORDSHIP : I won't allow the matter to go in if it was gone into in chief, and the question of whether or not the paper was to be supplied or was
30 agreed to be accepted, was discussed to some extent, I am not prepared to say that it had gone as far as Mr. Tilley is going.

I will let this be answered.

WITNESS : Will you please ask me.

MR. TILLEY : Q. Was any reason given for not supplying you with paper or giving you the paper rather than the cash ?

MR. HENDERSON : Would it not be in writing, Mr. Tilley, correspondence with Mr. Pringle ?

WITNESS : Please repeat the question. I did not just get that.

MR. TILLEY : Q. Did any of the manufacturers, or did Mr. Pringle,
40 or any person—

HIS LORDSHIP : At present I have not heard of any request being made to the other manufacturers except one conversation at an early date with the representatives of Abitibi and Spanish River, but the correspondence or communications in regard to the supply took place apparently between the Plaintiff and the Paper Controller.

MR. TILLEY : I was putting it broadly.

HIS LORDSHIP : And did Mr. Pringle, or did the representatives of either

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of the Paper Companies, any of them, give you a reason for not furnishing you with paper rather than pay differential? A. Well, I cannot answer that by "yes" or "no." I have got to go back now to the time when Mr. Pringle and myself arranged, discussed this matter, whether we would get from Abitibi or Spanish River, paper or money.

MR. OSLER : Surely, my Lord.

MR. TILLEY : We have had that conversation? A. But when they did not give the money, and say they were willing to give the paper, when I had a final conference in New York, I offered an order for the paper, and they refused to supply it.

Q. Did they give reasons for refusing? A. I asked them to ship 6,000 tons of paper to Chicago, and they said they would not do it. They would pay the money rather than do it.

MR. OSLER : Might I ask the witness, is that at the meeting at which you say Mr. Alex. Smith and Mr. Meade were present in New York?

A. Yes, sir, both of them.

Q. The same thing over again? A. No, I was at that meeting, they refused to deliver paper, said they would pay the money, but evidently did not do it.

MR. TILLEY : That is all, thank you, Mr. Backus.

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MR. TILLEY : My Lord, I have the statement, and I think it has been checked as to prices in the United States and Canada, from March, 1917, to December, 1919.

HIS LORDSHIP : It might just as well go in as an Exhibit, and be in correct form.

MR. OSLER : What you have in your hand, is not what you had this morning?

MR. TILLEY : It is in better form. I had Mr. Clarkson's office type it off, he had facilities there. If my friend finds any mistake, we will correct it.

HIS LORDSHIP : However, you say, Mr. Thomson is satisfied?

MR. TILLEY : We sent one of those my friend has approved, and asked them to type it, and they have typed it and sent it back.

HIS LORDSHIP : The statement will go in as Exhibit 22, subject to being verified.

MR. OSLER : Subject to being verified.

HIS LORDSHIP : As much as you have already assented to.

MR. OSLER : And it goes in as being the prices simply fixed by the various orders referred to, and some of those orders are still in appeal, no decision ever rendered.

MR. TILLEY : I am putting this in as the price list of the Orders as they stand.

HIS LORDSHIP : As they stand for what—for the orders.

MR. OSLER : For whatever the Orders actually are.

HIS LORDSHIP : These orders are still binding, as whether they may ultimately be reversed or maintained on appeal.

10

20

30

40

MR. OSLER : Quite so. I do not want your Lordship to think the orders were standing as not appealed from.

HIS LORDSHIP : No. This is a statement of prices in Canada and the United States from what date to what date ?

MR. TILLEY : From the 1st of March, 1917, to the end of 1919.

MR. TILLEY : Then your Lordship will remember that a document that we described as Exhibit 4 was taken out of Exhibit 1 and marked separately. It is a document—

HIS LORDSHIP : Yes, pages 69 to 71 of Exhibit 1.

10 MR. TILLEY : That is so, and it is the document that Mr. Philips gave evidence on. I shall not try to re-state what he said, because I may have it inaccurately, but I propose, from the papers that have been brought here, from the Board of Commerce Office, papers that Mr. Pringle—I produce the original order signed by Mr. Pringle.

HIS LORDSHIP : That is to take the place of one that is in as exhibit 4 ?

MR. TILLEY : I thought we should leave Exhibit 4, there, there was oral testimony as to the presenting of a draft, and I thought we might just attach this to Exhibit 4.

HIS LORDSHIP : Put it in as 4-A.

20 EXHIBIT 4-A. Original order taken out of Mr. Pringle's papers, and dated 17th July, 1919.

MR. TILLEY : That is taken out of Mr. Pringle's papers.

MR. HENDERSON : I understand that is a document found among Mr. Pringle's papers, is that all, Mr. Tilley.

MR. TILLEY : I have just stated what it is.

MR. HENDERSON : You have taken it as an order ?

MR. TILLEY : If my friend is taking that stand, he must call the witness and prove it. My friend asked me if it were a document found among Mr. Pringle's papers ?

30 MR. TILLEY : I said that I did not—I do not see why I should state it again. I stated it fully.

HIS LORDSHIP : We have accepted without question a number of documents which have come out of Mr. Pringle's papers as produced here. Mr. Tilley stated that this is a document which is produced from the same source. Speaking for myself, I am prepared to accept the statement which any of the Counsel—

MR. HENDERSON : The only thing, my friend spoke of it as the original order signed by Mr. Pringle. A question will arise as to whether it is an effective order.

40 HIS LORDSHIP : As to what its effect is ?

MR. HENDERSON : That is all.

MR. OSLER : And as I understand it, that is said, it is a document found among Mr. Pringle's papers.

HIS LORDSHIP : And it is yet to be decided what the effect of it may be.

MR. OSLER : And that is as far as it goes in putting it in just now.

EXHIBIT No. 4-A. Order providing for payment on account of differentials for period from 1st January to 1st July, 1919.

MR. TILLEY : That is the case, my Lord.

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MR. OSLER : I will call Mr. Dawe.

Before opening our defence, my submission is that no case has been made out.

HIS LORDSHIP : That will be noted.

MR. OSLER : I put that formally before your Lordship, but I do not press it, of course, as I understand your Lordship's practice is to hear all the evidence.

HIS LORDSHIP : In a case of this kind, I will hear what the evidence may be. I reserve the consideration of your motion.

ARTHUR LIONEL DAWE, Sworn. Examined by MR. OSLER : 10

Q. Mr. Dawe, you were the Secretary of the Newsprint Manufacturers' Association, in 1917? A. Yes.

Q. When did you hold office? A. 1917 to 1921.

Q. At what date in 1917? A. The 1st of February, 1917, to September, 1921.

Q. And I think—have you got the Minute Book before you?

A. Yes, sir.

Q. Does that contain the minutes of the meetings of the Association— 20

HIS LORDSHIP : Are you putting the book in?

MR. OSLER : I was going to ask, my Lord, to put in copies.

MR. TILLEY : Was Mr. Backus of the Fort Frances Company a member?

MR. OSLER : Q. Was Mr. Backus a member, or rather the Fort Frances Company? A. You asked me a question about the minutes.

Q. Did you prepare the minutes? A. I kept the minutes, myself.

Q. Mr. Tilley asks if the Fort Frances Company was a member of the Association? A. Not to my knowledge.

Q. Did any of their representatives attend the meetings? A. Yes.

Q. That is, I suppose, on the occasions when they are shown? A. Yes, sir 30

Q. Do you know, Mr. Dawe, one way or the other, whether Mr. Backus or his company were members? A. Not to my knowledge, sir.

Q. Have you a roll of members? A. We had at that time, although I have not got it here—it was, of course, there was a roll made up on the basis of assessment of the membership of the Association. I do not know that Mr. Backus ever paid any assessment.

Q. Then, what was the first meeting that you have there?

MR. TILLEY : I submit that these meetings are not evidence against Mr. Backus or the Fort Frances Company on the statement of the witness.

HIS LORDSHIP : On the witness's statement I would suppose the minutes 40 of the Association would not be evidence against the Association, except the minutes may be evidence of what took place at the meetings at which the Plaintiff Company was represented.

MR. TILLEY : Oh, yes, I was not making my objection apply to a case where this witness would say, "I took the minutes and transcribed what took place in Mr. Backus' presence, or the presence of Mr. Dahlberg."

MR. OSLER : And he may use them to refresh his memory of what took place on those occasions.

MR. TILLEY : I do not know how what took place on other occasions would be evidence against us in any event.

HIS LORDSHIP : We will have to deal with that, when it arises.

MR. OSLER : When was the first meeting ? A. On the 21st of February, 1917.

Q. 1917 ? A. Yes.

Q. Was Mr. Backus present ? A. Mr. Backus was present.

10 Q. And that is the minute of which some considerable part was read to Mr. Backus this morning ? A. Yes, sir.

Q. What do you say whether or not that minute correctly states what took place ? A. I do say so, sir, it was a faithful effort to report the conversations that took place at that time.

HIS LORDSHIP : You took the minutes yourself ? A. I took the minutes myself.

MR. OSLER : Then I will put that in.

HIS LORDSHIP : Are you putting them in separately, or putting in all the Extracts as one Exhibit ?

20 MR. OSLER : I put the complete file of the minutes, in view of my friend's objection, I am not sure that I can ask your Lordship to put them in simply as they are, that is really for my learned friend to say.

MR. TILLEY : I have not really seen them. They have not been produced, although I think they should have been.

MR. OSLER : Why ?

MR. TILLEY : Because these are simply a memorandum of the Association, and we all have an interest.

MR. OSLER : I would not have thought so.

MR. TILLEY : I have not seen them.

30 HIS LORDSHIP : We will mark it as it progresses by just having the minutes of these meetings as they are referred to.

MR. OSLER : My friend Mr. Munnoch will check them off, and we can pass them in as they are referred to.

MR. OSLER : I do not think we need refer in detail to that minute.

HIS LORDSHIP : That will be Exhibit 23.

MR. OSLER : Mr. Backus suggested that three cents per pound, as a means of determining an arbitrary would be satisfactory to the western mills.

40 "Mr. Backus had stated that three cents per pound as a means of determining an arbitrary would be satisfactory to the Western mill. Mr. Chahoon, however, differed on this point, stating that an average price should be figured from export business."

"Mr. C. H. Smith then outlined the proposal to have the whole matter stand over until Monday the 26th instant."

And a resolution was passed assuring the Government that the mills would take care of Canadian publishers at a price of \$2.50 per hundred pounds.

HIS LORDSHIP : Is that the morning meeting ?

MR. OSLER : This was the morning meeting only.

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And the contracts were to start on March 1st, 1917, and to be enforced for three months.

And then the resolution carried.

“This meeting has appointed a Committee to work out the details of a distribution scheme. This Committee to report back to an adjourned meeting on Monday next, 26th of February.”

Then follows a record of the vote.

Fort Frances voting in favour, and a copy of the resolution was to be sent to Mr. Breadner, and then a committee of seven was named to meet at two o'clock to discuss ways and means of meeting the Government's requirements, and Mr. Backus was a member of that Committee. 10

Q. Then, have you mentioned, Mr. Dawe, a minute of the Special Committee Meeting? A. Yes, sir.

There were present Messrs. Geo. Chahoon, Jr., A. C. Champion, F. J. Campbell, E. W. Backus, J. A. Bothwell, and Mr. Sharpe, and A. L. Dawe. All the members of the Committee except Mr. McCarthy and C. H. Smith.

MR. TILLEY : Might I have a copy of the Minutes, to follow them?

MR. OSLER : Then, Mr. Sharpe was the Accountant, I suppose?

A. Yes, sir.

HIS LORDSHIP : That is all a part of Exhibit 23? 20

MR. OSLER : I think it might be a part of Exhibit 23.

HIS LORDSHIP : Then it was the meeting of the 21st of February, and also—

MR. OSLER : A meeting of the Special Committee held on the same date.

HIS LORDSHIP : On what date?

MR. OSLER : Of the same date, my Lord.

And at that meeting, Mr. Montgomery was invited into the meeting, and a tentative agreement form was drawn up for use by newsprint mills, and covering all details appertaining to the pooling and distributing of tonnage to Canadian consumers. 30

“This agreement to be submitted to the manufacturers at a general meeting to be held at 6 p.m. February 21st, for the approval”—that is the same date?

A. That is the same date.

Q. Then was there a meeting held that day? A. The general meeting.

Q. Yes? A. Yes, at six o'clock.

Q. Was Mr. Backus there? A. Mr. Backus was present, yes.

Q. I do not see his name, it is not important? A. It is in my copy.

Then, at that meeting, the tentative agreement was submitted by Mr. Montgomery. It was agreed that the committee already elected should stay in force and form a directorate if necessary of any company that should be formed, and arranged for operation of a pool, and distribution of any tonnage, and the meeting then adjourned. 40

HIS LORDSHIP : Was there any minute of the agreement being signed, witness? A. No, sir.

MR. HENDERSON : That comes later, my Lord.

MR. OSLER : I take it that all this goes in.

HIS LORDSHIP : The Minutes regarding relation to the meeting of February 21st, 1917.

MR. OSLER : Q. Then, was there a meeting on the 26th of February as the minutes suggested ? A. No, sir.

Q. When was the next meeting ? A. The next meeting was the 7th of March, but I did not take those minutes.

HIS LORDSHIP : Who took those ? A. They were taken by the Accountant, Mr. Sharpe.

10 Q. And Mr. Backus was not present ? A. No, Mr. Backus was not present.

MR. OSLER : I think perhaps I will have to call Mr. Sharpe to prove the Minutes of these Committee meetings, but perhaps I might conveniently refer to them as we go along on account of——

The action of the Federal——

His Lordship : Is Mr. Sharp here ?

Mr. Osler : Yes my Lord.

HIS LORDSHIP : If necessary, this witness can stand down and Mr. Sharpe could swear to having taken the minutes ?

20 MR. TILLEY : I do not object to my friend proceeding in the way he indicates.

HIS LORDSHIP : Mr. Tilley does not object to your going on, and Mr. Sharpe can confirm them afterwards.

MR. OSLER : I understood so, my Lord.

Q. "The action of the Federal Board Commission of the United States relative to fixing prices was discussed and it was finally decided that the agreement drafted by Mr. George Montgomery, K.C., be altered to allow of the abolishment of the suggested "ten dollar" differential until such time as an alteration in price conditions might render it necessary to reconsider the matter."

30 MR. TILLEY : What date was that ?

MR. OSLER : The 7th of March.

MR. TILLEY : Mr. Backus was not there.

MR. OSLER : He was a member of the Committee.

MR. TILLEY : That is not the point, as I understand it, the minutes of meetings at which he was present or was represented is evidence against us. The fact that he is on a committee and does not attend does not make what the others did evidence against my client.

MR. OSLER : Why ? He is on the Committee, surely.

MR. TILLEY : I submit not.

40 MR. OSLER : This is a record of what is done by the committee, of which he was a member and appointed at a meeting of manufacturers at which he was representing the Plaintiff Company.

HIS LORDSHIP : Mr. Osler, Mr. Backus, or Mr. Backus' Company was not a member of the Association. He was present at the meeting of the 21st of February, and took part in what went on, and therefore the Record of Minutes of what went on at that occasion would be evidence of what was done, evidence of whatever weight it is entitled to, but if the Committee, or if the

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Association, or if he, or even he being a member of the committee, and the committee met afterwards and in Mr. Backus' absence determined, "We will not carry out that arrangement, we will carry out something else," what they did on that occasion, how can evidence of what took place on that occasion—

MR. OSLER : He puts it in this way. He says they reached an agreement. Now the minutes, so far as he was there, show clearly no agreement.

HIS LORDSHIP : That is, of the 21st of February, they stand by themselves.

MR. OSLER : The subsequent minute shows the course of the transaction, and that is what took place at the meeting of a committee of which he was a member.

HIS LORDSHIP : The representatives of other companies cannot bind his company by something they did. For instance, the committee might decide, we won't carry out that arrangement, we will arrange that the Fort Frances Company will supply all this newsprint to the Western Canadian publishers, and we won't pay any differential on it." It would be idle to contend that his company would be bound.

MR. OSLER : That is quite true, and it may easily be that these minutes cannot be used to establish affirmatively the fact of an agreement.

His Lordship ; Or if there had been an agreement that this committee abrogated it.

MR. OSLER : That would be so.

Then we have the intermediate course, which is what we have to deal with here, steps taken looking towards an agreement which is consummated. Now, we ought to show the course of the transaction.

HIS LORDSHIP : I am of opinion it is not evidence against the Plaintiff Company. It may be evidence of what these people, the others, decided at that time, or they would wish to do. Finally, I will admit evidence of what was actually done by them as showing their attitude, not as in any way binding upon the Plaintiff, subject to the objection raised to its going in.

MR. OSLER : Q. Then the last paragraph that I was reading, when my friend took his objection, March 7th—

"On motion proposed and carried, Messrs. Chahoon, Meade, Campion and Sharpe were named as a special committee to consider the draft agreement, and to make such necessary alterations as seemed advisable because of the change in the United States price."

MR. TILLEY : Is that a separate Exhibit, my Lord ?

HIS LORDSHIP : That will have to go in as a separate Exhibit, because it is objected to.

MR. OSLER : It will be Exhibit 24 then.

And then the next is open to the same objection.

HIS LORDSHIP : That meeting was on the 7th of March, was it ?

MR. OSLER : On the 7th of March, my Lord.

Q. Then, is your next minute on the 8th of March, Mr. Dawe ? A. Yes.

Q. That is again a meeting of a special committee, Mr. Sharpe again Secretary ? A. Yes.

Q. That is not one—you did not take the minute of that ?

A. I did not take the minute.

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HIS LORDSHIP : Is there anything in that you want reference to ?

MR. OSLER : Yes, my Lord, in the same way as the last one.

HIS LORDSHIP : Attach it to the last one.

MR. OSLER : "The draft agreement drawn up by Mr. George Montgomery, K.C., relative to the pooling of losses, etc., was carefully gone over clause by clause, and certain changes were made and agreed to as essential to the value of the document, under the changed price conditions in the United States.

10 "It is agreed that Mr. Sharp should submit the wording of the clauses so changed to Mr. Montgomery, to be passed upon by him and made effective in the agreement.

"It was decided at the completion of the re-draft of the agreement, that two copies should be sent to each of the Canadian Newsprint manufacturers with a letter requesting that one copy be signed and returned directly to Mr. Breadner at Ottawa. It was also decided that Mr. Chahoon should send a copy of the redraft of the agreement to the Minister at Ottawa, together with a list of the manufacturers to whom copies have been sent for signature."

MR. TILLEY : Can he say that that was sent to Mr. Backus ?

20 MR. OSLER : Q. Can you say, Mr. Dawe, whether that was sent to Mr. Backus ? A. I cannot say.

MR. OSLER : Will that be part of Exhibit 24 ?

HIS LORDSHIP : These two may be in as Exhibit 24.

MR. OSLER : Q. Then, I think there are two more, before me, of April 5th, another meeting of the special committee, Mr. Dawe ? A. Yes.

Q. Were you there ? A. I was there.

Q. You took this meeting ? A. I took this meeting.

HIS LORDSHIP : What is the date ?

MR. OSLER : The 5th of April, 1917.

30 "The question of finding some means of distributing the Canadian tonnage, as directed by the Government, was discussed, but no solution could be found to present to the general meeting. It was therefore agreed to communicate with Mr. Breadner, advising him of the situation, and asking that a representative of the Government be sent down to meet the Committee. Mr. Breadner stated (on the telephone) that he would send Mr. Pringle. The meeting then adjourned after arranging for an evening session."

MR. OSLER : That is part of Exhibit 24, I suppose, and then the same day, Thursday evening, April 5th, 1917—was that same day ? A. Thursday evening, the 5th, the same day.

40 Q. There were several members, Mr. Chahoon, Campion, Campbell, McCarthy, Meade, Bothwell, Sharpe, and the Secretary—that is your minute again. A. Yes, and also Mr. Pringle.

Q. "Mr. Chahoon outlined to Mr. Pringle the situation regarding distribution of the percentage of tonnage required for Canadian consumption.

"Mr. Pringle agreed as to the difficulties that had been met, but finally suggested that if the manufacturers would agree, he would enforce Orders-in-Council, so as to make it legally possible for the manufacturers to retain sufficient tonnage from their export contracts to take care of the home con-

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sumption. Further than this, he would recommend to the Minister of Finance that by the end of May the newspapers be notified that the Government considered that they had fulfilled their obligations, and that negotiations would have to be carried on between the officials and the manufacturers direct.

“Mr. Pringle signified his willingness of being present at the general meeting, to be held Friday, the 6th of April.

“The meeting then adjourned.”

MR. OSLER : Then, on the 6th of April, the minute of another General Meeting, again, I think, Mr. Backus was not present. That will be part of Exhibit 24, also. 10

“Mr. Chahoon outlined the position to date showing the difficulties met in attempting to arrange an equitable distribution of tonnage, inasmuch as no export tonnage can be legally held back until manufacturers are compelled to do so by the Government, but suggested that Orders-in-Council might be put in force.

“Mr. Pringle outlined his suggestion as to the enforcement of orders-in-council and the appointment of a commission, but stated that he was not in a position to give any guarantee as to what would be done at the end of the three months, ending the 31st of May. He hoped, however, that the mills would come to some arrangement and arrange for proper distribution until that time. He was of the opinion that the Government would take the position at this time that supply and demand must regulate the price of newsprint, and that the newspapers should so put their house in order as to be able to absorb the natural increase in price. 20

“Mr. Chahoon stated that at the present time certain mills are carrying the load for the remainder, and would like to know if the Government would give these mills some assistance at the end of the three months ending the 31st of May. Inquiry among those mills that were “short” of tonnage and also those mills that were “long” of tonnage showed that it was the desire of those present to abide by the decision of the committee, and it was then announced by Mr. Chahoon that Laurentide and Belgo Companies had agreed to continue supplying up to the 31st of May, the same amount of Canadian tonnage as supplied for the same period in 1916. 30

“The two mills carrying an overload—namely, The Canada Paper Company and the E. B. Eddy Company, will be recompensed by the division of their over-tonnage amongst the four following mills : J. R. Booth, Price Bros., Donnacona, and St. Maurice. It was agreed by the three latter mills that the easiest method of settling the distribution would be by the payment of a cash differential of \$10 per ton to the Canada Paper Company and the E. B. Eddy Company. 40

“The matter of Western distribution, on account of the absence of Mr. Backus representing the Fort Frances Company, did not present any easy solution, and the matter of distribution was left to Mr. Pringle, and the Secretary was instructed to advise Mr. Backus accordingly.”

Q. Now, you were present at that meeting, Mr. Dawe, I think ?

A. Yes.

Q. And you took that minute then, did you advise Mr. Backus.

- A. Yes, I wired Mr. Backus.
- Q. That is the earlier—have you got that, Mr. Tilley, of the 6th of April or thereabouts?
- MR. TILLEY : It is in your productions.
- MR. OSLER : There was a telegram from Mr. Backus to the defendant of April, rather indicating that he had got such a telegram.
- MR. TILLEY : I have not a second copy, but if you have a copy?
- MR. OSLER : No, I have not it.
- MR. HENDERSON : Just the fact.
- 10 MR. OSLER : Mr. Backus evidently received a message.
- MR. TILLEY : That indicates the message to him pretty clearly.
- MR. OSLER : I thought you had the message there?
- MR. TILLEY : If I have it, I will give it to you.
- MR. OSLER : Mr. Montgomery calls my attention to the fact that the contents of the wire from the Canadian Pulp and Paper Association is quoted in full in the letter from Mr. Backus to Pringle and Thomson, dated 7th April, 1917, (Exhibit 18) which went in this morning.
- MR. TILLEY : As Exhibit No. 18, and it was sent the same day as the telegram.
- 20 HIS LORDSHIP : That is the letter in which he referred to monthly losses of \$10,000, April 7th, 1917, to Pringle & Thomson.
- MR. OSLER : Q. Then, Mr. Dawe, what is your next Minute?
- A. May 7th, 1917, and unless my friend wants it—
- MR. TILLEY : What is that?
- MR. OSLER : The Minute of May 7th, 1917—I thought you had copies?
- MR. TILLEY : I am just getting them, it is a little delayed. Was Mr. Backus there? Was there any person representing the Fort Frances Company present?
- MR. OSLER : I do not think there is anything of any consequence in that
- 30 at all, and I do not think Mr. Backus was there.
- MR. HENDERSON : No, the Fort Frances Company was not represented at that meeting.
- MR. TILLEY : You are making it a part of Exhibit 24.
- MR. OSLER : I was not putting it in at all, unless you want it in.
- MR. TILLEY : I do not want it in.
- MR. OSLER : And there was another meeting on the 1st of February, 1918, and I think the same thing applies—
- Q. Was the first of February the next meeting? A. No, there was another meeting before that one.
- 40 Q. Of what date? A. Of the 10th of January.
- MR. OSLER : You are quite right, it has got precedence in my brief—transposed in my brief.
- Mr. Backus was not there.
- “After considerable discussion on the question of an equitable distribution of the burden imposed upon the Canadian mills by the fixed price of \$50 per ton, on Canadian business, it was moved by Mr. George Chahoon, Jr., seconded by Mr. Thomas, that the whole matter of adjustment be referred

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back to Mr. R. A. Pringle, K.C. ; the case to be presented by Messrs. Clarkson and Sharpe."

MR. TILLEY : I am afraid I lost track, did you put in that telegram of April 7th?

MR. OSLER : No, I noted that was quoted in full in Exhibit 18.

MR. TILLEY : I think you are misunderstanding just a little, the telegram of April 7th is a telegram sent by Mr. Backus.

MR. OSLER : That went in this morning?

MR. TILLEY : No, the letter went in. On the same day he sent a telegram which you refer to, but I do not know that you put it in. 10

MR. OSLER : I thought it was attached to the letter. The letter says, "I herewith enclose confirmation of telegram sent you this morning."

MR. TILLEY : That, then, is part of Exhibit 18.

MR. OSLER : Q. This Minute on the 10th January, 1918, is the next, and that says, "After considerable discussion on the question of an equitable distribution of the burden imposed on the Canadian Mills by the fixed price of \$50 per ton on Canadian business, it was moved by Mr. George Chahoon, Jr., seconded by Mr. Thomas, that the whole matter of adjustment by referred back to Mr. R. A. Pringle, K.C., the case to be presented by Messrs. Clarkson and Sharpe." 20

That will be part of Exhibit 24.

HIS LORDSHIP : Is that a meeting of the Committee, or of the Association?

MR. OSLER : That is of the Association, my Lord.

MR. TILLEY : It is dated the 10th of January, 1918.

MR. OSLER : Q. Then the next is the Minute of the 1st of February, 1918, which again, I do not think contains anything which is of interest to us here.

The next Minute is of the 19th of February, Mr. Dawe? A. The 19th of February. 30

MR. OSLER : And that, again, I think contains nothing that is useful here. And then on the 12th of March, 1918? A. On the 12th of March.

Q. This is a meeting of the newsprint section, Canadian Pulp and Paper Association. "It was then considered advisable that the Manufacturers should continue to supply their customers until the 25th of March,—being the date set for the next hearing of the Commission."

MR. OSLER : Fort Frances was at that Meeting, came in later.

At this meeting, my Lord, it is sated, "Representatives of the Abitibi Company, Belgo, Booth, Brompton, Canada Paper, Donnacona, Eddy, Laurentide, Price, Spanish River, St. Maurice ; later the Fort Frances Com- 40
pany."

HIS LORDSHIP : That can go in as part of Exhibit 23.

MR. TILLEY : It is rather ambiguous, I do not know who it is.

MR. OSLER : As a matter of fact, the last paragraph is the only one, "The question of differential was then brought forward, and after considerable discussion it was decided to take the question up at the meeting to be held on the following morning."

MR. HENDERSON : Then Fort Frances was present.

MR. OSLER : And Fort Frances, represented by Mr. Dahlberg was present—that is the meeting which was referred to the next morning.

“The question of differential was discussed at great length which resulted in a proposal by V. Mitchell of the following tentative agreement,”—

And then follows an agreement which purports to be signed by some of the mills, and which in fact, provided, I think I need not read it in detail, to your Lordship, that the account prepared, showing differentials up to the 30th December, 1917, be settled on the basis of the receiving mills accepting
 10 fifty per cent., and the short mills paying fifty per cent., and all bills up to the 31st of January, should be settled on the same basis, and “this agreement is subject to the elimination of any contribution to the News Pulp and Paper Company and to the elimination of the Crabtree Company as a contributing mill, and also is subject to retention as a contributing mill of the Ontario Paper Company, the statement up to September 30th, 1917, to be adjusted accordingly by Messrs. Clarkson and Sharp.

“This agreement is binding upon all the mills signatory hereto, notwithstanding the fact that it may not be signed by all the mills named in the said statement of September 30th, 1917.”

20 HIS LORDSHIP : That covered differentials up to the 31st December, and provided for the tentative arrangement up to the end of January, 1918.

MR. OSLER : Quite so, my Lord.

Q. By the way, Mr. Dawe, you took this Minute yourself? A. Yes.

Q. And then the Minute goes on, “Mr. Dahlberg, for the Fort Frances Company stated that they would not accept the proposal. Mr. Taylor for the E. B. Eddy Company stated that it would be necessary for him to confer with Mr. Millen, and his Board of Directors before stating the Eddy Company’s position. Mr. Gordon McDougall, K.C., stated for the Donnacona Paper Company, Limited, that Mr. McKee had no authority to definitely
 30 agree or disagree until the matter had been submitted to his Board of Directors.”

HIS LORDSHIP : At any rate, it was not agreed to by the Plaintiff?

MR. OSLER : It was not agreed to by the Plaintiff. My attention was called to the fact, my Lord, that the agreement was ultimately signed by more than those whose names appeared in the Minutes.

MR. TILLEY : As it is in now, it just has the names that were on the one—I tried to follow, I think.

MR. OSLER : I suppose so.

MR. KILMER : I take it that goes in as part of Exhibit 23.

40 HIS LORDSHIP : As part of Exhibit 23, Minute of Meeting at which representatives of the Plaintiffs were present would be embodied in Exhibit 23, the others in Exhibit 24.

MR. OSLER : Q. Then, on the 26th of April, 1918, is that the next meeting—the Fort Frances was not present there, apparently? A. No.

Q. That would be part of Exhibit 24—

“The Minutes of the previous Meeting were read and passed. Mr. G. H.

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Montgomery then outlined the positions of the Manufacturers at the end of the present Order-in-Council, expiring April 30th.

“He also gave an account of the new Order-in-Council which the Government had drawn up from the first of May until the first of June. While this did not meet with unanimous approval it was nevertheless decided to carry on rather than cause the Government any embarrassment at this very critical time. The mills present agreed that the question of differential should not be considered after the first of February, 1918. In this connection Mr. Sharpe stated that the amounts involved in the distribution of the differential were being sent to each mill and he hoped that there would be a speedy readjustment of this difficulty. 10

HIS LORDSHIP : What is that date after which the differential should not be considered?

MR. OSLER : That would be the first of February, 1918, my Lord.

“In this connection Mr. Sharpe stated that the amounts involved in the distribution of the differential were being sent to each mill, and he hoped that there would be a speedy readjustment of this difficulty.

“In connection with the appointment of an appeal court from the final decision of the Paper Controller, attention was drawn to the correspondence that had passed between Mr. G. H. Montgomery and the Prime Minister. It was felt that the sentiments expressed therein were sufficient guarantee of the Government’s good faith in this matter.” 20

Then the meeting of the newsprint manufacturers held in Ottawa on the 14th of August, 1918—this will be part of Exhibit 23. Mr. Dahlberg was present—no, I do not know—can you tell us whether Mr. Dahlberg was present? A. No, Mr. Dahlberg was not present.

MR. OSLER : Then it will be part of Exhibit 24.

“On Motion of Mr. F. J. Campbell, Mr. P. B. Wilson took the chair. Mr. George H. Montgomery then outlined to the manufacturers their position under the drafted Order-in-Council and pointing out that Messrs. Sharp and Clarkson had last April, 1918, arrived at an agreement respecting the differential for the months of March–September, 1917, and the Company whom the present proposed Order-in-Council was to benefit had not raised any objection to the amount. 30

“Mr. Dahlberg, however, now takes the stand that they are entitled to \$15.00 differential plus a rebate on duty of \$3.18 per ton.”

HIS LORDSHIP : What was that date in August?

MR. OSLER : That was the 14th August, 1918, my Lord.

Then on the 11th September, again, I think the Plaintiffs were not represented (that will be part of Exhibit 24). 40

“Mr. Montgomery read a telegram sent by Sir William Price to Controller Pringle to the effect that Price Bros., Ltd., had withdrawn from the investigation and would cease to supply paper at the present government price in Canada on October 1st.

“Mr. Montgomery gave the details of a conference held between Sir Thomas White, Minister of Finance, and himself, in Montreal on September 9th. He said that Sir Thomas had suggested that if the manufacturers were

dissatisfied with the Government's action in confirming Controller Pringle's Order relative to the claims of the Fort Frances Pulp and Paper Company in connection with the differential awards, they might move for a re-hearing before Mr. Pringle."

HIS LORDSHIP : What is that Award?

MR. OSLER : That refers, my Lord, I think, to the Order of the 6th August, 1918, the payment of \$100,000, which covered Fort Frances, I think the date of this Minute is the 11th of September. Your Lordship will understand there is no express reference to the date, but that was, and I am assuming
10 from the tenor of the Minute, that is what it refers to. There is nothing else it can refer to.

Then I see nothing else in the remainder of that Minute.

Q. And in the next Minute, Mr. Dawe, I think is of the 8th October, 1918.

A. The 8th of October, 1918.

MR. OSLER : Again, I do not think——

Mr. Henderson points out I should have read the last paragraph of the previous Minute.

"Mr. Sharpe stated that he proposed to send out assessment notices to
20 the various manufacturers affected for amounts due on differential on the basis of \$60 a ton, covering the period October 1st, 1917, to January 31st, 1918, payments to be made on the basis of fifty per cent. of \$12.50"—that evidently was in conformity with the agreement of the 13th of March, 1918.

HIS LORDSHIP : That did not cover the Fort Frances people, that was only the eastern people.

MR. OSLER : No, my Lord, that was apart from them.

Then on the 8th October, 1918, this is part of Exhibit 24. "Mr. Mont-
gomery gave an account of developments since the announcement of the new
price for newsprint fixed by Controller Pringle on September 25th including the
30 efforts of the Canadian Press Association to persuade the Government to inter-
vene with the Order. He stated that Controller Pringle had called a meet-
ing for Thursday, October 10th, in Ottawa, to hear arguments on a motion
to be presented by the Publishers asking for the suspension of the Order, insofar
as it related to retroactive payments"—Your Lordship will observe that Order,
which is in fact dated the 26th of October is sometimes referred to as the 25th.
There appears to have been some confusion in the date, but the correct date,
I think is the 26th.

"Mr. Montgomery also read a letter from Controller Pringle, and another
from the Canadian War Trade Board relative to the unpaid claim of the Fort
40 Frances Pulp and Paper Company for their share of the differential awards.
The Controller's letter was to the effect that unless payments were made at
once, he would be under the necessity of resorting to 'drastic measures' to
compel payment. The War Trade Board's letter was a notification that the
Board had been instructed to refuse export licenses to companies failing to
comply with the Controller's order."

MR. OSLER : That is the order that went to Appeal.

"Mr. Montgomery, as Counsel for the Section, asked for instructions in

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regard to these matters, as well as on the general question of taking an appeal from Controller Pringle's Order fixing the price at \$69 per ton.

"After much discussion of the differential question, it was

"Moved by Mr. Thomas and seconded by Mr. Sabbatan, and RE-SOLVED, that for the purpose of avoiding dissension between the manufacturers of newsprint paper, that the contributing mills offer to pay to the Fort Frances Pulp and Paper Company, Limited, the amount shown in the statement as prepared by Mr. Sharp covering the periods from March 1st, 1917, to January 31st, 1918, which have been made up on the basis of the settlement agreed upon between the other manufacturers, and that the rights of the Fort Frances Company to any further amount is left for the decision of the Paper Control Tribunal, to whom it has been appealed, such payments to be made without prejudice to the claims of any of the parties and to be made only upon the Fort Frances Company agreeing to accept payment upon the above conditions, and that Mr. Henderson be requested to submit this offer to the Fort Frances Company. 10

"Upon a vote being taken, the following companies, by their representatives, voted in favour of the motion: The Abitibi Power and Paper Co., Limited, J. R. Booth, The Canada Paper Company, Limited, the Donnacona Paper Company, Limited, The Laurentide Company, Limited, Price Brothers, Limited, the St. Maurice Paper Company, the Spanish River Pulp and Paper Mills. 20

One reserved his vote and "the Secretary was instructed to obtain the vote of the Brompton Pulp and Paper Company, Limited, from Mr. Bothwell, as they were not represented at the meeting."

Then a few paragraphs further down, "A general discussion of the question of the differentials followed . . . was deferred." 12

Now I see the next meeting was the 31st of January, 1919, and I see nothing there. Mr. McLaurin was present, but I see nothing that we need trouble with. 30

Then the next meeting was on February 11th, 1919, I pass over that also, I think.

And on September 26th, 1919, I think we can pass over that.

Then on the 27th November, 1919, a clause towards the end—this will be also part of Exhibit No. 24—

"Mr. Millen desired to put on record that the Eddy Company are willing to supply their quota at the price fixed by the Government and will not supply any more than their share.

"Mr. Mitchell stated that the Abitibi Power and Paper Company have already placed themselves on record as being willing to supply their quota at any price fixed by the Government." 40

Then the previous paragraph which Mr. Henderson called attention to,

"Mr. H. I. Thomas outlined the position taken by Mr. Booth, in view of the changed market conditions and that in agreeing to a Canadian price of \$75 he did so on the basis of the American price of \$80.

"The market situation as changed, Mr. Booth's contention is that it should have a decided bearing on a revised Canadian price. Telegrams were

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read from the Donnaconna, Brompton, Price and the Powell R. Companies dissenting from the proposed order of the Paper Controller."

And then "after some discussion, Mr. Victor Mitchell suggested that the meeting consider a resolution that would be the basis for Mr. Montgomery to negotiate with Mr. Pringle and it was proposed by Mr. Mitchell, seconded by Mr. Millen,

10 "That the proposed order be amended so as to provide that the requirements of the Eastern Canada newspaper publishers for the first six months of 1920 shall be furnished by the Eastern mills pro rata according to their respective capacities at the price mentioned in the proposed order.

"That there should be no differentials and each mill shall be bound to furnish its quota of paper, and, further, that no newspaper publisher shall be entitled to newsprint paper beyond its actual consumption for the corresponding months of 1919.

"The following mills voted in favour:—E. B. Eddy Co., Ltd; St. Maurice Paper Company; Abitibi Power and Paper Company; Canada Paper Company.

"The Ontario Paper Company and J. R. Booth did not vote."

Then on the 15th of December, 1919, another meeting—I do not think I need deal with that.

20 On the 30th of January, 1920—again I think this is a part of Exhibit 24—Mr. Backus not being present.

"The Secretary presented a copy of an Order, issued by R. A. Pringle, Paper Controller, dated at Toronto, January 23rd, 1920, and received by the Section's legal adviser, Mr. George H. Montgomery, K.C., ordering and directing G. T. Clarkson of Toronto prepare statements showing the differentials to which the different mills who have supplied a greater percentage of Canadian tonnage than properly attributable to them are entitled, said statements to cover the full period from 1st March, 1917, down to January 1st, 1920, and ordering and directing the mills to supply the necessary information when
30 called upon."

HIS LORDSHIP : In your reading of that, Mr. Osler, if I heard you aright, you referred to an order made in December, 1920, and this was on the 30th of January, 1920.

MR. OSLER : January 23rd, I should have said. That was an order made the day after Mr. Pringle's resignation and that no doubt, the day after the acceptance, I have the resignation itself, dated 16th January, and no doubt that is what is referred to in the statement in consequence of the public announcement having been made of the change in the personnel of the Control-
40 lership ;

That is part of Exhibit Number 24.

HIS LORDSHIP : Now you say the 23rd of January, 1920, the day on which this Order purports to have been made, was the day after Mr. Pringle's resignation had been accepted?

MR. OSLER : Yes, my Lord.

HIS LORDSHIP : And that is assented to?

MR. TILLEY : It is purporting, if your Lordship will look at Exhibit 1, there is some argument.

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HIS LORDSHIP : I do not want it now.

MR. TILLEY : There was an Order-in-Council that appointed another Controller, and that is what my friend refers to as an acceptance of his resignation.

MR. OSLER : The Order-in-Council did accept his resignation. I quite agree we should not attempt to argue it at this stage.

HIS LORDSHIP : If anything is assented to by both Counsel, I want to know.

MR. OSLER : Your Lordship would have been astonished.

MR. TILLEY : Did you stop putting in the Exhibits? 10

MR. OSLER : I have enough, unless you wanted to put in something else.

Q. Now, Mr. Dawe, can you tell me, having refreshed your memory by looking at these Minutes, can you tell me whether there was an agreement made—

MR. TILLEY : I object to the witness making any statement unless he is going outside the Minutes.

HIS LORDSHIP : He says the Minutes were faithfully taken, a faithful record, so far as he knows of what happened.

MR. OSLER : Quite so, but I submit I may put the question in general terms to the witness, was there a concluded agreement between the mills in 20 the month of February, 1917?

HIS LORDSHIP : The witness would have to say first, if he has any knowledge apart from what took place in the Minutes.

Q. Have you any knowledge of what took place among the members of the Association or their representatives who were present at these meetings, except what are in the Minutes? A. Of a casual nature.

Q. Are you able to speak from memory as to anything that took place, or something that did not take place? A. Yes, I can.

HIS LORDSHIP : I think I will allow the question subject to the objection, and see what he has to say about it. 30

MR. OSLER : Q. Then what have you to say, Mr. Dawe, about there having been or not having been an agreement arrived at with reference to this newsprint control?

HIS LORDSHIP : Other than as disclosed?

A. There was none.

MR. TILLEY : To say there was none is rather broad.

HIS LORDSHIP : There was none within your knowledge, you mean?

MR. HENDERSON : Did the Minutes note all that took place?

WITNESS : You are asking me about the parties who were present at the first meeting, are you not? 40

MR. OSLER : There was no agreement at all arrived at.

Q. Then, Mr. Dawe, do you know anything with reference to the payment of the moneys ordered to be paid by Mr. Pringle under his first order of the 6th of August, 1918, of the various mills? A. Speaking from memory, I have some recollection of what went on at that time.

Q. Now, will you tell me what you know about that? A. Well, it must of necessity be rather sketchy, because I am depending entirely on my memory.

Q. But tell me what your memory is? A. At the time the demand was made by me, I cannot fix the actual date, but I remember the circumstances, because we were required by the Acting—by the Deputy Minister of Customs, to prove to his satisfaction that all of the money mentioned in the Order, in his possession, Mr. McDougall was the Deputy Commissioner—

MR. HENDERSON : He was called the Commissioner of Customs, not Deputy.

WITNESS : And he insisted on that particular day, which I cannot give, unless the money was in his hands, he would embargo all paper from all mills—
10 in other words, if one member was remiss in making his payment all would suffer, and I recollect a rather busy afternoon in persuading the mills that they would have to bring their cheques, or send them so as to be there on time.

HIS LORDSHIP : Are these the amounts that made up the \$100,000? Is that what you are referring to, Mr. Dawe? A. Yes.

MR. OSLER : I was just going to ask you, and what was actually done, in fact?

A. Well, the money was all delivered, because there was no embargo placed on the paper.

HIS LORDSHIP : What was the date you said by which the \$100,000 was
20 to be paid?

A. I cannot tell you.

HIS LORDSHIP : By some certain date, which you cannot recall.

MR. OSLER : That is all, thank you. Do you know who the cheques were paid to, Mr. Dawe?

A. They were paid, some were paid to Mr. Pringle, and some were made to the Order of the Government in the person of the Commissioner.

Q. To the Commissioner, you mean Mr. McDougall, the Commissioner of Customs? A. Yes.

CROSS-EXAMINED : BY MR. TILLEY.

30 Q. Mr. Dawe, how do you know how the cheques were payable?

A. Because I saw them.

Q. You saw all the cheques? A. Not all of them.

Q. Did you see some of the cheques? A. Some of the cheques.

Q. Whose cheques did you see? A. I saw the Donnacona.

Q. How was it payable? A. I do not know.

Q. What other one? A. I saw the Spanish River.

Q. How was it payable? A. That was payable to Mr. Pringle, c/o
the Commissioner of Customs, that is, it was payable to the Order of Mr.
40 Pringle in care of the Commissioner of Customs—that is the way the cheque was made? It was worded along those lines I cannot give you the exact words.

MR. HENDERSON : We have the cheque here.

MR. TILLEY : What next? A. St. Maurice.

Q. How was that payable? A. I do not know.

Q. When did you see the Spanish River cheque? A. The last time I saw it was last week.

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Q. Last week, did you ever see it before? A. No, I do not recall that I did.

Q. Mr. Dawe, you are supposed to be giving evidence of what you knew at the time—

HIS LORDSHIP : I understood that is what he was swearing to.

MR. TILLEY : Q. I did not suppose you were shown paper to come into the witness box? A. No, you do not understand. I said these cheques were shown to me at the time.

Q. But you do not remember whether you saw the Spanish River—you do not remember seeing the Spanish River before last week? A. I do not recall it, no. 10

Q. And do you say what ones you saw at the time? A. I cannot recall.

Q. You cannot recall any individual cheques? A. No, I saw two or three.

Q. Nor do you know whether any particular company made the payment, or to whom? A. Only this one that I spoke of.

Q. Which one? A. The Spanish River.

Q. And that is because you saw it last week? A. Last week.

Q. Other than that, you do not know? A. I do not know.

Q. But your impression is that the bulk of it was paid to the Commissioner of Customs? A. I cannot say, because I cannot recollect it. 20

Q. Either the Commissioner of Customs, or Mr. Pringle? A. I cannot answer that.

Q. Then, we can eliminate your evidence as to how or to whom any payment was made, except the Spanish River and you think you based that on seeing the cheque recently? A. Yes.

Q. Then, were you in touch with the negotiations, or with the Minister of Customs, or the Commissioner of Customs, or the Department of the Government that was threatening the embargo? A. I was in touch with the Commissioner. 30

Q. You had personal interviews with him, I gather? A. Yes, sir.

Q. And he made it clear to you that unless the \$100,000 was paid before a certain date, there would be an embargo against all your companies?

A. That is my recollection.

Q. When you represent that as your recollection, you cannot remember the date? A. No, sir.

Q. You only assume, I suppose, that the payments were made because the embargo was not placed on the mills? A. I made that clear, Sir, before.

Q. That is right, is it? A. Yes.

Q. It is the— 40

HIS LORDSHIP : In his answer in chief, Mr. Tilley, as I took it, he said that the Commissioner said that unless they made these payments that he would place the embargo against all the mills, and that the embargo was not placed, and therefore the money must have been paid."

MR. TILLEY : Yes, my Lord.

Q. Now, Mr. Dawe, when you say all the mills, you mean all the mills that were noted in Mr. Pringle's Order? A. All the mills in the order.

Q. And your mills then apparently were refusing to pay, were they?

A. My mill?

Q. Yes, the mills of your Association, they were refusing to pay, were they? A. Some were hesitant, if I recollect it correctly.

Q. Well, what happened, when they were unwilling to pay, and indicated that, did they, is that right? You are nodding? A. I do not quite get your question.

Q. Were they refusing to pay, or were they hesitating—I will put that as a question?

10 MR. HENDERSON : They had launched appeals.

WITNESS : I would say they were hesitating.

MR. TILLEY : If my friend would please not interrupt, I would like to discuss it with the witness a bit—

Q. What was the position? A. They were hesitating.

Q. The mills, or the companies that were in your Association, they were from time to time refusing to carry out the Controller's Orders, were they not—you remember, unless they got a better price. At one time, they were refusing to settle? A. I can only recollect what took place in the Minutes.

20 Q. You cannot recall except what is in the Minutes? A. I can recall one instance.

Q. I want you to answer my question, whether the companies in the Association were or were not refusing at times to carry out the Controller's Orders, or refusing to supply paper except on terms you indicate? A. I think there was one case is all I recollect.

Q. Do you mean one company? A. Yes.

Q. Which one? A. The Price Company.

Q. In what year? A. If I might refresh my memory.

Q. It is indicated in the Minutes? A. Yes.

30 Q. Did they not take a very pronounced stand at one time, that unless there was an appeal court established so that the appeal would not go to the Governor-in-Council, that they would refuse to carry out the Controller's Orders? A. I do not recall.

Q. You do not recall? A. No.

Q. You do not recall any determined effort to get a tribunal of that kind established and pressure brought to bear in order to secure it? A. If it did sir, it appears in the Minutes—

Q. What meeting—you do not know anything of it yourself? A. No, sir, because I see nothing of that in the Minutes.

40 Q. Then you say Mr. Backus was appointed to this Committee, apparently the Committee held a great many sessions afterwards.

What are these meetings put in, are they the Minutes of the Committee, or the Minutes of the Association? A. They are Minutes of the Association, and one or two Minutes which I signed put in as being Minutes of the Committee—I was not present at two of them, I was present at some of the others.

Q. Now, did you ever send out a notice to Mr. Backus or his company to attend the different meetings? A. Mr. Backus was at the meeting of the 21st—

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HIS LORDSHIP : Answer the question he asks you—do not answer some other question. He asked you if you sent out notices to Backus? A. No.

MR. TILLEY : Of the meetings of the Association? A. Yes.

Q. When? A. Approximately two days before the meeting was called, on the 21st.

Q. Did you send any notices for any subsequent meetings, after the 21st of February? A. Mr. Backus received it, yes.

Q. What notices? A. Such notices as we sent to the other newsprint manufacturers.

Q. In cases of Committee meetings? A. To the best of my knowledge. 10

Q. That is, he was on the list? A. Yes.

Q. Of persons to whom notices were to be sent? A. Yes, sir.

HIS LORDSHIP : That is, of the Association meetings.

MR. TILLEY : Q. You are quite sure of that? A. To the best of my knowledge.

Q. After that particular date, he was not a member? A. He was not, we passed it by invitation.

Q. Did you then notify him of every meeting? A. To the best of my knowledge, yes, sir.

Q. Do you know anything about the figures of tonnage for 1917 as com- 20
pared with 1916? A. No, sir.

Q. That is the requirements of the Canadian Publishers? A. No, sir.

Q. You do not know whether it was substantially increased or not?

A. No, sir, I do not.

Q. Mr. Dawe, is this a letter of yours to Mr. Pringle?

MR. OSLER : Q. What date is that?

WITNESS : April 6th, 1917.

MR. HENDERSON : That letter was read, was it not?

A. Yes, sir, pardon me, did you ask me, if I wrote this—no, sir, I did not write it. 30

Q. Is it your signature? A. It is my signature.

MR. TILLEY : Q. It is your signature to the letter, is it—is it not your letter? A. It was written for me. I signed it as Secretary of the Association.

Q. It is a letter from you as Secretary? A. Exactly.

Q. Written by whom? A. Written by our Counsel.

Q. Mr. Montgomery? A. Yes, sir.

MR. TILLEY : I do not think this is in, April 6th, 1917.

MR. OSLER : I do not think so.

MR. TILLEY : Q. It reads, "At your request conveyed to the Chair- 40
man . . . Canadian tonnage for today's meeting was based. Yours truly
(sgd.) H. L. Dawe, Secretary to the Newsprint Manufacturers."

And then the memorandum attached.

Now, these two were attached together—I do not know whether—did you enclose that agreement with it?

HIS LORDSHIP : I do not recollect they were referred to?

A. I do not recall that agreement.

MR. TILLEY : That is why I am asking the witness.

A. I do not recall that agreement.

MR. TILLEY : It was attached to the letter in Mr. Pringle's file, and I wanted to know whether he sent it in?

It is in that copy I gave you of papers this morning, second document.

MR. HENDERSON : Of what date?

MR. OSLER : That is apparently that missing draft.

MR. TILLEY : Would this be the draft that was prepared by Mr. Montgomery?

A. I do not know, Sir, I cannot tell you.

Q. You cannot tell us? A. Well, it is not signed, so I cannot.

10 HIS LORDSHIP : The letter may go in as the Exhibit for the time being.

MR. TILLEY : I think so, my Lord.

That will be Exhibit 25.

EXHIBIT NO. 25. Letter dated 6th April, 1917, H. L. Dawe, Secretary, to R. A. Pringle.

MR. OSLER : With your Lordship's permission, I would just like to ask Mr. Dawe with reference to the Membership of the Newsprint Manufacturer's Association, and the Pulp and Paper Branch, do you know one way or the other
20 who the members are?

MR. TILLEY : Of what?

MR. OSLER : Q. Of this Newsprint Manufacturer's Association?

A. Do you mean at that time?

Q. Or the present time? A. I cannot, without looking at the records of the Association. You see, it is ten years ago, the membership consisting at that time of about seventy per cent. of the Manufacturers of various kinds of paper throughout Canada. Those were the newsprint Manufacturers, called together at the call of the President of the Association, Mr. C. Howard Smith.

30 Q. Then, do you know, with any certainty, whether or not the Plaintiff Company was a member of that Association?

HIS LORDSHIP : He answered. You cannot cross-examine. He made the statement flatly that the Plaintiffs were not members of the Association, in his evidence in Chief. He made that statement very explicitly.

MR. OSLER : And I was wondering, just speaking of his recollection whether—

MR. TILLEY : I did not cross-examine.

MR. OSLER : The very last words, before he left the box, he said he was not.

HIS LORDSHIP : He said the Plaintiffs were not members to his knowledge.

40 MR. HENDERSON : To his knowledge?

HIS LORDSHIP : That is as far as he goes.

A line of cross-examination was in regard to the question of notice of meetings of the Association. He said he did, to the best of his recollection send notices of the meetings of Associations to attend.

MR. OSLER : The note which I took, almost at the last of the defence

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cross-examination, "Were the members of the Association?" And he, I thought he went farther than he had said in chief, and that he said "no."

HIS LORDSHIP : If that is so, I did not catch it.

MR. TILLEY : It only repeats what he said in chief.

MR. OSLER : In chief he said, "To his knowledge," and here apparently it was a full statement.

HIS LORDSHIP : Go on, Mr. Tilley, and hear what he has to say.

MR. TILLEY : My Lord, can he cross-examine?

HIS LORDSHIP : No, perhaps the purpose may be accomplished if I ask the witness a question. 10

Q. Witness, in your examination in chief you said the Plaintiff company, Mr. Backus was not a member of this Association to your knowledge—now what knowledge did you have of the membership of the Association?

A. Only such as the books afforded me when I took over the position as Secretary.

Q. And from what period in the books to what period? A. That would be from the 1st of February, from the time I took them over.

Q. 1st of February, in? A. In 1917.

Q. Well, from that time, did they appear in the books? A. Not that I recall. 20

Q. Have you any knowledge as to the list of members, or the persons of the Membership other than what you got from the books? A. No, I depended entirely on the books for my knowledge of the membership.

HIS LORDSHIP : I do not know that you can make anything very much out of that, then.

MR. OSLER : No, my Lord. I just wanted to find out definitely.

MR. OSLER : Then I will get from Mr. Sharp.

MR. TILLEY : So that we may get these copies.

MR. TILLEY : May I put in now, copies Mr. Taylor has sent us of Exhibits 10, 11 and 12. 30

HIS LORDSHIP : Those were put in, by Mr. Scott the other day, that is the originals were produced to Clarkson & Company and they were to have copies made for us. Now they are here.

FREDERICK WILLIAM SHARP : sworn

EXAMINED BY MR. OSLER.

Q. Mr. Sharp, you are a Chartered Accountant? A. Yes.

Q. Of the Province of Quebec? A. Yes.

Q. Practising in Montreal? A. Yes. 40

Q. And you are the gentleman who has been referred to as having been present at some of the meetings which are recorded in these Minutes that the last witness, Mr. Dawe, has been speaking about? A. Yes.

Q. And Mr. Dawe said that he had not taken a note of the Minutes of the 7th and 8th of March—two committee meetings—can you tell me who took them? A. I can say from memory that I did take some Minutes now, but whether it was those Minutes, I cannot be positive, today, ten years ago

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that these were taken, but as my name is down here, and as Mr. Dawe was not present, I think I can conclude that they were taken by myself.

Q. What did you do with the Minutes you did take? A. They were turned over to Mr. Dawe to inscribe into his Minute Book.

Q. What do you say as to the accuracy of the Minutes you took down?

A. If I took them, they were correct, sir.

CROSS-EXAMINED : BY MR. TILLEY.

10 Q. Mr. Sharp you had something to do with the preparation of this first agreement, didn't you? I might say this is a document produced from Mr. Pringle's papers—do you recognize it? A. I am afraid I do not, sir.

Q. You did not look at it? A. The first two pages I glanced over. They are quite foreign to my recollection today.

Q. Do you remember that Mr. Montgomery was to draft an agreement? A. Yes, it was discussed.

Q. Well then, did you help him draft it? A. From the Minutes I learned that I was to be associated with him in that matter, but today I cannot recall just what happened except I know that agreement was discussed but it
20 apparently fell out of existence altogether.

Q. I am not asking you that at all, you are getting away, I am asking you if you had anything to do with it? A. I know I was asked to associate myself with Mr. Montgomery.

Q. Did you carry that out? A. There was something done, but how much I cannot say.

Q. Did you take part in it? A. I think I did.

Q. Now then, just take a little time, and look at that, and tell me whether it is a document—possibly my friends will admit that this is the document—
Would you, Mr. Osler?

30 MR. OSLER : I do not think so.

MR. TILLEY : Probably you would ask Mr. Montgomery?

MR. OSLER : You may have an opportunity of asking him.

MR. TILLEY : Are you going to call Mr. Montgomery?

MR. OSLER : I have not finally decided.

MR. TILLEY : I would not bother this witness at all.

MR. OSLER : I think you had better assume that we won't.

HIS LORDSHIP : Perhaps Mr. Tilley will call Mr. Montgomery.

MR. OSLER : I am not quite so optimistic as that.

MR. TILLEY : And possibly my friends want—

40 WITNESS : I do not recall this.

Q. Not at all? A. No.

Q. You cannot help us about that? A. I am afraid I cannot.

Q. Here it says on top, "Agreement by Manufacturers never executed," then it has that pencil on the top, Number 2, and it is followed, "Number 2", and you say you cannot help us about that at all? A. It is a long time ago, sir.

Q. I know it is a long while ago.

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MR. OSLER : Is there anything to show these notations are from Pringle's files?

MR. TILLEY : I cannot say, I think it is Mr. Pringle's writing, and it was attached to the letter I put in last. It was attached when it was found, I believe.

Q. Then, Mr. Sharp, you remember being asked by Mr. Pringle to get up statements in connection with differentials in 1919, do you not—1919?

A. These are three hectic years, the years in which these things took place.

Q. Please, just delay, and then answer me without going around the side 10 lines.

HIS LORDSHIP : The witness is thinking out aloud—

Think it to yourself, Mr. Sharp, and let us have your answer.

MR. TILLEY : Q. The reason I mention it is that Mr. Taylor says that he got statements from you dealing with matters that would be pertinent to be considered in connection with differentials? A. Now, might I ask you a question so that I can help you by giving you a more correct answer.

Q. Certainly? A. You are referring now to what period of differential, and then I can answer your question, 1918 or 1919—

Q. 1918 or 1919, or any part of either year? A. We were appointed 20 in 1917, I think it was originally Mr. G. T. Clarkson and myself to work out differential.

Q. Yes? A. And we worked out the period—you have not asked me whether we did or not, that is the end of my answer. We were appointed at that time.

Q. I am asking you, I know you were appointed, I know you did work, and I know you did work for 1917—now I am asking if you were not asked by Mr. Pringle to get out the figures for 1919? A. I do not know if it was 1919 but I was asked for a period when the figures in the end were not actually got 30 out.

Q. That is, it was not completed? A. It was completed for the first two periods.

Q. For the first two periods? A. Yes.

Q. Then, was it incomplete for the remaining period? A. For the remaining period, I gave the figures, but they were not acted on.

Q. You gave them to whom? A. Sent them to Mr. Pringle.

Q. Sent them to Mr. Pringle? A. Yes.

Q. Now, when did you send them to him? A. I cannot give you the exact date.

Q. Have you got the papers here? A. I do not think my papers or 40 correspondence gives that. I may say I had a great deal of material, and I got rid of a lot of it.

Q. I do not want it all, or we will have just as big a file of material here.

HIS LORDSHIP : Witness, you told Mr. Tilley that you had prepared figures for differentials for two periods, and then that you were asked for, and did prepare figures for a third period, but that the figures prepared for the third period were not acted upon?

A. I am afraid that I cannot give you the date that these were sent to Mr. Pringle.

MR. TILLEY : Q. About what time? A. I do not think I can say to-day. I do not think I can say, sir.

HIS LORDSHIP : Do you know what the period was for?

A. Yes, sir, the time would be following on from January 31st, 1918.

HIS LORDSHIP : The period following that date?

MR. TILLEY : Q. To the end of 1919? A. No, I think the figures were prepared to the end of June. I think that was his request.

10 Q. Now, did he request for any further figures? A. No.

Q. Now, have you the letters here? A. I have some letters here.

Q. Your letter of August 29th? A. What year?

Q. 1919? A. No, I have not.

Q. What have you—that first is 1917.

Now, Mr. Sharp, is this a letter of yours to Mr. Pringle of September 4th, 1918? A. It is.

Q. That deals with a matter that has been referred to here, so I shall put that in.

20 This is a copy of a letter dated Montreal, September 4th, 1918, to R. A. Pringle, Esq., Commissioner of Newsprint.

You write to Mr. Pringle, "I have before me a copy of the evidence given at the hearing at Ottawa the 14th of last month before a sitting of a Committee of the Privy Council with Sir Thomas White acting as Chairman.

"On page 23 of the record your own evidence reads as follows:—

30 "I ascertained the loss sustained by the Fort Frances Pulp and Paper Company owing to their obeying my orders. When I got these figures from Mr. Clarkson I had them submitted to Mr. Sharp. I spoke to Mr. MacLaren, Comptroller of the Fort Frances Company and I asked him to go to Montreal and interview Mr. Sharp and he came back and said that everything was satisfactory so far as Mr. Sharp was concerned."

"There is some mistake in regard to what Mr. MacLaren told you. I do not recall having had the figures submitted to me either by Mr. MacLaren or anyone else so that I could not have very well expressed myself as satisfied with the same"—that is September 4th, 1918.

MR. OSLER : That will be Exhibit what?

HIS LORDSHIP : Exhibit 26.

EXHIBIT No. 26. Copy of letter dated 4th September, 1918, F. W. Sharp to R. A. Pringle.

40 MR. TILLEY : Q. Mr. Sharp, I produce a letter of August 29th, a copy of a letter from Mr. Pringle's file to you—

MR. HENDERSON : What year?

MR. TILLEY : 1919, August 29th, and it is in reply to yours of the 28th which I have not been able to locate amongst his papers, and he says, "Yours of the 28th inst., duly received—"

HIS LORDSHIP : Mr. Tilley, would it not be better to show that to him, and ask him.

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MR. TILLEY : I assume I am allowed to put in copies. My friends have been doing it.

MR. OSLER : You mean—

MR. TILLEY : Copies from Mr. Pringle's file to him.

MR. OSLER : We have not got it here.

HIS LORDSHIP : That he may say whether he received such a letter—in other words, if it happened to be something in Mr. Pringle's file that never came to him.

MR. OSLER : It might be something that Mr. Pringle dictated and never sent. 10

MR. TILLEY : I thought we were proceeding on the assumption that—

HIS LORDSHIP : A good deal of stuff has gone in from Mr. Pringle's file without any very great objection.

MR. OSLER : We have varied a good deal—sometimes my friend has allowed things to go in, and other times he did not.

MR. TILLEY : I have not objected, but I do not like you to put in things as part of my case with my witness.

MR. OSLER : We won't bother about that, but when we have an unauthenticated document—

MR. HENDERSON : We have not found the letter. 20

MR. TILLEY : My friend should not make that remark while the witness is reading it, and deciding what he has to say about it.

WITNESS : I do not recollect that letter at all.

MR. TILLEY : Do you say you did not receive it?

A. No, I won't say that, but I do not recall the receiving of it at all.

Q. You ought to be able to give us something about correspondence of that kind. It is about differentials following on the Order made by the Appeal Court. Now, did you have correspondence with Mr. Pringle about the Order of the Appeal Tribunal after they had dealt with differentials and had refused the amount of \$100,000 that he had fixed? A. I do not recall the letter at all, sir, having received it, I do not recall the substance of the letter, or anything about it. 30

May I make a further remark, your Lordship, in regard to this, that at this period, Mr. Pringle seemed to be transferring the matter of differential, rather directly to Mr. Clarkson and this makes it all the more astonishing that I should receive that letter at that time.

MR. TILLEY : Q. You would not say that you did not receive it?

A. No, sir, I do not recollect the letter at all.

Q. It will be with your papers? A. No, sir.

Q. Why would it not? A. Because all this matter was disposed of, 40 sometime in 1922 or 1923, the whole matter, I got rid of the files.

Q. Where did you get these letters that you produced here?

A. Out of my own letter book. These are letters to me.

Q. Then, you would have your letter to Mr. Pringle of the 28th?

A. I would have a copy of that on my file.

Q. Where is that? A. I did not bring it.

Q. Have you got a copy of that? A. No, just to the end of 1918, but

that time my work was pretty well finished, I just had Saturday morning to look up these matters, and this is what I got.

Q. At any rate, you cannot help me on this? A. No, sir.

HIS LORDSHIP : For whom were you representing—under whose instructions were you acting?

A. On Mr. Pringle's.

At the outset I came from the mills, but latterly—

HIS LORDSHIP : You say originally—at what time?

A. Pretty well the first meetings of the Association.

10 Q. That is early in 1917, the early part, February and March. Now, when did the time arrive when you acted on instructions from Mr. Pringle only, and not from the mills?

A. I do not recall further than I had heard that we had received our appointment, Mr. Clarkson and myself.

Q. And from that time forward you acted under Mr. Pringle's instructions and directions, and not in any sense for the mills? A. Yes, I think I may say that, as I recollect it. Mr. Clarkson and myself were both recognized as acting for Mr. Pringle.

MR. TILLEY : Q. Now, Mr. Taylor said, and my recollection is he had
20 in his file, giving evidence, statements from him, showing the differentials down to the—showing the figures that would be necessary when considering differentials—that is figures of tonnage, Canadian and American and so on, down to the end of 1919? A. No, that was wrong, sir.

Q. Now, Mr. Sharp, don't say it was wrong unless you are clear about it, because my recollection is that I saw them? A. No, sir, I did not prepare papers up to the end of that year. I prepared figures.

Q. And he said that you wrote to him, and quoted from your letter, that Brompton would not send in the figures at some date, that Brompton would not comply? A. Referring to Brompton—that would be for the same period,
30 the early part of 1918.

HIS LORDSHIP : Mr. Tilley, Exhibit 14 is a letter of July 10th, 1919, from Pringle to Clarkson, enclosing statements received or alleged by Pringle to have by him been received from Sharp in respect of differentials.

MR. TILLEY : Yes, but these are 1920 letters that I am referring to. Mr. Sharp reports on Brompton in July, but Mr. Clarkson got an Order—

Q. Do you remember that Mr. Pringle made an order of the 23rd of January, 1920, the original—

MR. HENDERSON : Look at the original of the letter. July, 1919, you will find it is the one you have in mind, Mr. Tilley.

40 MR. TILLEY : Please—

MR. HENDERSON : It is only proper.

MR. TILLEY : In the middle of a sentence, will you please permit me to finish what I am saying to the witness.

Q. I am asking you whether you remember an Order made by Mr. Pringle on the 23rd of January, 1920, regarding differentials—do you remember that? A. I cannot remember the date, sir, at all.

Q. And Mr. Clarkson produced the letter that he said was sent out to

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the various mills, asking them for the figures, and that letter is Exhibit 5, and it is dated the 28th of January, 1920. Now, there is the form of the letter and he told us that after that was sent out, that he got certain figures from you, as I remember, that would—

MR. HENDERSON : Has my friend a right to tell the witness his recollection? My friend has referred to a letter which the witness did write in July, 1919.

MR. TILLEY : And I have already stated that that letter might be dated in July, 1919, I have already said that to the witness—now, I am asking the witness something entirely different, and my friend might just rest a few minutes, and I will ask from the witness what I want. 10

MR. HENDERSON : My friend has no right to tell the witness what is—he must take it from the witness.

A. I cannot see the original of that letter.

MR. TILLEY : Now, I am asking you whether after that date, you are prepared to say that you did not send to Mr. Clarkson, or Mr. Taylor any figures with regard to tonnage of any of the companies that you acted for enabling him to go on with his computation? A. No, sir, the last thing that I sent forward, and I think they were sent also to Mr. Pringle would be for the month I previously referred to. 20

Q. Are you acting for these companies now? A. No, this matter has passed out long ago.

Q. But are you acting for the companies? A. Only in the capacity of Auditor for certain companies, not all of them.

Q. Which company? A. We audit for Laurentide, Donnaconna, Belgo-Canadian, and some new mills that have come into being since that time, which won't interest you. They were not in being at that time.

Q. Then were you acting for these companies in 1920 ?

A. For Belgo-Canadian, and Donnaconna.

Q. For Laurentide ? A. No. 30

Q. In 1920 ? A. No.

Q. And you say if any figures were sent in for these companies in 1920, they were not, according to your recollection, sent in by you ? A. No.

Q. That is your recollection ? A. That is right.

Q. Have you a letter book there ? A. No, I have a copy taken from the letter-books ?

Q. But you have not got all the copies ? A. One or two letters that Mr. Osler—

Q. Did you go past 1918 ? A. No.

Q. Well, it is 1919 or 1920—are they in letter books ? 40

A. They are in letter books.

Q. Could you telegraph for the letterbooks, and have them here in the morning ? A. I could.

Q. Would you do so, please ? A. I will, 1919 and 1920.

HIS LORDSHIP : So they will be sent to-night, and get here to-morrow ?

A. That will have to be done very quickly.

MR. TILLEY : If you would telegraph or telephone I would be glad—the telephone would be better.

HIS LORDSHIP : The cross-examination is finished, subject to any further information from these letters.

MR. OSLER : Then we will reserve our re-examination.

HIS LORDSHIP : Yes, if there is anything from what he brings.

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FREDERICK ALEXANDER MACGREGOR, Sworn.

Examined by MR. OSLER :

10 Q. Mr. MacGregor, you have charge of Mr. Pringle's papers, I under-stand ? A. Those relating to the newsprint work.

Q. What is your position ? A. Registrar under the Combines Investigation Act.

Q. Did you receive the files that Mr. Pringle had in connection with the newsprint control, from whom ?

A. From Mr. Louis Coté, the Executor, or one of the Executors of Mr. Pringle's estate.

Q. And as you have mentioned, you have held them ever since ?

A. Yes, sir.

HIS LORDSHIP : You said you were Registrar of what ?

20 A. Of the Combines Investigation Act.

MR. OSLER : Q. Then, will you give me the Notices of Appeal from the various Orders made by Mr. Pringle which you have ?

A. I will get them for you.

MR. OSLER : Your Lordship made some observation this morning about the speed with which documents were produced. Some of the gentlemen who are with me, were explaining to me in the adjournment that they had copies that could have been produced, but the original had to be got from these files, is what occasioned the delay.

30 HIS LORDSHIP : I know it is often very easy to make observations from the Bench as to the slowness with which papers are produced when one's time is extremely limited, as is the time of the Judges of the Trial Division these days, and one gets very impatient over delays.

MR. OSLER : You have the file of notices of appeal from the several Orders made by the—? A. By the Newsprint Controller. They are arranged under date of Order, Mr. Osler, in chronological Order.

Q. Well, I think the better way would be to put these all in as one Exhibit, my Lord.

40 HIS LORDSHIP : It is going to be a difficult job for the unfortunate Judge if he has got to read all these. I mean to get out the wheat from the chaff. Could Counsel not go over them, perhaps this evening, or sometime, and agree on what ought to go in ? I mean, what are pertinent to my present enquiry.

MR. HENDERSON : Perhaps we could agree that the appeals were taken by everybody from everything.

MR. OSLER : I think that was the result.

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MR. HENDERSON : I think that is a fair way of putting it. You appealed and we did.

MR. TILLEY : If you have the appeals that are pertinent, we can easily get at them.

MR. HENDERSON : Everything was in appeal, everything was in appeal.

MR. OSLER : They are rather voluminous, because of course, separate appeals were lodged by each defendant, although perhaps that may not have been strictly speaking necessary.

HIS LORDSHIP : Do you propose to put in the originals taken from the files ?

MR. OSLER : I did so, perhaps, my Lord, unless there is some objection to it.

HIS LORDSHIP : I do not know, but ordinarily they decline to allow originals from Departmental files to be filed in Court.

WITNESS : I have taken that up with the Deputy Minister of Justice. He said, if the Court wished to have them, there would be no objection to their being placed on the Record.

HIS LORDSHIP : Then, if Counsel cannot agree, it is of course impossible for me to say what ought to go in, and what ought not, because I have never seen them.

MR. HENDERSON : Have you an index of them, Mr. Tilley ?

MR. TILLEY : This is the first I have seen them.

MR. HENDERSON : They are indexed.

HIS LORDSHIP : Perhaps the best way to do would be to put them in as one Exhibit, and then Counsel for the Defendant will doubtless refer to particular numbers of Orders, and Counsel for the Plaintiff will do the same with parts that he wants to use particularly. I do not know what else I can do.

MR. OSLER : That is what I had in view, my Lord.

HIS LORDSHIP : I do not know whether it will help Counsel to arrive at a solution if I tell them the more of the stuff they put in, the longer they will have to wait for their judgment. I do not know if that will help you to lessen the quantity of material.

MR. TILLEY : That is why I want to cut it out.

MR. OSLER : My friend is much more interested in other things than cutting it out.

MR. TILLEY : I see here Notices of Appeal had, for instance, by myself, for the Publishers, the newspaper publishers—I do not know what that has to do with the matters we are concerned with here. I must let my learned friend pursue his own course. If anything is material at all, I think we should all have it pointed out. For instance, an Order dated 6th August, 1918, was apparently appealed from. I do not know what the Order was, and that was heard and argued, and finally determined. I do not know why that notice of appeal is material to anything since.

HIS LORDSHIP : Have you examined this witness with respect to the contents of these Orders, Mr. Osler ?

MR. OSLER : No, I have not, my Lord, except to show that the receipt

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stamps that are on them were on when he got them, and in many cases they are marked "received" with the date, and Mr. Pringle's initials.

MR. TILLEY : Well, the first five that I notice, I can identify as being notices of appeal from a differential Order, and the appeals were heard, and the differential payment reduced from \$100,000 to \$78,000, as your Lordship has heard frequently. Now, why we want the notices of appeal from that Order, I cannot quite follow, and that would dispose of five.

10 HIS LORDSHIP : I was going to suggest, Mr. Tilley, that Mr. Osler is not wanting to examine this witness as to the contents of the documents, that perhaps between now and to-morrow morning, or between the period of adjournment and to-morrow morning, you might be able to arrive at some solution of the matter.

MR. TILLEY : And the next five or six are from the Order of the 25th or the 26th of September, and I remember that that appeal was disposed of.

MR. OSLER : I do not think so.

MR. TILLEY : Oh, yes, that Order was made as late as 1920 by the Appeal Tribunal—

MR. MUNNOCH : It was disposed of so far as Fort Frances, but not the others.

20 MR. TILLEY : Your Lordship will remember the witness in the box, Mr. Backus, said \$73.00 was fixed for Fort Frances, and it was subsequently reduced to \$66.00, that is the result of that appeal, and of course, when an appeal would be taken, there would be half-a-dozen notices by the other companies to make the appeal perfect for each company with the result I would note, in looking at this file just what it was that my friend was going to argue or urge in regard to it, because I cannot see the relevancy of lots of these ?

30 MR. OSLER : So far as those two notices with regard to the Order of the 6th of August are concerned, I think they have gone into the discard. Now, that is done.

MR. TILLEY : The 25th of September, there must be a dozen of them here.

MR. OSLER : But there, I think, there were other points to be dealt with, and what I want to show is that there were appeals from these various orders made by the Paper Control Tribunal.

MR. TILLEY : If that is the point, the orders are all in, if I left out any, I would be very glad to fix up Exhibit 1. These Orders show what they are appealed from—when the Tribunal deals with the matter they show.

MR. OSLER : But there are appeals pending that have never been dealt with by the Appeal Tribunal.

40 MR. TILLEY : I can say at once, you can divide this Exhibit by 2—and half of them have been disposed of, I know, the 25th of September, and the 6th of August—

HIS LORDSHIP : Now, could we go on with something until five o'clock, or approximately five o'clock, then see if this can be reduced in bulk between now and ten-thirty to-morrow morning.

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MR. OSLER : So far as that order of the 25th or 26th September, my friend, Mr. Munnoch advises me that dealt with the Fort Frances, but not the other companies.

MR. TILLEY : The appeal ?

MR. OSLER : Yes.

MR. TILLEY : I am perfectly sure everything down to September was dealt with—how far beyond that it goes, I do not remember.

MR. OSLER : Well then, I will call Mr. Montgomery.

—continued.

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Discussion
as to Evi-
dence.
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GEORGE H. MONTGOMERY, Sworn. Examined by MR. OSLER :

HIS LORDSHIP : Now, I am keeping an Exhibit number, number 27, for 10 these papers, whatever they are to be, when they are finally settled.

MR. KILMER : When the witness is recalled, my Lord, there are some papers I want to have him produce as well.

HIS LORDSHIP : Perhaps you can remind me of that in the morning, Mr. Kilmer.

MR. KILMER : It was about cutting the Exhibit down, that is all.

MR. TILLEY : I do not understand Mr. MacGregor was finished.

MR. OSLER : I do not understand so.

HIS LORDSHIP : Mr. MacGregor will come back in the morning when we settle on the Exhibits. 20

MR. OSLER : Before we examine Mr. Montgomery, I would like to have an understanding in this matter.

HIS LORDSHIP : What is the difficulty.

MR. OSLER : There was a letter the other day by Mr. Tilley to Mr. Pringle, and I asked Mr. Tilley to produce it. He had it in Court. He had the original and he had it in Court, and I do not know whether Mr. MacGregor will find the copy in Mr. Pringle's files or not, but I asked Mr. Tilley if he will have it in Court to-morrow, and he says he does not know.

MR. TILLEY : I will explain the position to your Lordship. It was a letter that was written by me, acting for other clients. It is not a document 30 that I have acting for the people in this trial at all, but it is a document that came to me in answer to a letter that I wrote to Mr. Pringle when I was acting against the Fort Frances Pulp & Paper Company.

HIS LORDSHIP : It is not in your possession on behalf of the Fort Frances Company ?

MR. TILLEY : Not at all.

HIS LORDSHIP : Then Mr. Tilley cannot produce it unless he is subpoenaed to produce it.

MR. OSLER : I told my learned friend I would have to subpoena him if that would be necessary, but I supposed it would be unnecessary for me to do 40 it, I can go through the form of subpoena with him.

HIS LORDSHIP : It would depend on whether his clients would consent. Mr. Tilley is not their agent.

MR. TILLEY : That is the point. I do not think I should.

MR. OSLER : If my friend tells me I must issue the subpoena, I will.

MR. TILLEY : I have the letter in Court, I believe I have, and if your Lordship thinks I should produce a letter written to me when I am acting for other clients, I will produce it.

HIS LORDSHIP : While I think it may be producable, Mr. Tilley, I do not know that—I am not saying one way or the other as to whether it is evidence or not evidence as against the Fort Frances Company in this litigation. I could of course order its production and then determine whether it ought to be admitted in evidence in this action.

MR. TILLEY : I think I am afraid I have mislaid it my Lord, but my
10 friend has a copy of it, and I am quite willing that he should show it to your Lordship and the letter I wrote and the letter from Mr. Pringle in answer and if your Lordship thinks that it should be put in in evidence that will be the end of it so far as I am concerned—oh, yes, here it is. I should say that the letter lost was a letter of November 8th, 1921, which is long after, of course, material dates in connection with Paper Control. The letter I wrote to Mr. Pringle was written on behalf of the proprietors of certain Western newspapers, who had claims against the Fort Frances Company because of the reduction made in the price of newsprint by the Paper Control Tribunal, and they ordered refunds, and then I wrote to Mr. Pringle, as solicitor for these plaintiffs.

20 HIS LORDSHIP : You, as solicitor, wrote ?

MR. TILLEY : Yes, my Lord, I wrote to Mr. Pringle for certain information, and he wrote me in reply, and there is the letter, and there is his reply.

HIS LORDSHIP : This ought to be put in as evidence ?

MR. TILLEY : Against the Fort Frances Company ?

HIS LORDSHIP : How does that affect the Fort Frances ?

MR. OSLER : Simply as part of Mr. Pringle's files and correspondence.

MR. TILLEY : I am quite willing it shall go in on that basis, provided I
am allowed to have any documents from Mr. Pringle's files. Your Lordship will remember one witness did not remember. If we are putting in documents
30 from his files, and each one is to have the same privilege, I am not objecting.

MR. OSLER : I am not objecting to putting in original documents from his files. There is a difference. My learned friend sought to extend that by putting in unauthenticated copies, but the original letters have been put in, and this is a statement made by Mr. Pringle himself.

MR. TILLEY : I do not want to make this a matter that tends to delay the trial at all. I am quite willing, if your Lordship thinks it might be of any use at all.

HIS LORDSHIP : Well, it might be, but I should state here, that documents
40 which come from Mr. Pringle's file, which purport to be letters or other papers passing between Mr. Pringle and somebody else, insofar as this action is concerned, Mr. Tilley in this case was somebody else, because he was representing Publishers—he was not representing Fort Frances Company—these documents strictly speaking are not evidence here, however, unless they can be brought in under general rules which allow entries to be put in, or something written by a deceased person in the discharge of his duty. Now, if they do not come within that, they cannot be admitted in any way at all, and even if they do go in they are evidence only to the extent to which what is written

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is in fulfillment of the known duty of the writer, so far as this is concerned. I glanced at Mr. Pringle's letter to Mr. Tilley, which contains certain statements, information furnished to Mr. Tilley on behalf of the client for whom he was then acting, and referring to some matters. I do not know that it is going to help or hurt very much one way or the other, because it is largely corroborative of what I have already in, I mean as to moneys paid, and so on, but if Counsel are willing that what papers appear from Mr. Pringle's file, Mr. Pringle being deceased, should be admitted here for what they may be decided to be worth to the Court, why, I am not going to object to it.

MR. OSLER : I think, that, of course, should be confined to original 10 documents.

HIS LORDSHIP : If you are going to do that, then the copy of the letter from Mr. Tilley to Mr. Pringle is not an original document. What is here is a letter from Mr. Pringle to Mr. Tilley, that is the only original.

MR. OSLER : That is true, my Lord, it is going to be quite unfair to insist that only the letters that Mr. Pringle may have written are to be received in evidence and that the replies to them are not going to be received.

MR. HENDERSON : That may be received as evidence of the fact they are documents.

HIS LORDSHIP : In other words, I am not going to assume what Mr. 20 Pringle states is the absolute truth, and if something is wrong in his letter, that it cannot be corrected.

MR. OSLER : I have no doubt the original of Mr. Tilley's letter is to be found in Mr. Pringle's file.

MR. TILLEY : I do not know. Mr. Thomson says he has not seen it.

MR. OSLER : And I have no objection to the copy of this letter that goes in being put in in this case, but that is covered; it would be rather broad to say that any document or any copy of a document found on the files should go in.

MR. HENDERSON : For what it is worth. 30

HIS LORDSHIP : The position I have to take would be, if Counsel object to it going in, I would have to refuse it as not being evidence, that is either Counsel, if Mr. Tilley is objecting, it is refused. If not objecting—

MR. TILLEY : I object, except on the line I have indicated already.

MR. OSLER : Just a moment.

MR. TILLEY : I thought we were proceeding on very broad lines in these copies. You never had an objection to meet from any document, except at the time you were trying to put that in. In fact, I said at the time, you were trying to put in in, if you bring it along later, all right.

MR. OSLER : What is your suggestion ? 40

MR. TILLEY : My suggestion is the papers that are produced here from the Department as being Mr. Pringle's file should, for what they are worth, be admissible as evidence.

HIS LORDSHIP : Counsel not assenting that the contents of all these are to be accepted as proof.

MR. TILLEY : The facts stated, no—but this, there is the correspondence for what it is worth.

MR. HENDERSON : As if Mr. Pringle were here and produced them himself.

HIS LORDSHIP : They will perhaps show what the course was that was followed.

MR. TILLEY : Too broad.

HIS LORDSHIP : But they cannot be accepted as definite and absolute proof of what is stated in them.

MR. TILLEY : I do not think the case will turn on their statement.

MR. HENDERSON : As if Mr. Pringle were here, and producing them
10 himself.

MR. OSLER : Then, we make that arrangement.

MR. TILLEY : Then these go in.

MR. OSLER : Then these two letters go in.

HIS LORDSHIP : That is, the original letter from Mr. Pringle, and Mr. Tilley's letter to Mr. Pringle will go in as Exhibit 28.

What is the date of Mr. Pringle's letter to Mr. Tilley ?

MR. OSLER : That is of the 9th November, 1921, Mr. Tilley's letter was the previous day, the 8th of November, 1921.

HIS LORDSHIP : Now does this embody the understanding between
20 Counsel? Counsel agree that the papers from Mr. Pringle's file shall be admitted but not as proof of the truth of any statements which may be made therein.

MR. TILLEY : Yes.

MR. OSLER : Yes, my Lord.

HIS LORDSHIP : Very well.

Now, Mr. Montgomery has been sworn.

MR. HENDERSON : I think that might go a step further, as evidence of the fact that they were written, in the case of letters and so on, just as if Mr. Pringle was here.

HIS LORDSHIP : That is assumed, Mr. Henderson, that is assumed that
30 they are what they purport to be, that they are not proof of the truth of any statement contained in them.

MR. TILLEY : The statements of facts.

HIS LORDSHIP : Yes.

EXHIBIT No. 28. Letter dated 8th November, 1921 (copy), W. N. Tilley to R. A. Pringle, and letter dated 9th November, 1921, R. A. Pringle to W. N. Tilley.

GEORGE H. MONTGOMERY : Examination continued by MR. OSLER.

40 Q. Mr. Montgomery, you of course practise in Montreal? A. Yes.

Q. You are a Member of the Bar? A. I am.

Q. I think you are a Batonnier, of the Montreal Bar?

A. I have that honour.

HIS LORDSHIP : That is not supposed to affect credibility.

WITNESS : I am supposed to be attending a meeting of the Council at this moment, four o'clock.

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MR. OSLER : In the month of February, 1917, were you employed by the members or some of the members of the Newsprint Association in connection with the matter of control of the price of newsprint in Canada ?

A. I was.

Q. You have been sitting in Court to-day, when we have been reading the minutes of the Association meetings ? A. Yes.

Q. Do you remember the occasion of the meeting of the 21st of February, 1917 ? A. I do.

Q. And will you tell me what took place with reference to the suggested agreement to the newsprint price and the suggested differential that was referred to in those minutes ? 10

A. As I recall it, I was asked to attend, either a meeting of the manufacturers themselves or a meeting of sub-committee, to prepare the agreement which had been discussed to provide for the distribution of tonnage of the Association during the period of three months from March 1st to June 1st, 1917, during which time the manufacturers had undertaken to carry on, that is to continue the supply of newsprint to Canadian publishers at a price of \$2.50, which was less than the price that they had asked.

Q. And did you prepare a draft agreement for them ? A. I did.

Q. Was that agreement ever completed ? A. Do you mean as far as consent to it goes, or execution ? 20

Q. Yes ? A. Oh, no, never.

Q. Will you tell me, what were the circumstances in connection with the matter from the time the draft was prepared ?

A. Well, as a matter of fact, this thing was sprung upon the manufacturers a little bit suddenly. There had been some Orders-in-Council passed in Ottawa which are referred to, I notice to-day. When I saw that draft agreement for the first time for many years I think from the 17th of February, which led to this meeting being called of the mills throughout Canada, in the preparation of that agreement, which represented the ideas of those present, and which list was here, I prepared an agreement which I thought would incorporate their ideas, and as Mr. Backus has stated, it was an agreement that would provide for the payment of the differentials, or an adjustment of tonnage as the case might be, during the period of three months. If I might be allowed, just to give the history, your Lordship, to show how this agreement came about, how this period of three months and so on, how there was any question of that being done, I do not know if it would be of interest to you or not ? 30

MR. OSLER : Q. I think perhaps it would be worth the time involved. It is not very long. 40

MR. TILLEY : It is really apart from what we are concerned with.

WITNESS : I won't go back—it is a matter that had been somewhat under discussion, I understand, since the previous contract period, and if you look at the Orders-in-Council you will see, and the proceedings themselves, you will see the manufacturers had been asked to make an arrangement between themselves, and the publishers were complaining of the price they were asking, which was the American price, was too high, and they offered to throw their

books open for three months to the Government to satisfy themselves that the price they were asking was a fair price, and was entirely justified by the costs; and during that period of three months they would settle on fifty dollars instead of sixty dollars, which I think was the price then asked, that this tentative agreement was to take care of that supply.

10 MR. OSLER : Q. This was fully assented to at the meeting of the 21st February ? A. Oh, it obviously could not be, because some of the important mills were not even present. You will find, for instance, Booth, who would have been one of the contributing mills, and who certainly would have had to be consulted was not even present, and in looking at the representatives of the other mills you will see in some cases they were not members, they were ordinary representatives who would have to consult their principals. Then further you will note that the matter that was under discussion was not at all, or not altogether on the lines that it subsequently took. Mr. Backus, who was not in the eastern situation was present, so was Mr. Lang, of Powell River. Powell River is a mill on the Pacific Coast, and if you will look at the minutes, you will see that Mr. Lang is one of those who approved of this agreement, which was a tentative agreement at that time, would have taken in the whole of the manufacturers in Canada. To-day, I do not think there is even any
20 suggestion that Powell River are parties to it. They would, if that agreement had gone through.

MR. OSLER : Q. What happened with reference to the agreement ? Was a draft prepared ?

A. There was a draft prepared, and one thing that was evident was, that it might be treated as a point where we were going up in any event to see Sir Thomas White, I think it was, and we wished them to be acquainted with what we were doing, to meet their views, or the efforts to meet their views, and a copy of that draft was taken up and, I think, with Sir Thomas, which was subsequently revised more than once, in view of changed conditions, and different views expressed, and as the agreement was considered, I
30 might say that I just saw in Court here the copy which Mr. Tilley had, and I would be quite unable to say to-day what draft that was. I would imagine it was the one that I took up and left with Mr. Thomas White. If it is, that one would have been revised somewhat.

Q. Could that be identified ? A. I could not tell you at all. I made a thorough search in my files to see if I could find a copy of that agreement. Unfortunately the whole of our 1917 file disappeared. I could not find trace of it. I have had both of our old storage places hunted through, and not a draft of it was discovered.

40 MR. OSLER : Q. Then, do you remember how long the consideration of such an agreement lasted ? A. Well, I would have to be assisted by the minutes. I see, by the way, it was ended, I know how it ended, but I could not, without reference to the minutes say how long it took. I see that it ended finally by a separate agreement by which the eastern situation was taken care of, either in tonnage or money.

MR. OSLER : Q. You assist yourself on the date by referring to the minutes ? A. Yes, I remember the incident, but I would not remember the date.

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Q. Apart from the date, will you tell us the incident.

A. The Laurentide and the Belgo-Company offered to continue to supply their increased supply without compensation for that period of three months, and Eddy and Canada Paper were to be taken care of by four of the others, I think it was Price, Booth, Brompton and St. Maurice, if I remember rightly, or Donnaconna.

Q. And Donnaconna possibly? A. It might have been Donnaconna.

Q. Now, can you—

MR. HENDERSON: Donnaconna and St. Maurice?

A. Yes, they did not attempt to deal with the Western situation, that would be not only the situation of Mr. Backus with the Middle West, but with the Pacific situation on the Pacific Coast, for instance, the Powell River Company who had been parties to the negotiations in February, they did not attempt to deal with those, but dealt entirely with the eastern situation.

HIS LORDSHIP: Only it was intended to be a draft agreement you were preparing should cover it all, both east and west?

A. Yes, even including the Pacific Coast.

Q. And that, you say, you are reminded by the minutes, that some arrangement was made among the eastern mills, except as to differentials, that is taken from the minutes at a later time than the agreement?

A. Yes, that is the old agreement never came to anything, the matter was handled in a different way among the eastern manufacturers.

HIS LORDSHIP: And as to the western ones?

A. That matter was not touched at all, that matter was left for them to adjust themselves.

Q. At any rate, you never did anything with that?

A. I never did anything with that.

Q. Nothing which affected the position of the Fort Frances people?

A. No.

HIS LORDSHIP: Go on, Mr. Osler.

MR. OSLER: Q. Might I ask one question arising out of what your Lordship said.

HIS LORDSHIP: Yes.

MR. OSLER: I understood Mr. Montgomery, he remembered the circumstances, but not the dates.

Q. I say, in order to get the incident, you went to the minutes?

A. Oh, no, I remember the incident quite well.

Q. Then, were you concerned in the newsprint proceedings from that time forward until it closed? A. I was.

Q. Then what do you say as to the basis on which newsprint was furnished to the Canadian trade, was it on the basis of the agreement, or was it on the basis of the Orders made by Mr. Pringle from time to time?

A. Well, you would have to find the answers, in the first instance there had been, as regards March, April and May, there had been an agreement that they would supply, they would carry on as they were at the rate of \$2.50 hundred, but there was an Order passed, I think before, I have forgotten the exact date, it is of record anyway, more or less, giving effect to that agree-

ment because the time, it was made one of the objections that we raised to it was that it might necessitate cutting off some of the paper which was being supplied under contract to American customers, it might curtail the supply, and I think it was at Mr. Pringle's suggestion, in the first instance that their position should be protected by having the Order-in-Council passed which would give them an advance when they were unable to ship by reason of a provision of law, so that during those first three months it was virtually not an agreement to which effect was given by an Order-in-Council. After that date they continued to supply for three years instead of three months, and it

10 was decidedly not an agreement, it was under an order.

HIS LORDSHIP : Now, the effect of what you say is, as to the months of March, April and May, 1917, there has been this agreement among the eastern mills to which you have already referred, and after there was also subsequently an Order made? A. There was an Order made.

Q. Which, so far as these three months were concerned operated in accordance with the provisions of the agreement which had been made?

A. Yes. I say there was, unless there should be confusion, it was not a written agreement with the Government, just an undertaking, an assurance to the Government that they would carry on for that period of three months

20 in order to allow the Government to satisfy themselves that the price which they were asking was a fair price. No one contemplated that it would go longer than the three months period, and in fact, we had the assurance of Mr. Pringle that at the end of that three months period he would recommend to the Government that he would tell the Publishers the law of supply and demand would have to apply, they would have to adjust themselves to that condition.

MR. OSLER : Q. Then what do you say as to the position between the long mills and the short mills, with reference to the customers in Canada, that is as to how far that affected the delivery of paper or the payments of dif-

30 ferences in cash?

A. That question which had not been quite seriously considered when they were dealing with the temporary period of three months, became a very active one later on. If you have reference to the value of the customer as a fact—in whether or not a differential should be paid—if that is what you had reference to?

Q. Yes, that is it. Now, can you give us shortly an outline of what took place with reference to that.

MR. TILLEY : By the Fort Frances?

MR. OSLER : Either the Fort Frances or the others.

40 MR. TILLEY : We are not interested with the others.

HIS LORDSHIP : Where the Fort Frances is concerned, what they did among themselves is what would or would not affect the plaintiff?

A. Of course, it is rather difficult, ten years afterwards to distinguish between the things that you remember as to whether Fort Frances protested, or did not protest in view of any individual conversation, because we were meeting constantly in Ottawa. Fort Frances were represented by their attorneys, and we were constant touch, and everybody knew everything that

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was occurring, at least, we thought we did, and these matters were discussed, so I would have to speak to the best of my recollection as to whether Fort Frances were present at a particular discussion or not, and at any rate, your Lordship could take it they were fully acquainted with the actions of the mills, and expressed their views, too, in regard to it.

HIS LORDSHIP : I do not understand that the evidence goes the length of showing that there was any definite agreement or arrangement made, or anything of that kind with regard to the retention or giving up of customers, or anything of that nature ? A. No.

HIS LORDSHIP : What it consisted of, I would assume from what has been 10 said was the objection on the part of some companies to allowing other companies to supply newsprint to their customers ? A. Yes.

Q. And so on, that they did not want other manufacturers to take their customers away from them ? A. Certainly.

Q. And whatever might be done in the arrangement of differentials in the way of supplying newsprint, rather than paying money, or some at least of them were seeking to have it done in such a way as that it would not enable the other manufacturers to take their customers away from them.

MR. OSLER : And also, my Lord, that is what I am addressing the argu- 20 ment to, was the reason for abandoning the differential in 1918.

HIS LORDSHIP : The reason for abandonment by whom ?

MR. OSLER : By Mr. Pringle, because there was no agreement to pay the differential to anybody, these other mills had agreed between themselves to abandon it, and Mr. Pringle was adopting that same attitude.

HIS LORDSHIP : I suppose that is really the point of contention, to show Mr. Pringle did or did not abandon.

Q. The position you are taking is that he did, and the position Mr. Tilley is taking is that he did not.

MR. OSLER : That is why I am taking this position. We know Mr. Pringle's statement on the occasion of the meeting of the 23rd of September, 30 1918.

HIS LORDSHIP : I remember what Mr. Backus said in regard to that, the explanation he understood what Mr. Pringle meant by it.

MR. OSLER : Except Mr. Backus got that at second hand.

HIS LORDSHIP : We won't argue it now. I am going to hear lengthy argument no doubt at a later stage. We will go on. I will hear what Mr. Montgomery may have to say, subject to Mr. Tilley's objection, applying it, Mr. Montgomery, as well as you can to particular people in regard to what was said.

A. Well, if you will note by the minutes, Mr. F. H. Anson, the President 40 of the Abitibi Company, was not present at all, at that meeting of February 21st, 1917, and my recollection is that very early in the game he took strong exception to this differential provision, saying that he had, ever since the mill was started, been trying to get some Canadian customers, had not been allowed into the Canadian market, and that he would be delighted to have some of the Canadian business handed to him. Other mills of the shorts took the same position, they were there, not as a matter of choice, but because they

had never been allowed to be "long,"—in other words, the Canadian business had been pretty zealously preserved by those who had it.

HIS LORDSHIP : By force of circumstances, is that the idea ?

A. Some of them had contracts at very good terms.

HIS LORDSHIP : There was not any complaint ? A. No, very much to the contrary.

HIS LORDSHIP : How could the one company get what the other company had ? A. They had long associations.

HIS LORDSHIP : To preserve the Canadian trade, so to speak ?

10 A. Some mills had been dealing with particular manufacturers or particular publishers for many years. They had supplied their paper for many, many years, and they would have met any price that anybody chose to quote to try to take the business from them, if they thought it was a serious price, and it might lose them the business.

HIS LORDSHIP : On the principle, between the devil you know and the one you don't know, you choose the one you know ?

A. Not altogether, but in the case of new people, who try to get in they thought that it would result in lowering the price for it without getting the customers—in any event, it had been very evidently done, if you will look at
20 it you will find the Abitibi had almost no Canadian business at the time, and others were not quite as badly off, but several of the older mills had considerable, however. Mr. Backus was in the very fortunate position that there was no one to compete in his territory.

HIS LORDSHIP : Unless they equalized the freight rate ?

A. Of course, it was almost prohibitive.

MR. TILLEY : Q. He had a large American business as well ?

A. He was really an international mill. He had one mill on the American side, and one on the Canadian side, and he pumped sulphite across the river and he could handle it pretty much as he pleased, subject to no—I do not
30 know if you want me to go on with the whole story.

MR. OSLER : I think I would like to hear about the carrying of it out until the abandonment of the differential, until 1918 ?

A. Well, the differential question was more or less lost sight of, so far as any communication I had with it was concerned, until—for many months we were more concerned with fighting the common enemy, Mr. Tilley's clients, the Publishers, than we were in questions of differential, and—oh, I do not think it was until the beginning of the following year there was ever very much discussion about it so far as we were concerned, then.

HIS LORDSHIP : That is 1918 ? A. 1918. Then in a meeting held in
40 Ottawa, about the 12th of March, the 11th or 12th of March, 1918, some figures were produced by Messrs. Clarkson and Sharp, purporting to show the adjustments due on the differential account from March to September, I think it was, 1917, or from March till January 31st—there were two statements, one I think, carried it down March to September, inclusive, and the second one down to January 31st—but whether that second one was produced at that time, or a later date, I would not be positive. In any event, it showed the accounts ran into very considerable figures, and I came down to Montreal

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with these statements, there were probably half of the manufacturers present at that meeting, and a meeting was held on the 13th or the evening of the 12th, I think the meeting was held, and it was held over until the 13th, and these statements were presented and considered—

HIS LORDSHIP : Pardon me, Mr. Montgomery, would you tell me, first of all, with respect, by whom were these figures prepared, by the manufacturers ? A. By all the manufacturers, excluding Powell, I think.

MR. TILLEY : Q. Not Powell ? A. Excluding Powell, I do not think Powell River was included in it. I have not seen it for years, but I have no recollection of Powell River being in that statement at all, I am not sure 10 whether News Pulp were included or excluded, nor Crabtree, there were a couple of border line cases. The mills who were shown as shorts.

HIS LORDSHIP : You took these figures down to Montreal ?

A. Yes, there, where no Order had been made. These figures had been presented to us, but it seems Mr. Pringle had asked Messrs. Clarkson & Sharp to get them out, because they were understood to be associated in the preparation by Mr. Clarkson for the purpose, and they provoked a very lively discussion. The shorts took the stand very much on the lines that I have described as being Mr. Anson's stand that this Canadian tonnage was an 20 asset.

MR. TILLEY : Q. You are now speaking of the manufacturers ?

A. The meeting of the 13th of March, 1918, at Montreal.

MR. HENDERSON : March 12th and 13th.

MR. TILLEY : Not before the Commission ?

WITNESS : March 12th and 13th.

MR. TILLEY : I do not want to keep on objecting.

HIS LORDSHIP : I note your objection. I am admitting this evidence subject to the objection which you have already taken.

WITNESS : I might say that Fort Frances Company was represented 30 there, at that meeting.

HIS LORDSHIP : At Montreal ? A. Yes, Mr. Dahlberg was there. Dahlberg was representing them.

HIS LORDSHIP : All right. A. The shorts pointed out to the longs it would be grossly unfair to call upon them to pay this differential, when they got the Canadian customers, and when conditions became a little different, they would still have the benefit of all their Canadian customers and the most valued part of their business, while the other people would have contributed to carrying them through the difficult stage; and offers were made by various of the "short" mills to the "long" mills, "Give us some of your customers and we will be glad to have them and delighted to supply them," but as was 40 natural, the "longs" were not giving up their customers. Finally, towards the end of the day, and I think it was on the proposition by Mr. Victor Mitchell, K.C., who had been representing the Abitibi Company, they split the difference and cleaned it up under a \$6.25 basis instead of \$12.50.

HIS LORDSHIP : That applied to whom ? A. That was intended to apply to all who had been shown in that statement, that is including Fort

Frances, but, as I think Mr. Tilley said, did not include Powell River, and I do not know if it included either News Pulp or Crabtree.

HIS LORDSHIP : Do I understand that Fort Frances agreed to that ?

A. Not at that meeting. Mr. Dahlberg said he would not accept—I do not recall Mr. Dahlberg taking any exception to the figure, but I distinctly remember him saying the Fort Frances would not take that fifty per cent. settlement, and some of the others were not in a position at that time to say definitely whether they could—these minutes will speak as to that; Donna-conna, I think, was one, and I do not think Mr. Millen of the Eddy Company
10 was there. That Agreement was signed by most of those present, and was subsequently completed by the signature of practically all the mills.

MR. TILLEY : That would be what Exhibit ? A. I do not know if it is an Exhibit. It is rectified in the minutes, but if you compare the signatures on the minutes with the original which I have before me, you will see that there were several companies whose names are not given there, who subsequently signed.

MR. TILLEY : Q. What is the date of the original agreement ?

A. The 13th day of March, 1918.

HIS LORDSHIP : Are you putting this in now ? It will be Exhibit No. 29.

20 EXHIBIT No. 29. Agreement dated 13th March, 1918. Agreement as to adjustment of Canadian tonnage.

WITNESS : There was one more, it is a duplicate, signed by Ontario.

MR. OSLER : It might as well go in. It was put in in the minute.

Q. There are some additional signatures here, so I think we might put
this in.

HIS LORDSHIP : That will be Exhibit 29.

WITNESS : For instance, in the minute, the one in the contributing mills stopped with the name of the Spanish River, you will find after that St. Maurice Paper, and Mr. J. R. Booth signed, and on the receiving side the
30 Eddy Company signed through Mr. Millen, and the Canada Paper Company signed through Mr. Campbell, the Ontario Paper Company—

HIS LORDSHIP : If I might have the date, please ?

A. March 13th, 1918.

HIS LORDSHIP : It is not signed by the Plaintiff ?

A. No, Mr. Dahlberg refused to take that.

HIS LORDSHIP : Now, Mr. Osler, you are going to be some time with Mr. Montgomery. We have reached our usual time of adjournment.

Court adjourned until 10.30 to-morrow.

MR. OSLER : Your Lordship, might I mention about the other witnesses.
40 Mr. Meade, unfortunately, is in the hospital. He had had a slight operation. He won't be able to get here, and I have not been able to get in touch so far with Mr. Alexander Smith. I may have something to say to your Lordship in the morning about these, but those that we can get on with, we will proceed with.

Court resumed May 31st, 1927, 10.30 a.m.

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GEORGE H. MONTGOMERY, Continued. Examined by MR. OSLER :

Q. Mr. Montgomery, you were being examined yesterday, and I think you had dealt to some extent with the agreement between the mills other than the Plaintiff and one or two others of the 13th of March, 1918. Will you continue on. You were dealing with that, on the subject of differential, following that agreement ?

A. Well, at the same time that the question of this settlement of the differential for the past month was under discussion, the question as to its treatment for the future was also a very active subject, but it was impossible to deal with it definitely at that meeting, on account of the absence of Mr. Millen of the Eddy Company, who were the largest, if I remember correctly, the Eddy Company supplied almost one hundred per cent. of their tonnage to Canada, having agreements—Mr. Taylor who was there representing them took the agreement back to Mr. Eddy, and he not only—to Mr. Millen, and he not only signed the agreement on behalf of the Eddy Company, but he came to the next meeting which was held in April, and with the others agreed that there should be no further differential from February 1st. That left everyone in agreement with the exception of the Fort Frances. Our feeling, the feeling of everyone there present was—

HIS LORDSHIP : Is that evidence ?

WITNESS : No, I was only recounting the fact that our feeling was that they would accede to such an extent. After that an assessment was made, which included the \$6.25, Fort Frances which they did not accept. It was subsequently rebated.

MR. OSLER : Q. Returned, I suppose ? A. Yes, I should say returned to the mills who had contributed.

Q. Then, were there any Orders made by Mr. Pringle with reference to differentials after that time ? A. We explained to Mr. Pringle what had been done, and that the manufacturers had made an agreement—

MR. TILLEY : Can you fix the date of that ? A. No, it would be after, it would be shortly after that meeting, you will see it referred to in the minutes of the next meeting. You see, Mr. Pringle's position, Mr. Tilley, that it was not purely a judicial one. He was in constant communication with us. There were difficulties about getting paper, and this publisher wanted paper, and that publisher wanted paper, he was constantly ringing me up over the telephone and making requests of me, and I saw Mr. Pringle every time I was in Ottawa about the thing, so there was far more happened off the Record than there was on it, on account of being to such an extent administrative, and we explained to him the situation, and that in our opinion, an agreement had been made between the manufacturers—you will recall that the terms of the Order-in-Council was failing an agreement between—it was only failing an agreement between the manufacturers these other provisions should become operative, and we felt quite satisfied an agreement which was made by ninety per cent. would be treated by all, in any event, no differential order was made until the one of August 6th, 1919.

MR. OSLER : 1918 ? A. August 6th, 1918.

HIS LORDSHIP : When you say that you informed Mr. Pringle that the

manufacturers had made an agreement, did you explain to him that the Plaintiffs were not a party to it? A. Oh, yes, and that is why the Order of August 6th, 1918, only refers to Fort Frances. That Order came more or less as a bolt from the blue. There had been no hearing, the matter had not been discussed, there had been at various times, you will see, scattered through the Record—

MR. TILLEY : I do not want to object to such a narrative as explains the history, but I submit we are getting somewhat past—

HIS LORDSHIP : Its psychological effect is going too far?

10 MR. TILLEY : I am afraid, unless we draw the line, we will take up a long time over what is very—

HIS LORDSHIP : That is why I stopped Mr. Montgomery after he started to tell us about how he felt.

WITNESS : The old difficulty of a lawyer giving evidence.

HIS LORDSHIP : Mr. Montgomery has not been transgressing.

WITNESS : As a matter of fact, without any reaction, and although it was the fact, and the Record will disclose, the assurance given that there would not be any Order without a hearing, this Order was given without a hearing, that is the point I wish to make.

20 MR. TILLEY : I understand—surely we are not going into whether it was—

HIS LORDSHIP : No, I think it is proper enough for him to state that they were not notified of any hearing, as a result of which the Order was produced, and that is perhaps as far as he has a right to go. That is as far as the Order of August 6th? A. August 6th.

HIS LORDSHIP : Yes? A. The Order, of course, met with protest all around, with a result that there was a hearing arranged before Sir Thomas White, which took place on the 14th of August, and before Sir Thomas White alone, or Sir Thomas White as head of a Committee of the Cabinet, I cannot say, because they were in and out, Mr. Rowell and others, but the result was
30 that on August 23rd Mr. Pringle's Order was approved.

MR. TILLEY : The meeting was August 12th? A. August 14th.

HIS LORDSHIP : And on the 23rd the Order was approved?

A. Was approved.

Q. Now, will Counsel let me understand—was there any Appeal in practice or under the Statute of the Orders-in-Council from the Paper Controller to the Minister?

A. Not at that time.

HIS LORDSHIP : By anybody? A. Perhaps my brother Counsel.

HIS LORDSHIP : All right, you know it, Mr. Montgomery?

40 A. The Order appointing Mr. Pringle Controller contained a provision that any order of his, fixing prices would be subject to the approval of the Governor-General-in-Council.

HIS LORDSHIP : That would justify the proceedings and on the 23rd of August the Order was confirmed? A. Was confirmed.

Q. All right? A. The result was the mills were virtually going on strike, sir. Mr. Price wrote a letter to Mr. Pringle notifying him of it, he would be dropping out, would not supply paper after October 1st.

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Mr. Booth wrote a letter. I do not know if you have it here. It is among the papers.

MR. TILLEY : Q. They took that stand ? A. They took that stand. Everybody saw they had lost confidence in the whole proceedings; they had lost confidence in the whole control. I was more or less of a peacemaker to get this, and I went to see Sir Thomas White, in the Ritz Carlton Hotel. I explained the situation, the difficulty we were having with the mills supplying and the knowledge that if there were a differential order of that kind the mills would call the whole thing off, and they could do what they liked. Sir Thomas suggested that we call for a re-hearing before Mr. Pringle. I told him the reason why they objected, the other mills objected to it so strongly, Sir William Price, for instance, who gave us no reason why—but the result of it was Sir Thomas assured me that steps would be taken about that Paper Control Tribunal. 10

MR. OSLER : Q. Probably, but on Mr. Booth's stand, did he carry on any further than the threat ? A. He closed down at one time, and refused to supply the Ottawa papers, but whether that was the occasion—

MR. HENDERSON : That was the day the Tribunal was appointed ?

A. I would not say, but he did close down. I think Mr. McNichol was sent down to try to get paper, I do not remember if that was the date or not. 20

MR. OSLER : I am going to get that when Mr. MacGregor comes back in the box, the letter from Mr. Booth to Mr. Pringle, dated the 10th of August, 1918—but in the meantime I would like to read the copy which my friend Mr. Henderson has from the Booth file : "R. A. Pringle, Esq., Controller of Newsprint Paper, 122 Wellington Street, Ottawa. Dear Sir,—I have received your letter of the 8th inst, with enclosure of copy of draft Order-in-Council re differential claimed by the Fort Frances Company. I——"

MR. TILLEY : That is a letter from whom ?

MR. OSLER : From Mr. Booth to Pringle.

MR. TILLEY : Can you find the original ? 30

MR. OSLER : I am going to ask Mr. MacGregor to produce the original.

MR. HENDERSON : This is a copy.

MR. TILLEY : I do not want to object, but I submit we are getting very far afield when you are following up facts and talks on the basis of an agreement which the witnesses say we had refused to agree to. Why should they attempt to give all the horrible details. They did refuse.

HIS LORDSHIP : I do not see it helps any more than the statement of Mr. Montgomery would help, that a number of them refused and threatened what they would do. That is really furnishing the atmosphere of what took place afterwards before the Appellate Tribunal. 40

MR. TILLEY : I quite agree, that is what Mr. Montgomery was leading up to, they insisted on having an Appeal Court to which they could go, instead of the Governor-in-Council. I understood that was the point of it.

MR. OSLER : If I might reserve the Exhibit number for this ?

HIS LORDSHIP : I do not think it should be carried further, the matter of these protests. There is a good deal of evidence already to the effect.

MR. HENDERSON : There is just this about it. Mr. Booth's position throughout, my Lord, was that he refused to recognize—

MR. TILLEY : I cannot hear what my friend is saying, and I do not think it is of benefit to put on the Record what your Lordship thinks has gone far enough already.

MR. HENDERSON : I wanted it to go in for another purpose.

MR. TILLEY : I am not objecting. It is in as Exhibit 30.

MR. HENDERSON : I also propose to ask that one particular letter go in when Mr. MacGregor takes the box, and I mention it now because of the fact
10 that Mr. Booth always took the position that there was no justification for payment in cash. No jurisdiction to order payment in cash. He always stated his position to be that he would supply paper.

HIS LORDSHIP : Then this letter which you have been reading, when it is produced by Mr. MacGregor, will be Exhibit 30.

HIS LORDSHIP : The letter is dated when ?

MR. OSLER : I have the original now, my Lord, it is the 10th of August, 1918, from Mr. J. R. Booth to R. A. Pringle.

EXHIBIT No. 30. Letter dated 10th August, 1918, J. R. Booth to R. A. Pringle.

20 MR. OSLER : Then, Mr. Montgomery, following the interview with Sir Thomas White, what took place with reference to the Appeal Tribunal ?

A. Well, the Appeal Tribunal was appointed a few days after that.

Q. The Order-in-Council appointing that is the 16th September, 1918 ?

A. It would be about then, my interview with Sir Thomas was on the 9th, so it would be just a week after that, and you will see by the terms of the Order-in-Council they are given the right to appeal from the Order of August 6th, notwithstanding the fact that it had been confirmed by Order-in-Council.

MR. OSLER : That Order-in-Council appears on pages 51 and 52 of Exhibit 1, my Lord, and the clause that Mr. Montgomery has just referred
30 to is the ninth clause.

HIS LORDSHIP : I will no doubt have to read it all over. Was not my Brother Middleton a member of that Tribunal ?

A. Yes, my Lord, and Mr. Justice White, of New Brunswick, and Mr. Justice Archer of Montreal.

MR. OSLER : And the Tribunal was constituted by the Order-in-Council I have just referred to, the 16th September, 1918, and at page 53 of Exhibit 1, your Lordship will find the copy of the Order-in-Council of the 19th September, making the appointment of the Tribunal—in other words, they constituted a Tribunal, and then subsequently made the appointment of the
40 officers afterwards.

WITNESS : In the meantime, it had been made perfectly clear to Mr. Pringle as well as to Mr. Thomas White, that there must be no further Order for differentials if they wished the supply of paper continued, and you will see, at the very first meeting—

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MR. TILLEY : I do not understand how we can have evidence made perfectly clear to Mr. Thomas White ?

A. I did personally.

MR. TILLEY : And made perfectly clear to Mr. Pringle.

HIS LORDSHIP : I think, Mr. Montgomery, you will have to confine yourself to statements as to what you said, or what was notified in writing, rather than give us the lawyer's substance of what took place. In other words, in a sense, you say that it was made perfectly clear, you are usurping my function, because I am supposed to determine what the effect of what you said was, and I am not willing to let somebody else do my work. 10

WITNESS : I could not dictate what the Order would be, but I personally advised Sir Thomas White, and Mr. Pringle, what the result would be.

HIS LORDSHIP : You notified them on behalf of your clients.

MR. TILLEY : What did you advise ? A. Instead of one mill going to strike, Fort Frances, he would have a dozen, and on the first meeting held after that, on September 12th, it was one of the matters taken up, that is meeting to which Mr. Backus referred to yesterday. Shall I read the excerpt from that, the actual excerpt ?

MR. OSLER : Of what date ? A. The 12th September.

HIS LORDSHIP : What is this ? A. An excerpt from the Official Record. 20
It is more accurate than my statement.

HIS LORDSHIP : Of the proceedings before Mr. Pringle ? A. Yes.

HIS LORDSHIP : Very well.

MR. TILLEY : Were the Fort Frances people there ?

WITNESS : I fancy so, Mr. Philips was nearly always there, something that can be easily identified.

On September 12th, 1918—

HIS LORDSHIP : First, were the representatives of the Fort Frances Company present ? A. I am unable to say definitely, my Lord. There were two meetings occurred, September 12th, and September 23rd, the Records 30
will show that no doubt.

MR. KILMER : The one of September 12th ? A. And the meeting that went on September 23rd, I think it was, September 23rd, 24th or 25th, which resulted in the Order of September 26th. It does not give a list of those present. You will have to go through it, get the original minutes, you will have to look there to see if Mr. Dahlberg was there—sometimes Dahlberg, and sometimes Philips, you will have to look at the proceedings.

MR. OSLER : I do not see that Mr. Philips or Mr. Dahlberg were represented as being present at the meeting of the 12th September ?

A. Mr. Kilmer may perhaps attend to a reference here, where the Com- 40
missioner says—is that the meeting of the 12th, or the 23rd ?

MR. TILLEY : What page is that ?

A. This is just an excerpt from the brief—page 275—276 of the brief—
I do not know whether that is the 12th or the 23rd.

MR. OSLER : It is pages 2011 to 2013, volume 5.

HIS LORDSHIP : It is merely telling what took place ?

MR. OSLER : I have a note of the Counsel who were present on the 12th

of September, that does not include Mr. Philips or Mr. Dahlberg, but I understand sometimes witnesses were present as well, and it may be that Mr. Dahlberg was there. We will verify that, but Mr. Philips was present on the meeting of the 23rd.

A. Where the same remark was made.

MR. OSLER : A similar remark, on September 12th, which is reported at page 2011.

MR. TILLEY : Is it understood you refer to this shorthand note as being a copy of what transpired before Mr. Pringle ?

10 MR. OSLER : I think so. That is, we are not putting the whole thing in in a lump.

MR. TILLEY : I should hope not, but that was not our arrangement yesterday. It is something we can refer to—it is not certified to, and the official reporter is no use to help my friend. I think he will find first of all, on September 12th, Mr. George S. Henderson represented Fort Frances Company—

MR. HENDERSON : My friend is in error. I never represented Fort Frances on the differential.

MR. TILLEY : I am reading the Record.

20 HIS LORDSHIP : Mr. Henderson is not a party to your arrangement with Mr. Osler.

MR. OSLER : That is a matter that was perfectly clearly understood. Mr. Henderson did represent Fort Frances on price matters, but not on differential.

MR. TILLEY : I may say, I attended the proceedings, and I never heard that distinction drawn. That may be a mental reservation. I never heard the distinction drawn.

HIS LORDSHIP : I do not know what harm it is going to do anybody. We are now considering whether Fort Frances had any person present.

MR. OSLER : Because Mr. Thomas L. Philips was with Mr. Henderson.

30 MR. HENDERSON : No, he was not with me. I refused—I was there representing Mr. Booth.

HIS LORDSHIP : Mr. Montgomery, you were starting to give me some information as to what took place.

MR. OSLER : My Lord, may I just clear that up for a moment.

HIS LORDSHIP : As to the representations? Does it make any difference?

MR. OSLER : Only to the question Mr. Henderson was in an embarrassing position.

MR. HENDERSON : I am not worried about it.

40 MR. OSLER : Mr. Philips was representing Fort Frances on the 12th, so you will refer to what you were about to mention?

A. The books, which are more accurate than my recollection reads—

HIS LORDSHIP : Yes?

A. "THE COMMISSIONER : We want, if possible to get away from the differentials, which have caused us much trouble, and to fix a price.

"MR. MONTGOMERY : Every one must agree that there can be no more differential.

"THE COMMISSIONER : I do not want to hear any more of the differential, if this can be avoided.

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“MR. MONTGOMERY : There can be no more differential, whatever happens.”

WITNESS : That is confirming what would happen if he made any Order.

MR. HENDERSON : Read the next two lines.

WITNESS : “THE COMMISSIONER : He apparently assented with my judgment as he says it has been a source of friction all through.”

And then you will find in the meeting of the 23rd, in which Mr. Philips took part the answer to Mr. Orde, the Commissioner, says, “I will say to you, Mr. Orde, now, that there will be no more differential——”

MR. TILLEY : But their Order promised——

10

HIS LORDSHIP : I suppose that is binding.

WITNESS : That was the Commissioner, not myself that said that. I would just like to correct an impression which Mr. Backus made yesterday, when he said that remark was made at a time when the Canadian price was higher than the American. He is not exact in that.

MR. TILLEY : What are the facts?

A. The facts are, at the time of that meeting, on September 12th, we were operating—the Canadian Mills were operating under a \$57 price—the American price, if I remember correctly, that is subject to the cheque you have, the figures were \$62.

20

MR. TILLEY : Mr. Montgomery, I do not want to interrupt, but just to make it clear—is that quite a fair way to put it because that was the very meeting at which Mr. Pringle was raising the price?

A. Oh no, that came after—this is on September 12th, Mr. Tilley, before we even had the statement to show what the result would be, or had even presented our evidence upon which we would propose to act for an increase in price.

HIS LORDSHIP : What was it on September 12th?

A. Subject to confirmation of these figures, my recollection was the Canadian price was \$57, and the American price \$62.

30

HIS LORDSHIP : On September 12th?

A. September 12th.

HIS LORDSHIP : It was not on the 12th the Commissioner said there would be no more differentials?

He said, I do not want to hear any more of a differential,” I have no doubt it was on the 23rd that he made the statement, “I will say to you now, there will be no more differentials”?

A. That was on the 23rd.

Q. On the 12th, he expressed, “I have no doubt, the sentiment of a great many people, was merely he did not want to hear any more about it”?

40

A. The Order which fixed that \$69 price from which an Appeal was taken was made at the conclusion of the hearing on the 26th of September.

HIS LORDSHIP : Order fixing what price?

A. \$69.

Q. That was the Canadian price? A. That was the Canadian price, and it was followed very shortly afterwards by an increase in the American price.

MR. TILLEY : Q. What date? A. Can you give me the date, I can look it up for you, if you like, it was the Circuit Court—if I remember correctly, the 2nd of October, I know it was very shortly afterwards, six days after in 1918.

MR. TILLEY : Q. And they fixed what price?

MR. OSLER : They fixed \$70? A. Yes.

MR. TILLEY : Mr. Montgomery, may I just interrupt, did you say \$69—when you said \$69, you meant the other mills, but for the Fort Frances, it was different, was it not \$73?

10 A. There was a temporary order fixing it temporarily for \$3 more but that was subject to some readjustment in rebate of sulphide allowance.

Q. But you are saying the price fixed on the 26th of September was \$69, and a few days later the American price was raised a dollar more, but as for Fort Frances, the price that was fixed was \$73, was it not? A. Subject to—

Q. Subject to something in the future? A. Subject to that reduction of sulphide duty which was then under discussion and was granted.

MR. TILLEY : The Order states for this sulphide duty and freight rates?

A. And freight rates on ground wood if I remember rightly.

20 MR. OSLER : Q. Well then, the Order of the 26th of September included no provision for differential? A. No, nor did any of the subsequent orders.

Q. Then, will you just summarize as shortly as possible what took place down to the conclusion of the matter so far as you were dealing—

HIS LORDSHIP : Which order was this you said allowed no differential?

A. Of the 26th of September, my Lord.

HIS LORDSHIP : You have already told us about that?

A. And none of the orders afterwards whether the American price was lower or higher than the Canadian. As a matter of fact it was always higher afterwards.

30 MR. OSLER : Q. Then you summarized, subsequent to the Order of the 26th of September, 1918, what took place with reference to the control?

A. Well, it continued with difficulties until December, 1919, when there was general dissatisfaction ; Sir William Price cancelled my retainer, and took over control, and refused to carry on any further or obey the Orders of the Commission. I think there was trouble at Fort Frances about that time, too, but in any event, a meeting of the manufacturers was held in Montreal, and they decided to go to Sir Henry Drayton direct, and to invite the Publishers to accompany them. I think it was probably through the kind offices of Mr. Tilley that the avenue for negotiations had been opened up. Every-
40 body was heartily sick of it anyway, and we met the Publishers in Montreal. I say "we", I was present, and went on to Ottawa, and held a meeting before Sir Henry Drayton who was either the Minister of Finance or Acting Premier, I do not remember which. Acting Premier, I think then.

MR. HENDERSON : Both, I think?

A. Both, yes ; and the result of that meeting was the agreement which was taken to end controls so far, anyway as the Eastern mills were concerned, the price was fixed at, for the first six months of 1920 at \$80, with a proviso

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that after the end of the six months the price should be the lowest made by three of the largest sales agencies in America, I can give them to you if you wish them and that concluded our interest in the Control proceedings. Mr. Pringle was called in to make an Order to give effect to it, that was on the 17th December, 1919.

MR. OSLER : That seems to be on page 78a of Exhibit 1.*

HIS LORDSHIP : That is the Order that was made by the Controller, pursuant to this?

MR. OSLER : Pursuant to this arrangement, to fix the price at \$80, it is a fraction over \$80—\$4.07½ per one hundred pounds. 10

WITNESS : That is less than carload lots.

Q. Is that the order that you refer to? A. Yes, \$4.00 per hundred pounds in car load lots.

Q. Is that put in your order, the same order? A. The same order, it is given in print.

Q. That is the order you refer to? A. Yes.

Q. Now below the order is dated, apparently, "Nothing in this order shall prejudice the rights of the interested parties in the matter of differentials," and then the initials follow, "R. A. P." What do you say about that, Mr. Montgomery? A. That was not on the order when it was drafted and approved, and when we left Ottawa. I was surprised to see it there at a later date, the Order was made and signed without any such addition. That is added as a postscript, and it only came to my knowledge sometime later. 20

MR. TILLEY : Q. Do you mean a matter of weeks or days or months?

A. I am unable to say definitely. Mr. Osler asked me that question this morning, and I was not absolutely able to say definitely. I know it was a long time afterwards, but I really would not be able to help you at all at fixing the date.

HIS LORDSHIP : It was a long time after you saw this postscript?

A. When I saw the postscript—

HIS LORDSHIP : Is it put on in the handwriting of Mr. Pringle? 30

A. I could not say, I never saw the original, but as regards the date of it, the date it was put on, obviously before the Order was approved a few days later, because it appears with the confirmed order.

HIS LORDSHIP : What was the language of the addition?

MR. HENDERSON : "Nothing in this order shall prejudice the rights of the interested parties in the matters of the differentials."

MR. OSLER : Then, Mr. Montgomery, you were present at a hearing before Mr. Pringle on the 2nd of October, 1919, when reference was made to the documents which was stated, I think the 17th of July, 1919, and is referred to as an Order made by Mr. Pringle—will you refresh your memory by looking at the Record for the 17th September, 1919, I think you will find it at page 201 of the Record before Mr. Pringle? 40

A. I remember the incident, that was the 17th September, 1919.

Q. The Order was the 17th July, but the proceedings before Mr. Pringle at which it was referred to is the 17th September? A. It must have been

August, because it was after the Appeal Control Tribunal that the incident happened. I looked at Mr. Taylor's copy.

MR. OSLER : Q. Now, will you just tell us what you know about that so-called unsigned unissued Order?

MR. TILLEY : Does it not appear by the proceedings?

MR. OSLER : Yes.

Q. Will you? A. I know nothing of the Order, never having seen it, and all that I heard was that statement of Mr. Pringle's that he made there, what happened was this.

10 Q. Will you refresh your memory by that statement, and read this?

HIS LORDSHIP : What do you mean, Mr. Montgomery, when you say that you know nothing of this Order?

A. There was no Order ever issued. Mr. Pringle at those proceedings made some reference to the fact that he had drafted an Order.

Q. Were you present at those meetings? A. Yes.

Q. And this is something that Mr. Pringle spoke of? A. In discussion with Senator Ross and myself.

MR. OSLER : The Honourable W. B. Ross, K.C.?

A. Appearing for Fort Frances.

20 MR. HENDERSON : And took part in the discussion because he was then complying with the Order.

HIS LORDSHIP : First of all, the date when this took place?

A. The 17th of September, 1919.

HIS LORDSHIP : Not 17th September, 1919?

A. Yes, the Order or alleged Order or disputed Order.

Q. Bearing date the 17th of July? A. I do not think there is any date given.

MR. OSLER : It is not referred to by date at this place in the proceedings, but I understood——?

30 A. I do not remember any date in connection with it at all.

HIS LORDSHIP : This was on the 17th of September?

A. This was on the 17th of September when a reference to some order was made.

Q. What is it you say took place? A. The Appeal Control Tribunal had rendered its Judgment reducing the differential from \$100,000 to \$72,000 odd, the result being that the mills found themselves in the position of having overpaid some \$28,000, and I was requested to apply for the return of that, that overpayment had been made in the previous October.

HIS LORDSHIP : You mean October, 1918? A. Of 1918.

40 MR. TILLEY : And this is September?

A. September, 1919. They had paid in the full \$100,000.

HIS LORDSHIP : Had paid in to whom?

A. To Mr. Pringle, that is, so far as my knowledge goes, and any cheques that I saw were made payable to Mr. Pringle.

HIS LORDSHIP : There were no payments so far as you know made direct to the Plaintiffs?

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A. No, I do not think so, they were all made to Mr. Pringle, there were wires sent out to all the mills advising them that unless they sent cheques payable to the Order of R. A. Pringle by a certain date, that the export would be stopped.

MR. TILLEY : Sent out by whom?

A. Commissioner McDougald, of the Customs, and it called for cheques payable to the Order of Robert A. Pringle, and any I saw, I remember Brompton's for instance were made payable to the Order of Robert A. Pringle.

HIS LORDSHIP : This time in September, the amount having been reduced, you say the mills had overpaid to the extent of some \$28,000? 10

A. That is correct.

Q. And you were instructed to get this back? A. Yes, and I made an application at the meeting for its return, and Mr. Pringle countered by a suggestion——

MR. TILLEY : Might I suggest——

WITNESS : Well, I wrote it, I will read it, and you will have another.

MR. TILLEY : Except the Reporter will have to take it down, I thought it might be just copied and made an Exhibit if it be material.

HIS LORDSHIP : I suppose we have come down now really to something that is more or less of interest. 20

MR. TILLEY : I had hoped, my Lord.

HIS LORDSHIP : I have been getting a lot of history, I suppose it is all necessary to enable me to understand the situation, but I think it would be as well if this were in some form in which it would be readily accessible, without my having to get the Reporter to transcribe it for me.

MR. OSLER : I think it might just be copied and read into the Record.

HIS LORDSHIP : The trouble is, I do not have the Record.

MR. HENDERSON : Mr. Tilley happens to have it in short form.

MR. OSLER : I think that can just be put in.

MR. TILLEY : Have you got one of these? 30

MR. OSLER : We can arrange to have it in, I have only before me the copy in my brief.

HIS LORDSHIP : I do not want it immediately, but when I come to consider this, it would be an advantage to have it in a simple form.

Then a copy of the proceedings of this occasion on the 17th of September, 1919, before the Paper Controller will be made and put in as Exhibit Number 31.

EXHIBIT No. 31. Memorandum of proceedings 17th September, 1919, before R. A. Pringle, Commissioner, to enquire into costs of newsprint.

MR. HENDERSON : There are only three pages. 40

MR. OSLER : And then the material parts of that, are, I think "Senator W. B. Ross, K.C., appeared for the Fort Frances Pulp and Paper Company——

MR. TILLEY : Start earlier than that.

MR. OSLER : I am sorry, this is the beginning of it then.

"Mr. Montgomery, I have an application here, Mr. Commissioner" and the Commissioner says, "Is it in connection with the differential matter?"

“Mr. Montgomery : Yes, I have been getting letters “THE COMMISSIONER : We will do the best we can.”

MR. TILLEY : It might just be noted that was at the end of other proceedings, a further occasion, we had reached the adjournment—ready to adjourn, and then Mr. Montgomery made this application.

MR. OSLER : I assume that is so, as shown by the Record?

A. I assume so, I do not recollect that. Would it help you to have it explained as to what it means by “the whole basis of differential may be changed if the prices are changed for the prior periods”?

10 Q. Yes? A. The explanation of that, as I understand it is, that all orders from September 26th, 1918, had been subject of appeal to this Paper Control Tribunal, both by the Publishers and by the Manufacturers.

HIS LORDSHIP : That is the order subsequent to?

A. The orders including and subsequent to the Order of September 26th, 1918, these appeals were still pending and had never been heard, and as a matter of fact, have never been heard.

MR. TILLEY : Mr. Montgomery, are you just accurate in your recollection—the judgment of the Tribunal on the 18th of August?

20 A. I should not have said “including” an appeal was taken from that, but the judgment of August, 1919, disposed of that appeal, and has just been handed down, the others are still pending, that is correct.

MR. OSLER : I do not know what is accurate about that, but I see a statement to the effect that although the Order was dated the 18th of August.

MR. TILLEY : It was handed out on the 30th of August.

WITNESS : The very proceedings had been handed out, and that was the subject matter of the earlier part of the meeting of the 17th of September.

Q. I think it is without doubt? A. I do not remember.

MR. TILLEY : But there were later Orders that have not yet been reviewed.

30 HIS LORDSHIP : Have the appeals never been heard in respect to these later Orders?

MR. HENDERSON : No, my Lord, everything was allowed to stand.

WITNESS : I might say everything was—every order right down to that of September 17th were in like manner appealed, but have never been heard.

HIS LORDSHIP : Would there be any possibility of my being able to get rid of the trouble by arranging to have the Appeal Tribunal called together.

MR. OSLER : Of course, one of our stipulations is this, one of our stipulations is that this Court is not the one to deal with the matter.

40 HIS LORDSHIP : I was discussing the matter with my Brother Middleton, I do not see, I am afraid it would be somewhat difficult to get the Tribunal to meet again.

MR. OSLER : It is a very popular occupation.

MR. MONTGOMERY : Fortunately there are all alive.

MR. TILLEY : There has been no machinery for remunerating that Tribunal for many years.

HIS LORDSHIP : Is that the finish?

WITNESS : In applying that reference I never saw any Order, and never

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heard of the date of July, that is to the best of my recollection, any draft order even, or never heard of the date of July until the date of these proceedings.

MR. TILLEY : Q. These proceedings? A. These proceedings in Court here, where I heard an Order has been referred to of July, 1919, that brings nothing back to my memory, I do not recall any reference to a proposed Order other than the one that appears there.

MR. HENDERSON : I did not know what he meant when he spoke of this.

A. I did not know what I—as a matter of fact, I did not take that seriously. I do not know whether that is evidence.

MR. TILLEY : That is our trouble, that you are not taking it seriously 10 enough yet.

MR. HENDERSON : Did anybody take this seriously?

A. The thing was not taken seriously.

MR. TILLEY : I think that is going a bit too far to say it was not taken seriously? A. Well, as—

MR. OSLER : Q. Now, Mr. Montgomery, is there anything further that you think of? A. No, after that meeting of September 17th in Ottawa, before Sir Henry Drayton, our part in the proceedings ended, the Control was continued for a certain time after that by Mr. Pringle, down to January, 1922, I think, and that was because Price Bros. were not parties to that hearing on 20 December 17th, and refused to have anything to do with it. The Order was inapplicable to Fort Frances, and there were subsequent hearings of the Commission, but we did not attend them at all. We took no part in them. Our end of it was there, we did not appear either before the Controller, before the Appeal Control Tribunal and a hearing, which I understand subsequently took place with reference to one of these matters we took no part in it, and that ended my connection with it.

MR. KILMER : Before Mr. Tilley begins, I want to ask a question or two particularly with reference to the position of the Abitibi Company, and to ask 30 Mr. Montgomery if he could confirm what happened at a hearing before the Commissioner, Mr. Pringle, on the 19th of June, 1917? If you will look at your memorandum there, page 282 to 286. (Note: these page references are to report of Newsprint Enquiry).

WITNESS : That was one of the very early sittings?

Q. At the very beginning, yes, at page 282 to 286—what I want to ask you particularly about is at page 286, the statement of Mr. Smith of the Abitibi Company, that is Mr. W. H. Smith? A. The Treasurer if I remember rightly.

Q. The Treasurer of the Abitibi Company, and I ask Mr. Montgomery 40 to read from the Record and see whether it is his recollection, down to the last paragraph? A. Where do you want me to begin?

Q. Begin at page 284.

HIS LORDSHIP : Is this in already?

MR. HENDERSON : No, my Lord, it is not in.

HIS LORDSHIP : Then, perhaps, Mr. Montgomery had better read it to himself first and see if he recalls the circumstances.

Read it to yourself first, and see if you recall the circumstances and whether you are able to confirm it or not.

MR. TILLEY : Mr. Kilmer, I think your paging must be wrong?

A. Volume 1, page 282 to 286.

Q. Pages 282 to 286 is the whole thing, but I am just asking you to read as to the one question there, is that your recollection? A. Oh yes, sir, I remember the incident. It was after the first meeting, it was the second, it was very early in the proceedings.

MR. KILMER : Now, I will read the extract and ask Mr. Montgomery—
10 “MR. SMITH : (For the Abitibi Company) I may say, Mr. Pringle, that we are ready, and always have been ready since the first of March to supply our proportion. We are ready now.

“THE COMMISSIONER : Are you ready now to supply your proportion of the tonnage which you have not supplied, and which Mr. Backus has been altogether supplying since the 1st of March last?

“MR. SMITH : Whatever proportion is properly allotted to the Abitibi Company we are prepared to supply.

“THE COMMISSIONER : But are you prepared to pay?

“MR. SMITH : No, we are not.

20 “THE COMMISSIONER : Then we will have to make an Order to compel you to pay and we will have to send somebody to your mill to see that nothing goes out of the country until such time as you are ready to obey the Orders that have been made in this matter, and we are not going to have any humbugging about it, I can assure you. You will do either one thing or the other. You will have either to supply the paper or you will pay the difference.

“MR. SMITH : That is just our point, that we are ready to supply the paper”—do you remember that? A. Yes, I remember that, because Mr. Smith was being scolded by the Commissioner. I remember the incident quite well.

30 MR. KILMER : That is a correct statement of the incident?

A. I am sure it is.

MR. TILLEY : If my friend is ready to put in such notices of Appeal as he thinks are relevant, I will be very glad to have them in before I examine Mr. Montgomery, because I will want to ask him about them.

HIS LORDSHIP : Notices of Appeal from various Orders?

MR. TILLEY : Yes, I just want to know what ones we have to discuss.

MR. OSLER : I have a folio here of Notices of Appeal, which have not been decided by the Paper Control Tribunal, and which are still pending there, and then I have another file of those which have been heard.

40 MR. TILLEY : We are not concerned with those that have been heard.

HIS LORDSHIP : I do not see, at the present time—

MR. TILLEY : Because these are covered in the Orders, Exhibit 1.

MR. HENDERSON : Mr. Tilley is right, there is no object in putting in those that have been dealt with.

EXHIBIT No. 27. File of Notices of Appeal from Orders of R. A. Pringle (fifteen).

HIS LORDSHIP : This is a file of Notices of Appeal?

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—
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No. 18.
George H.
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—continued.

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—continued.

MR. OSLER : Found among Mr. Pringle's papers in respect to Orders made by Mr. Pringle, and in respect of which appeals have not been decided by the Paper Control Tribunal. The first is of the 15th of October, 1918, by the E. B. Eddy Company.

MR. TILLEY : From an Order of the 21st of January.

MR. OSLER : From a number of orders from the 21st of January, 1918, the 29th of April, 1918, the 31st of May, 1918, the 27th of June, 1918, the 30th of August, 1918, 26th day of September, 1918, fixing the prices of newsprint paper, "hereby appeal to the Paper Control Tribunal from the said Orders and all other Orders (if any) heretofore made by the said Commissioner and Controller, on the ground that, upon the evidence adduced before the said Commissioner and Controller, the said Commissioner and Controller ought to have fixed prices for the sale of newsprint paper during the periods covered by the said respective Orders largely in excess of those fixed thereby." 10

MR. OSLER : The Notice of Appeal of the 8th of November, 1918, by Mr. Tilley as Counsel for the Canadian Newspaper Publisher's special Paper Committee, an appeal from the Order made on the 10th day of October, 1918, and the Order of the 26th of September, 1918.

The next Notice dated 30th December, 1918, an Appeal by Mr. Tilley from an Order dated the 30th day of November, 1918. 20

Then an Appeal by Mr. Montgomery as Counsel for the Canadian Pulp and Paper Association, dated the 28th February, 1919, from an Order dated 31st of January, 1919.

The next is Notice dated the 28th day of February, 1919, by Mr. Tilley from an Order of the 31st of January, 1919, and on the 28th day of April, 1919, by Mr. Tilley from an Order dated the 31st of March, 1919.

The next is an Appeal dated the 30th day of April, 1919, by Mr. Montgomery on behalf of the Manufacturers represented by the Canadian Pulp and Paper Association from the Order of the Commissioner dated the 31st of March, 1919, and accompanying these are, in some cases, letters or copies 30 from Mr. Pringle's files—Mr. Montgomery encloses that file, and there is a copy of a letter to Mr. Montgomery—

MR. TILLEY : We do not need the letters, the Order is here.

MR. OSLER : I think so, in some cases there is service on them, and some not.

MR. TILLEY : There is no question of service.

HIS LORDSHIP : I think the Exhibit should be confined to the Notices of Appeal.

MR. OSLER : Then we will do that, my Lord.

Then on the 26th of June, 1919, an Appeal by Mr. Tilley for the Canadian Newspaper Publishers from an Order dated the 31st day of May, 1919. 40

On the 27th day of June, 1919, an Appeal by Mr. Montgomery on behalf of the Canadian Pulp and Paper Association from the Order dated the 31st of May, 1919.

Also an Appeal by Mr. Montgomery dated the 1st day of August, 1919, from the same Order of the 31st of July, 1919, and again on the 20th of August, 1919, an Appeal by Mr. Tilley for the Canadian Newspaper Publishers from

the Order dated 31st July, 1919, during August and September, 1919, the prices of newsprint paper fixed by his Order of the 26th September, 1918, on the ground that such prices are excessive.

And an Appeal by Mr. Montgomery, for the Canadian Pulp and Paper Association, on the 2nd day of October, 1919, from an Order dated the 30th of September, 1919.

An Appeal dated the 30th day of October, 1919, by Mr. Tilley for the Canadian Newspaper Publishers from an Order dated the 30th day of September, 1919.

10 And an Appeal dated the 14th day of November, 1919, by W. B. Ross as Counsel for the Fort Frances Pulp and Paper Company from an Order made by Mr. Pringle, dated the 28th day of October, 1919, directing and commanding the said Fort Frances Pulp and Paper Company to supply to the *Free Press* Newspaper such paper as they require at \$69.88 per ton on the ground that said Order or direction is illegal and oppressive and that the demand of said *Free Press* Newspaper is unreasonable and unfounded.

And an Appeal dated the 15th day of November, 1919, by Mr. Tilley for the Canadian Newspaper Publishers from an Order made by Mr. Pringle dated the 31st day of October, 1919.

20 MR. HENDERSON : Mr. Osler, there is one by Mr. J. R. Booth, October 15th, 1918, taken by Mr. Orde.

MR. OSLER : There are probably some others, Notices of Appeal.

MR. HENDERSON : There was one by Fort Frances from the original Order and St. Maurice.

MR. OSLER : In the meantime these appear to be what came from Mr. Pringle's files. There may be some other Notices of Appeal.

MR. HENDERSON : There were a number of individual Appeals.

MR. OSLER : And the letters transmitting these can be taken off that file.

HIS LORDSHIP : You skip the Notices of Appeal now?

30 MR. OSLER : Perhaps that should be done now. We will do that, unless you want to use that file at the moment.

CROSS-EXAMINED :

BY MR. TILLEY.

Q. Mr. Montgomery, you were asked by my friend, Mr. Kilmer with regard to the attitude of the Abitibi Company before the Commission in 1917, and the extract was read from the proceedings—I do not understand that you were saying that that is all of the extract that is material? A. Oh no, I remember the incident.

Q. You remember the incident? A. Yes.

40 Q. And I think it is right to say that that question of supplying paper rather than paying cash was a matter that was prominent from the very beginning of the hearing before Mr. Pringle? A. I think so, yes, I so consider that.

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—continued.

Q. And I think you are authority for the statement that when that subject commenced to be discussed, it always went around in a circle? A. It may be.

Q. I think on the 17th of December, 1919, at the hearing before Mr. Pringle, you put it this way. Senator Ross said: "There will be no objection to Fort Frances following the order with regard to the quota. If the order is thirteen per cent. of its gross output, there will be no objection. With regard to the differential on freight, we have already suggested a way of dealing with that,"—and then you said: "That question is almost as old as the inquiry itself. That suggestion always comes and is always followed by this suggestion that they will turn over to us the American publishers. I do not think that the responsibility for that is either Senator Ross' or ours, but the suggestion has been made, the counter-proposal follows, and it ends there." 10

Now, as I understand the suggestion, the suggestion made is, give us the paper and then the manufacturers say, give us your customers, and then the matter goes around that way—the manufacturer not wanting to give up his customers—now that applied to Eastern Canada, did it not? A. Yes, it applied, but I do not know that it applied everywhere.

Q. It did not apply in Western Canada, did it, because there was no point to say, "Give us your customer in Western Canada," because of the high freight? A. I think I see what you mean, that is true. 20

That Fort Frances, by reason of its geographical position, and as Mr. Backus has explained, had the field practically to itself out there.

Q. And the price that was set by the Controller from the beginning was f.o.b. price at the mill? A. That is true.

Q. And the freight item on paper going from the nearest point east of Fort Frances to the Prairies would be at least twelve dollars more than from Fort Frances? A. I understand that to be the case.

Q. You understand that to be the case? A. Yes.

Q. Then Fort Frances would say, "Well, all right, put the paper at our disposal at your mill, so that we can handle it from there," then the Manager would refuse to do that, wouldn't he? A. When you say "your mill," you mean the Manufacturer's mill? 30

Q. Yes, that is the Abitibi would say, for instance, or Spanish River, "We will supply paper." "Well, all right, supply the paper at your mill where it can be used—you cannot ship it out to Western Canada. Supply it to our order at your mill, and we will take it at your mill in lieu of the extra paper we are supplying over our quota in Western Canada"—that was the attitude was it not? A. I think that does not get quite the full story. I do not think— 40

Q. I will get the full story, but I want, just if I may, to get what I conceive to be certain conditions? A. As far as it goes, what you say is correct, but it does not go the full story.

Q. I will give you an opportunity, Mr. Montgomery? A. Yes.

Q. As far as it goes, it is correct, and then when the Fort Frances would say, "Give us the paper at your mill"—the Abitibi, the Spanish River, or whatever company up north would say, "Oh no, you cannot have it at our

mills"—was that not so? A. Exactly, that is to be shipped to the United States and sold at a certain big profit out there to a customer of the Fort Frances Company.

Q. That is to say the Fort Frances Company's position, let it be right or wrong, was, "If we have to supply any more in Canada, it leaves us less to market in the United States, more than our quota"—that was their position, was it not? That is what they contended? A. And the other people contended to the contrary.

Q. Please do not tell me something I do not ask about? A. I am sorry, I wanted to make it clear—I agree with you if you say that was their contention.

Q. Mr. Montgomery, the other people never at any time contended that the Fort Frances Company was not supplying more than its percentage in Canada? A. Most strenuously.

Q. How did they do that, and when and where? A. Everywhere, from the very start.

Q. Well, what do you mean—now let the quota be eleven per cent., or fifteen per cent. of the output of the Canadian mills marketed in Canada as a whole, and the balance in the States—that roughly was about the situation wasn't it? A. If you will entirely eliminate any distinction between these markets, but as there was an eastern market, there was a middle west market, and a Pacific coast market, which was just as distinct and more distinct than Canada and the United States?

Q. Am I right in saying that from eleven to fifteen per cent., depending on the period you take throughout the Control, eleven to fifteen per cent. of the total Canadian production of paper was marketed in Canada, and the balance in the United States? A. I am not sure of the figures, but if you have them—

Q. Is that not your recollection? A. It is in that neighbourhood, yes.

Q. Yes, eleven to fifteen per cent.—now then, let us see, let us assume that each manufacturer has to supply eleven to fifteen per cent. of his production in Canada, leaving him free to use the balance for United States sales—you do not suggest, do you, that on that basis, let it be right or wrong, the Fort Frances Company was not supplying in Western Canada, much more than its percentage of eleven to fifteen per cent.? A. As far as figures go, I am sure that is true, they were supplying more than eleven to fifteen per cent., but their business—

Q. I think the record shows, because these matters were discussed from time to time, something about forty per cent., or about three times as large as the percentage—that is so? A. Whatever their market demands were out there, they were supplying them, they were the only ones.

Q. Now, are you saying that it was at any time contended that that was not the situation of the Fort Frances Company, that it was supplying two or three times as much as its quota? A. I do.

Q. Now, will you show me where that was ever put forward, because I think I know this record, and I do not know where it is? A. Well, Mr. Tilley, as I explained the order of August 6th was given without any hearing

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whatever, and so the only opportunity that we had of discussing that matter was on the appeal, and you will find that very fully dealt with.

Q. In the Appeal? A. Yes.

Q. To the Paper Control Tribunal? A. To the Paper Control Tribunal.

Q. Now, what was the contention, so that I will understand what you are saying was contended? A. In the summary of points, as it has developed later in argument—

Q. Of your factum? A. Yes.

Q. Now, may I just follow you? A. Perhaps, to give it in the order of date, Mr. Tilley, I think it was referred to in the hearing before Sir Thomas White, too. 10

Q. I will just follow you there, one at a time—would you read what you have? A. Yes, in the points, Mr. Tilley, Number 9.

Q. I have it here? A. That is a summary of points of error, as it were, Number 9, at page 5, at the top, "No differential whatever should have been ordered against the Eastern Manufacturers in respect to the supply of paper by the Fort Frances Company for the western market."

Q. I am not saying—? A. It is developed, that argument, and the reason why, the system and so on, and their quota was the supply of whatever percentage in their own market, that the eastern mills had nothing whatever to do with, they could never participate in. 20

MR. TILLEY : Q. Mr. Montgomery, I wish really you would stop, please, because you are not answering my question? A. What is your question?

Q. I put it on this basis, assume that the quota that each manufacturer was to supply the Canadian Publishers was from eleven to fifteen per cent. of his manufactured product in Canada, it was never suggested by any person that the Fort Frances Company did not at all times exceed that?

A. Well, Mr. Tilley, as far as your percentage that they exceeded eleven to fifteen per cent., if those are the figures, and I have no doubt they are, I am absolutely with you. 30

Q. Yes? A. When you said, introduced the words, "their quota," I cannot agree with you, and I do not want to argue with you about it.

HIS LORDSHIP : Mr. Tilley speaks about their quota—he is speaking of something the Paper Controller or somebody said was to be their quota, and so you are not conceding anything.

WITNESS : The word "quota" is not used in the Order.

MR. TILLEY : Q. Mr. Montgomery, I will define my meaning of the word quota, as percentage, the same percentage that the manufacturers in Canada as a whole market in Canada as compared with the United States. It was never contended that on that basis, be it right or wrong, he was not supplying a great deal more than his quota? A. Mr. Tilley, the figures are all there, and they are much more accurate than I could be. 40

Q. I want to get some common basis that is right? A. He was supplying more than eleven to fifteen per cent. of his total output in Canada, to Canadian Customers.

Q. To the Canadian Customers, yes, now then, were they ever offered by any mill, so far as you know, any paper that he could have f.o.b. the mill to handle as he pleased? A. I do not know, Mr. Tilley, you see I did not represent Abitibi at all in that proceeding. They were being represented by Mr. Mitchell.

Q. You were being asked about it, and I wanted to find out from you, because you remembered this conversation? A. I do, well.

Q. Now, just let me read you what Mr. Smith—I have just noticed the way it reads, Mr. Smith says, at page 282, “I appear for the Abitibi Paper
10 Company.

“THE COMMISSIONER : Mr. Wilson and Mr. Smith”——

Q. Now, Mr. Wilson was for the Abitibi? A. No, for the Spanish River.

Q. “Mr. Wilson and Mr. Smith, I do not know whether we can say there is a misunderstanding, but there seems to be difficulty as between yourselves and the Fort Frances people in regard to the supply of paper to the western trade. I certainly understood that so far as the Abitibi Company was concerned that they would prefer paying in cash any difference rather than supply paper to the Canadian Newspapers. I now understand that is not the case,
20 that you would rather supply your percentage of paper. However, from the 1st of March up to the present time, Fort Frances has supplied the paper required for Winnipeg and the West and we will have to get that adjusted as between you. I am very pleased to say that Mr. Clarkson at Toronto is to be associated with me in this investigation and if the Abitibi and the Spanish River Company and the Fort Frances Company cannot arrive at any satisfactory adjustment between themselves, then I am going to have Mr. Clarkson take that matter up at once, proceed to Fort Frances and see if he cannot get these accounts adjusted. It is not at all fair to Fort Frances that they should continue supplying the Western Trade at the \$2.50 rate and not be
30 recouped by the others. These accounts will have to be gone into and adjustment made, and when I get Mr. Clarkson’s report, I will make the necessary Order to carry out the matter satisfactorily—have you any objections to that?

“MR. WILSON : Not at all. We would be quite prepared to make a settlement with Mr. Backus, when we had fixed on the basis of a settlement. If Mr. Clarkson can help us to arrive at a settlement, we will be very pleased. That is our attitude. I am ready, either to make a settlement, or to supply more paper in the future than has been supplied in the past.”

Now, that was Mr. Wilson’s attitude, Mr. P. B. Wilson.

40 HIS LORDSHIP : Was that at this meeting of June 17th?

MR. TILLEY : The same meeting, my Lord, June 17th, this part appears just before the part my friend read.

MR. TILLEY : “THE COMMISSIONER : You can quite appreciate that if you are going to supply the paper that there will have to be an adjustment of the different accounts. Just at the present time Fort Frances is supplying Winnipeg, and as far west as Moose Jaw.

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—continued.

“MR. WILSON : We will be quite prepared to make any settlement that you may direct us to make.

“MR. SMITH : For the Abitibi I may say Mr. Pringle that we are ready and always have been ready since the 1st of March to supply our proportion. We are ready now.

“THE COMMISSIONER : Are you ready now to supply your proportion of the tonnage which you have not supplied, and which Mr. Backus has been altogether supplying since the 1st of March last?

“MR. SMITH : Whatever proportion is properly allotted to the Abitibi Company we are prepared to supply. 10

“THE COMMISSIONER : But are you prepared to pay?

“MR. SMITH : No, we are not.

“THE COMMISSIONER : Then we will have to make an Order to compel you to pay, and we will have to send somebody to your mill to see that nothing goes out of the country until such time as you are ready to obey the orders that have been made in this matter and we are not going to have any humbugging about it, I can assure you. You will do one thing or the other. You will have either to supply the paper or you will pay the difference.

“MR. SMITH : That is just our point, that we are ready to supply the paper. 20

“THE COMMISSIONER : I do not remember the names of the gentlemen whom I met as representing the Spanish River and the Abitibi Company. They told me they represented these two mills, and they told me they would much prefer paying the difference in money rather than supply the paper. I said to them, ‘It is immaterial which you do, but if you are going to pay the difference, then I will compel Fort Frances to continue supplying the paper to the Western Customers, and I made an Order that Fort Frances should, and Fort Frances has continued, and has supplied on that understanding, and Fort Frances has got to be taken care of.

“MR. HENDERSON : Probably it would be better for Mr. Clarkson to get these three parties together and see what arrangement can be made.” 30

Q. Mr. Henderson was appearing for J. R. Booth and for the Fort Frances Pulp and Paper Company, according to the front of the books.

“THE COMMISSIONER : Well, Mr. Henderson, I want to know what Abitibi’s position is, Mr. Anson has written me telling me practically that they will not pay one cent, and Mr. Anson cannot take that position. Mr. Anson will have to obey any Order that is made in this matter, and we might as well get the matter settled now, and know where we are at.

“MR. HENDERSON : Unless everybody obeys the Order, we will never get to an agreement,” and the Commissioner says, “We have got to get ahead. It is absolutely unfair to the Fort Frances Company, that a settlement should not be made. Three months have gone, and Fort Frances has been supplying paper as far west as Moose Jaw, for any one of their customers who required it and yet these other people are not making any headway towards a settlement for what has been supplied since the first of March. I am going to bring this matter to a head, and understand Abitibi’s position.” 40

Then Mr. Orde said something about the Eddy Company.

Now then, here are the references, Mr. Montgomery, and you were perfectly familiar with what was going on throughout this Control period. Here are references to a willingness to supply paper. I want to know from you particularly, in view of the statement that I read later on from you, whether whenever that offer came to be fulfilled the point was taken, "we will not let the Fort Frances handle this f.o.b. at our mill. We only offered it to be sent to their customers in Western Canada"—is that not true? A. No, I think they were willing to take customers in the States if he wanted to switch around. Their objection was they had not declined, one to give cash and take paper—
 10 they did not want to take customers.

Q. Now, do you remember in the negotiations for settlement that you referred to this morning, at the end of 1919? A. Yes.

Q. We got from you, or from Spanish River at that time, and for the first time, a willingness to supply paper to the Fort Frances Company for sale in the United States? A. I think—

Q. And that was part of the settlement? A. I think there was something after that, so Mr. Wilson can speak far better as to that. I had not anything to do with that arrangement.

Q. I accept that. Now, I want to know whether you know at any time,
 20 prior to that date that they were willing to let Fort Frances have the paper f.o.b. their mill? A. To send where they wanted—regardless of customers. Mr. Tilley, my recollection is the same as yours, I hesitate to say absolutely because that matter was handled by Mr. Mitchell for the Abitibi Company and was the subject for a whole lot of correspondence, which I do not think I ever read, that is why I cannot give you a qualified answer, but if you ask me generally, my recollection agrees with yours, that is what I knew of it.

Q. Mr. Montgomery, that is what you had reference to when you said that it seemed to go round in a circle? A. Yes.

Q. Well now, put it this way, there can be no doubt, having regard to
 30 the conditions that were existing, and the price that was being fixed being uniform throughout Canada, an offer of paper by an eastern mill for a publisher in Western Canada, in the Prairie part of Canada, west of Winnipeg—Winnipeg or west, would be perfectly idle? A. I do not want to argue with you. We all know there is a twelve dollar difference in freight rates, and Mr. Publisher would have kicked, there is no doubt about that.

Q. Not only kicked, but they were to get their paper f.o.b. the mill, and that twelve dollars would more than exhaust any difference really between Canadian and American price? A. At most times, yes, I think all times.

Q. The mill could not absorb that? A. I do not know, for instance,
 40 you have an example, I do not know Mr. Wilson and that Western Publisher you have spoken of adjusted it. They adjusted it somehow, that is a practical illustration of where paper was shipped West, but I do not know the arrangement.

Q. I am referring now to the period of the Paper Control? A. That of the Paper Control toward the end.

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Q. No, it was after Paper Control was over, they could set their price?

A. I could not be sure.

Q. At any rate, during the time we are concerned with, 1917, 1918 and 1919 the whole plan was—a substantial feature of the plan was to have the paper hauled the shortest possible distance, not only to save the shipping facilities, but it kept down the cost? A. I cannot remember ever having heard that referred to.

Q. You cannot remember? A. They criss-crossed a lot, and there was no change in the disposition, that is Price Bros. continued to supply their customers even though they might be at a more remote point for much of the tonnage, there was no readjustment of customers or tonnage. 10

Q. I am not saying there was an adjustment nor I am not saying that particular mills in the east exchanged their customers? A. I cannot say, the matter of supplying the nearest point ever was discussed.

Q. At any rate, there was no practical use to suggest a supply, during 1917, 1918, 1919 from an eastern mill to Winnipeg, or the West? A. Well, as far as I know, I do not remember any. You can sum the whole thing up in a minute without arguing the merits of the one position or the other, when they said, "Give us paper at the mill, and we will ship it where we like," that was their position whether right or wrong. 20

The position of the other fellow, you could not get customers and get money, because if it is over at three months and all troubles at an end, you will tell us you now want our customer, we will be all left with the paper on our hands. You cannot both have the cake and eat it—that is the position of the paper men. I do not say right or wrong, that was the position in Eastern Canada of both East and West, as far as I was concerned as to the shipments between Fort Frances, Spanish, Abitibi. However, I do not see any reference to it, possibly Mr. Wilson can give it to us.

Q. But you do not know anything of that having occurred in Western Canada? A. Oh yes, if you look at Mr. Wilson's correspondence, if you look to the arguments before the Paper Control Tribunal, you will find that a big feature. 30

Q. I will agree with you. You will find the statement, "We will supply paper," but you will put that in a concrete form, it was to supply the Western country which was a different thing? A. If they were willing to swap American for Canadian customers.

Q. You cannot show me anything in the Record to substantiate? A. I have no doubt it is there, there are many many thousands, but there is no question of the fact, Mr. Wilson is here who can testify to the fact, and Mr. Smith much better than I can. 40

Q. That applied to Eastern Canada very acutely? A. Not more acutely than Western, it was applied to both, undoubtedly.

Q. Mr. Montgomery, I thought you said this morning, or yesterday, that the Canadian trade and Canadian Customers were the ones that they had their eyes on, these Manufacturers? A. Quite true, but that was looked upon—

Q. Because that was looked upon as the better market for them?

A. Quite true.

Q. Now if, therefore, there was a desire to get into or retain Canadian customers? A. Quite true.

Q. Now, I am suggesting that the supply of Canadian customers by Eastern mills, so far as the Fort Frances Company is concerned was an idle thing, I am leaving out now the American end? A. From a practical point of view, yes.

Q. And then when you come to Eastern Canada, the situation was acute there in respect to Canadian customers, because these mills, larger mills, 10 wanted to keep some—get some of Eddy's or Laurentide's Canadian customers? A. I think they wanted to get into the market that was contributory to them, that was open to them, and I will agree with you that the Western market was not open to them from a practical point of view.

Q. Nor was the Eastern market easy to attack from the Fort Frances Company? A. In the same way, exactly.

Q. The same thing, was it? A. They were separate centres, entirely.

Q. Now then, Mr. Montgomery, you spoke of the Laurentide Company, and I think you said the Donnacona remained out for a time? A. Laurentide and the Belgo.

20 Q. They remained out for a time? A. How remained out—I will tell you, I know what you have reference to. They said they would carry on for that three months without claiming any differential or any indemnity.

Q. And they actually carried on for the three months without the differential? A. So far as I know.

Q. Did they get the differential after three months? A. To be accurate about that, you will have to take that agreement that was made in March, 1918, when that \$12.50 was established, and when the mills generally took \$6.25 in settlement, it may or may not have covered those three months, I 30 cannot tell you without examining the record. In other words, that settlement may have had the effect of giving them that \$6.25 even that, in place of the earlier arrangement.

Q. Then whether that is so or not, at the end of the temporary period of three months, they shared in the differentials along with the other Eastern mills? A. There was never any question of differentials between them until that March statement, then you have the whole facts, the statement came down, which I am sure, included Laurentide and Belgo, just as much as any other mill.

Q. And that continued down, with regard to these mills getting their differentials among themselves, down to January, the end of January, 1918?

40 A. Yes, it only came up on one occasion, that is when the statement was presented for the first time, which was in March, 1918, and you are quite correct in saying it was to the end of January, 1918, a settlement was made, and that ended the matter.

Q. Now then, was that settlement made at that time, or was it agreed on in advance, that it would come to an end, there, if the Control was coming to an end? A. We always hoped that Control would come to an end some day, but it had no reference to the end of the Control at all.

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Q. It had no reference to the end of Control? A. No.

Q. Then, is it not true, at the end of 1919, these mills were informed they must have differentials? A. Yes, it was.

Q. And Laurentide said, "If it ends, we must insist on our quota?"

A. They were endeavouring to finish it up, apparently there was no end to it.

Q. That was so then in regard to Eddy and Laurentide? A. Except Eddy never went any further than that, Mr. Tilley.

Q. Because we made a settlement at the end of 1919, and of course they got into the Courts with regard to the validity of the price order and so on, that is the order made against the Price Company, I quite agree matters took a turn, but at the end of 1919 both Eddy and Laurentide were saying, "We will not continue without differential payments or else paper must be supplied"? A. I think you will find references to that effect in the Record. 10

HIS LORDSHIP : Let me understand, Eddy and Laurentide, I presume had large Canadian trade, do you say?

A. The Eddy trade, I think, was practically one hundred per cent. Canadian.

HIS LORDSHIP : And the Laurentide largely?

A. They were much long—we called them, I do not know the exact per- 20 centage.

Q. And their attitude then, according to this was, that as they were in effect being shut out of the American market for the large proportion of their output, that therefore the other mills ought to recoup them for the difference or supply them? A. I do not think, after that agreement of March to be perfectly honest about it, after that agreement of March, which was confirmed in April, I do not think seriously there was any thought of getting it out of the other mills—what they did want was getting that question of differential between the Canadian and American prices, naturally, the thing had gone on for nearly three years. 30

MR. TILLEY : Q. Mr. Montgomery—? A. And, Mr. Tilley, I will agree with you. I have no doubt you will find records of that kind, you will find references of that kind on the record, and suggestions, but I cannot accept the suggestion, that they ever intended from that time on, they ever seriously intended to get it from the manufacturers, because that would have meant as much as in 1918, a distribution of tonnage and giving up contracts.

Q. Mr. Montgomery, you say the situation was such that they might carry on in order to save their customers, for a time, but they might reach the end of their patience in that regard, and then insist on differentials—but is it not true that in 1919 they were again coming to Mr. Pringle wanting the question of differentials dealt with? A. You will undoubtedly find remarks of that kind on the record, and I quite agree with you, they were getting impatient, and the suggestion to you is, what they were trying to get arranged by that remark was, to get an end of the differentials. 40

MR. TILLEY : If they could get an end of control, and an end of differentials? A. That is, getting the Canadian prices on a par with American.

Q. And ending all differentials? A. Whatever they said at their meeting or anywhere else.

Q. But that was never seriously put forward, Mr. Montgomery? A. Do not ask me to assent to something that I know is not correct.

Q. Are you saying that persons like Mr. Orde, representing the Eddy Company, who got up before the Commissioner, were not serious in what they said to the Commissioner about differentials? A. I think they were serious in what they were saying in the sense they were trying to bring that thing to an end, and pointing out their position.

10 Q. And then you mean, if they did not succeed in bringing the control to an end, they would go on without asking for differentials—is that what you mean? A. I am quite satisfied, Mr. Tilley, if you ask me to make inferences—

Q. You are making them—I am not asking you to make them, because you are volunteering? A. No, that is your question, you are asking me, to say what they would have done. I can only guess what they would have done, or did in the end, by themselves.

Q. You are suggesting that they would not follow up the matter, because you are suggesting that they were not serious? A. We are both open to speculate what their attitude was, I have a very strong impression, I know it is not evidence, but I cannot assent to your impression.

Q. Then do not volunteer because you commenced to volunteer, but if there was a lot of disparity in what they were saying, and there was a mutual purpose, and I assume if they did not succeed in the mutual purpose they would drop the question of differentials—is the Court to take that from what you say? A. I think that is pretty near the idea, the idea of keeping it to their own mill had been thrashed out so thoroughly, and it was so thoroughly thought that the mills would rather pay a differential, if they had to, than give up a customer. I think the same reason that made them come to that opinion in 1918 was just as cogent at the end of 1919, the time to which you are referring—

MR. TILLEY: Q. Now, here is a record of what took place on October 9th, 1919—

MR. HENDERSON: Page?

MR. TILLEY: At one date on which the matter was discussed?

MR. HENDERSON: What is the page?

MR. TILLEY: It is on page 1, but I will proceed with it, there are only seven or eight pages, eight pages, and I am just taking the whole of them.

40 Mr. Henderson appears for Mr. Booth, and then he introduces discussion about an adjournment which is not directly, but at the bottom of page 2, Senator Ross is objecting to that adjournment, he says, "Of course there may be certain phases of the case that may have to be adjourned for a length of time, for instance, fixing of price?"

MR. OSLER: That is before Mr. Pringle?

MR. HENDERSON: Does it not give the page of the general Record?

MR. TILLEY: This is page 2 of the proceedings on that date.

MR. HENDERSON: What is the date?

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MR. TILLEY : Of the 9th of October, 1919.

Now, Mr. Orde said,—

I will just mark this as an Exhibit, I won't stop to read it all—

Mr. Orde says, "While the question of differential is under consideration, I wish to point out on behalf of Eddy that the question of differentials is rather a serious one for them now, and if you are going to fix any date to discuss differentials, the whole question had better be discussed and not simply with reference to Fort Frances. I quite appreciate the difficulty in the way, that until the final price is fixed, the foundation for the differential is lacking."

Now, I will not read the rest, but surely you do not suggest at that time, 10
Mr. Orde was not serious in wanting the question of differentials to be discussed and the figures ascertained, for the purpose of having them fixed.

A. Mr. Tilley, that is true, what he says, we tried to speculate what was behind it.

HIS LORDSHIP : What was that, Mr. Tilley?

MR. TILLEY : The 9th of July, 1919, Exhibit No. 32. Proceedings of meeting of October 9th, 1919.

MR. TILLEY : Now, Mr. Montgomery, see if we cannot get on. I will take the blame for lack of speed. Shortly after that date, October 9th, 1919, I am not particular of a week or so, but possibly in November, negotiations 20
were commenced between the Publishers and the Eastern Mills looking towards a settlement? A. There were negotiations, I cannot help you with the date, I would not have thought it was as long ahead of December 17th as that implies.

Q. Probably in December? A. I think so.

Q. And a settlement was reached? A. Yes.

Q. And the Order of the 17th of December, which is at page 78a of Exhibit 1—have you a copy of it, Mr. Montgomery? A. I am not sure, sir.

Q. That is the Order, you remember, that has a postscript at the end?

A. I remember the Order quite well.

30

HIS LORDSHIP : What page, and where?

MR. TILLEY : Page 78a of Exhibit 1.

Q. And that Mr. Montgomery, as so stated is really an Order by consent? A. I think that is true, we had a discussion before Sir Henry Drayton before Mr. Pringle was called in, to make an Order implementing.

Q. Implementing it? A. Yes, except as to the postscript.

Q. And I think there was an Order-in-Council made confirming it?

A. That is my recollection.

Q. So that it made an end of the whole matter of price fixing, because that Order carried it down the full six months into 1920 at \$80 a ton as the 40
price for that period? A. That is true, it was supposed to end our interest in Control so far as we were concerned, we went away and never went back.

Q. Now, Mr. Montgomery, when you say price control, of course, these people that you made the settlement with were the publishers? A. Quite so.

Q. Who were not concerned at all about the question of differential?

A. Absolutely not.

Q. Not concerned at all with the question of differentials, and in addition the fixing the price at that time, as shown by the Order, it was principally with the understanding that the prices fixed by the previous Order should stand and there should be no revision asked by either party as to this?

A. No, honestly, Mr. Tilley, I cannot remember one thing about that. I see what you are driving at, and it would have to be an enforced action, in fact, I do not remember any discussion about these things, what they were talking about was this price, and I do not remember any discussion one way or the other as to back prices.

10 Q. You remember the prices that had been fixed by Mr. Pringle was \$69?

A. That is correct.

Q. A ton? A. Yes.

Q. In carload lots, rolls in carload lots? A. Yes, surely.

Q. And that is the bulk of these shipments? A. Under that price, that is the fact.

Q. And that is the price? A. From the 1st of October, 1918.

Q. I think from the 1st of December, 1918? A. 1st December, is it 1918?

20 Q. Yes, and that was the price that you had been getting. Now, I want to put the point to you quite fairly, there were a lot of appeals taken from the various orders, every person was appealing to protect himself?

A. That is true.

Q. And when this settlement was made, all the Publishers appeals and all your Appeals against the Publishers were at an end? A. Now, I do not want to quibble with that. I tell you, I do not remember any discussion about that, Mr. Tilley, I do not remember. And you can draw what inferences you like, and yours and mine would probably be the same, but I cannot remember the matter being discussed at all.

30 Q. Mr. Montgomery, from the time you made this settlement, I representing the Publishers—and you representing the Eastern Manufacturers—were not to appeal to the Appeal Tribunal? A. I cannot say we did not intend to appeal, but I quite agree with you, we did not think either of us, expected to argue it, as I told you in chief, we thought the thing was finished as far as we were concerned, but I cannot remember any discussion about formally withdrawing appeals.

Q. Mr. Montgomery, possibly it would not be unfair to say that is one of the things you would not need to bring into the kind of discussion, we were having at the time, because our whole point at the time was to make an end of price quarrelling. A. I quite agree with you, Mr. Tilley.

40 Q. The Publishers, I think you will remember that the Publishers were first invited to pay \$75, and I think you got me up another \$5? A. I think so, I did not—

Q. And when that was done, I think the Publishers, both sides, thought they were going a long way to make an end of further discussions before Mr. Pringle, or the Appeal Tribunal in regard to prices? A. I think you are quite right, Mr. Tilley. If I take any issue at all with you it would be on the former question whether there was any formal discussion about withdrawing

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these appeals. I agreed with you fully on that. We thought and hoped everything was finished as far as we were concerned, and we did not want to hear that again.

Q. I am in this position, I must ask you about that. I cannot go in the box and state my own opinion? A. Yes.

Q. But I think you would be very much surprised, after the settlement was made, if I had gone back and asked you to reduce the \$69 tonnage?

A. I think so myself.

Q. And I think I would have been quite surprised if you had gone back and asked it to be increased? A. I think we are at one.

Q. But I think that either of us, if the matter had come up, we would take the position that the appeals had been abandoned generally. I do not think either of us expected to hear of it again, I think we would either of us say at this point that they had been abandoned? A. I think I will leave that to the Court.

Q. I thought you were going to be magnanimous this time. Then, Mr. Montgomery, would it be right to say that the question of the validity of this—well, I will put it this way, did you ever hear, at any time, of any objection being raised to the clause regarding differentials being inserted in any of the formal orders in which it was found? A. Yes.

Q. When? A. The Appeal Tribunal—

Q. No, I am asking now about Mr. Pringle—did you ever hear of any objection to the insertion in his Orders at the time the Order was made, by him, of the clause with regard to differentials? A. No.

Q. If you will remember the history of that clause, I think you brought it up yourself?

HIS LORDSHIP : I am not familiar with that. What is the clause?

MR. TILLEY : The clause reads in this way—

WITNESS : What we objected to was his interpretation of it.

MR. TILLEY : The clause reads in this way. It is in many of the Orders :
 “Whereas, under existing conditions the supply of newsprint paper to Canadian Publishers is not proportionately distributed between them, and by reason of the fact that the prices fixed are lower than the manufacturers are receiving from export business, I do order that each manufacturer shall bear his due proportion of the cost so entailed in complying with above, and that if arrangements are not made between the manufacturers for the pooling of such cost, and for adjustment between themselves, in proportion to the percentage of their output supplied to Canadian Publishers, that an accounting be made, and the manufacturer or manufacturers who have supplied a greater percentage of Canadian tonnage than is properly attributable to them shall be paid by the other manufacturers sufficient to place them in the same position as the manufacturer or manufacturers who have not supplied their proper percentage of paper to the Canadian publishers.”

That is what we refer to as the differential clause.

MR. OSLER : That appeared in some of the Orders down to August, 1918.

MR. TILLEY : That appeared in every Order that was issued with regard

to prices down to the Order of September 26th, 1918, did it not, Mr. Montgomery? A. That is true.

MR. OSLER : Not including the Order of September 26th ?

MR. TILLEY : All the orders prior to the order of September 26th ?

A. Yes.

Q. Now then, I quite agree you had a serious dispute about the interpretation of the Order, but no objection was ever raised to the inclusion of this clause in the Orders? A. There was never any occasion for an objection.

Q. I am not asking about the occasion, I am asking as to the fact.

10 A. I mean the question never came up for discussion, there was no occasion for it.

HIS LORDSHIP : That is not an answer, Mr. Montgomery.

WITNESS : We drew the picture, but we knew what it meant until he gave it another interpretation we never objected.

MR. TILLEY : Q. Mr. Montgomery, that clause, I think I have seen, and I would like you to explain if it is so, because it touches on just what you have said—that clause seems to be the clause with the change of only, say one word; it is the very same clause that was prepared—who prepared it?

A. I am afraid I have to plead guilty to it myself.

20 Q. You plead guilty to it yourself, and then what your real complaint is that the people who construed it, did not know what it meant, like the draftsman knew?

A. I think I would have to take all the blame if it is open to a construction so far, as to what it meant.

Q. When did you draw it, before it was put in the Minister of Customs Order, because it goes away back to that date? A. I think the one it was taken with appropriate variations from the draft agreement of which you have a copy.

30 Q. Yes? A. By comparing the two you can see the objections that were made, I do not have to explain them to you.

Q. Now, is that the agreement you are referring to?

A. I cannot identify it, but I have no doubt it is. I have never seen that since 1917 until yesterday.

Q. And handed by you to Mr. Pringle? A. No, that is not my recollection.

Q. By whom? A. My recollection, when we went up to see Sir Thomas White, he asked it be left with him, because at that time we were concerned with being called a combine, or pool, but it had nothing to do with the Order, or incorporation of that clause in the Order.

40 Q. But it was taken to be a proper clause, having regard to what you drafted for yourselves? A. Yes.

HIS LORDSHIP : This is the draft agreement?

MR. TILLEY : Between the manufacturers.

HIS LORDSHIP : The one that was not executed?

MR. OSLER : Really the draft of a proposed agreement.

MR. HENDERSON : Called a tentative agreement.

(Exhibit 33, draft of proposed agreement between several parties.)

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HIS LORDSHIP : That was back in February, 1917 ?

A. February 21st, 1917, was the first Minute, discussing it, subsequently we carried it on to February.

MR. TILLEY : Q. Then, Mr. Montgomery, the Orders that were made in the first instance, the Orders-in-Council, were made at your instance, were they not ? A. Yes, we wove the rope that hung us.

Q. You invited the Orders-in-Council, and you presented to the Council the draft that seemed to be satisfactory to your people ?

A. You are confusing two things, Mr. Tilley.

Q. No, I am not. No, I am not saying that you drafted the Order at all, I am saying you asked for an Order to be made so as to protect you against claims by American customers ? A. You have the facts, but you are not giving—

Q. Surely that had no connection ? A. Not until we went on with that Order, I am talking about the combine after Mr. Pringle was in on the scheme, in April, some three months after that, Mr. Pringle came down and assured us that its difficulty would not be passing an Order-in-Council, in regard to differential, but to ask us if we had to hold back any American contract tonnage.

Q. And these orders were created as a result of that ? A. I think so. 20

Q. I think the first order of the Minister of Customs is appointed to fix the prices ? A. Yes.

Q. And to control the shipments ? A. I think so.

Q. As appears here ? A. Yes.

HIS LORDSHIP : Was that subsequent to the time that the Canadian price had been fixed ?

A. No, my Lord, that was during the time that we, by agreement, said we would carry on for three months at \$50, the American price was then supposed to have been \$60.

HIS LORDSHIP : At that time it was apparently contemplated that if you did not carry on the Government would fix the price ? 30

A. Yes, there had been Orders-in-Council, two, I remember, one of February 20th, and one of the 17th.

Q. And how was that affecting you in respect to American tonnage ?

A. They wanted full requirements. Apparently we were getting to a stage where there was not enough to cover both Canadian and American markets, there was a shortage developed.

Q. And you wanted protection for your clients with respect to United States tonnage, you might not be able to supply ?

A. If we supplied the full requirements of the United States trade. 40

MR. HENDERSON : Which was under contract ?

MR. TILLEY : Now there is no doubt, I gather from what you say, but the Fort Frances Company never agreed to the basis you were suggesting in February, February 17th, for the settlement of differential, but I would just like to be sure that I understood the position at that time—the Fort Frances Company were under a handicap as to the duty on the sulphite which

had not been rebated? A. Are you speaking of February, 1917, or March, 1918?

Q. February, 1917? A. Oh, yes, the rebate did not come until later.

MR. TILLEY: Q. And in March, 1919, they were still under that handicap? A. Surely.

Q. That is if they brought the sulphite across, and did not send back the sulphite in paper so to speak, to the United States, they would not get the drawback of the duty they paid. A. That is right.

HIS LORDSHIP: That is \$3.50. A. \$3.15.

10 MR. TILLEY: Q. And that represented, it is not \$3.15 on the sulphite, the duty on the sulphite represented \$3.15 in cost in every ton of paper, as you understood? A. Yes.

Q. Now the dispute—before I ask that—we had discussed the American prices, but in addition to the American prices that came to be used in all comparisons made, they did not include what are called, spot prices, did they?

A. As far as I understand not. I never checked the figures, but I am sure you are right.

Q. And the spot prices in the United States ran up to very high figures?

A. Yes.

20 Q. Twice as much as any prices that we are considering here? A. Yes.

Q. That is to say, if you had some free tonnage, and able to sell it on the market to a purchaser, a cash purchaser, you would be able to get \$150 a ton at times? A. I do not know as it went as high as \$150.

Q. Any way, for all practical purposes, exceedingly high?

A. Oh, yes, I used to hear all sorts of stories of what people got.

HIS LORDSHIP: Tell me, that I may understand, did the Paper Control order have no effect on spot prices at all?

MR. TILLEY: No, it was not an effective control in that sense. People would not submit themselves to control?

30 A. I think the control was intended to control these things, it was intended to control them, but there is no question on the fact that there was a spot market, which was very much above the fixed price.

MR. TILLEY: Q. Then, Mr. Montgomery, all the things that we have discussed about the differential clause, including the one we have not discussed about its interpretation, because the question was raised as to whether the Canadian mill that supplied more than its quota was to be recouped for its loss, no matter what this loss might be, by not having the paper for sale in the United States, or whether those mills that had in supplying their quota, supplied more paper than they otherwise would have had for sale to the United States, ought to give up their profit on that, that difference as to the proper interpretation of the Order was well developed long before the Appeal Tribunal heard the matter?

A. Do you mean as to whether the spot market prices?

Q. As to what was the proper interpretation, as to whether the long mills were to be recouped for their loss in not selling their paper in the United States, or whether the short mills were to give up their extra profit because

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they sold in the United States—that was one question that arose as a matter of interpretation under this clause ?

A. It may have been, but I do not remember it just in that way.

Q. I thought that was the point you were making, the point that——?

A. There were half a dozen questions, there was that question and the question of whether the figures were to be made up of free tonnage only and whether tonnage they had to supply anyway because they were under contract to supply it, should be taken into account in these differentials, and a great lot of questions of that kind. I think it was solved by an average price in the first figures, and then when it came to be—especially Fort Frances, they 10 took another way of doing it.

Q. Of course the eastern manufacturers worked it out their own way ?

A. Oh, no, that was the figures that were presented, the manufacturers had no need to do that.

MR. TILLEY : Q. The manufacturers of Eastern Canada worked out their own percentage ? A. But on a set of figures with which they had nothing to do with the preparation of.

Q. That is to say the same figures that Clarkson and Sharp ?

A. It was a statement of Clarkson & Sharp's which was presented to the Commission in Ottawa, and in respect of which the Commissioner, I think 20 actually, did actually make a sort of interim Order, or direction ordering something on account to be paid in, but I took the point there was no formal order putting that differential Order into force, but there were figures which none of the manufacturers had ever seen before, and I certainly did not see.

Q. So that when you came to settle what was payable one to the other on the basis of your agreement between yourselves, you say that you accepted figures that you had nothing to do with the preparation of ?

A. They were Clarkson and Sharp's figures.

HIS LORDSHIP : That is the settlement of \$6.25 instead of \$12.50 ?

A. Yes, the Clarkson and Sharp showed a differential of \$12.50 between 30 Canadian and American prices.

MR. TILLEY : Q. Now, Mr. Montgomery, all questions of that kind, and questions of whether mills were offering to supply or not offering to supply their tonnage, all these questions were well developed as matters of controversy before the hearing of the Appeal Tribunal ?

A. Yes, but not worked out.

Q. But they were worked out before the Appeal Tribunal, I mean at the hearing of the Appeal Tribunal, they were all discussed fully, well developed by the Appeal Tribunal ?

A. Well, I do not want to minimize the argument before the Appeal 40 Tribunal, questions were submitted, my Lord, I think that is what my friend wants to get out.

HIS LORDSHIP : I am interested to know whether the three judges who composed that Appeal Tribunal had submitted to them by Counsel representing the various parties their respective contentions ?

A. I think so, I do not know how far they followed through the dealings with the tonnage, but I know during the argument they refused to deal with the question of jurisdiction or their authority.

—continued.

HIS LORDSHIP : My Brother Middleton told me something about that, their refusal to deal with their jurisdiction was because they said they were not the proper Tribunal to deal with that, and I had an occasion to deal with a similar question not long ago myself.

HIS LORDSHIP : We will adjourn until two o'clock.

MR. HENDERSON : It would be convenient if we knew, if we did not finish the evidence, will your Lordship sit to-morrow ?

HIS LORDSHIP : I am not making any rash promises as yet. I am afraid if I made any statements in regard to that, that Counsel or witnesses might
10 extend themselves.

Court resumed at two o'clock p.m.

GEORGE H. MONTGOMERY, Cross-Examination.

Continued by MR. TILLEY :

MR. TILLEY : Mr. Thomson, who had more to do with the final settlement than I had, draws my attention to the fact the formal order of Mr. Pringle was covered by this Order of September, 1919 ? A. I did not know that.

Q. You remember that Mr. Pringle finally added a clause that the prices should be subject to further revision to be made at a later date ? A. Yes.

20 Q. And in order to close up these Orders that contained such a provision, in this Order of September 17th, 1919, there is this clause : "Under the power reserved to me to revise my former interim order, I do confirm the prices fixed by my former order for the period up to the 1st of July, 1918, and for the period from the 1st of December, 1918, to the 31st of December, 1919, the Orders in the Exhibit of course were all Orders that the Appeal Tribunal had passed upon ? A. I remember that, I did not interpret that though, as having to do with appeals.

Q. This was his final order confirming this final price ?

30 A. It may be open to that argument, I see your argument, I did not interpret it to apply to appeals. I see your argument.

Q. That that order would be in accordance with our arrangement ?

A. I think we are all agreed that we no more expected to hear from him than we did from Fort Frances.

Q. Then referring to the other notices of appeal, if I am right in that, would cover the notices given by the Eddy Company, and by myself, and by yourself, because they were all in the settlement of the Order, the Eddy Company, yourself for the Association, and myself for the Publishers—that would be so, wouldn't it ? A. I would think so, if you are going to argue the facts are there. These parties were all included in the settlement.

40 Q. I am only trying to cover the matter ? A. Yes.

Q. And that only leaves this from Mr. Ross of the 14th of November, 1919, appealing on behalf of the Fort Frances Company from an Order of the

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Controller dated the 28th of October, 1919—now my friend put this in while you were in the box, but I do not understand you were assenting to the proposition that that appeal was still pending by Mr. Ross for the Fort Frances Company, because that appeal was heard by the Appeal Tribunal and a judgment—? A. I remember quite well, Mr. Tilley, there was the Fort Frances Appeal in which we thought we were not interested and took no part. Q. You were not interested, I quite agree, but it is the last Order, I will not say whether it recites all the orders, but it is the last order in Exhibit 1. It deals with all the prices for Fort Frances, which were the only prices left open after our settlement? A. I do not remember, but if it is from the Record, I have no doubt it is correct. 10

Q. Then, Mr. Montgomery, I think there is only one thing and I am not sure but I did touch upon it—it is to refer again to the matter, I did touch on, but I have looked up the proceedings of the 23rd of September, you remember you described the proceedings as of the 23rd of September? A. Yes.

Q. 1918? A. 1918.

Q. Yes, now the extract that you gave from the proceedings of that date is on page 286, where the Commissioner says, "I will say to you, Mr. Orde, now, that there will be no more differential"—now, I just ask you to confirm my statement, because that record is there, fully confirming my statement that that was made on the 3rd day of the sitting, that is the 25th of September, not on the 23rd. 20

A. I would have to look at the Record to tell that.

Q. Have you the Record? A. The one I have is just simply an excerpt, and the date marked on the top is the 23rd September—but I have not checked that.

Q. You quite appreciate that page 286 is in the third day.

A. Obviously that would be so.

Q. It was a three days session? A. It appears to be quite correct.

Q. So, it was made on the third day and I would also ask you to confirm the statement that at the conclusion of that day's session, Mr. Pringle announced what his judgment would be? 30

A. That appears to be so from the Record.

Q. So that while the formal order, in fact, I think you will remember we have had a good deal of discussion whether the Order is properly dated the 26th or the 25th of September, that is because it was issued the day after he pronounced it? A. I had forgotten that.

Q. So, according to notes of the proceedings, it is made on the 25th, but according to the formal Order when it was issued, it would be the 26th

A. The Record would appear to indicate that. 40

MR. TILLEY: That is all, thank you.

Q. I was going to ask you this, and I had this before me at the hearing with regard to differentials—before the Paper Control Tribunal, prior to the Order of 18th of August, 1919, on the appeal before the Paper Tribunal, from the Order of the 6th of August, 1918, regarding differentials, Judgment on which was handed out in August, 1918, you and the other appellants had quite elaborate written briefs? A. Yes.

Q. Printed briefs, did you not? A. I do not want to contradict you. My own was quite a short one, it was not an elaborate brief, it was rather a thin one.

MR. TILLEY : Q. It was not as verbose, but I have read them both, and I think it was more cogent and comprehensive. It showed that care had been taken to get it in proper compass? A. Thank you.

Q. But I just wanted to ask you this—was there anything that developed with regard to differentials after the Appeal Tribunal gave its judgment in August, 1919, that is with regard to subsequent differentials, that was not
10 before the Appeal Tribunal, with regard to the differentials they were dealing with—was not every point that you have raised with regard to differentials before the Appeal Tribunal, when it dealt with the differentials under the Order of 6th August, 1918, except the one thing, that at a subsequent date, for a time, the Canadian price was higher than the American price?

A. That requires a little mental review. I am afraid I would get into making a speech, which I want to avoid.

Q. No, I want you to get that fixed, like this factum?

A. The whole contents of it, without going into argument—

Q. Was there any change in circumstances or conditions after the
20 Tribunal handed out its judgment except the one thing, after the order of the 6th of August, 1918, except the one thing, that for a time the Canadian price was higher than the American? A. There was.

Q. What? A. There were several things, I do not like to embark on a speech, because there were, there were several things.

Q. Let us have them? A. Well, first bear in mind, always the powers of the Controller were quite as much administrative as judicial, if I might say. There was the attitude of the manufacturers which was well known to him, and militated against a further Order, that was not a thing that the Appeal Court had to consider at all.

Q. I was thinking more of the things that the Appeal Court would
30 properly consider in determining what ought to be done with regard to differentials? A. I do not want to be at cross-purposes with you, because I had in mind answering more what was militating against Mr. Pringle making an order.

Q. Take that, do you mean a little coercion?

A. Yes, he was administering under difficulties—he had a difficult situation undoubtedly to administer.

Q. Let us admit it, coercion due to the threats of the manufacturers that they would refuse to supply? A. Number 2.

Q. Was that number 1? A. I do not want to quarrel with you over
40 the word coercion—you have used that word, as long as every one understands what is meant, you can call it anything you like.

Q. The second was the fact that everyone felt that the Fort Frances situation had been dealt with in another way. You see that this row came up—

Q. Just describe it so that I follow you? A. When this row came up, which I have described to you already and I won't go over it, the Government took the thing in the end.

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Q. Yes? A. And they gave Fort Frances first a rebate from July of this sulphite duty, and then later carried that right back to 1917.

Q. That is the Order-in-Council that duty was, made provision for the duty? A. Refunded to them.

Q. And made it retroactive? A. Yes.

Q. Anything else? A. There was the discussion about the freight on ground wood from East, but I cannot tell you how far that was adjusted for them, I do not know.

Q. That was the other thing referred to by Mr. Pringle?

A. Yes, they were complaining of having to bring ground wood from the East and paying a very high freight on it, but I cannot tell you as to that. 10

Q. Anything else, or have you exhausted that?

A. I am sorry to delay. I do not like to say there was nothing else, because we were satisfied—I do not recollect anything, Mr. Tilley, off hand, there may have been other things, but I do not recall them for the moment.

Q. This seemed to be the outstanding thing, now we will put that, with the Number 3, because it was referred back.

HIS LORDSHIP : I did not get that?

MR. TILLEY : Number 3 was regarding some freight charges on ground wood pulp shipped from the East, number three. With regard to duty on sulphite, both as to current times, and as to the retroactive features—that change had been made before the Appeal Tribunal dealt with the differentials and were taken into account by them in the Orders they made? 20

A. I learned that from Mr. Taylor, we never before were ever given the figures.

Q. That seemed to be so? A. From Mr. Taylor's evidence, that would appear—it was obviously in use at the time we drafted our brief.

Q. Mr. Montgomery, of course, I do not want to let you have the premier position in not knowing some things that were going on at the time, because I think we were kept a bit in the dark, so we will just let that be as it is—but when you come to the Judgment of the Appeal Tribunal on the 18th of August? 30

A. Yes.

Q. Which is, I am speaking now of the one with regard to prices, Mr. Montgomery, at page—will you give the page in Exhibit 1, Mr. Montgomery, please? A. At page 75.

Q. At page 75 of Exhibit one there is this clause : "We made no difference as to the price payable by the Fort Frances Pulp and Paper Company as the Government has granted a refund on sulphite imported"? A. Yes.

Q. So that the Appeal Tribunal at that time put Fort Frances on the same basis as other manufacturers because the sulphite duty had been attended to by the Government in the interval—that would seem to be so, we both knew that much anyway? A. I will tell you what I did not know then, and have known later, I know that the sulphite rebate had been granted from July, I think it was. 40

Q. Yes? A. I did not know that they had got it retroactively back to the first period. I think that in 1921 my letters show that I was wondering whether something of the kind had not been done.

Q. The letters that my friend Mr. Osler put in ?

A. Yes, I do not recollect, as a matter of fact having heard of it until these proceedings came on.

Q. That takes care of 2 and 3. Point number one, coercion is the thing that never affected the Appeal Tribunal ?

A. I know it would have affected that order, I say I know, I was so absolutely in touch with the situation, we were satisfied there would be no further differential order made.

Q. Possibly you felt confident of that, but when you got to the Court of Appeal on such an Order, the Court of Appeal certainly would not pay any attention to your threats ? A. There would not be an appeal from their Order.

Q. If Mr. Montgomery cannot answer, he will turn to Mr. Osler ?

A. I asserted an Order had not been made. I quite agree with you the Appeal would have decided the thing more or less judicially.

Q. Then the most you can hope is a judgment not quite judicial through threats ? A. I do not want to argue. Mr. Pringle's chief difficulty was to get paper, it was administrative, and he would not have got it if he had made an Order, he knew that.

HIS LORDSHIP : What would have been the outcome ?

A. The mills would have stopped and let the Government do what they pleased. I am not speculating as to that. That position was formally taken.

MR. TILLEY : Q. Mr. Montgomery, you know Mr. Backus took some steps too ? A. And he got what he wanted, apparently from the letters.

Q. Thank you, I am glad that you concede that.

MR. HENDERSON : So did Mr. Booth.

MR. TILLEY : Q. And the freight on ground wood pulp, that was a temporary thing, about a trifle ? A. I do not know.

MR. OSLER : Are you putting in those two briefs ?

MR. TILLEY : I do not know.

MR. HENDERSON : They should go in.

HIS LORDSHIP : Why do I want them. The arguments that were presented there will be presented here so far as applicable.

MR. OSLER : Except so far, they will show the contentions, and I would ask to put them in. My friend has cross-examined as to some of them. My friend was asking Mr. Montgomery about some of the points raised and so on. Your Lordship will remember that he referred particularly to some of them.

HIS LORDSHIP : He did not read any portion of them. He did not turn to any particular pages. He spoke generally as to the grounds on which they presented argument to the Appellate Tribunal.

MR. OSLER : My recollection was he mentioned point 9 particularly, in one of them.

HIS LORDSHIP : I personally do not care. If the Counsel can justify it before an Appellate Court, it does not make any difference to me. I do not think it is evidence at all, or properly admissible, if Counsel agree, I won't refuse it, but I won't promise I will look at it. It strikes me as absurd to put

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it in evidence before me, at a trial of another issue here, a factum which presumably is the argument and the facts on which they based their argument was presented before another Tribunal—I do not see how it is going to affect the issue between these parties in the slightest degree.

MR. OSLER : Then my friend was cross-examining Mr. Sharp, I think it you conclude that.

HIS LORDSHIP : Are Counsel going to put in the factum or are you not putting them in.

MR. OSLER : I would have preferred to put them in, but I gathered your ruling was against me.

HIS LORDSHIP : I am not ruling against you. Mr. Tilley does not object, and you think it is important it should go in, let them go in. Are there more than one ?

MR. OSLER : There are two factums. One on behalf of Mr. Victor H. Mitchell on behalf of the Abitibi and St. Maurice, and the other by Mr. George H. Montgomery, on behalf of the other mills.

HIS LORDSHIP : They can go in as Exhibit 34, the two factums.

EXHIBIT No. 34. Two factums, dated 6th August, 1918, as presented before the Appeal Tribunal in connection with the paper control order of August 6th, 1918.

MR. KILMER : My Lord, I would like to call Mr. W. H. Smith.

HIS LORDSHIP : If Mr. Tilley can cross-examine Mr. Sharp ?

MR. KILMER : He is a very short witness, and wanted to get away to-night.

HIS LORDSHIP : I thought they were all to get away tonight ?

MR. KILMER : I just wished to make sure about him.

MR. TILLEY : Mr. Kilmer does not care about the rest.

HIS LORDSHIP : I think I will finish with Mr. Sharp, if he is here.

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FREDERICK W. SHARP, Recalled. Cross-examined by MR. TILLEY :

Q. Did you make an investigation about 1919 or 1920 ? A. I did, sir.

Q. I see that in June, 1919, writing to Mr. Pringle, you told him the Brompton Company had refused to give you figures ? A. Yes, sir.

Q. And they never changed from that ? A. No.

HIS LORDSHIP : That was June, 1919.

MR. TILLEY : Yes, my Lord, June, 1919, the letter of June 10th.

Q. And then, in the same letter, you told him that the Fort Frances Company had reported up to and including September, 1918—while all the other mills had reported to the end of June, to which time you were figuring differentials ? A. That is right.

Q. That carried up as late as June ?

A. That is right, 1918.

Q. He is writing in June, 1919, but he said he is figuring differentials up to June, 1918? A. Yes.

Q. It was just to June you had in mind? A. Yes.

Q. Then on July 8th, 1919, you write to Mr. Clarkson, "After a long delay, I have received figures from the balance of the mills enabling us to make up the differentials in accordance with Mr. Pringle's request, containing statements as follows"—then you go into the detail of it—probably if you will just look at that letter and tell me whether that is a letter which relates down to the same period only, or whether it goes beyond June, 1918?

10 A. It goes to June, 1918, only.

Q. Only? A. Yes.

Q. And I see that the differential that the Fort Frances should receive according to that, would be \$78,509.53? A. That was according to Mr. Pringle's directions on figuring, it was not the directions that we would have followed, as we did formerly.

Q. It was not quite on the same basis? A. No.

Q. But it was on his direction? A. On his direction.

Q. Given to you verbally? A. No, I am inclined to think it would be in writing. Mr. Pringle was in my office on several occasions.

20 Q. And you give the other alternative, if it is made up on another basis which I presume is the basis you favoured? A. Yes.

Q. The amount would be \$43,343.53?

A. The basis I would have thought correct.

Q. The basis you would have thought correct, of course, at that time, you had not the Order of the Appeal Tribunal? A. No.

Q. On the 1917 figures? A. No, I think that came up later, Mr. Tilley.

Q. Much later? A. Yes.

HIS LORDSHIP: What was the first amount?

MR. TILLEY: \$78,509.53.

30 Q. You cannot put your hand on the instructions you got?

A. No, sir, we have not any letters.

HIS LORDSHIP: That was only up to the end of June, 1918? A. Right.

Q. Now, just tell me briefly, for my information, what was the difference between the basis of the figures directed by Mr. Pringle, and the basis which you and Mr. Clarkson approved? A. I am afraid I have not the data before me.

Q. You cannot recall?

MR. TILLEY: He says he thinks possibly it was in writing, but it is not among these, and he cannot call it to mind.

40 WITNESS: I might say, however, your Lordship, the American price had been fixed, and both Mr. Clarkson and myself figured that the differential should be based on that, the difference between the Canadian and the American prices, which, at that time, had been fixed.

MR. TILLEY: Q. Then, on February 3rd you write to Mr. Pringle a letter, "I am this morning in receipt of a copy of a letter to the Belgo-Canadian Pulp and Paper Company, from Clarkson, Gordon & Dilworth, dated 28th January, 1920"—

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MR. OSLER : 3rd of February of what year ?

MR. TILLEY : 3rd of February, 1920.

"I am this morning in receipt of a copy of a letter . . . of the three previous statements. Yours truly, (sgd.) F. W. Sharp."

Q. That is your letter, you see, you signed that, F. W. Sharp ?

A. I sure did. That is my signature.

HIS LORDSHIP : Are you putting in this letter ?

MR. TILLEY : If your Lordship pleases.

EXHIBIT No. 35. Letter dated 3rd February, 1920, F. W. Sharp to R. A. Pringle. 10

HIS LORDSHIP : Just the one letter, Mr. Tilley ?

MR. TILLEY : Just the one letter.

WITNESS : Yes, we were ordered, as I explained yesterday, otherwise, I should not have been in receipt of the information.

MR. TILLEY : Q. And you were being called upon at that time to give the information, and on February 3rd, 1920, you wrote Mr. Pringle ?

A. I wrote him.

Q. And that apparently is the letter that you wrote, to which the copy I showed you yesterday was a reply, I gather, would that be your recollection now ? A. I have not compared the dates. The dates will show whether that 20 is so or not.

HIS LORDSHIP : Are you referring now, Mr. Tilley, to that copy of letter of August 29th, 1919—you could not recognize—

MR. TILLEY : No, my Lord, it is a letter, I thought it was February, 1920.

HIS LORDSHIP : No, the one Mr. Sharp could not recognize was a copy of August 29th, 1919, he said he could not recognize that as ever having been received by him, and something was said, if he could find a letter to which that was an answer.

MR. TILLEY : Q. Then, so far as the papers are concerned here, you have not a reply, but you said the letter from Mr. Pringle would likely be 30 destroyed ? A. Yes, that is right.

Q. And this we got from your letter-books ?

A. Yes, the letter is the copy we kept.

MR. TILLEY : Q. And I think I need not put this in, because it is just asking for an answer to the other letter.

Q. Now, Mr. Sharp, you said you were in the employ of Mr. Pringle—were you in the employ of the Association at all ? A. No, sir.

Q. Because in the Minutes I see here, are accounts to you, one of the Minutes that were not put in, "Messrs. Sharp, Milne & Co., \$498.40," ordered to be paid ? 40

Q. Oh, that might have been for other services by my firm.

Q. But you are not regularly employed ? A. No, but this matter was billed entirely by Pringle.

Q. I know, this was billed entirely to Pringle, but were you in an official capacity to the Association ? A. No, sir.

MR. TILLEY : That is all, thank you.

WILLIAM HENRY SMITH, Sworn. Examined by MR. KILMER :

Q. Mr. Smith, you are Secretary-Treasurer of the Abitibi Pulp and Paper Company ? A. Yes, sir.

Q. And did you attend a meeting or hearing before the Paper Controller on the 19th of June, 1917 ? A. Yes, I did.

Q. And appeared for the Abitibi Company there ? A. Yes, sir.

Q. Now, on the question of differentials, what attitude did you take on the part of the Abitibi Company at that meeting ? A. Mr. Pringle enquired—

MR. TILLEY : If this is—

10 MR. KILMER : I will read this—perhaps I will ask if you confirm this ?

HIS LORDSHIP : The date ?

MR. KILMER : The 19th of June, 1917, and pages 282 to 286.

HIS LORDSHIP : We had this referred to before ?

MR. KILMER : Yes, my Lord, but I am only using a very small part of that.

Q. Now, this appears in the Record, Mr. Smith—"Mr. Smith for the Abitibi Company : I might say, Mr. Pringle, that we are ready, and always have been ready since the 1st of March, to supply our proportion. We are ready now.

20 "The Commissioner: Are you ready now to supply your proportion of the tonnage which you have not supplied, and which Mr. Backus has been altogether supplying since the first of March last ?

"Mr. Smith : What ever proportion is properly allowed to the Abitibi Company, we are prepared to supply.

"The Commissioner : Are you prepared to pay ?

"Mr. Smith : No, we are not.

30 "The Commissioner : Then we will have to make an Order to compel you to pay and we will have to send somebody to your mill to see that nothing goes out of the country until such time as you are ready to obey the Orders made in this matter, and we are not going to have any humbugging about it. I assure you, you will do one thing or the other, you will have either to supply the paper or pay the difference.

"Mr. Smith : That is just our point. We are ready to supply the paper"—do you confirm that ?

A. Yes, I recollect that distinctly.

Q. As having taken place at that meeting ? A. Yes.

Q. You were ready to supply the paper to whom ?

A. To the Canadian Publishers.

40 Q. Then you have a telegram, received from Mr. McDougald, to the Abitibi Company, of the 23rd of October, 1918—have you that telegram ?

A. I have not got it.

Q. That is a telegram received by you ? A. Yes.

Q. To the Abitibi Power and Paper Company, Montreal, Quebec—

MR. TILLEY : From whom ?

MR. KILMER : From Mr. McDougald ? A. The Commissioner of Customs.

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MR. KILMER : That telegram, I will put in, my Lord. It reads as follows :

“Ottawa, October 23rd, 1918. The Abitibi Power and Paper Co., Montreal, Que. You are advised that your license to export newsprint paper shall be suspended and cease to be effective unless you deliver to me certified cheque payable to Order of Robert A. Pringle within one week for \$11,147.96, amount of differential due under Order of R. A. Pringle, Controller. (sgd.) John McDougald, Commissioner of Customs.

HIS LORDSHIP : I am sorry, Mr. Kilmer, there was some conversation going on. I could not get what you said. 10

MR. KILMER : (Reads telegram.)

EXHIBIT No. 36. Telegram dated 23rd October, 1918, John McDougald, Commissioner of Customs to the Abitibi Power and Paper Company.

MR. KILMER : Q. Did you send that money to Mr. Pringle ?

A. My recollection is that the cheque was sent to Mr. McDougald, the Commissioner of Customs.

Q. Payable ? A. To Mr. Pringle.

Q. And this is the letter you received, acknowledging the receipt of it ?

A. Yes.

Q. A letter from Mr. Pringle to L. R. Wilson, Secretary Abitibi Power and Paper Company, Limited, Montreal, dated 29th October, 1918, “Dear Sir,—John A. McDougald, Esq., Commissioner of Customs, has forwarded me your letter of the 25th inst., together with cheque enclosed for \$11,147.96. Yours very truly, (sgd.) R. A. Pringle.” 20

EXHIBIT No. 37. Letter dated 29th October, 1918, R. A. Pringle to L. R. Wilson, Secretary Power and Paper Company.

MR. KILMER : Then, my Lord, this witness could prove signatures to a number of letters from the late Mr. Anson to R. A. Pringle, and the replies. I have the originals of both, and I understand that as long as they are in the files, Mr. Tilley is willing to accept them. I will put in the originals. I do not suppose there is any use going over them with this witness, but he is here to prove the signatures now, if necessary. 30

MR. TILLEY : Of letters written by Mr. Anson.

MR. KILMER : Letters written by Mr. Pringle to the late F. H. Anson, who was President of the Abitibi Company at the time, and replies from Anson to Pringle, the correspondence between them.

MR. TILLEY : The correspondence is complete ?

MR. KILMER : It is complete down to the date from the first letter from R. A. Pringle to the Abitibi Company sending a statement. It is already in dated May 17th, 1917, and the last letter is from Mr. Anson to Mr. Pringle, dated 24th December, 1917. 40

MR. TILLEY : I won't call for proof of signatures.

MR. KILMER : I will put in the originals of these letters.

If your Lordship will reserve an Exhibit number for these letters, they can be put in under any number.

HIS LORDSHIP : You purpose calling another witness to deal with the correspondence ? If they are going in, why not put them in now when Mr.

Smith is in the box, if they are to go in? Are they ready?

MR. KILMER: Ours are ready, but we have to call for the letters from Mr. Pringle's files.

HIS LORDSHIP: They have to be gotten together. Is this objected to, Mr. Tilley?

MR. TILLEY: I do not know just what they are. All I am saying is, I won't want proof of signatures.

HIS LORDSHIP: As records, the same as the other, if they go in as an Exhibit, they go in not as proving any facts which they may state, or anything
10 of that sort?

MR. KILMER: No, my Lord, I am putting them in as communications between the parties.

HIS LORDSHIP: Then, let them be Exhibit 38, subject to any objection Mr. Tilley may have to make in regard to them.

They will be Exhibit 38, when you have them prepared, and you will perhaps let Mr. Tilley and Mr. Thomson see them.

EXHIBIT No. 38. Bundle of letters, correspondence between R. A. Pringle, Commissioner, and F. H. Anson, President, Abitibi Power and Paper Company.

MR. KILMER: Then, my Lord, there are letters I wanted to put in from
20 Mr. Victor Mitchell to the Controller, Mr. Pringle, and they are dated—12th April, 1918, is the first one. These are all Mitchell to Pringle, the 4th of May, 1918, and the 13th of May, 1918, and the 29th of June, 1918, and as to two of these, that is the first one of the 12th of April, 1918, and the third one, May 13th, 1918, we have not got the original from the Controller's files, but we have the copies from the Abitibi files, and this witness will be able to say if they are disputed in any way, that they were written, and under what circumstances, in the Abitibi office.

MR. TILLEY: Would it not be well to produce them to him now, and put them in now, because I would like to see them.

HIS LORDSHIP: The first one you are dealing with is of the 12th of April, 1918, from Victor Mitchell, to Mr. Pringle?

MR. KILMER: Yes, my Lord.

Q. Now this copy, Mr. Smith, I put in your hand of a letter of the 12th of April, 1918—do you know about that letter, Mr. Smith—where was it written? A. Yes, was typed in our office in Montreal, it bears the initials of Mr. Anson's Secretary.

MR. TILLEY: I take that to be a copy of a letter Mr. Mitchell wrote.

MR. KILMER: Take the one of the 13th of May?

MR. TILLEY: Also that.

MR. KILMER: These are the four letters, the others are originals.

HIS LORDSHIP: You wanted to put them in as separate exhibits?

MR. KILMER: That was the reason.

HIS LORDSHIP: Then you can put in the four letters as Exhibit 39.

EXHIBIT No. 39. Four letters, Victor E. Mitchell to R. A. Pringle, Commissioner and Controller.

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—
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No. 20.
William H.
Smith,
Examination
31st May,
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—continued.

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William H.
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CROSS-EXAMINED by MR. TILLEY :

Q. Now, Mr. Smith, Mr. Kilmer has read you part of the proceedings when you were at Ottawa, but he did not read to you all that was said at that time. There was a good deal more said on that occasion—is that right ?

A. Yes, sir.

Q. Now you produced some letters with regard to the payment of money, you do not produce the letter sending the cheque to Mr. McDougald—is that the letter ?

A. No, sir, this is a letter from the Spanish River Company. I am representing the Abitibi. 10

Q. Have you got the letter where you sent the cheque ? A. No.

Q. Have you got the copy of it ? A. No.

Q. Why, how is that ? A. Well, I did not think to look it up.

Q. Well, if that is required, it can no doubt easily be produced. It is of the 25th of October, 1918. Is this it ? A. Yes, sir.

Q. Letter of the 25th of October, 1918—

HIS LORDSHIP : Do you want to put it in, Mr. Tilley ?

MR. TILLEY : If your Lordship pleases.

EXHIBIT No. 40. Letter to John McDougald dated 25th October, 1918, from L. R. Wilson, Secretary Abitibi Power and Paper Company, Limited. 20

“October 25th, 1918. John McDougald, Esq., Commissioner of Customs, Ottawa, Ont. Dear Sir :—We are in receipt of your telegram . . . by our Solicitors, Messrs. McGibbon, Casgrain, Mitchell & Casgrain. Yours faithfully, (sgd.) L. R. Wilson, Secretary.”

HIS LORDSHIP : Was that to Mr. McDougald ?

MR. TILLEY : To Mr. McDougald.

Q. Then, when you said that you were willing to supply paper, you mean to Canadian Publishers, do you ? A. Yes, sir.

Q. Where ? A. Wherever the Paper Controller, Mr. Pringle, might direct. 30

Q. You did not want any United States customers ?

A. No, what we were aiming to do was to comply with the Government Orders in furnishing tonnage to the Canadian Publishers that they might be supplied.

Q. And, of course, the customers you wanted to get were the customers in Eastern Canada, who could afford to pay the freight rates, and take your paper ?

A. Well, we offered to supply the paper to any Publishers in Canada whom Mr. Pringle might direct.

Q. But, of course, there are questions of transportation in Canada that 40 must be dealt with, Mr. Smith, is that not so ? A. Yes.

Q. And you never contemplated that transportation costs would be paid by your paper from your mill to Western Canada, Winnipeg, or the West ?

A. Well, I suppose if the Publisher wanted the paper badly enough he would have to pay the transportation costs.

Q. What? A. If he wanted the paper badly enough he would pay the transportation costs to get it.

HIS LORDSHIP: Any shipments you would make, wherever it was to go would be f.o.b your mills? A. Yes, sir.

MR. TILLEY: Q. And your mills are where?

A. At Iroquois Falls, Ontario.

Q. Do you know what the freight rate is from Iroquois Falls to Winnipeg, or was in 1917? A. No, I do not.

Q. Approximately? A. No, I do not know that.

10 Q. What is it now? A. I am sorry, I do not know the freight rates.

Q. You have no idea? A. No.

MR. OSLER: Then, I think we will resume Mr. MacGregor's examination.

FREDERICK ALEXANDER MACGREGOR, Recalled.

Examined by MR. OSLER:

MR. OSLER: He was called yesterday to produce Mr. Pringle's file, my Lord.

20 Q. Mr. MacGregor, we have just had from Mr. W. H. Smith correspondence about the payment of the Abitibi Power and Paper Company's contribution under this order of the 6th of August, 1918. Have you got the correspondence relating to the payment by the others?

A. I have it in another file.

Q. Will you get that? A. I left it on the table, Mr. Osler.

HIS LORDSHIP: You had better bring all your material over here, Mr. MacGregor, you do not know what may be wanted.

WITNESS: I have some papers here from Mr. MacDougald.

30 Q. These are the ones I had in mind. Now, will you just give me those that you have, these letters that you have, showing the receipt of moneys from these different companies which had been sent to Mr. McDougald, or received by Mr. Pringle, direct.

A. Mr. McDougald, October 29th, 1918, Mr. McDougald to Mr. Wilson please check carefully of the Abitibi Company.

MR. OSLER: That we have already dealt with.

A. Letter from Price Bros. to Mr. Pringle, enclosing cheque for \$8,768.53.

HIS LORDSHIP: Do you want to put these in, Mr. Osler?

MR. OSLER: I think if we have these facts stated, I do not think it is necessary to fill up the Record with the letters.

40 MR. TILLEY: I am assuming that it helps my friend, that the manufacturers paid the money to Mr. McDougald or Mr. Pringle.

MR. OSLER: As a matter of fact they all paid to Mr. Pringle. Sometimes the cheques went through Mr. McDougald's hands.

MR. TILLEY: I was referring more to the route of payment, but I assume the money reached Mr. Pringle, I do not know, the witness, I understand can say.

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MR. OSLER : Everybody, I understand, is satisfied.

MR. TILLEY : If the witness says these payments reached Mr. Pringle, I am satisfied.

HIS LORDSHIP : I gather from the evidence as it has gone in that there is no dispute that they all paid the amount finally they were supposed to pay in respect of that hundred thousand dollar assessment, whatever it was, called for, to Mr. Pringle direct or through the Commissioner of Customs to Mr. Pringle.

MR. TILLEY : I would concede that.

MR. HENDERSON : The cheques being made payable to Mr. Pringle. 10

MR. OSLER : If my learned friend concedes that, then we have, first of all, the four such letters as we have.

HIS LORDSHIP : Is there anything turning on that. I mean, assuming that it is conceded that the payment of the one hundred thousand dollars was actually made, does anything turn on the question of whether it went through the Commissioner of Customs.

MR. OSLER : Unless this, my Lord, that the Commissioner of Customs was apparently the one who put the pressure on which produced the money, and instead of requiring payment to Fort Frances, he required payment to Mr. Pringle. 20

HIS LORDSHIP : But I do not understand that in this action being tried before me there is any claim being made by the Plaintiff against these defendants in respect to any sum which was included in the one hundred thousand dollars, and which it is alleged was not paid ?

MR. OSLER : Oh, no, my Lord, if I might use the expression, the boot is on the other leg.

HIS LORDSHIP : You say you paid too much, by virtue of the decision of the Appeal Tribunal, and you want that back ?

MR. OSLER : Quite so, my Lord.

HIS LORDSHIP : And I understand the Plaintiff to say, "We did not get 30 it, we got a few thousand" ?

MR. OSLER : It is complicated apparently by the fact Mr. Pringle did not pay it all over. He paid \$80,000. Then the question might arise as to who is responsible for the balance ?

HIS LORDSHIP : That is in respect to the claim by you to get back from the Fort Frances people money which they say they did not get, but which you say went to Pringle, which was intended to go through to them.

MR. OSLER : Paid under that Order.

HIS LORDSHIP : But stopped on the way. Do we need to go on with formal proof ? 40

MR. OSLER : Not in view of my learned friend's admission. I am quite satisfied.

HIS LORDSHIP : That may save us some time.

MR. OSLER : With your Lordship's permission, my learned friend, Mr. Henderson, will take the witness.

EXAMINED by MR. HENDERSON :

Q. Have you a letter, Mr. MacGregor, of the 25th of January, 1918, from Mr. J. R. Booth to Mr. Pringle? A. This is the letter.

HIS LORDSHIP : You are putting this in ?

MR. HENDERSON : Yes, my Lord, letter of the 25th of January, 1918, from J. R. Booth to Mr. Pringle.

"Re Newsprint Enquiry. I have just received your interim report . . . no adjustment would be necessary. Yours truly, (sgd.) J. R. Booth."

MR. HENDERSON : That is signed by Mr. Booth personally. I think your Lordship is aware of the fact, Mr. Pringle, of course knew that the two mills are practically across the road from one another, having an identical shipping point, as the letter says.

HIS LORDSHIP : That is in effect the suggestion the Eddy Company should hand over certain of their customers to Mr. Booth.

MR. HENDERSON : I have not the evidence here, because unfortunately the parties are dead, but that is what it would have amounted to, and that was the objection to it on the part of the Eddy Company.

EXHIBIT No. 41. Letter dated 25 January, 1918, J. R. Booth to R. A. Pringle, Paper Controller.

MR. HENDERSON : Then I put in a letter dated September 5th, 1918, from Mr. Pringle to Mr. Booth.

EXHIBIT No. 42. Letter dated September 5th, 1918, R. A. Pringle to J. R. Booth.

"Ottawa, Sept. 5th, 1918, J. R. Booth, Esq., Ottawa, Ont. Dear Sir,— I desire to thank you for your kindness . . . are treated with absolute fairness. Yours very truly, (sgd.) R. A. Pringle."

MR. HENDERSON : Then I put in a letter dated—I would ask your Lordship to read a letter from Mr. Booth to Mr. Pringle, of August 10th, which is already in—

HIS LORDSHIP : What is the date of this one ?

MR. HENDERSON : This is dated September 5th, 1918 and is Exhibit 42.

HIS LORDSHIP : You mentioned an earlier Exhibit, Mr. Henderson, are you referring to Exhibit 30 ?

MR. HENDERSON : A letter of the 10th of August, my Lord.

HIS LORDSHIP : That is Exhibit 30.

MR. HENDERSON : In which you Lordship will see, Mr. Booth was then threatening to close his mill.

HIS LORDSHIP : He was protesting against the Order, and sent forward his cheque.

MR. HENDERSON : And said, No matter what the result would be, he would refuse to supply even at the risk of being refused export.

HIS LORDSHIP : Does this refer specifically to the letter of the 30th August ?

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MR. HENDERSON : Not specifically. Mr. Pringle called on Mr. Booth, and this followed. I do not know as it is any longer necessary. I had a letter from Mr. Pringle to Mr. Booth acknowledging his cheque for \$6,169.

HIS LORDSHIP : Is that any part of the \$100,000 ?

MR. HENDERSON : I discovered by an admission now.

That is all, my Lord.

HIS LORDSHIP : Do you wish to cross-examine this witness, Mr. Tilley ?

CROSS-EXAMINED by MR. TILLEY :

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Q. Mr. MacGregor, there are one or two letters—there is a letter from Mr. Pringle to the Fort Frances Company of the 31st October, 1918—have you got that, and another one of November 8th ? 10

A. I have a letter here from Mr. Pringle to the Fort Frances Company, dated the 31st October, 1918—

HIS LORDSHIP : Yours is the office copy ?

A. The carbon copy of it.

MR. TILLEY : That is October 31st ?

MR. HENDERSON : Do you mind telling us what it was. We have not got it in our brief.

MR. TILLEY : I will show it in a moment.

Q. And a letter to Mr. W. B. Ross of the 8th November, and the letter from Mr. Clarkson's—Mr. Taylor to Mr. Pringle, of the 6th November, 1918 ? A. Yes. 20

MR. TILLEY : I will put these three letters together, if I may, the first of them is a letter of October 31st to the Fort Frances Pulp and Paper Company,—“I have to-day handed to Mr. W. B. Ross . . . promised to put through Order-in-Council.”

HIS LORDSHIP : The cheque was sent for what amount ?

MR. TILLEY : \$70,000, my Lord.

And then Mr. Taylor, of Mr. Clarkson's firm writes Mr. Pringle on the 6th of November, 1918, “I attach memorandum of drawback . . . on Saturday. Yours faithfully.” 30

MR. TILLEY : And attached is a memorandum showing the different companies that are mentioned in the Order of the 6th of August, 1918, about differentials, and giving their proportion of drawback, interest and total. I need not read the items, but the total of them with interest is \$17,495.17.

And then the other letter is from Mr. Pringle to Hon. W. B. Ross, 8th November, 1918 :

“My Dear Senator :—Enclosed, as promised, I am sending you cheque payable to the order of the Fort Frances Pulp and Paper Company, Limited, for \$10,000. This is paid over on the same terms and conditions as the \$70,000.” 40

EXHIBIT No. 43. Letter 31st October, 1918, Mr. Pringle to Fort Frances Pulp and Paper Company; letter dated 6th November, 1918, W. D. Taylor to R. A. Pringle, with statement attached; and carbon copy letter 8th November, 1918, R. A. Pringle to W. B. Ross.

HIS LORDSHIP : That makes the total of \$80,000 which has been referred to ?

MR. TILLEY : That makes the total of \$80,000.

Then I put in also, letter from Mr. Wilson, of the Spanish River Company, to Mr. McDougall. This is a letter dated 28th October, 1918, from Mr. Percy B. Wilson, Vice-President, Spanish River Pulp and Paper Mills, to Mr. McDougall, Commissioner of Taxation.

"October 28th, 1918, John McDougall, Esq., Commissioner of Taxation, Ottawa, Ont.

"Sir,—I duly received your telegram in mail to you."

"Yours truly, (sgd.) Percy B. Wilson, Vice-President."

EXHIBIT No. 44. Letter dated 28th October, 1918, Percy B. Wilson to John McDougall.

MR. OSLER : Did not a copy of that go in this morning, Mr. Tilley, I thought it did.

MR. TILLEY : Q. I do not think so.

Q. Mr. MacGregor, I think you have some other letters there, have you a copy of a letter to Mr. White ?

A. The date, I have them arranged by date.

Q. January 17th, to Mr. Pringle, you made a copy of it.

MR. OSLER : A letter from Mr. Pringle ? A. All these are sorted according to dates, not according to subject.

MR. TILLEY : That is all, thank you, Mr. MacGregor.

MR. OSLER : I will call Mr. Percy B. Wilson.

PERCY B. WILSON, Sworn. Examined by MR. OSLER :

Q. Mr. Wilson, what was your position with the Spanish River Company in 1917, 1918 and 1919 ? A. Vice-President.

Q. With headquarters ? A. Sault Ste. Marie.

Q. And did you take an active part in connection with Paper Control matters respecting that company ? A. Yes, very.

Q. Then, will you tell me first the position of your Company with reference to shipments of paper into the Western market, when I say the Western market, I mean the middle western market, the Prairie section ?

A. We had never been able to get into the Western market. We had a few Canadian customers, we were not able to get into even the Eastern market.

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Q. And when the Paper Control was established, what position was taken by your company? A. Well, we recognized with the others the necessity for supplying the Canadian Publishers, and expressed ourselves as willing to do it, or in the event of not supplying them, paying the differential.

Q. And what was done with reference to the actual supplying of customers by your company? A. We did not supply any Western Canadian customers until sometime in 1920, but I believe we carried out every order of the Controller.

Q. Can you tell me as shortly as you can what were the considerations which had to be taken into account in considering the question of either supplying customers or paying the differential in 1917?

A. Well, as paper contracts are entered into, and are yearly documents from the 1st of January to the end of December in each year, they are regarded as of great importance, and manufacturers are naturally very unwilling to lose any contracts nor do they care to supply paper to other people's contracts, that is why we can properly object to supplying paper, unless it was to our own customers, or unless the customer was handed over to us.

Q. Then was that the attitude which your company finally took?

A. Yes.

MR. TILLEY: When you say "finally," can you fix the date of what he means by that?

A. We began to supply in 1920, that is the attitude we took late in 1919, I think it was.

MR. OSLER: Q. Then you were not present, I think, at the initial meeting of the newsprint manufacturers in February of 1917? A. I was not.

Q. But shortly afterwards you did attend several meetings that Mr. Pringle held? A. I think the first meeting I attended was at Mr. Pringle's first hearing in June, 1917.

Q. In June, 1917? A. Yes.

Q. And were you actively concerned in connection with the arrangement by which the differential was settled up to the end of January, 1918, and subsequently discontinued? A. I had no part in working out that differential.

Q. Were you aware of what was going on? A. Oh, yes.

Q. Did your company assent to it? A. They assented, yes, they did.

Q. When you say they assented, to pay the settlement I take it?

A. Yes.

Q. And from that time on, what was the position with reference to differentials? A. I do not quite understand from that time on.

Q. From the time of that settlement?

A. You mean the settlement up to the end of—

Q. Of January, 1918? A. Yes, we understood there was no further differential after that.

Q. You were present in Court this morning when Mr. Montgomery was being examined about the postscript to the order of December, 1919—now, in a moment I will give you the date? A. December 17th, 1919.

Q. Were you present, officially, at that time?

A. When the Order was being made up, yes.

Q. And was the postscript on the order when you saw it?

A. No, it was not.

Q. I might say—just tell me what you knew about the making of the order and the signing of it?

A. Well, I was present with Mr. Montgomery and several others when the order was being discussed, and Mr. Montgomery had to leave before it was finally completed, and as there was a discussion about one of the plaintiffs, which one, I forget at the moment, I had a copy made of the order as finally
10 passed and sent it on to Mr. Montgomery after I got back to the Soo, and I was informed afterwards that a postscript had been added to the Order, which was certainly not there, as I sent Mr. Montgomery a copy of the last page of the order, and that was not on it.

HIS LORDSHIP : Was that December 17th, 1918?

MR. OSLER : December 17th, 1919, my Lord.

Q. What was the attitude of your company as far as you were aware in connection with them, of the other defendant companies to the resumption of differentials throughout 1918 and 1919.

A. Well, we understood that there were to be no further differentials
20 after the amount that was made up and paid up to the end of January, 1918.

Q. And if any further differential had been ordered, what was the attitude of your company?

MR. TILLEY : I object to that.

HIS LORDSHIP : Their attitude might be evidence insofar as their attitude was disclosed to the Plaintiff—I do not see what their attitude in regard to the other defendants—

MR. OSLER : Or to the Controller?

HIS LORDSHIP : If they communicated to the Controller, and told him— we have been getting a lot of correspondence between different parties—this
30 would be admissible as much as the other would be.

MR. TILLEY : If this witness communicated it.

HIS LORDSHIP : That is all, as to any communication he may have made to the Controller.

MR. OSLER : Q. Did you have any communications with the Controller with reference to the situation? A. I do not recall it.

CROSS-EXAMINED by MR. TILLEY :

Q. Really, what you mean, Mr. Wilson, I suppose is, that the companies that were parties to the adjustment of differentials as between themselves, down to January, 1918, the end of that month, stopped allowing differential one to the other, and you assumed that it was the end of it.

40 A. We all assumed that it was the end of the differential.

Q. But that was a matter between yourselves? A. Yes.

Q. When you spoke of supplying newsprint paper, towards the end of

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1919, I think that arose out of the adjustment of differences between the publishers and the manufacturers? A. Yes.

Q. And grew out of the negotiations? A. It did.

Q. Which you took a very leading part in, I think, and a very useful part, if I may say so—now, at that time, you agreed, and commenced to carry it out, the practice of turning over certain paper to the Fort Frances Company?

A. Yes.

Q. What was that? A. My recollection is that we placed it to their order at the "Soo."

Q. At the "Soo"? A. Some of it I know went to Chicago.

10

Q. But that was never done, or offered to be done before that date?

HIS LORDSHIP: Before what date?

MR. TILLEY: Before the end of December, 1919?

A. It is about that time, I think, I can give you the date.

Q. I think that is near enough, towards the end of December—I think there was some dispute that it was to go into effect, but when did you supply your first? A. To Fort Frances from the "Soo," the 3rd of January, 1920.

Q. Of course, that was pursuant to some negotiations that had been going on before that date? A. Yes, it was.

Q. Then you have since—

20

HIS LORDSHIP: That was for United States customers, or for any purpose?

MR. TILLEY: You turned it over to them f.o.b.?

A. I really think it went to Chicago, my Lord.

HIS LORDSHIP: But so far as your company were concerned, there were no requirements placed upon its destination?

A. I do not think so. We were really trying to oblige Mr. Backus.

MR. TILLEY: Q. We were really working a little more harmoniously at that time? A. I would not say we were working more harmoniously.

Q. I was referring to the manufacturers and publishers?

30

A. I see, yes, that is true.

Q. Then the freight rate to Chicago from your mill would of course be higher than from Fort Frances to Chicago? A. Yes.

Q. A couple of dollars? A. I cannot say that. I would be quite prepared for Mr. Backus to say what the difference was. He knows it, and I do not.

Q. It would be more? A. Not that we were interested in the freight rate.

Q. And then you did commence supplying the "Free Press" it is said, at a certain time? A. Yes.

40

Q. Can you fix about the time? A. Yes, I have not just the date.

HIS LORDSHIP: The Winnipeg Free Press?

A. The Manitoba Free Press is the correct title, the 1st of March, 1920.

MR. TILLEY: 1920, and without desiring at all to investigate into your private business, I suppose that involves some absorption of freight rate by your company?

A. That was the impression you obtained from Mr. Backus yesterday?

- Q. Yes? A. It is not true.
- Q. No? A. When Mr. Backus, if I might explain——
- Q. I am just asking that question, there is no long explanation?
- A. I want to explain.
- HIS LORDSHIP: March, 1920? A. March, 1920, yes, sir.
- MR. TILLEY: The price is f.o.b., my Lord.
- Q. That is to say your standard price, at the mill? A. Yes, exactly.
- Q. For each customer? A. Yes.
- Q. And then they pay the freight? A. They pay the freight.
- 10 Q. Was that possible during the war?
- A. I do not quite understand you.
- Q. Well, the Free Press were anxious to get paper from you during the war? A. Was it possible for us to have supplied them during the war?
- Q. During paper control? A. Certainly, we would have supplied anybody who would have paid the freight from our mill.
- Q. Were they willing to pay freight from your mill?
- A. During the war?
- Q. During control? A. The question never arose, because we were never asked to supply them.
- 20 Q. You were never asked to supply them by any person?
- A. No, we were not.
- Q. Do you mean to say Mr. Pringle never asked you to supply?
- A. I do.
- Q. The Winnipeg Free Press? A. Yes.
- Q. With any paper? A. Yes, that is my recollection.
- Q. Now, my recollection of some documents here would be contrary—I am trying to search my memory just as I am asking you the question, frankly? A. It is a matter of memory with me, and I do not recollect that we ever did anything but carry out his Orders, in fact, the letters which I have
- 30 here, and to which I have referred is stated to be the Paper Controller's Orders.
- Q. What letters? A. The letters I have just been reading from.
- Q. I do not understand? A. I was refreshing my memory as to a date.
- Q. That was after Mr. Pringle ceased to be Controller?
- A. The paper was sold after control by the Board.
- Q. My recollection is, prior to that, Mr. Macklin, who was the Business Manager of the Free Press, was he not? A. Yes.
- Q. That he was endeavouring to get paper, and do you say that he was willing to pay, or do you know whether he was willing to pay freight from your mill? A. I do not think he was very willing to pay, but he paid.
- 40 Q. He paid when? A. He paid on these shipments that were made to him.
- Q. In what month? A. Beginning in March, 1920.
- Q. And how long did that continue?
- A. I am sorry I have not this at the moment.
- Let me see, well, it was in March, 1920, that it began, March 1st, 1920.
- Q. Yes? A. And I really think it went on from there.
- Q. For how long? A. Until to-day.

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No. 22.
Percy B.
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—continued.

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—continued.

Q. Until to-day—always on the same terms, that is at your ordinary f.o.b. price at the mills, with freight? A. Yes. You are asking now on behalf of the Spanish Company and you have made a distinction, you are asking me as Vice-President of the Spanish, because I am also Vice-President of the Fort William Paper Company, and a Director of the Manitoba Paper Company. There are, I think two different mills we have supplied—you are referring to the Paper Supply of the Spanish Company, at or about the time?

Q. The others are subsidiary companies? A. Yes.

Q. And your answer applies to them all? A. It may.

MR. OSLER: They are not subsidiaries.

10

MR. TILLEY: Of the Fort William?

MR. OSLER: Depends on what you mean by subsidiaries?

MR. TILLEY: Might the witness answer?

Q. They are companies that the Spanish River control? A. Largely.

Q. Then, I do not know whether you——? A. Not what you would call a complete subsidiary, a subsidiary is something which is beneath or below or the child of the parent company.

HIS LORDSHIP: Sometimes.

MR. TILLEY: Is your answer the same for all these companies, because you drew a distinction?

20

HIS LORDSHIP: I gathered from one answer you made, Mr. Wilson, that perhaps you meant some of the paper that was supplied elsewhere than from the "Soo"? A. Yes, it was, my Lord, it was supplied from Fort William.

Q. Mr. Tilley asked you how long this had been going on?

A. Long after 1920 it was going on, the delivery from the Spanish Company. Then from the Fort William Paper Company in Fort William, and now from the Manitoba Paper Company.

Q. Where is that? A. In Twin Falls, near Winnipeg.

MR. TILLEY: Q. So that the delivery is from there?

A. Yes, outside this account, of course, altogether.

30

MR. TILLEY: Q. Then, the Spanish River and the Fort William—do you say that the supply was from these companies, at the ordinary f.o.b. rate?

A. Yes.

Q. The purchaser paying the freight?

A. I say that in regard to the Spanish Company, I do not include the Fort William.

Q. Why? A. Because it is unnecessary to include it.

MR. TILLEY: Was that a fact in regard to the Fort William?

A. That is a matter in which I do not feel able to answer.

Q. You do not know the answer? A. I do know the answer.

40

MR. OSLER: Is it since this?

HIS LORDSHIP: Is the Fort William Company a defendant?

MR. OSLER: No, my Lord, and it began to make long after control, there is no purpose to be served in this litigation in answering such a question.

MR. TILLEY: All right, Mr. Wilson.

Q. Now, you found Mr. Macklin is a person who had quite a grievance, or he thought? A. Yes, he certainly thought he had a grievance.

Q. That is at the beginning of 1920 ? A. Yes, and before also.

Q. What ? A. And before also.

Q. Of course, before, because it carried over December, 1919 ? A. Yes.

MR. TILLEY : That is all thank you. Oh, I should ask you this, you paid your differential to, or sent the cheque to the Commissioner of Customs, payable to Mr. Pringle ? A. I did.

Q. And I think, for some time afterwards, you were demanding from Mr. Pringle the return of the moneys as certain sulphite allowances had been made ? A. I was.

10 Q. And did you get it ? A. I did not get it all.

Q. You got part ? A. Yes.

Q. So that part of the money you paid has been returned to you, that is ?

A. Yes, exactly—I can tell you the amount that we received back on all accounts in respect to that return.

Q. In differentials, yes, when you say all accounts, others ?

A. There were several companies interested in them.

Q. You mean paper companies ? A. Paper companies, yes.

Q. And do you mean to say that they were acting together ?

A. As a matter of fact, I am sorry this question has arisen, Mr. Tilley.

20 Q. I did not force it ? A. I did not force it either—I mean to say, I am being asked it.

Q. But I understood you had never got the money back ?

A. We have not, except to a small extent.

MR. TILLEY : Any extent is helpful ? A. I can tell you exactly what that was.

Q. Yes ? A. The Spanish Company raised what was a fair and just claim.

Q. Yes ? A. The Spanish Company got back \$2,000, I think the St. Maurice Company got back a thousand, and some other company \$500, that I think is the total amount.

Q. You never made any demand on the Fort Frances Company for that ? A. No.

HIS LORDSHIP : You said the St. Maurice Company got a thousand dollars ? A. I think that was it, at any rate, the total amount was \$3,500 between the three companies.

MR. TILLEY : That is all, thank you.

RE-EXAMINED by MR. OSLER :

40 Q. You say you never made any demand on the Fort Frances Company, you did not pay the Fort Frances Company direct ? A. No.

Q. Then from whom were you making the demand for payment ?

A. I made the demand on Mr. Pringle.

Q. And what did you call on him to do ?

A. I made the demand on Mr. Pringle, I said—

MR. OSLER : Q. What did you call on him to do ?

A. I called on him to return to us the amount which was due to us as being overpaid when we paid our proportion of the hundred thousand dollars.

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nation, 31st
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—continued.

Q. And did you know that a considerable sum had been paid to the Fort Frances Company over and above the amount that the Paper Control Tribunal had found still owing to them after the judgment was reduced ?

A. Yes, I did after that, afterwards, about \$7,000.

Q. I think you told my learned friend that the matter of differential being discontinued after the beginning of 1918 was a matter between yourselves—were you present at the meeting of the Paper Controller which was referred to as of the 23rd of September, 1918, in the earlier part of the hearing which in fact, seems to have been the third day of that sitting, and to have been the 25th, when the Commissioner announced that there would be no more differentials. 10

Q. Were you present on that occasion ?

A. I do not recall being present on that date, but I was present at so many meetings, it is quite likely that I was.

Q. You cannot say ? **A.** I cannot, at this date.

Q. You do not recall the episode itself ? **A.** If a matter that took place at that meeting took place before me, I might be able to say yes, I was there when that was done.

HIS LORDSHIP : Do you recall the episode itself when it is stated Mr. Pringle made some statement about differential ? 20

A. I am not quite sure, really.

HIS LORDSHIP : Then you had better not say.

MR. OSLER : What did you mean when you said it was a matter between yourselves ? **A.** Well, we had as managers, understood there was no further differential, that is what I meant. There was an account taken to the 31st of January, 1918, and we understood that was the last account that would be taken.

MR. OSLER : **Q.** And what did you understand with reference to Mr. Pringle's attitude—

HIS LORDSHIP : Now, does that not all depend on where he got his understanding—supposing his own Counsel told him—"You will never be asked to pay any more," and he would go away with that understanding, and he would say to-day, quite honestly that that was the understanding. I do not say it fixes the question of liability. The witness has said quite frankly he doesn't recall Mr. Pringle's statement in regard to it. I think that is the end of it so far as that is concerned. 30

MR. OSLER : **Q.** Do you recall Mr. Pringle making any statement on any occasion ? **A.** Yes, I have heard him say in his opportunist way that he wanted no more differentials, that is about all I can say, I think.

HIS LORDSHIP : In the same way that any of us would say he did not want any more trouble. 40

MR. OSLER : What would you say, Mr. Wilson, was that the occasion of ?

A. I do not think I can say more than that, that it was understood between the manufacturers that there were to be no more differentials after the 31st of January, 1918, and that had Mr. Pringle's sympathy.

Q. Then you have said that you had placed your paper at the disposal of the Fort Frances Company in December or January, 1919 ? **A.** Yes.

Q. January, 1919, but 1920, I think my friend put it, you had agreed to place your paper at their disposal—was that under agreement, or under order? A. That was under order, oh, yes.

MR. TILLEY : By the order of the 17th of December, which was made on consent.

HIS LORDSHIP : That is the evidence as we had it before.

MR. OSLER : That is, the price was fixed.

MR. TILLEY : When was it arranged with Mr. Wilson, by arrangement he was going to do that, before the Order was made, when was that consent, 10 Mr. Wilson?

A. Well, what we did was to carry out what we were told to do, we were the only mill, I suppose, that were willing to do what we did to help Mr. Backus to give him some paper for his American customers, as to what Order was actually placed as the result of which we delivered that paper, I do not know.

MR. TILLEY : Mr. Wilson, that arose out of the negotiations for settlement, did it not?

MR. HENDERSON : The settlement was in writing, and there was nothing about that.

WITNESS : The settlement for differentials?

MR. TILLEY : Q. No, the settlement in 1918 with the publishers and 20 the——? A. Yes, I think so.

HIS LORDSHIP : No witness made that statement.

MR. TILLEY : Mr. Wilson said it arose out of our settlement between the publishers and the manufacturers.

A. Yes, we met Sir Thomas White at Ottawa.

Q. And Sir Henry Drayton? A. Sir Henry Drayton, yes.

HIS LORDSHIP : Mr. Montgomery gave evidence in regard to that.

FREDERICK J. CAMPBELL, Sworn. Examined by MR. OSLER :

30 Q. Mr. Campbell, you were the Manager of the Canada Paper Company in the beginning of 1917? A. Yes, sir.

Q. And you were——

HIS LORDSHIP : The Canada Paper Company?

MR. OSLER : The Canada Paper Company, my Lord.

Q. And you were present at the meeting of the 21st of February, 1917?

A. Yes, sir.

Q. Now, will you tell me shortly whether or not there was any concluded agreement arrived at at that meeting or at the continuation of it before the Committee was appointed? A. The meeting appointed a sub-committee, 40 that was the conclusion of the meeting, they appointed the sub-committee to make an agreement, to draw up an agreement.

Q. Yes, and was the suggested agreement ever concluded?

A. No, we called in Mr. Montgomery to draw it up, and difficulties arose about concluding it.

HIS LORDSHIP : Is the suggestion that if you had not called in Mr. Montgomery, you doubtless would have reached an agreement?

MR. OSLER : The usual result.

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—
Defendants'
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No. 22.
Percy B.
Wilson,
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nation, 31st
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—continued.

No. 23.
Frederick J.
Campbell,
Examination
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Defendants'
Evidence.
No. 23.
Frederick J.
Campbell,
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Examination
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No. 24.
Discussion
as to Evi-
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CROSS-EXAMINED by MR. TILLEY :

Q. Mr. Campbell, I suppose that Mr. MacGregor's recollection of what happened at these meetings is better than yours ?

A. In regard to that agreement I should think it would be.

MR. TILLEY : We have had his story, thank you. That is all, thank you, Mr. Campbell.

HIS LORDSHIP : Anything further, Mr. Osler ?

MR. OSLER : It is all I have at the present time. Unfortunately we have not been able to get Mr. Meade or Mr. Alexander Smith. Mr. Meade is in the hospital for an operation to-morrow, and I presume owing to the holidays in the United States, it has not been possible to get in touch with Mr. Smith, and I feel that we should have had the evidence as to this alleged arrangement in New York which was first had in October, and then in April excluded because it was something that should have been disclosed, if it was to be relied upon now, but I have a feeling that that ought to be excluded. On the other hand, I do not want to rely on that and not call these witnesses who could, if my instructions are correct, make it quite clear that no such arrangement or understanding or whatever expression may be used with regard to it was arrived at as is said by Mr. Backus.

MR. OSLER : Will your Lordship pardon me. There is a question I should have asked Mr. Campbell.

HIS LORDSHIP : Very well.

No. 25.
Frederick J.
Campbell
(Recalled)
Examination
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FREDERICK J. CAMPBELL, Recalled. Examined by MR. OSLER :

Q. Mr. Campbell, some question was raised as to whether the Fort Frances Company was a member of the Pulp and Paper Association ?

MR. TILLEY : The Records will show that.

WITNESS : Beg pardon ?

MR. TILLEY : It is just a conflict, we can have the record.

MR. OSLER : Q. What was your position in that Association ?

A. I was President of the Association in 1918.

Q. And do you know as a fact, whether the Fort Frances Company was or was not a member ? A. Well, the Fort Frances Company was represented at all our meetings, and contributed to our expenses.

MR. TILLEY : When ? A. In 1917. In 1918, when I was President, it was represented, fees were not paid up, and we concluded unless they paid up, they should not be represented at our meetings.

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dence.
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HIS LORDSHIP : Well, you will have to determine for yourself, Mr. Osler, what your course is to be with regard to further evidence.

MR. OSLER : My Lord, I do not feel that I should close my defence without an opportunity of calling these witnesses, unless, of course, my friend is prepared to say that he does not rely on the evidence that was given by Mr. Backus as to that.

HIS LORDSHIP : I was just looking over my notes of what Mr. Backus had stated in regard to the alleged interviews with these two men. Was it Meade and Smith ?

MR. OSLER : Mr. Meade and Mr. Alexander Smith.

HIS LORDSHIP : I do not know when you are going to finish your trial, if you do not finish it now. It certainly won't be until September. Have you concluded your evidence, other than that ?

MR. OSLER : Other than that, my Lord.

HIS LORDSHIP : And none of the other defendants desire to put in any
10 testimony ?

MR. HENDERSON : Nothing further, my Lord.

HIS LORDSHIP : Then it rests for you to state definitely, Mr. Osler, as to what your attitude is to be, either that you are not prepared for reasons of illness or absence of these men, and your having been taken by surprise, if that is the course you want to take, I want it to appear on the Record, if anything is to be done, just why it is being done ?

MR. OSLER : Yes, my Lord, that is the attitude if I had known that my learned friend was going to attempt to give evidence of some arrangement other than the one that was said to have been arrived at on the 21st of February
20 I should have taken steps to see either that we could have these gentlemen here, or that the trial might have been arranged for a date when they could be present.

HIS LORDSHIP : Now, your demand for particulars, as I recall it, was a demand for particulars of the agreement referred to in paragraph five ?

MR. OSLER : Yes, my Lord.

HIS LORDSHIP : Is there any use, Mr. Tilley, is there any further agreement referred to as having been entered into——

MR. TILLEY : There is this, my Lord, in paragraph five we allege that agreement. Might I just show your Lordship what the pleading is ?

HIS LORDSHIP : I am just looking at the pleading ?
30

MR. TILLEY : In paragraph one we describe the parties, and then we describe their occupation, and statement about the market situation during the war, and then certain negotiations or conferences between the manufacturers and the Government, and paragraph five, "A measure of price control was established in the United States," and then at the end of that paragraph, "It was impossible or exceedingly inconvenient for each Canadian manufacturer to supply his exact proportion of the requirements of the Canadian Publishers, whereby such manufacturer would bear his pro rata share of the loss involved by selling in Canada at the lower rate, so it was
40 agreed by the plaintiff and defendants that an adjustment would be made so that those manufacturers who supplied more than their proportion of the Canadian demand would be compensated for their extra loss by those who supplied less than their share," and then in paragraph 6——

HIS LORDSHIP : That is that agreement which you allege was made between the plaintiff and the defendant in paragraph five ?

MR. TILLEY : Yes.

HIS LORDSHIP : The latter part of paragraph five, and now is there any

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place else in your statement of claim where you allege any other agreement ?

MR. TILLEY : In paragraph six we——

HIS LORDSHIP : Permit me. Do I understand from you that by your pleading you allege there was some other agreement or arrangement entered into ?

MR. TILLEY : Yes, because, I say, having made my statement in paragraph five, I say, subsequently orders were made. In paragraph 13, "all price fixing orders down to and including an order of the Controller dated 30th of August, 1918, contained a provision similar to the clause set out in paragraph 6 hereof. Subsequent orders of the Controller did not contain the express clause, but all such subsequent orders were made on the assumption that the practice of adjusting differentials amongst the manufacturers would still prevail, if the Canadian price was lower than the price in the United States, and the plaintiff and defendants acted on said Orders on that understanding." And then, I submit, I am entitled to give evidence to show that the parties conferred from time to time, and discussed how these things would be adjusted, one to the other, under the orders, and at the time when we gave this evidence, there was the situation that orders were being made. 10

HIS LORDSHIP : Then you rely, I do not say altogether, but you rely in part upon interviews or conferences alleged to have taken place between representative of the plaintiff company and these two men who are referred to in New York and elsewhere. 20

MR. TILLEY : As showing the basis on which they were dealing.

HIS LORDSHIP : Well.

MR. TILLEY : And I submit my friend did not, and I would think from the Order, intentionally limited his particulars to paragraph five, which is something that is alleged with regard to a period before the Orders.

HIS LORDSHIP : Well, if Mr. Osler, at the outset of the trial had said to me, "Mr. Meade, who is ill in the hospital, is a material witness, and I won't be able to go on with this trial, or complete this trial by reason of Mr. Meade's absence," I would have had to still make some provision for it, and if Mr. Osler, as I understand he does, takes the position, in view of the evidence which has been given, it is necessary for him, on behalf of his client to have the evidence of Mr. Meade and Mr. Smith, and he has not been able to get them here, although he has made efforts since he has found their evidence was required, on a matter which he did not anticipate, I do not think I would be prepared to shut it out. If the evidence is, if Mr. Osler thinks it is essential, it may or may not be essential here, it may be thought essential some place else, at some other Court. There is not anything I can do except to allow the matter to stand until such time in September as I can fix to hear these two witnesses. Of course, it will be understood it is to hear those two witnesses only. There won't be any other course which I can take very well, in the view that I take of the matter. There is no object in hearing argument now, until we have heard all the evidence. I do not know now what date in September I can fix for it, perhaps I am not free to mention here. I would not be able to say until the sittings of the Courts are determined for September, what time in September I would be able to hear what remains of the evidence. 30 40

that is the evidence of these two witnesses, and I should think that perhaps as satisfactory a way, or at least unsatisfactory way would be to leave it, so that I would adjourn the completion of the trial *sine die*, with the understanding that I will inform Counsel as speedily as I can of what date in September I can hear the evidence of the two remaining witnesses and the argument of Counsel, and that that should be, I should think on ten days' notice; ten days' notice should be sufficient time. Will that be satisfactory to Counsel?

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MR. OSLER : Yes, my Lord, I should like, of course, as long notice as possible.

10 I think ten days is sufficient, but I assume, if your Lordship does find yourself in the position of giving longer notice—

HIS LORDSHIP : I do not mean ten days' notice from me. As soon as I know what the sittings of the Court will be in September, I will notify Counsel. I will let you and Mr. Tilley know at once, and I will know that, I assume, in June or July, and I will let you know at once.

MR. OSLER : I do not want to telegraph these two gentlemen, they are both pretty busy, and so might not be home.

HIS LORDSHIP : I would expect you would then communicate with these gentlemen and arrange so that they will be available for the time in September
20 which may be fixed.

MR. OSLER : Perhaps your Lordship would let me have a discussion with Mr. Montgomery, an adjournment is very distasteful to us, of course.

HIS LORDSHIP : I can assure you it is not any more distasteful to you than it is to me, if I have to read all this over again.

MR. OSLER : When we can take the risk of whatever there might be, I would like a conference.

HIS LORDSHIP : Whatever is done or is to be done should be on the Record, so I had better come back here. I will come back here at a quarter to five—would that be sufficient—I will come back here at a quarter to five.

30 MR. OSLER : My Lord, after a conference, my learned friends who are with me, and I, have concluded that while we would very much have liked to have these witnesses, having regard to the fact that we hope that both your Lordship and the other Courts we expect, will take our view that the particular point is not material, we have concluded that rather than take so long an adjournment, we will close now.

HIS LORDSHIP : Very well.

Do you put in any evidence in reply, Mr. Tilley?

MR. TILLEY : No reply, my Lord.

HIS LORDSHIP : No reply.

40 HIS LORDSHIP : We will adjourn now until 10.30 on Thursday morning for argument.

Argument of Counsel.

Certified a correct transcript.

J. E. HENDERSON, C.S.R.,

Official Reporter, S.C.O.

—continued.

Reasons for Judgment of Grant, J.A.

In the
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—
No. 27.
Reasons for
Judgment of
Grant, J.A.
31st Decem-
ber, 1927.

FORT FRANCES PULP COMPANY,

v.

SPANISH RIVER PULP Co., *et al.*

Copy of Judgment of Grant, J.A.,
delivered 31st December, 1927.
W. N. TILLEY, K.C., and A. J.
THOMSON, for the plaintiffs.
HELLMUTH, K.C., and RAMSEY, for
the Eddy Co., and the News
Pulp and Paper Co.
KILMER, K.C., C. C. ROBINSON, 10
K.C., and LANDRIAU, for the
Abitibi Co. and St. Maurice Co.
GEORGE HENDERSON, K.C., for the
Booth Executors.
G. OSLER, K.C., J. G. GIBSON, and
MUNNOCH, for the other defen-
dants.

This is an action tried without a jury on the 26th, 27th, 30th and 31st
days of May, 1927. 20

The plaintiff's claim as stated in the prayer of their pleading is for "a
declaration that such of the defendants as supplied less than their proper
share of newsprint to Canadian publishers during the period from the 1st
January, 1918, to the 31st December, 1919, are liable to pay to the plaintiff
the loss suffered by the plaintiff in supplying more than its proper share of
newsprint to Canadian publishers during the said period ; and an accounting
between the parties for the said period ; payment of the amounts found owing
to the plaintiff upon such accounting ; and the costs of the action, together
with such further and other relief as the circumstances of the case may require.

By the pleading, the plaintiff's claim is based upon an alleged agreement 30
between the parties, of which particulars were delivered pursuant to order made
in Chambers, and also upon Orders alleged to have been made by the Paper
Controller, to which an extended reference is hereafter made.

Various defences were put forward, the nature and particulars of which
will be disclosed in due course.

Mr. Osler took the most active part for the defence, other counsel inter-
vening only when it was necessary or expedient to adduce evidence specially
on behalf of their respective clients or to present argument for them.

At the outset, Mr. Osler raised the preliminary objection that as the 40
matters which form the subject of this litigation had been referred to an
official known as the Paper Controller (appointed by Order-in-Council, by
statutory authority), from whom a right of appeal was given to a specially
named appeal tribunal, this court has no jurisdiction to entertain an action.

At the request of the defence counsel an amendment to their pleadings was permitted to enable them to claim a right of set off in respect of moneys which they allege had been paid to or to the account of the plaintiff company, and to a return of which the defendants allege that they were entitled.

On behalf of all the defendants Mr. Osler stated that they did not intend to raise or press the issue as to the authority of the Dominion Government to pass the orders-in-council under which certain officials, including the Paper Controller, assumed to exercise certain powers, but that the defendants desired to reserve their right to raise this question in another court, Mr. J. R. Booth, one of the defendants, having died since the action was begun, his personal representatives had been substituted as defendants by Order duly made.

This is one case more to be added to the long list of actions arising by reason of the War. The pertinent facts are as follows :

The plaintiff company and the defendants were in 1917, and still are, manufacturers of what is known as newsprint, the name given to that quality of paper which is utilized in the publication of newspapers. In the early part of the year 1917 the major part of the newsprint manufactured in the Dominion of Canada was exported to the United States. It was estimated that approximately 87% of the Canadian product went to customers in the adjoining Republic. The demand for newsprint in the United States was so pressing, that, as an almost inevitable consequence, the price commenced and continued to rise. The production of newsprint in the United States being very much less than was required to supply the demand in that country, the manufacturers of newsprint in Canada were reaping the benefit. With perhaps two or three exceptions, the newsprint manufacturers of the Dominion exported nearly the whole of their output, and as a result of the above conditions, the publishers of newspapers in Canada were compelled either to meet the high prices which were being paid in the United States, or to do without the newsprint, which meant to stop publication. By reason of the long carriage from the mills to their places of publication, and the resulting high freight rates, the publishers in Manitoba, Saskatchewan and Alberta were the chief sufferers; those in Alberta were in part supplied by mills in British Columbia, but publishers in Saskatchewan and Manitoba were compelled to rely upon shipments of newsprint from Eastern Canada. The situation having become acute, an association of publishers made representations to the Government of Canada seeking some relief, and it was urged on their behalf, not without some reason, that as the bulk of the newsprint manufactured on this continent was produced in Canada, under the then existing conditions the Canadian publishers ought not to be forced out of existence for lack of newsprint of which so great a quantity was being produced in this country. For obvious reasons, the Government was anxious to assist the publishers, and, to insure a continuance of the newspapers issued in this country, conferences were had with manufacturers and publishers with a view to finding a solution of the problem.

In the second session of the Dominion Parliament in the year 1914, there

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was enacted what was known as the War Measures Act of 1914, being Chapter 2 of the Statutes passed in the second session of that year. This is to be found in the volume of the Dominion Statutes of 1915. The title given to the statute furnishes information as to its purpose, being "An Act to confer certain powers upon the Governor-in-Council and to amend the Immigration Act." Section 2 of the Statute reads as follows :

"All acts and things done or omitted to be done prior to the passing of this Act and on and after the first day of August, A.D. 1914, by or under the authority of or ratified by,—

- (a) His Majesty the King in Council; 10
- (b) Any Minister or officer of His Majesty's Imperial Government;
- (c) The Governor in Council;
- (d) Any Minister or officer of the Government of Canada;
- (e) Any other authority or person;

which, had they been done or omitted after the passing of this Act, would have been authorized by this Act or by orders or regulations hereunder, shall be deemed to have been done or omitted under the authority of this Act, and are hereby declared to have been lawfully done or omitted."

Various other extraordinary provisions are to be found in this statute (*vide* Sec. 6), all of which were doubtless justified by the then state of war. 20 Assuming that the Dominion Parliament had power to pass such legislation, I think the language of the statute, is sufficiently wide to authorize what was done by the Governor-in-Council, in the various Orders-in-Council issued.

On the 16th April, 1917, an order was passed authorizing the Minister of Customs to fix the price of newsprint to be furnished by the manufacturers to the publishers of Canada from the 1st March, 1917, to the 1st June of the same year. A copy of this Order-in-Council will be found in Exhibit 1 which contains copies of many orders-in-council and of orders of the Paper Controller and of the Paper Control tribunal and other documentary material which were put in by counsel in this form for convenience of refer- 30 ence. Copies of Orders-in-Council or other such documentary evidence to which references are hereafter made, will be found in Exhibit 1, unless it is otherwise specified.

In this Order-in-Council of April 16th, 1917, the Minister of Customs was authorized to fix both the quantity and the price of newsprint paper furnished or to be furnished to Canadian publishers for the three months period above mentioned. Substantial penalties were imposed upon any person who might contravene or fail to observe the provisions of the Order-in-Council or any regulation or order made thereunder.

On the same date a further Order-in-Council was issued referring to a 40 report from the Minister of Finance dated April 14th, 1917, wherein the latter stated that it was advisable that action be taken to ensure to the publishers of Canadian newspapers an adequate supply of newsprint paper at reasonable prices. The Minister recommended that R. A. Pringle, K.C., of Ottawa, should be appointed Commissioner under Part 1 of The Inquiries Act, R.S.C., 1906, chap. 104, and amending Act, chap. 28 of 2 George V, with power to con-

duct an inquiry concerning the manufacture, sale, price and supply of newsprint paper within the Dominion of Canada, and that he also be appointed an officer under section 6 of The War Measures Act for the due enforcement of all orders and regulations made by the Minister of Customs under the preceding Order-in-Council of the same date, namely, April 16th, 1917. The commission appointing Mr. Pringle as Paper Commissioner follows the Order-in-Council.

On the 8th day May, 1917, the Minister of Customs issued an order fixing the price at which newsprint was to be supplied by Canadian manufacturers thereof to the Canadian publishers during the period from March 1st to June 1st, 1917. This order recited the Order-in-Council of the 16th April, and proceeded to fix prices as stated. Two paragraphs of this order are of especial interest, and read as follows :—

“AND WHEREAS under existing conditions the supply of newsprint paper to Canadian publishers by the manufacturers is not proportionately distributed between them, and by reason of the fact that the prices fixed are considerably below those the manufacturers are receiving from export business, I do order that each manufacturer should bear his due proportion of the cost so entailed in complying with the above, and that if arrangements are not made between the manufacturers for the pooling of such cost and for adjustment
20 between themselves in proportion to the percentage of their output supplied to Canadian publishers then an accounting be made and the manufacturer or manufacturers who have supplied a greater or less percentage of Canadian tonnage than properly attributable to them shall be paid by the other manufacturers sufficient to place them in the same position as the manufacturer or manufacturers who have not supplied their proper percentage of paper to the Canadian publishers.

“That the manufacturers shall when called upon furnish to the Commissioner appointed by Order-in-Council dated the 16th April, 1917, being order No. 1060, accurate figures showing the total tonnage of newsprint paper
30 produced and shipped during the preceding month and the tonnage so produced and shipped for the Canadian market and export markets respectively together with the price f.o.b. at the mill both for paper for export and paper for Canadian trade.”

The first of these two paragraphs is self-explanatory, and the circumstances mentioned and the measures taken by the Minister and subsequently by the Paper Commission or Controller, in efforts both to supply Canadian publishers with newsprint, and at the same time, to divide the burden of so doing equitably among the newsprint manufacturers, have given rise to this litigation. The plaintiff company founds its claim in contract also, as to
40 which reference will subsequently be made.

The powers given to the Minister of Customs by the Order-in-Council of the 16th April were continued by subsequent orders.

On May 28th, the Minister of Customs fixed the prices of newsprint to be supplied to Canadian publishers for the month of June. This order also contains the paragraphs which are specially referred to above. Again, on the 30th June, the Minister fixed the prices which were to obtain from the July 1st

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to the August 1st. This order also contained the paragraphs already quoted and contain a further order that “any and all manufacturers shall when called upon by the Commissioner supply paper in such quantity or quantities as the Commissioner may direct to such newspaper or newspapers as he may direct.” This order is made subject to revision as to price in the event of it being decided at a later date that the price now charged is either too high or too low.

On July 31st, the Minister made a further order, similar in form to the last above mentioned, by which he fixed the prices which were to rule for the month of August.

By Order-in-Council dated September 1st, 1917, the special powers previously given to the Minister of Customs in respect of the matters mentioned, were extended to December 1st, 1917. 10

Under dates September 1st, October 1st and November 2nd, the Minister of Customs issued further orders fixing prices for the months of September, October and November, 1917, respectively, and the special paragraphs which have already been quoted appear in the orders also.

On the 3rd November, 1917, an Order-in-Council was issued by which, after reciting the appointment of Mr. Pringle as Commissioner to conduct an inquiry, and the making of various orders by the Minister of Customs, and that the investigations were still in progress, special reference is made to the paragraphs which had been contained in the orders of the Minister of Customs, referring especially to the provision for adjustment to be made among manufacturers of newsprint in proportion to their total output, so that the loss of profit or burden occasioned by supplying the Canadian publishers at the lower prices might be equitably distributed among the manufacturers. This order proceeds to appoint R. A. Pringle, K.C., a Controller, continuing to have all the powers which had been given him under the commission issued on April 16th, and also giving him full power to carry out all the terms and conditions of the different orders made from time to time by the Minister of Customs, and authorizing the said R. A. Pringle, K.C., to fix the quantity and price of newsprint paper and other classes of paper to be furnished to Canadian publishers by the manufacturers during the continuance of the war; to fix the price of pulp, including sulphite and sulphate; the prices, however, to be first approved by the Governor-in-Council. This order further authorizes Mr. Pringle “to make such orders as he might deem necessary or advisable for the distribution and delivery of paper by the manufacturers to the publishers, and for the distribution and delivery of pulp to manufacturers of newsprint and other paper.” 20 30

It provides that “all orders and regulations made by the Controller under this authority shall have the force of law and shall be enforced by such officer or officers as the Controller may appoint; that any person who contravenes or fails to observe any regulation or order made under this authority shall be liable to punishment as provided by the War Measures Act; and that in the course of and in connection with his investigation the Controller be authorized to Confer and co-operate with the Federal Trade Commissioner of the United States of America; and that the Controller be authorized under the Inquiries Act to engage the services of such accountants, engineers, technical advisers or other 40

experts, clerks, reporters and assistants as he may deem necessary and advisable. The expenditure hereunder to be charged to War appropriation.”

If the provisions of this Order-in-Council are to be strictly interpreted, I have grave doubt as to there having been thereby conferred upon Mr. Pringle as Controller or Commissioner the power or authority to do or order to be done some of the things which he subsequently did or ordered. I think it is open to very serious question whether the language of the above Order-in-Council authorized the Controller to order one manufacturer to pay money to another, in respect of the so-called “differentials.” However that may be, as will hereafter appear his possession of such right or authority seems to have been recognized by the Paper Control Tribunal, which was the Appellate Court created by Order-in-Council to hear appeals from the orders of the Paper Controller.

As has already been stated, the plaintiff company bases its claims not only on the orders of the Paper Controller but also upon an alleged agreement between the parties. As disclosed by the Statement of Claim and the particulars thereof filed pursuant to order of the Master in Chambers, it is alleged that such agreement was in writing; was dated on or about the 21st February, 1917, was entered into in the City of Montreal by the companies represented at a meeting of the Canadian Pulp & Paper Makers’ Association, and that the terms and provisions of the said agreement are as set out in the so-called differential clause contained in the price-fixing order of the Minister of Customs and the Commissioner, R. A. Pringle, K.C.

At the close of the trial before me the impression was quite clearly made upon my mind that the plaintiff had failed to establish the making of any such binding or enforceable agreement as was pleaded. The evidence of the officials of the plaintiff company in regard to what was alleged to have taken place was of too indefinite a character to furnish any satisfactory foundation for a valid and enforceable contract; and it was abundantly clear to my mind, by the evidence of other witnesses, that no such definite or valid and enforceable agreement had been entered into. In so far as this phase of the matter is concerned, my finding is against the plaintiff.

On the 17th November, 1917, the Paper Controller issued his first order, and as subsequent orders issued by him down to and including the 30th August, 1918, were made in similar form, it is convenient to give some particulars of this one. The order recites the appointment of the Controller and also that the Minister of Customs had fixed the price and quantity of newsprint paper to be furnished to Canadian publishers by the manufacturers up to the 20th November, 1917, and that it was necessary for the Controller to fix the price from that date, which he proceeded to do with respect to a period of two months from the 20th November, 1917, to the 20th January, 1918. Then follows, verbatim, the differential paragraph which has been quoted above, as it had been inserted in the earlier orders of the Minister of Customs. It is quite evident that this paragraph was copied exactly from the Minister’s orders. The next paragraph is, with some slight alterations to suit the change of circumstances, a copy of the other and succeeding paragraph contained in the Minister’s order, of which paragraph also a copy is

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quoted above. Then follow two short paragraphs as follows :—

“This order is made subject to revision as to the price in event of it being decided at a later date that the prices now charged are either too high or too low.

“This order is subject to approval by the Governor-in-Council.”

The paragraph above referred to, and previously quoted in full, which is spoken of in the evidence before me and in the documents and correspondence as the “differential” clause, is to be found in each of the price fixing orders of the Paper Controller down to and including August 30th, 1918, but is not to be found in any order issued by him subsequent to that time. 10

On the 19th, 24th and 28th January, 1918, the Controller issued further price fixing orders, intended to be effective down to May 1st, 1918. On April 29th, May 31st, and June 24th, respectively, further orders were made, in substantially the same form as before, and operating up to the 31st August, 1918. All of the orders heretofore mentioned appear to have been approved by Orders-in-Council issued subsequent thereto.

On August 6th, 1918, the Controller issued an order “determining differentials to the 31st December, 1917.” This was the first order made fixing definite sums and directing same to be paid by certain of the manufacturers to the plaintiff company, and the total amount ordered to be paid, as will appear by 20 perusal of the copy of the order in Exhibit 1 (at page 45) was \$100,797.71. This order recited the various measures which had been taken with a view to securing for Canadian publishers a full supply of newsprint and the various orders which had been made and orders of the Minister of Customs issued pursuant thereto; recited verbatim the “differential” paragraph contained in the Minister’s orders, the appointment of the Controller and a statement of his powers, the price-fixing orders which he had previously made, and further that the plaintiff company, in obedience to his orders, had supplied a very much larger proportion of paper to Canadian publishers than properly attributable to it, and is entitled to the “differential” as set out in the report 30 of G. T. Clarkson, accountant, said “differential” covering the months of March, April, May, June, July, August, September, October, November and December for the year 1917. (Then follows a list of the companies required to pay, and the amounts payable, to which, however, was subsequently added interest.) Then follows this paragraph :—

“I direct and order that the above amounts together with interest at the rate of 5% per annum be paid by the above named companies to the Fort Frances Pulp and Paper Company, Ltd., within thirty days from the date hereof.”

After giving the list of the companies and particulars of the amounts 40 payable by each, with the total as already stated, the order proceeds in the following words :—

“I recommend that, in the event of any of the above named companies refusing to comply with this order, no license issue to such company or companies so refusing or neglecting to comply with this order for export of paper.”

Approval of the above order was given by Order-in-Council on the 23rd August, 1918.

By way of preparation for the making of this order, a long and painstaking investigation was required to be made by Mr. Clarkson and his assistants, and some slight idea of the extent of such investigation and of the work which had to be done in preparing the basis upon which the order might be made will be obtained by a perusal of Exhibits 10, 11 and 12, which are the statements of "differentials" as prepared for the Controller and the Paper Control Tribunal in respect of the period in question, namely, down to December 31st, 1917.

10 On August 30th, 1918, a further price-fixing order was issued, covering the month of September, and similar in form to those which had preceded it. This, as already stated, was the last order issued by the Paper Controller, in which appears the "differential" clause. This order was approved by Order-in-Council on September 5th.

On September 16th, an Order-in-Council was issued whereby was constituted an appellate court known as the Paper Control Tribunal. A copy of this is to be found on pages 51 and 52 of Exhibit 1, and on page 53 is a copy of a further Order-in-Council dated September 19th, 1918, wherein were named the members of the Superior Courts of Ontario, New Brunswick and Quebec, who were appointed to the Paper Control Tribunal and of whom it was to be
20 composed. It proceeds to provide as follows :—

"An appeal shall lie to the Tribunal from any decision or order made by the Commissioner and Controller under the authority of the said Orders-in-Council, and the Tribunal shall have power to review the whole proceeding relating thereto, and to vary or modify any such decision or order in such manner as it may consider appropriate to carry out the intent of the said Orders-in-Council; but any decision or order of the Commissioner or Controller shall be observed and complied with pending the disposition of any appeal therefrom."

30 Further particulars are given regarding the procedure to be followed in the making of appeals, and then follow several paragraphs which may be given in full :—

"5. The Tribunal may at its discretion in connection with any proceeding under review, receive or call for additional evidence or matter to be received by the Commissioner and Controller, and for this purpose the Tribunal shall be vested with the powers of Commissioners under the Inquiries Act, Part 1, Chapter 104, Revised Statutes of Canada, and the Act in amendment thereof, Statutes of Canada, 2 George, V Chapter 28.

"6. The Tribunal may make such rules governing procedure on appeal as it may deem necessary.

40 "7. The decisions and orders of the Tribunal shall be final.

"8. The provision of the said Order-in-Council of November 3rd, 1917 (P.C. 3122) to the effect that the prices of paper as fixed by the Commissioner and Controller shall be subject to the approval of the Governor-in-Council, is hereby revoked.

"9. An appeal shall lie to the Tribunal from the Order of the Commissioner and Controller, dated August 6th, 1918, respecting differentials, not-

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withstanding the approval thereof by the Order-in-Council of August 23rd, 1918 (P.C. 1963).”

On September 26th, 1918, the Paper Controller issued a further order fixing prices at which the paper was directed to be supplied by the manufacturers to Canadian publishers during the period from October 1st to December 1st of that year. This is the first price-fixing order issued by the Controller from which the “differential” clause is omitted, nor does that clause appear in any subsequent price-fixing order issued by him.

The plaintiff company is distinguished from the other manufacturers of newsprint in the matter of the price to be paid f.o.b. the mill; the increase in price allowed to the plaintiff being based on their having to pay a duty on sulphite. A provision is contained in the order that the plaintiff’s prices shall be subject to reduction in the event of it being relieved of the payment of duty, etc. All prices are also stated to be subject to subsequent revision as from July 1st, 1918, in case it should be found that the prices were too low or too high. In the event of a change in the price being made upon such revision, the manufacturers or publishers, as the case may be, would be required to pay the differences which might be found upon the revision, as owing by the one or the other, into chartered banks, to be then named by the Controller. This order also relates back to the 1st July, 1918, and the publishers were directed to pay to the manufacturers the difference between the prices fixed in his prior orders and the prices fixed in the order “from the 1st day of July, 1918, up to the present date.”

The last paragraph of this order, which appears also in all the subsequent orders of the Controller in this or some similar form, reads as follows :—

“Any parties desiring to appeal from this order to the Paper Control Tribunal will serve notice of such intention to appeal within thirty days of the date hereof.”

By Order-in-Council of September 30th, 1918, a payment was directed to be made to the plaintiff of the sum of \$24,045.48, being the aggregate of 35 cents per hundred pounds allowed by the order of the Controller dated January 21st, 1918, the amount of which had been deposited in a chartered bank. On November 11th, a similar Order-in-Council was made in respect of the amounts so payable to the other manufacturers.

On November 30th, 1918, the Controller renewed his price-fixing order of September 26th for a period of two months commencing on December 1st of that year. The reason given for merely renewing the earlier order instead of making a new order was that the order of September 26th had been appealed and was under consideration by the Paper Control Tribunal whose decision was not likely to be pronounced before February 1st, 1919; for this reason he thought it advisable that he should merely renew the September order rather than issue a new order.

On January 23rd, 1919, the Paper Control Tribunal issued an interim report in respect to the appeals from the order of September, 1926, but as this provides for the taking of further evidence and does not materially affect the issue before me, I need not further refer to it.

On January 31st and March 31st, 1919, the Controller issued further

renewals up to June 1st, 1919, of the order of September, 1918, and for the reason previously given. This course was again followed on May 31st, the operation of the September order being renewed to August 1st, 1919. In this year a statute was passed, to which the Royal Assent was given on July 7th, 1919, 9 and 10 George V, Chapter 63. The title is a sufficient indication of its contents, and is as follows :—

“An Act to provide for the completion, after the declaration of peace, of work begun and the final determination of matters pending before the Commissioner and Controller of Paper and the Paper Control Tribunal, or either
10 of them, at the date of such declaration.”

By section 1 of this statute, after an extensive recital, it is provided that the powers, jurisdiction and authority of the Commissioner and Controller are confirmed and extended to such extent as may be necessary to enable him to fully complete all work and investigations begun by him under the provisions of various Orders-in-Council, etc., prior to the declaration of peace. By section 2, the powers, jurisdiction and authority of the Paper Control Tribunal are confirmed and extended so as to enable that Tribunal to “finally determine, after the declaration of peace, all matters pending before and not finally
20 determined by it upon the date of such declaration; and the powers, jurisdiction and authority of said Tribunal are further extended to such extent as may be necessary to enable it to hear and finally determine all matters and questions brought before it subsequent to the publication of said Proclamation, on appeal from any act done by or order or decision of the Commissioner and Controller under the provisions of section 1 of this Act.”

Section 3 of the Statute states that except for the purpose of completing matters undertaken and determining questions arising prior to the declaration of peace, the powers, and authority, etc., of the Commissioner and Controller and of the Paper Control Tribunal should cease upon the publication of the Proclamation.

30 On July 14th, 1919, the Controller issued a special order whereby he directed the plaintiff company to pay into the Royal Bank of Canada, Ottawa Branch, to the credit of the Controller and G. T. Clarkson, any sums of money which plaintiff might thereafter receive from the Customs Department as rebate on duty paid on liquid sulphite from 1st July, 1918, which moneys were to remain in the Bank at such credit and only to be paid out to the parties entitled thereto upon the joint order of the Controller and Mr. Clarkson.

On July 31st, 1919, the Controller issued a further renewal order extending the operation of the order of September 26th, 1918, until October 1st, 1919.

40 Under date of August 12th, 1918, the Paper Control Tribunal delivered judgment on the appeals from the order of the Controller of August 6th, 1918, whereby he determined the amount of the “differentials” and directed payment thereof to the plaintiff by the various manufacturers. As a result of the Tribunal’s decision, the aggregate amount of the “differentials” was reduced to the sum of \$72,507.12. As a result of this reduction, the defendants having already paid the amounts ordered by the Controller to be paid by them

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respectively, making the total of \$100,797.71, the defendants had paid approximately \$28,000.00 more than they should have been required to pay. These amounts were paid to the Paper Controller, and as appears by the evidence before me the total amount thereof paid over to the plaintiff company was \$80,000.00. On the same date, namely, August 18th, 1919, the Paper Control Tribunal gave judgment on the appeal from the order of the Controller of September 26th, 1918, altering the prices which had been allowed by the Controller for the period covered by such order, namely from July 1st, 1918, to November 30th, 1918. The Tribunal's judgment or order contains the provision that any purchasers of paper who had overpaid, having in view the change in prices made by the Tribunal's decision, might apply to the Paper Controller for an order directing a refund to such purchaser of the amount overpaid. 10

On September 30th and October 31st, the Controller issued further orders renewing the operation of the order of September 26th, 1918, down to the end of December, 1919.

On December 17th, the Controller issued an order directing that there should be an increase of prices over those fixed by the order of September 26th, 1918, to date from January 1st, 1920, for a period of six months; he also thereby confirmed the prices ordered by him up to July 1st, 1918, and from December 1st, 1918, to December 31st, 1919, all of which had been stated to be open to subsequent revision. It will be remembered that the prices covering the period from July 1st, 1918, to November 30th, 1918, had been fixed by the Paper Control Tribunal upon appeal made to them in respect thereof. By the last paragraph of this order, it is stated that "none of the provisions of this order shall apply to the Fort Frances Pulp & Paper Company, Ltd.", and by a footnote inserted subsequent to the date and subsequent to the signature of the Controller, but initialed by him, appears the following sentence: "Nothing in this order shall prejudice the rights of the interested parties in the matter of differentials." This order was approved by Order-in-Council dated December 30th, 1919. 20 30

On December, 20th 1919, at a meeting of the Governor-General in Council, consideration was given to the validity and propriety of proceeding and acting under the authority of The War Measures Act of 1914. Reference was made to an opinion which had been furnished to His Majesty's Government in England by a Legal Committee upon a similar question which had been raised there as to the powers of the British Government conferred by the Defence of the Realm Act, 1914, and it is recited that although no proclamation had yet been issued declaring that the War no longer existed, yet that actually war conditions had in fact long ago ceased to exist and that therefore this could no longer be urged as a reason for maintaining the extraordinary regulations as necessary or advisable for the security, defence, peace, order and welfare of Canada. It was therefore ordered that with certain exceptions, the special orders and regulations should no longer be enforced. Among the exceptions were Orders-in-Council respecting pulp and paper control, and those covered by the exceptions, it was directed, should continue in force until the last day of the next session of Parliament. 40

On December 22nd, the Controller issued an order regarding the supplying of sheet news, similar in form to the one issued on the 17th of December regarding newsprint in rolls.

On December 24th, 1919, another order was issued by the Controller. This order recites the former price-fixing orders made by him and that they were subject to subsequent revision in case it should be found that they were too high or too low. He refers also to the judgment of the Paper Control Tribunal on the appeals from his order of September 26th, 1918, and the reduction in price made by the Tribunal therein.

10 After stating that it was desirable that he should finally fix prices and that it was necessary that he should consider the whole situation in regard to the supply of newsprint by the Fort Frances Pulp & Paper Company, Ltd., to the Western publishers and fix a price that would give them reasonable profit over and above costs, and that he thought that the price to be allowed should be as therein stated for the period from January 1st, 1918, to July 1st, 1918, he then proceeded to confirm prices which he had fixed by former orders up to and including the 1st January, 1920, with the exception of a period from January 1st, 1918, to July 1st, 1918, for which he fixed special prices. He ordered that the publishers should pay the Fort Frances Company the prices
20 so fixed and ordered that the Fort Frances Company should account to its customers for the amount paid for newsprint shipped during the period from July 1st, 1918, to November 30th, 1918, in excess of the prices fixed by the Paper Control Tribunal, and also for the amount which may have been paid to them for paper shipped during the period from December 1st, 1918, to December 1st, 1919, in excess of the price fixed by his order, and further ordered that the customers should pay to the Fort Frances Company the difference in price for the period from January 1st, 1918, to July 1st, 1918. The order further provides, in self-interpretation, that the Fort Frances Company is only
30 required to supply newsprint to Canadian publishers for its due proportion of its production in Canada, stated to be approximately five thousand tons a year, unless arrangements are made whereby paper from other mills is placed at the disposal of the Controller or of some other Government official, to be shipped to the American customers of the Fort Frances Company, in which event the latter company would be required to supply Canadian customers with such additional quantity. The order proceeds to direct that the Western publishers, in respect of such additional quantity of paper, would be required to pay to the Fort Frances Company the additional freight rate from the Sault to Chicago or Minneapolis but not exceeding \$2 per ton.

One of the later paragraphs of this order reads as follows :—

40 “This order is made without prejudice to the rights of any interested parties in regard to differentials for any period prior to the date of this order.”

The last paragraph states that the order is subject to appeal, of which notice is to be given to the Controller within thirty days.

On December 31st, 1919, the Controller issued a further order, in which the previous orders and appeals therefrom and the result thereof were recited; and it was also recited that it was necessary for him to fix the price to which the plaintiff company was to be entitled from January 1st to February 1st, 1920.

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Reasons for
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The order then fixes a price to be paid by the publisher to the plaintiff company for the months mentioned, but proceeds to state that the prices fixed were to apply only to the Canadian quota of the plaintiff company, and that any additional tonnage supplied by the plaintiff to Canadian publishers over and above such quota was to be paid for by the publishers at the rate of \$80 per ton as fixed by his order of December 24th.

On January 16th, 1920, by letter to the Minister of Finance at Ottawa, Mr. Pringle asked to be relieved "from the distribution of newsprint." This was subsequently referred to by himself as his resignation, and by a minute of the Committee of the Privy Council under date of January 22nd, 1920, his resignation "as Controller of news and other paper was accepted." On the same date, Mr. R. W. Breadner was appointed Controller of newsprint and other paper in place of R. A. Pringle, K.C., resigned. 10

On January 23rd, 1920, that is, as will be noted, on the day after his resignation was accepted and his successor was appointed, Mr. Pringle purports as Paper Controller to issue another order providing for the payment of differentials by manufacturers of newsprint. A copy of this document will be found at page 90 of Exhibit 1. It contains many recitals as to the original authority under which he had been appointed, the course which had been followed by the Minister of Customs and by himself as Controller, and the various orders which had been issued fixing prices and otherwise exercising the powers with which he had been invested. 20

Among the numerous recitals is one in which it is stated that in all his price-fixing orders issued from time to time "there was a provision in regard to the protection of the manufacturer or manufacturers who supplied a greater percentage of Canadian tonnage than properly attributable to them, similar in terms to the order made by the Honourable the Minister of Customs." As has been noted, this statement was incorrect, as such provision was not contained in any order issued by the Controller subsequent to August 30th, 1918. 30

It is further recited that by his order of August 6th, 1918, provision had been made for payment of differentials covering the period from March 1st, 1917, to December 31st of that year, and that the appeal from such order had been decided by the Tribunal in due course. It then recites as follows:—

"And whereas no order has been put into effect in regard to differentials since the order of the 6th day of August, 1918, and the whole question of differentials remains to be disposed of."

This last recital is of interest in its bearing upon the contention put forward by counsel for the plaintiff, that the Paper Controller on the 17th July, 1919, issued an order (*vide* Exhibits 4 and 4 (a)) fixing the amounts of differentials to be paid to the plaintiff company for the period from January 1st, 1918, to July 1st of the same year. The making of such an order is denied by the defendants. Further reference will be made to this at a later stage. 40

The order then proceeds to direct that G. T. Clarkson do prepare statements showing the differentials, to which the different mills which had supplied a greater percentage of Canadian tonnage than properly attributable to them, are entitled. Such statements are to cover the full period from March 1st,

1917, to January 1st, 1920. Mr. Clarkson is directed to have regard to the principles laid down by the Paper Control Tribunal, and is required to state the proper amounts to be paid by each of the contributing mills by way of differential. It is further directed that upon completion of the statements, copies are to be served on all the mills who would be entitled to receive or contribute amounts by way of differential, and that they are to have the right to appeal to the Paper Control Tribunal from the findings of the accountant as well as from the principles, as covered by this order, within thirty days from receipt of such statements. It is ordered further, that the manufacturers are,
 10 forthwith, when called upon by Mr. Clarkson, to furnish to him all information necessary for the preparation of the statements, and that service of the statement or of notice to be given under the order, would be sufficient if made by registered mail. The last document copied in Exhibit 1 is a decision of the Paper Control Tribunal pronounced on the 8th July, 1920, in respect of appeals which had been taken from the orders of the Controller of December 24th and 31st, 1919. The Fort Frances Company's appeal from the order of December 24th was dismissed, and the publishers' appeal therefrom was allowed, and new prices were fixed, to be paid by the publishers to the Fort
 20 Frances Company. The appeal of the Fort Frances Company from the order of December 31st, was allowed and a new price was fixed to govern as from January 1st, 1920. By a further clause, the Fort Frances Company and the publishers were ordered, respectively, to refund amounts overpaid.

It appears in evidence that appeals were taken from every order made by the Controller continuing the order renewing the prices fixed by the order of September 26th, 1918, and down to December 31st, 1919; but it was stated that the appeals had not been dealt with by the Paper Control Tribunal except as to the orders of December 24th and 31st, 1919. (*Vide Exhibit 24.*)

The plaintiff relies upon the alleged order of July 17th, 1919 (Exhibit 4 and 4 (a)), and the order of January 23rd, 1920, by which, it is contended, the
 30 Controller ordered that differentials should be ascertained and paid, and that, such orders having been made under the authority conferred upon the Controller by virtue of the Statute, the Court should implement those orders and provide for the ascertainment of the amounts proper to be paid and direct payment thereof when ascertained.

Regarding the alleged order of July 17th, 1919 (Exhibits 4 and 4 (a)), it appears from the evidence that this order was never sent out or formally issued in any manner nor were any steps ever taken to carry it into effect. It is further to be noted in that regard that no order of that date is thereafter recited in the many orders subsequently made by the Controller. As has
 40 already been mentioned, the making of any such order is negatived in the recitals contained in the order of January 23rd, 1920. In addition it will be found, upon perusal of a letter written by Mr. Pringle on November 9th, 1921, to Mr. Tilley, in answer to a letter from the latter, dated November 6th of that year (*vide Exhibit 28*) that Mr. Pringle states, when referring to the order for payment of differentials for the year 1917 and the fact that plaintiffs had been overpaid in respect thereof the sum of \$7,492.88, that

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“No further order was ever issued by me,” and also that the order made at the time when Breadner was appointed never became effective.

My finding upon the evidence must be that no effective or valid order regarding differentials was made on the 17th July, 1919. I am fully convinced upon the evidence that such is the fact. Further, in regard to the alleged order of January 23rd, 1920, I quite agree with the view expressed in his letter by the late Controller, where he stated that this order never became effective. The order, according to its date, purports to have been made on the day after Mr. Pringle's resignation of the office of Controller had been accepted and after his successor had been appointed. As the facts present themselves to my mind, Mr. Pringle was not Controller on the 23rd January, 1920, and had no authority, statutory or otherwise, to make any such order. 10

A copy of certain proceedings before the Controller on September 17th, 1919, was filed as Exhibit 31. At the bottom of the first page will be found a statement by the Commissioner, Mr. Pringle, which reads in part as follows :

“I made an order, which I did not issue, directing payment of further differentials. I thought that in view of the fact that there might possibly be a change in these prices I would not issue you the order just then, but I made the order directing payment of certain moneys to the credit of Mr. Clarkson, Mr. Sharpe and myself. Under the circumstances would you ask me to make an order directing Fort Frances to refund these moneys to the manufacturers while there are very large amounts of money due by the manufacturers to Fort Frances ? It is entirely a matter for you.” 20

Apparently the order directing payment of further differentials, which was not issued, would be the order of July 17th, above mentioned. The money which counsel was asking to have refunded by the Fort Frances Company was the amount of money which had been overpaid in respect of differentials for the year 1917 as a result of the reduction therein made by the Paper Control Tribunal and referred to in Mr. Pringle's letter to Mr. Tilley (Exhibit 28). 30

Again at the bottom of page 2 and top of page 3 of Exhibit 31, it is made very clear that the Controller did not issue the order, and, that this was the fact, was clearly recognized by Senator E. Ross, counsel for the Fort Frances Company before the Controller, who stated on that occasion, at the close of the hearing, “I think we ought to have those orders issued.”

A copy of the proceedings before the Controller on October 9th, 1919, is filed as Exhibit 32, and it is made very clear that any change which might be made in the prices would of necessity cause a change in differentials.

As has already been stated, all the orders of the Controller renewing the prices as fixed by the order of September 26th, 1918, down to December 31st, 1919, are the subject of appeals to the Paper Control Tribunal and remain undisposed of with the exception of the orders of December 24th and December 31st, 1919, which deal with the prices to be charged on and after January 1st, 1920, and therefore cover a period which is not in question in this action. Until the Paper Control Tribunal determines what prices are to rule during such portions of the period down to December 31st, 1919, as have not already 40

been dealt with by that Tribunal, it is impossible for any person to ascertain what differentials, if any, should be allowed.

Turning to the evidence as given by the witnesses and disclosed by correspondence, it is abundantly evident that the whole situation regarding the supply of newsprint to Canadian publishers was one of extreme difficulty. The plaintiff company, with its mill at Fort Frances in the extreme westerly portion of Ontario, was so much closer, geographically, to the Western publishers, as to make prohibitive the difference in freight rates between shipments from the plaintiff's mills and the mills of the various defendants. When a price was
 10 fixed by the Minister of Customs or by the Paper Controller, to govern the sale of newsprint by Canadian manufacturers to Canadian publishers, so far as the supplying of the requirements of Western newspapers was concerned, this in effect meant that the plaintiff company had to supply these Western publishers at that price, because, as the price was f.o.b. the mill and there was a difference of about \$12 per ton in the freight rate, the Western publishers could not afford to buy from the Eastern mills. At any rate, as was to be expected, they would not buy from the Eastern mills and pay the additional \$12 per ton in freight. When orders were made from time to time directing the manu-
 20 facturers to supply the paper at the price fixed, it was from ten to fifteen or eighteen dollars per ton lower than the price which they could get for their product in the United States; the Eastern mill owners at once replied that they were prepared to supply their proportionate part of the newsprint required by Canadian publishers. Some of them, notably those represented by Mr. Hellmuth, supplied more than their quota but to their own Canadian customers. Others of the defendants sold and shipped practically the whole of their output to the United States trade. Some of these, expressing their willingness to supply their Canadian quota, asked to be furnished with the names of Canadian customers and the quantities they required, and stated that they would fill their orders. The plaintiff company, naturally, declined
 30 to hand over any of its customers to its Canadian competitors, and the Controller was given the very difficult task of finding a solution for the problem. Some tonnage was furnished by the Spanish River Company to the order of the plaintiff company, and I think was used by the latter to supply some of its United States customers, and in this way the Spanish River Company, *pro tanto*, supplied its quota.

I must confess that I cannot see that there was any insuperable obstacle in the way of adjustment of the whole matter in some similar manner, but I must also admit that, as this phase of the matter was not gone into fully before me, I may not be sufficiently informed to justify me in making any
 40 definite finding in that regard. I think it is due to the plaintiff company that I should state that the evidence has convinced me that such company sustained a very substantial loss of profit by reason of its having been compelled to supply the Western Canadian publishers with newsprint at prices fixed by the Paper Controller, when it could have sold such newsprint to United States customers at much higher prices. Whether, as has been suggested, the plaintiffs would have supplied the Western publishers even if there had been

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no paper control, except control of prices, in order to retain their hold on the trade in the Canadian West, I do not know.

In correspondence with the Paper Controller and also in his evidence given before me, Mr. Backus, the president of the plaintiff company, stated that its loss of profit in this connection amounted to as much as \$10,000 a month. I have no reason to doubt that this is substantially correct. That it was right that some measure should be taken or provision made for the relief of those manufacturers who were supplying more than their quota for Canadian customers was recognized by the defendants, or a great majority of them, as was shown by the tentative arrangement made among the Eastern manufacturers to accomplish that object, and of which some evidence was given before me. 10

It should also be stated that the plaintiff company was actually compelled by the Government to supply paper to the publishers in Western Canada, *vide* Fort Frances Pulp & Co. v. Manitoba Free Press (1923), A.C. 695, at top of page 700.

When long continued and persistent efforts to procure some equitable adjustment through the Minister or the Controller had proven fruitless, the plaintiff gave notice to the Controller that they would not supply any more newsprint to Canadian publishers. The Minister of Customs promptly placed an embargo on the export of plaintiff's product, and for the space of a week or so, the plaintiff was not allowed to move a Carload of newsprint. Upon the explicit promise by the Paper Controller that some equitable adjustment of their grievance would be obtained at an early date, the plaintiff resumed Canadian shipments. In one other case the authority of the Paper Controller was vindicated. When the order was issued directing payment by certain Eastern mills to the plaintiff of the amounts which had been found to be payable in respect of differentials for the year 1917, and the Abitibi Company refused to pay its allotment, the Minister of Customs, by telegram, (Ex. 36) allowed them one week for payment by certified cheque of \$11,147.96 upon penalty of having their export license suspended. The certified cheque was forwarded at once. It will thus be made apparent that the Paper Controller, backed by the Minister of Customs, had weapons of ample power to enforce his orders. Why he provided for and compelled payment of differentials for 1917, and failed or omitted to do so for 1918 and 1919, has not been satisfactorily explained. It is said that he made known in the autumn of 1918, his intention that there should be no more orders for payment of differentials. This was denied by the plaintiff, but whether the Controller made the statement or not, in so far as is disclosed by the evidence before me, there was quite as much reason for payment of differentials to the plaintiff after December 31st, 1917, as there was before that date. 30 40

At the close of the trial the impression had been clearly made upon my mind, that the plaintiff company has an honest and substantial claim. By reason of its geographical position, plaintiff's mill was compelled to bear the burden which, in all fairness, ought to have been shared by the others.

The official authority which compelled the plaintiff company to carry the load, ought to have been exerted to compel the others to bear their share.

There is no satisfactory evidence before me, that an equitable adjustment could not have been accomplished by compelling the mills which were not supplying their Canadian quota, to place the requisite quantity of paper at the disposal of the mills that were doing so.

The offers of some of the Eastern mills, to supply Western publishers were quite obviously insincere, as they well knew that the heavy and additional freight rates, made the price prohibitive. The attitude and course adopted by some of the defendants, under the very unusual conditions which obtained in Canada at that time, do not commend themselves to one who has no interest
 10 on either side. If I could see my way clearly, to compelling an adjustment of the plaintiff's claim, by those defendants who shirked their fair share of the burden, I would do so without any hesitation.

My difficulty lies in that I fear this Court has no jurisdiction so to do.

The general rule governing this point was stated by Willes, J., in *Wolverhampton New Waterworks Co. v. Hawkesford* (1859), 6 C.B.N.S. 336, at p. 356, in a brief passage which has frequently been quoted as a correct statement of the law :—

“There are three classes of cases in which a liability may be established
 20 founded upon a statute. One is, where there was a liability existing at common law, and that liability is affirmed by a statute which gives a special and peculiar form of remedy different from the remedy which existed at common law; there, unless the statute contains words which expressly or by necessary implication exclude the common law remedy, the party suing has his election to pursue either that or the statutory remedy. The second class of cases is, where the statute gives the right to sue merely, but provides no particular form of remedy; there, the party can only proceed by action at common law. But there is a third class, viz., where a liability not existing at common law is created by a statute which at the same time gives a special and particular remedy for
 30 enforcing it. The present case falls within this latter class, if any liability at all exists. The remedy provided by the statute must be followed, and it is not competent to the party to pursue the course applicable to cases of the second class.”

The case at bar clearly comes within the third class. The same rule was stated at an earlier date by Lord Tenterden, C.J., in *Doe dem Bishop of Rochester v. Bridges* (1831), 1 B. & Ad. 847, at p. 859 :—

“And as the act has provided for its payment and recovery in this manner, it appears to us that there can be no other mode of enforcing the payment. The lessee is under no contract, to pay it; the covenant for payment of the reserved rent, clear of all taxes, will not apply, because this payment has, by
 40 the redemption, ceased to exist as a tax. And where an act creates an obligation, and enforces the performance in a specified manner, we take it to be a general rule that performance cannot be enforced in any other manner. If an obligation is created, but no mode of enforcing its performance is ordained, the common law may, in general, find a mode suited to the particular nature of the case.”

Lord Halsbury, L.C., in *Passmore v. Oswaldtwistle Urban District Council* (1898) A.C. 387, at p. 394, where he states :—

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“The principle that where a specific remedy is given by a statute, it thereby deprives the person who insists upon a remedy of any other form of remedy than that given by the statute, is one which is very familiar and which runs through the law. I think Lord Tenterden accurately states that principle in the case of *Doe v. Bridges*. (1) He says : ‘where an Act creates an obligation and enforces the performance in a specified manner, we take it to be a general rule that performance cannot be enforced in any other manner.’ The words which the learned judge, Lord Tenterden, uses, there appear to be strictly applicable to this case. The obligation which is created by this statute is an obligation which is created by the statute and by the statute alone. It is nothing to the purpose to say that there were other statutes which created similar obligations, because all those statutes are repealed; you must take your stand upon the statute in question, and the statute which creates the obligation is the statute to which one must look to see if there is a specified remedy contained in it. There is a specified remedy contained in it, which is an application to the proper Government department.” 10

What then is the position of the plaintiff in the present case? I have already found that it has failed to establish any valid or enforceable agreement between the defendants and itself. The plaintiff’s claim, if it is to stand, must be supported upon the Orders-in-Council, issued under the ‘War Measures’ Act. 20

For present purposes, the Orders-in-Council are assumed to be valid and unassailable. What is their effect? The one issued on April 16th, 1917, and the commission thereunder, in effect, appoint Mr. Pringle a Commissioner to enquire and report.

The Order-in-Council of November 3rd, 1917, appoints him as Paper Controller, and sets out the powers which he may exercise (*vide* Ex. 1, pp. 20-1-2).

The order last mentioned recites (*inter alia*) the “differential clause” as it had been embodied in the various price-fixing orders of the Minister of Customs during the earlier part of 1917. It may be that the Minister had power to do what this “differential clause” recited as part of his Orders; I am not called upon to determine that point, as the orders of the Minister dealt with 1917 only, and any claim for differentials for that year has been disposed of and paid. The first question is, was such a power given to Pringle, as Paper Controller? I doubt it. He is given power to carry out all terms and conditions of the different orders made by the Minister. This was done and related only to part of the year 1917, in so far as price-fixing and adjusting matters between the manufacturers, were concerned. The Controller was also empowered to fix the quantity and price of newsprint and other paper to be supplied to Canadian publishers by the manufacturers; and the price of pulp, including sulphite and sulphate (subject to approval by the Governor-in-Council, until the Tribunal was substituted). He was further empowered to make such orders as he might deem necessary or advisable “for the distribution and delivery” of paper and pulp, etc., and it was declared “that all orders and regulations made by the Controller under this authority shall have the force of law and shall be enforced by such officer or officers as the 40

Controller may appoint; and then penalties are prescribed for non-observance or non-fulfilment of such orders, etc. It will be noted that his authority is to make orders for the distribution and delivery of paper "by the manufacturers to the publishers;" he is not even (at least in clear language) empowered to make orders for the delivery of paper by one manufacturer to another; and no mention at all is made of ordering the payment of money.

I do not know whether or not this question was raised before the Paper Control Tribunal, nor what views may have been entertained by the learned Judges who composed that body. No record of any discussion before the
 10 Tribunal upon this question has been brought to my notice, nor any decision or expression of opinion thereon. In my judgment the Paper Controller was not invested with any authority to make an order for payment of money by one manufacturer to another. But, assuming that the Paper Controller had that power, did he exercise it?

Leaving aside for the moment, the further question as to the jurisdiction of this Court to enforce the plaintiff's claim, it seems to me quite clear, that no such claim could arise unless and until such an order had been made by the Controller. No such order has been brought to my attention. The abortive orders of July 17th, 1918, and January 23rd, 1920, might perhaps
 20 have satisfied the requirements in this regard, but, as I have already stated, in my opinion, they are not available as valid orders, and, in my view, they were both subject to review by the Tribunal. It is true that his orders, down to and including the one of August 30th, 1918, did direct that any manufacturer who supplied more than his quota of paper to Canadian publishers, should be recouped by such manufacturers as had supplied less than theirs, and that all manufacturers should, when called upon, furnish statements giving the necessary data from which their relative positions could be ascertained, yet he never called upon them to supply the statements. Until these
 30 were ordered and supplied, it could not be ascertained whether any manufacturer had supplied more or less (or what quantity) than his quota, or what were the differences, from time to time, between the price fixed for paper supplied to publishers in Canada, and that obtained upon the export of the product. These particulars were essential to the making of any order for payments, and only upon them could any such order be based, and the Controller was to make such order as he might deem "necessary or advisable."

As I understand his position, he was invested with a discretion of a judicial or semi-judicial character, which he alone (and the Tribunal over him) could exercise, and he has not done so.

Mr. Tilley urged upon me, that if of opinion that what had been done by
 40 the Paper Controller fell short of what was requisite to form a valid and sufficient foundation for plaintiff's claim, the Court would implement what had been done, and itself ascertain, by means of a reference, what amounts should be payable, and by whom. In support of his contention he cited *Cameron v. Cuddy* (1914) A.C. 651. The head-note in the report reads as follows :

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“In an action upon a contract whereby the parties have provided for arbitration as a means of ascertaining the amount due under the contract, if arbitration proceedings have proved abortive it is the duty of the Court to supply the defect by itself ascertaining the amount due.”

The decision of the Board was delivered by Lord Shaw of Dunfermline, and the following passage taken from page 656, sets forth the principle upon which the decision was based :

“When an arbitration for any reason becomes abortive, it is the duty of a Court of law, in working out a contract of which such an arbitration is part of the practical machinery, to supply the defect which has occurred. It is the 10 privilege of a Court in such circumstances and it is its duty to come to the assistance of parties by the removal of the impasse and the extrication of their rights. This rule is in truth founded upon the soundest principle, it is practical in its character, and it furnishes by an appeal to a Court of Justice the means of working out and of preventing the defeat of bargains between parties. It is unnecessary to cite authority on the subject, but the judgment of Lord Watson in *Hamlyn & Co. v. Talisker Distillery* (1894) A.C. 202, might be referred to.

“By section 6 of this agreement the appellant had a contractual right to insist on a deduction equal to the value of the deficiency of assets delivered, such value being determined by arbitration. When the arbitration became 20 abortive, that method of fixing the value became, of course, impossible. But by the well-recognized principle which has just been cited, the Court in such a case must take upon itself the burden of deciding that which the parties had intended originally should be decided by a domestic tribunal.”

There was a contract between the parties, who had agreed that any deduction to be allowed to appellant, should be ascertained by arbitration.

The arbitration having become abortive, through no fault of appellant, and it being admitted that there was a deficiency for which an allowance should be made to the appellant, it was held to be the duty of the Court to ascertain the amount which should be allowed. 30

In the case at bar there was no contract, nor was there any obligation in law, unless and until an order would be issued by the Controller creating the obligation, which, in my view, cannot be created in any other way, under the facts of the case.

For this reason, therefore, I am of opinion that the plaintiff must fail. in my judgment, also, the plaintiff must fail upon the broad principle, that, having no claim otherwise than under the War Measures' Act and the Orders-in-Council made thereunder, by the rule laid down in the authorities cited above, the only remedy open to them, is the one given by the Orders upon which the claim depends for its existence. In other words, in my view, this 40 Court has no jurisdiction in the matter. I confess frankly that I have come to this conclusion with reluctance, as I am satisfied that the plaintiff has not been fairly treated, and I should be pleased if another Court can come to a different conclusion. Feeling as I do, I am not disposed to allow any costs to the defendants, other than as I am about to state.

At an early stage of the trial, it was made known that the defendants, the Eddy Co. and the News Pulp & Paper Co., having supplied their Canadian quota, had been made parties only because their presence would be required in the taking of accounts upon a reference. Mr. Hellmuth, who appeared for them, was then excused from further attendance.

His clients should have their costs of the action up to the time of his retirement, and I so direct. Otherwise the action is dismissed, without any allowance of costs to the other defendants.

The defendants' counterclaim for the amount overpaid in respect of 10 differentials for the year 1917. Of the amount overpaid only \$7,492.88 reached the plaintiff, the balance being retained by the Controller. Upon application being made to him for an order directing repayment by the plaintiff, the Controller declined to make such an order, stating, in effect, that there would be a much larger sum to become payable by these defendants to the plaintiff when his further orders for payment of differentials would issue. The whole matter rested with him, subject to appeal to the Tribunal, and I do not think I have any jurisdiction to interfere with it, even if I were disposed to assist these defendants, which I am not. The same remarks apply to the counterclaim in 20 respect to the rebate allowed by the Government to the plaintiff, of sulphide duty. I think these defendants may quite fairly be left where they are in regard to these items, unless, on appeal, another Court should see its way to allowing the plaintiff's claim, in which event these items should be taken into account. The counterclaims will also be dismissed without costs. Thirty days stay.

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No. 28.

Formal Judgment of Grant, J.A.

IN THE SUPREME COURT OF ONTARIO.

THE HONOURABLE MR. JUSTICE GRANT. { Saturday, the Thirty-First
day of December, 1927.

30 BETWEEN :

FORT FRANCES PULP & PAPER COMPANY, LIMITED,
Plaintiff,

AND

SPANISH RIVER PULP & PAPER MILLS, LIMITED,
ONTARIO PAPER COMPANY, LIMITED,
J. R. BOOTH, E. B. EDDY COMPANY, LIMITED,
ABITIBI POWER & PAPER COMPANY, LIMITED.

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—continued.

BROMPTON PULP & PAPER COMPANY, LIMITED,
PRICE BROS. & COMPANY, LIMITED,
ST. MAURICE PAPER COMPANY, LIMITED,
LAURENTIDE COMPANY, LIMITED,
CANADA PAPER COMPANY, LIMITED,
DONNACONA PAPER COMPANY, LIMITED,
NEWS PULP & PAPER COMPANY, LIMITED,
BELGO-CANADIAN PAPER COMPANY, LIMITED, AND
BELGO-CANADIAN PULP & PAPER COMPANY, LIMITED.

Defendants : 10

(By original action)

AND

BETWEEN :

FORT FRANCES PULP & PAPER COMPANY, LIMITED,

Plaintiff,

AND

SPANISH RIVER PULP & PAPER MILLS, LIMITED,
ONTARIO PAPER COMPANY, LIMITED,
CHARLES JACKSON BOOTH, JOHN FREDERICK BOOTH,
and HELEN GERTRUDE FLECK, Executors and
Executrix of the will of the late J. R. Booth,
E. B. EDDY COMPANY, LIMITED,
ABITIBI POWER & PAPER COMPANY, LIMITED,
BROMPTON PULP & PAPER COMPANY, LIMITED,
PRICE BROS. & COMPANY, LIMITED,
ST. MAURICE PAPER COMPANY, LIMITED,
LAURENTIDE COMPANY, LIMITED,
CANADA PAPER COMPANY, LIMITED,
DONNACONA PAPER COMPANY, LIMITED,
NEWS PULP & PAPER COMPANY, LIMITED,
BELGO-CANADIAN PAPER COMPANY, LIMITED, AND
BELGO-CANADIAN PULP & PAPER COMPANY, LIMITED,

20

30

Defendants :

(By order to proceed).

1. This action coming on for trial on the 26th, 27th, 30th, and 31st days of May and the 2nd day of June, 1927, before this Court at the sittings holden at Toronto for the trial of actions without a jury, in the presence of Counsel for all parties, upon hearing read the pleadings and other proceedings in the action, and upon hearing the evidence adduced, and what was alleged by Counsel aforesaid and the defendants, E. B. Eddy Company, Limited, and News Pulp & Paper Company, Limited, making no claim for payment from their co-defendants on any accounting that might take place in the action and

40

Counsel for such defendants with the consent of all parties having withdrawn from the trial, this Court was pleased to direct this action to stand over for judgment and the same coming on this day for judgment :

2. THIS COURT DOTH ORDER AND ADJUDGE that this action be and the same is hereby dismissed as against the said defendants E. B. Eddy Company, Limited, and News Pulp & Paper Company, Limited, with costs up to the time of the withdrawal of their Counsel as aforesaid to be paid forthwith after taxation thereof.

3. AND THIS COURT DOTH FURTHER ORDER AND ADJUDGE that this
10 action be and the same is hereby dismissed as against the other defendants without costs.

4. AND THIS COURT DOTH FURTHER ORDER AND ADJUDGE that the counterclaims of the defendants other than E. B. Eddy Company, Limited, and News Pulp and Paper Company, Limited, be and the same are hereby dismissed without costs.

Settled, February 16th, 1928,

“E. HARLEY,”

Senior Registrar, S.C.O.

*In the
Supreme
Court of
Ontario.*

No. 28.
Formal
Judgment of
Grant, J.A.
31st Decem-
ber, 1927

No. 29.

Notice of Appeal.

20

TAKE NOTICE that the plaintiff appeals to a Divisional Court from the judgment pronounced by the Honourable Mr. Justice Grant on the 31st day of December, 1927, on the following grounds :

1. The judgment is against the law, evidence and weight of evidence.

2. The Orders made by the Controller dated 17th July, 1919, and 23rd
January, 1920, were effective.

3. The Manufacturers of newsprint in Canada were under obligation to
30 supply newsprint paper to Canadian Publishers rateably and they agreed amongst themselves to adjust by money payments any claims arising through some Manufacturers supplying more and others less than their proportion.

4. In the circumstances disclosed in evidence the Court had authority to make such orders as might be necessary to bring about equality amongst the Manufacturers.

5. The basis of adjusting differentials by money payments was definitely settled by Orders of the Controller, the Paper Control Tribunal and the Governor in Council.

6. Effective orders directing adjustment of differentials were made by
40 the Controller from time to time throughout the period ending 1st October, 1918, and a final Order was made by him on 23rd January, 1920.

7. The only matter left to be determined was the amount to be paid by Manufacturers who supplied less than their proportion to Manufacturers who supplied more than their proportion.

No. 29.
Notice of
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19th Jan-
uary, 1928.

*In the
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—continued.

8. In so far as the machinery for adjusting the rights of parties broke down, it is the Court's duty to supply the deficiency.

9. On the evidence adduced at the trial the plaintiff was entitled to the relief claimed.

DATED the 19th day of January, 1928.

TILLEY, JOHNSON, THOMSON & PARMENTER,
255 Bay Street, Toronto 2,

Solicitors for the Plaintiff.

To :

MESSRS. BLAKE, LASH, ANGLIN & CASSELS,
Solicitors for certain defendants. 10

MESSRS. HENDERSON & HERRIDGE,
Solicitors for other defendants.

MESSRS. KILMER, IRVING & DAVIS,
Solicitors for other defendants.

MESSRS. HELLMUTH, CATTANACH & RAMSEY,
Solicitors for other defendants.

No. 30

Notice

No. 30
Notice
24th Janu-
ary, 1928.

TAKE NOTICE that, pursuant to subsection 6 of Rule 492 of the Rules of Practice and Procedure of this Court, upon the hearing of the plaintiff's appeal in this action, the defendants Abitibi Power & Paper Company, Limited, Charles Jackson Booth, John Frederick Booth and Helen Gertrude Fleck, Executors and Executrix of the will of the late J. R. Booth, Brompton Pulp & Paper Company, Limited, Donnacona Paper Company, Limited, Price Bros. & Company, Limited, Ontario Paper Company, Limited, Spanish River Pulp & Paper Company, Limited, and St. Maurice Paper Company, Limited, will contend that the judgment pronounced by the Honourable Mr. Justice Grant on the 31st day of December, 1927, should be varied in so far as the said judgment dismisses the counterclaim of the said defendants for the amount over- 30
paid by them to the plaintiff in respect of differentials for the year 1917, and the further counterclaim of the said defendants in respect of the rebate allowed by the Government to the plaintiff on sulphite duty, which counterclaims are particularly set forth in paragraphs 10 to 13 inclusive of the amended Statements of Defence.

The said defendants will so contend upon the grounds :—

1. That the said judgment in so far as it dismisses the aforesaid counterclaims is against the law, the evidence and the weight of evidence.

2. That upon the facts alleged at the trial of the action and upon the law the said defendants are entitled to judgment as claimed 40
against the plaintiff for the difference between the amounts paid to the plaintiff under the Order of R. A. Pringle, Esquire, K.C., formerly Paper Controller, dated the 6th day of August, 1918, and the reduced

amounts directed to be paid by the Order of the Paper Control Tribunal dated the 18th day of August, 1919.

3. That in any event the learned Trial Judge stated in his reasons for judgment that if on appeal another Court should see its way to allowing the plaintiff's claim the amounts claimed by virtue of the counterclaim aforesaid should be taken into account.

DATED this 24th day of January, 1928.

10 **BLAKE, LASH, ANGLIN & CASSELS, Toronto, Ont.,**
Solicitors for the defendants, Spanish River Pulp & Paper Mills, Limited, Ontario Paper Company, Limited, Brompton Pulp & Paper Company, Limited, Price Bros. & Company, Limited, and Donnacona Paper Company, Limited.

HENDERSON & HERRIDGE, Trust Building, Ottawa,
Solicitors for Charles Jackson Booth, John Frederick Booth, and Helen Gertrude Fleck, Executors and Executrix of the will of the late J. R. Booth.

20 **KILMER, IRVING & DAVIS, Toronto, Ont.,**
Solicitors for the defendants, Abitibi Power & Paper Company, Limited, and St. Maurice Paper Company, Limited.

To

MESSRS. TILLEY, JOHNSTON, THOMSON & PARMENTER,
Solicitors for the plaintiff.

and to

MESSRS. HELLMUTH, CATTANACH & RAMSAY,
Solicitors for E. B. Eddy Company, Limited, and News Pulp & Paper Company, Limited.

No. 31.

30 **Reasons for Judgment of Second Divisional Court.**

(LATCHFORD, C.J., RIDDELL, ORDE, AND FISHER, J.J.A.)

W. N. TILLEY, K.C., and A. J. THOMSON, K.C., for the plaintiff, appellant.
GLYN OSLER, K.C., and G. R. MUNNOCH, for all defendants (other than the E. B. Eddy Co., Ltd., and News Pulp & Paper Co. Ltd.), respondents.

G. F. HENDERSON, K.C., for defendants, executors of late John R. Booth, respondents.

J. G. GIBSON, for defendant, Spanish River Pulp & Paper Mills, Ltd., respondent.

40 **L. A. LANDRIAUX,** for defendants, Abitibi Power & Paper Co. Ltd., and St. Maurice Paper Co., Ltd., respondents.

(Heard 5th and 6th February, 1929.)

*In the
Supreme
Court of
Ontario.*

No. 30.
Notice
24th January,
1928.

—Continued

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Reasons for
Judgment of
Second
Divisional
Court.
3rd May,
1929.

*In the
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Court of
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Reasons for
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Court.
(Orde, J.A.)
3rd May,
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—continued.

ORDE, J.A. : Before proceeding to discuss the questions raised by this appeal, some explanation may be expedient, as a matter of record, of my sitting as a member of the Court. As appears from the evidence at the trial, I acted throughout the War as counsel for the E. B. Eddy Co., Ltd., in the prolonged proceedings before the Paper Commissioner and Controller and before the Paper Control Tribunal, upon which proceedings the present action is based. I was appointed to the Bench shortly before those proceedings were concluded. The Eddy Company was made a party defendant to this action but not by reason of any claim made against it by the plaintiff, and its counsel was permitted to withdraw at an early stage of the trial and it takes no part in this appeal.

10

Before the appeal came on I intimated to my colleagues and to counsel that my connection with the paper control proceedings might render my sitting inadvisable but counsel for all parties stated then and at the opening of the appeal that they were all desirous that I should sit and my colleagues also expressed their acquiescence.

The plaintiff bases its declaration that it is entitled to recover upon two grounds,—First, that there was a contract among the manufacturers of newsprint paper by which (I quote from par. 5 of the statement of claim) “it was agreed by the plaintiff and defendants that an adjustment would be made so that those manufacturers who supplied more than their proportion of the Canadian demands would be compensated for their extra loss by those who supplied less than their share;” and second, That by virtue of the War Measures Act passed by the Dominion Parliament on the 22nd August, 1914, 5 Geo. V. Ch. 2, and of the Act of 7th July, 1919, 9-10 Geo. V. Ch. 63, and of the Orders in Council and the orders of the Paper Controller and of the Paper Control Tribunal made thereunder a statutory liability to make such compensation was imposed.

The question of contractual liability was disposed of in a few words by the learned trial Judge who found that no such contract as alleged had been proved by the plaintiff. Upon the appeal, while the contention was not expressly abandoned, no argument was made upon it by plaintiff’s counsel who confined their attack upon the judgment below to the second ground above mentioned.

The learned trial Judge has so fully recounted the sequence of events during the whole period of the Government’s control over the disposal of newsprint paper that it is unnecessary to repeat the whole story. I shall refer only to such facts as serve to explain the conclusions at which I have arrived.

The plaintiff’s right to the compensation claimed in this action depends wholly upon the effect of the War Measures Act of 1914 and the later Act of 1919, and upon the sufficiency of the Orders-in-Council and the orders of the Paper Controller and of the Paper Control Tribunal passed or made thereunder as establishing a legal right to the compensation claimed which can be enforced by the Supreme Court of Ontario.

40

No question is raised by any of the defendants as to the power of Parliament to pass the War Measures Act, or to vest in the Governor-in-Council the powers which that Act purported to confer upon the Executive Government of Canada. Any such defence would probably have been as hopeless in this case as it proved to be in *Fort Frances Pulp & Paper Co. Ltd. v. Manitoba Free Press Co. Ltd.* (1923), A.C. 695.

But those defendants who, if the plaintiff's contention is established, will be liable to contribute towards the compensation claimed, set up certain defences or contentions which may be divided substantially into three, viz.:

10 1. That whatever the powers conferred upon the Governor-in-Council by the War Measures Act of 1914 may have been, no power was given by the Act or by Order-in-Council to any Minister or to the Paper Controller to make an order for the payment of money by one person to another which would create an enforceable legal liability.

2. That if any such power was conferred it was not, so far as it might have served as a foundation for the relief claimed in this action, ever exercised.

3. That even had the power been exercised and an order been made by the Controller for the payment of money (whether ascertained as to amount or not) there is no jurisdiction in this Court to grant the plaintiff any relief.

20 We are not called upon to deal with any question as to the extent of the power of the Parliament of Canada in time of war to pass such measures for the defence of Canada as may interfere with matters within the Provincial Legislative field, such as property and civil rights. That such power is very wide is established by the judgment of the Privy Council in the *Fort Frances* case, and it may be within the power of Parliament in such an emergency to so legislate as to create a civil liability to pay money by one person to another enforceable by action in any Provincial Court. But the point made by the defendants is that the Orders-in-Council, under which first the Minister of
30 those manufacturers who supplied less than their proportion of the Canadian demand for newsprint to pay what was termed "the differentials" by way of compensation to those who were supplying more than their proportion, did not either expressly or by implication confer any such power. The learned trial Judge has expressed some doubt upon this point. If the validity of any orders rested mainly upon the powers expressly conferred by the Orders-in-Council of the 16th April 1917, and the 3rd November, 1917, I should be inclined to the view that no such power was given. But this argument is, in my opinion, very much weakened, so far as the orders made by Mr. Pringle as Paper Controller are concerned, by the fact that down to the time when the
40 Paper Control Tribunal was appointed, each order made by him was expressly ratified by Order-in-Council. If it be assumed, for the purpose of argument, that the Government of Canada, that is the Governor-in-Council, had the power to order the payment of money by one manufacturer to another, it would be difficult to hold that the approval or ratification by Order-in-Council of such an order made by the Controller did not constitute an effective executive act on the part of the Government.

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It may be observed in this connection that the Government clearly recognized the right of the Paper Controller to order one group of manufacturers to compensate the other group by its peremptory action when the Abitibi Company refused to pay its proportion of the differentials in accordance with the Controller's order. That action took the form of a notice that the Abitibi Company's license to export paper would be suspended unless the money were paid within one week. Whether there was an enforceable civil liability or not the Government possessed a very effective practical means, during war time, of enforcing the orders of its officials.

The substantial obstacles in the plaintiff's path are those set up by the two other grounds of defence above mentioned. They depend, not upon the validity or otherwise of the acts and things done by the Paper Controller and by the Governor-in-Council but upon the question whether or not those acts and things really imposed upon the respondents any legal enforceable liability to compensate the plaintiff as claimed. They may well be discussed together.

It is upon Section 6 of the War Measures Act, 1914, 5 Geo. V. Chap. 2, that the plaintiff's claim is based. That Section is as follows :—

"6. The Governor-in-Council shall have power to do and authorize such acts and things, and to make from time to time such orders and regulations, as he may by reason of the existence of real or apprehended war, invasion or insurrection deem necessary or advisable for the security, defence, peace, order and welfare of Canada; and for greater certainty, but not so as to restrict the generality of the foregoing terms, it is hereby declared that the powers of the Governor-in-Council shall extend to all matters coming within the classes of subjects hereinafter enumerated, that is to say :—

(a) censorship and the control and suppression of publications, writing, maps, plans, photographs, communications and means of communication;

(b) arrest, detention, exclusion and deportation;

(c) control of the harbours, ports and territorial waters of Canada and the movements of vessels ;

(d) transportation by land, air, or water and the control of the transport of persons and things;

(e) trading, exportation, importation, production and manufacture;

(f) appropriation, control, forfeiture and disposition of property and of the use thereof.

2. All orders and regulations made under this section shall have the force of law, and shall be enforced in such manner and by such courts, officers and authorities as the Governor-in-Council may prescribe, and may be varied, extended or revoked by any subsequent order or regulation; but if any order or regulation is varied, extended or revoked, neither the previous operation thereof nor anything duly done thereunder, shall be affected thereby, nor shall any right, privilege, obligation or liability acquired, accrued, accruing or incurred thereunder be affected by such variation, extension or revocation."

By section 7 it was provided that when compensation was to be made

for any property appropriated by His Majesty under the provisions of the Act, or of any Order-in-Council, order or regulation made thereunder the claim therefor was to be referred by the Minister of Justice to the Exchequer Court of Canada, or to any Superior or County Court of the Province within which the claim arose or to a judge of any such Court.

Section 8 provided for forfeiture of ships or vessels used or moved, or of goods dealt with, contrary to any order or regulation under the Act, by proceedings in the Exchequer Court or in any Superior Court.

Section 9 empowered the Courts mentioned in Sections 7 and 8 to make
10 rules governing the procedure upon any reference made to or proceedings taken before such Courts under those two sections.

Section 10 empowered the Governor-in-Council to prescribe penalties by way of fine or imprisonment or both, enforceable upon summary conviction or upon indictment, for violations of orders and regulations made under the Act.

Section 3 provided that Sections 6, 10, 11 and 13 of the Act should only be in force during war, invasion or insurrection, real or apprehended.

The primary object of the Government when it commenced to exercise control over the distribution of newsprint paper was in the words of the Order-in-Council of the 16th of April, 1917, "to ensure to publishers of Canadian newspapers an adequate supply of newsprint paper at reasonable prices."
20 The attempt to equalize prices as between those manufacturers who were supplying more than their proportionate share of the Canadian demand and those who were supplying less, by means of the differentials was really incidental to that primary object, though none the less important if justice were to be done as between the two groups of manufacturers. One of the chief difficulties in the way of this method of equalization was that the prices to be paid by the publishers to the manufacturers were fixed by the Controller from time to time for comparatively short periods, in most cases less than three months, and were then only tentative being expressly subject to future revision.
30 This revision might be upwards or downwards, and depended upon the statements prepared from time to time by the accountants whom the Controller employed to examine the manufacturers' books as to cost of production, etc., and upon the Controller's conclusions thereon. All of this took time, and there was the further delay in the final settlement of prices consequent upon the setting up of the Paper Control Tribunal which was empowered to sit as an Appellate Tribunal and review all the orders of the Controller. All this uncertainty as to whether the prices so fixed from time to time would stand or whether the manufacturers would either receive something more or be obliged to make a refund to the publishers, for paper sold and delivered many months
40 before, added to the difficulties in fixing the differentials as among the manufacturers themselves. They likewise were necessarily subject to future revision by the Controller and ultimately to review by the Control Tribunal.

In all his price fixing orders down to and including that of the 30th August, 1918, there appeared a general provision as to the payment of differentials by one group of manufacturers to the other. In all his later orders this provision was omitted. Whether the establishment, a few days later,

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namely, on the 16th September, 1918, of the Paper Control Tribunal had anything to do with this omission or was a mere coincidence is not clear.

By his order of the 6th August, 1918, the Controller had fixed the amounts of the differentials respectively payable by the contributing manufacturers for a period of ten months ending on the 31st December, 1917, amounting in all, with interest, to \$100,797.71. Upon appeal the Paper Control Tribunal on the 18th August, 1919 (more than a year later) disallowed the interest and reduced the amount fixed by the Controller's order to \$72,507.12. The Controller's price fixing order of the 30th August, 1918, the last one containing the general provision for the payment of differentials, fixed the prices payable by the publishers down to the 1st October, 1918. 10

Beyond those two orders, there was never any effective judicial act either by the Paper Controller or by the Paper Control Tribunal which dealt with differentials or in any way fixed or determined the amount thereof, either tentatively or finally.

For some reason, not quite clear, there was appended as a footnote to the Controller's order of the 17th December, 1919, a memorandum that nothing in the order should prejudice the rights of the interested parties in the matter of differentials, and a similar provision was embodied in his order of the 24th December, 1919. Just what purpose this mention of differentials was to serve is not explained. It was perhaps intended either as a warning to those who would be called upon to contribute, that the matter of differentials for the period subsequent to the 31st December, 1917, was still an open and unsettled one, or as a salve to those who would be entitled to receive compensation, or both. 20

So that we have the amount of the differentials payable by the contributing manufacturers definitely and finally fixed by the Control Tribunal down to the 31st December, 1917, and a general direction by the Controller in his orders covering the period down to the 1st October, 1918, that in requiring the manufacturers to accept from the publishers the prices thereby fixed, there should, in certain events, be an adjustment among themselves by means of the payment of differentials. But no order fixing the amount of the differentials in accordance with this direction was ever issued by the Controller. 30

There are, however, in connection with the claim put forward by the plaintiff, two matters of a somewhat extraordinary nature which call for comment. There was produced at the trial a document dated the 17th July, 1919 (Exhibit 4a) purporting to be an order signed by the Paper Controller fixing certain amounts to be paid by the contributing manufacturers to the plaintiff as differentials for the period from the 1st January, 1918, to the 1st July, 1918. This document was apparently found among the papers of the Paper Controller in the possession of the Board of Commerce of Canada which had been appointed by order-in-council of the 29th January, 1920, as Commissioner and Controller of paper shortly after the resignations of Mr. Pringle and of Mr. Breadner. Not only is there no evidence that this document was ever issued, or delivered as an order to any of the parties interested, but there is the positive statement by Mr. Pringle himself as recorded in the Minutes of the proceedings before him on the 17th September, 1919 (Exhibit 40

31) that he had made an order, which he did not issue, directing payment of further differentials, followed by his reasons for not issuing it. This statement is strengthened by the recital in the document signed and issued by Mr. Pringle on the 23rd January, 1920, seven days after he had tendered what the Government regarded as his resignation as Paper Controller, and one day after such resignation had been formally accepted and his successor had been formally appointed by Order-in-Council.

In that document it is recited that no orders had been put into effect in regard to differentials since the order of the 6th August, 1918. There is also
 10 the statement in Mr. Pringle's letter to Mr. Tilley of the 9th November, 1921, that no further order (referring to that of the 6th August, 1918) had ever been issued by him. In view of the fact that the document of the 23rd January, 1920, purported to deal expressly with the matter of differentials it is impos-
 20 sible to believe that it would not have recited this document of the 17th July, 1919, if Mr. Pringle had really issued it as an order. Had Mr. Pringle been alive his evidence at the trial of this action would doubtless have amplified the statement made by him at the hearing of the 17th September, 1919, but even without any further explanation as to the existence of the document, it is, I think, clearly established beyond question, that as found by the learned trial
 30 Judge, the document of the 17th July, 1919, was never in fact an effective or valid order. In my opinion it constitutes, so far as it affects the matter in issue here, just so much waste paper.

The other extraordinary matter is the document of the 23rd January, 1920, just mentioned. In discussing this some reference to the Act passed on the 7th July, 1919, 9-10 Geo. V., ch. 63, is necessary. The preamble of that Act recited the Orders-in-Council for the appointment of a Commissioner and Controller of Paper and for the creation of a Paper Control Tribunal and that there were certain investigations and work begun by the Commissioner and Controller which were not completed and certain matters still pending
 30 and undetermined by the Control Tribunal. This was followed by provisions confirming and extending the powers, jurisdiction and authority of the Commissioner and Controller to such extent as might be necessary to enable such Commissioner and Controller to fully complete all work and investigations begun by him under the two orders-in-council of the 16th April, 1917, and those of the 21st April, 1917 and the 3rd November, 1917, prior to the declaration of peace, and to determine all questions and to make all necessary orders with respect to matters begun by or coming before him prior to the publication in the Canada Gazette of a proclamation by the Governor-in-Council declaring that the war which commenced on the 4th August, 1914, no longer existed.
 40 There was also a corresponding provision as to the powers of the Paper Control Tribunal.

When he made the so-called Order of the 23rd January, 1920, Mr. Pringle may have considered that some powers had been reserved to him to make such an order by the provision of the Act of 1919 just mentioned. And it is to be noted that his letter of the 16th January, 1920, to Sir Henry Drayton, the then Minister of Finance, is not in terms a resignation of his office. He asks to be relieved from the distribution of newsprint, but at the same time

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points out that he had certain duties to discharge under the Act of 1919. Just what he expected the Government to do in consequence of this letter is not clear. It might perhaps have been possible under the Act to relieve Mr. Pringle of some part of the duties remaining to be performed, and at the same time to allow him to wind up other matters. The Government, however, did not so interpret his letter, but treated it as a resignation of his office "as Controller of Newsprint and other paper" and as such formally accepted it by order-in-council on the 22nd January, 1920 (P.C. No. 145) and by another order-in-council of the same date (P.C. No. 154) appointed Mr. Breadner in his place. It may be that when he made the order he did not know that the Government had yet acted upon his letter or if acted upon that it failed to provide for some continuance of his powers as Paper Controller in accordance with the suggestion in his letter. Or it may be that he thought the Act of 1919 had in some way vested certain continuing powers in him as *persona designata*.

Whatever may be the explanation of the making of the order of the 23rd January, 1920, there can be no doubt in my opinion, that on the preceding day Mr. Pringle's powers and authority as Paper Controller, as well under the War Measures Act of 1914 and the Orders-in-Council passed thereunder as under the Act of 1919, had completely ceased, and that any powers and duties remaining to be exercised and performed by the Paper Controller were then wholly vested in Mr. Breadner. The Act of 1919 vested the continuing powers in the Commissioner and Controller of Paper by virtue of that office, and it is not possible to construe the Act as giving power to the then occupant of the office as *persona designata*. Mr. Pringle himself evidently later came to the conclusion that the so-called order of the 23rd January, 1920, was ineffective, for he so states in his letter to Mr. Tilley of the 9th November, 1921, already mentioned. The learned trial Judge was right in holding that this document never became an effective order of the Paper Controller.

The plaintiff's claim is for "a declaration that such of the defendants as supplied less than their proper share of newsprint to Canadian Publishers during the period from 1st January, 1918, to 31st December, 1919, are liable to pay to the plaintiff the loss suffered by the plaintiff in supplying more than its proper share of newsprint to Canadian publishers during the said period," also for "an accounting between the parties for the said period" and for "payment of the amounts found owing to the plaintiff upon such accounting."

Now as already pointed out there was never any effective order of the Paper Controller entitling the plaintiff to payment of any definite amounts by way of compensation by any of the defendants in respect of the period of two years in question, nor was there any general direction, as a term or provision of the orders fixing prices for the same period, that there should be compensation by means of the payment of differentials, except for the first nine months thereof, that is down to the 1st October, 1918, the end of the period for which prices were fixed by the Controller's order of the 30th August, 1918, which, as already stated, was the last order which embodied the general direction for the payment of differentials.

This general direction as to the earlier period of nine months does not, in

my opinion, really affect the principles upon which the plaintiff's claims for relief are to be determined, but the fact that the Paper Controller, in the exercise of the powers which he believed were conferred upon him formally imposed in general terms a liability in certain events upon some of the manufacturers to pay compensation to the others, and that all the Controller's orders fixing prices for those nine months were each expressly approved by Order-in-Council, places the plaintiff's claim for relief as to that period on somewhat higher ground than the claim as to the remaining fifteen months. The claim as to these nine months, if not barred by other considerations,

10 would perhaps have not only strong equitable grounds for its support, but even some legal grounds based upon the statutory effect of the War Measures Act, 1914, and the Orders-in-Council passed thereunder including those which approved the Controller's orders. When I speak of equitable grounds, I mean such equitable grounds as might be deduced from the mere inclusion of the differential provision in the Orders. The learned trial Judge came to the conclusion that the action must be dismissed, with reluctance, because he thought that the plaintiff had not been fairly treated. Though I speak of equitable grounds, I desire to make it clear that I am not referring to any question of fairness or otherwise in the result so far as the plaintiff's claim is

20 concerned. There were so many factors, such as cost of production, freight rates, domestic and export prices, etc., for consideration during the period of paper control that it would be impossible in my opinion, to predicate what the ultimate conclusion upon the question of differentials for the years 1918 and 1919 would have been. The determination of that question rested in the first instance with the Paper Controller and in the final resort with the Paper Control Tribunal, and, except by inference from the fact that differentials were ordered to be paid and the amounts so to be paid were ultimately fixed for the period up to the 31st December, 1917, there is no justification that I can see for the view, as if it were a foregone conclusion, that the Controller or

30 the Control Tribunal would have ultimately fixed any amount whatever as owing by one group of manufacturers to the other. The system of paper control set up by the Government was a war measure designed to assist and protect the nation in the prosecution of the war. The powers vested in the Paper Controller were subject to approval or disapproval for a time by the Governor-in-Council and later to review by the Paper Control Tribunal. The equalization of profits by means of the differentials was not in any sense a necessary incident of control. The learned trial Judge has held that it was beyond the powers of the Controller. Whether it was beyond the powers of the Governor-in-Council is a question, which as I have already pointed out,

40 is not raised before us. But whether it was within the power of the Controller or the Government or not, it was by no means incumbent upon either to exercise the power; and if no attempt at equalization had been made by the Controller or the Control Tribunal or the Government, throughout the whole period of paper control, however unfair the omission to do so might have been, I find it difficult to see upon what ground either legal or equitable (I use the term "equitable" in its technical, and not in any popular, sense) those manufacturers who had failed to reap as large a profit from the production and sale

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—continued.

of newsprint as others could have compelled the others, by means of an action in the Courts, to hand over some of their greater profits to those who had not been so fortunate. It seems to me that to state the proposition in this simple form is to answer it.

Does the plaintiff's claim for relief really present itself in any other form than the proposition I have just stated? I cannot see how it does. Omitting for the moment the possible effect of the general direction as to differentials in the Controller's orders covering the months between the 1st January and the 1st October, 1918, as a foundation of liability in respect of those nine months, upon what theory can the plaintiff base any claim for compensation from the defendants or any of them in the absence of some order of the Paper Controller or of the Paper Control Tribunal? What is its cause of action? You cannot by merely establishing that the Government, in the exercise of some compulsory power given it by Parliament, has forced you to do something in such a way as to cause you some loss greater than that which has been sustained by others in a similar position, have a cause of action for compensation against those others. In saying this I am perhaps in effect repeating what I have already said. But this simple principle meets the plaintiff at the very threshold of its case. 10

I cannot help thinking that the discussion of the question involved here has been greatly confused and obscured both by the fact that compensation was definitely ordered and the amounts fixed for a period prior to 1918, and by the ineffective (again I am for the moment omitting the possible effect of the order of the 30th August, 1918) references to differentials by the Controller and others during the later proceedings before the Controller; and also by the undoubted fact that the Controller apparently considered not only that the question of differentials subsequent to the 31st December, 1917, was still open, but that some compensation ought to be made by some of the manufacturers to the others. But the definite fixing of the amount of compensation for the period prior to the 1st January, 1918, cannot, upon any principle that I know of, be relied upon as establishing a basis of liability for any subsequent period. Remove the impression created by the effective disposition of the question of differentials for that earlier period from one's mind and consider the question of liability raised in this action as if there had been no question of differentials prior to 1918, and it seems to me that the foundation for the plaintiff's claim for compensation in this action completely disappears. How can the fact, assuming it to be the fact, that the Paper Controller thought that compensation ought to be made or that he intended to order it, constitute any basis for an action if he failed to give concrete expression to that thought or intention by some effective order or decision which would have been subject to review by the Paper Control Tribunal or to approval by the Governor-in-Council? 20 30 40

It is quite clear to me that, quite apart from any difficulty confronting the plaintiff as to the jurisdiction of this Court to entertain the action, the plaintiff's claim for compensation, so far as it covers the period of fifteen months between the 1st October, 1918, and the 31st December, 1919, has no foundation whatever, statutory or otherwise. There is in fact no cause

of action as to that period entitling the plaintiff to any relief whatever, even if this Court had complete jurisdiction to grant relief of the nature claimed.

As to the earlier period of nine months, that is from the 1st January, 1918, to the 1st October, 1918, the general direction to make compensation, while indicating an intention on the part of the Controller to implement it by some more specific order when complete information would be available and the prices to be charged the publishers finally fixed, cannot, in my judgment, form the basis of any enforceable legal right or give rise to any cause of action. It was merely one movement in the machinery created by the Government to
 10 assist in the prosecution of the war. It was impossible to forecast what the next movement might be. Many things might have happened. The manufacturers affected might have discontinued manufacture or refused to sell at the prices dictated by the Controller, at the probable risk of having their factories taken over by the Government. The exigencies of the situation as it developed might have rendered it inexpedient to make any further order or to attempt otherwise to enforce the general direction to make compensation. That is in effect what happened; nothing more was done and the intention to enforce compensation was never carried out.

The plaintiff relies upon *Cameron v. Cuddy* (1914) A.C. 651, in support of
 20 its contention that when there is an obligation to pay and the proceedings designed to ascertain the amount due prove abortive, it is the duty of the Court to supply the defect by itself ascertaining the amount. In that case there was a contract to pay which of itself created a liability and gave rise to a cause of action. The proceeding by way of arbitration designed by the contract fell through and it became impossible to ascertain the sum due by that method. I see no parallel between that case and the present one. There was there a fundamental liability created by contract which provided that the amount due should be determined by arbitration. The contract was not of such a character as to make the award a condition precedent of liability.
 30 Here there is not, in my judgment, any liability to pay, statutory or otherwise upon which a Court, following the principle applied in *Cameron v. Cuddy*, could proceed to ascertain the amount due. The general direction to make compensation did not create any actionable liability whatever.

I have dealt at length with the merits of the plaintiff's claim rather than dispose of it upon the mere question of the jurisdiction of this Court to entertain the action. And when I use the term "merits" I am not referring to any principles of natural justice, which no Court is ever called upon to administer, but to the existence of any statutory right to assert the claim as a legal cause of action given to the plaintiff by virtue of the War Measures Act, 1914.
 40 Whether it would have been legally possible for the Governor-in-Council under any authority conferred by the Act, to have created an actionable liability as between subject and subject, is, in my opinion, extremely doubtful, however extensive the powers of the Government might be by means of its war machinery, including the creation of special Courts for the purpose, to enforce any order it might make. But what was done here fell far short of anything which ever purported to impose any definite liability upon any of the defendants so far as the year 1918 and 1919 were concerned.

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—continued.

Coming now to the question of jurisdiction I can see no answer to this objection. The learned trial Judge has rightly held that this case falls within the third class mentioned by Wills, J., in *Wolverhampton New Waterworks Co. v. Hawkesford* (1859) 6 C.B.N.S. 336 at 356, namely, "Where a liability not existing at common law is created by a statute which at the same time gives a special and particular remedy for enforcing it." There were many ways by which the Government with the extraordinary powers given by the War Measures Act might have enforced its orders, such as the imposition of penalties, or forcible seizure or confiscation. But the feature of the Act which, in my judgment, establishes beyond question that relief for things suffered in consequence of the exercise of the powers thereby given to the Governor-in-Council, must be such as are given by the Act itself is the positive provision embodied in sub-sec. 2 of sec. 6 quoted above, that "all orders and regulations made under this section shall have the force of law, and shall be enforced in such manner and by such Courts, officers and authorities as the Governor-in-Council may prescribe." The only Courts or officers ever prescribed under this provision were the Paper Controller and the Paper Control Tribunal. The Government might have set up other Courts for the purpose or have declared that the Controller's orders might be enforced in the ordinary Courts at law. But it did not do so. The word "shall" is clearly imperative and there is nothing in the context to justify any other interpretation. 10 20

The War Measures Act was designed to vest in the Government of Canada full control of all such measures as it might deem necessary in the prosecution of the war with full power to enforce them by such means as it saw fit. The provision that its orders were to have the force of law and were to be enforced in such manner and by such Courts, officers and authorities as the Government itself might prescribe was clearly intended to give the Government absolute and unfettered control over the means it chose to adopt—within the range of the powers conferred upon it by the Act, of course,—for the defence of the nation. It might enforce such orders by the summary exercise of its military or police power, or through the medium of the Courts, but the choice of the means for such enforcement rested solely with the Government. The enactment that the orders made under it should have the force of law was in aid of the Government and was not intended to confer rights upon the subject. The provision for compensation in cases of expropriation of property was an indication of some protection against a possible arbitrary exercise of power, though the wording of Section 7 lends colour to the argument that whether or not compensation would be made depended upon the will of the Government, and the principle of *Attorney General v. De Keyser's Royal Hotel Limited* (1920) A. C. 508, might not be applicable. 30 40

The jurisdiction of the Courts to determine the scope of the powers conferred by the War Measures Act and the validity of any Order-in-Council passed thereunder was not taken away. The *Habeas Corpus* proceedings in the Supreme Court of Canada to test the validity of the Order-in-Council enforcing conscription, in the case of *Re Gray* (1918), 57 Can. S.C.R. 150, established that. But there is a vast difference between a question as to the validity of an order made under the Act, and the means for enforcing an

order on the assumption that it is valid. The very assumption of its validity removes it from the jurisdiction of the ordinary Courts unless such jurisdiction was expressly conferred by the Government.

There is nothing in this view to conflict with the *Fort Frances and Manitoba Free Press Case* already mentioned. That action was brought not to enforce an order of the Paper Controller but for repayment of moneys which in the result were in excess of those which ought to have been paid. It was in substance an ordinary common law action for money had and received, see (1923) A.C. 695 at p. 703.

10 In the reasons of the learned trial Judge is a passage indicating that the Paper Control Tribunal may still dispose of certain appeals as to prices. Whether the Tribunal still exists or has any further power may be seriously doubted. It is quite clear from the Order-in-Council establishing it that the Tribunal could only exercise an appellate jurisdiction over orders made by the Controller. It had no original jurisdiction whatever, and if still in existence would have no power to make any order for the payment of differentials.

The appeal should be dismissed.

LATCHFORD, C.J.: I agree.

FISHER, J.A.: I agree.

20 RIDDELL, J.A.: This is an appeal from the judgment of Mr. Justice Grant at the trial of an action arising, like so many others, from the disorganization by the Great War, of the world of business in Canada.

The exigencies of war required the enactment of the Statute (1914) 5 George V. cap. 2, under section 6 of which the acts were done upon what this proceeding is founded, the plaintiffs claiming that by reason of what was done under this section, the defendants are liable to them for at least, some money.

30 The facts are stated accurately and with sufficient fullness in the reasons for judgment of my learned brother Grant in his luminous reasons for judgment; and I do not repeat them. Without finally so deciding, I, as at present advised, agree in the conclusions at which he has arrived, and would in that view alone, dismiss the appeal.

But there is another ground of which little was said in the argument upon which I think the appeal fails.

40 No doubt, recognizing the very complicated and difficult situations which might arise in the course of a novel and unprecedented experiment, Parliament decided that while "All orders made under this section" should "have the force of law," the enforcement of them should not be left to the ordinary Courts, but they should be "enforced in such manner and by such Courts, officers and authorities as the Governor-in-Council might prescribe" (1914) 5 George V. cap. 2, Sec. 6 (2).

The Court is not one of "such Courts"; we have no direction from the Governor-in-Council, and I think that we have no jurisdiction in the matter.

It is not such a case as *Cameron v. Cuddy* (1914) A.C. 651, in which a

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(Latchford,
C.J.,
Fisher, J.A.,
Riddell J.A.)

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liability to pay something existed in fact, but the method agreed upon to determine the amount became impossible. There the Judicial Committee following the previous case of *Hamlyn & Co. v. Talisker Distillery* (1894) A.C. 202, held that the Court would enforce the liability.

The case of *Fort Frances P. & P. Co. v. Manitoba Free Press Co., Ltd, et al* (1923) A.C. 695, an appeal from the judgment in *Manitoba Free Press Co. Ltd. v. Fort Frances Pulp & Paper Co., Ltd.* (1922), 52 O.L.R. 118, might be appealed to as showing jurisdiction in this Court. The point was not raised in that case, and the provisions of sec. 6 (2) were never considered, all parties taking it for granted, apparently, that the Court had jurisdiction. The only matter decided by me in the trial Court was “whether the Paper Control Tribunal and the Paper Controller has been validly vested with power to make the orders in controversy” (1923) A.C. at p. 699 ; and that was the only matter decided by the Judicial Committee (except the rejection of the reasons for judgment of the Appellate Division). That case, moreover, was an action to recover from the defendants sums of money paid to them in excess of the proper amount ; and the Judicial Committee considered “that the effect of these Orders was to render the defendants liable to account for the balance on the footing of being money had and received to the use of” the plaintiffs. (P. 703). Such an amount would be recoverable in a simple Common Law action.

In the present case, however, the amount to be paid, if any, had not been determined by the proper tribunal; and, indeed, it may be said that the liability to pay anything had not been finally determined—the Controller might still have said that there was nothing payable; his discretion was broad and that might be exercised in any way subject, of course, to appeal; any discretion he might exercise was subject to the supervision and control of the Tribunal; in a word, there was no final adjudication, but the matter was still discretionary; and that discretion was not entrusted to this Court.

I am unable to find any sound basis upon which to found jurisdiction in this Court and would dismiss the appeal with costs.

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No. 32.

Formal Judgment of Second Divisional Court.

IN THE SUPREME COURT OF ONTARIO.

THE HONOURABLE THE CHIEF JUSTICE OF
THE SECOND DIVISIONAL COURT.
THE HONOURABLE MR. JUSTICE RIDDELL.
THE HONOURABLE MR. JUSTICE ORDE.
THE HONOURABLE MR. JUSTICE FISHER.

Friday, the Third day
of May, A.D. 1929.

(Same style of cause as in Formal Judgment of Grant, J.A.)

UPON MOTION made unto this Court on the 5th and 6th days of February, 1929, by Council on behalf of the plaintiff, in the presence of Counsel for the defendants other than the defendants E. B. Eddy Company, Limited, and News Pulp & Paper Company, Limited, as against whom this appeal has been abandoned, by way of appeal from the Judgment pronounced herein by the Honourable Mr. Justice Grant on the 31st day of December, 1927, dismissing

this action, upon hearing read the pleadings, the evidence adduced at the trial and the said Judgment and upon hearing Counsel aforesaid and judgment upon the motion having been reserved until this day;

1. THIS COURT DOETH ORDER that this appeal be and the same is hereby dismissed with costs to be paid by the plaintiff to the defendants other than E. B. Eddy Company, Limited, and News Pulp & Paper Company, Limited, forthwith after taxation thereof.

“E. HARLEY,”
Senior Registrar, S.C.O.

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Supreme
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No. 32.
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Judgment of
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Divisional
Court.
3rd May,
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—continued.

10 Entered O.B. 107, pages 222-3,
June 24, 1929.
“E.B.”

No. 33.

Order of Orde, J.A.

IN THE SUPREME COURT OF ONTARIO.

20 THE HONOURABLE MR. JUSTICE ORDE
IN CHAMBERS.

} Friday, the 20th day of
September, 1929.

(Same style of cause as in Formal Judgment of Grant, J.A.)

1. UPON the application of counsel for the plaintiff in the presence of counsel for the defendants other than E. B. Eddy Company, Limited, and News Pulp & Paper Company, Limited, upon hearing read the judgment of the Second Divisional Court of the Appellate Division of the Supreme Court of Ontario pronounced herein on the 3rd day of May, 1929, the reasons for said judgment, the affidavit of C. F. H. Carson filed and the bond of The Dominion of Canada Guarantee and Accident Insurance Company, dated the
30 16th day of September, 1929, filed, and upon hearing what was alleged by counsel aforesaid and it appearing that the case is one in which the plaintiff has, under the provisions of the Privy Council Appeals Act, R.S.O. 1927, Chapter 86, a right to appeal to His Majesty in His Privy Council.

2. IT IS ORDERED that the said bond be and the same is hereby approved and allowed as good and sufficient security that the plaintiff will effectually prosecute its appeal to His Majesty in His Privy Council from the said judgment of the Second Divisional Court and will pay such costs and damages as may be awarded in case the said judgment is confirmed.

3. AND IT IS FURTHER ORDERED that an appeal by the plaintiff to His
40 Majesty in His Privy Council from the said judgment of the Second Divisional Court be and the same is hereby admitted.

4. AND IT IS FURTHER ORDERED that the costs of this application be costs in the said appeal.

“E. HARLEY,”
Senior Registrar, S.C.O.

Entered O.B. 108, pages 48-9,
Sept. 20th, 1929.
“L.G.”

No. 33.
Order of
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20th Sep-
tember, 1929

Part II
EXHIBITS

Part Exhibit 23.
(Defendants' Exhibit.)

Minutes of Meeting of Newsprint Manufacturers of Canada.

Held at 10 a.m at Montreal, February 21st, 1917.

*In the
Supreme
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Ontario.*
—
Exhibits.
Part Ex. 23
Minutes of
Meeting of
News Print
Manufacturers of
Canada.
21st February,
1917.

- Present :
- C. H. Smith (in the Chair).
 - N. R. Lang.....Powell River Co.
 - J. F. Taylor.....The E. B. Eddy Co., Ltd.
 - G. H. Millen....." " " " " " 10
 - F. J. Campbell.....Canada Paper Co., Ltd.
 - Frank Powell.....News Pulp & Paper Co.
 - Geo. M. McKee.....Donnacona Paper Co., Ltd.
 - J. M. McCarthy.....Price Bros. & Co., Ltd.
 - E. W. Backus.....Fort Frances Pulp & Paper Co.
 - Geo. Chahoon, Jr.....Laurentide Co., Ltd.
 - H. W. Beauclerk.....Brompton P. & P. Co., Ltd.
 - J. A. Bothwell....." " " " " "
 - W. Biermans and
 - A. G. Campion.....Belgo-Canadian Pulp & Paper Co., Ltd.
 - Hurlbut.....Spanish River P. & P. Mills Co. 20
 - Geo. Mead....." " " " " "
 - Geo. M. Smith.....Abitibi Power & Paper Co., Ltd.
 - R. A. McInnis....." " " " " "
 - W. G. Linehan.....Laurentide Co., Ltd.
 - C. H. McCormack.....Ontario Paper Co.
 - A. L. Dawe.....

Mr. C. H. Smith reviewed the present situation and stated that Orders-in-Council while prepared were not published and would not be put in effect by Government providing solution of problem was forthcoming from manufacturers. 30

Mr. Chahoon was of the opinion that whatever was done should be outside of the Association altogether, and that any "pooling" arrangements entered into should be in the nature of a separate organization.

Mr. Backus stated that 3c. per lb. as a means of determining an arbitrary would be satisfactory to the Western mills. Mr. Chahoon, however, differed on this point, stating that an average price should be figured from export business.

Mr. McCormack stated emphatically that he had no interest in the proceedings at all, but that his new machine could be turned on to Canadian tonnage entirely. 40

It was then proposed by Mr. McCarthy, seconded by Mr. Chahoon, and carried, that Mr. R. W. Breadner be invited into the meeting.

Mr. C. H. Smith then outlined the proposal to have the whole matter stand over until Monday, the 26th instant.

Mr. Breadner stated this was a reasonable request and agreed accordingly.

Mr. Backus desired to go on record that Canadian manufacturers must look for higher prices in this export business in order to allow them to comply with the war measure enforced by the Government. Mr. Breadner stated that the Canadian Government have no interest in what the export prices were.

In reply to a question as to what prices the Government would enforce should the Orders-in-Council be placed in effect, Mr. Breadner stated that he did not know. If the requirements of the Government were met nothing would be done.

10 Mr. Smith stated that the manufacturers should have equal consideration as regards duty on raw material and machinery, but Mr. Breadner referred to his own remarks on the subject made on October 17th last at Ottawa.

The following resolution was then proposed by Mr. Chahoon, seconded by Mr. Biermans :

“THAT this meeting assure the Canadian Government, through its representative, Mr. R. W. Breadner, that it is prepared to meet the Government wishes, and contract with the Canadian Publishers at a price of \$2.50 per 100 lbs. for rolls, \$3.25 per hundred pounds, for sheets, \$3.50 per hundred pounds for sheets, 2 ton lots. All prices

20

Contracts to start on March 1st, 1917, and to be in force for three months. That this meeting has appointed a Committee to work out the details of a distribution scheme. This Committee to report back to an adjourned meeting, on Monday next, 26th of February.”

Carried by vote :

30

Abitibi Power & Paper Co., Ltd.
Belgo-Canadian Pulp & Paper Co., Ltd.
Brompton Pulp & Paper Co., Ltd.
Canada Paper Co.
Edwin Crabtree & Sons.
The E. B. Eddy Co., Ltd.
Laurentide Co., Ltd.
Price Bros. & Co., Ltd.
Spanish River Pulp & Paper Mills Co.
Ontario Paper Co.
Fort Frances Pulp & Paper Co.
Powell River P. & P. Co.

Absent : Donnacona Paper Co., Ltd. } Refrained from voting.
News Pulp & Paper Co. }

40

A copy of this Resolution to be given to Mr. Breadner.

It was then proposed that a Committee of seven be formed to meet at 2 o'clock to discuss ways and means of meeting the Government's requirements.

GEO. CHAHOON, JR.
A. G. CAMPION.
F. J. CAMPBELL.
E. W. BACKUS.
J. M. MCCARTHY.
J. A. BOTHWELL.
C. H. SMITH.

The meeting then adjourned.

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Supreme
Court of
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Exhibits.
Part Ex. 23
Minutes of
Meeting of
News Print
Manufacturers of
Canada.
21st February,
1917.

—continued.

*In the
Supreme
Court of
Ontario.*

Exhibits.
Part Ex. 23
Minutes of
Meeting of
Special
Committee.
21st Febru-
ary, 1917.

Part Exhibit 23.
(Defendants' Exhibit.)
Minutes of Meeting of Special Committee.

Held Feb. 21st, 1917, Montreal.

Present : Messrs. Geo. Chahoon, Jr., A. G. Campion, F. J. Campbell, E. W. Backus, J. A. Bothwell, and Mr. Sharp.
A. L. Dawe.

It was reported that the News Pulp & Paper Co. have agreed to stay out of any "pool" arrangements providing an adequate supply of ground wood is guaranteed by the other members. 10

Mr. Montgomery was then invited into the meeting, and a tentative agreement form was drawn up for use by newsprint mills and covering all details appertaining to the pooling and distributing of tonnage to Canadian consumers.

This agreement to be submitted to the manufacturers at a general meeting to be held at 6 p.m. February 21st, for their approval.

The Special Committee then adjourned.

20

Part Ex. 23.
Minutes of
General
Meeting of
News Print
Manufacturers.
21st Febru-
ary, 1917.

Part Exhibit 23.
(Defendants' Exhibit.)
Minutes of General Meeting of Newsprint Manufacturers.

Held at 6 p.m. February 21st, 1917, Montreal.

Present : Mr. C. H. Smith (in the Chair), Messrs. John F. Taylor, F. J. Campbell, Geo. M. McKee, E. W. Backus, Geo. Chahoon, J. A. Bothwell, A. G. Campion, Mr. Hurlbut, Geo. H. Mead, R. A. McInnis, W. G. Linehan, Messrs. Sharp and Montgomery, A. L. Dawe.

Tentative agreement was submitted by Mr. Montgomery.

It was agreed that the Committee already elected should stay in force and form directorate if necessary, of any company to be formed, and to have full powers of arranging for any operation of pool and distribution of tonnage. 30

The meeting then adjourned.

Ex. 33.
Draft
Manufacturers'
Agreement.

Exhibit 33.
(Plaintiff's Exhibit.)
Draft of Manufacturers' Agreement.

THIS MEMORANDUM OF AGREEMENT made and entered into between the several parties, persons and Companies whose signatures are hereunto attached :

WHEREAS the Dominion of Canada has through His Excellency the Governor General in Council acting under and in virtue of the provisions of Section 6 of The War Measures Act, 1914, passed certain Orders in Council, the one dated the seventh day of February, 1917, providing that to ensure to 40

the publishers of Canadian newspapers an adequate supply of newsprint paper at reasonable prices the exportation of newsprint paper in sheets or rolls shall be permitted only by license under regulations of the Minister of Customs, and the other dated the seventeenth day of February, 1917, further enacting certain regulations respecting the price, sale, control, storage, distribution transport, etc., of newsprint paper in sheets or rolls.

AND WHEREAS in consequence of the said Orders in Council and the powers so exercised by the Government of Canada it has become necessary to the manufacturers of newsprint paper to make provision between themselves
 10 for the supply of the same to the publishers of Canadian newspapers for news-
 paper purposes only at a price approved by the Government.

AND WHEREAS as a result of conferences between the newsprint manu-
 facturers and the representatives of the Government the manufacturers have
 agreed to supply the Canadian publishers for newspaper purposes with news-
 print paper at a price of \$2.50 per hundred pounds in rolls in carload lots ;
 at \$3.25 per hundred pounds in sheets in carload lots and \$3.50 per hundred
 pounds in sheets in less than carload lots of two tons and over, f.o.b. the mills
 of the various manufacturers for a period of three months dated from the first
 day of March, 1917.

20 AND WHEREAS under existing conditions the supply of newsprint paper
 to Canadian publishers by the manufacturers is not proportionately distributed
 between them and by reason of the fact that the prices so fixed are considerably
 below those the manufacturers are receiving from export business it is neces-
 sary in consequence in order that each manufacturer should bear his due pro-
 portion of the loss so entailed in complying with the wishes of the Government
 that arrangements should be made for a pooling of the said loss and for adjust-
 ment between the said manufacturers in proportion to the percentage of their
 output supplied to Canadian publishers.

NOW THEREFORE THIS AGREEMENT WITNESSETH :

30 That for good and valid consideration hereby acknowledged to have been
 received, each of the parties hereto doth for himself or itself and not one for
 the other severally agree the one with the other as follows :

1. On or before the fifth day of each month each manufacturer shall
 furnish to the auditors of the pool hereby formed accurate figures showing the
 total tonnage of newsprint paper produced and shipped during the preceding
 month and the tonnage so produced and shipped for the Canadian market and
 the export markets respectively, and it is agreed that the auditors of the pool
 shall have full access to the books and records of each manufacturer for the
 purpose of verifying the statements of tonnage so furnished. Upon receipt of
 40 the said statements it shall be the duty of the auditors of the pool to prepare
 statements showing the percentage of the total Canadian tonnage to the total
 tonnage produced and shipped and applying the percentage so established to
 the total tonnage of each mill and showing the amounts due by or to each
 manufacturer by reason of its having supplied a greater or less percentage of
 the Canadian tonnage than that attributable to it as established by the said
 auditors and as determined by the differential in price that may be established
 from time to time.

*In the
 Supreme
 Court of
 Ontario.*

—
 Exhibits.
 Ex. 33.
 Draft
 Manufac-
 turers'
 Agreement.

—continued.

*In the
Supreme
Court of
Ontario.*
—
Exhibits.
Ex. 33.
Draft
Manufac-
turers'
Agreement.
—continued.

2. It is agreed between the parties hereto that for a period of three months from the first day of March, 1917, the differential in price shall be and is hereby established at \$10 per ton, which differential shall thereafter continue until otherwise determined. For the purpose of arriving at revisions of the differential each Manufacturer agrees in addition to stating the tonnage of export paper as hereinabove provided to state the price f.o.b. mill at which the same has been sold.

3. Monthly accounts shall be rendered to each manufacturer showing the amount due to or from it by virtue of the said distribution and each manufacturer from whom any amount shall be due shall within five days from the delivery of said account remit the amount so due in Montreal funds to the Manager or Secretary appointed for the administration of the affairs of the pool hereby established. The monthly statement so sent to each manufacturer shall show in addition the amount to be contributed by each manufacturer in proportion to its tonnage to cover the expenses incurred up to the end of the preceding month in connection with the organization and administration of the pool, and the amount of such expenses shall be adjusted at the same time as the differential in price. 10

4. Should any manufacturer be unable at any time due to fires, strikes, accidents or other causes beyond its control to continue the supply of newsprint paper to Canadian publishers undertaken by it, then and in such case such supply shall be assumed and provided by the other parties to this agreement in proportion to the total tonnage of each. 20

5. Should any manufacturer supplying less than the percentage attributable to it desire to increase its supply in kind rather than pay the differential he shall intimate his desire to the pool managers whose duty it shall be to readjust the tonnage in so far as the same may be found possible from time to time in order to secure the Canadian tonnage required by such manufacturer.

6. Should it be considered advisable to form a small company for the administration of the pool hereby established each of the parties hereto agrees to become a shareholder in the said Company in an amount sufficient to pay up ten per cent. of the authorized capital of the said company and it is hereby agreed that the company so formed or any trustee who may be appointed, at a meeting called of the members hereof shall have full power and authority to administer the affairs of the pool and sue for, demand and recover any amounts which may become due by any of the parties hereto or by any other parties who may subsequently become members of the pool, or to exercise on behalf of the members any other right or action arising out of this agreement. 30

7. Pending the formation of a company or the appointment of a trustee it is agreed that the affairs of the pool shall be administered by the Committee already appointed by the manufacturers, and consisting of Messrs. George Chahoon, Jr., Campion, Campbell, Backus, McCarthy, Bothwell, and C. H. Mead, Messrs. Sharp, Milne & Co., Chartered Accountants, Auditors and Mr. A. L. Dawe, Secretary, and that meetings of the Committee or the parties hereto may be called by the Secretary of the Committee by notice in writing or by telegram issued at least forty-eight hours before such meeting. 40

IN WITNESS WHEREOF the parties hereto have signed at the places and dates set opposite their respective signatures.

[Signature.]

*In the
Supreme
Court of
Ontario.*

Exhibits.

Part Ex. 24.
Minutes of
Meeting of
Special
Committee.
8th March,
1917.

—continued.

Part Ex. 24.
Minutes of
Meeting of
Special
Committee.
5th April,
1917.

Part Ex. 24.
Minutes of
Adjourned
Meeting.
5th April,
1917.

It was decided after completion of the re-draft of the agreement that two copies should be sent to each of the Canadian Newsprint manufacturers with a letter requesting that one copy be signed and returned directly to Mr. Breadner at Ottawa. It was also decided that Mr. Chahoon should send a copy of the re-draft of the agreement to the Minister at Ottawa together with a list of the manufacturers to whom copies had been sent for signature.

"F. W. SHARP"

Secretary, pro tem.

"GEO CHAHOON JR"

Chairman.

Part Exhibit 24

(Defendants' Exhibit.)

Minutes of Meeting of Special Committee

Held Thursday, April 5th, 1917.

Present : Messrs. George Chahoon, Jr., A. G. Champion, F. J. Campbell, McCarthy, Henry Mead, J. A. Bothwell, Sharp, and the Secretary.

The question of finding some means of distributing the Canadian tonnage, as directed by the Government, was discussed, but no solution could be found to present to the general meeting. It was therefore agreed to communicate with Mr. Breadner advising him of the situation, and asking that a representative of the Government be sent down to meet the Committee. Mr. Breadner stated (on the telephone) that he would send Mr. Pringle ; the meeting then adjourned after arranging for an evening session.

10

20

Part Exhibit 24.

(Defendants' Exhibit.)

Minutes of Adjourned Meeting.

Held at the Ritz Carlton Hotel, Thursday evening, April 5th, 1917.

Present : Messrs. George Chahoon, Jr., A. G. Champion, F. J. Campbell, McCarthy, Henry Meade, J. A. Bothwell, Sharp and the Secretary. Also Mr. Pringle.

Mr. Chahoon outlined to Mr. Pringle the situation regarding distribution of the percentage of tonnage required for Canadian consumption.

Mr. Pringle agreed as to the difficulties that had been met, but finally suggested that if the manufacturers would agree he would enforce Orders-in-Council so as to make it legally possible for the manufacturers to retain sufficient tonnage from their export contracts to take care of the home consumption. Further than this, he would recommend to the Minister of Finance that by the end of May the newspapers be notified that the Government considered that they had fulfilled their obligations and that negotiations would have to be carried on between the officials and the manufacturers direct.

Mr. Pringle signified his willingness of being present at the General meeting, to be held Friday, the 6th of April.

The meeting then adjourned.

30

40

Part Exhibit 24.
(Defendants' Exhibit.)

Minutes of Meeting of Newsprint Manufacturers.

Held at the Ritz Carlton Hotel, Friday, April 6th, 1917.

Present : Abitibi represented by Mr. McInnis;
Belgo—Mr. A. G. Campion and Mr. Biermans;
Brompton—Bothwell;
Canada Paper Co.—Mr. Campbell and Mr. Kilgour;
10 Crabtree Mills—Mr. H. Smith;
Donnacona—Geo. McKee;
E. B. Eddy Co.—Mr. Millen and Mr. Taylor.
Laurentide—Mr. Chahoon and Mr. Linehan;
Price Bros.—Mr. McCarthy;
St. Maurice—Mr. McLaurin;
Spanish River—Mr. Henry Meade.

The following Mills were not represented :—

Mr. J. R. Booth, News Pulp & Paper Co., Fort Frances, and
Powell River Co.

20 On motion of Mr. Smith, seconded by Mr. Bothwell, and carried, Mr. Chahoon was invited to take the chair.

Mr. Chahoon outlined the position to date, showing the difficulties met in attempting to arrange an equitable distribution of tonnage, inasmuch as no export tonnage can be legally held back until manufacturers are compelled to do so by the Government, but suggested that orders-in-council might be put in force.

30 Mr. Pringle outlined his suggestions as to the enforcement of orders-in-council and the appointment of a commissioner, but stated that he was not in a position to give any guarantee as to what would be done at the end of the three months, ending the 31st of May. He hoped, however, that the mills would come to some arrangement and arrange for proper distribution until that time. He was of the opinion that the Government would take the position at this time that supply and demand must regulate the price of newsprint, and that the newspapers should so put their house in order as to be able to absorb the natural increase in price.

40 Mr. Chahoon stated that at the present time certain mills were carrying the load for the remainder, and would like to know if the Government would give these mills some assistance at the end of the three months, ending the 31st of May. Inquiry among those mills that were "short" of tonnage and also those mills that were "long" of tonnage showed that it was the desire of those present to abide by the decision of the committee, and it was then announced by Mr. Chahoon that Laurentide and Belgo Companies had agreed to continue supplying up to the 31st of May, the same amount of Canadian tonnage as supplied for the same period in 1916.

The two mills carrying an overload—namely, the Canada Paper Company and the E. B. Eddy Company, will be recompensed by the division of their over-tonnage amongst the four following mills : J. R. Booth, Price

*In the
Supreme
Court of
Ontario.*

—
Exhibits.
Part Ex. 24.
Minutes of
Meeting of
News Print
Manufacturers.
6th April,
1917.

*In the
Supreme
Court of
Ontario.*

Exhibits.
Part Ex. 24.
Minutes of
Meeting of
News Print
Manufacturers.
6th April,
1917.

—continued.

Ex. 25.
Letter A. L.
Dawe to
R. A. Pringle
6th April,
1917.

Bros., Donnacona, and St. Maurice. It was agreed by the three latter mills that the easiest method of settling the distribution would be by the payment of a cash differential of \$10 per ton to the Canada Paper Company and the E. B. Eddy Company.

The matter of Western distribution, on account of the absence of Mr. Backus, representing the Fort Frances Company, did not present an easy solution, and the matter of distribution was left to Mr. Pringle, and the Secretary was instructed to advise Mr. Backus accordingly.

After a very hearty vote of thanks to Mr. Pringle for his courtesy the meeting adjourned.

10

Exhibit 25.
(Plaintiff's Exhibit.)
Letter A. L. Dawe to R. A. Pringle.

801 Shaughnessy Building,
Montreal,
April 6th, 1917.

R. A. Pringle, Esq., K.C.,
Ottawa Bank Building, Ottawa.

Dear Sir :—

At your request conveyed to the Chairman of the meeting of the Newsprint Manufacturers held today at the Ritz Carlton Hotel, we would advise that a satisfactory solution of the difficulties would appear to have been arrived at, or at least, meeting the conditions of the Eastern market. 20

Before citing the terms of the arrangement it would probably be interesting to you to know something of the difficulties that have had to be met and overcome since the question of a price of $2\frac{1}{2}$ c. per lb. to the publishers was brought before the Manufacturers by the Government in February last.

The first general meeting of the manufacturers was held the 21st of February at which representatives of fifteen out of the sixteen mills were present.

A very general discussion took place at this meeting as to the loss resulting from the $2\frac{1}{2}$ c. price, and as to how the loss could be equitably distributed among the different manufacturers. 30

As price conditions existed at that time the selection of a differential of \$10 per ton appeared to be the best method of meeting the situation, and an agreement on this basis was drawn up and submitted by Mr. George Montgomery, K.C., to the Government for its approval as to the terms regarding pooling of loss under this arrangement.

Before this scheme could be brought before the Mills for the approval of their Boards and their respective signatures, a number of the newsprint manufacturers made an arrangement with the Federal Trades Commission sitting at Washington allowing the commission to fix a price at which paper was to be sold to these mills customers in that market. This Commission in a special Report to the U. S. Senate fixed a price of $2\frac{1}{2}$ c. per lb. with certain stipulations to the publishers. This eradicated the differential of \$10 per ton fixed in the above-mentioned agreement. 40

For the better consideration of this subject a special committee had been named and this Committee thereupon convened in an endeavour to find satisfactory means to cope with the new conditions.

After a number of meetings it was finally decided to obtain from the manufacturers their Canadian and export tonnage and an average export price with a view to obtaining a figure which might be fixed as a satisfactory differential to be distributed by those short of Canadian tonnage to the mills long of their supply.

10 The replies to hand were so much at variance that the Committee could not come to any agreement amongst themselves as to a method of pooling the loss which would be satisfactory to each of the mills.

This condition was intensified by recent information to the effect that the endeavours of the Federal Trades Commission to fix a price in the U. S. markets have been without result. Finally, the committee unable to come to any decision that seemed to be presentable to the mills as fair and just to each decided to ask the Government to assist their deliberations by sending a representative to a meeting of the Committee which was called for yesterday, and who had to present their findings to a general meeting of the newsprint manufacturers which was called for today.

20 You are personally aware of the discussion which took place last night showing very plainly the many difficulties which had to be overcome, before it could be anticipated that the several mills would amicably join in and carry out a scheme to pool the loss without the intervention of the Government.

A general meeting of the Newsprint Manufacturers was convened this morning and at the outset it seemed to all appearance, that a solution of the difficulty was no nearer. At this stage the Laurentide and Belgo-Canadian Companies who stood to be amongst the largest losers under the new price condition for the reason that their supplies to the Canadian market were already largely in excess of their average quota, signified that up to the 1st of 30 June next they were willing to continue to maintain their present excess of Canadian tonnage without any consideration for so doing.

The removal of this large proportion of Canadian tonnage which required to be taken care of, left two Eastern mills only who appeared to require indemnity for a surplus of Canadian tonnage. These mills were the E. B. Eddy Co., of Hull, Que., and the Canada Paper Co., of Windsor Mills, Que.,—long of their supply to the extent of 1,500 tons and 184 tons respectively, for the remainder of the term to be provided for up to June 1st.

After some discussion it was arranged to distribute this tonnage between four mills as follows :—

40	J. R. Booth.....	244.18 tons.
	Donnaconna Co.....	562.46 “
	St. Maurice Co.....	537.19 “
	Price Bros.....	340.17 “

The above distribution being in proportion to their shortage.

The most satisfactory way of bringing about the exchange without disturbing the market condition of the mills concerned, is on a cash basis on the rate of \$10 per ton. The representatives of the last three named mills who were present expressed themselves as satisfied with this arrangement.

The loss assumed by the Laurentide and Belgo-Canadian Companies

*In the
Supreme
Court of
Ontario.*

Exhibits.
Ex. 25.
Letter A. L.
Dawe to
R. A. Pringle
6th April,
1917.

—continued.

Exhibits.
Ex. 25.
Letter A. L.
Dawe to
R. A. Pringle
6th April,
1917.

—continued.

amounts on the above differential basis, to \$13,280.00 and \$11,890.00 respectively.

In the absence of a representative of the Fort Frances Pulp & Paper Co. it did not seem possible to make any arrangement for the Western market, and accordingly the question was left with you to handle from Ottawa.

We attach hereto a copy of a chart on the figures of which the consideration of Canadian tonnage for to-day's meeting was based.

Yours truly,
A. L. DAWE,
Secretary to the Newsprint Mnfrs.

Part Exhibit 18.

(Defendants' Exhibit.)

10

Part Ex. 18.
Letter, Fort
Frances Pulp
& Paper
Company
Limited, to
Pringle &
Thompson,
7th April,
1917.

Letter Fort Frances Pulp & Paper Company, Limited, to Pringle and Thompson.

FORT FRANCES PULP & PAPER CO., LTD.

Minneapolis, Minn, April 7th, 1917.

Messrs. Pringle & Thompson,
Solicitors,

Ottawa, Canada.

Dear Mr. Pringle :—

I herewith enclose confirmation of telegram just sent you. This is brought about by telegram I received today from Canadian Pulp & Paper Association dated April 6th and reading as follows : 20

“At a meeting today of the newsprint manufacturers regarding the distribution of Canadian tonnage, the eastern situation was disposed of after conference with Mr. Pringle, who came from Ottawa to meet manufacturers. The western situation, however, not allowing of such a solution was referred to Mr. Pringle and the matter will be taken up from Ottawa.”

It goes without saying that we are compelled to supply our pro rata share of newsprint paper consumed by publishers in Canada. That percentage amounts to approximately 6,000 tons. We are now supplying to Canadian publishers over 12,000 tons. The difference between our United States price and our Canadian price is \$15 per ton, and owing to the attitude of the Government in Customs Duties our extra cost on that item amounts to over \$3.00 per ton, so you will note we are losing \$18 per ton on all of the surplus paper we furnish to Canadian publications. 30

Undoubtedly we are within our rights when we demand that the amount of paper we shall furnish to Canadian publishers shall be limited to our true proportion.

Will you kindly wire us at Fort Frances upon receipt of this letter that arrangements will be made with other mills to furnish the amount of tonnage we are now supplying above our proportion ? 40

In view of the prospect of our having this 6,000 or 7,000 tons of paper available for use in the United States, we have made a conditional sale of the same in the U. S. on a basis which will mean a difference to us of approximately \$10,000 per month, consequently we feel that we are entitled to prompt action on your part.

Very truly yours,
Fort Frances Pulp & Paper Company, Ltd.,
“E. W. BACKUS,” President.

EWB-M.

Part Exhibit 18.

(Defendants' Exhibit.)

Telegram Fort Frances Pulp & Paper Company, Limited, to Pringle and Thompson*In the
Supreme
Court of
Ontario.*

Minneapolis, Minn., April 7th, 1917.

Pringle & Thompson, Solicitors,
Ottawa, Canada.

Canadian Pulp & Paper Association wire that distribution of print paper to western Canadian publishers is in hands of Mr. Pringle. We are supplying over six thousand tons more than our share. Our loss on this surplus tonnage now amounts to approximately eighteen dollars per ton and we urgently request you to give us prompt relief by issuing orders to other mills to relieve us of this surplus tonnage. Kindly wire us at Fort Frances when we may expect this relief, and we will wire you names of publications to ship to at Winnipeg and westerly east of Calgary.

Fort Frances Pulp & Paper Company,
By E. W. BACKUS, President.

12 M.

Exhibits.
Part Ex. 18.
Telegram
Fort Frances
Pulp &
Paper
Company
Limited to
Pringle &
Thompson,
7th April,
1917.

20

Part Exhibit 1.

(Plaintiff's Exhibit.)

Order-in-Council.Part Ex. 1.
Order-in-
Council.
16th April,
1917.

P. C. 1059.

AT THE GOVERNMENT HOUSE AT OTTAWA.

Monday, the 16th day of April, 1917.

Present :

His Excellency the Governor-General in Council.

His Excellency the Governor-General in Council, with a view to ensure to publishers of Canadian newspapers an adequate supply of newsprint paper, at reasonable prices, and under and by virtue of the power in that behalf conferred by Section 6 of the War Measures Act, 1914, or otherwise vested in the Governor-General in Council, is pleased to make the following regulations respecting the price, sale, control, storage, distribution, export, transport, etc., of newsprint paper in sheets or rolls, and the same are hereby made and enacted accordingly :—

1. The Minister of Customs is hereby authorized and empowered to fix the quantity and price of newsprint paper in sheets or rolls furnished or to be furnished to the publishers in Canada by the manufacturers from 1st day of March, 1917, to June 1st, 1917.

2. The Minister of Customs is further authorized and empowered to make such order or orders as he may deem necessary or advisable for the distribution and delivery of such newsprint paper in sheets or rolls by the manufacturers to the publishers.

3. All orders and regulations made by the Minister under this authority shall have the force of law, and shall be enforced by such officer or officers as shall be appointed by Order-in-Council.

*In the
Supreme
Court of
Ontario.*

Exhibits
Part Ex. 1.
Order-in-
Council.
16th April,
1917.

—continued.

4. Any person who contravenes or fails to observe any of the provisions of this Order-in-Council, or any regulation or order made thereunder, shall be guilty of an indictable offence, and liable upon indictment and conviction to a fine not exceeding \$5,000 or to imprisonment for any term not exceeding three years, or to both fine and imprisonment as specified; and any director or officer of any company or corporation who assents to or acquiesces in the contravention or non-observance by such company or corporation of any of the provisions of these regulations shall be guilty individually and collectively with his company or corporation, and with his co-directors or associate officers.

(Signed) **RUDOLPHE BOUDREAU,** 10
Clerk of the Privy Council.

Part Ex. 1.
Order-in-
Council.
16th April,
1917.

Part Exhibit 1.
(Plaintiff's Exhibit.)
Order-in-Council.

P. C. 1060.

Certified copy of a Report of the Committee of the Privy Council, approved by His Excellency the Governor-General on the 16th April, 1917.

The Committee of the Privy Council have had before them a report, dated 14th April, 1917, from the Minister of Finance, stating that he considers it advisable that action should be taken to ensure to the publishers of Canadian newspapers an adequate supply of newsprint paper at reasonable prices. 20

The Minister therefore recommends that Robert Abercrombie Pringle, K.C., of the City of Ottawa, one of His Majesty's Counsel learned in the law, be appointed a Commissioner under part one of the Inquiries Act, chapter 104, Revised Statutes of Canada, and amending Act, chapter 28, George V., with all powers given by said Acts, to conduct an enquiry into and concerning the manufacture, sale, price and supply of newsprint paper within the Dominion of Canada, and that he also be appointed an officer under the provisions of section 6 of the War Measures Act, for the due enforcement of all orders and regulations made by the Minister of Customs under Order-in-Council, P.C. 1059, dated the 16th day of April, 1917. 30

The Committee submit the same for approval.

RUDOLPHE BOUDREAU,
Clerk of the Privy Council.

Part Ex. 1.
Commission
appointing
Robert A.
Pringle, K.C.
Paper Com-
missioner,
16th April,
1917.

Part Exhibit 1.
(Plaintiff's Exhibit.)
Commission Appointing Robert A. Pringle, K.C., Paper Commissioner.

CANADA.

40

GEORGE THE FIFTH, by the Grace of God, of the United Kingdom of Great Britain and Ireland, and of the British Dominions beyond the Seas, King, Defender of the Faith, Emperor of India.

To all to whom these Presents shall come, or whom the same may in any wise concern, GREETING.

WHEREAS in and by an order of Our Governor General in Council bearing date the sixteenth day of April in the year of Our Lord one thousand nine hundred and seventeen, provision has been made for an inquiry by our Commissioner therein and hereinafter named into and concerning the manufacture, sale, price and supply of newsprint paper within Canada as upon reference to the said Order-in-Council (a copy of which is hereunto annexed) will more fully and at large appear.

10 NOW KNOW YE, that by and with the advice of our Privy Council for Canada, We do by these presents nominate, constitute and appoint

ROBERT ABERCROMBIE PRINGLE,

of the City of Ottawa, in the Province of Ontario, Esquire, one of our counsel learned in the law for the said province to be our Commissioner to conduct such inquiry.

To have, hold, exercise and enjoy the said office, place and trust unto the said Robert Abercrombie Pringle, together with the rights, powers, privileges and emoluments unto the said office, place and trust, of right and by law appertaining, during pleasure.

20 AND we do hereby, under the authority of the Revised Statute respecting inquiries concerning public matters confer upon our said Commissioner the power of summoning before him any witnesses and of requiring them to give evidence on oath, or on solemn affirmation if they are persons entitled to affirm in civil matters and orally or in writing and to produce such documents and things as Our Said Commissioner shall deem requisite to the full investigation of the matters into which he is hereby appointed to examine.

AND We do hereby under the authority of an Act to amend the Inquiries Act, 2 George V, chapter 28, authorize our said Commissioner to engage the services of such accountants, engineers, technical advisers or other experts, 30 clerks, reporters and assistants as he may deem necessary or advisable.

AND We do hereby require and direct Our said Commissioner to report to our Minister of Finance of Canada the results of his investigation together with the evidence taken before him and any opinion he may see fit to express thereon.

IN TESTIMONY WHEREOF, we have caused these Our Letters to be made Patent and the Great Seal of Canada to be hereunto affixed. Witness, Our Right Trusty and Right Entirely Beloved Cousin and Counsellor, Victor Christian William, Duke of Devonshire, Marquis of Hartington, Earl of Devonshire, Earl of Burlington, Baron Cavendish of Hardwicke, Baron 40 Cavendish of Keighley, Knight of Our Most Noble Order of the Garter, one of Our Most Honourable Privy Council, Knight Grand Cross of Our Most Distinguished Order of Saint Michael and Saint George, Knight Grand Cross of our Royal Victorian Order, Governor-General and Commander-in-Chief of our Dominion of Canada.

At Our Government House, in the City of Ottawa, this sixteenth day of April, in the year of our Lord one thousand nine hundred and seventeen and in the seventh year of Our Reign.

BY COMMAND,

THOMAS MULVEY,
Under Secretary of State.

*In the
Supreme
Court of
Ontario.*

Exhibits
Part Ex. 1.
Commission
appointing
Robert A.
Pringle, K.C.
Paper Com-
missioner,
16th April,
1917.

—continued.

*In the
Supreme
Court of
Ontario.*

Part Exhibit 1.
(Plaintiff's Exhibit.)
Order of Minister of Customs.

Exhibits.
Part Ex. 1.
Order of
Minister of
Customs,
8th May,
1917.

WHEREAS by Order-in-Council dated 16th April, 1917, I have been authorized and empowered to fix the quantity and price of newsprint paper in sheets or rolls furnished, or to be furnished to the publishers in Canada by the manufacturers from First March, 1917, to First June, 1917 ;

AND WHEREAS I have been further authorized and empowered to make such order or orders as I may deem necessary and advisable for the distribution and delivery of such newsprint paper in sheets or rolls by the manufacturers to the publishers ; 10

I THEREFORE under and by virtue of the powers given by such order-in-council dated 16th April, 1917, DO ORDER AND DIRECT that the manufacturers of newsprint paper, do supply to the newspapers throughout Canada newsprint paper in rolls at the rate of \$2.50 per 100 lbs. in car load lots; \$3.25 per 100 lbs. in sheets in car load lots, and \$3.50 per 100 lbs. in sheets in less than car load lots of two tons and over f.o.b. the mills of the various manufacturers, for a period of three months dating from First March, 1917 ;

AND WHEREAS under existing conditions the supply of newsprint paper to Canadian publishers by the manufacturers is not proportionately distributed between them, and by reason of the fact that the prices fixed are considerably below those the manufacturers are receiving from export business I do order that each manufacturer should bear his due proportion of the cost so entailed in complying with the above, and that if arrangements are not made between the manufacturers for the pooling of such cost and for adjustment between themselves in proportion to the percentage of their output supplied to Canadian publishers that an accounting be made and the manufacturer or manufacturers who have supplied a greater or less percentage of Canadian tonnage than properly attributable to them shall be paid by the other manufacturers sufficient to place them in the same position as the manufacturer or manufacturers who have not supplied their proper percentage of paper to the Canadian publishers. 20 30

That the manufacturers shall when called upon furnish to the Commissioner appointed by Order-in-Council dated 16th April, 1917, being Order No. 1060, accurate figures showing the total tonnage of newsprint paper produced and shipped during the preceding month and the tonnage so produced and shipped for the Canadian market and export markets respectively, together with the price f.o.b. at the mill both for paper for export and paper for Canadian trade. 40

DATED at Ottawa this 8th day of May, A.D. 1917.

(Signed) J. D. REID,

Minister of Customs.

Exhibit 19.

(Defendants' Exhibit.)

Letter E. W. Backus to R. A. Pringle and Statement Enclosed.

*In the
Supreme
Court of
Ontario.*

FORT FRANCES PULP & PAPER CO., LTD.

Minneapolis, Minn., May 11th, 1917.

Exhibits.
Ex. 19.
Letter, E. W.
Backus to
R. A. Pringle
and state-
ment
enclosed,
11th May,
1917.

Honourable R. A. Pringle,
Special Commissioner of Paper,
Union Bank Bldg.,
Ottawa, Ont.,
10 Canada.

My dear Mr. Pringle :

I herewith hand you statement in duplicate showing amount due us, namely, \$23,392.38, on account of the surplus paper which we delivered to Canadian publishers in the months of March and April of this year.

This statement is made out in details so that there may be no delay in the other Canadian mills who have furnished less than their proportion making payment to us without delay. Will you kindly take this matter up with them and secure payment for us for which we will be duly grateful to you ?

I do not want this to be considered as a precedent, however, because we
20 would prefer to take paper in return rather than make settlement in cash.

However, I want to thank you for expediting this matter as you have done.

Very truly yours,

"E. W. BACKUS,"

Prest.

EWB/CET
Enc.

FORT FRANCES PULP AND PAPER CO. LTD.

May 11th, 1917.

**STATEMENT OF AMOUNT DUE BY CANADIAN MANUFACTURERS ACCOUNT
OVER SHIPMENTS PRINT PAPER TO CANADIAN CUSTOMERS
MARCH AND APRIL.**

30

Shipments to Canada.	March Pounds	April Pounds
News Chronicle P. Co., Pt. Arthur . . .	41502	
Leader Pub. Co., Ltd., Regina	142880	145694
Lethbridge Herald P. Co., Lethbridge	44985	44519
Man. Free Press P. Co., Winnipeg . . .	881648	736057
Regina Daily Post, Regina	99962	48726
Sask. Daily Star, Saskatchewan	99771	153958
Norw. Pub. Co., Winnipeg	20603	
40 Sun Pub. Co., Brandon	45356	
Teleg. Printg. Co., Winnipeg	439299	284487
Tribune Pub. Co., Winnipeg	341179	305677
Herald P. Co., Prince Albert		56662
Moose Jaw D. News, Moose Jaw		12700

*In the
Supreme
Court of
Ontario.*
—
Exhibits.
Ex. 19.
Letter, E. W.
Backus to
R. A. Pringle
and state-
ment
enclosed,
11th May,
1917.

Phoenix Pub. Co., Saskatoon.....	107042
	<u>2157185</u>
Prod. Mch. 7,363,126; Apr. 6,501,116	1895522
11% thereof being amount fixed by the Government.....	809943
	<u>715123</u>
	1347242
	<u>1180399</u>

Amt. overshipped in Tons..... Tons. 1263.82 at 15.00 \$18957.30 10

—continued.

Actual
Drawback Drawback

Add Drawback on overshipment of
1263.82 tons as follows : at 70.3107 at 89%

Sulp. over pipe line.....	10278.40	
“ in Laps.....	8193.62	93.81
Alum.....	48.93	61.94
Clay.....	12.03	15.20
Wrappers.....	542.87	687.29
Dextrine.....	8.50	10.75
Core Pipe.....	1410.45	1410.25

<u>10216.40</u>	<u>12557.64</u>	Difference \$2341.24
-----------------	-----------------	-------------------------

Sulp. over pipe line.....	8117.47	
“ in Laps.....	7304.23	1092.98
Alum.....	58.79	78.47
Clay.....	25.62	32.07
Wrappers.....	585.18	744.67
Dextrine.....	7.78	9.78
Core Pipe.....	1108.25	1108.25

<u>9089.85</u>	<u>11183.69</u>	2093.84
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Total Amt. due on Drawbacks..... 4435.08

Total Amt. due..... \$23392.38



Part Exhibit 38.
(Defendants' Exhibit.)

Letter R. A. Pringle to Abitibi Pulp & Paper Co.

COMMISSION

TO ENQUIRE INTO AND REPORT UPON THE MANUFACTURE, SALE
PRICE AND SUPPLY OF NEWS PRINT PAPER IN CANADA.
COMMISSION DATED APRIL 16TH, 1917.

ROBERT A. PRINGLE, K.C.,
COMMISSIONER

H. A. STEWART, K.C.,
COUNSEL

10

411 Union Bank Building, Ottawa Ont.

May 17th, 1917.

Abitibi Pulp & Paper Co.,
Montreal, Que.

Dear Sirs :—

Enclosed please find copy of statement received from E. W. Backus, Pres. Fort Frances Pulp & Paper Co., Ltd. I would like very much if yourselves and Spanish River could get this matter adjusted with the Fort Frances Pulp & Paper Co.

20

Yours truly,
"R. A. PRINGLE."

Enc.

Part Exhibit 38.
(Defendants' Exhibit.)

Letter F. H. Anson to R. A. Pringle.

ABITIBI POWER & PAPER COMPANY, LIMITED,
Iroquois Falls, Ontario,
May 22nd, 1917.

30 Robert A. Pringle, Esq., K.C.,
Commissioner,
411 Union Bank Building,
Ottawa.

Dear Sir :—

I have your favor of the 17th enclosing statement from the Fort Frances Pulp & Paper Company.

40 We are and have been ready at all times to manufacture and furnish our proportion of the Canadian tonnage as required by the Government and have so notified the manufacturers, and we are still ready to make and ship such proportion of our product as may be required by the Government; and we have nothing to adjust with the Fort Frances Company.

Yours truly,

"F. H. ANSON,"
President.

F.H.A.
M.C.

*In the
Supreme
Court of
Ontario.*

—
Exhibits.
Part Ex. 38.
Letter R. A.
Pringle to
Abitibi Pulp
& Paper
Company,
17th May,
1917.

Part Ex. 38.
Letter F. H.
Anson to
R. A. Pringle
22nd May,
1917.

*In the
Supreme
Court of
Ontario.*

Part Exhibit 38.
(Defendants' Exhibit.)
Telegram R. A. Pringle to F. H. Anson.

Ottawa, May 24th, 1917.

Exhibits.
Part Ex. 38.
Telegram
R. A. Pringle
to F. H.
Anson,
24th May,
1917.

F. H. Anson, Esq.,
Pres. Abitibi Power & Paper Co.,
Iroquois Falls, Ont.

Letter twenty-second received. Astonished at position taken by you. It was on statement of your representative that you preferred paying your proper proportion than furnishing paper that I did not insist on your retaining in Canada your portion of paper. Order directs that each manufacturer should bear proper proportion of cost in supplying Canadian trade, and any manufacturer supplying greater percentage of Canadian tonnage than properly attributable to him shall be paid by the other manufacturers who have not supplied their proper proportion of paper to Canadian trade. Have submitted your letter to Minister of Customs. He asks for reply by telegram as to whether you are prepared to carry out order made, so that he may take such further action as may be necessary in the case. 10.

R. A. PRINGLE.

Part Ex. 38.
Telegram
F. H. Anson
to R. A.
Pringle,
24th May,
1917.

Part Exhibit 38.
(Defendants' Exhibit.)
Telegram F. H. Anson to R. A. Pringle.

20

Iroquois Falls, Ont., May 24th, 1917.

R. A. Pringle,
Commissioner, 411 Union Bank Bldg., Ottawa, Ont.

Am astonished that any representative our company should have indicated we preferred paying any bonus rather than furnishing paper as this was absolutely contrary to my instructions which were that we would make and ship any additional tonnage necessary to fill our proposition, and we notified the manufacturers accordingly. I have not correspondence here, but am wiring for further information according our records. We are short twenty seven hundred and thirty-six tons to make up our quota or two hundred and twenty-eight tons monthly. We wanted this additional tonnage at our mills and advised the newsprint association continuously that we would take this amount of tonnage from any mill that had a surplus and have been unable to get it. We are prepared to deliver six hundred and eighty-four tons of Canadian newsprint our shortage for March, April and May on twenty-four hours' notice. We have displaced more than this amount of export tonnage to take care of our Canadian tonnage in expectation of filling these orders, and consequently should not be called upon to pay any premium to manufacturers who will not give up any of their excess Canadian contracts. 30

11 p.m.

F. H. ANSON.

40

Part Exhibit 1.
(Plaintiff's Exhibit.)
Order-in-Council.

*In the
Supreme
Court of
Ontario.*

P. C. 1442.

At the Government House at Ottawa, Friday, the 25th day of May, 1917
Present : His Excellency

The Governor-General in Council.

His Excellency the Governor-General in Council is pleased to order and it is hereby ordered that the powers given to the Minister of Customs by section 1 of the Regulations respecting the price, sale, control, storage, etc., of newsprint paper in sheets or rolls, established by the Order-in-Council of the 16th April, 1917, whereby the said Minister of Customs is empowered to fix the quantity and price of newsprint paper in sheets or rolls furnished or to be furnished to the publishers in Canada by the manufacturers from the 1st day of March, 1917, to June 1st, 1917, shall be and the same are hereby extended from 1st June, 1917, to the 1st September, 1917.

Certified a true copy.

"RUDOLPHE BOUDREAU,"

[SEAL]

Clerk of the Privy Council.

Exhibits.
Part Ex. 1.
Order-in-
Council,
25th May,
1917.

20

Part Exhibit 38.
(Defendants' Exhibit.)

Letter R. A. Pringle to F. H. Anson.

PRINGLE, THOMPSON, BURGESS & COTE.

511-514 Union Bank Building,

Ottawa, May 25th, 1917.

F. H. Anson, Esq.,

President Abitibi Pulp & Paper Co.,

Montreal, Que.

Part Ex. 38
Letter R. A.
Pringle to
F. H. Anson,
25th May,
1917.

Dear Sir :—

30 Your letter of 22nd instant duly received. As I wired you I immediately took the matter up with the Minister of Customs and explained the whole situation to him. He told me that if the regulations were not carried out then he would send an official to the mill who refused to submit and prevent export until such time as matters were adjusted. I would regret exceedingly that such a course should be adopted.

40 At a good deal of inconvenience to myself I went to New York and met the representative of Fort Frances Pulp & Paper Co. the Spanish River and I understood your representative who was present at the meeting. At that time my instructions from the Minister were that paper had to be furnished to the western press at a rate of \$2.50 f.o.b. as of Fort Frances. Your representative and Spanish River representative I remember objected to this as you would not be getting \$2.50 but \$2.50 less the additional freight as between Fort Frances and your mill. Backus took the position that he would be willing to take instead of money, paper, and that the proportion that you were to contribute would be taken by him f.o.b. at your mill at \$2.50. I remember Mr. Mead talking with me and stating that he did not desire to give the

*In the
Supreme
Court of
Ontario.*

Exhibits.
Part Ex. 38.
Letter R. A.
Pringle, to
F. H. Anson
25th May,
1917.

—continued.

paper; that they would much prefer paying the difference and when Mr. Backus came to Ottawa I told him that he would have to be satisfied with money and not paper.

Of course, if you prefer furnishing the paper instead of your proportion in cash then I think it can be arranged so that Backus will take the paper at the mill at the \$2.50 and send it to his customers.

The whole situation is a difficult one. Order-in-Council was renewed today and time extended for furnishing of paper at the \$2.50 rate. As there is evidently going to be a difficulty in regard to adjustment, just the moment I get back from Calgary I am going to get an expert accountant to go into this whole situation and work out the differential, or in the event of the manufacturers preferring—to supply the paper instead of the money then to work out the delivery of the paper. Paper may have to be delivered to another mill who are supplying the Canadian trade. 10

I do not think any good will be done by my going into this matter any further,—just at the moment. The Fort Frances people will have to wait until an accountant goes thoroughly into this matter and then we can decide whether they should be recouped with paper or money.

Yours truly,

“R. A. PRINGLE.”

20

Part Exhibit 38.

(Defendants' Exhibit.)

Letter F. H. Anson to R. A. Pringle.

Part Ex. 38.
Letter F. H.
Anson to
R. A. Pringle,
25th May,
1917.

ABITIBI POWER & PAPER COMPANY, LIMITED.

Iroquois Falls, Ontario,

May 25th, 1917.

R. A. Pringle, Esq., K.C.,
Commissioner,
411 Union Bank Building,
Ottawa.

30

Dear Sir :—

Referring further to your letter of May 17th and your telegram of the 24th.

First, let me say that there is not nor has there ever been any intent on our part to evade the assumption of our proper proportion of Canadian tonnage, nor has anything been done, in so far as I know, which would warrant the assumption that we were not prepared to carry out the Government's orders in this respect. On the contrary, at every meeting of the newsprint manufacturers we have endeavored to co-operate in any arrangement looking towards a satisfactory adjustment and have repeatedly advised the Newsprint Manufacturers' Committee to this effect. 40

I feel sure from the tenor of your letter that our position in this matter has been misconstrued or misunderstood. My instructions to our representatives were to advise the Newsprint Manufacturers that we would make and

ship any additional tonnage of paper which was necessary to make up our proportion. This notification was made not only verbally but in writing and is a matter of record and known, or should have been known, by every one of the manufacturers, and in so far as I know at the moment, we have never discussed with any manufacturer the question of paying any bonus whatsoever for their taking over this tonnage nor has any suggestion been made that we do so, and your letter enclosing the statement from the Fort Frances Mill for the payment of a premium on paper over-shipped on their Canadian tonnage, was the first intimation we had ever received that such a thing was contemplated.

10 We have never had any correspondence or interviews with Mr. Backus on this subject; in fact he was at one of the meetings in which the manufacturers were notified by us that we were prepared to manufacture our proportion and asked for tonnage.

The facts of the matter are that all the manufacturers who have excess Canadian tonnage want to keep it notwithstanding its low price, as they ultimately expect that the Canadian prices will come back to normal and most of these contracts are placed with papers favorably situated for shipping facilities from their own mills, and they are all the more anxious to hold them
20 now that they think they see a way of collecting a fancy premium.

When we asked for an assignment of tonnage from the Quebec mills who had a surplus, we could get none. No one wanted to give up any and in this territory the mills having a surplus, I understand, practically agreed to take care of the shortage of the other mills without any charge. This eliminated any necessity for an adjustment for a number of eastern mills.

Anticipating the taking over of this additional tonnage, we have already displaced 1,500 tons of United States paper to take care of our home market requirements. Furthermore, this action was taken after the Federal Trade Commission had set the price for American newsprint at \$50 per ton the same
30 as on the Canadian market. We gave up this tonnage to take the Canadian tonnage at the same figure and for doing this we are now faced with a request to pay a premium to one of the Canadian mills of \$18.52 per ton without notice, without agreement and in spite of the fact that we were willing and anxious to supply the tonnage.

Had we been offered Canadian tonnage and refused to accept it, it would have been another matter, but when we have asked for and been prepared to take our proportion from other manufacturers, we should not be called upon to pay any premium whatever to those who refuse to give up their portion of excess contracts.

40 According to the statements prepared, our proportion of the Canadian tonnage is 7,502 tons. We have contracts on file for 4,766 tons, leaving us short 2,736 tons for the year, or 226 tons per month. For the months of March, April and May we are therefore short 684 tons of having supplied our proportion of Canadian requirements and we are prepared today to deliver to and will place at the disposal of the Fort Frances Mill who are "long" considerable tonnage, 684 tons of paper, sizes and quality which they may specify, at the price of \$50 per ton f.o.b. Mill, or we will make and deliver all or any

*In the
Supreme
Court of
Ontario.*

—
Exhibits.
Part Ex. 38.
Letter F. H.
Anson to
R. A. Pringle,
25th May,
1917.

—continued.

*In the
Supreme
Court of
Ontario.*

Exhibits.
Part Ex. 38.
Letter F. H.
Anson to
R.A. Pringle,
25th May,
1917.

—continued.

portion of this to the order of such other manufacturers in Canada as may be “long” on Canadian tonnage and wish relief.

Should other manufacturers decline to give up sufficient of their excess tonnage for the filling of these orders, we respectfully request that we be absolved from any obligation to pay a premium on such shortage as may not be taken up in this manner.

Yours truly,
“F. H. ANSON,”
President.

FHA.
M.C.

10

Part Ex. 1.
Order of
Minister of
Customs,
28th May,
1917.

Part Exhibit 1.
(Plaintiff's Exhibit.)
Order of Minister of Customs.

WHEREAS, by Order-in-Council dated 16th April, 1919, I was authorized and empowered to fix the quantity and price of newsprint paper in sheets and rolls, furnished or to be furnished to the publishers in Canada by the manufacturers, from 1st March, 1917, to 1st June, 1917 ;

AND WHEREAS, I did fix the price as shown by my Order of 8th May, 1917;

AND WHEREAS, by Order-in-Council dated the 25th day of May, 1917, I have been authorized to fix the quantity and price of newsprint paper, in sheets and rolls, furnished or to be furnished to the publishers in Canada by the manufacturers for a further term from 1st June to 1st July, 1917 ;

NOW THEREFORE, under and by virtue of the powers given by such Order-in-Council I ORDER AND DIRECT that the manufacturers of newsprint paper do supply to the newspapers throughout Canada, newsprint paper in rolls at the rate of \$2.50 per 100 lbs. in car load lots; \$3.25 per 100 lbs. in sheets in car load lots, and \$3.50 per 100 lbs. in sheets in less than car load lots of two tons and over, f.o.b. the mills of the various manufacturers, for a period of one month from the FIRST DAY OF JUNE, 1917, to the FIRST DAY OF JULY, 1917 ;

AND WHEREAS under existing conditions the supply of newsprint paper to Canadian publishers is not proportionately distributed between them, and by reason of the fact that the prices fixed are lower than the manufacturers are receiving from export business, I Do ORDER that each manufacturer should bear his due proportion of the cost so entailed in complying with above, and that if arrangements are not made between the manufacturers for the pooling of such cost, and for adjustment between themselves in proportion to the percentage of their output supplied to Canadian publishers that an accounting be made, and the manufacturer or manufacturers who have supplied a greater percentage of Canadian tonnage than properly attributable to them shall be paid by the other manufacturers sufficient to place them in the same position as the manufacturer or manufacturers who have not supplied their proper percentage of paper to the Canadian publishers.

THAT the manufacturers shall when called upon furnish to Commissioner appointed by Order-in-Council, dated 16th April, 1917, being Order No. 1060,

accurate figures showing the total tonnage of newsprint paper produced and shipped during the preceding month, and the tonnage so produced and shipped for the Canadian market and export markets respectively, together with the prices f.o.b. at the mills, both for paper for export and paper for Canadian trade.

DATED this 28th day of May, A.D. 1917.

(Signed) J. D. REID,
Minister of Customs.

*In the
Supreme
Court of
Ontario.*

Exhibits.
Part Ex. 1.
Order of
Minister of
Customs,
28th May,
1917.

—continued.

10

Part Exhibit 38.
(Defendants' Exhibit.)
Letter F. H. Anson to R. A. Pringle.

ABITIBI POWER & PAPER COMPANY, LIMITED.
Iroquois Falls, Ontario,
May 29th, 1917.

Part Ex. 38
Letter, F. H.
Anson to
R.A. Pringle,
29th May,
1917.

R. A. Pringle, Esq.,
Commissioner,
411 Union Bank Building, Ottawa, Ont.

Dear Sir :—

20 Referring further to our correspondence respecting the Abitibi Company's Canadian tonnage, I have been in communication with our representatives who attended the various meetings of the Canadian Newsprint Manufacturers, and they advise me that at these meetings they made our position with respect to taking over our proportion of Canadian tonnage perfectly clear to the members and that furthermore they verbally notified them of our willingness to take up additional tonnage and confirmed this in writing.

30 So far I have been unable to find out who gave you the information with respect to our willingness to pay a bonus for our short tonnage, and I would esteem it a favor if you would advise me who made this statement on our behalf.

Yours truly,
"F. H. ANSON,"
President.

F.H.A.
M.C.

Part Exhibit 38.
(Defendants' Exhibit.)
Letter F. H. Anson to R. A. Pringle.

ABITIBI POWER & PAPER COMPANY, LIMITED.
Iroquois Falls, Ontario,
May 30th, 1917.

Part Ex. 38.
Letter, F. H.
Anson to
R.A. Pringle,
30th May,
1917.

40 Robert A. Pringle, Esq., K.C.,
Commissioner,
411 Union Bank Bldg., Ottawa, Ont.
Dear Sir :—

I have your favor of the 25th. I appreciate that the situation with respect to paper distribution is somewhat complicated and so far as I am

*In the
Supreme
Court of
Ontario.*

Exhibits.
Part Ex. 38.
Letter, F. H.
Anson to
R.A. Pringle,
30th May,
1917.

—continued.

concerned, I shall do everything that I possibly can to co-operate in reaching a satisfactory adjustment.

We are quite prepared to provide for our proportion, but so far the difficulty has been that manufacturers who in the past have tied themselves up with a large proportion of Canadian tonnage because of its being more profitable to them and have shut out other mills from this trade, now consider that they are the ones who shall dictate the prices, terms and conditions under which they will turn over their surplus Canadian tonnage and are treating the Mills who are short as a stock broker would treat a "Bear" who was short in the stock market. On the contrary I consider that it should be at our option, in complying with the Government's requirements, as to whether we shall furnish tonnage or pay a price difference, and it was due to the attitude of the other manufacturers in the early stages of negotiations, that we decided to assume the tonnage, as it appeared to us at that time that it would be impossible to arrive at any arrangement which would be mutually satisfactory, which involved the payment of any price difference, and we were particularly affected as at that time we were being pressed by and had practically agreed with the Federal Trade Commission in the United States, to supply our U. S. custom rs with paper at a price which they might fix. 10

They subsequently fixed this price at \$50 per ton, and while up to the present writing no final agreement has been reached, there is a possibility that we may be required to carry out this arrangement. If so, the price of our U. S. tonnage and the price of our Canadian tonnage will be the same and there would not therefore be any premium due to other manufacturers as the business we would exchange with them would be all practically at the same cost. 20

As we had some American contracts expiring in March and April equivalent in amount to approximately our Canadian tonnage, we gave these up, expecting to take over Canadian contracts, but when we advised the other mills accordingly, none of them wanted to give up the contracts, wanting to hold on to them but they were willing to take a corresponding amount of tonnage from us which they could ship into other markets and get the prevailing open market price of 3½ to 5 cts. per lb., with the result that should the Government at any time revise their regulations with respect to distribution of Canadian newsprint, they would have their contracts as at present while we who were prepared to take care of our proportion were left with an equivalent amount of unfilled tonnage which we might not be able to satisfactorily place at that time in other markets. 30

I regret that it was impossible for me to attend the meetings which were previously called, but I shall certainly endeavor to be present at the next one. 40

Yours very truly,

"F. H. ANSON,"

President.

F.H.A.

M.C.

Part Exhibit 38.
(Defendants' Exhibit.)
Letter R. A. Pringle to F. H. Anson.

COMMISSION

TO ENQUIRE INTO AND REPORT UPON THE MANUFACTURE, SALE
PRICE AND SUPPLY OF NEWS PRINT PAPER IN CANADA.

COMMISSION DATED APRIL 16TH, 1917.

ROBERT A. PRINGLE, K.C.,
COMMISSIONER

H. A. STEWART, K.C.,
COUNSEL

10 **F. H. Anson, Esq.,** 411 Union Bank Building, Ottawa, Ont.,
Pres. Abitibi Power & Paper Co., Ltd., June 13th, 1917.
Iroquois Falls, Ont.

Dear Sir :—

Yours of the 30th ult. reached my office while I was absent in the west. I only returned Monday and of course found an accumulation of work.

I am very pleased with the tone of your letter and I can quite appreciate the difficulties in the situation. While west I found some trouble in Saskatchewan. Fort Frances Pulp & Paper Co., owing to differences not having been adjusted are not supplying paper to western customers under terms of
20 order. I have written them today that unless these papers are kept supplied an official will go to their mill and prevent export until matters are adjusted.

I note from your letter that you are willing to contribute your proportion of paper. I will see what can be done in regard to this. I understand the Winnipeg Telegram want paper and I have had to wire to the Fort Frances Pulp & Paper Co. as to same today. Of course you understand the terms of the order that the mills who do not supply the Canadian trade have got to bear their proportion of cost and if Fort Frances Paper Co. are getting \$3.25 for their paper then there is a difference of 75c. that has to be taken care of.

I am not an accountant and if I were I would not have time to go into this
30 adjustment. I have retained Mr. Clarkson of Toronto, who has been recommended to me as a very competent accountant, and he will be here Tuesday a.m. and will be given instructions in regard to the whole matter.

In fairness to Fort Frances Pulp & Paper Co. I must say that they were not anxious to take care of the western papers, but would have much preferred to have shipped their paper to the States, but the papers had to be taken care of and they have been compelled to supply them at the \$2.50 rate.

As you are no doubt aware meeting will be held here on Tuesday, 19th, and I may have the pleasure of seeing you on that date.

Yours very truly,

"R. A. PRINGLE."

40

Exhibit 20.

(Defendants' Exhibit.)

Letter R. A. Pringle to Thomas McLaren.

Thomas McLaren, Esq.,

Controller Fort Frances Pulp & Paper Co.,

Fort Frances, Ont.

June 13th, 1917.

Dear Sir :—

Yours of June 6th was received by me on my return from the West on

*In the
Supreme
Court of
Ontario.*

Exhibits.
Part Ex. 38.
Letter, R. A.
Pringle to
F. H. Anson,
13th June,
1917.

Ex. 20.
Letter, R. A.
Pringle to
Thomas
McLaren,
13th June,
1917.

*In the
Supreme
Court of
Ontario.*

Exhibits.
Ex. 20.
Letter, R. A.
Pringle to
Thomas
McLaren,
13th June,
1917.

—continued.

Monday. The position in regard to the newspaper business to say the least is very complicated.

I forwarded to Abitibi and Spanish River the statement you sent to me. They take the position that they are ready to supply paper to the western trade. In fact they have set aside paper for that purpose. I was surprised at this as I certainly understood when in New York from one whom I considered a representative of the Abitibi that they preferred paying the difference in cash, and not in paper. Now they take the other position. Their representative will be here Tuesday and I will see what can be done in regard to an adjustment.

10

One of the members of the Government sent for me this morning and told me that Winnipeg Telegram were not being supplied with paper. Consequently I wired you.

I have advised the Daily News of Moose Jaw to pay your draft at the \$3.00 rate and that the difference would be refunded to them.

I don't want to take any harsh action, but I spoke to one of the Ministers today as to the trouble I am having in this matter, and he told me that if there was any further trouble just to have an official go and prevent any export of paper until the paper manufacturers were willing to live up to the regulations and this course I will have to take if there is any further bother.

20

I have retained Mr. Clarkson of Toronto whom I understand is a first-class accountant, and I am going to have him take up the adjustment of differences between your mill, Abitibi and Spanish River and upon his report an order will be made and if it is not carried out then of course other steps can be taken. Possibly if your representative was here on Tuesday to meet representatives of the other mills matters could be arranged.

Yours very truly,

R. A. PRINGLE.

30

Part Ex. 38.
Letter, F. H.
Anson to
R.A. Pringle,
27th June,
1917.

Part Exhibit 38.

(Defendants' Exhibit.)

Letter F. H. Anson to R. A. Pringle.

ABITIBI POWER & PAPER COMPANY, LIMITED.

Iroquois Falls, Ontario,

June 27th, 1917—Dict. 26th.

Mr. R. A. Pringle,
Commissioner,
411 Union Bank Building,
Ottawa.

40

Dear Sir :—

Your favor of June 13th addressed to Iroquois Falls, only reached me two days ago, having been forwarded to New York, undelivered there, and then returned here.

In the meantime I have been in communication with both Mr. Mead and Mr. Smith, whom you met in New York, and in justification of my previous

letter I would say that neither Mr. Mead nor Mr. Smith advised me that they had met you in New York, and it was only after I had your wire that I received this information.

I regret that I was not able to be at the Meeting on Tuesday last. I was compelled to be in New York to meet parties who were sailing on the steamer on Wednesday. In the meantime I had telegraphed Mr. Wilson to meet me and he gave me a partial report of Tuesday's meeting.

There seems to be an impression—and I do not know how it got about—that I or the Abitibi Company are trying to evade taking our proportion of
 10 Canadian tonnage and embarrass the Government; and I want to say to you that there is absolutely nothing further in my mind. I have never refused to supply the tonnage we were short, which amounts to 125 tons per month, and as a matter of fact I have offered to take up this amount of Canadian contracts from any of the Canadian manufacturers.

In regard to the Winnipeg Telegram to which you specifically refer, if Mr. Backus will not supply them I am perfectly willing to take up 125 tons monthly on this or any other Winnipeg paper and relieve them to that extent; and furthermore they say that in the adjustment of Canadian tonnage, notwithstanding the fact that I have offered and wanted to take 125 tons additional,
 20 I have never been called upon or requested by a Canadian manufacturer to supply one pound of Canadian tonnage, nor have I ever had any communication with Mr. Backus, or requested him to supply any shortage which we might have on our Canadian contracts.

I again want to assure you that I am more than anxious to do anything that I can to relieve you or the Government from any trouble or embarrassment in this connection. In fact I have been trying to do this ever since the question came up.

According to our records we were short for March, April, May and June approximately 125 tons each month or 500 tons for the four months; and I am
 30 prepared to deliver this 500 tons during the ensuing four months to any Canadian papers or in any way which you yourself may suggest.

Yours very truly,
 "F. H. ANSON,"

FHA/W.

President.

Part Exhibit 1.
 (Plaintiff's Exhibit.)
Order of Minister of Customs.

WHEREAS by Order-in-Council dated 16th April, 1917, I was authorized and empowered to fix the quantity and price of newsprint paper in sheets and
 40 rolls, furnished or to be furnished to the publishers in Canada by the manufacturers from 1st March, 1917, to 1st June, 1917 ;

AND WHEREAS I did fix the price as shown by my order of 8th May, 1917;

AND WHEREAS by Order-in-Council dated the 25th day of May, 1917, I have been authorized to fix the quantity and price of newsprint paper in sheets and rolls furnished or to be furnished to the publishers in Canada by the

*In the
 Supreme
 Court of
 Ontario.*

Exhibits.
 Part Ex. 38.
 Letter, F. H.
 Anson to
 R.A. Pringle,
 27th June,
 1917.

—continued.

Part Ex. 1.
 Order of
 Minister of
 Customs,
 30th June,
 1917.

*In the
Supreme
Court of
Ontario.*

Exhibits.
Part Ex. 1.
Order of
Minister of
Customs,
30th June,
1917.

—continued.

manufacturers for a further term from 1st June to 1st Sept., 1917 ;

AND WHEREAS I did fix the quantity and price of newsprint paper in sheets and rolls from 1st June to 1st July, 1917 ;

NOW THEREFORE under and by virtue of the powers given by such order-in-council I do order and direct that the manufacturers of newsprint paper do supply to the newspapers throughout Canada, newsprint paper in rolls at the rate of \$2.50 per 100 lbs. in car load lots; \$3.25 per 100 lbs. in sheets in car load lots, and \$3.50 per 100 lbs. in sheets in less than car load lots of two tons and over f.o.b. the mills of the various manufacturers for a period of one month from the first day of July, 1917 to the first day of August, 1917 ; 10

AND WHEREAS under existing conditions the supply of newsprint paper to Canadian publishers is not proportionately distributed between them, and by reason of the fact that the prices fixed are lower than the manufacturers are receiving from export business I do order that each manufacturer should bear his due proportion of the cost so entailed in complying with above and that if arrangements are not made between the manufacturers for the pooling of such cost, and for adjustment between themselves in proportion to the percentage of their output supplied to Canadian publishers that an accounting be made and the manufacturer or manufacturers who have supplied a greater percentage of Canadian tonnage than properly attributable to them shall be paid 20 by the other manufacturers sufficient to place them in the same position as the manufacturer or manufacturers who have not supplied their proper percentage of paper to the Canadian publishers.

That the manufacturers shall when called upon furnish to Commissioner appointed by order-in-council dated 16th April, 1917, being Order No. 1060, accurate figures showing the total tonnage of newsprint paper produced and shipped during the preceding month and the tonnage so produced and shipped for the Canadian market and export markets respectively together with the prices f.o.b. at the mills both for paper for export and paper for Canadian Trade. 30

I do further order that any and all manufacturers shall when called upon by the Commissioner supply paper in such quantity or quantities as the Commissioner may direct to such newspaper or newspapers as he may direct.

This order is made subject to revision as to price in the event of it being decided at a later date that the price now charged is either too high or too low.

DATED at Ottawa this 30th day of June, A.D. 1917.

(Sgd.) J. D. REID,
Minister of Customs.

Part Ex. 1.
Order of
Minister of
Customs,
31st July,
1917.

Part Exhibit 1.
(Plaintiff's Exhibit.)
Order of Minister of Customs.

40

WHEREAS by Order-in-Council dated the 16th day of April, 1917, I was authorized and empowered to fix the quantity and price of newsprint paper in sheets and rolls, furnished or to be furnished to the publishers in Canada by the manufacturers, from 1st March, 1917, to 1st June, 1917.

AND WHEREAS by Order-in-Council dated the 25th day of May, 1917, I was authorized to fix the quantity and price of newsprint paper in sheets and rolls furnished or to be furnished to the publishers in Canada by the manufacturers for a further term from 1st June to 1st September, 1917.

AND WHEREAS I have by different orders fixed the price of newsprint paper in sheets and rolls from 1st March, 1917, to 1st August, 1917.

AND WHEREAS it has become necessary to fix the quantity and price of newsprint paper in sheets and rolls from 1st August to 1st September, 1917.

10 AND WHEREAS by Order-in-Council dated 1st September, 1917, I was further authorized and empowered to fix the quantity and price of newsprint paper in sheets and rolls furnished by or to be furnished to the publishers in Canada by the manufacturers from 1st September, 1917, to 1st December, 1917.

NOW THEREFORE under and by virtue of the powers given by such Order-in-Council, I ORDER AND DIRECT that the manufacturers of newsprint paper do supply to the newspapers throughout Canada, newsprint paper in rolls at the rate of \$2.50 per 100 lbs., in car load lots; and \$3.50 per 100 lbs. in sheets in less than car load lots of two tons and over f.o.b. the mills of the various manufacturers, for a period of one month from the FIRST DAY OF AUGUST, 20 1917, to the FIRST DAY OF SEPTEMBER, 1917.

AND WHEREAS under existing conditions the supply of newsprint paper to Canadian publishers is not proportionately distributed between them, and by reason of the fact that the prices fixed are lower than the manufacturers are receiving from the export business, I DO ORDER that each manufacturer should bear his due proportion of the cost so entailed in complying with above, and that if arrangements are not made between the manufacturers for the pooling of such cost, and for adjustment between themselves in proportion to the percentage of their output supplied to Canadian publishers that an accounting be made, and the manufacturer or manufacturers who have 30 supplied a greater percentage of Canadian tonnage than properly attributable to them shall be paid by the other manufacturers sufficient to place them in the same position as the manufacturer or manufacturers who have not supplied their proper percentage of paper to the Canadian publishers.

THAT the manufacturers shall when called upon furnish to Commissioner appointed by Order-in-Council, dated 16th April, 1917, being Order No. 1060, accurate figures showing the total tonnage of newsprint paper produced and shipped during the preceding month, and the tonnage so produced and shipped for the Canadian market and export markets respectively, together with the prices f.o.b. at the mills, both for paper for export and paper for Canadian trade. 40

I DO FURTHER ORDER that any and all manufacturers shall when called upon by the Commissioner supply paper in such quantity or quantities as the Commissioner may direct to such newspaper or newspapers as he may direct.

THIS ORDER is made subject to revision as to the price in event of it being decided at a later date that the price now charged is either too high or too low.

DATED AT OTTAWA this 31st day of July, A.D. 1917.

(Signed) J. D. REID,

Minister of Customs.

*In the
Supreme
Court of
Ontario.*

Exhibits.
Part Ex. 1.
Order of
Minister of
Customs,
31st July,
1917.

—continued.

*In the
Supreme
Court of
Ontario.*

Part Exhibit 1.
(Plaintiff's Exhibit.)
Order-in-Council.

Exhibits.
Part Ex. 1.
Order-in-
Council,
1st Septem-
ber, 1917.

P. C. 2431.

At the Government House at Ottawa,
Saturday, the 1st day of September, 1917.

Present : His Excellency

The Governor-General in Council.

His Excellency the Governor-General in Council is pleased to order that the powers given to the Minister of Customs to fix the quantity and price of newsprint paper in sheets or rolls furnished or to be furnished to the publishers in Canada by the manufacturers, shall be and the same are hereby extended from 1st September, 1917, to the 1st December, 1917. 10

Certified a true copy,

"RUDOLPHE BOUDREAU,"

Clerk of the Privy Council.

[SEAL]

Part Ex. 1.
Order of
Minister of
Customs,
1st Septem-
ber, 1917.

Part Exhibit 1.
(Plaintiff's Exhibit.)
Order of Minister of Customs.

WHEREAS by Order-in-Council dated the 16th day of April, 1917, I was authorized and empowered to fix the quantity and price of newsprint paper in sheets and rolls, furnished or to be furnished to the publishers in Canada by the manufacturers, from 1st March, 1917, to 1st June, 1917. 20

AND WHEREAS by Order-in-Council dated the 25th day of May, 1917, I was authorized to fix the quantity and price of newsprint paper in sheets and rolls furnished or to be furnished to the publishers in Canada by the manufacturers for a further term from 1st June to 1st September, 1917.

AND WHEREAS by Order-in-Council dated 1st September, 1917, I was further authorized and empowered to fix the quantity and price of newsprint paper in sheets and rolls furnished by or to be furnished to the publishers in Canada by the manufacturers from 1st September, 1917, to 1st December, 1917. 30

AND WHEREAS it has become necessary to fix the quantity and price of newsprint paper in sheets and rolls from 1st September to 1st October, 1917.

NOW THEREFORE under and by virtue of the powers given by such Order-in-Council, I ORDER AND DIRECT that the manufacturers of newsprint paper do supply to the newspapers throughout Canada, newsprint paper in rolls at the rate of \$2.50 per 100 lbs., in car load lots; \$3.25 per 100 lbs. in sheets in car load lots, and \$3.50 per 100 lbs. in sheets in less than car load lots of two tons and over f.o.b. the mills of the various manufacturers, for a period of one month from the FIRST DAY OF SEPTEMBER, 1917, to the FIRST DAY OF OCTOBER, 1917. 40

AND WHEREAS under existing conditions the supply of newsprint paper to Canadian publishers is not proportionately distributed between them, and by reason of the fact that the prices fixed are lower than the manufacturers

are receiving from the export business, I DO ORDER that each manufacturer should bear his due proportion of the cost so entailed in complying with above, and that if arrangements are not made between the manufacturers for the pooling of such cost, and for adjustment between themselves in proportion to the percentage of their output supplied to Canadian publishers that an accounting be made, and the manufacturer or manufacturers who have supplied a greater percentage of Canadian tonnage than properly attributable to them shall be paid by the other manufacturers sufficient to place them in the same position as the manufacturer or manufacturers who have not supplied
 10 their proper percentage of paper to the Canadian publishers.

THAT the manufacturers shall when called upon furnish to Commissioner appointed by Order-in-Council, dated 16th April, 1917, being Order No. 1060, accurate figures showing the total tonnage of newsprint paper produced and shipped during the preceding month, and the tonnage so produced and shipped for the Canadian market and export markets respectively, together with the prices f.o.b. at the mills, both for paper for export and paper for Canadian trade.

I DO FURTHER ORDER that any and all manufacturers shall when called upon by the Commissioner supply paper in such quantity or quantities as the
 20 Commissioner may direct to such newspaper or newspapers as he may direct.

THIS ORDER is made subject to revision as to the price in event of it being decided at a later date that the price now charged is either too high or too low.

DATED AT OTTAWA this 1st day of September, A.D. 1917.

(Signed) J. D. REID,

Minister of Customs.

Part Exhibit 1.

(Plaintiff's Exhibit.)

Order of Minister of Customs.

30

WHEREAS by Order-in-Council dated the 16th day of April, 1917, I was authorized and empowered to fix the quantity and price of newsprint paper in sheets and rolls, furnished or to be furnished to the publishers in Canada by the manufacturers, from 1st March, to 1st June, 1917.

AND WHEREAS by Order-in-Council dated the 25th day of May, 1917, I was authorized to fix the quantity and price of newsprint paper in sheets and rolls furnished or to be furnished to the publishers in Canada by the manufacturers for a further term from 1st June to 1st September, 1917.

40 AND WHEREAS by Order-in-Council dated 1st September, 1917, I was further authorized and empowered to fix the price of newsprint paper in sheets and rolls furnished by or to be furnished to the publishers in Canada by the manufacturers from 1st September, 1917, to 1st December, 1917.

AND WHEREAS I did by Order, dated the 1st day of September, 1917, fix the price and quantity of newsprint paper in sheets and rolls furnished or to be furnished to the publishers in Canada by the manufacturers from 1st September to 1st October, 1917.

AND WHEREAS it has become necessary to fix the quantity and price of

*In the
Supreme
Court of
Ontario.*

Exhibits.
Part Ex. 1.
Order of
Minister of
Customs,
1st Septem-
ber, 1917.

---continued.

Part Ex. 1.
Order of
Minister of
Customs,
1st October,
1917.

*In the
Supreme
Court of
Ontario.*

Exhibits.
Part Ex. 1.
Order of
Minister of
Customs,
1st October,
1917.

—continued.

newsprint paper in sheets and rolls from 1st October, to 1st November 1917.

NOW THEREFORE under and by virtue of the powers given by such Order-in-Council, I ORDER AND DIRECT that the manufacturers of newsprint paper do supply to the newspapers throughout Canada, newsprint paper in rolls at the rate of \$2.50 per 100 lbs., in car load lots; \$3.25 per 100 lbs. in sheets in car load lots, and \$3.50 per 100 lbs. in sheets in less than car load lots of two tons and over f.o.b. the mills of the various manufacturers, for a period of one month from the FIRST DAY OF OCTOBER, 1917, to the FIRST DAY OF NOVEMBER.

AND WHEREAS under existing conditions the supply of newsprint paper to Canadian publishers is not proportionately distributed between them, and by reason of the fact that the prices fixed are lower than the manufacturers are receiving from the export business, I Do ORDER that each manufacturer should bear his due proportion of the cost so entailed in complying with above, and that if arrangements are not made between the manufacturers for the pooling of such cost, and for adjustment between themselves in proportion to the percentage of their output supplied to Canadian publishers that an accounting be made, and the manufacturer or manufacturers who have supplied a greater percentage of Canadian tonnage than properly attributable to them shall be paid by the other manufacturers sufficient to place them in the same position as the manufacturer or manufacturers who have not supplied their proper percentage of paper to the Canadian publishers.

THAT the manufacturers shall when called upon furnish to Commissioner appointed by Order-in-Council, dated 16th April, 1917, being Order No. 1060, accurate figures showing the total tonnage of newsprint paper produced and shipped during the preceding month, and the tonnage so produced and shipped for the Canadian market and export markets respectively, together with the prices f.o.b. at the mills, both for paper for export and paper for Canadian trade.

I Do FURTHER ORDER that any and all manufacturers shall when called upon by the Commissioner supply paper in such quantity or quantities as the Commissioner may direct to such newspaper or newspapers as he may direct.

THIS ORDER is made subject to revision as to the price in event of it being decided at a later date that the price now charged is either too high or too low.

DATED AT OTTAWA this 1st day of October, A.D. 1917.

(Signed) J. D. REID,
Minister of Customs.

Part Exhibit 38

(Defendants' Exhibit.)

Letter F. H. Anson to R. A. Pringle.

Part Ex. 38.
Letter, F. H.
Anson to
R. A. Pringle,
26th October
1917.

ABITIBI POWER & PAPER COMPANY, LIMITED.
Iroquois Falls, Ontario,

October 26th, 1917.

Confidential.

Mr. R. T. Pringle,
Commissioner, Ottawa.

Dear Mr. Pringle :—

I am again unfortunately so placed that I cannot get to Ottawa Monday

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as I will have to be in New York for the completion of important financial contracts on that date.

However, I am writing you an official letter with respect to question of tonnage, and I would consider it a great favor if you would place same before Mr. Clarkson or the Committee who are looking into the question of distribution.

We are really now placed in a very difficult position, one which I feel that we should be given relief on, as if we are not furnished the Canadian tonnage to which we are entitled, it will be necessary for us to slow down our mill or go on the open market to place our surplus.

I would briefly say in this connection, confidentially, that I have a very strong feeling with respect to the attitude towards the Abitibi Company on the part of the other manufacturers in Canada, and I have expressed this same opinion to them and their representatives. We have undoubtedly been made a mark of by every other manufacturer, simply because we were not willing to agree to the adoption of certain policies in regard to this investigation which I did not consider right ; with the result that our attitude has unquestionably been misinterpreted by the Government and others, and a decided effort made on the part of other manufacturers to discredit our figures and belittle our management ; at the same time throwing every obstacle possible in the way of our getting the proportion of Canadian tonnage to which we are entitled.

I am going to make it a point to get to Ottawa, as I wish to see you just as soon after my return to Montreal as possible.

In the meantime if there is anything that can be done whereby we may receive this tonnage, I am asking you for in the official letter, I would esteem it a great favor if you would use such influence as you consistently can to arrange for same.

Yours very truly,

"F. H. ANSON,"

President.

30

FHA/W.

Part Exhibit 1.

(Plaintiff's Exhibit.)

Order of Minister of Customs.

WHEREAS by Order-in-Council dated the 16th day of April, 1917, I was authorized and empowered to fix the quantity and price of newsprint paper in sheets and rolls, furnished or to be furnished to the publishers in Canada by the manufacturers, from 1st March, 1917, to 1st June, 1917.

AND WHEREAS by Order-in-Council dated the 25th day of May, 1917, I was authorized to fix the quantity and price of newsprint paper in sheets and rolls furnished or to be furnished to the publishers in Canada by the manufacturers for a further term from 1st June to 1st September, 1917.

AND WHEREAS by Order-in-Council dated 1st September, 1917, I was further authorized and empowered to fix the price and quantity of newsprint paper in sheets and rolls furnished by or to be furnished to the publishers in

*In the
Supreme
Court of
Ontario.*

Exhibits.
Part Ex. 38.
Letter, F. H.
Anson to
R. A. Pringle,
26th October
1917.

--continued.

Part Ex. 1.
Order of
Minister of
Customs,
2nd Novem-
ber, 1917.

*In the
Supreme
Court of
Ontario.*

Exhibits.
Part Ex. 1.
Order of
Minister of
Customs,
2nd Novem-
ber, 1917.

—continued.

Canada by the manufacturers from 1st September, 1917, to 1st December, 1917.

AND WHEREAS I did by Order dated 1st October, 1917, fix the price and quantity of newsprint paper in sheets and rolls furnished or to be furnished to the publishers in Canada by the manufacturers from 1st October to 1st November, 1917 ;

AND WHEREAS it has become necessary to fix the quantity and prices of newsprint paper in sheets and rolls from 1st November to 20th November, 1917 ;

NOW THEREFORE under and by virtue of the powers given by such Order-in-Council, I ORDER AND DIRECT that the manufacturers of newsprint paper do supply to the newspapers throughout Canada, newsprint paper in rolls at the rate of \$2.50 per 100 lbs., in car load lots; \$3.25 per 100 lbs. in sheets in car load lots, and \$3.50 per 100 lbs. in sheets in less than car load lots of two tons and over f.o.b. the mills of the various manufacturers, for a period of twenty days from the FIRST DAY OF NOVEMBER, 1917, to the TWENTIETH DAY OF NOVEMBER, 1917 ;

AND WHEREAS under existing conditions the supply of newsprint paper to Canadian publishers is not proportionately distributed between them, and by reason of the fact that the prices fixed are lower than the manufacturers are receiving from export business, I Do ORDER that each manufacturer should bear his due proportion of the cost so entailed in complying with above, and that if arrangements are not made between the manufacturers for the pooling of such cost, and for adjustment between themselves in proportion to the percentage of their output supplied to Canadian publishers that an accounting be made, and the manufacturer or manufacturers who have supplied a greater percentage of Canadian tonnage than properly attributable to them shall be paid by the other manufacturers sufficient to place them in the same position as the manufacturer or manufacturers who have not supplied their proper percentage of paper to the Canadian publishers.

THAT the manufacturers shall when called upon furnish to Commissioner appointed by Order-in-Council, dated 16th April, 1917, being Order No. 1060, accurate figures showing the total tonnage of newsprint paper produced and shipped during the preceding month, and the tonnage so produced and shipped for the Canadian market and export markets respectively, together with the prices f.o.b. at the mills, both for paper for export and paper for Canadian trade.

I DO FURTHER ORDER that any and all manufacturers shall when called upon by the Commissioner supply paper in such quantity or quantities as the Commissioner may direct to such newspaper or newspapers as he may direct.

THIS ORDER is made subject to revision as to the price in event of it being decided at a later date that the price now charged is either too high or too low.

DATED AT OTTAWA this 2nd day of November, A.D. 1917.

(Signed) J. D. REID,

Minister of Customs.

Part Exhibit 1.
(Plaintiff's Exhibit.)
Order-in-Council.

P. C. 3122.

November 3rd, 1917.

The Committee of the Privy Council have had before them a report, dated 2nd November, 1917, from the Minister of Finance, submitting the following information and recommendations respecting the paper situation in Canada.

10 About the beginning of the present year conditions affecting newsprint paper became very acute and newspaper publishers experienced difficulty in obtaining an adequate supply.

On 16th April, 1917, in order to ensure to the publishers of Canadian Newspapers an adequate supply at reasonable prices, Robert A. Pringle, K.C., of the City of Ottawa, was appointed a Commissioner with all powers given under the Inquiries Act, Ch. 104, Revised Statutes of Canada, and Amending Act, 2 Geo. V., Chap. 28, to conduct an inquiry into and concerning the manufacture, sale price and supply of newsprint paper within the Dominion of Canada. He was also appointed an officer under provisions of Section 6 of the War Measure Act for the due enforcement of all orders and regulations made by the Minister of Customs under Order-in-Council P. C. 1059, of 16th April, 1917.

Orders were made from time to time by the Honourable the Minister of Customs under authority of Orders-in-Council, the provisions of which have not as yet been completely fulfilled.

Robert A. Pringle, K.C., was also appointed a Commissioner with full powers under the Inquiries Act to investigate into the cost of production of pulp, book and half-tone papers.

30 Both investigations are still in progress. Acting under different Orders made by the Honourable the Minister of Customs the Commissioner has exercised control over the supply of newsprint paper in the Dominion of Canada, and up to the present time domestic needs have been adequately safeguarded. The last Order made by the Minister of Customs was dated 1st October, 1917, and under that Order he fixed the price and quantity of newsprint in sheets and rolls furnished or to be furnished to the publishers in Canada by the manufacturers up to the 1st November, 1917.

He did also order as follows :

40 "AND WHEREAS under existing conditions the supply of newsprint paper to Canadian publishers is not proportionately distributed between them, and by reason of the fact that the prices fixed are lower than the manufacturers are receiving from export business, I do order that each manufacturer should bear his due proportion of the cost so entailed in complying with above, and that if arrangements are not made between the manufacturers for the pooling of such cost and for adjustment between themselves in proportion to the percentage of their output supplied to Canadian publishers,

*In the
Supreme
Court of
Ontario.*
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Exhibits.
Part Ex. 1.
Order-in-
Council,
3rd Novem-
ber, 1917.

*In the
Supreme
Court of
Ontario.*

Exhibits.
Part Ex. 1.
Order-in-
Council,
3rd Novem-
ber, 1917.

—continued.

then an accounting be made, and the manufacturer or manufacturers who have supplied a greater percentage of Canadian tonnage than properly attributable to them shall be paid by the other manufacturers sufficient to place them in the same position as the manufacturer or manufacturers who have not supplied their proper percentage of paper to the Canadian publishers.”

As both investigations are still proceeding and the Commissioner considers that it is imperative to continue the exercise of public control over supply and prices as the only effective means of assuring to the newspapers of Canada their requirements, the Minister recommends that Robert A Pringle, K.C., be appointed a Controller continuing to have all the powers given under the Commission issued to him on 16th April, 1917, and that he also be given full power to carry out all the terms and conditions of the different orders made from time to time by the Honourable the Minister of Customs ; that he be authorized and empowered to fix the quantity and price of newsprint paper paper and other classes of paper to be furnished to the publishers in Canada by the manufacturers during the continuance of the war unless otherwise ordered, and also to fix the price of pulp, including sulphite and sulphate. The prices, aforesaid, however, to be first approved by the Governor in Council.

The Minister further recommends that as Controller Mr. Pringle be further authorized and empowered to make such order or orders as he may deem necessary or advisable for the distribution and delivery of paper by the manufacturers to the publishers and for the distribution and delivery of pulp (including sulphite and sulphate) to manufacturers of newsprint and other paper ; that all orders and regulations made by the Controller under this authority shall have the force of law and shall be enforced by such officer or officers as the Controller may appoint; that any person who contravenes or fails to observe any regulation or order made under this authority shall be liable to punishment as provided by the War Measures Act ; and that in the course of and in connection with his investigation the Controller be authorized to confer with and co-operate with the Federal Trade Commission of the United States of America ; and that the Controller be authorized under the Inquiries Act, Ch. 104, Revised Statutes of Canada and Amending Act, 2 Geo. V., Chap. 28, to engage the services of such accountants, engineers, technical advisers or other experts, clerks, reporters and assistants as he may deem necessary and advisable. The expenditure incurred hereunder to be charged to War Appropriation.

The Committee concur in the foregoing and submit the same for approval.
(Sgd.) RUDOLPHE BOUDREAU,

C. P. C.

Part Exhibit 38.

(Defendants' Exhibit.)

Letter R. A. Pringle to F. H. Anson.

COMMISSION

TO ENQUIRE INTO AND REPORT UPON THE MANUFACTURE, SALE PRICE AND SUPPLY OF NEWSPRINT PAPER IN CANADA. COMMISSION DATED APRIL 16th, 1917

ROBERT A. PRINGLE, K.C.,
COMMISSIONER.

H. A. STEWART, K.C.
COUNSEL

411 Union Bank Building, Ottawa, Ont.

Part Ex. 38.
Letter, R. A.
Pringle to
F. H. Anson,
8th Novem-
ber, 1917.

40

November 8th, 1917.

F. H. Anson, Esq.,
Abitibi Pulp & Paper Co.,
Iroquois Falls, Ont.

*In the
Supreme
Court of
Ontario.*

Dear Sir :—

Yours of 26th ult. duly received and would have been answered sooner only every moment of my time has been taken up for the last few days. I have endeavoured to have some of the newspapers take their paper from you. I had within the last week to make an order in regard to the Montreal Star.
10 Unfortunately they are not inclined to take from you owing to the freight rates and possibility of delays in the winter months. However, I have the matter before me and will do the best I can to get you Canadian business. I am sending your letter to Mr. Clarkson, who has on hand the adjustment between the different manufacturers.

Exhibits.
Part Ex. 38.
Letter, R. A.
Pringle to
F. H. Anson,
8th Novem-
ber, 1917.

—continued

Yours very truly,
R. A. PRINGLE.

P.S.—I enclose copy of order-in-council of 3rd Nov. appointing me controller.—R.A.P.

Part Exhibit 1.
(Plaintiff's Exhibit.)
Order of Controller Pringle.

Part Ex. 1.
Order of
Controller
Pringle.
17th Novem-
ber, 1917.

20

WHEREAS by Order-in-Council dated the 3rd November, 1917, I was authorized and empowered to make such order or orders as I might deem necessary or advisable for the distribution and delivery of paper by the manufacturers to the publishers, and for the distribution and delivery of pulp (including sulphite and sulphate) to the manufacturers of newsprint and other paper.

AND WHEREAS the Honourable the Minister of Customs acting under
30 authority of Order-in-Council dated 1st September, 1917, did fix the price and quantity of newsprint paper in sheets and rolls to be furnished to the publishers in Canada by the Manufacturers up to the 20th day of November, 1917.

AND WHEREAS it is necessary for me to fix the price from that date.

NOW THEREFORE under and by virtue of the powers given to me by said Order-in-Council, dated 3rd November, 1917, I Do ORDER AND DIRECT that the manufacturers of newsprint paper do supply to the newspapers throughout Canada newsprint paper in rolls at the rate of \$2.50 per 100 lbs. in car load lots ; \$3.25 per 100 lbs. in sheets in carload lots, and \$3.50 per 100 lbs. in
40 sheets in less than carload lots of two tons and over, f.o.b. the mills of the various manufacturers, for a period of Two MONTHS from the 20th day of November, 1917, to the 20th day of JANUARY, 1918.

AND WHEREAS under existing conditions the supply of newsprint paper to Canadian publishers is not proportionately distributed between them, and by reason of the fact that the prices fixed are lower than the manufacturers

*In the
Supreme
Court of
Ontario.*

Exhibits.
Part Ex. 1.
Order of
Controller
Pringle.
17th Novem-
ber, 1917.

—continued.

are receiving from export business, I Do ORDER that each manufacturer should bear his due proportion of the cost so entailed in complying with above, and that if arrangements are not made between the manufacturers for the pooling of such cost and for adjustment between themselves in proportion to the percentage of their output supplied to Canadian publishers, then an accounting be made and the manufacturer or manufacturers who have supplied a greater percentage of Canadian tonnage than properly attributable to them shall be paid by the other manufacturers sufficient to place them in the same position as the manufacturer or manufacturers who have not supplied their proper percentage of paper to the Canadian publishers.

10

I Do FURTHER ORDER that the manufacturers shall when called upon furnish accurate figures showing the total tonnage of newsprint paper produced and shipped by them during such period as directed and the tonnage so produced and shipped for the Canadian market and export market respectively together with the prices f.o.b. at the mills both for paper for export and paper for Canadian trade.

THIS ORDER is made subject to revision as to the price in event of it being decided at a later date that the prices now charged are either too high or too low.

THIS ORDER is subject to approval by the Governor-in-Council.

DATED AT OTTAWA this 17th day of November, 1917.

20

(Sgd.) R. A. PRINGLE,

Controller.

Part Ex. 1.
Order-in-
Council.
19th Novem-
ber, 1917.

Part Exhibit 1.

(Plaintiff's Exhibit.)

Order-in-Council.

P. C. 3241.

CERTIFIED to be a true copy of a Minute of a Meeting of the Committee of the Privy Council approved by the Deputy of His Excellency the Governor-General on the 19th November, 1917.

30

The Committee of the Privy Council, on the recommendation of the Minister of Finance, advise that the Order of Mr. R. A. Pringle, K.C., Controller of newsprint and other papers, attached hereto, be approved.

"E. J. LEMAIRE,"

Clerk of the Privy Council

Part Ex. 38.
Letter, F. H.
Anson to
R. A. Pringle,
21st Novem-
ber, 1917.

Part Exhibit 38.

(Defendants' Exhibit.)

Letter F. H. Anson to R. A. Pringle.

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ABITIBI POWER & PAPER COMPANY, LIMITED.

Iroquois Falls, Ontario,

November 21st, 1917.

Mr. R. A. Pringle,
Controller,
Newsprint Manufacturers,

Dict.: 20th.

Ottawa, Ontario.

Dear Sir :—

I have your favor of November 8th forwarded to Montreal, which reached there just after I had left for Iroquois Falls.

With regard to Canadian tonnage I have asked Mr. Chahoon of the Laurentide Company to give me some business and I expect he will turn over some orders to us. In fact he agreed to give us the Toronto News, which we were ready to take, but we subsequently did not get the order for some reason.

10 We have advised the Secretary of the Association that we are prepared to take Canadian business, or supply Canadian tonnage, but apparently none of the Canadian mills want to give up their tonnage.

We have on hand today nearly 1,000 tons of surplus paper which we are anxious to place during November and December, and I shall be very glad indeed if you can place with us any portion of this amount for Canadian delivery, as we are short on our delivery of \$50.00 paper approximately 1,000 to 1,200 tons, and I would like to get this delivered and off our books prior to the 1st of January.

Yours very truly,

“F. H. ANSON,”

President.

20

Part Exhibit 38.

(Defendants' Exhibit.)

Letter R. A. Pringle to F. H. Anson.

OFFICE OF

COMMISSIONER AND CONTROLLER, NEWS PRINT, BOOK PAPER, ETC.

30 Robert A. Pringle, K.C.

COMMISSIONER AND
CONTROLLER

COUNSEL

H. A. STEWART, K.C.,
BROCKVILLE, ONT.

411 Union Bank Building,

Ottawa, Ont., Nov. 26th, 1917.

F. H. Anson, Esq.,

Pres. Abitibi Power & Paper Co.,

Iroquois Falls, Ont.

Dear Sir :—

40 Yours of 21st inst. duly received. I note that you have on hand nearly a thousand tons of surplus paper which you are anxious to place during November and December. I will do the best I can to see that this paper is placed. I have endeavoured to have one or two of the newspapers send their orders to you, but they have objected on account of freight rate, and danger of non-delivery. However, I will do the best I can in the matter.

Yours Truly,

“R. A. PRINGLE,”

Controller.

*In the
Supreme
Court of
Ontario.*

Exhibits.
Letter, F. H.
Anson to
R. A. Pringle,
21st Novem-
ber, 1917.

—continued.

Part Ex. 38.
Letter, R. A.
Pringle to
F. H. Anson.
26th Novem-
ber, 1917.

*In the
Supreme
Court of
Ontario.*

Exhibits.
Part Ex. 38.
Letter F. H.
Anson to
R.A. Pringle,
4th Decem-
ber, 1917.

Part Exhibit 38.

(Defendants' Exhibit.)

Letter F. H. Anson to R. A. Pringle.

ABITIBI POWER AND PAPER COMPANY, LIMITED.

Montreal, December 4th, 1917.

**R. A. Pringle, Esq.,
411 Union Bank Bldg.,
Ottawa.**

Dear Mr. Pringle :—

I have your favor of the 26th. I wish to thank you for your recom- 10
mendation to the Montreal Star. We have taken on 200 tons from them
which will give us a little relief. but as you will have noted from our statement
for week ending November 30th, we still have 1,000 tons of paper on hand at
the mill and are still short of orders.

In this connection I would say that at the moment I am rather in a
quandary as to what to do with respect to our 1918 contracts. I am desirous
of contracting the mill fairly full for 1918. I figure our output for that year
approximately 65,000 tons, 11% of this will give 7,150 tons as our proportion
of the Canadian tonnage, and I am reserving 7,250 tons for this purpose.

Against this 7,250 tons, however, I have at the present time only 4,500 20
tons in sight, leaving 2,750 tons open.

In so far as I have been able to learn there are no open Canadian news-
print contracts, all of them being taken care of by their present suppliers, and
furthermore apparently little inclination on the part of the manufacturers to
release any of the Canadian tonnage which they at present hold, and it seems
to be the intention of the manufacturers to hold all the Canadian tonnage
they presently have.

If you can consistently do so, I would like to have an outline of the pos-
sible attitude of the Government as to what their position would be in the 30
event of our not being able to secure contracts for our proportion of Canadian
tonnage for the ensuing year, that is, if we are unable to secure these contracts
at the beginning of the year. Are we to be called upon later on to supply
the difference between the contracts we actually have and the proportion
which we are required under the law to provide ?

Yours truly,

"F. H. ANSON,"

President.

F.H.A.

M.C.

Part Ex. 38.
Letter, F. H.
Anson to
R.A. Pringle,
24th Decem-
ber, 1917.

Part Exhibit 38.

(Defendants' Exhibit.)

Letter F. H. Anson to R. A. Pringle.

ABITIBI POWER & PAPER COMPANY, LIMITED.

Montreal, December 24th, 1917.

**R. A. Pringle, Esq., K.C.,
Commissioner,
Ottawa, Ont.**

40

Dear Mr. Pringle,—

I have just received a telegram from the Ontario Paper Co. at Thorold, asking us to arrange to ship as promptly as possible 1,200 to 1,400 tons of 72 $\frac{3}{4}$ " newsprint to the Chicago Tribune in accordance with my letter to Sir Henry Drayton, and I have accordingly wired the Mill to start manufacture and shipment of all surplus tonnage to the Chicago Tribune under this order.

There is a doubt, however, in my mind as to what arrangement may have been made by Sir Henry with the Ontario Paper Co. in this respect with regard to the invoice price. We are short of supplying our quota of Canadian
10 tonnage somewhere between 1,200 and 1,500 tons and my understanding is that it is the intention of the Government, in view of the fact that they have taken part of the power away from the Ontario Paper Co., to furnish the Tribune with a certain amount of paper on the basis of price of Canadian publishers and that shipments we may make to the Chicago Tribune are to be billed by us at \$50.00 per ton f.o.b. Mill, and the tonnage so shipped by us is to be considered as a part of our Canadian proportion.

Will you kindly advise me if my understanding in this respect is correct.

If this is the case, we will arrange to ship the Chicago Tribune sufficient tonnage to cover our proportion of the Canadian total, which will relieve us
20 from the necessity of making any adjustment with other mills.

Incidentally I might say for your information that we have also sold the Ontario Pulp & Paper Co. 1,500 tons of pulp which they have ordered shipped immediately.

This pulp was sold them to make up for their deficiency in power and at a very low price, and any re-adjustment of newsprint tonnage which may be necessary by reason of including the Chicago Tribune on the Canadian list of papers. I feel that this pulp shipment on our part to Canadian mills should be taken into consideration.

I am very glad indeed to have got this order as it will straighten out the
30 question of our tonnage.

Yours truly,

"F. H. ANSON,"

President.

F.H.A.
M.C.

Part Exhibit 24.

(Defendant's Exhibit.)

Minutes of Meeting of Newsprint Manufacturers.

Held at the Court House, Ottawa, on 10th January, 1918.

40 Present : Mr. Millen of the E. B. Eddy Co., in the chair.
Representatives of Messrs. J. R. Booth, Abitibi Power & Paper Co., Laurentide Company, Donnacona Paper Company, the E. B. Eddy Company, Belgo-Canadian Pulp & Paper Company, St. Maurice Paper Company.
Messrs. Montgomery, Orde, McDougall, Henderson and Mitchell; also Clarkson and Sharp.

*In the
Supreme
Court of
Ontario.*

Exhibits.
Part Ex. 38.
Letter, F. H.
Anson to
R. A. Pringle,
24th Decem-
ber, 1917.

—continued.

Part Ex. 24.
Minutes of
Meeting of
News Print
Manufacturers.
10th Janu-
ary, 1918.

*In the
Supreme
Court of
Ontario.*

Exhibits.
Part Ex. 24.
Minutes of
Meeting of
News Print
Manufacturers.
10th January,
1918.

—continued.

Part Ex. 1.
Order of
Controller
Pringle.
19th January,
1918.

After considerable discussion on the question of an equitable distribution of the burden imposed upon the Canadian mills by the fixed price of \$50 per ton on Canadian business, it was moved by Mr. George Chahoon, Jr., seconded by Mr. Thomas, that the whole matter of adjustment be referred back to Mr. R. A. Pringle, K.C., the case to be presented by Messrs. Clarkson and Sharp.

Meeting adjourned.

Part Exhibit 1.

(Plaintiff's Exhibit.)

10

Order of Controller Pringle.

WHEREAS by Order-in-Council, dated 3rd November, 1917, I am authorized and empowered to make such order or orders as I may deem necessary or advisable for the distribution of paper by the manufacturers to the publishers, and I am further empowered to fix a price (such price to be subject to the approval of the Governor-in-Council).

AND WHEREAS I did on the 17th day of November, 1917, fix prices up to and inclusive of the 20th day of January, 1918.

20

NOW THEREFORE under and by virtue of the powers given to me by said Order-in-Council of 3rd November, 1917, I DO ORDER AND DIRECT that the manufacturers of newsprint paper do supply to the newspapers throughout Canada newsprint paper in rolls at the rate of \$2.50 per 100 lbs. in carload lots ; \$3.25 per 100 lbs. in sheets in carload lots, and \$3.50 per 100 lbs. in sheets in less than carload lots of two tons and over, f.o.b. the mills of the various manufacturers, for a period of ELEVEN DAYS from the 20th day of January, 1918, to the FIRST DAY OF FEBRUARY, 1918.

AND WHEREAS under existing conditions the supply of newsprint paper to Canadian publishers is not proportionately distributed between them, and by reason of the fact that the prices fixed are lower than the manufacturers are receiving from export business, I DO ORDER that each manufacturer should bear his due proportion of the cost so entailed in complying with above, and that if arrangements are not made between the manufacturers for the pooling of such cost and for adjustment between themselves in proportion to the percentage of their output supplied to Canadian publishers, then an accounting be made and the manufacturer or manufacturers who have supplied a greater percentage of Canadian tonnage than properly attributable to them shall be paid by the manufacturer or manufacturers sufficient to place them in the same position as the manufacturer or manufacturers who have not supplied their proper percentage of paper to the Canadian publishers.

30

40

I DO FURTHER ORDER that the manufacturers shall when called upon furnish accurate figures showing the total tonnage of newsprint paper produced and shipped by them during such period as directed and the tonnage so produced and shipped for the Canadian market and export markets respectively together with the prices f.o.b. at the mills both for paper for export and paper for Canadian trade.

THIS ORDER is made subject to revision as to the price in event of it being decided at a later date that the prices now charged are either too high or too low.

THIS ORDER is subject to approval by the Governor-in-Council.

DATED AT OTTAWA this 19th day of JANUARY, A.D. 1918.

(Sgd.) R. A. PRINGLE, Controller.

Part Exhibit 1.

(Plaintiff's Exhibit.)

Order of Controller Pringle.

*In the
Supreme
Court of
Ontario.*

Exhibits.
Part Ex. 1.
Order of
Controller
Pringle.
19th Janu-
ary, 1918.

—continued.

10 WHEREAS by Order-in-Council, dated 3rd November, 1917, I am author-
ized and empowered to make such order or orders as I may deem necessary
or advisable for the distribution of paper by the manufacturers to the pub-
lishers, and I am further empowered to fix a price (such price to be subject
to the approval of the Governor-in-Council).

AND WHEREAS I have fixed a price up to the 1st day of February, 1918.

20 NOW THEREFORE, under and by virtue of the powers given to me by the
said Order-in-Council of 3rd November, 1917, I DO ORDER AND DIRECT that
the manufacturers of newsprint paper do supply to the newspapers throughout
Canada newsprint paper in rolls at the rate of \$2.85 per 100 lbs. in carload
lots ; \$3.25 per 100 lbs. in sheets in carload lots, and \$3.50 per 100 lbs. in
sheets in less than carload lots of two tons and over, f.o.b. the mills from the
various manufacturers for a period of THREE MONTHS from the FIRST DAY OF
FEBRUARY, 1918, TO THE FIRST DAY OF MAY, 1918.

30 AND WHEREAS under existing conditions the supply of newsprint paper
to Canadian publishers is not proportionately distributed between them, and
by reason of the fact that the prices fixed are lower than the manufacturers
are receiving from export business, I DO ORDER that each manufacturer should
bear his due proportion of the cost so entailed in complying with above, and
that if arrangements are not made between the manufacturers for the pooling
of such cost and for adjustment between themselves in proportion to the per-
centage of their output supplied to Canadian publishers, then an accounting
be made and the manufacturer or manufacturers who have supplied a greater
percentage of Canadian tonnage than properly attributable to them shall be
paid by the manufacturer or manufacturers sufficient to place them in the same
position as the manufacturer or manufacturers who have not supplied their
proper percentage of paper to the Canadian publishers.

40 I DO FURTHER ORDER that the manufacturers shall when called
upon furnish accurate figures showing the total tonnage of newsprint paper
produced and shipped by them during such period as directed and the tonnage
so produced and shipped for the Canadian market and export market respec-
tively together with the prices f.o.b. at the mills both for paper for export and
paper for Canadian trade.

THIS ORDER is made subject to revision as to the price in event of it being decided at a later date that the prices now charged are either too high or too low.

THIS ORDER is subject to approval by the Governor-in-Council.

DATED AT OTTAWA this 21st day of January, A.D. 1918.

(Sgd.) R. A. PRINGLE, Controller.

Part Ex. 1.
Order of
Controller
Pringle.
21st January
1918.

*In the
Supreme
Court of
Ontario.*

Exhibits.
Ex. 41.

Letter, J. R.
Booth to
R. A. Pringle
25th Janu-
ary, 1918.

Exhibit 41.

(Defendants' Exhibit.)

Letter J. R. Booth to R. A. Pringle.

Ottawa, Canada, January 25th, 1918.

R. A. Pringle, Esq., K.C.,
Paper Controller,
Ottawa.

RE NEWSPRINT ENQUIRY.

Dear Sir,—

I have just received your interim report to Sir Thomas White, and I need not say that I have read it with much interest. 10

Although, of late, there have been rumours that the price fixed by you for newsprint would not be retroactive to July 1st, 1917, as we had all supposed would be the case, your report is the first official intimation I have had that this course is not to be followed. This brings to my mind the question of the adjustment between the mills, which would not have been an important matter had your price been retroactive, but which now assumes larger proportions.

Until I receive the auditor's figures, I cannot, of course, tell whether I was long or short of Canadian tonnage during the period under review, although, according to my own computation, the deficit, if any, of my mill is quite insignificant. 20

If, however, my Canadian tonnage should be found to be short of my quota, I desire to notify you now that I wish to exercise the privilege, which I assume I have, of making this deficient tonnage, instead of paying to a pool any amount based on the differential between domestic and export prices in 1917.

Since the Eddy Company is, undoubtedly, long on Canadian tonnage, and as the freight rates from my mill and that of the Eddy Company are identical to all points, it would be a simple matter for the Eddy Company to hand over to me for manufacture a sufficient domestic tonnage to complete my quota for the period in question, always assuming that the auditor comes to the conclusion that I have not already made the required quantity. 30

You will, I believe, understand from the earlier part of this letter that the reason why this matter has not been brought to your attention until this comparatively late date, is that I had always expected the retroactive provision to apply, and that, therefore, no adjustment would be necessary.

Yours truly,

J. R. BOOTH.

J.R.B.

Part Exhibit 1.

(Plaintiff's Exhibit.)

Order of Controller Pringle

40

Part Ex. 1.
Order of
Controller
Pringle.
28th Janu-
ary, 1918.

WHEREAS by Order-in-Council dated 3rd November, 1917, I am authorized and empowered to make such Order or Orders as I may deem necessary and advisable for the distribution of paper by the manufacturers to the publishers.

AND I am further empowered to fix a price (such price to be subject to the approval of the Governor-in-Council.)

AND WHEREAS I have fixed a price up to the First day of February, 1918, by Order dated the 19th day of January, A.D. 1918, which Order, I understand, has been approved by the Governor-in-Council.

AND WHEREAS I have submitted an Order fixing price from First day of February, 1918, to First day of May, 1918, which Order has not yet been approved by the Governor-in-Council.

10 AND WHEREAS circumstances have arisen which may delay the consideration by the Governor-in-Council of said Order fixing price from the First day of February, 1918, to the First day of May, 1918, I DO THEREFORE ORDER that the prices fixed in my Order of 19th day of January, 1918, fixing prices from the 20th day of January, 1918, to the first day of February, 1918, remain in force until such time as the Governor-in-Council either approves or disapproves of my Order now before them fixing prices from the First day of February, 1918, to the First day of May, 1918, and that all the terms and conditions of said Order govern in regard to supply and price until such time as Governor-in-Council deals with Order fixing price from First day of February to First day of May, 1918.

20 This Order is made subject to revision in the event of it being decided at a later date that the prices now charged are either too high or too low.

This Order is subject to approval by the Governor-in-Council.

DATED at Ottawa this 28th day of January, A.D. 1918.

(Signed) R. A. Pringle.

Part Exhibit 1.
(Plaintiff's Exhibit.)
Order-in-Council.

30 The Committee of the Privy Council have had before them the following Report, submitted by the Honourable Mr. Maclean, on behalf of the Sub-Committee of the Privy Council appointed on the 23rd day of January, 1918 (P.C. 194), for the purpose of giving a hearing to the newspaper publishing interests of Canada upon the interim report of R. A. Pringle, Esq., K.C., and dated the 21st day of January, 1918, respecting the matter of the enquiry into the manufacture, sale, price and supply of newsprint paper in Canada, which he was authorized to make under the commission of Your Excellency, dated April 16th, 1917, and under the Enquiries Act, viz.:—

The Sub-Committee did on the 1st day of February, 1918, grant a hearing to representatives of the newsprint publishing interests as well as to the manufacturers of newsprint.

40 The manufacturers contended the price fixed by the Commissioner by the Order of January 21st, 1918, to continue from the 1st day of February, 1918, to the 1st day of May next, at \$2.85 per hundred pounds in carload lots, for newsprint in rolls, was not sufficiently high, and that the price should not be less than \$3.00 per hundred pounds, but they expressed willingness to accept the interim report of the Commissioner.

*In the
Supreme
Court of
Ontario.*

—
Exhibits.
Part Ex. 1.
Order of
Controller
Pringle.
28th Janu-
ary, 1918.

—continued.

Part Ex. 1.
Order-in-
Council.
18th Febru-
ary, 1918.

*In the
Supreme
Court of
Ontario.*
—
Exhibits.
Part Ex. 1.
Order-in-
Council.
18th Febru-
ary, 1918.
—continued.

The publishers contended that the Order of the Commissioner be not confirmed by the Committee of the Governor-in-Council, and urged the following grounds in support of such contention :—

- (a) That by reason of the rulings of the Commissioner refusing the admission of evidence tending to show combinations among producers of newsprint to unduly enhance the price of their product, they were denied an opportunity of full enquiry into the matters covered by the Order-in-Council authorizing the investigation and that following the said ruling by the Commissioner they withdrew from the enquiry. 10
- (b) That the interim report of the Commissioner disclosed that the investigation was not yet complete and that the costs of production of newsprint had not yet been determined and that, therefore, there should be no increase in the price of newsprint as ordered and provided in the interim report until the investigation was fully completed and the actual cost of production finally determined.

The Sub-Committee is of the opinion that it is not in the public interest that the investigation should be curtailed by any lack of authority on the part of the Commissioner to investigate the matters complained of, and as doubts have been raised as to the scope of the enquiry, your Committee recommends that the powers of the Commissioner should be more fully defined and that he be authorized to enquire into any contract, agreement, arrangement, or combination, by or between any corporation, firm, association, or person or persons which was or is designed to have the effect of increasing or fixing the price of newsprint, or of restricting competition, or controlling the production, manufacture, sale, supply or cost thereof to the disadvantage or cost of the consumers, and generally to enquire into any or every thing that he deems fit and proper and which in any way affects the use or supply of newsprint in Canada or the cost thereof. 30

The Sub-Committee would approve of the Commissioner securing the assistance of a competent expert in the matter of pulp and paper production and costs, to co-operate with the Commissioner and his assistants in the investigation, and to advise with the Commissioner on questions pertinent to the enquiry.

The Sub-Committee further believes the publishers could materially assist the Commissioner in his important and difficult enquiry by taking part in the further investigation.

It appearing from the Commissioner's report and the evidence that the enquiry into the actual cost of producing and selling newsprint is not yet fully complete and determined, and it, therefore, not being possible at the present time to determine with exactness what the price of newsprint should be, but from the evidence so far received and from the Commissioner's report it would appear that the cost of production of newsprint has increased since the month of April, 1917, when the price of \$2.50 per hundred pounds was fixed, your sub-committee would, therefore, recommend that the Order of the Commissioner dated the 21st day of January, 1918, fixing the price at 40

which newsprint is to be supplied to the newspapers throughout Canada by the manufacturers thereof from the 1st day of February, 1918, to the 1st day of May in the same year, be approved, subject, however, to the following variation, namely : the sum of \$2.50 only per hundred pounds, being the price fixed by prior orders, shall be paid to the manufacturers, and that the additional sum of 35 cents per hundred pounds, being the increase in price provided by the Order of the Commissioner made on January 21st, 1918, be paid by the purchasers of newsprint in Canada from the manufacturers thereof, and as purchased, to the Controller, R. A. Pringle, Esq., K.C., and by
 10 him to be deposited in a chartered bank or banks as may be designated by him, the said sum to remain in such bank or banks until such time as the Commissioner's final report is made and approved of by His Excellency the Governor-in-Council, when the said sum or sums shall be refunded to the publishers or to the manufacturers, or part to one and part to the other, as the case may be, in accordance with the final Order of the Commissioner when made.

The Sub-Committee further recommends that the Commissioner be authorized and empowered to limit his investigation and enquiry, when determining the actual cost of production of newsprint, to four of the mills producing or manufacturing newsprint in Canada, if he deems it expedient, as may
 20 be fairly representative of the different mills now producing or manufacturing newsprint in Canada.

And the Sub-Committee further recommends that the completion of the investigation and enquiry be proceeded with forthwith and be completed on or before the 20th day of April, 1918.

The Committee of the Privy Council concur in the foregoing report and recommendations, and submit the same for approval.

.....
 Clerk of Privy Council.

30

Part Exhibit 1.
 (Plaintiff's Exhibit.)
Order-in-Council.

Part Ex. 1.
 Order-in-Council.
 9th March, 1918.

P.C. 577.

At the Government House at Ottawa,
 Saturday, the 9th day of March, 1918.

Present : His Excellency

The Governor-General in Council.

40 His Excellency the Governor-General in Council on the recommendation of the Minister of Trade and Commerce, and under the provisions of The War Measures Act, 1914, and all other powers vested in the Governor-in-Council, is pleased to order and it is hereby ordered that the exportation of the following goods be prohibited to all destinations outside of Canada except under license issued by the Minister of Customs at the request of The War Trade Board, viz. :

Abrasives and all materials entering into their manufacture.

*In the
 Supreme
 Court of
 Ontario.*
 —
 Exhibits.
 Part Ex. 1.
 Order-in-
 Council.
 18th Febru-
 ary, 1918.
 —continued.

*In the
Supreme
Court of
Ontario.*
—
Exhibits.
Part Ex. 1.
Order-in-
Council.
9th March,
1918.

Ammonium sulphate.
Calcium carbide.
Electrodes.
Machinery.
Bones and other materials entering into the manufacture of fertilizers.
Chemical wood pulp.
Mechanical wood pulp
Newsprint paper.

Iron or Steel comprising.:

Wire Rods. 10
Wire, plain or galvanized or otherwise coated.
Sheets.
Plates.
Bars.

Certified true copy of Original of records in the Privy Council office.

“G. G. KEZAN,”

Assist. Clerk of the Privy Council.

Part Ex. 23.
Minutes of
Meeting of
News Print
Section of
C.P. & P.A.
12th March,
1918.

Part Exhibit 23.

(Defendants' Exhibit.)

Minutes of Meeting of Newsprint Section of C. P. & P. A. 20

Montreal, Tuesday, March 12-18.

Present : Representatives of the Abitibi Company, Belgo, Booth, Brompton, Canada Paper, Donnacona, Eddy, Laurentide, Price, Spanish River, St. Maurice ; later the Fort Frances Company.

Minutes of the previous meeting were duly read and passed.

Mr. Victor Mitchell then outlined the events that had taken place, giving details of his interview with the Premier.

The meeting was then adjourned until the evening in order that the matter might be further discussed with Mr. Montgomery.

On the meeting again coming to order in the evening, Mr. Montgomery 30 stated that the Premier had given him his promise that should either party be dissatisfied with the final evidence of the Commissioner they should have the right to judicial review.

It was then considered advisable that the manufacturers should continue to supply their customers until the 25th of March, being the date set for the next hearing of the Commission.

The question of differential was then brought forward, and after considerable discussion it was decided to take the question up at the meeting to be held on the following morning.

The meeting then adjourned. 40

Part Exhibit 23

(Defendants' Exhibit.)

Minutes of Meeting of Newsprint Section of C. P. & P. A.

Wednesday, March 13-18.

Present : Representatives of the Abitibi Co., Belgo, Booth, Brompton, Canada Paper Co., Donnacona, Eddy, Laurentide, Price, Spanish River, St. Maurice, Fort Frances.

Also : Messrs. G. Montgomery, K. C., G. F. Henderson, K. C., V. Mitchell, K.C., and Mr. W. F. Sharp.

10 The minutes of the previous meeting were duly read and passed.

The question of differential was discussed at great length, which resulted in a proposal by V. Mitchell of the following tentative agreement :—

NEWS PRINT INQUIRY.**AGREEMENT AS TO ADJUSTMENT OF CANADIAN TONNAGE.**

The undersigned contributing Mills hereby agree to pay to the receiving mills and the undersigned receiving mills hereby agree to accept fifty (50) per cent. of the amount shown due by and to them respectively on this statement prepared by Messrs. Clarkson & Sharp, up to Sept. 30th, 1917, and signed for identification by Victor Mitchell, K.C., and Geo. H. Montgomery, K.C., adjusted as hereafter mentioned, and fifty (50) per cent. of the amount which shall be found due by and to them respectively up to January 31st, 1918, the statement up to such date to be made by Messrs. Clarkson & Sharp on the same basis as the statement up to September 30th, 1917; and the said two statements shall be furnished to the undersigned mills as soon as possible. The amount so found to be due by the contributing mills shall be paid in cash to Mr. F. W. Sharp, C.A., Montreal, within fifteen days after the said statements have been furnished to the undersigned Mills, and out of the amount so paid to him the said Mr. Sharp shall pay to the Receiving Mills which have been signatories to this agreement the amounts shown due to them respectively on the said statements, and the amount due to any Receiving mill or mills which have not become signatory to this agreement shall be repaid by said Mr. Sharp to the contributing mills pro rata according to their several contributions.

This agreement is subject to the elimination of any contribution to the News Pulp and Paper Co., and to the elimination of the Crabtree Co. as a contributing mill, and also is subject to retention as a contributing mill of the Ontario Paper Co., the statement up to September 30th, 1917, to be adjusted accordingly by Messrs. Clarkson & Sharp.

40 This agreement is binding upon all the mills signatory hereto, notwithstanding the fact that it may not be signed by all the mills named in the said statement of September 30th, 1917.

DATED at Montreal, the 13th day of March, 1918.

(This agreement was signed by the following mills) :

CONTRIBUTING MILLS.

Price Brothers & Co. Ltd.
Per (Sgd.) Wm. Price, President.

RECEIVING MILLS.

Belgo-Can. Pulp & Paper Co., Ltd.
Per (Sgd.) H. Biermans.

*In the
Supreme
Court of
Ontario.*

Exhibits.
Part Ex. 23.
Minutes of
Meeting of
News Print
Section of
C.P. & P.A.
13th March,
1918.

*In the
Supreme
Court of
Ontario.*

Exhibits.
Part Ex. 23.
Minutes of
Meeting of
News Print
Section of
C.P. & P.A.
13th March,
1918.

—continued.

Brompton Pulp & Paper Co, Ltd.

Per (Sgd.) J. A. Bothwell.

Abitibi Power & Paper Co., Ltd.

Per (Sgd.) Victor E. Mitchell,

Director.

Laurentide Company, Ltd.

Per (Sgd.) G. Chahoon, Jr., Pres.

Spanish River Pulp & Paper Mills,

Per (Sgd.) P. B. Wilson,

Vice-President.

Mr. Dahlberg for the Fort Frances Company stated that they would not accept the proposal. Mr. Taylor for the E. B. Eddy Company, stated that it would be necessary for him to confer with Mr. Millen and his Board of Directors before stating the Eddy Company's position. Mr. Gordon McDougall, K.C., stated for the Donnacona Paper Company, Ltd., that Mr. McKee had 10
no authority to definitely agree or disagree until the matter had been submitted to his Board of Directors.

The meeting then adjourned.

Exhibit 29.

(Defendants' Exhibit, also included in Plaintiff's Exhibit)

Agreement as to Adjustment of Canadian Tonnage.

Ex. 29.
Agreement
as to adjust-
ment of
Canadian
Tonnage.
13th March,
1918.

NEWSPRINT INQUIRY.

20

AGREEMENT AS TO ADJUSTMENT OF CANADIAN TONNAGE.

The undersigned Contributing Mills hereby agree to pay to the Receiving Mills, and the undersigned Receiving Mills hereby agree to accept fifty (50) per cent. of the amount shown due by and to them respectively on the statement prepared by Messrs. Clarkson and Sharp up to September 30th, 1917, and signed for identification by Victor E. Mitchell, K.C., and George H Montgomery, K.C., adjusted as hereafter mentioned, and fifty (50) per cent. of the amount which shall be found due by and to them respectively up to January 31st, 1918, the statement up to such date to be made up by Messrs. 30
Clarkson and Sharp on the same basis as the statement up to September 30th, 1917; and the said two statements shall be furnished to the undersigned Mills as soon as possible. The amounts so found to be due by the Contributing Mills shall be paid in cash to Mr. F. W. Sharp, C.A., Montreal, within fifteen days after the said statements have been furnished to the undersigned Mills, and out of the amount so paid to him the said Mr. Sharp shall pay to the Receiving Mills which have become signatories to this Agreement the amount shown due to them respectively on the said statements, and the amount due to any Receiving Mill or Mills which have not become signatory to this Agree-
ment shall be repaid by said Mr. Sharp to the Contributing Mills *pro rata* 40
according to their several contributions.

This agreement is subject to the elimination of any contribution to the News Pulp and Paper Company and to the elimination of the Crabtree Company as a Contributing Mill, and is also subject to the retention as a Contributing Mill of the Ontario Paper Company, the statement up to September 30th, 1917, to be adjusted accordingly by Messrs. Clarkson and Sharp.

This Agreement is binding upon all the Mills signatory hereto, notwith-

standing the fact that it may not be signed by all the Mills named in the said statement of September 30th, 1917.

Dated at Montreal, this 13th day of March, 1918.

*In the
Supreme
Court of
Ontario.*

CONTRIBUTING MILLS.
Price Brothers & Co., Ltd.
per Wm. Price, President.
Brompton Pulp & Paper Co.
per J. A. Bothwell.
10 Abitibi Power & Paper Co., Ltd.,
by Victor E. Mitchell, Director.
The Spanish River Pulp & Paper
Mills, Ltd.,
"Percy B. Wilson," Vice-Pres.
St. Maurice Paper Co., Limited,
"A. MacLaurin," Vice-President.
"J. R. Booth."

RECEIVING MILLS.
The Belgo-Can. Pulp & Paper Co.
"H. Biermans," Gen. Mgr.
Laurentide Co., Ltd.
"George Chahoon, Jr.," Pres.
The E. B. Eddy Company, Limited.
per Geo. J. Millen, President.
Canada Paper Co., Limited.
"F. J. Campbell," Gen. Mgr.

Exhibits.
Ex. 29.
Agreement
as to adjust-
ment of
Canadian
Tonnage.
13th March,
1918.

—continued.

Part Exhibit 39.

(Defendants' Exhibit.)

20 **Letter Victor E. Mitchell to R. A. Pringle.**

R. A. Pringle, Esq., K.C.,
Commissioner and Controller,
122 Wellington Street,
Ottawa, Ont.

April 12th, 1918.

Part Ex. 39.
Letter,
Victor E.
Mitchell to
R. A. Pringle
12th April,
1918.

Dear Mr. Pringle:—

At the hearing last Monday you stated that the Fort Frances Mill had to be relieved of supplying excess tonnage to the Western newspapers and asked me whether the Abitibi Company were prepared to furnish paper for
30 this purpose.

I told you that I was not in a position to state definitely, but since my return I have taken the matter up with the officials of the company and I find that the Abitibi Company's shortage on Canadian tonnage averages between 250 to 300 tons per month.

They are prepared to furnish paper to this amount to responsible newspaper publishers and I shall be glad if you will kindly furnish the Abitibi Company with the names of publishers requiring approximately this amount of tonnage together with the sizes of paper which they use.

40 V.E.M.
M.C.

Yours truly,

VICTOR E. MITCHELL.

Part Exhibit 24.

(Defendants' Exhibit.)

Minutes of Meeting of Newsprint Section.

Held in Montreal, Ritz-Carlton, April 26th, 1918.

Present :

Representatives of J. R. Booth, Brompton Pulp & Paper Co.,

Part Ex. 24.
Minutes of
Meeting of
News Print
Manufacturers.
26th April,
1918.

*In the
Supreme
Court of
Ontario.*

Exhibits.
Part Ex. 24.
Minutes of
Meeting of
News Print
Manufacturers.
26th April,
1918.

—continued.

Also : Donnaconna Paper Co., Eddy, Laurentide, Price Bros., St. Maurice Paper Co., and the Spanish River Pulp and Paper Mills.
John F. Orde, Esq., K.C.,
Geo. H. Montgomery, K.C.
F. W. Sharp, of Messrs. Sharp, Milne & Co.

The minutes of the previous meeting were read and passed. Mr. G. H. Montgomery then outlined the position of the manufacturers at the end of the present order-in-council, expiring April 30th.

He also gave an account of the new order-in-council which the Government had drawn up from the first of May until the first of June. While this did not meet with unanimous approval it was nevertheless decided to carry on rather than cause the Government any embarrassment at this very critical time. The mills present agreed that the question of differential should not be considered after the first of February, 1918. In this connection Mr. Sharp stated that the amounts involved in the distribution of the differential were being sent to each mill and he hoped that there would be a speedy readjustment of this difficulty.

In connection with the appointment of an appeal court from the final decision of the paper controller, attention was drawn to the correspondence that had passed between Mr. G. H. Montgomery and the Prime Minister. It was felt that the sentiments expressed therein were sufficient guarantees of the Government's good faith in this matter.

Mr. Beck was authorized by the manufacturers to draw up a strong protest against the resolution adopted by the American Newspaper Publishers' Association in respect to the prohibition of the export of newsprint.

There being no further business to transact the meeting was then adjourned.

(Order-in-Council dated 6th of August, 1918, follows).

Part Exhibit 1.

(Plaintiff's Exhibit.)

Order of Controller Pringle.

WHEREAS by Order-in-Council dated 3rd November, 1917, I am authorized and empowered to make such order or orders as I may deem necessary or advisable for the distribution of paper by the manufacturers to the publishers, and I am further empowered to fix prices (such prices to be subject to the approval of the Governor-in-Council).

AND WHEREAS on the 21st January, 1918, I did make an order fixing prices from the 1st day of February, 1918, to the 1st day of May, 1918 ;

AND WHEREAS said Order was approved by Order-in-Council, P.C. 408, dated 18th February, 1918, subject to the provision that of the price of \$2.85 per 100 pounds therein mentioned \$2.50 should be paid to the manufacturers and 35 cents deposited to my credit in a chartered bank pending the final completion of the investigation, such 35 cents to be repaid to the publishers, or paid to manufacturers, or paid part to one and part to the other, in accordance with the price to be fixed after such due investigation ;

Part Ex. 1.
Order of
Controller
Pringle.
29th April,
1918.

30

40

AND WHEREAS it was stipulated that the investigation should be fully completed before April 20th, 1918 ;

AND WHEREAS it has been found impossible to obtain the necessary evidence and to complete such investigation within the time mentioned ;

AND WHEREAS it has become necessary to fix prices to prevail from the date of the expiration of my order of the 21st day of January, 1918 ;

NOW THEREFORE under and by virtue of the powers given to me by the said Order-in-Council of 3rd November, 1917, I do order and direct that the manufacturers of newsprint paper do supply to the newspapers throughout
 10 Canada, newsprint paper in rolls at the rate of \$2.85 per 100 pounds, in carload lots ; \$3.25 per 100 lbs. in sheets in carload lots, and \$3.50 per 100 pounds in sheets in less than carload lots of two tons and over, f.o.b. the mills from the various manufacturers for a period of one month from the 1st day of May, 1918, to the 1st day of June, 1918, subject to the condition that if the price fixed by this order is too high or too low there will be a revision of price from May 1st, 1918, and the manufacturers or publishers will be required to pay into such chartered bank as may be designated by me any sum or sums of money which may be found to be due by them owing to such revision.

AND WHEREAS under existing conditions the supply of newsprint paper
 20 to Canadian publishers is not proportionately distributed between them, and by reason of the fact that the prices fixed are lower than the manufacturers are receiving from export business, I Do ORDER that each manufacturer should bear his due proportion of the cost so entailed in complying with above, and that if arrangements are not made between the manufacturers for the pooling of such cost and for adjustment between themselves in proportion to the percentage of their output supplied to Canadian publishers, then an accounting be made and the manufacturer or manufacturers who have supplied a greater percentage of Canadian tonnage than properly attributable to them shall be paid by the other manufacturers sufficient to place them in the same position
 30 as the manufacturer or manufacturers who have not supplied their proper percentage of paper to the Canadian publishers.

I Do FURTHER ORDER that the manufacturers shall when called upon furnish accurate figures showing the total tonnage of newsprint paper produced and shipped by them during such period as directed and the tonnage so produced and shipped for the Canadian market and export market respectively together with the prices f.o.b. at the mills both for paper for export and paper for Canadian trade.

THIS ORDER is made subject to approval by the Governor-in-Council and is without prejudice to such adjustments in price as may require to be made
 40 under order of January 21st, 1918, as varied by order-in-council dated February 18th, 1918.

DATED AT OTTAWA this 29th day of April, A.D. 1918.

R. A. PRINGLE,

Controller.

Approved by Order-in-Council of May 1st, 1918.

*In the
Supreme
Court of
Ontario.*

Exhibits.
Part Ex. 1.
Order of
Controller
Pringle.
29th April,
1918.

—continued.

*In the
Supreme
Court of
Ontario.*

Part Exhibit 1.
(Plaintiff's Exhibit.)
Order-in-Council.

Exhibits.
Part Ex. 1.
Order-in-
Council.
1st May,
1918.

P. C. 1028.

At the Government House at Ottawa, Wednesday, the 1st day of May, 1918.

Present : His Excellency

The Governor-General in Council.

His Excellency the Governor-General in Council, on the recommendation of the Acting Minister of Finance, is pleased to approve and doth hereby approve the annexed Regulation issued by the Controller of News Print, Book Paper, etc., on the 29th day of April, 1918. 10

The foregoing is a true copy of P.C. 1028, dated 1st May, 1918, of record in the Privy Council Office.

“RUDOLPHE BOUDREAU,”

Clerk of the Privy Council.

Part Ex. 39.
Letter,
Victor E.
Mitchell to
R. A. Pringle
4th May,
1918.

Part Exhibit 39.
(Defendants' Exhibit.)
Letter Victor E. Mitchell to R. A. Pringle.

20

McGIBBON, CASGRAIN, MITCHELL & CASGRAIN.

Royal Trust Building, Montreal,

May 4th, 1918.

R. A. Pringle, Esq., K.C.,
Paper Commissioner,
Ottawa, Ont.

Dear Mr. Pringle :—

You will remember that at the last hearing before you Mr. Dahlberg, of the Fort Frances Company, stated that they desired to be relieved of some of their Canadian contracts, and you asked me whether the Abitibi Company was prepared to take over some of the contracts. I told you that I could not answer then, but would let you know. 30

Subsequently, I informed you that we were prepared to take contracts for 250 to 300 tons per month. You answered me that you were communicating with the Fort Frances people. Since then I have heard nothing from you or from the Fort Frances Company.

I understand that this Company is pressing for a price of \$70.00 per ton, and this probably accounts for their apparent disinclination to part with any of their Canadian customers. I have always taken the position that we were prepared to furnish paper to newspaper publishers in Canada, but not to Canadian mills, as it is not fair that any mills should be called upon to contribute money when they are in a position and willing to furnish paper, and this has been our position right along. 40

I have only just returned from a trip to the Abitibi mill, and while there I made arrangements to have 300 tons of paper manufactured for the Canadian trade. I shall be glad, therefore, if you will take the matter up again with the Fort Frances people.

While I was away I received a copy of a letter which you had received from Mr. Dahlberg in reference to a conference which was had in Mr. Alexander Smith's office in New York. I propose to reply to this letter in detail next week ; I was unable to do so at Abitibi, as I had not the file of correspondence before me.

Mr. Dahlberg does not state the date of the meeting to which he referred, but I understand it was probably in the month of March, 1917, and I am informed that at this meeting no definite arrangement was made. In May Mr. Anson advised you of the position of the Abitibi Company, namely, 10 that they wished to furnish paper and not to pay a cash differential, and that position Mr. Anson has maintained ever since, as is shown by the correspondence between you and him. Moreover, any arrangement which may have been made in March would have been of a temporary character, as no one at that time knew that the Government investigation would extend over so long a period of time, and in the month of March of last year it is quite possible that the Abitibi Company was not in a position to divert paper from its United States customers. It is in a position to do so now—and has been ever since last May. As to this phase of the matter, however, I shall be able 20 to advise you more definitely next week, after I have examined the correspondence.

I am dictating this letter over the telephone from my house.

Yours very truly,

“VICTOR E. MITCHELL.”

Exhibit 21.

(Defendants' Exhibit.)

Letter B. G. Dahlberg to R. A. Pringle.

MINNESOTA AND ONTARIO POWER COMPANY.

International Falls, Minn.,

May 6th, 1918.

30 Mr. R. A. Pringle,
Union Bank Building,
Ottawa, Canada.

My Dear Mr. Pringle :—

Your letter of the 24th of April is disappointing in the extreme.

From it I gather you will expect us to continue furnishing paper during the month of May on the old \$2.85 basis.

You have been undoubtedly informed of the labor situation and the disposition made thereof, which will mean an advance in labor cost effective May 40 1st. It was bad enough to furnish paper at \$2.85 under the old conditions, but it does seem as if we are being asked to carry more than we should be asked to carry if we are to increase wages and still furnish paper at \$2.85. It does seem that it is about time that some of the burden be passed on to the publishers, as our Company certainly cannot go on facing these mounting costs without having it reflect on the price we receive for our product.

We will, of course, comply with your order and ship our quota of paper to Canada. We will also ship the excess above our quota necessary to furnish

*In the
Supreme
Court of
Ontario.*

Exhibits.
Letter,
Victor E .
Mitchell to
R. A. Pringle,
4th May,
1918.

—continued.

Ex. 21.
Letter, B. G.
Dahlberg to
R. A. Pringle,
6th May,
1918.

*In the
Supreme
Court of
Ontario.*

Exhibits.
Ex. 21.
Letter, B. G.
Dahlberg to
R. A. Pringle
6th May,
1918.

the Western Publishers, but this with the specified understanding that differential adjustment is to be made with us currently, and that the adjustment will be based upon the difference between the Canadian price and American price, plus the duty draw back.

Yours truly,

"B. G. DAHLBERG,"
Second Vice-President.

BGD.H

Part Exhibit 39.

(Defendants' Exhibit.)

Letter Victor E. Mitchell to R. A. Pringle.

10

Part Ex. 39.
Letter,
Victor E.
Mitchell to
R. A. Pringle
13th May,
1918.

R. A. Pringle, Esq., K.C.,
Paper Controller,
Ottawa, Ontario.

May 13th, 1918.

Dear Mr. Pringle,—

Mr. Dahlberg of the Fort Frances Pulp & Paper Co. sent to the Abitibi Power & Paper Co. a copy of his letter to you dated 11th April last, and which I have had no opportunity of answering before.

Mr. Dahlberg does not state the date of the conference in New York at which Mr. Alexander Smith was present, but Mr. Mead in his telegram to Mr. Anson dated the 26th May, 1917, refers to a meeting in New York at which Mr. Smith was present, representing the Abitibi Co., and at which he, Mead, was also present, representing the Spanish River Co. At this meeting Mr. Mead states no decision was reached.

Moreover, Mr. Mead wrote Mr. Anson under date June 2nd, 1917, as follows :—

"You understand, I take it, from all of the correspondence, that I have never in any way indicated what action I consider likely on the part of the Abitibi Co., Mr. Smith having been present during the only conference I have had with Mr. Pringle, at which time Mr. Smith stated that he did not agree with my position (which was to pay the differential instead of furnishing paper) and would take no final action with regard to the matter without first reviewing same with yourself as President of the Abitibi Company."

There is therefore some misunderstanding as to what decision was reached at this meeting as far as the Abitibi Company was concerned, but it is quite clear that neither Mr. Smith nor Mr. Mead committed the Company to any definite policy.

Mr. Anson wrote you on May 22nd, 1917, that the Company preferred furnishing paper instead of its proportion in cash, and in replying to this letter under date May 25th, you made the statement :

"Of course, if you prefer furnishing the paper instead of your proportion in cash then I think it can be arranged so that Backus will take the paper at the Mill at the \$2.50 and send it to his customers."

In a letter to you of the same date, Mr. Anson says :—

"My instructions to our representatives were to advise the newsprint manufacturers that we would make and ship any additional tonnage of paper which was necessary to make up our proportion."

And again on May 29th Mr. Anson wrote you as follows :—

“I have been in communication with our representatives who attended the various meetings of the Canadian Newsprint Manufacturers, and they advise me that at these meetings they made our position with respect to taking over our proportion of Canadian tonnage perfectly clear to the members, and that furthermore they verbally notified them of our willingness to take up additional tonnage and confirmed this in writing.”

On May 30th Mr. Anson wrote you in reply to your letter of the 25th as follows :—

10 “We are quite prepared to provide for our proportion but so far the difficulty has been that manufacturers who in the past have tied themselves up with a large proportion of Canadian tonnage because of its being more profitable to them, and have shut out other mills from this trade, now consider that they are the ones who shall dictate the prices, terms and conditions under which they will turn over their surplus Canadian tonnage and are treating the mills who are short as a stock broker would treat a “Bear” who was short on the stock market. On the contrary I consider it should be at our option, in complying with the Government’s requirements, as to whether we shall furnish tonnage or pay a price difference, and it was due to the attitude of the
20 other manufacturers in the early stages of negotiations that we decided to assume the tonnage, as it appeared to us at that time that it would be impossible to arrive at any arrangement which would be mutually satisfactory which involved the payment of any price difference.”

Further on in the same letter Mr. Anson says :

“As we had some American contracts expiring in March and April equivalent in amount to approximately our Canadian tonnage, we gave these up, expecting to take over Canadian contracts, but when we advised the other mills accordingly, none of them wanted to give up the contracts, wanting to hold on to them, but they were willing to take a corresponding amount of
30 tonnage from us which they could ship into other markets and get the prevailing open market price of 3½ to 5 cts. per lb., with the result that should the Government at any time revise their regulations with respect to distribution of Canadian newsprint, they would have their contracts as at present while we who were prepared to take care of our proportion were left with an equivalent amount of unfilled tonnage which we might not be able to satisfactorily place at that time in other markets”.

On June 27th Mr. Anson again wrote as follows :—

“In regard to the Winnipeg Telegram to which you specifically refer, if Mr. Backus will not supply them I am perfectly willing to take up 125 tons
40 monthly on this or any other Winnipeg paper and relieve them to that extent,” and also in the same letter :

“According to our records we were short for March, April, May and June approximately 125 tons each month or 500 tons for the four months, and I am prepared to deliver this 500 tons during the ensuing four months to any Canadian papers or in any way which you yourself may suggest.”

The correspondence therefore shows quite clearly what position was finally taken by the Abitibi Company and ever since then it has been endeavouring to obtain contracts for its proportion of the Canadian tonnage.

*In the
Supreme
Court of
Ontario.*

—
Exhibits.
Part Ex. 39.
Letter,
Victor E.
Mitchell to
R. A. Pringle
13th May,
1918.

—continued.

*In the
Supreme
Court of
Ontario.*

Exhibits.
Part Ex. 39.
Letter, V. E.
Mitchell to
R.A. Pringle,
13th May,
1918.

—continued.

You will remember at the last meeting before you, you asked me whether the Abitibi were prepared to furnish paper, as the Fort Frances people were ready to surrender contracts. Mr. Dahlberg himself also challenged me and said they were prepared to hand over some of their contracts to us. I told him at that time I was not in a position to answer for the Company, as I did not know how they stood, but as soon as I returned, I took the matter up with the officials and notified you on the 12th of April that I found that the Abitibi Co.'s shortage on Canadian tonnage averaged between 250 to 300 tons per month and that it was prepared to furnish paper to this extent to responsible newspaper publishers, and you wrote me that you would take the matter up with the Fort Frances people. 10

Since then, however, we have heard neither from you nor from the Fort Frances people, and I think under the circumstances you must admit that it is not fair to impose a cash differential on us when we are prepared to furnish our quota of paper.

It is perfectly apparent that neither the Fort Frances nor any of the other mills desire to transfer any of their contracts to other Canadian manufacturers and under such circumstances, it is not right that they should receive any money indemnification.

We again ask you to arrange for the transfer of contracts to us for 200 or 300 tons per month which we are prepared to furnish. 20

V.E.M.
M.C.

Yours faithfully,

VICTOR E. MITCHELL.

Part Exhibit 1.

(Plaintiff's Exhibit.)

Order of Controller Pringle.

Part Ex. 1.
Order of
Controller
Pringle.
31st May,
1918.

WHEREAS by Order-in-Council dated 3rd November, 1917, I am authorized and empowered to make such order or orders as I may deem necessary or advisable for the distribution of paper by the manufacturers to the publishers and I am further empowered to fix prices (such prices to be subject to the approval of the Governor-in-Council). 30

AND WHEREAS it has become necessary to fix prices to prevail from the date of the expiration of my order of the 29th day of April, 1918, fixing prices from May 1st to June 1st, 1918.

NOW THEREFORE under and by virtue of the powers given to me by the said Order-in-Council of 3rd November, 1917, I do order and direct that the manufacturers of newsprint paper do supply to the newspapers throughout Canada, newsprint paper in rolls at the rate of \$2.85 per 100 pounds, in carload lots ; \$3.25 per 100 lbs. in sheets in carload lots, and \$3.50 per 100 pounds in sheets in less than carload lots of two tons and over, f.o.b. the mills of the various manufacturers for a period of one month from the 1st day of June, 1918, to the 1st day of July, 1918, subject to the condition that if the price fixed by this order is too high or too low there will be a revision of price from May 1st, 1918, and the manufacturers or publishers will be required to pay into such chartered bank as may be designated by me any sum or sums of money which may be found to be due by them owing to such revision. 40

AND WHEREAS under existing conditions the supply of newsprint paper to Canadian publishers is not proportionately distributed between them, and by reason of the fact that the prices fixed are lower than the manufacturers are receiving from export business, I DO ORDER that each manufacturer should bear his due proportion of the cost so entailed in complying with above, and that if arrangements are not made between the manufacturers for the pooling of such cost and for adjustment between themselves in proportion to the percentage of their output supplied to Canadian publishers, then an accounting be made and the manufacturer or manufacturers who have supplied a greater
 10 percentage of Canadian tonnage than properly attributable to them shall be paid by the other manufacturers sufficient to place them in the same position as the manufacturer or manufacturers who have not supplied their proper percentage of paper to the Canadian publishers.

I DO FURTHER ORDER that the manufacturers shall when called upon furnish accurate figures showing the total tonnage of newsprint paper produced and shipped by them during such period as directed and the tonnage so produced and shipped for the Canadian market and export market respectively together with the prices f.o.b. at the mills both for paper for export and paper for Canadian trade.

20 THIS ORDER is subject to approval by the Governor-in-Council and is without prejudice to such adjustments in price as may require to be made under order of January 21st, 1918, as varied by order-in-council dated February 18th, 1918.

DATED AT OTTAWA this 31st day of May, A.D. 1918.

“R. A. PRINGLE,”

Controller.

Part Exhibit 1.
 (Plaintiff's Exhibit.)
 Order-in-Council.

30

Part Ex. 1.
 Order-in-Council.
 5th June,
 1918.

P. C. 1386.

At the Government House at Ottawa,
 Wednesday, the 5th day of June, 1918.

Present : His Excellency

The Governor-General in Council :

40 His Excellency the Governor-General in Council on the recommendation of the Minister of Finance, is pleased to approve and doth hereby approve the annexed Regulation issued by the Controller of News Print, Book Paper, etc., on the 31st day of May, 1918.

The foregoing is a true copy of original on record in the Privy Council Office.

“RUDOLPHE BOUDREAU,”

Clerk of the Privy Council.

*In the
 Supreme
 Court of
 Ontario.*

Exhibits.
 Part Ex. 1.
 Order of
 Controller
 Pringle.
 31st May,
 1918.

—continued.

*In the
Supreme
Court of
Ontario.*

Exhibits.
Part Ex. 1.
Order of
Controller
Pringle.
27th June,
1918.

Part Exhibit 1.
(Plaintiff's Exhibit.)
Order of Controller Pringle.

WHEREAS by Order-in-Council dated 3rd November, 1917, I am authorized and empowered to make such order or orders as I may deem necessary or advisable for the distribution of paper by the manufacturers to the publishers, and I am further empowered to fix prices (such prices to be subject to the approval of the Governor-in-Council).

AND WHEREAS it has become necessary to fix prices to prevail from the date of the expiration of my order of the 31st day of May, 1918, fixing prices from June 1st to July 1st, 1918. 10

NOW THEREFORE under and by virtue of the powers given to me by the said Order-in-Council of 3rd November, 1917, I do order and direct that the manufacturers of newsprint paper do supply to the newspapers throughout Canada, newsprint paper in rolls at the rate of \$2.85 per 100 pounds, in carload lots ; \$3.25 per 100 lbs. in sheets in carload lots, and \$3.50 per 100 pounds in sheets in less than carload lots of two tons and over, f.o.b. the mills from the various manufacturers for a period of two months from the 1st day of July, 1918, to the 1st day of September, 1918, subject to the condition that if the price fixed by this order is too high or too low there will be a revision of price from May 1st, 1918, and the manufacturers or publishers will be required to pay into such chartered bank as may be designated by me any sum or sums of money which may be found to be due by them owing to such revision. 20

AND WHEREAS under existing conditions the supply of newsprint paper to Canadian publishers is not proportionately distributed between them, and by reason of the fact that the prices fixed are lower than the manufacturers are receiving from export business, I DO ORDER that each manufacturer should bear his due proportion of the cost so entailed in complying with above, and that if arrangements are not made between the manufacturers for the pooling of such cost and for adjustment between themselves in proportion to the percentage of their output supplied to Canadian publishers, then an accounting be made and the manufacturer or manufacturers who have supplied a greater percentage of Canadian tonnage than properly attributable to them shall be paid by the manufacturer or manufacturers sufficient to place them in the same position as the manufacturer or manufacturers who have not supplied their proper percentage of paper to the Canadian publishers. 30

I DO FURTHER ORDER that the manufacturers shall when called upon furnish accurate figures showing the total tonnage of newsprint paper produced and shipped by them during such period as directed and the tonnage so produced and shipped for the Canadian market and export market respectively together with the prices f.o.b. at the mills both for paper for export and paper for Canadian trade. 40

THIS ORDER is subject to approval by the Governor-in-Council and is without prejudice to such adjustments in price as may require to be made under order of January 21st, 1918, as varied by order-in-council dated February 18th, 1918.

DATED AT OTTAWA this 27th day of June, A.D. 1918.

(Signed) "R. A. PRINGLE", Controller.

Part Exhibit 39.

(Defendants' Exhibit.)

Letter Victor E. Mitchell to R. A. Pringle.

MCGIBBON, CASGRAIN, MITCHELL & CASGRAIN.

Royal Trust Building,

Montreal, June 29th, 1918.

R. A. Pringle, Esq., K.C.,
 Paper Controller,
 Ottawa, Ont.

*In the
 Supreme
 Court of
 Ontario.*

Exhibits.
 Part Ex. 39.
 Letter,
 Victor E.
 Mitchell to
 R. A. Pringle
 29th June,
 1918.

10 Dear Mr. Pringle,

I have not received any reply from you to my last letter in reference to the transfer of paper contracts from the Fort Frances Company to the Abitibi Company.

I think you will admit that, so long as the Abitibi Company is willing to take over contracts, it should not be called upon to pay any cash differential. The mills supplying the Canadian newspapers cannot expect to have their cake and eat it ; in other words, they cannot retain the contracts and still exact a money indemnity from mills that are prepared to relieve them of such contracts.

20 The Abitibi Company has always been willing to furnish its quota of paper to the Canadian newspaper publishers, and while it agreed, in view of the large reduction which most of the other mills agreed to, that it would pay the differential up to the first of February last, it did so without prejudice and simply to meet the other manufacturers in a friendly way. From the first day of February, however, it stands upon its legal position and will not make any further payments of cash differential.

Yours faithfully,

VICTOR E. MITCHELL.

Part Exhibit 1.

(Plaintiff's Exhibit.)

Order-in-Council.

30

P. C. 1628.

At the Government House at Ottawa,
 Tuesday, the 2nd day of July, 1918.

Part Ex. 1.
 Order-in-
 Council.
 2nd July,
 1918.

Present : His Excellency
 The Governor-General in Council.

40 His Excellency the Governor-General in Council on the recommendations of the Minister of Finance, is pleased to approve and doth hereby approve the accompanying Order issued on the 27th day of June, 1918, by R. A. Pringle, Controller of Newsprint Paper, etc., fixing prices, etc., to prevail from the 1st day of July, 1918, to the 1st day of September, 1918.

The foregoing is a true copy of original on record in the Privy Council Office.

"RUDOLPHE BOUDREAU,"

Clerk of the Privy Council

*In the
Supreme
Court of
Ontario.*

Exhibits.
Part Ex. 1.
Order of
Controller
Pringle.
6th August,
1918.

Part Exhibit 1.
(Plaintiff's Exhibit.)
Order of Controller Pringle.

WHEREAS His Excellency the Governor-General in Council with a view to ensure to publishers of Canadian Newspapers an adequate supply of newsprint paper at reasonable prices and under and by virtue of the powers in that behalf conferred by section 6 of the War Measures Act, 1914, or otherwise vested in the Governor-General in Council, was pleased to make certain regulations respecting the price, sale, control, storage, distribution, export and transport, etc., of newsprint paper in sheets or rolls and by Order-in-Council dated the 16th day of April, 1917, the Minister of Customs was given authority among other things to make such Order or Orders as he might deem necessary or advisable for the distribution and delivery of newsprint paper in sheets or rolls by the manufacturers to the publishers, and to fix the quantity and price of newsprint paper in sheets or rolls furnished or to be furnished to the publishers in Canada by the manufacturers from the 1st of March, 1917, to the 1st of June, 1917. 10

AND WHEREAS by subsequent Orders in Council of May 25th, 1917, and September 1st, 1917, the time was extended and the Honourable the Minister of Customs under the authority given him by the Order-in-Council of the 16th day of April, 1917, and the further Order-in-Council extending the time, did from time to time make orders fixing the quantity and price of newsprint paper in sheets or rolls to be furnished by the manufacturers to the publishers up to and including the 20th day of November, A.D. 1917. And in all Orders made by the Honourable the Minister of Customs there was the following provisions :— 20

AND WHEREAS under existing conditions the supply of newsprint paper to Canadian publishers is not proportionately distributed between them, and by reason of the fact that the prices fixed are lower than the manufacturers are receiving from export business, I do order that each manufacturer should bear his due proportion of the cost so entailed in complying with above, and that if arrangements are not made between the manufacturers for the pooling of such cost, and for adjustment between themselves in proportion to the percentage of their output supplied to Canadian publishers that an accounting be made, and the manufacturer or manufacturers who have supplied a greater percentage of Canadian tonnage than properly attributable to them shall be paid by the other manufacturers sufficient to place them in the same position as the manufacturer or manufacturers who have not supplied their proper percentage of paper to the Canadian publishers. 30

AND WHEREAS by Order-in-Council dated the 3rd day of November, 1917, I was appointed Commissioner and Controller with full power to make such order or orders as I might deem necessary or advisable for the distribution and delivery of newsprint, etc., and to carry out all the terms and conditions of the different Orders made from time to time by the Honourable the Minister of Customs. 40

AND WHEREAS acting under the authority of said Order-in-Council of 3rd November, 1917, I have made Orders from time to time fixing price of newsprint subject to approval of the Governor-in-Council which said orders have been approved by the Governor-in-Council and in all such Orders there was a provision in regard to the protection of the manufacturer or manufacturers who supplied a greater percentage of Canadian tonnage than properly attributable to them, similar in terms to the Order made by the Honourable the Minister of Customs.

AND WHEREAS The Fort Frances Pulp & Paper Company, Limited, have in obedience to my Orders supplied a very much larger proportion of paper to Canadian publishers than properly attributable to them, and are entitled to the differential as set out in the report of G. T. Clarkson, Accountant, said differential covering the months of March, April, May, June, July, August, September, October, November and December for the year 1917, and which is as follows :—

	Abitibi Pulp & Paper Co., Ltd.....	\$10,638.52
	J. R. Booth.....	5,876.13
	Brompton Pulp & Paper Company.....	7,018.46
	Donnacona Paper Company, Limited.....	10,814.14
20	Price Brothers & Company, Limited.....	8,412.96
	Ontario Paper Co., Ltd.....	8,969.20
	Spanish River Pulp and Paper Mills.....	33,875.27
	The St. Maurice Paper Co., Ltd.....	11,016.31

all of which is shown on the detailed statement hereunto attached to this my Order.

I Direct and Order that the above amounts together with interest at the rate of five per cent. per annum be paid by the above-named Companies to The Fort Frances Pulp & Paper Co., Ltd., within thirty days from the date hereof.

The following statement shows that net amount, including interest which will be required to be paid by each of the Companies referred to :

	PRINCIPAL	INTEREST	TOTAL
Abitibi Pulp & Paper Co.....	\$10,638.52	\$ 509.44	\$11,147.96
J. R. Booth.....	5,876.13	287.16	6,163.29
Brompton Pulp & Paper Co..	7,018.46	357.34	7,375.80
Donnacona Paper Co., Ltd.	10,814.14	517.98	11,332.12
Ontario Paper Co., Ltd.....	8,696.20	394.60	9,090.80
Price Bros. & Co., Ltd.....	8,412.96	355.57	8,768.53
Spanish River Pulp Co.....	33,875.27	1,514.27	35,389.54
40 St. Maurice Paper Co.....	11,016.31	513.36	11,529.67
	<hr/>	<hr/>	<hr/>
	\$96,347.99	\$4,449.72	\$100,797.71

I recommend that in the event of any of the above named Companies refusing to comply with this Order that no license issue to such Company or Companies so refusing or neglecting to comply with this order for export of paper.

*In the
Supreme
Court of
Ontario.*

This Order is subject to the approval of the Governor-in-Council.
DATED at Ottawa this 6th day of August, A.D., 1918.

“R. A. PRINGLE,”

Approved by Order-in-Council P.C. 1963.

Controller.

Exhibits.
Part Ex. 1.
Order of
Controller
Pringle.
6th August,
1918.

Exhibit 30.
(Defendants' Exhibit.)
Letter J. R. Booth to R. A. Pringle.

—continued.

Ottawa, August 10th, 1918.

Ex. 30.
Letter, J. R.
Booth to
R.A. Pringle,
10th August,
1918.

R. A. Pringle, Esq., K.C.,
Controller of Newsprint Paper,
122 Wellington Street,
Ottawa.

10

Dear Sir,—

I have received your letter of the 8th instant with enclosure of copy of draft order-in-council *re* differential claimed by the Fort Frances Company. I have already tendered to the latter my cheque for an amount which I consider to be a fair settlement of any claim they may have, but they have refused such settlement and returned my cheque, although the amount was computed on the basis, which proved acceptable to all the other receiving mills. I cannot see my way to increase my offer, and, in any circumstances, even at the risk of being refused an export license for my paper, I should resolutely decline to pay the demand of the Fort Frances Company, as I consider it unfair and unreasonable. 20

I also desire to say that I cannot sell my newsprint paper to Canadian consumers at \$2.85 per 100 lbs. longer than September first next, when I understand your present order expires. It is costing me more than \$2.85 per 100 lbs. to manufacture, and I cannot believe that any Government would try to force me to sell my product at a loss. I sincerely trust, therefore, that you will not find it necessary to extend again the present price, more especially as the manufacturers were given to understand last winter that the interim price made by you in February would not be continued after the end of April, when a final price was to be set. 30

It is possible that the other Canadian manufacturers may take the same stand, but, in any case, I have made up my mind to adhere to the foregoing, even if I have to stand alone.

Yours truly,

“J. R. BOOTH.”

JRB:PM

Part Ex. 24.
Minutes of
Meeting of
News Print
Manufacturers.
14th August,
1918.

Part Exhibit 24.
(Defendants' Exhibit.)
Minutes of Meeting of Newsprint Manufacturers

40

Held in Ottawa, 14th August, 1918.

Present : Messrs. P. B. Wilson, J. A. Bothwell, F. J. Campbell, Alex. McLaurin, J. N. McRae, H. I. Thomas, Millen & Taylor, Sir William

Price ; also Messrs. Geo. H. Montgomery, Gordon McDougall, J. F. Orde, and Victor Mitchell.

On motion of Mr. F. J. Campbell, Mr. P. B. Wilson took the chair. Mr. Geo. H. Montgomery then outlined to the manufacturers their position under the drafted order-in-council and pointing out that Messrs. Sharp & Clarkson had last April, 1918, arrived at an agreement respecting the differential for the months of Mar./Sept., 1917, and the company whom the present proposed order-in-council was to benefit had not raised any objection to the amount.

Mr. Dahlberg, however, now takes the stand that they are entitled to
10 \$15.00 differential plus a rebate on duty of \$3.18 per ton.

The meeting then adjourned.

(The official record of the meeting held before Sir Thomas White in Ottawa on same day, 14th August, 1918, will also form part of these minutes).

*In the
Supreme
Court of
Ontario.*

Exhibits.
Minutes of
Meeting of
News Print
Manufacturers.
14th August,
1918.

—continued.

Part Exhibit 1.
(Plaintiff's Exhibit.)
Order-in-Council.
P.C. 1963

AT THE GOVERNMENT HOUSE AT OTTAWA
Friday, 23rd day of August, 1918.

20 Present : His Excellency

The Governor-General in Council :

His Excellency the Governor-General in Council, on the recommendation of the Minister of Finance, is pleased to approve the annexed Regulation issued by the Controller of News Print, Paper, etc., on the 6th day of August, 1918, and the same is hereby approved accordingly.

“E. J. LEMAIRE,”

Clerk of the Privy Council.

Part Ex. 1.
Order-in-
Council.
23rd August,
1918.

Part Exhibit 1.
(Plaintiff's Exhibit.)
Order of Controller Pringle.

30

WHEREAS by Order-in-Council dated 3rd November, 1917, I am authorized and empowered to make such order or orders as I may deem necessary or advisable for the distribution of paper by the manufacturers to the publishers, and I am further empowered to fix prices (such prices to be subject to the approval of the Governor-in-Council).

AND WHEREAS it has become necessary to fix prices to prevail from the date of the expiration of my order of the 27th day of June, 1918, fixing prices from 1st July to 1st September, 1918.

40 NOW THEREFORE under and by virtue of the powers given to me by the said Order-in-Council of 3rd November, 1917, I do order and direct that the manufacturers of newsprint paper do supply to the newspapers throughout Canada, newsprint paper in rolls at the rate of \$2.85 per 100 pounds, in carload lots ; \$3.25 per 100 lbs. in sheets in carload lots, and \$3.50 per 100 pounds

Part Ex. 1.
Order of
Controller
Pringle.
30th August,
1918.

*In the
Supreme
Court of
Ontario.*

Exhibits.
Part Ex. 1.
Order of
Controller
Pringle.
30th August,
1918.

—continued.

in sheets in less than carload lots of two tons and over, f.o.b. the mills of the various manufacturers for a period of one month from the 1st day of September, 1918, to the 1st day of October, 1918, subject to the condition that if the price fixed by this order is too high or too low there will be a revision of price from May 1st, 1918, and the manufacturers or publishers will be required to pay into such chartered bank as may be designated by me any sum or sums of money which may be found to be due by them owing to such revision.

AND WHEREAS under existing conditions the supply of newsprint paper to Canadian publishers is not proportionately distributed between them, and by reason of the fact that the prices fixed are lower than the manufacturers are receiving from export business, I DO ORDER that each manufacturer should bear his due proportion of the cost so entailed in complying with above, and if arrangements are not made between the manufacturers for the pooling of such cost and for adjustment between themselves in proportion to the percentage of their output supplied to Canadian publishers, then an accounting be made and the manufacturer or manufacturers who have supplied a greater percentage of Canadian tonnage than properly attributable to them shall be paid by the manufacturer or manufacturers sufficient to place them in the same position as the manufacturer or manufacturers who have not supplied their proper percentage of paper to the Canadian publishers. 10 20

I DO FURTHER ORDER that the manufacturers shall when called upon furnish accurate figures showing the total tonnage of newsprint paper produced and shipped by them during such period as directed and the tonnage so produced and shipped for the Canadian market and export market respectively together with the prices f.o.b. at the mills both for paper for export and paper for Canadian trade.

THIS ORDER is subject to approval by the Governor-in-Council and is without prejudice to such adjustments in price as may require to be made under order of January 21st, 1918, as varied by order-in-council dated February 18th, 1918. 30

DATED AT OTTAWA this 30th day of August, A.D. 1918.

(Sgd.) R. A. PRINGLE,
Controller.

Ex. 26.
Letter, F. W.
Sharp to
R. A. Pringle
4th September,
1918.

Exhibit 26.

(Plaintiff's Exhibit.)

Letter F. W. Sharp to R. A. Pringle.

SHARP, MILNE & Co.

Montreal, September 4th, 1918. 40

R. A. Pringle, Esq.,
Commissioner of Newsprint,
Ottawa, Ont.

Dear Mr. Pringle :—

RE : NEWSPRINT DIFFERENTIAL.

I have before me a copy of the evidence given at the hearing held at

Ottawa the 14th of last month before a sitting of a Committee of the Privy Council with Sir Thos. White acting as Chairman.

On page 23 of the record your own evidence reads as follows :—

“I ascertained the loss sustained by the Fort Frances Pulp & Paper Company owing to their obeying my orders. When I got these figures from Mr. Clarkson I had them submitted to Mr. Sharp. I spoke to Mr. Maclaren, Controller of the Fort Frances Company and I asked him to go to Montreal and interview Mr. Sharp and he came back and said that everything was satisfactory so far as Mr. Sharp was concerned.”

10

There is some mistake in regard to what Mr. Maclaren told you. I do not recall having had the figures submitted to me either by Mr. Maclaren or anyone else so that I could not have very well expressed myself as satisfied with the same.

Yours truly,

(Signed) F. W. SHARP.

Part Exhibit 1.
(Plaintiff's Exhibit.)
Order-in-Council

*In the
Supreme
Court of
Ontario.*
—
Exhibits.
Ex. 26.
Letter, F. W.
Sharp to
R. A. Pringle
4th Septem-
ber, 1918.
—continued.

Part Ex. 1.
Order-in-
Council.
5th Septem-
ber, 1918.

P.C. 2162.

20

At the Government House at Ottawa,
Thursday, the 5th day of September, 1918.

Present : His Excellency

The Deputy Governor-General in Council.

His Excellency the Deputy Governor-General in Council on the recommendation of the Minister of Finance, is pleased to approve the annexed Regulation issued by the Controller of Newsprint Paper, etc., on the 30th day of August, 1918, and the same is hereby approved accordingly.

The foregoing is a true copy of original on record in the Privy Council Office.

30

“RUDOLPHE BOUDREAU,”

Clerk of the Privy Council.

Exhibit 42.
(Defendants' Exhibit.)
Letter R. A. Pringle to J. R. Booth.

Ex. 42.
Letter, R. A.
Pringle to
J. R. Booth.
5th Septem-
ber, 1918.

OFFICE OF
COMMISSIONER AND CONTROLLER, NEWS PRINT, BOOK PAPER, ETC.

Robert A. Pringle, K.C.,
COMMISSIONER AND
CONTROLLER

COUNSEL
H. A. STEWART, K.C.,
BROCKVILLE, ONT.

J. R. Booth, Esq.,
Ottawa, Ont.

411 Union Bank Building,
Ottawa, Ont., Sept. 5-18.

40

Dear Sir :—

I desire to thank you for your kindness in granting me an interview yesterday afternoon. I quite appreciate everything you said in regard to the

*In the
Supreme
Court of
Ontario.*

Exhibits.
Ex. 42.
Letter, R. A.
Pringle to
J. R. Booth.
5th Septem-
ber, 1918.

—continued.

newsprint situation, and the difficulties the manufacturers are encountering owing to the attitude taken by the Government.

My position, as I think you know, has been a difficult one. I have felt for some time that the manufacturers have not been receiving the consideration to which they are entitled. When my order was made advancing the price to \$57.00 per ton I could not see any reason why the full amount should not go to them. However, the Committee of the Privy Council who dealt with the matter thought otherwise and directed a portion of this amount to be paid into the banks, where it now remains notwithstanding that I have recommended it should be paid out to the manufacturers. 10

I had very strong hopes of having a hearing in August to definitely settle the price to prevail for a period of two or three months, but unfortunately I was unable to proceed owing to Mr. Clarkson not giving me complete statements of costs at the various mills. I had Mr. Taylor, of Mr. Clarkson's office, on the telephone yesterday, and he assures me that everything will be in my hands by the 9th instant, and I purpose holding a meeting on Thursday, the 12th instant, and going into all evidence as to costs.

It is not necessary for me to assure you that when this evidence is all in I will make an order based on the evidence which will be absolutely fair to all interested parties. After seeing you yesterday I saw Sir Thomas White, Minister of Finance, and had a full discussion with him of the situation. I have assured him that you did not desire either to embarrass myself as Commissioner or the Government, but that you felt very strongly that the time had arrived when a price should be fixed that would do justice to all. 20

I may say to you that Sir Thomas White feels the same way and he appreciates very much your agreeing to carry on so that there will be no embarrassment to either myself or the Government.

I would ask you to continue supplying the Ottawa papers under my order until 1st October. I have already told you that if on the hearing of the evidence it appears that the price at which you have been supplying the publishers since 1st July is not a fair and reasonable price,—then I will make any price I fix to relate back to the 1st of July. 30

Thanking you again for your kindness in granting me the interview, and with renewed assurance of my earnest desire to see that all parties interested in the controversy are treated with absolute fairness.

Yours very truly,

“R. A. PRINGLE.”

Part Exhibit 24.

(Defendants' Exhibit.)

Minutes of Conference of Newsprint Section C. P. & P. A. 40

Held at the Chateau Laurier, Ottawa, Wednesday, Sept. 11th, 1918.

Present : Messrs. Booth, Thomas, McKee, Bothwell, Sabbaton, P. B. Wilson, Millen, Coleman, Montgomery, Mitchell, Macdougall, Henderson, Orde, Sharp.

Part Ex. 24.
Minutes of
Conference
of News
Print
Section
C.P. & P.A.
11th Septem-
ber, 1918.

Mr. Montgomery called the meeting to order, at 10.30 o'clock, and stated that the object was to discuss a course of action in connection with the adjourned hearing before Paper Controller Pringle set for Sept. 12th.

Mr. Montgomery read a telegram sent by Sir William Price to Controller Pringle to the effect that Price Bros., Ltd., had withdrawn from the investigation and would cease to supply paper at the present government price in Canada on October 1st.

Mr. Montgomery gave the details of a conference held between Sir Thomas White, Minister of Finance, and himself., in Montreal, on Sept 9th. He said that Sir Thomas had suggested that if the manufacturers were dissatisfied with the Government's action in confirming Controller Pringle's order relative to the claims of the Fort Frances Pulp & Paper Company, in connection with the differential awards, they might move for a re-hearing before Mr. Pringle.

Mr. Montgomery also said that the Minister of Finance had told him that he had been interviewed by Mr. Woods, publisher of the Calgary Herald, and former president of the Canadian Press Association, who had said that the newspaper publishers would consider a price of \$3 to \$3.05 per 100 lbs. for newsprint paper if they could be assured of a six months' contract on that basis.

A long discussion followed on the Fort Frances award, but no definite action resulted.

Mr. Henderson suggested that the manufacturers move before Mr. Pringle for the acceptance of the evidence taken before the Federal Trade Commission as part of the Canadian record.

The suggestion met with general acceptance.

It was agreed that Mr. Montgomery should present the case for the manufacturers before Mr. Pringle at the adjourned hearing.

The conference adjourned until 2.30 o'clock.

30

At 2.30 the conference resumed.

A general discussion on the forthcoming hearing was indulged in. It was the sense of those present that everything possible should be done to expedite the investigation and bring it to a close.

Mr. Montgomery told of a joint conversation he had had during the noon adjournment with Mr. Pringle and Mr. P. D. Ross, during which the question of a conference between representatives of the publishers and those of the manufacturers arose. Mr. Ross had said that he would call his committee together, by telegraph, to meet in Ottawa the following morning.

Mr. Sharp stated that he proposed to send out assessment notices to the various manufacturers affected for amounts due on differential on the basis of \$60 a ton, covering the period October 1st, 1917, to January 31st, 1918, payments to be made on the basis of 50% of \$12.50.

The conference adjourned indefinitely at 4 o'clock.

*In the
Supreme
Court of
Ontario.*

Exhibits.
Part Ex. 24.
Minutes of
Conference
of News
Print
Section
C.P. & P.A.
11th Septem-
ber, 1918.

—continued.

*In the
Supreme
Court of
Ontario.*

Exhibits.
Part Ex. 1.
Order-in-
Council.
16th Sep-
tember, 1918

Part Exhibit 1.
(Plaintiff's Exhibit.)
Order-in-Council.

P.C. 2270.

AT THE GOVERNMENT HOUSE AT OTTAWA,
Monday, the 16th September, 1918.

Present : His Excellency

The Governor-General in Council.

WHEREAS by the Order-in-Council of April 16th, 1917 (P.C. 1059), the 10
Order-in-Council of April 16th, 1917 (P.C. 1060), the Order-in-Council of
April 21st, 1917 (P.C. 1109), and the Order-in-Council of November 3rd, 1917
(P.C. 3122), His Excellency the Governor-in-Council was pleased to make
regulations for controlling commerce in paper, and to appoint a Commissioner
and Controller for carrying those regulations into effect ;

AND WHEREAS the Commissioner and Controller is empowered by the
said Orders-in-Council to fix the prices of paper and to impose other con-
ditions upon commerce therein ;

AND WHEREAS it is expedient to extend the provisions of the said Orders-
in-Council in manner hereinafter appearing ;

THEREFORE, His Excellency the Governor-General in Council, on the 20
recommendation of the Right Honourable the Prime Minister, is pleased,
under the authority of the War Measures Act, 1914, to order, and it is hereby
ordered as follows :

1. There shall be a tribunal, which shall be called the Paper
Control Tribunal (hereinafter referred to as the Tribunal), which
shall be composed of three judges selected from the Superior Courts
of the Provinces.

2. An appeal shall lie to the Tribunal from any decision or order
made by the Commissioner and Controller under the authority of 30
the said Orders-in-Council, and the Tribunal shall have power to
review the whole proceeding relating thereto, and to vary or modify
any such decision or order in such manner as it may consider appro-
priate to carry out the intent of the said Orders-in-Council ; but any
decision or order of the Commissioner and Controller shall be obser-
ved and complied with pending the disposition of any appeal therefrom.

3. Such appeal shall lie at the instance of any party to a pro-
ceeding before the Commissioner and Controller.

4. Notice of appeal in respect of any decision or order heretofore
made, shall be given within thirty days of the approval of these 40
regulations or in respect of any decision or order hereafter made,
within thirty days of the rendering of such decision or order.

5. The Tribunal may at its discretion in connection with any
proceeding under review, receive or call for additional evidence or
matter to that received by the Commissioner and Controller, and for
this purpose the Tribunal shall be vested with the powers of Com-
missioners under the Inquiries Act, Part 1, Chapter 104, Revised

Statutes of Canada, and the Act in amendment thereof, Statutes of Canada, 2 George V, Chapter 28.

6. The Tribunal may make such rules governing procedure on appeal as it may deem necessary.

7. The decisions and orders of the Tribunal shall be final.

8. The provision of the said Order-in-Council of November 3rd, 1917 (P.C. 3122), to the effect that the prices of paper as fixed by the Commissioner and Controller shall be subject to the approval of the Governor-in-Council, is hereby revoked.

10

9. An appeal shall lie to the Tribunal from the Order of the Commissioner and Controller, dated August 6th, 1918, respecting differentials, notwithstanding the approval thereof by the Order-in-Council of August 23rd, 1918 (P.C. 1963).

(Sgd.) RUDOLPHE BOUDREAU,
Clerk of the Privy Council.

*In the
Supreme
Court of
Ontario.*

Exhibits.
Part Ex. 1.
Order-in-
Council.
16th Sep-
tember, 1918

—continued.

Part Exhibit 1.
(Plaintiff's Exhibit.)
Order-in-Council.

Part Ex. 1.
Order-in-
Council.
19th Sep-
tember, 1918

20

P.C. 2310.

Certified copy of a Report of the Committee of the Privy Council, approved by His Excellency the Governor-General, on the 19th September, 1918.

The Committee of the Privy Council, on the recommendation of the Right Honourable the Prime Minister, advise that the Honourable Mr. Justice William E. Middleton, Toronto, the Honourable Mr. Justice Albert S. White, Sussex, New Brunswick, and the Honourable Mr. Justice Charles Archer, Montreal, be appointed the members of "The Paper Control Tribunal," constituted by Order-in-Council, dated 16th September, 1918 (P.C. 2270).

30

RUDOLPHE BOUDREAU,
Clerk of the Privy Council.

Exhibit 17.

(Defendants' Exhibit.)

Award of United States Circuit Court Judges.

The full text of the judgment of the U.S. Circuit Court Judges is as follows:
1. Our jurisdiction rests solely on the consent of the signatory parties;
40 we act as arbitrators only.

2. The principles applied by courts of authority, in regulating rates for public utilities, should be followed in this proceeding as nearly as possible.

3. In valuing the capital investment used in producing newsprint, prices before the present European War should be adopted.

4. We are not informed as to the investment or value of the plant of The Gould Paper Co. The Brompton Co. produces little newsprint and that under abnormal conditions. Therefore these manufacturers must con-

Ex. 17.
Award of
United
States
Circuit
Court
Judges.
25th
September,
1918.

*In the
Supreme
Court of
Ontario.*

Exhibits.
Ex. 17.
Award of
United
States
Circuit
Court
Judges.
25th
September,
1918.

—continued.

form to the fair maximum price fixed for the other eight parties, and based upon the evidence concerning said eight businesses.

5. In ascertaining capital investment, *i.e.*, the present value of property actually used in paper production, we exclude timber lands whether owned or leased, also undeveloped or potential water power, *i.e.*, water rights; but include mill and town sites, terminal facilities, and improvements on or development of natural water powers, together with any investment by way of actual payment for power rights. The foregoing allowed elements of capital value are the “tangibles.”

6. Going concern value and working capital are proper additions to 10
“tangibles.”

7. In ascertaining manufacturing cost, no allowance for stumpage, in respect of wood obtained from leased Canadian Crown Lands, is made, such stumpage not representing any actual disbursements, nor the partial exhaustion of property for which payment (on a stumpage basis) was ever made.

In respect, however, of wood cut on owned land, such stumpage charge is proper, and \$2 per cord is less than the market rate.

8. Owing to more costly wood, and higher expenses for labor, taxes, and freight charges, the typical mill in the United States cannot, with equal skill in management, produce paper as cheaply as a similar mill in Canada; such 20
disadvantage means an additional cost per ton of paper of slightly more than \$5.

9. The Spanish River Co. is an exception to the Canadian manufacturers, solely because of a high and wholly unexplained wood cost.

10. The maximum selling price fixed for all the signatories should be based on an average of the reasonable capital investments, and fair manufacturing costs of the signatory parties—other than the Gould and Brompton Companies.

11. It is not advisable to make any special rate, by way of favor, for manufacturers meeting with special but temporary misfortune. The high 30
manufacturing cost of The Minnesota & Ontario Co., due to drought, and the serious loss of the Abitibi Co. ascribed to sabotage, are business accidents, which would not relieve them from the competition of more fortunate rivals in ordinary times, and under a fixed maximum rate they must still meet competition.

12. We consider ourselves bound by agreement of parties that the annual production of each manufacturer is to be taken as the proven daily capacity of plant multiplied by 300 yearly working days.

Therefore, we disregard the fact also proven that the output of the signatory parties for 1917, was 5—6/10 per cent. over the assumed production. 40

13. The fair present value, as depreciated and at pre-war prices of an integrated paper mill plant, per ton of daily capacity, is :—

Tangibles.....	\$25,000
Going concern value 10%.....	2,500
Working capital.....	12,000

Total..... \$39,500

14. A fair maximum return on said capital in a business of the hazards proven is 15% per annum.

15. The actual cost of making one ton of newsprint paper in an average Canadian mill, out of recently gathered wood and without any allowance for stumpage not actually paid, was not less than \$48 on or about April 1st, 1918. There is no evidence or suggestion that any element of cost has since then diminished.

10 The same ton of paper would have cost, if made in the United States, about \$5 more ; and the average cost, for the eight manufacturers considered, is more than \$50 per ton.

*In the
Supreme
Court of
Ontario.*
—
Exhibits.
Ex. 17.
Award of
United
States
Circuit
Court
Judges.
25th
September,
1918.

CONCLUSION.

Applying the foregoing findings to a plant having a daily capacity of 100 tons,—

The capital invested is \$39,500 x 100.....	\$3,950,000
The fair annual return, 15%.....	592,500
To be obtained by selling all of an annual production of 30,000 tons, or a profit per ton of.....	\$19.75
Add to this average cost of manufacture, say.....	50.25
	\$70.00

20 should be the maximum selling price of one ton of newsprint in rolls f.o.b. mill.

It is therefore ordered that the finding or award of the Federal Trade Commission be varied so as to read as follows :—

The fair and reasonable maximum prices for each of the ten signatory companies for sales of Standard newsprint paper to customers in the United States, are :—

Roll news in car lots, f.o.b. mill.....	\$3.50 per cwt.
Roll news in less than car lots, f.o.b. mill	3.62½ per cwt.
Sheet news in car lots, f.o.b. mill.....	3.90 per cwt.
Sheet news in less than car lots, f.o.b. mill	4.02½ per cwt.

30 The Minnesota & Ontario Company is directed to adjust its outstanding settlements for the months of January, February and Marc , 1918, at not over the maximums hereby fixed.

In no other respect do we vary the award of the Federal Trade Commission.

To which award executed by us as Arbitrators in quadruplicate we have set our hands and seals this 25th day of September, 1918.

Part Exhibit 1.
(Plaintiff's Exhibit.)

Order of Controller Pringle.

40 WHEREAS by Order-in-Council dated 3rd November, 1917, I am authorized and empowered to make such order or orders as I may deem necessary or advisable for the distribution of paper by the manufacturers to the publishers, and I am further empowered to fix prices :

Part Ex. 1.
Order of
Controller
Pringle.
26th
September,
1918.

*In the
Supreme
Court of
Ontario.*

Exhibits.
Part Ex. 1.
Order of
Controller
Pringle.
26th
September,
1918.

—continued.

AND WHEREAS it has become necessary to fix prices to prevail from the date of the expiration of my Order of the 30th day of August, 1918.

AND WHEREAS in my previous orders there was a provision that if the price fixed was too high or too low there would be a revision of price from May 1st, 1918, and the manufacturers or publishers would be required to pay into such chartered bank as might be designated by me, any sum or sums of money which may be found to be due by them owing to such revision.

NOW THEREFORE under and by virtue of the powers given to me by the said Order-in-Council of 3rd November, 1917, I DO ORDER AND DIRECT that the manufacturers of newsprint paper within the Dominion of Canada (with the exception of the Fort Frances Pulp & Paper Co Ltd.) do supply to the newspapers throughout Canada, newsprint paper in rolls at the rate of \$3.45 per 100 lbs. in carload lots; \$3.25½ per 100 lbs. roll news in less than car load lots ; sheet news in car lots at \$3.80 per 100 lbs.; Sheets in less than car load lots of two tons and over \$3.92½ per 100 lbs—all to be f.o.b. at the mills of the various manufacturers, for a period of Two MONTHS from the first day of October, 1918, to the First day of December, 1918, subject to the condition that if the prices fixed by this order are any time found upon investigation to be either too high or too low, there will be a revision of price from July 1st, 1918, and in the event of such revision the manufacturers or publishers will be required to pay into such chartered banks as may be designated by me, any sum or sums of money as may be found to be due by them owing to such revision.

The Fort Frances Pulp & Paper Co., Ltd, are entitled to the following prices :—Roll news in car lots at \$3.65 per 100 lbs. f.o.b. mill ; roll news in less than carload lots \$3.80 per 100 lbs. f.o.b. the mill. These prices are, however, subject to reduction in the event of the Fort Frances Pulp prices are, however, subject to reduction in the event of the Fort Frances Pulp & Paper Co., Ltd., being relieved of payment of duty on sulphite imported into Canada, and also in the event of present freight rates on ground wood being reduced, and are subject to revision clause set out above.

The maximum commission for jobbers or other middlemen selling newsprint obtained from any of the manufacturers of newsprint in Canada shall be as follows :—15c. per 100 lbs. on carload lots ; 40c. per 100 lbs. on less than carload lots ; 60c. per 100 lbs. in less than ton lots. The commission shall be added to the actual cost of paper at the mill or at the warehouse. The cost at the warehouse will be the net mill price plus freight cartage and other reasonable necessary expenses incurred in getting the paper to the warehouse. In billing customers these items and the commission shall be stated separately.

All of above prices shall date from 1st July, 1918, and the publishers are required to pay to the manufacturers the difference between the prices fixed in my prior orders and the prices fixed in this order from the 1st day of July, 1918, up to the present date.

All manufacturers will be required to supply paper to publishers as directed by myself as Controller in order to receive the benefit of this Order.

I DO FURTHER ORDER that the manufacturers shall, when called upon, furnish accurate figures showing the total tonnage of newsprint paper pro-

duced, sold and shipped for the Canadian market and export market respectively, together with the prices obtained f.o.b. the mills.

ANY parties desiring to appeal from this Order to the Paper Control Tribunal will serve notice of such intention to appeal within thirty days of the date hereof.

DATED AT OTTAWA this 26th day of SEPTEMBER, A.D. 1918.

(Sgd.) R. A. PRINGLE,
Controller.

*In the
Supreme
Court of
Ontario.*

Exhibits.
Part Ex. 1.
Order of
Controller
Pringle
26th
September,
1918.

10

Part Exhibit 1.

(Plaintiff's Exhibit.)

Order-in-Council.

P.C. 2405.

—continued.

Part Ex. 1.
Order-in-
Council.
30th
September,
1918.

CERTIFIED COPY OF A REPORT OF THE COMMITTEE OF THE PRIVY COUNCIL,
APPROVED BY HIS EXCELLENCY THE GOVERNOR-GENERAL ON
THE 30TH SEPTEMBER, 1918.

The Committee of the Privy Council have had before them a Report, dated 26th September, 1918, from the Minister of Finance, stating that under the provisions of the Order-in-Council of the 18th February, 1918 (P.C. 408), approving of the Order of the Commissioner and Controller of Newsprint, dated 21st January, 1918, fixing the price at which newsprint is to be supplied to the newspapers throughout Canada by the manufacturers thereof from 1st February to 1st May, 1918, it was provided that the sum of \$2.50 only per hundred pounds, being the fixed price by prior orders, be paid to the manufacturers and that the additional sum of 35 cents per hundred pounds referred to in the Order of the Commissioner of the 21st January, 1918, be paid by the purchasers of newsprint in Canada from the manufacturers thereof, and as purchased, to the Controller, R. A. Pringle, Esq., K.C., and by him deposited in a chartered bank or banks as may be designated by him, the said sum to remain in such bank or banks until such time as the Commissioner's final report is made and approved by Your Excellency in Council, when the said sum or sums shall be refunded to the publishers or to the manufacturers, or part to one and part to the other as the case may be, in accordance with the final order of the Commissioner when made.

The Commissioner now represents that there is on deposit in the banks \$24,045.48 to which the Fort Frances Pulp & Paper Company, Limited, is, in view of his recent order as to the price of newsprint, entitled, and he states that there is no reason why this money should not be paid over to the Company.

The Minister, on the report of the Commissioner and Controller of Newsprint, recommends that authority be given for the payment to the Fort Frances Pulp & Paper Company, Limited, of the said amount, namely, \$24,045.48.

The Committee concur in the foregoing recommendation and submit the same for approval.

F. K. BENNETS,
Asst. Clerk of the Privy Council.

*In the
Supreme
Court of
Ontario.*

—
Exhibits.
Part Ex. 3.
Order-in-
Council,
No. 2465.
4th October,
1918.

Part Exhibit 3.

(Defendants' Exhibit.)

Order-in-Council No. 2465.

AT THE GOVERNMENT HOUSE AT OTTAWA,
Friday, 4th day of October, 1918.

Present : His Excellency
The Governor-General in Council.

His Excellency the Governor-General in Council, under the provisions of Section 286 of the Customs Act, is pleased to make the following Regulations respecting drawback of Customs duty on liquid sulphite pulp used on and after the First day of July, One Thousand Nine Hundred and Eighteen, in the manufacture of newsprint paper, and the same are hereby made and established accordingly : 10

REGULATIONS.

1. When imported liquid sulphite pulp, on which Customs duties have been paid, used on and after the First day of July, One Thousand Nine Hundred and Eighteen, in the manufacture of newsprint paper there may be paid a drawback of ninety-nine per centum of all the duties paid on liquid sulphite pulp so used.

Provided, however, that such drawback shall not be paid unless the duties have been paid on liquid sulphite pulp so used as aforesaid within one month from the date when the newsprint paper was manufactured. 20

2. The said drawback may be paid to the manufacturer of newsprint paper subject to the following conditions, viz.:—

(a) The quantity of liquid sulphite pulp used and amount of duties paid thereon shall be ascertained ;

(b) Satisfactory evidence shall be furnished in respect to the manufacture in Canada of the newsprint paper.

3. The claim for drawback shall be verified under oath before a Collector of Customs to the satisfaction of the Minister of Customs, in such form as he shall prescribe, within one year after the manufacture of the newsprint paper. The Minister may also require in any case the production of such further evidence, in addition to the usual averments, as he deems necessary to establish the bona fides of the claim. 30

E. J. LEMAIRE,

Clerk of the Privy Council

(SEAL)

Part Ex. 24.
Minutes of
Meeting of
News Print
Section
C.P. & P.A.
8th October,
1918.

Part Exhibit 24.

(Defendants' Exhibit.)

Minutes of a Meeting of Newsprint Section, C. P & P. A.

Held at the Ritz-Carlton Hotel, Montreal, Oct. 8th, 1918. 40

Present : Messrs. Biermans, F. J. Campbell, Victor E. Mitchell, George M. McKee, H. I. Thomas, John F. Taylor, George Millen, F. A. Sabbaton, A. McLaurin, Sir William Price, Percy B. Wilson and Coleman, members ; and Messrs. George H. Montgomery, K.C., J. F. Orde, K.C., George F. Henderson, K.C., E. Martin, and

F. W. Sharp.

Mr. George M. McKee presiding.

The meeting was called to order at 9.30 o'clock.

The minutes of the previous meeting were read and approved.

Upon the Chairman's request, Mr. Montgomery gave account of developments since the announcement of the new price for newsprint fixed by Controller Pringle on Sept. 25th, including the efforts of the Canadian Press Association to persuade the Government to intervene with the order. He stated that Controller Pringle had called a meeting for Thursday, October 10th, in Ottawa, to hear arguments on a motion to be presented by the publishers asking for the suspension of the order in so far as it related to retro-active payments.

Mr. Montgomery also read a letter from Controller Pringle and another from the Canadian War Trade Board relative to the unpaid claim of the Fort Frances Pulp & Paper Company for their share of the differential awards. The Controller's letter was to the effect that unless payments were made at once he would be under the necessity of resorting to "drastic measures" to compel payment. The War Trade Board's letter was a notification that the Board had been instructed to refuse export licenses to companies failing to comply with the Controller's order.

Mr. Montgomery, as counsel for the Section, asked for instructions in regard to these matters, as well as on the general question of taking an appeal from Controller Pringle's Order fixing the price at \$69 per ton.

After much discussion of the differential question, it was

Moved by Mr. Thomas and seconded by Mr. Sabbaton, and

RESOLVED,—That for the purpose of avoiding dissension between the manufacturers of newsprint paper, that the contributing mills offer to pay to the Fort Frances Pulp & Paper Company, Limited, the amount shown in the statements as prepared by Mr. Sharp, covering the periods from March 1st, 1917, to January 31st, 1918, which have been made up on the basis of the settlement agreed upon between the other manufacturers, and that the rights of the Fort Frances Company to any further amount is left for the decision of the Paper Control Tribunal, to whom it has been appealed, such payments to be made without prejudice to the claims of any of the parties and to be made only upon the Fort Frances Company agreeing to accept payment upon the above conditions, and that Mr. Henderson be requested to submit this offer to the Fort Frances Company.

Upon a vote being taken, the following companies, by their representatives, voted in favor of the motion : The Abitibi Power & Paper Co., Limited, J. R. Booth, The Canada Paper Company, Limited, the Donnaconna Paper Company, Ltd., The Laurentide Company, Limited, Price Brothers, Ltd., the St. Maurice Paper Company, the Spanish River Pulp & Paper Mills.

Mr. M. C. Martin, representing the Ontario Paper Company, reserved his vote.

The Secretary was instructed to obtain the vote of the Brompton Pulp & Paper Company, Limited, from Mr. Bothwell, as they were not represented at the meeting.

*In the
Supreme
Court of
Ontario.*

Exhibits.
Part Ex. 24.
Minutes of
Meeting of
News Print
Section
C.P. & P.A.
8th October,
1918.

—continued.

*In the
Supreme
Court of
Ontario.*

Exhibits.
Part Ex. 24.
Minutes of
Meeting of
News Print
Section
C.P. & P.A.
8th October,
1918.

—continued.

After general discussion, Mr. Montgomery was instructed to represent the manufacturers at the hearing before Controller Pringle in Ottawa on October 10th, and to oppose any motion to suspend or interfere with the order of the Controller made on September 25th.

Notice was given by Mr. Henderson that he had entered an appeal against the Controller's Order of Sept. 25th, on behalf of J. R. Booth, on the ground that the price fixed by the Controller was too low. Mr. Henderson also stated that he had received instructions from the Fort Frances Pulp & Paper Company, Limited, to take a similar appeal on their behalf.

Several others of those present announced their intention of taking an appeal, and it was understood that the several companies would so instruct their counsel. 10

A general discussion of the question of the differentials followed, when it was agreed by the mills present that there should be no differentials for the months of February, March, April, May and June of this year. Action on the question as affecting the period from July 1st was deferred.

Mr. F. J. Campbell, chairman of the Committee on Publicity, made a report upon what had been done to date by that Committee. He asked for authority to incur necessary expenses in carrying on the work, and stated that he had asked Mr. Sabbaton to act as a member of the Committee in place of Mr. Chahoon, during the latter's absence on war work. 20

On motion of Mr. Campbell, seconded by Sir William Price, it was

RESOLVED,—That this newsprint section has heard the Report of the Publicity Committee, and endorses the action of the Committee in engaging the services of Mr. Edward Beck as Publicity Representative, as well as the various brochures that have been issued by the Department and the expenditure on Advertising already incurred, and authorizes such further expenditure as may in the opinion of the Committee be expedient, the same not to exceed \$20,000 in any one year.

The resolution was unanimously adopted. 30

There being no further business, the meeting was formally adjourned.

GEO. M. MCKEE,
Chairman, Newsprint Section.

A. L. DAWE,
Secretary.

Part Ex. 27.
Notice of
Appeal by
E. B. Eddy
Company
Limited.
15th October
1918.

Part Exhibit 27.

(Defendants' Exhibit.)

Notice of Appeal by E. B. Eddy Company, Limited.

THE PAPER CONTROL TRIBUNAL.

IN THE MATTER OF certain Orders made by Robert A. Pringle, Esquire, K.C.,
Commissioner and Controller of Newsprint, fixing the prices of
Newsprint paper. 40

TAKE NOTICE THAT THE E. B. EDDY COMPANY, LIMITED, a body corporate having its Head Office at the City of Hull in the Province of Quebec, manufacturers of newsprint paper affected by the Orders made by Robert A.

Pringle, Esquire, K.C., Commissioner and Controller of Newsprint Paper, bearing date respectively the 21st day of January, 1918, the 29th day of April, 1918, the 31st day of May, 1918, the 27th day of June, 1918, the 30th day of August, 1918, and the 26th day of September, 1918, fixing the prices of newsprint paper, hereby appeal to the Paper Control Tribunal from the said Orders and all other Orders (if any) heretofore made by the said Commissioner and Controller, on the ground that, upon the evidence adduced before the said Commissioner and Controller, the said Commissioner and Controller ought to have fixed prices for the sale of newsprint paper during the periods
 10 covered by the said respective Orders largely in excess of those fixed thereby.

DATED at Ottawa this 15th day of October, A.D. 1918.

THE E. B. EDDY COMPANY, LIMITED,

By Orde, Powell, Lyle & Snowdon,

48 Sparks Street, Ottawa, Ontario,

Their Solicitors.

To ROBERT A. PRINGLE, Esq., K.C.,
 Commissioner and Controller of Newsprint.

To H. A. STEWART, Esq., K.C.,
 Counsel for the Dominion Government.

20 To W. N. TILLEY, Esq. K.C.,
 Counsel for the Canadian Press Association and for The Canadian
 Newspaper Publishers' Special Paper Committee.

And to JOHN R. IMRIE, Esq.,
 Secretary thereof.

Part Exhibit 3.

(Defendants' Exhibit.)

Order-in-Council No. 2581.

AT THE GOVERNMENT HOUSE AT OTTAWA
 Saturday, the 19th day of October, 1918.

30 PRESENT :

HIS EXCELLENCY

THE GOVERNOR-GENERAL IN COUNCIL :

His Excellency the Governor-General in Council, on the recommendation of the Acting Prime Minister, is pleased to order and it is hereby ordered, with reference to the Order-in-Council of the 23rd August, 1918, approving a Regulation or Order of the Controller of News Print, Paper, etc., dated 6th August, 1918, that a direction do issue to the Minister of Customs and all the officers of the Government concerned in that behalf in accordance with the recommendation of the Controller that in the event of any of the
 40 Companies named in the said Order of the 6th August, 1918, refusing or neglecting to comply with any of the requirements of the said Order no license for export of paper shall so long as such refusal or neglect shall continue issue to such company so refusing or neglecting to comply.

(SEAL)

E. J. LEMAIRE,
 Clerk of the Privy Council.

*In the
 Supreme
 Court of
 Ontario.*

Exhibits.
 Part Ex. 27.
 Notice of
 Appeal by
 E. B. Eddy
 Company
 Limited.
 15th October
 1918.

—continued.

Part Ex. 3.
 Order-in-
 Council,
 No. 2581.
 19th October
 1918.

In the
Supreme
Court of
Ontario.

Exhibits.
Ex. 36.
Telegram,
John
McDougald
to Abitibi
Power &
Paper
Company.
23rd October
1918.

Exhibit 36.

(Defendants' Exhibit.)

Telegram John McDougald to Abitibi Power & Paper Co.

Ottawa, Ont., Oct. 23, 18.

The Abitibi Power and Paper Co.,
Montreal, Que.

You are advised that your license to export news print paper shall be suspended and cease to be effective unless you deliver to me certified cheque payable to order of Robert A. Pringle within one week for eleven thousand one hundred and forty seven dollars and ninety-six cents amount of differential due under order of R A Pringle Controller. 10

JOHN McDOUGALD,
Commissioner of Customs.

418PM.

Ex. 40.
Letter, L. R.
Wilson to
John
McDougald.
25th October
1918.

Exhibit 40.

(Plaintiff's Exhibit.)

Letter L. R. Wilson to John McDougald.

Abitibi Power & Paper Company Limited.

MONTREAL

October 25, 1918. 20

JOHN McDOUGALD, Esq.,
Commissioner of Customs,
Ottawa, Ont.

Dear Sir :—

We are in receipt of your telegram of October 23rd reading as follows :—

“You are advised that your license to export newsprint paper shall be suspended and cease to be effective unless you deliver to me certified cheque payable to order of Robert A. Pringle within one week for eleven thousand one hundred and forty seven dollars and ninety-six cents, amount of differential due under order of R. A. Pringle, Controller.” 30

In compliance therewith, we enclose herewith our certified cheque for \$11,147.96, payable to the order of Mr. Robert A. Pringle, Paper Controller, being the amount which we are required to pay under Mr. Pringle's Order as Paper Controller dated the 6th day of August, 1918, but this payment is made subject to all our rights under the appeal against the said order entered on our behalf by our Solicitors, Messrs. McGibbon, Casgrain, Mitchell & Casgrain.

Yours faithfully,
“L. R. WILSON”,
Secretary. 40

LRW/MC

Exhibit 44.

(Plaintiff's Exhibit.)

Letter Percy B. Wilson to J. L. McDougald.**THE SPANISH RIVER PULP AND PAPER MILLS LIMITED
SAULT STE. MARIE.**

October 28th, 1918.

**JOHN McDOUGALD, Esq.,
Commissioner of Taxation,
Ottawa, Ont.***In the
Supreme
Court of
Ontario.*Exhibits.
Ex. 44.
Letter Percy
B. Wilson
to J. L.
McDougald.
28th October
1918.

10 Sir :—

I duly received your telegram of the 23rd inst., as follows :—

“You are advised that your license to export newsprint paper shall
 “be suspended and cease to be effective unless you deliver to me certified
 “check payable to order of Robert A. Pringle within one week for thirty-
 “five thousand three hundred and eighty-nine dollars and fifty-four
 “cents, amount of differential due under order of R. A. Pringle, Con-
 “troller.”

and I now enclose cheque accordingly.

I have to say that I have not been furnished with particulars showing
 20 how this amount is made up, but I understand it includes an amount of \$3.15
 per ton in respect of rebate on Sulphite.

I hand you this cheque subject to being satisfied that the amount in
 question is correct and wish to state definitely that the cheque is sent in
 compliance with the order received, but subject to appeal from the order
 which has been entered on our behalf by Messrs. McGibbon, Casgrain,
 Mitchell & Casgrain, of Montreal,

In order that there might be no misunderstanding on the matter I sent
 you the following telegram today :—

30 “Your telegram 23rd. Certified cheque payable to order Robert A.
 “Pringle thirty-five thousand three hundred eighty-nine dollars fifty-
 “four is in mail to you.”

Yours truly,

“PERCY B. WILSON”,
Vice-President.

Exhibit 37.

(Defendants' Exhibit.)

Letter R. A. Pringle to L. R. Wilson.

OFFICE OF

**COMMISSIONER AND CONTROLLER,
NEWSPRINT, BOOK PAPER, ETC.**

40

**ROBERT A. PRINGLE, K.C.
COMMISSIONER AND
CONTROLLER****COUNSEL
H. A. STEWART, K.C.
BROCKVILLE, ONT.****411 Union Bank Building,
OTTAWA, ONT., Oct. 29-18.**Ex. 37.
Letter, R. A.
Pringle to
L. R. Wilson
29th October
1918.

*In the
Supreme
Court of
Ontario.*

L. R. WILSON, Esq.,
Sec'y Abitibi Power & Paper Co. Ltd.,
Montreal, Que.

Exhibits.

Part Ex. 37.
Letter, R. A.
Pringle to
L. R. Wilson
29th October
1918.

Dear Sir :—

John A. McDougald, Esq., Commissioner of Customs, has forwarded me your letter of 25th instant together with cheque enclosed for \$11,147.96.

Yours very truly,
"R. A. PRINGLE."

—continued.

Part Exhibit 43.

(Plaintiff's Exhibit.)

10

Letter R. A. Pringle to Fort Frances Pulp & Paper Company, Limited.

Oct. 31-18.

Part Ex. 43.
Letter, R. A.
Pringle to
Fort Frances
Pulp &
Paper
Company
Limited.
31st October
1918.

Fort Frances Pulp & Paper Co. Ltd.
Fort Frances,
Ont.

Dear Sirs :—

I have today handed to Hon. W. B. Ross, your representative, cheque for Seventy Thousand Dollars (\$70,000.00) on account of differential as per my order of August 6th, 1918. As you are aware, this order is being appealed, and this money is paid to you subject to the rights of all parties under the appeal, and in the event of the appellant being successful in their appeal then you will be called upon to obey such order as the Paper Control Tribunal may make. 20

Under instructions from the Minister of Finance, I am holding out of moneys received an amount sufficient to cover the \$3.15 per ton allowed for rebate on sulphite duty, on the understanding however, that this will be forwarded to you in the event of the Government not passing an order-in-council providing for payment to you of the \$3.15 per ton as allowed in the amount fixed in my order. I have the assurance of the Government that this will be done next week. I am taking up with Mr. Clarkson at once the adjustment of this duty, and as soon as I have his statement I will submit same to the Minister of Finance who has promised to put through Order-in-Council. 30

Yours truly,

R. A. PRINGLE

Part Ex. 43.
Letter,
W. D.
Taylor to
R. A. Pringle
with state-
ment
enclosed.
6th Novem-
ber, 1918.

Part Exhibit 43.

(Plaintiff's Exhibit.)

Letter W. D. Taylor to R. A. Pringle with Statement Enclosed.

40

R. A. PRINGLE, Esq., K.C.,
122 Wellington Street,
Ottawa, Ontario.

CLARKSON, GORDON & DILWORTH

Toronto, 6th November 1918.

Dear MR. PRINGLE :—

I attach memorandum of drawback on sulphite included in the differential payable to the Fort Frances Pulp & Paper Company Limited from March

to December 1917, \$16,721.55 showing the distribution amongst the different contributing companies.

The second column shows the interest on the amount in the first column amounting in all to \$773.62 which forms part of the interest charge of \$4,449.72 included in your order of 6th of August, 1918. The last column combines the drawback and interest to be refunded to each company.

I return herewith the papers you left with me in connection with this on Saturday.

Yours faithfully,
"W. D. TAYLOR."

In the Supreme Court of Ontario.
Exhibits.
Part Ex. 43.
Letter,
W. D.
Taylor to
R. A. Pringle
with state-
ment
enclosed.
6th Novem-
ber, 1918.
--continued.

10
WDT/MF.
Enclo. 1

CLARKSON, GORDON & DILWORTH

Date 6/11/1918

Proportion of

	Drawback	Interest	Total
Abitibi.....	\$1,846.35	\$88.44	\$1,934.79
Booth.....	1,019.82	49.84	1,069.66
20 Brompton.....	1,218.10	62.03	1,280.13
Donnaconna.....	1,876.83	89.90	1,966.73
Price.....	1,460.10	61.71	1,521.81
Ontario.....	1,509.25	69.79	1,579.04
Spanish River.....	5,879.18	262.81	6,141.99
St. Maurice.....	1,911.92	89.10	2,001.02
	<u>\$16,721.55</u>	<u>\$773.62</u>	<u>\$17,495.17</u>

30

Part Exhibit 43.

(Plaintiff's Exhibit.)

Letter R. A. Pringle to W. B. Ross.

122 Wellington St.
Nov. 8th, 1918.

Part Ex. 43.
Letter, R. A.
Pringle to
W. B. Ross.
8th Novem-
ber, 1918.

HON. W. B. ROSS,
Citizen Bldg.,
Ottawa.

My dear Senator :—

40 Enclosed, as promised, I am sending you cheque payable to the order of the Fort Frances Pulp & Paper Company, Limited for \$10,000. This is paid over on the same terms and conditions as the \$70,000.

Yours very truly,
R. A. PRINGLE.

Enc. \$10,000.

*In the
Supreme
Court of
Ontario.*

Part Exhibit 27.
(Defendants' Exhibit.)

Notice of Appeal by Canadian Newspaper Publishers' Special Paper Committee.

Exhibits.
Part Ex. 27.
Notice of
Appeal by
Canadian
Newspaper
Publishers
Special
Paper
Committee.
8th Novem-
ber, 1918.

TAKE NOTICE that an application will be made on behalf of the Canadian Newspaper Publishers' Special Paper Committee to the Paper Control Tribunal at the Sittings to be held at Ottawa on Thursday the 14th day of November, 1918, by way of appeal from the decision or order made by Robert A. Pringle, Esq., K.C., Commissioner and Controller of newsprint on the 10th day of October 1918, refusing to grant the application of the said Committee for an order staying until the appeal of the said Committee to the said Paper Control Tribunal has been disposed of, the operation of the said Order dated 26th day of September, 1918, in so far as the same requires the Publishers to pay to the Manufacturers the difference between the prices fixed in the prior Orders of the said Commissioner and Controller and the prices fixed in said Order of 26th September, 1918, or in the alternative for an order staying the payment of such excess price pending said appeal or directing it to be paid into Court for or such further or other order as the circumstances of the case may require or as to the said Paper Control Tribunal shall seem proper. 10

DATED at Toronto this 8th day of November, 1918. 20

W. N. TILLEY,

of Counsel for the Canadian
Newspaper Publishers' Special
Paper Committee.

To : ROBERT A. PRINGLE, Esq., K.C.,
Commissioner and Controller of newsprint.
H. A. STEWART, Esq., K.C.,
Counsel for the Dominion Government.
G. H. MONTGOMERY, Esq., K.C.,
G. W. MACDOUGALL, Esq., K.C., 30
G. F. HENDERSON, Esq., K.C.,
J. F. ORDE, Esq., K.C.,
VICTOR E. MITCHELL, Esq., K.C.,
GLYN OSLER, Esq., K.C., and
THOS. L. PHILIPS, Esq.,
of Counsel for Manufacturers of newsprint paper.

Part Ex. 1.
Order-in-
Council.
11th Novem-
ber, 1918.

Part Exhibit 1.
(Plaintiff's Exhibit.)
Order-in-Council.

P.C. 2777. 40

CERTIFIED COPY OF A REPORT OF THE COMMITTEE OF THE PRIVY COUNCIL,
APPROVED BY HIS EXCELLENCY THE GOVERNOR-GENERAL ON THE 11TH
NOVEMBER, 1918.

The Committee of the Privy Council have had before them a Report dated 7th November, 1918, from the Minister of Finance submitting that

under the provisions of the Order-in-Council of the 18th February, 1918 (P.C. 408), approving of the Order of the Commissioner and Controller of newsprint, dated 21st January, 1918, fixing the price at which newsprint is to be supplied to the newspapers throughout Canada by the manufacturers thereof from 1st February to 1st May, 1918, it was provided that the sum of \$2.50 only per hundred pounds, being the fixed price by prior orders, be paid to the manufacturers and that the additional sum of 35 cents per hundred pounds referred to in the Order of the Commissioner of 21st January, 1918, be paid by the purchasers of newsprint from the manufacturers thereof, and as purchased, to the Controller R. A. Pringle, Esq., K.C., and by him deposited in a chartered bank or banks as may be designated by him, the said sum to remain in such bank or banks until such time as the Commissioner's final report is made and approved by the Governor-in-Council, when the said sum or sums shall be refunded to the publishers or to the manufacturers, or part to one and part to the other as the case may be, in accordance with the final order of the Commissioner when made.

The Minister further submits that the Commissioner now represents that there is on deposit in the banks \$44,218.12 together with interest to the amount of \$502.79, and that in view of his recent order as to the price of newsprint that this money should now be paid over to the manufacturers.

The Minister, on the report of the Commissioner and Controller of newsprint, recommends that authority be given him to pay over to the manufacturers the amount of moneys now lying to his credit in the different banks.

The Committee concur in the foregoing recommendation and submit the same for your approval.

RUDOLPH BOUDREAU,
Clerk of the Privy Council.

30

Part Exhibit 1.
(Plaintiff's Exhibit.)
Order of Controller Pringle.

ORDER OF CONTROLLER PRINGLE

WHEREAS by Order-in-Council dated 3rd November, 1917, I am authorized and empowered to make such order or orders as I may deem necessary or advisable for the distribution of paper by the manufacturers to the publishers, and I am further empowered to fix prices.

AND WHEREAS by Order dated the 26th day of September, 1918, I did order and direct that the manufacturers should supply paper to the publishers at the prices set out in said order, from the 1st day of October, 1918, to the 1st day of December, 1918, subject to certain conditions all of which are fully set out in said order.

AND WHEREAS said order is now in appeal, and the appeal is not likely to be disposed of by the Paper Control Tribunal before the 1st day of February, 1919, I DO THEREFORE BY VIRTUE of my powers contained in said Order-in-Council of November 3rd, 1917, renew said order of the 26th day of Sep-

*In the
Supreme
Court of
Ontario.*

Exhibits.
Part Ex. 1.
Order-in-
Council.
11th Novem-
ber, 1918.

—continued.

Part Ex. 1.
Order of
Controller
Pringle.
30th Novem-
ber, 1918.

*In the
Supreme
Court of
Ontario.*

Exhibits.
Part Ex. 1.
Order of
Controller
Pringle.
30th Novem-
ber, 1918.

—continued.

tember, 1918, for a period of two months, that is to say from 1st day of December, 1918, to the 1st day of February, A.D. 1919.

THIS ORDER is subject to appeal, and any parties desiring to appeal to the Paper Control Tribunal, are required to serve notice of appeal within thirty days of the date hereof.

DATED AT OTTAWA this 30th day of November, A.D., 1918.

Sd. R. A. PRINGLE,
Controller.

Document not filed as an Exhibit but filed by the Respondents on the Appeal to the Appellate Division and now indexed as Exhibit 45. 10

P. C. 2/3140

Certified to be a true copy of a Minute of a Meeting of the Treasury Board, approved by His Excellency the Governor-General in Council, on the 21st December, 1918.

[Crest Privy
Council Canada]

FINANCE :

The Board recommend that the following regulations be made and established, under the provisions of Section 286, of the Customs Act, respecting drawback of Customs duty on liquid sulphite pulp used on and after the first day of March, One Thousand Nine Hundred and Seventeen, and on or before the thirtieth day of June, One Thousand Nine Hundred and Eighteen, in the manufacture of newsprint paper : 20

REGULATIONS

1. When imported liquid sulphite pulp, on which Customs duties have been paid, used on and after the first day of March, One Thousand Nine Hundred and Seventeen, and on or before the thirtieth day of June, One Thousand Nine Hundred and Eighteen, in the manufacture of newsprint paper there may be paid a drawback of ninety-nine per centum of all the duties paid on liquid sulphite pulp so used. 30

Provided, however, that such drawback shall not be paid unless the duties have been paid on liquid sulphite pulp so used as aforesaid within one month from the date when the newsprint paper was manufactured.

2. The said drawback may be paid to the manufacturer of newsprint paper subject to the following conditions, viz :—

(a) The quantity of liquid sulphite pulp used and amount of duties paid thereon shall be ascertained.

(b) Satisfactory evidence shall be furnished in respect to the manufacture in Canada of the newsprint paper. 40

Ex. 45.
Document
not filed as
an exhibit
but filed by
the Respon-
dents on the
appeal to the
Appellate
Division
(now indexed
as Exhibit
45).
21st Decem-
ber, 1918.

3. The claim for drawback shall be verified under oath before a Collector of Customs to the satisfaction of the Minister of Customs, in such form as he shall prescribe, within two years after the manufacture of the newsprint paper. The Minister may also require in any case the production of such further evidence, in addition to the usual averments, as he deems necessary to establish the bona fides of the claim.

"E. J. LEMAIRE",
Clerk of the Privy Council.

*In the
Supreme
Court of
Ontario.*

Exhibits.
Part Ex. 45.
Document
not filed as
an exhibit
but filed by
the Respondents on the
appeal to the
Appellate
Division
(now indexed
as Exhibit
45).
21st December,
1918.
—continued.

Part Exhibit 27.

(Defendants' Exhibit.)

10

Notice of Appeal by Canadian Newspaper Publishers' Special Committee.

TAKE NOTICE that the Canadian Newspaper Publishers Special Paper Committee hereby appeals to the Paper Control Tribunal from an order made by Robert A. Pringle, Esquire, K.C., Commissioner and Controller of Newsprint dated the 30th day of November, 1918, continuing during December, 1918, and January 1919, the prices of newsprint paper fixed by his order of 26th September, 1918, on the ground that such prices are excessive.

DATED at Toronto this 30th day of December, 1918.

W. N. TILLEY,
of Counsel for the Canadian
Newspaper Publishers' Special
Paper Committee.

Part Ex. 27.
Notice of
Appeal by
Canadian
Newspaper
Publishers'
Special
Paper
Committee
30th Decem-
ber, 1918.

20

To : ROBERT A. PRINGLE, Esq., K.C.,
Commissioner and Controller of Newsprint.

H. A. STEWART, Esq., K.C.,
Counsel for the Dominion Government.

G. H. MONTGOMERY, Esq., K.C.,

G. W. MACDOUGALL, Esq., K.C.,

G. F. HENDERSON, Esq., K.C.,

30

J. F. ORDE, Esq., K.C.,

VICTOR E. MITCHELL, Esq., K.C.,

GLYN OSLER, Esq., K.C., and

THOS. L. PHILIPS, Esq.,

of Counsel for Manufacturers of Newsprint Paper.

Part Exhibit 1.

(Plaintiff's Exhibit.)

Interim Judgment of Paper Control Tribunal.

IN THE MATTER OF THE APPEALS BY THE PUBLISHERS AND BY THE MANUFACTURERS FROM THE ORDER OF MR. COMMISSIONER PRINGLE, DATED 26TH SEPTEMBER, 1918.

40

At the opening of this hearing, Mr. Clarkson and his assistant, Mr. Taylor, were examined at some length by Counsel for the Publishers, but

Part Ex. 1.
Interim
Judgment of
Paper
Control
Tribunal.
23rd Janu-
ary, 1919.

*In the
Supreme
Court of
Ontario.*
—
Exhibits.
Part Ex. 1.
Interim
Judgment of
Paper
Control
Tribunal.
23rd Janu-
ary, 1919.

we reserved our decision upon receiving this testimony as evidence, and pending such decision Counsel for the Manufacturers did not cross-examine.

By the Order of the Commissioner now under review it is provided that if the prices fixed by him "are at any time found upon investigation to be either too high or too low, there will be a revision of price from July 1st, 1918" and prices after that date were in part based upon estimated only.

We think that it is important that the prices when fixed by us should be final and that all proper evidence which either party may think important should be before us.

Investigations have now been made by Mr. Clarkson which will enable the accuracy of certain estimates on which the price was fixed to be tested. We refer to the estimated increase of cost of wood, wages and freight after 1st July.

In view of the admission of the record of the proceedings before the Federal Trade Commission, of the necessity of confining the further evidence within reasonable limits, of the great mass of evidence already taken, and of the views we entertain with respect to certain matters argued before us, we do not think that further evidence should be received with reference to the following topics :

1. Capital investment. 20
2. Working capital.
3. Return upon investment.
4. Going value.
5. Depreciation.
6. Sinkage.
7. Stumpage.
8. Machine losses.

We desire that further evidence should be mainly directed and shall be substantially confined to the matters (other than those mentioned above as excluded) dealt with in the publishers' brief in the criticism of the estimated cost of manufacture at the different mills and the estimated increased cost of wood, labour and freight. 30

If as the result of the criticism of Mr. Clarkson's former reports he desires to modify his conclusions, he should be afforded an opportunity of doing so.

We shall withhold our decision for sufficient time to enable either party to give such relevant evidence as it may desire and as is permitted under the above rulings, before the Commissioner. The evidence taken before us is to be treated as taken by the Commissioner, with liberty to Manufacturers' Counsel to cross-examine thereon. 40

Upon this evidence we would ask the Commissioner to state what change, if any, should in his opinion be made in the prices fixed by him, and without any further formal appeal we shall receive further argument, either oral or written, as may be arranged by Counsel.

It is desired that this evidence shall be given as soon as practicable. If either party fails to proceed with diligence, a motion may be made for

judgment on the evidence as it now stands, or the Tribunal may of its own motion determine the questions before it without awaiting further evidence.

DATED at Ottawa, this twenty-third day of January, A.D., 1919.

(Signed) A. S. WHITE.

(Signed) CHARLES ARCHER,

(Signed) W. E. MIDDLETON.

(Signed) THOMAS P. OWENS,
Registrar.

*In the
Supreme
Court of
Ontario.*

Exhibits.
Part Ex. 1.
Interim Judgment of
Paper Control Tribunal
23rd January
1919.

—continued.

10

Part Exhibit 1.

(Plaintiff's Exhibit.)

Order of Controller Pringle.

WHEREAS by Order-in-Council dated 3rd November, 1917, I am authorized and empowered to make such order or orders as I may deem necessary or advisable for the distribution of paper by the manufacturers to the publishers, and I am further empowered to fix prices.

AND WHEREAS by Order dated the 26th day of September, 1918, I did order and direct that the manufacturers should supply paper to the publishers at the prices set out in said order, from the 1st day of October, 1918, to the 1st day of December, 1918, subject to certain conditions, all of which are
20 fully set out in said Order.

AND WHEREAS I did on the 30th day of November, 1918, renew said order of September 26th, 1918, for a period of two months from 1st day of December, 1918 to 1st day of February, 1919.

AND WHEREAS said orders are now in appeal, and the appeal is not likely to be disposed of by the Paper Control Tribunal before the 1st day of April, 1919, I Do THEREFORE by virtue of my powers contained in said Order-in-Council of November 3rd, 1917, further renew said order of the 26th day of September, 1918, for a period of two months, that is to say from the 1st day of February, 1919, to the 1st day of April, 1919.

30 THIS ORDER is subject to appeal, and any parties desiring to appeal to the Paper Control Tribunal, are required to serve notice of appeal within thirty days of the date hereof.

DATED AT OTTAWA this 31st day of January, A.D. 1919.

Sgd. R. A. PRINGLE,
Controller.

Part Exhibit 27.

(Defendants' Exhibit.)

Notice of Appeal by Canadian Pulp & Paper Association.

40 TAKE NOTICE that the Manufacturers represented by the Canadian Pulp & Paper Association hereby appeal to the Paper Control Tribunal from an order made by Robert A. Pringle, Esquire, K.C., Commissioner and Controller of Newsprint dated the 31st day of January 1919, continuing during February and March 1919, the prices of newsprint paper fixed by his order of 26th September 1918, on the ground that such prices are excessive.

Part Ex. 1.
Order of
Controller
Pringle.
31st January
1919.

Part Ex. 27.
Notice of
Appeal by
Canadian
Pulp &
Paper Association.
28th February,
1919.

*In the
Supreme
Court of
Ontario.*

DATED at Montreal, this 28th day of February, 1919.

GEORGE H. MONTGOMERY,
Of Counsel for the Canadian
Pulp & Paper Association.

Exhibits.
Part Ex. 27.
Notice of
Appeal by
Canadian
Pulp &
Paper Asso-
ciation.
28th Febru-
ary, 1919.

To : ROBERT A. PRINGLE, Esq., K.C.,
Commissioner and Controller of Newsprint.
H. A. STEWART, Esq., K.C.,
Counsel for the Dominion Government.
W. N. TILLEY, Esq., K.C.,
Counsel for the Canadian Newspaper Publishers, Special Paper
Committee.

10

—continued

Part Exhibit 27.

(Defendants' Exhibit.)

Notice of Appeal by Canadian Newspaper Publishers' Special Committee.

Part Ex. 27.
Notice of
Appeal by
Canadian
Newspaper
Publishers'
Special
Paper
Committee.
28th Febru-
ary, 1919.

TAKE NOTICE that the Canadian Newspaper Publishers' Special Paper Committee hereby appeals to the Paper Control Tribunal from an order made by Robert A. Pringle, Esquire, K.C., Commissioner and Controller of Newsprint dated the 31st day of January, 1919, continuing during February and March 1919, the prices of newsprint paper fixed by his order of 26th September 1918, on the ground that such prices are excessive.

DATED at Toronto this 28th day of February, 1919.

W. N. TILLEY,
Of Counsel for the Canadian
Newspaper Publishers' Special
Paper Committee.

20

To : ROBERT A. PRINGLE, Esq., K.C.,
Commissioner and Controller of Newsprint.
H. A. STEWART, Esq., K.C.,
Counsel for the Dominion Government.
G. H. MONTGOMERY, Esq., K.C.,
G. W. MACDOUGALL, Esq., K.C.,
G. F. HENDERSON, Esq., K.C.,
J. F. ORDE, Esq., K.C.,
VICTOR E. MITCHELL, Esq., K.C.,
GLYN OSLER, Esq., K.C., and
THOS. L. PHILIPS, Esq.,
of Counsel for Manufacturers of Newsprint paper.

30

Part Exhibit 1.

(Plaintiff's Exhibit.)

Order of Controller Pringle.

Part Ex. 1.
Order of
Controller
Pringle.
31st March,
1919.

WHEREAS by Order-in-Council, dated 3rd November, 1917, I am author- 40
ized and empowered to make such order or orders as I may deem necessary
or advisable for the distribution of paper by the manufacturers to the pub-
lishers, and I am further empowered to fix prices :

AND WHEREAS by Order dated the 26th day of September, 1918, I did order and direct that the manufacturers should supply paper to the publishers at the prices set out in said order, from the 1st day of October 1918, to the 1st day of December, 1918, subject to certain conditions, all of which are fully set out in said order.

AND WHEREAS I did on the 30th day of November, 1918, renew said order of September 26th, 1918, for a period of two months from the 1st day of December 1918, to the 1st day of February, 1919 ;

AND WHEREAS I did on the 31st day of January, 1919, again renew
10 said order of September 26th, 1918, for a period of two months from the 1st day of February, 1919, to the 1st day of April, 1919 :

AND WHEREAS said orders, are now in appeal, and the appeal is not likely to be disposed of by the Paper Control Tribunal before the 1st day of June, 1919, I do therefore by virtue of my powers contained in said Order-in-Council of November 3rd, 1917, further renew said order of 26th day of September, 1918, for a period of two months, that is to say, from the 1st day of April, 1919, to the 1st day of June, 1919.

THIS ORDER is subject to appeal, and any parties desiring to appeal
20 to the Paper Control Tribunal are required to serve notice of appeal within thirty days of the date hereof.

DATED AT OTTAWA this 31st day of March, A.D., 1919.

Sgd. R. A. PRINGLE,
Controller.

Part Exhibit 27.

(Defendants' Exhibit.)

Notice of Appeal by Canadian Newspaper Publishers' Special Paper Committee.

TAKE NOTICE that the Canadian Newspaper Publishers' Special Paper Committee hereby appeals to the Paper Control Tribunal from an order made
30 by Robert A. Pringle, Esquire, K.C., Commissioner and Controller of Newsprint dated the 31st day of March, 1919, continuing during April and May, 1919, the prices of newsprint paper fixed by his order of 26th September, 1918, on the ground that such prices are excessive.

DATED at Toronto this 28th day of April, 1919.

W. N. TILLEY,
Of Counsel for the Canadian
Newspaper Publishers' Special
Paper Committee.

40 To : ROBERT A. PRINGLE, ESQ., K.C.,
Commissioner and Controller of Newsprint.
H. A. STEWART, ESQ., K.C.,
Counsel for the Dominion Government.
G. H. MONTGOMERY, ESQ., K.C.,
G. W. MACDOUGALL, ESQ., K.C.,
G. F. HENDERSON, ESQ., K.C.,

*In the
Supreme
Court of
Ontario.*

Exhibits.
Part Ex. 1.
Order of
Controller
Pringle.
31st March,
1919.

—continued.

Part Ex. 27.
Notice of
Appeal by
Canadian
Newspaper
Publishers'
Special
Paper
Committee.
28th April,
1919.

*In the
Supreme
Court of
Ontario.*

**J. F. ORDE, Esq., K.C.,
VICTOR E. MITCHELL, Esq., K.C.,
GLYN OSLER, Esq., K.C., and
THOS. L. PHILIPS, Esq.,**
of Counsel for Manufacturers of Newsprint paper.

Exhibits.
Part Ex. 27.
Notice of
Appeal by
Canadian
Newspaper
Publishers'
Special
Paper
Committee.
28th April,
1919.

—continued.

Part Ex. 27.
Notice of
Appeal by
Manufacturers
represented by the
Canadian
Pulp &
Paper Asso-
ciation.
30th April,
1919.

Part Exhibit 27.

(Defendants' Exhibit.)

Notice of Appeal by Manufacturers represented by the Canadian Pulp & Paper Association.

TAKE NOTICE that the Manufacturers represented by the Canadian Pulp & Paper Association hereby appeal to the Paper Control Tribunal from an order made by Robert A. Pringle, Esquire, K.C., Commissioner and Controller of Newsprint dated the 31st day of March, 1919, continuing during April and May, 1919, the prices of newsprint paper fixed by his order of 26th September, 1918, on the ground that such prices are excessive.

DATED at Montreal, this 30th day of April, 1919.

G. H. MONTGOMERY,
Of Counsel for the Manufacturers
represented by the Canadian Pulp
& Paper Association.

20

TO : **ROBERT A. PRINGLE, Esq., K.C.,**
Commissioner and Controller of Newsprint.
H. A. STEWART, Esq., K.C.,
Counsel for the Dominion Government.
W. N. TILLEY, Esq., K.C.,
Counsel for the Canadian Newspaper Publishers' Special Paper
Committee.

Exhibit 2.

(Plaintiff's Exhibit.)

Letter T. L. Philips and W. B. Ross to R. A. Pringle.

30

May 13th, 1919.

HON. R. A. PRINGLE,
Commissioner and Controller of Pulp & Paper,
Ottawa, Ont.

Dear Sir :—

On behalf of the Fort Frances Pulp & Paper Company Ltd., we beg to offer the following statement. The exhibits introduced by Mr. Dahlberg at the hearing just concluded showed an average cost per ton of paper manufactured by this company during the first eleven months of 1918 of \$59.21 and an average selling price in Canada during the same period of \$63.63 per ton. Since the introduction of those exhibits it has appeared that in making up the cost statements for the first five months of 1918, Mr. Clarkson did not deduct the amount of the rebate on sulphite in slush form applicable to those months, although it was deducted for the balance of the period. The amount

Ex. 2.
Letter, T. L.
Philips and
W. B. Ross
to R. A.
Pringle.
13th May,

of the rebate applicable to these first five months was approximately \$16,322.00 and its deduction from the costs would reduce the average cost per ton for the eleven months period from \$59.21 as shown by our exhibits to \$58.72 per ton.

The average Canadian sales price during this eleven months shown by the exhibits of \$63.63 per ton was reached by the use of a price of \$73.00 per ton for the period from July 1 to November 30. Since the introduction of the exhibits you have ruled that this Company must account back to its Canadian customers at a price of \$69.88 per ton for the period July 1—
 10 November 30. This reduces the average Canadian price per ton for the eleven months ending Nov. 30, 1918 to \$62.22 per ton or only \$3.50 per ton more than the average cost for the same period after making allowance for the rebate in sulphite duty for the first five months.

During the same period the average selling price of this Company's paper in the United States where the price was during all of the time fixed by the proceedings before the Federal Trade Commission and the U. S. Circuit Judges for the Second Circuit under the agreement with the Attorney-General of the United States was \$72.78 per ton. This average is obtained by the use of the going American price of \$75.05 per ton for the period from July 1 to
 20 Nov. 30 inclusive. The price last named continued through the month of December, 1918. Since January 1, 1919 this Company's paper has sold in the United States under yearly contracts entered into at the request of its American customers of \$78.00 per ton and the company had applications which it has so far been unable to accept for enough more paper for sale in the United States at the price last stated to take up substantially all of its production.

It is true that you have not as yet heard evidence with respect to costs of manufacture subsequent to Nov. 30 1918, but it is equally true that the company's own cost figures for the month of December show a cost in excess
 30 of \$62.00 per ton and we most respectfully submit that if certain remarks of yours from the bench are to be interpreted as indicating the view that because one or two preceding months showed costs below the average for the eleven months there was some reason existing for a reduction in price, the last mentioned fact should also be given due consideration.

During the recent hearing you made reference from the bench to the average cost and average selling price per ton for a period of 23 months beginning at sometime in the year 1917. We are not able to check the figures thus suggested by you but in this connection do invite your attention to the following :—

40 The average cost per ton for the period beginning March 1, 1917, and ending Nov. 30, 1918, as shown by the figures in Mr. Clarkson's latest reports after deducting therefrom the amount of the rebate of sulphite duty was approximately \$49.88 per ton and the selling price for the same period was (average) per ton \$56.40. The manner in which these figures are arrived at is shown on the attached statement. It will be observed that this really gives a double effect to the sulphite rebate for the period subsequent to June 1, 1918 as we have deducted the full amount of the rebate from the total costs

*In the
Supreme
Court of
Ontario.*

Exhibits.
Ex. 2.
Letter, T. L.
Philips and
W. B. Ross
to R. A.
Pringle.
13th May,
1929.

—continued.

*In the
Supreme
Court of
Ontario.*

Exhibits.

Ex. 2.
Letter, T. L.
Philips and
W. B. Ross
to R. A.
Pringle.
13th May,
1929.

—continued.

for the period while Mr. Clarkson gave effect to the rebate in the total cost figures for the months subsequent to May, 1918. The true average cost is therefor approximately \$50 per ton.

At the present time and since January 1, last this Company has sustained a loss of \$8.12 on each ton of paper which it has sold in Canada under the prices fixed so far in the proceedings under your direction, *i.e.*, it has sold its paper in Canada under your orders at \$8.12 per ton less than the price at which it was at the same time selling exactly the same sort of paper in the United States and it could have sold the tonnage, which under your orders it sold in Canada, in the United States at the higher price.

10

During the period since January 1, 1918, this company has also sold under your orders more than its due proportion of Canadian tonnage and that down at least to September 26, 1918 under orders which provided for reimbursement to it of the difference between the Canadian price and the price at which the excess above its due proportion might have been sold for in other markets. This differential situation has grown steadily worse since September and at the present time and at least since January 1 last, this Company has been suffering a loss as above indicated of substantially ten thousand dollars a month growing out of the difference between Canadian and American prices.

20

Down to the present this Company has endeavoured at all times to comply fully with all orders and requests made by yourself both in letter and in spirit and it is with the utmost reluctance that it faces any possible departure from the course which it has thus far pursued. The amount of money involved in the differential account which has not been settled since January 1, 1918 has become so large and the present spread between the Canadian and American prices is so great and the consequent loss so heavy that this Company has been much against its wishes and those of its officers forced to the conclusion that unless the matter of past differentials is adjusted down to Sept. 26, 1918, and provision made for their payment; provisions made for the proper adjustment and payment of differentials since Sept. 26, 1918, on the same equitable basis as that provided in price fixing orders entered prior to that time and arrangement made for monthly adjustment and payment of differential accounts in the future this company will be obliged to cease shipments of newsprint paper from its mill to Canadian customers May 26, 1919.

30

With assurances of the highest personal regard, we are,

Very respectfully,

“T. L. PHILIPS”.

“W. B. ROSS”,

Attorneys for Fort Frances Pulp & Paper Company Limited.

40



Part Exhibit 1.

(Plaintiff's Exhibit.)

Recommendation of Controller Pringle to Paper Control Tribunal.

May 26, 1919.

TO THE PAPER CONTROL TRIBUNAL

In compliance with your Interim Judgment dated the 23rd day of January, A.D., 1919, I have taken further evidence which I now submit together with the exhibits filed.

Having considered all evidence before me in regard to cost of manufacture of newsprint and reasonable profits to be allowed to the manufacturer, I see no reason to make any change in my Order of September 26, 1918.

(Signed) R. A. PRINGLE,
Controller.

*In the
Supreme
Court of
Ontario.*

Exhibits.
Part Ex. 1.
Recommendation of
Controller Pringle to
Paper Control
Tribunal.
26th May,
1919.

Part Exhibit 1.

(Plaintiff's Exhibit.)

Order of Controller Pringle.

WHEREAS by Order-in-Council, dated 3rd November, 1917, I am authorized and empowered to make such order or orders as I may deem necessary or advisable for the distribution of paper by the manufacturers to the publishers, and I am further empowered to fix prices :—

AND WHEREAS by Order dated the 26th day of September, 1918, I did order and direct that the manufacturers should supply paper to the publishers at the prices set out in said order, from the 1st day of October, 1918, to the 1st day of December, 1918, subject to certain conditions, all of which are fully set out in said order ;

AND WHEREAS I did on the 30th day of November, 1918, renew said order of September 26th, 1918, for a period of two months from the 1st day of December, 1918, to the 1st day of February, 1919 ;

AND WHEREAS I did on the 31st day of January, 1919, again renew said order of September 26th, 1918, for a period of two months from the 1st day of February, 1919, to the 1st day of April, 1919 ;

AND WHEREAS I did on the 31st day of March, 1919, again renew said order of September, 26th, 1918, for a period of two months from the 1st day of April, 1919, to the 1st day of June, 1919 ;

AND WHEREAS said Orders are now in appeal, and the appeal is not likely to be disposed of by the Paper Control Tribunal for some time, I DO THEREFORE by virtue of my powers contained in said Order-in-Council of November 3rd, 1917, further renew said order of 26th day of September, 1918, for a period of two months from the 1st day of June to the 1st day of August, 1919.

This Order is subject to appeal, and any parties desiring to appeal to the Paper Control Tribunal are required to serve notice of appeal within thirty days of the date hereof.

DATED AT OTTAWA this 31st day of May, A.D., 1919.

Sgd. R. A. PRINGLE,
Controller.

Part Ex. 1.
Order of
Controller
Pringle.
31st May,
1919.

*In the
Supreme
Court of
Ontario.*

Exhibits.
Ex. 9.

Letter W. B.
Ross and
T. L. Philips
to R. A.
Pringle.
25th June,
1919.

Exhibit 9.

(Defendants' Exhibit.)

Letter W. B. Ross and T. L. Philips to R. A. Pringle.

OTTAWA, June 25th, 1919.

The HON. R. A. PRINGLE,
Commissioner and Controller of Pulp & Paper,
OTTAWA, ONT.

Dear Sir :—

Referring to letter addressed to you during the month of May last by the undersigned on behalf of the Fort Frances Pulp & Paper Company, Limited, in which you were advised that unless matter of differentials between Canadian and American prices of news print paper, so far as the same affected said Company, was adjusted by you, the Fort Frances Pulp & Paper Company, Limited would be obliged to cease shipment of news print paper from its mill to Canadian customers after May 26th last, we have to advise that in view of the announcement of the sitting of the Paper Control Tribunal at Montreal on June 16th, the Fort Frances Company decided to forego the suspension of shipments to its Canadian Customers on May 26th in the hope that the entire subject might be cleaned up by an early decision of the Paper Control Tribunal. The Tribunal has however adjourned without rendering judgment and the time when such judgment may be expected is wholly indefinite. We beg therefore to notify you that the Fort Frances Pulp and Paper Company Limited, must insist upon immediate action by you with respect to the matters set forth in the communication of the undersigned above referred to, and that unless effective action is taken by you in the matters mentioned, the Fort Frances Company will cease shipments to Canadian purchasers of its paper on the 27th day of July 1919.

Very truly yours,

"W. B. ROSS,"

"T. L. PHILIPS,"

Solicitors for the Fort Frances Pulp
and Paper Company Limited.

Part Ex. 27.
Notice of
Appeal by
Canadian
Newsprint
Publishers'
Special
Paper
Committee.
26th June,
1919.

Part Exhibit 27.

(Defendants' Exhibit.)

Notice of Appeal by Canadian Newsprint Publishers' Special Paper Committee.

TAKE NOTICE that the Canadian Newspaper Publishers' Special Paper Committee hereby appeals to the Paper Control Tribunal from an order made by Robert A. Pringle, Esquire, K.C., Commissioner and Controller of Newsprint dated the 31st day of May, 1919, continuing during June and July, 1919, the prices of newsprint paper fixed by his order of 26th September, 1918, on the ground that such prices are excessive.

DATED at Toronto this 26th day of June, 1919.

W. N. TILLEY,

of Counsel for the Canadian News-
print Publishers' Special Paper
Committee.

To : ROBERT A. PRINGLE, Esq., K.C.,
Commissioner and Controller of Newsprint.
H. A. STEWART, Esq., K.C.,
Counsel for the Dominion Government.
G. H. MONTGOMERY, Esq., K.C.,
G. W. MACDOUGALL, Esq., K.C.,
10 G. F. HENDERSON, Esq., K.C.,
J. F. ORDE, Esq., K.C.,
VICTOR MITCHELL, Esq., K.C.,
GLYN OSLER, Esq., K.C., and
THOS. L. PHILIPS, Esq.,
of Counsel for Manufacturers of Newsprint paper.

Part Exhibit 27.

(Defendants' Exhibit.)

Notice of Appeal by Canadian Pulp & Paper Association.

20 TAKE NOTICE that the Manufacturers represented by the Canadian Pulp
& Paper Association hereby appeal to the Paper Control Tribunal from an
order made by Robert A. Pringle, Esquire, K.C., Commissioner and Con-
troller of Newsprint dated the 31st day of May, 1919, continuing during
June and July, 1919, the prices of newsprint paper fixed by his order of 26th
September, 1918, on the ground that such prices are inadequate.

DATED at Montreal, this 27th day of June, 1919.

G. H. MONTGOMERY,
of Counsel for the Canadian Pulp
& Paper Association.

30 To : ROBERT A. PRINGLE, Esq., K.C.,
Commissioner and Controller of Newsprint.
H. A. STEWART, Esq., K.C.,
Counsel for the Dominion Government.
W. N. TILLEY, Esq., K.C.,
Counsel for the Canadian Newspaper Publishers'
Special Paper Committee.

Exhibit 6.

(Defendants' Exhibit.)

Telegram J. B. McNicol to R. A. Pringle.

Fort Frances Ont

July 2, 1919

40 R. A. PRINGLE, K. C.,
Ottawa Ont

Fort Frances Paper Co. have assured me that they will supply the Western
Press with paper at 69.88 subject to adjustment on price fixed by the Appeal
Tribunal they also ask to be assured that they will be paid the differential

*In the
Supreme
Court of
Ontario.*

Exhibits.
Part Ex. 27.
Notice of
Appeal by
Canadian
Newsprint
Publishers'
Special
Paper
Committee.
26th June,
1919.

—continued.

Part Ex. 27.
Notice of
Appeal by
Canadian
Pulp &
Paper
Association.
27th June,
1919.

Ex. 6.
Telegram,
J. B. Mc-
Nicol to
R. A. Pringle
2nd July,
1919.

*In the
Supreme
Court of
Ontario.*

Exhibits.
Ex. 6.

Telegram,
J. B. Mc-
Nicol to
R. A. Pringle
2nd July,
1919.

—continued.

fixed by Appeal Court Please wire me fully tomorrow what action to take I have seen the Winnipeg Free Press and expect to meet other Western Publishers Wednesday the Free Press agrees with terms and condition named by Fort Frances.

McNICOL.

Exhibit 7.

(Defendants' Exhibit.)

Telegram R. A. Pringle to J. B. McNicol.

Ottawa, July 3 1919.

10

Ex. 7.
Telegram,
R. A. Pringle
to J. B.
McNicol,
3rd July,
1919.

**J. B. McNicol, Esq.,
Fort Frances, Ont.**

Wire received. Make another demand on Fort Frances Pulp & Paper Co. that orders for supply western publishers be obeyed forthwith. If they refuse see District Crown Attorney, lay information under War Measures Act against Backus and Dalhberg, officers of Fort Frances Pulp & Paper Co. for disobedience of orders made by Controller for supply newsprint. They are both liable to penalty five thousand dollars and imprisonment. Custom Officials at Fort Frances will be notified tomorrow morning to prevent any further exports. Unfortunate they should disobey my orders this critical time as was getting through legislation which would have benefited all concerned. This now likely be held up unless I hear definitely my orders are going to be obeyed. Government also considering their powers as to cancelling power leases. Cannot understand their action.

R. A. PRINGLE.

Part Exhibit 1.

(Plaintiff's Exhibit.)

Statute (Canada) 9-10 George V. Chap. 63.

Part Ex. 1.
Statute
(Canada)
9-10 George
V., Chap. 63.
7th July,
1919.

AN ACT TO PROVIDE FOR THE COMPLETION AFTER THE DECLARATION OF PEACE OF WORK BEGUN AND THE FINAL DETERMINATION OF MATTERS PENDING BEFORE THE COMMISSIONER AND CONTROLLER OF PAPER AND THE PAPER CONTROL TRIBUNAL, OR EITHER OF THEM, AT THE DATE OF SUCH DECLARATION.

30

(Assented to 7th July, 1919).

WHEREAS under and by virtue of the provisions of THE WAR MEASURES ACT, 1914, His Excellency the Governor-in-Council, by the Order-in-Council of April 16th, 1917, (P.C. 1059), the Order-in-Council of April 16th, 1917, (P.C. 1060), the Order-in-Council of April 21st, 1917, (P.C. 1109), and the Order-in-Council of November 3rd, 1917, (P.C. 3122), did make regulations for controlling commerce in paper, and for appointing a Commissioner and Controller for carrying such regulations into effect; and whereas His Excellency the Governor-in-Council, by the Order-in-Council of September 16th, 1918, (P.C. 2270), did further under the authority of The War Measures Act, 1914, modify the provisions of the Order-in-Council of November 3rd, 1917, (P.C. 3122), in certain respects, and provide for the creation and appointment of a Paper Control Tribunal, for the purposes and with the authority

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and jurisdiction set forth in said Order-in-Council of September 16th, 1918 (P.C. 2270) ; and whereas there have been investigations and work begun by said Commissioner and Controller which are not completed and with respect to which appeal will lie to said Paper Control Tribunal under the provisions of said Order-in-Council of September 16th, 1918, (P.C. 2270) ; and whereas, there are now matters pending before and undetermined by said Paper Control Tribunal ; Now therefore His Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:

*In the
Supreme
Court of
Ontario.*
—
Exhibits.
Part Ex. 1.
Statute
(Canada)
9-10 George
V., Chap. 63.
7th July,
1919.

1. The powers, jurisdiction and authority of the Commissioner and
10 Controller of Paper are hereby confirmed and extended to such extent as may
be necessary to enable said Commissioner and Controller to fully complete
all work and investigations begun by him under the provisions of the Order-
in-Council of April 16th, 1917, (P.C. 1059), the Order-in-Council of April 16th,
1917, (P.C. 1060), the Order-in-Council of April 21st, 1917, (P.C. 1109), and
the Order-in-Council of November 3rd, 1917, (P.C. 3122) prior to the De-
claration of peace, and to determine all questions and to make all necessary
orders with respect to matters begun by or coming before him prior to the
publication in the Canada Gazette of a proclamation by the Governor-in-
Council declaring that the war which commenced on the fourth day of August,
20 one thousand nine hundred and fourteen, no longer exists.

—continued.

2. The powers, jurisdiction and authority of the Paper Control Tribunal
under the Order-in-Council of September 16th, 1918, (P.C. 2270) are hereby
confirmed and extended to such extent as may be necessary to enable said
Paper Control Tribunal to finally determine after the declaration of peace
all matters pending before and not finally determined by it upon the date of
such declaration ; and the powers, jurisdiction and authority of said Tribunal
are further extended to such extent as may be necessary to enable it to hear
and finally determine all matters and questions brought before it subsequent
to the publication of the said proclamation on appeal from any act done by
30 or order or decision of the Commissioner and Controller under the provisions
of section one of this Act.

3. Except for the purpose of finally completing all matters undertaken
and determining all questions arising prior to the declaration of peace, the
powers, authority and jurisdiction of said Commissioner and Controller of
Paper and of said Paper Control Tribunal shall cease upon the publication
of the said proclamation.

Part Exhibit 3.
(Defendants' Exhibit.)
Order-in-Council No. 1388.

Part Ex. 3.
Order-in-
Council,
No. 1388.
7th July,
1919.

40

AT THE GOVERNMENT HOUSE AT OTTAWA
Monday the 7th day of July, 1919.

PRESENT :

HIS EXCELLENCY

THE GOVERNOR-GENERAL IN COUNCIL :

WHEREAS by Order-in-Council of 3rd November, 1917, (P.C. 3122)
Robert A. Pringle, K.C., of the City of Ottawa was appointed Controller

*In the
Supreme
Court of
Ontario.*

Exhibits.
Part Ex. 3.
Order-in-
Council,
No. 1388.
7th July,
1919.

—continued.

of Newsprint, with powers to make such order or orders as he might deem necessary in connection with his controllership, and particularly in connection with the distribution and supply of newsprint by the manufacturers to the publishers ;

AND WHEREAS until recently the publishers have been kept supplied under the Controller's orders with newsprint, but difficulties have now arisen in regard to supply of newsprint owing to the refusal of one of the manufacturers to comply with the orders of the Controller ;

AND WHEREAS large powers are given to the Controller under said Order-in-Council of November 3rd, 1917, yet the Controller has expressed 10 a doubt as to his power to prevent the export of paper in the event of a manufacturer or manufacturers refusing to comply with orders made by him under the provisions of the Order-in-Council of November 3rd, 1917 ;

THEREFORE His Excellency the Governor-General in Council, on the recommendation of the Minister of Finance, and under the authority of the War Measures Act, 1914, is pleased to order and is hereby ordered as follows:—

The Minister of Customs is hereby empowered,—in the event of any of the paper manufacturing companies refusing or neglecting to comply with any of the orders made by the Controller of Newsprint under the powers given to him by Order-in-Council of 3rd November, 1917, and on the recom- 20 mendation of the Controller,—to forbid and prevent the export of paper by such company or companies refusing or neglecting to comply with the orders of the Controller so long as such refusal or neglect shall continue.

E. J. LEMAIRE,
Clerk of the Privy Council.

Exhibit 13.

(Plaintiff's Exhibit.)

Letter R. A. Pringle to G. T. Clarkson.

OFFICE OF
COMMISSIONER AND CONTROLLER
NEWS PRINT, BOOK PAPER, ETC.

30

ROBERT A. PRINGLE K.C.
COMMISSIONER AND
CONTROLLER

COUNSEL
H. A. STEWART, K.C.
BROCKVILLE, ONT.

G. T. CLARKSON, ESQ.,
Toronto, Ont.

122 Wellington Street,
OTTAWA, ONT., July 10/19.

My dear Mr. Clarkson :—

Since writing you this morning it has struck me that if the contributing mills were ordered to pay in at the present time, say \$50,000. that it ought 40 to be satisfactory.

You might have Mr. Taylor make me up from Sharp's statements what proportion each mill would have to pay to make up the \$50,000.

Yours very truly,
"R. A. PRINGLE."

Ex. 13.
Letter, R. A.
Pringle to
G. T. Clark-
son.
10th July,
1919.

Exhibit 14.
(Plaintiff's Exhibit.)
Letter R. A. Pringle to G. T. Clarkson.

OFFICE OF
COMMISSIONER AND CONTROLLER
NEWS PRINT, BOOK PAPER, ETC.

ROBERT A. PRINGLE K.C.
COMMISSIONER AND
CONTROLLER

COUNSEL
H. A. STEWART K.C.
BROCKVILLE, ONT.

*In the
Supreme
Court of
Ontario.*
—
Exhibits.
Ex. 14.
Letter, R. A.
Pringle to
G. T. Clark-
son.
10th July,
1919.

10

122 Wellington Street,
OTTAWA, ONT., July 10/19.

G. T. CLARKSON, ESQ.,
Toronto, Ont.

Dear Mr. Clarkson :—

RE NEWSPRINT DIFFERENTIAL

I am in receipt of letter from Mr. Sharp enclosing differential statement and also copy of letter which he has written you.

As you are no doubt aware, there has been a great deal of difficulty over the Fort Frances situation and an understanding was arrived at after a great
20 deal of difficulty that an order would be made for payment of a proportion of the outstanding differential, such money to be paid into the bank. I have suggested that the money be paid into the credit of yourself and myself, there to remain until such time as the matter is finally disposed of.

I wish you would look over the statement which Sharpe has sent you and say what you would consider a fair amount to order the manufacturers to pay in at the present time. I am prepared to make an order at once. It seems to me that the manufacturers ought to pay in a very large proportion of the outstanding differential. They would be amply protected by the money being paid in to the bank, there to remain until such time as the whole
30 question is disposed of by the Tribunal. I would like if possible if you could give this matter consideration at once and let me hear from you as I am anxious to make the order the early part of next week.

I thought of going to Toronto to talk the matter over with you but find I cannot very well get away until Monday or Tuesday of next week.

I am enclosing you copy of an order which I am likely to make in connection with the western situation. It seems to me that this is—fair. An adjustment has to be made in regard to lap sulphite and the whole matter is still under consideration by the Paper Control Tribunal. The publishers will be protected by the money being paid into the bank and the Fort Frances
40 Company will also be protected.

Kindly let me hear from you at an early date and oblige. I would like if you could give me your ideas by mail on the differential figures and save me a trip to Toronto.

Yours very truly,
"R. A. PRINGLE."

*In the
Supreme
Court of
Ontario.*

Part Exhibit 1.
(Plaintiff's Exhibit.)
Order of Controller Pringle.

OTTAWA, July 14, 1919.

Exhibits.
Part Ex. 1.
Order of
Controller
Pringle
14th July,
1919.

OFFICE OF PAPER CONTROLLER

Upon hearing the application of the Fort Frances Pulp & Paper Co. Ltd., to reconsider my direction of May 10th, 1919, in regard to the amount to be paid by publishers for news print under my order of 26th September, 1918, and it appearing to me that owing to the fact that no rebate of duty has been allowed on lap sulphite, and that a considerable quantity of lap sulphite has been used by the Fort Frances Pulp & Paper Co. Ltd., in the manufacture of news print supplied to the publishers since the 1st day of July, 1918, and it also appearing that there would be difficulty in making adjustment with the publishers owing to the above, and having regard to the appeal which is now pending before the Paper Control Tribunal not being disposed of at the present time and in the event of the Paper Control Tribunal reversing, changing or modifying my Order of Sept. 26th, 1918, there would be further difficulty in adjusting the accounts between the Fort Frances Pulp & Paper Co. Ltd., and the publishers.

The Fort Frances Pulp & Paper Co. Ltd., have expressed their willingness to pay into such bank or trust company as I may designate the full amount of the rebate of duty received by them since July 1st, 1918, under order-in-council P.C. 2465, together with any future amounts that may be received from time to time in order that all interests may be protected, on the understanding that said moneys will not be paid out until such time as all matters in question have been finally disposed of by the Paper Control Tribunal in event of appeal being taken to them from any order made by myself as Controller.

AND it appearing to me that this course will save complication and will absolutely protect the Fort Frances Pulp & Paper Co. Ltd. as well as the publishers.

I THEREFORE DO ORDER that the Fort Frances Pulp & Paper Co. Ltd., do supply to the western publishers their supply of newsprint at the prices fixed by my order of September 26th, 1918, and that the publishers do pay the full prices so fixed by said order until the Appellate Tribunal finally disposes of same.

I DO FURTHER ORDER that the Fort Frances Pulp & Paper Co. Ltd., do pay into the Royal Bank of Canada, Ottawa Branch, to the credit of myself and G. T. Clarkson any sum or sums of money they may have received from the Customs Department as rebate on duty paid on liquid sulphite together with any sum or sums of money they may hereafter receive under said Order-in-Council, such moneys as already received to be paid into the bank within thirty days of date hereof, and any future moneys to be paid into the bank within thirty days of receipt of same, said moneys to remain

in the Royal Bank, Ottawa Branch, to the credit of myself and G. T. Clarkson, and only to be paid out to the parties entitled thereto upon the joint order of myself and G. T. Clarkson.

DATED AT OTTAWA, this 14th day of July, 1919.

(Signed) "R. A. PRINGLE,"
Controller.

*In the
 Supreme
 Court of
 Ontario.*

Exhibits.
 Part Ex. 1.
 Order of
 Controller
 Pringle
 14th July,
 1919.
 —continued.

10

Exhibit 4.
 (Plaintiff's Exhibit.)
Copy of Exhibit 4a
 (Not Printed)

Ex. 4.
 Copy of
 Exhibit 4a.
 (Not
 Printed).
 17th July,
 1919.

Exhibit 4a.
 (Plaintiff's Exhibit.)

Disputed Order of Controller Pringle.

Ex. 4A.
 Disputed
 Order of
 Controller
 Pringle.
 17th July,
 1919.

20

WHEREAS His Excellency the Governor-General in Council with a view to ensure to publishers of Canadian newspapers an adequate supply of newsprint paper at reasonable prices, and under and by virtue of the powers in that behalf conferred by section 6 of the War Measures Act 1914, or otherwise vested in the Governor-General in Council, was pleased to make certain regulations respecting the price, sale, control, storage, distribution, export and transport, etc., of newsprint paper in sheets or rolls, and by order-in-council dated the 16th day of April, 1917, the Minister of Customs was given authority among other things to make such order or orders as he might deem necessary or advisable for the distribution and delivery of newsprint paper in sheets or rolls by the manufacturers to the publishers, and to fix the quantity and price of newsprint paper in sheets or rolls furnished or to be furnished to the publishers in Canada by the manufacturers from the 1st of March, 1917, to the 1st of June, 1917.

30

AND WHEREAS by subsequent orders-in-council of May 25th, 1917, and September 1st, 1917, the time was extended and the Honourable the Minister of Customs under the authority given him by the order-in-council of the 16th day of April, 1917, and the further orders-in-council extending the time, did from time to time make orders fixing the quantity and price of newsprint paper in sheets or rolls to be furnished by the manufacturers to the publishers up to and including the 20th day of November A.D. 1917. And in all orders made by the Honourable the Minister of Customs there was the following provision:—

40

“AND WHEREAS under existing conditions the supply of newsprint paper to Canadian publishers is not proportionately distributed between them and by reason of the fact that the prices fixed are lower than the manufacturers are receiving from export business, I do order that each manufacturer should bear his due proportion of the cost so entailed in complying with above and that if arrangements are not made between the manufacturers for the pooling of such cost, and for adjustment between themselves in proportion to the percentage of their output supplied to Canadian publishers that an accounting be made, and the manufacturer

*In the
Supreme
Court of
Ontario.*
—
Exhibits.
Ex. 4A.
Disputed
Order of
Controller
Pringle.
17th July,
1919.

—continued.

or manufacturers who have supplied a greater percentage of Canadian tonnage than properly attributable to them shall be paid by the other manufacturers sufficient to place them in the same position as the manufacturer or manufacturers who have not supplied their proper percentage of paper to the Canadian publishers.”

AND WHEREAS by Order-in-Council dated the 3rd day of November, 1917, I was appointed Commissioner and Controller with full power to make such order or orders as I might deem necessary or advisable for the distribution and delivery of newsprint, etc., and to carry out all the terms and conditions of the different orders made from time to time by the Honourable the Minister of Customs. 10

AND WHEREAS acting under the authority of said Order-in-Council of 3rd November, 1917, I have made orders from time to time fixing price of newsprint, and in all such orders there was a provision in regard to the protection of the manufacturer or manufacturers who supplied a greater percentage of Canadian tonnage than properly attributable to them similar in terms to the order made by the Honourable the Minister of Customs.

AND WHEREAS Fort Frances Pulp & Paper Company, Limited, have in obedience to my orders supplied a very much larger proportion of paper to Canadian publishers than properly attributable to them. 20

AND WHEREAS I did on the 6th day of August, 1918, make an order covering differentials for the months of March, April, May, June, July, August, September, October, November and December of the year 1917, which said order is now in appeal.

AND WHEREAS no order has been made for differentials covering the period from 1st January, 1918, to 1st July, 1918, and a large amount is due the Fort Frances Pulp & Paper Co. Ltd., on account of said differentials.

AND WHEREAS I do not at the present time consider that I should give judgment in regard to the differentials owing to the fact that the Paper Control Tribunal have not yet given their judgment on the appeal now pending before them from my order of August 6th, 1918, and I desire before giving any final judgment that all parties interested should have an opportunity of being heard and that they should be furnished with full statements, etc. However, I deem it only just that I should make at this time an interim order and direct the payment of a reasonable amount of the differentials now owing to the Fort Frances Pulp & Paper Co. Ltd., into the bank herein-after designated. 30

I DO THEREFORE ORDER that the following mills do pay into the Royal Bank of Canada, Ottawa Branch, to the credit of R. A. Pringle, G. T. Clarkson and F. W. Sharp the sums of money set opposite their respective names, within thirty days from the date of this order, said sums of money to remain on deposit in the Royal Bank of Canada, Ottawa Branch, in the joint names of R. A. Pringle, G. T. Clarkson and F. W. Sharp until such time as a final decision is given by the Paper Control Tribunal in regard to differentials, and shall be paid out only upon the order of myself as Paper Controller when final judgment is given by the Paper Control Tribunal :— 40

Abitibi Pulp & Paper Co. Ltd. \$ 3,874.58

J. R. Booth.....	708.40
Donnaconna Paper Co. Ltd.....	7,822.59
Ontario Paper Co. Ltd.....	7,446.79
Price Bros. & Co. Ltd.....	3,153.23
Spanish River Pulp & Paper Mills Ltd.....	18,431.24
St. Maurice Paper Co. Ltd.....	1,585.26
Brompton Pulp & Paper Co. Ltd.....	213.28

Any parties desiring to appeal from this order will require to serve notice of appeal within thirty days from the date hereof.

10 DATED at Ottawa, the 17th day of July A.D., 1919.

(Signed) R. A. PRINGLE,
Controller.

*In the
Supreme
Court of
Ontario.*
—
Exhibits.
Ex. 4a.
Disputed
Order of
Controller
Pringle,
23rd July,
1919.

—continued.

Exhibit 14a.

(Plaintiff's Exhibit.)

Letter G. T. Clarkson to R. A. Pringle.

E. R. C. CLARKSON & SONS.

Toronto, July 23rd, 1919.

Ex. 14a.
Letter, G. T.
Clarkson to
R. A. Pringle
23rd July,
1919.

R. A. PRINGLE, ESQ., K.C.,
122 Wellington Street,
Ottawa, Ont.

20 Dear Mr. Pringle :—

RE NEWSPRINT INVESTIGATION

I return herewith draft order you propose to make in this matter. It appeals to me that the Fort Frances Company is practically taking the attitude that it will not refund the rebate of duty unless you enforce collection of a differential from the Manufacturers, but it is willing to pay over the rebate of duty if you make the Manufacturers make payment on account of differential. The point, of course, which I see in the position is that the Fort Frances Company is bound to make repayment of the refund of duty to the Publishers. At the same time the Manufacturers will undoubtedly vigorously object to any further payment of differential until the Appeal Tribunal gives its finding as to whether the basis adopted by you shall be upheld or varied. The whole situation makes a very awkward predicament to my mind and I do not see how trouble can be avoided either one way or another unless the Appeal Tribunal can be persuaded to give its finding.

Yours truly,
"G. T. CLARKSON "

GTC/D.
Enc.

40

Part Exhibit 1.

(Plaintiff's Exhibit.)

Order of Controller Pringle.

WHEREAS by Order-in-Council, dated 3rd November, 1917, I am authorized and empowered to make such order or orders as I may deem necessary or advisable for the distribution of paper by the manufacturers to the publishers, and I am further empowered to fix prices :

Part Ex. 1.
Order of
Controller
Pringle.
31st July,
1919.

*In the
Supreme
Court of
Ontario.*

*Exhibits.
Part Ex. 1.
Order of
Controller
Pringle.
31st July,
1919.*

—continued.

AND WHEREAS by Order dated 26th day of September, 1918, I did order and direct that the manufacturers should supply paper to the publishers at the prices set out in said order, from the 1st day of October, 1918, to the 1st day of December, 1918. subject to certain conditions, all of which are fully set out in said order ;

AND WHEREAS I did on the 30th day of November, 1918, renew said order of September 26th, 1918, for a period of two months from the 1st day of December, 1918, to the 1st day of February, 1919 ;

AND WHEREAS I did on the 31st day of January, 1919, again renew said order of September 26th, 1918, for a period of two months from the 1st day of February, 1919, to the 1st day of April, 1919 ;

AND WHEREAS I did on the 31st day of March, 1919, again renew said order of September 26th, 1918, for a period of two months from the 1st day of April, 1919, to the 1st day of June, 1919 ;

AND WHEREAS I did on the 31st day of May, 1919, further renew said Order of September 26th, 1918, for a period of two months from the 1st day of June, 1919, to the 1st day of August, 1919 ;

AND WHEREAS said orders are now in appeal, and the appeal is not likely to be disposed of by the Paper Control Tribunal for some time, I Do THEREFORE by virtue of my powers contained in said Order-in-Council of November 3, 1917, further renew said order of 26th September, 1918, for a period of two months from the 1st day of August, 1919, to the 1st day of October, 1919.

THIS ORDER is subject to appeal and any parties desiring to appeal to the Paper Control Tribunal are required to serve notice of appeal within thirty days of the date hereof.

(Sgd.) R. A. PRINGLE,
Controller.

DATED AT OTTAWA, this
31st day of July, 1919.

Part Exhibit 27.

(Defendants' Exhibit.)

Notice of Appeal by Canadian Pulp & Paper Association.

TAKE notice that the Manufacturers represented by the Canadian Pulp & Paper Association hereby appeal to the Paper Control Tribunal from an order made by Robert A. Pringle, Esquire, K.C., Commissioner and Controller of Newsprint dated the 31st day of July, 1919, continuing through the months of August and September, 1919, the prices of newsprint paper fixed by his order of 26th September, 1918, on the ground that such prices are inadequate.

DATED AT MONTREAL, this 1st day of August, 1919.

G. H. MONTGOMERY,
Of Counsel for the Canadian
Pulp & Paper Association.

To : ROBERT A. PRINGLE, ESQ., K.C.,
Commissioner and Controller of Newsprint.
H. A. STEWART, ESQ., K.C.,
Counsel for the Dominion Government.
W. N. TILLEY, ESQ., K.C.,
Counsel for the Canadian Newsprint Publishers'
Special Paper Committee.

*Part Ex. 27.
Notice of
Appeal by
Canadian
Pulp &
Paper Asso-
ciation.
1st August,
1919.*

30

40

Part Exhibit 1.
(Plaintiff's Exhibit.)
Judgment of Paper Control Tribunal.

*In the
Supreme
Court of
Ontario.*

THE PAPER CONTROL TRIBUNAL
THE HONOURABLE MR. JUSTICE WHITE, (Chairman),
THE HONOURABLE MR. JUSTICE ARCHER,
THE HONOURABLE MR. JUSTICE MIDDLETON.

—
Exhibits.
Part Ex. 1.
Judgment of
Paper
Control
Tribunal.
18th August,
1919.

The 18th day of August, 1919.

10 The appeal of the manufacturers from the order of the Paper Controller, dated the 6th August, 1918, in respect of differentials payable to the Fort Frances Pulp & Paper Company, Limited, having come on to be heard before us in presence of Counsel for all parties :

We do this day adjudge and determine that the said order so far as it directs to be paid to the Fort Frances Pulp & Paper Company Limited, by the several manufacturers therein named, the several sums thereby specified for or in respect of differential for the ten months of March, April, May, June, July, August, September, October, November and December, in the year 1917, totalling (including interest) in said order, the sum of \$100,797.71, be varied so that the total amount which the said Fort Frances Pulp & Paper
20 Company Limited, shall be entitled to receive or retain under said order shall be the sum of \$72,507.12, instead of the said sum of \$100,797.71, payable by said manufacturers to said Fort Frances Pulp & Paper Company Limited, in the amounts and proportions following, that is to say :

	By the Abitibi Pulp & Paper Company.....	\$ 7,915.39
	By J. R. Booth.....	4,302.13
	By Brompton Pulp & Paper Company.....	5,026.88
	By Donnacona Pulp & Paper Company, Ltd.....	8,051.24
	By Price Brothers & Company Limited.....	6,544.56
	By Ontario Paper Company Limited.....	6,554.46
30	By Spanish River Pulp Company.....	25,846.03
	By St. Maurice Paper Company.....	8,266.43

\$ 72,507.12

We think the learned Paper Controller erred in directing interest to be paid to the Fort Frances Pulp and Paper Company, Limited, on the said amount which he found payable to said Company as differential.

40 We further adjudge and order that any of said contributing manufacturers who has under and in obedience to said order of the Paper Controller paid to the said Fort Frances Pulp & Paper Company Limited, as differential covering said ten months period, or as interest thereon, any sum in excess of the amount which we have above specified and adjudged as being properly payable by said manufacturers shall be repaid such excess forthwith by the Fort Frances Pulp & Paper Company Limited.

The appeal of the Ontario Paper Company Limited from the said Order of the Paper Controller is dismissed.

(Sgd.) A. S. WHITE, *Chairman.*
A. W. ARCHER, J.
W. E. MIDDLETON, J.

*In the
Supreme
Court of
Ontario.*

Exhibits.
Part Ex. 1.
Judgment of
Paper
Control
Tribunal on
appeal from
Paper
Controller's
Order of
of Sept. 26,
1918. 18th
August, 1919

Part Exhibit 1.
(Plaintiff's Exhibit.)
Judgment of Paper Control Tribunal.

THE PAPER CONTROL TRIBUNAL

THE HONOURABLE MR. JUSTICE WHITE (*Chairman*),
THE HONOURABLE MR. JUSTICE ARCHER,
THE HONOURABLE MR. JUSTICE MIDDLETON.

The 18th day of August, 1919.

The appeals of the manufacturers and of the publishers from the order of the Paper Controller made on the 26th of September, 1918, having come on to be heard before the tribunal and we, having by our order of 23rd January, 1919, referred the matter back to the Controller to take further evidence and to state what change if any should be made in the price fixed by the said order in view of such evidence, and he having by his report made on the twenty-seventh day of May last, found that no change should be made, the hearing of this appeal was then resumed in the presence of counsel for all parties. 10

We find and determine that the price of newsprint paper within the Dominion of Canada in carload, in rolls, shall be \$3.30 per 100 lbs., \$3.37½ in less than carload lots. Sheet news \$3.65 per 100 lbs., in carload lots—\$3.77½ in lots (less than carload lots) of two tons and over—all to be f.o.b. mills. This price to prevail from 1st July, 1918, to 30th November, 1918. 20

In arriving at this price we have considered all the evidence adduced both upon the original hearing and given before us, and upon the reference back, and have not dealt with the matter as an appeal only.

We made no difference as to the price payable to the Fort Frances Pulp & Paper Company, as the Government has granted a refund on sulphite imported.

Save as varied by this order, the provisions of the order of the Controller are to stand.

Any purchaser of paper who has paid on the footing of the prices fixed by the Controller may apply to him for an order directing a refund of the excess paid. 30

(Signed) A. S. WHITE,
Chairman.

CHAS. ARCHER, J.
W. E. MIDDLETON, J.

THOMAS P. OWENS, ESQ.,
Registrar of the Tribunal.

Remarks made by the Honourable Justice Archer :—

Without entering a formal dissent, I deem it advisable to say that I would have supported a judgment allowing \$66.00 a ton for the months of July, August and September, and \$69.00 a ton for October and November, 1918. 40

(Signed) CHAS. ARCHER. J.

THOMAS P. OWENS,
Registrar of the Tribunal.

Part Exhibit 27.

(Defendants' Exhibit.)

Notice of Appeal by Canadian Newspaper Publishers' Special Paper Committee.

TAKE NOTICE that the Canadian Newspaper Publishers Special Paper Committee hereby appeals to the Paper Control Tribunal from an order made by Robert A. Pringle, Esquire, K.C., Commissioner and Controller of Newsprint, dated the 31st day of July, 1919, continuing during August and September, 1919, the prices of newsprint paper fixed by his order of 26th September 1918, on the ground that such prices are excessive.

10 DATED at Toronto this 20th day of August, 1919.

W. N. TILLEY,

Of Counsel for the Canadian
Newspaper Publishers' Special
Paper Committee.

To : ROBERT A. PRINGLE, Esq., K. C.,
Commissioner and Controller of Newsprint.

H. A. STEWART, Esq., K.C.,
Counsel for the Dominion Government.

20 G. H. MONTGOMERY, Esq., K.C.,

G. W. MACDOUGALL, Esq., K.C.,

G. F. HENDERSON, Esq., K.C.,

J. F. ORDE, Esq., K.C.,

VICTOR E. MITCHELL, Esq., K.C.,

GLYN OSLER, Esq., K.C., and

THOS. L. PHILIPS, Esq.,

Of Counsel for Manufacturers of Newsprint paper.

Exhibit 31.

(Defendants' Exhibit.)

Evidence before Commissioner Pringle.

30 BEFORE :

R. A. PRINGLE, Esq., K.C., COMMISSIONER.

THE ROYAL COMMISSION TO INQUIRE INTO THE COST OF NEWS
PRINT MET IN OTTAWA ON WEDNESDAY, SEPTEMBER 17, 1919.

APPEARANCES :

MR. W. H. THOMSON, with Mr. J. M. Imrie, appeared for the Canadian
Press Association.

HON. SENATOR W. B. ROSS, K.C., appeared for the Fort Frances Pulp
& Paper Company.

MR. J. F. ORDE, K.C., appeared for the E. B. Eddy Company.

40 MR. GEORGE H. MONTGOMERY, K.C., appeared for the Canadian Pulp
and Paper Association.

MR. M. C. MARTIN, of Chicago, appeared for the Ontario Paper Company.

MR. GEO. F. HENDERSON, K.C., appeared for J. R. Booth.

Mr. Montgomery : I have an application here, Mr. Commissioner.

*In the
Supreme
Court of
Ontario.*

Exhibits.
Part Ex. 27.
Notice of
Appeal by
Canadian
Newspaper
Publishers'
Special
Paper
Committee.
20th August,
1919.

Ex. 31.
Evidence
before Com-
missioner
Pringle.
17th Septem-
ber, 1919.

*In the
Supreme
Court of
Ontario.*
—
Exhibits.
Ex. 31.
Evidence
before Com-
missioner
Pringle.
17th Septem-
ber, 1919.

—continued.

The Commissioner : Is it in connection with the differential matter ?

Mr. Montgomery : Yes, I have been getting letters from a number of mills asking when they are going to get back their over-payment.

The Commissioner : I made an order, which I did not issue, directing payment of further differentials, I thought that in view of the fact that there might possibly be a change in these prices I would not issue you the order just then, but I made the order directing payment of certain moneys to the credit of Mr. Clarkson, Mr. Sharp and myself. Under the circumstances would you ask me to make an order directing Fort Frances to refund these moneys to the manufacturers, while there are very large amounts of money due by the manufacturers to Fort Frances ? It is entirely a matter for you. 10

Mr. Montgomery : I understood that quite apart from whatever might be due from Fort Frances, there were moneys in your hands representing the sulphite rebate which have never been paid over.

The Commissioner : No, it was held under a letter from Fort Frances pending the final disposition of this money. These moneys, however, will accrue to the benefit of Fort Frances under the order in regard to the differentials.

Mr. Montgomery : In the meantime they are not doing Fort Frances or the manufacturers any good, and the manufacturers, of course, are responsible for the amounts. 20

The Commissioner : There will be interest on these moneys, and they are not getting any interest under the judgment of the Tribunal. However, I will dispose of that by an order, and direct payment into the Bank.

Mr. Montgomery : What I wish to have is the information so that I will be in a position to make a reply to the people who have written to me. You have explained the situation as you see it and I will simply have to reply to them in that sense.

The Commissioner : Very well. I took this up and I was very strongly pressed by Fort Frances to make an order in regard to further differentials. I made the order directing payment of these moneys, and just then I got word from you. You had heard from Mr. Justice Archer. Senator Ross in the meantime was away in Nova Scotia, and when he came back he thought the order had been issued. I made two orders. I made an order directing the Fort Frances Pulp and Paper Company to pay into the bank the amount of money they had received in connection with the sulphite rebate, and which the newspapers were claiming, and I made another order against the manufacturers directing them to pay into the Bank—I forget the exact amount—something like \$50,000 or \$60,000. But I held both orders after getting your message, and when Senator Ross came back he was surprised the orders had not gone out. I explained the situation to him and told him that in view of the judgment coming down shortly, and having heard from you, I would not think it wise to issue either order. I would ask that this matter stand. 30 40

Senator Ross : I should like to say that it is important for us that that order should go out and that the money should come in in order that we may get our bank interest, because the figures are getting large.

The Commissioner : I will look into it. The order that I made was an order for only a portion of the amount, and the money was to remain in the bank until such time as all parties had an opportunity of being here. I am willing to do anything I can to further this matter, but is there not this difficulty? This whole basis of differentials may be changed if the prices are changed for the prior periods.

Senator Ross : The issue of those orders was practically the basis upon which Fort Frances resumed the supply of paper to the Western newspapers.

Mr. Montgomery : I do not think they could help it.

10 Senator Ross : I think we ought to have those orders issued.

The Commissioner : We will do the best we can.

The Commission adjourned *sine die*.

*In the
Supreme
Court of
Ontario.*

Exhibits.
Ex. 31.
Evidence
before Com-
missioner
Pringle.
17th Septem-
ber, 1919.

—continued.

Part Exhibit 1.

(Plaintiff's Exhibit.)

Order of Controller Pringle.

Part Ex. 1.
Order of
Controller
Pringle.
30th Septem-
ber, 1919.

WHEREAS by Order-in-Council dated 3rd November, 1917, I am authorized and empowered to make such order or orders as I may deem necessary or advisable for the distribution of paper by the manufacturers to the publishers and I am further empowered to fix prices :

20 AND WHEREAS by Order dated 26th day of September, 1918, I did order and direct that the manufacturers should supply paper to the publishers at the prices set out in said order from 1st October, 1918, to 1st December, 1918, subject to certain conditions all of which are fully set out in said order ;

AND WHEREAS I did on the 30th day of November, 1918, the 31st day of January, 1919 ; the 31st day of March, 1919 ; the 31st day of May, 1919, and the 31st day of July, 1919, renew the said order of September 26th, 1918.

30 AND WHEREAS the Paper Control Tribunal have given judgment fixing price for period from July 1st, 1918, to December 1st, 1918, and the question of price for other periods is still under consideration I do therefore by virtue of my powers contained in said Order-in-Council of November 3rd, 1917, further renew said order of 26th September, 1918, for a period of ONE MONTH from the 1st day of October, 1919, to the 1st day of November, 1919.

This order is subject to appeal and any parties desiring to appeal to the Paper Control Tribunal are required to serve notice of appeal within thirty days of the date hereof.

Ottawa, September 30th, 1919.

“R. A. PRINGLE,”
Controller.

Part Exhibit 27.

(Defendants' Exhibit.)

Notice of Appeal by Canadian Pulp & Paper Association.

40

TAKE NOTICE that the Manufacturers represented by the Canadian Pulp & Paper Association hereby appeal to the Paper Control Tribunal from an Order made by Robert A. Pringle, Esquire, K.C., Commissioner and

Part Ex. 27.
Notice of
Appeal by
Canadian
Pulp &
Paper
Association.
2nd October,
1919.

*In the
Supreme
Court of
Ontario.*

Exhibits.
Part Ex. 27.
Notice of
Appeal by
Canadian
Pulp &
Paper
Association.
2nd October,
1919.

—continued.

Controller of Newsprint dated the 30th September, 1919, continuing through the month of October, 1919, the prices of newsprint paper fixed by his order of the 26th September, 1918, on the ground that such prices are inadequate.

DATED AT MONTREAL, this 2nd day of October, 1919.

GEORGE H. MONTGOMERY,
Of Counsel for the Canadian Pulp
& Paper Association.

To : ROBERT A. PRINGLE, ESQ., K.C.,
Commissioner and Controller of Newsprint. 10
H. A. STEWART, ESQ., K.C.,
Counsel for the Dominion Government.
W. N. TILLEY, ESQ., K.C.,
Counsel for the Canadian Newsprint Publishers'
Special Paper Committee.

Part Ex. 32.
Evidence
before Com-
missioner
Pringle.
9th October,
1919.

Exhibit 32.

(Plaintiff's Exhibit.)

Evidence before Commissioner Pringle.

ROYAL COMMISSION ON COST OF NEWSPRINT
OTTAWA, THURSDAY, OCTOBER 9, 1919. 20

BEFORE :

R. A. PRINGLE, ESQ., K.C., COMMISSIONER
THE ROYAL COMMISSION TO INQUIRE INTO THE COST OF NEWSPRINT
MET IN OTTAWA, ON THURSDAY, OCTOBER 9, 1919.

APPEARANCES :

MR. J. M. IMRIE, appeared for the Canadian Press Association.
HON. SENATOR W. B. ROSS, K.C., appeared for the Fort Frances Pulp
and Paper Company.
MR. J. F. ORDE, K.C., appeared for the E. B. Eddy Company.
MR. GEO. F. HENDERSON, K.C., appeared for J. R. Booth. 30

The Commissioner : Are we ready to proceed, Gentlemen ?

Mr. Henderson : Mr. Controller, the day before yesterday Mr. Tilley got into touch with Mr. Montgomery or Mr. Montgomery with Mr. Tilley, I am not sure which, but I mention Mr. Tilley first because the point of their conversation was that it had been ascertained that Mr. Clarkson, the chartered accountant for the Commission, who is looking into the costs was not ready with his statement, and would not be ready for five and perhaps six weeks. Under the circumstances it was suggested that it would be idle to come here this morning as nothing could be done, and that seemed so obvious to Mr. Tilley and Mr. Montgomery that even without conference with Mr. Orde and myself they agreed that, subject to what others might say, and particularly what you might say, there should be an adjournment. That seemed so obvious to them that I understand they told Mr. Clarkson that it would

not be necessary for him to come here this morning, so their absence is not due to lack of courtesy, but to the very simple situation which presented itself. I have undertaken to speak on behalf of Mr. Tilley as well as Mr. Montgomery in asking for an adjournment for something like six weeks.

10 The Commissioner : I was in Toronto Thursday and Friday of last week and saw Mr. Clarkson. He is doing everything possible to get at the costs in the different mills and I understand that Mr. Taylor, his assistant, and Mr. McNicol, the paper expert for the Commission, are now employed in Quebec, I think at Grand'Mere. It will be possibly five weeks before all their statements are ready and I do not think that there is much that we can do in the meantime. Have you any objection, Senator Ross, to an adjournment ?

Senator Ross : I have an objection. Of course, there may be certain phases of the case that may have to be adjourned for that length of time, for instance, fixing the price before July 1st and after November 1st. I should not like the whole case however to be adjourned, because I think the question of differentials ought to be dealt with in the meantime. We could perhaps adjourn subject to an application being made to you any time within the next week or ten days for an order on differentials.

20 The Commissioner : You can make that application any time. I am quite ready to hear it. The only point in regard to that is the one which I think I discussed with you, that in the event of any change being made in the price, the differential would also be changed.

Senator Ross : I am aware of that.

The Commissioner : Then we can adjourn to a day to be fixed. There is no use fixing a definite date now. I am quite ready for you, Senator Ross, to make application any time in regard to an order on differentials.

30 Senator Ross : You need only make a provisional order in this case, as you have done before. You have fixed a price subject to change. You might fix the differential at a figure which you know would fall within the price, so that no injustice would be done in any event. In the meantime I would point out the judges have disallowed us interest on the differential that has already been fixed. Now somebody must be getting the benefit of that money, and it strikes me that if the money is ours, we should have had the interest. I can understand why there should be a difference of opinion about the figures, but why we should go without the interest on money that is due us and which others are getting the benefit of, I do not know. For that reason, I think that an order on differentials should be made at an early date.

40 Mr. Orde : While the question of differentials is under consideration, I wish to point out on behalf of Eddy that the question of differentials is a rather serious one for them now, and if you are going to fix any date to discuss differentials the whole question had better be discussed, and not simply with reference to Fort Frances. I quite appreciate the difficulty in the way, that until the final price is fixed the foundation of the differential is lacking.

The Commissioner : There is a greater difficulty than that. I have not yet got from Mr. Clarkson or Mr. Taylor any statement showing me why

*In the
Supreme
Court of
Ontario.*

Exhibits.
Part Ex. 32.
Evidence
before Com-
missioner
Pringle.
9th October,
1919.

—continued.

*In the
Supreme
Court of
Ontario.*
—
Exhibits.
Part Ex. 32.
Evidence
before Com-
missioner
Pringle.
9th October,
1919.

—continued.

there was a change in the figures. I was speaking to one of the judges and he said "We have not changed your order at all, except in regard to interest." That is not correct. The figures are changed, and very substantially changed, and they must be based on figures given to the Court by Mr. Clarkson or Mr. Taylor being different to the figures which were given to me when I made my order. That has all got to be gone into. We will discuss that matter at any time it is convenient to counsel.

Mr. Henderson : I do not want to continue any apparent strain of discord, but I might be derelict in my duty to Booth if I failed to have it once more appear in the record that Mr. Booth from the very beginning of this inquiry would have been very pleased indeed to take over some of the Eddy Company's customers permanently. 10

The Commissioner : I do not know that any good purpose would be served by a discussion of that. I have had very great difficulty in getting Booth to help Eddy out with some of the publishers.

Senator Ross : Perhaps Mr. Booth would take over some of the Western fellows.

Mr. Henderson : He would be very pleased to, I think, at an f.o.b. Ottawa rate.

Senator Ross : Why should we not have this understanding now, 20 that you order the accountants to get ready on this question ?

The Commissioner : I have. When in Toronto on Friday I pointed out to Mr. Clarkson the discrepancies that I saw between these two orders and I asked him to prepare a statement showing just exactly how that was worked out. I hope to have it in a day or two.

Mr. Orde : That is limited to Fort Frances.

Senator Ross : I understand very well that you cannot force along the accountants faster than they can go, or choose to go.

The Commissioner : I am doing the best I can with them, and I think they are doing the best they can with me. 30

Senator Ross : If they are at work, it is understood they are getting the material ready for an order on differentials, subject of course to a discussion.

The Commissioner : As you are aware, I made an order which was signed by me, but which I have never put in force, directing payments of certain moneys into the bank. I thought it wise to hold that order until I got all these figures from Mr. Clarkson so that there would be no error about it.

Senator Ross : If the whole question of an application to put these orders in force and for a new order with regard to differentials stands, well and good.

The Commissioner : I am receiving statements from time to time from 40 Mr. Sharp in regard to adjusting the differential between the different manufacturers. I think Eddy was included in that adjustment.

Mr. Orde : I suppose so, but we have never received a cent of money.

The Commissioner : That seems to be outside of myself, I always understood there was an agreement between the different manufacturers and Eddy by which this matter would be adjusted between them, and I have

had statements from Mr. Sharp showing the adjustments that were made between the different manufacturers.

Mr. Henderson : I think there was an understanding—I should not like to say an agreement—between all the manufacturers except Fort Frances that differentials were a matter of ancient history, whether or not conditions have changed, whether or not what I call that understanding is in effect an agreement, I do not know at the present time. I have never inquired into the matter. I think that matter should be left open. I do not think it could be intelligently discussed on its merits until the figures are ready.

10 Mr. Orde : I do not want to be understood as assenting to what Mr. Henderson has said. There was undoubtedly some sort of understanding at one stage that the differentials question was dropped. But how long that was to last, or whether it had reference only to the then existing order, I am not sure. It was never intended by Eddy that it was going to abandon all claim to future differential regardless of what the price might be. It would be simply criminal to expect Eddy Company to accept the price that was ordered as against the price these other mills are getting from the United States. The Eddy Company are getting offers today running up as high as

20 Senator Ross : There is one other thing I wanted to say, and that is that the Fort Frances Company would be very glad to take paper at the Eastern mills instead of money. We are not in love with an order for cash or the interest. If the Eastern men would give us their portion of the paper at their mills we would be delighted to take it, and in that case they have it in their power to solve the question of differentials. Perhaps on the whole they may elect to do that. We would certainly be glad to take the paper.

The Commissioner : The understanding is that this meeting will be adjourned to a date to be fixed, and that application can be made to me at any time in regard to differential, and if necessary I will call a meeting for a

30 full discussion of the question.

The Commission adjourned *sine die*.

Part Exhibit 27.

(Defendants' Exhibit.)

Notice of Appeal by Canadian Newspaper Publishers' Special Paper Committee.

Take notice that the Canadian Newspaper Publishers Special Paper Committee hereby appeals to the Paper Control Tribunal from an order made by Robert A. Pringle, Esquire, K.C., Commissioner and Controller of Newsprint dated the 30th day of September, 1919, continuing during October the prices of newsprint paper fixed by his order of 26th September, 1918, on the

40 ground that such prices are excessive.

DATED at Toronto this 30th day of October, 1919.

W. N. TILLEY,
Of Counsel for the Canadian
Newspaper Publishers' Special
Paper Committee.

*In the
Supreme
Court of
Ontario.*

Exhibits.
Part Ex. 32.
Evidence
before Com-
missioner
Pringle.
9th October,
1919.

—continued.

Part Ex. 27
Notice of
Appeal by
Canadian
Newspaper
Publishers'
Special
Paper Com-
mittee.
30th October
1919.

*In the
Supreme
Court of
Ontario.*

Exhibits.
Part Ex. 27.
Notice of
Appeal by
Canadian
Newspaper
Publishers'
Special
Paper Com-
mittee.
30th October
1919.

—continued.

Part Ex. 1.
Order of
Controller
Pringle.
31st October,
1919.

To : ROBERT A. PRINGLE, ESQ., K.C.,
Commissioner and Controller of Newsprint.
H. A. STEWART, ESQ., K.C.,
Counsel for the Dominion Government.
G. H. MONTGOMERY, ESQ., K.C.,
G. W. MACDOUGALL, ESQ., K.C.,
G. F. HENDERSON, ESQ., K.C.,
J. F. ORDE, ESQ., K.C.,
VICTOR E. MITCHELL, ESQ., K.C.,
GLYN OSLER, ESQ., K.C., and
THOS. L. PHILIPS, ESQ.,
Of Counsel for Manufacturers of Newsprint Paper.

10

Part Exhibit 1.
(Plaintiff's Exhibit.)
Order of Controller Pringle.

WHEREAS by Order-in-Council dated 3rd November, 1917, I am authorized and empowered to make such order or orders as I may deem necessary or advisable for the distribution of paper by the manufacturers to the publishers and I am further empowered to fix prices ;

AND WHEREAS by Order dated 26th day of September, 1918, I did order and direct that the manufacturers should supply paper to the publishers at the prices set out in said order from 1st October, 1918, to 1st December, 1918, subject to certain conditions, all of which are fully set out in said order ;

AND WHEREAS I did on the 30th day of November, 1918, the 31st day of January, 1919 ; the 31st day of March, 1919 ; the 31st day of May, 1919 ; the 31st day of July, 1919, and the 30th day of September, 1919, renew said order of September 26th, 1918.

AND WHEREAS the Paper Control Tribunal have given judgment fixing price for period from July 1st, 1918, to December 1st, 1918, and the question of price for other periods is still under consideration I do therefore by virtue of my powers contained in said order-in-council of November 3rd, 1917, further renew my said order of 26th September, 1918, for a period of two months from the 1st day of November, 1919, to the 31st day of December, 1919.

This Order is subject to appeal and any parties desiring to appeal to the Paper Control Tribunal are required to serve notice of appeal within thirty days of the date hereof.

Ottawa, October 31st, 1919.

(Signed) R. A. PRINGLE,
Control.

Part Exhibit 27.
(Defendants' Exhibit.)

Notice of Appeal by Fort Frances Pulp & Paper Co.

TAKE NOTICE that the FORT FRANCES PULP & PAPER COMPANY hereby appeals to the Paper Control Tribunal from an order made by Robert A.

Part Ex. 27.
Notice of
Appeal by
Fort Frances
Pulp &
Paper
Company
Limited.
14th Novem-
ber, 1919.

40

Pringle, Esq., Commissioner and Controller of Newsprint, dated the 28th day of October, 1919, directing and commanding the said Fort Frances Pulp and Paper Company to supply to the Free Press Newspaper such paper as they require at \$69.88 per ton, on the ground that said order or direction is illegal and oppressive and that the demand of said Free Press Newspaper is unreasonable and unfounded.

DATED at Ottawa, this 14th day of November, A.D., 1919.

W. B. ROSS,
Of Counsel for the Fort Frances
Pulp & Paper Co.

10

TO : ROBERT A. PRINGLE, ESQ., K.C.,
Commissioner and Controller of Newsprint.
W. N. TILLEY, ESQ., K.C.,
Counsel for the Canadian Newspaper Publishers'
Special Paper Committee.

*In the
Supreme
Court of
Ontario.*

Exhibits.
Part Ex. 27.
Notice of
Appeal by
Fort Frances
Pulp &
Paper
Company
Limited.
14th Novem-
ber, 1919.

—continued.

Part Exhibit 27.

(Defendants' Exhibit.)

Notice of Appeal by Canadian Newspaper Publishers' Special Paper Committee.

20 TAKE NOTICE that the Canadian Newspaper Publishers Special Paper Committee hereby appeals to the Paper Control Tribunal from an order made by Robert A. Pringle, Esquire, K.C., Commissioner and Controller of Newsprint dated the 31st day of October, 1919, continuing during November and December the prices of newsprint paper fixed by his order of 26th September, 1918, on the ground that such prices are excessive and upon other grounds.

DATED at Toronto this 15th day of November, 1919.

W. N. TILLEY,
Of Counsel for the Canadian
Newspaper Publishers' Special
Paper Committee.

30

TO : ROBERT A. PRINGLE, ESQ., K.C.,
Commissioner and Controller of Newsprint.
HON. W. B. ROSS, K.C.,
Counsel for Fort Frances Pulp & Paper Co.

Part Ex. 27.
Notice of
Appeal by
Canadian
Newspaper
Publishers'
Special
Paper
Committee.
15th Novem-
ber, 1919.

Part Exhibit 24.

(Defendants' Exhibit.)

Memorandum of Conference of Newsprint Manufacturers.

40

HELD AT THE RITZ CARLTON HOTEL ON THURSDAY
EVENING, THE TWENTY-SEVENTH OF NOV. 1919.

PRESENT :

St. Maurice Paper Company, represented by Messrs. A. McLaurin,
and Coleman ;
Eddy Company, represented by Messrs. Millen and Taylor ;

Part Ex. 24.
Memoran-
dum of Con-
ference of
News Print
Manufac-
turers. 27th
November,
1919.

*In the
Supreme
Court of
Ontario.*

Exhibits.
Part Ex. 24.
Memorandum of Conference of News Print Manufacturers. 27th November, 1919.

—continued.

Booth Company, represented by Messrs. H. I. Thomas and McGibbon ;
Ontario Paper Company, represented by Mr. M. C. Martin ;
Abitibi Power & Paper Company represented by Mr. Victor Mitchell
and Mr. L. R. Wilson ;

Canada Paper Company represented by Mr. F. J. Campbell ;
George H. Montgomery attended as Counsel.

Mr. Campbell occupied the Chair in the absence of Mr. George M. McKee.

Mr. H. I. Thomas outlined the position taken by Mr. Booth in view of
the changed market conditions and that in agreeing to a Canadian price of
\$75 he did so on the basis of the American price of \$80.

10

The market situation as changed Mr. Booth's contention is that it should
have a decided bearing on a revised Canadian price. Telegrams were read
from the Donnacona, Brompton, Price & Powell R. Companies dissenting
from the proposed order of Paper Controller.

Mr. Millen desired to put on record that the Eddy Company are will-
ing to supply their quota at the price fixed by the Government and will not
supply any more than their share.

Mr. Mitchell stated that the Abitibi Power & Paper Company have
already placed themselves on record as being willing to supply their quota at
any price fixed by the Government.

20

Mr. Montgomery then advised the meeting of his various conversations
with Sir Henry Drayton and Mr. Pringle in relation to the present newsprint
order and of the conclusions that he had arrived at, namely, that there was
now a possibility of Mr. Pringle being retained to supervise the distribution
of newsprint and, particularly, in view of the practical experience by the
members with the redistribution of the Canadian business by voluntary
methods is impracticable.

Mr. Montgomery urged all members to look at the situation from a
common sense point of view bearing in mind that the agreement is in effect
for six months only after which time according to the understanding between
the two Committees the lowest export price should rule as the basis for future
contracts.

30

The St. Maurice Company also put themselves on record as being willing
to supply their quota at the price set by the Government.

After some discussion Mr. Victor Mitchell suggested that the meeting
consider a resolution that would be the basis for Mr. Montgomery to negotiate
with Mr. Pringle and it was proposed by Mr. Mitchell, seconded by Mr. Millen.

That the proposed order be amended so as to provide that the re-
quirements of the Eastern Canada newspaper publishers for the first
six months of 1920 shall be furnished by the Eastern mills *pro rata* accord-
ing to their respective capacities, at the price mentioned in the proposed
order.

40

That there should be no differentials and each mill shall be bound
to furnish its quota of paper, and, further, that no newspaper publisher
shall be entitled to newsprint paper beyond its actual consumption for
the corresponding months of 1919.

The following Mills voted in favor :—

E. B. Eddy Co. Ltd.
St. Maurice Paper Co.
Abitibi Power & Paper Co.
Canada Paper Company.

The Ontario Paper Company and J. R. Booth did not vote.

The Secretary was then instructed to immediately get in touch with all the mills not present and secure their vote on this resolution and to advise Mr. Montgomery of the results.

10 There being no further business brought forward the meeting adjourned.

*In the
Supreme
Court of
Ontario.*

Exhibits.
Part Ex. 24.
Memorandum of Conference of News Print Manufacturers.
27th November, 1919.

—continued.

Exhibit 16.

(Plaintiff's Exhibit.)

Letter Fort Frances Pulp & Paper Co., Ltd., to R. A. Pringle.

Ottawa, Ont., December 2, 1919.

MR. R. A. PRINGLE,
Paper Controller,
Ottawa, Ontario.

Ex. 16.
Letter, Fort Frances Pulp & Paper Company Limited to R. A. Pringle 2nd December, 1919.

Dear Sir :—

20 The Fort Frances Pulp & Paper Company Ltd., has as you know since the year 1917 loyally carried out all orders made by the Minister of Customs and by you for the supply of newsprint paper to Western Canadian publishers ; and it has done so at a heavy loss for which there does not seem to be any prospect of compensation, either immediate or remote.

Now that the war is over, and has been over for more than a year, it would seem only fair that the Company should receive some different treatment. It has, as you know, been supplying to the Western Canadian newspapers three times the amount of tonnage it should have supplied under the quota as fixed by you, while the Eastern Canadian manufacturers have been able to ship to their customers in the United States the paper which properly
30 should have been supplied by them to Canada.

But this is only a part of the present situation. The Fort Frances Company is now asked to supply paper, not only on the basis of 1918, a war year, but to find all the paper which the Western Canadian publishers choose to ask for, and this in a time of peace.

Again, the paper situation in the United States is a very difficult one. The situation there with respect to paper is somewhat similar to the situation in Canada with regard to coal. The United States publishers are short of paper and many of them are being forced to reduce the size of their publications or face discontinuance. The only relief they can get is from Canada.

40 Besides all this, the newspaper publishers of Western Canada are making no attempt whatever to economize in the use of paper ; but, on the contrary, are becoming grossly extravagant, as a glance at any issue will at once make apparent.

The situation is difficult, but it can be relieved, for the present, by the Eastern Canadian mills supplying their quota for Western Canada.

*In the
Supreme
Court of
Ontario.*
—
Exhibits.
Ex. 16.
Letter, Fort
Frances Pulp
& Paper
Company
Limited to
R. A. Pringle
2nd Decem-
ber, 1919.
—continued.

The Fort Frances Company therefore, in justice to itself and without injustice to any other interest, is compelled to say to you that, beginning with Friday, December 12th, it will only be able to supply the Western Canadian publishers with newsprint paper to the extent of its quota, or approximately eleven per cent., of its output.

If the eastern mills make deliveries, for account of Fort Frances, to you or to someone named by you, of their quota of paper for the west, Fort Frances will retain a like amount from its United States customers for the use of Western Canadian publishers, and use the amount delivered to it in the east to relieve the situation of the United States publishers which it serves. This, 10
of course, is based upon the assumption that the demands of the Western Canadian newspapers will not be allowed to exceed the demands of 1918.

The above method of handling the situation will give the Western Canadian newspapers all the paper they need, and would save them a good deal in freight. There would, of course, be the difference in freight. There would, of course, be the difference between the rate from Fort Frances to Minneapolis or Chicago and from Eastern Canada to the same points which would have to be taken care of by the Western Canadian publishers; and it may vary from time to time. It is to be noted that no attempt has been, 20
or is being made to equalize freights for any of the eastern publishers.

The distribution of the 11% quota is of course entirely in your hands, but it is suggested that this quota will amply take care of the needs of all the Western Canadian publishers outside of Winnipeg and leave about 1,400 tons available for the papers of that city.

The Fort Frances Company has again to urge the earliest possible settlement of the differential due to it for paper furnished since 1917, and also the fixation of a final price for paper furnished prior to July 1, 1918. Some intimation to the company of the principle on which the differential fixed by you was reduced by a large amount would be welcomed by it, as well as the reason for the disallowance of interest on the money, the use of which was 30
had by the eastern mills and of which this Company was deprived.

Respectfully submitted,
FORT FRANCES PULP & PAPER COMPANY, LIMITED.
By "W. B. ROSS." *Counsel.*

Part Ex. 3.
Order-in-
Council No.
2508. 15th
December,
1919.

Part Exhibit 3.
(Defendants' Exhibit.)
Order-in-Council No. 2508.

AT THE GOVERNMENT HOUSE AT OTTAWA
Monday 15th day of December, 1919. 40

PRESENT :

HIS EXCELLENCY THE GOVERNOR-GENERAL IN COUNCIL

WHEREAS the Minister of Finance reports that from representations made by the Commissioner and Controller, Newsprint, Book Paper, etc., it appears he is experiencing difficulty in securing compliance in all cases with orders made by him in pursuance of the powers conferred upon him by the Order-in-Council (P.C. 3122) of 3rd November, 1917.

THEREFORE with a view to enforcing compliance therewith, His Excellency the Governor-General in Council on the recommendation of the Minister of Finance, is pleased to order and doth hereby order and direct that, in the event of the Minister of Customs being notified by the said Commissioner and Controller that any Company or person has refused or neglected or is refusing or neglecting to comply with any order or orders made by him pursuant to the powers conferred upon him by the said Order-in-Council of 3rd November, 1917, or other authority in that behalf, the said Minister shall refuse to issue to such Company or person any license for export of paper for
 10 so long as such refusal or neglect shall continue.

E. J. LEMAIRE,

Clerk of the Privy Council.

*In the
Supreme
Court of
Ontario.*
—
Exhibits.
Part Ex. 3.
Order-in-
Council No.
2508. 15th
December,
1919.

—continued.

Part Exhibit 1.

(Plaintiff's Exhibit.)

Order of Controller Pringle.

P.C. 2586—(A)

WHEREAS by Order-in-Council dated the third day of November, 1917, I am authorized and empowered to make such order or orders as I may deem necessary or advisable for the distribution of paper by the manufacturers
 20 to the publishers and I am further empowered to fix prices ;

AND WHEREAS by my order dated 26th September, 1918, I did fix the prices to be charged for newsprint paper for the period from First July, 1918, to First December, 1918.

AND WHEREAS an appeal was taken from my said order of 26th September, 1918, by both the manufacturers and the publishers to the Paper Control Tribunal, and by the judgment of the said Paper Control Tribunal, dated 18th August, 1919, the prices fixed by my said order were varied, but otherwise such order was confirmed.

AND WHEREAS by my Interim Orders dated the 30th day of November,
 30 1918 ; the 31st day of January, 1919 ; the 31st day of March, 1919 ; the 31st day of May, 1919 ; the 31st day of July, 1919 ; the 30th day of September, 1919 ; and the 31st day of October, 1919, I did continue up to and including the 31st day of December, 1919, the prices fixed by my said order of 26th September, 1918 ;

AND WHEREAS I have given consideration to the present conditions of the paper market both in regard to supply and market prices, and I have come to the conclusion that there should be an increase in price commencing on the First day of January, 1920.

I DO THEREFORE ORDER AND DIRECT that the manufacturers of newsprint
 40 paper within the Dominion of Canada do supply to the newspaper publishers throughout Canada newsprint paper in rolls at the rate of Four Dollars per hundred pounds in carload lots ; \$4.07½ per hundred pounds rolls news in less than carload lots, all to be f.o.b. at mills of the various manufacturers, for the period of six months from the First day of January, 1920, to the First day of July, 1920 ; and that the prices thereafter shall be the lowest export prices as determined by the published prices of the International Paper

Part Ex. 1.
Order of
Controller
Pringle.
17th Decem-
ber, 1919.

*In the
Supreme
Court of
Ontario.*
—
Exhibits.
Part Ex. 1.
Order of
Controller
Pringle.
17th Decem-
ber, 1919.
—continued.

Company, the Canadian Export Paper Company and the George H. Mead Company.

The maximum commission for jobbers or other middlemen selling newsprint obtained from any of the manufacturers of newsprint in Canada shall be as follows ; Fifteen cents per hundred pounds on carload lots ; forty cents per hundred pounds on less than carload lots ; sixty cents per hundred pounds on less than ton lots. The commission shall be added at the mill or at the warehouse. The cost at the warehouse will be the net-mill price plus freight, cartage and other reasonable necessary expenses incurred in getting the paper to the warehouse. In billing customers these items and the com- 10 mission shall be stated separately.

I DO FURTHER ORDER that the manufacturers shall when called up furnish actual figures of the total tonnage of newsprint produced, sold and shipped for the Canadian market and export market respectively.

Under the power reserved by me to revise my former interim orders, I do confirm the prices fixed by my former orders for the period up to 1st July, 1918, and for the period from 1st December, 1918, to 31st December, 1919.

None of the provisions of this order shall apply to the Fort Frances Pulp and Paper Company Limited.

R. A. PRINGLE, 20
Controller.

December 17th, 1919.

Nothing in this order shall prejudice the rights of the interested parties in the matter of differentials.

R. A. P.

Part Exhibit 1.
(Plaintiff's Exhibit.)
Order-in-Council

AT THE GOVERNMENT HOUSE AT OTTAWA.
Saturday, the 20th day of December, 1919. 30

Part Ex. 1.
Order-in-
Council.
20th Decem-
ber, 1919.

PRESENT :

HIS EXCELLENCY THE GOVERNOR-GENERAL IN COUNCIL

WHEREAS there has been laid before His Excellency the Governor-General in Council a report from the Minister of Justice dated 4th December, 1919, directing attention to the present situation with regard to the Government Orders and Regulations which were sanctioned under the authority of the War Measures Act, 1914, and which still remain in operation, and submitting the following with reference thereto,—

The authority in this behalf conferred upon the Governor in Council by the Act is “to make from time to time such Orders and Regulations as he 40 may by reason of the existence of real or apprehended war, invasion or insurrection deem necessary or advisable for the security, defence, peace, order and welfare, of Canada.” The Legal Committee appointed in England by His Majesty's Government to consider and report upon the interpretation of the term “period of War,” by an interim report of 26th March, 1918, advised that the legislative powers of His Majesty's Government conferred by the Defence of the Realm Act, 1914, can be exercised only during the war,

and that the Orders and Regulations made by the Government under the statute could not have any valid operation after the termination of the war. The members of the Committee stated in their report that "In our opinion the true construction of the section is that the regulations so issued can operate only during the continuance of the war. The purpose expressed is for securing the public safety and the defence of the realm which we think means the public safety so far as threatened by our enemies in the present war and the defence of the realm against those enemies. The powers are given by reason of the national emergency and vest the Executive with an authority so wide that
 10 we think it must have been intended only to exist during the existence of the emergency."

The provisions of the Defence of the Realm (Con.) Act, 1914, of the United Kingdom, and of the War Measures Act, 1914, of Canada vary considerably, but so far as affects the question under consideration they were enacted for the same purpose, and the consideration upon which the opinion of the Committee proceeds are very pertinent to the question as to the operation of the Canadian Orders and Regulations.

It must be realized that although no proclamation has yet been issued declaring that the war no longer exists, actual war conditions have in fact
 20 long ago ceased to exist, and consequently existence of war can no longer be urged as a reason in fact for maintaining these extraordinary regulations as necessary or advisable for the security, defence, peace, order, and welfare of Canada.

The armistice which concluded hostilities became effective on 11th November, 1918, the Expeditionary Force has since been withdrawn and demobilized and the country generally is devoting its energies to re-establishment in the ordinary avocations of peace.

In these circumstances the Minister considers that the time has arrived when the emergency Government legislation should cease to operate.

30 THEREFORE His Excellency the Governor-General in Council, on the recommendation of the Minister of Justice is pleased to repeal all Orders and Regulations of the Governor in Council which depend for their sanction upon Section 6 of the War Measures Act, 1914, and the same are hereby repealed as from the First day of January, 1920, with the exception of the Orders and Regulations enumerated and included in the annexed schedule, which latter Orders and Regulations shall continue in force until the last day of the next Session of Parliament.

(Signed) F. K. BENNETTS,
Assist. Clerk of the Privy Council.

40

SCHEDULE.

Orders-in-Council and Regulations of the Governor in Council, sanctioned under authority of the War Measures Act, 1914, that are to remain in force,—

Respecting:—

1. Pulp and Paper Control.
2. Sugar Control.
3. Coal Control.
4. Trading with the Enemy.
5. Silver Coinage.
6. Exportation of Gold.

*In the
 Supreme
 Court of
 Ontario.*

—
 Exhibits.
 Part Ex. 1.
 Order-in-
 Council.
 20th Decem-
 ber, 1919.

—continued.

*In the
Supreme
Court of
Ontario.*

7. Internment Operations.
8. War Purchasing Commission.
9. Wool Control.

Exhibits.
Part Ex. 1.
Order-in-
Council.
20th Decem-
ber, 1919.

Part Exhibit 1.
(Plaintiff's Exhibit.)
Order of Controller Pringle.

P.C. 2586—(B)
SHEET NEWS

—continued.

Part Ex. 1.
Order of
Controller
Pringle.
22nd Decem-
ber, 1919.

WHEREAS by Order-in-Council dated the third day of November, 1917, I am authorized and empowered to make such order or orders as I may deem 10
necessary or advisable for the distribution of paper by the manufacturers
to the publishers and I am further empowered to fix prices ;

AND WHEREAS by my Order dated 26th September, 1918, I did fix the
prices to be charged for newsprint paper for the period from first July, 1918,
to first December, 1918 ;

AND WHEREAS an appeal was taken from my said Order of 26th Sep-
tember, 1918, by both the manufacturers and the publishers to the Paper
Control Tribunal, and by the judgment of the said Paper Control Tribunal,
dated 18th August, 1919, the prices fixed by my said Order were varied, but
otherwise such Order was confirmed ; 20

AND WHEREAS by my interim Orders dated the 30th day of November,
1918 ; the 31st day of January, 1919 ; the 31st day of March, 1919 ; the
31st day of May, 1919 ; the 31st day of July, 1919 ; the 30th day of Septem-
ber, 1919 ; and the 31st day of October, 1919, I did continue up to and includ-
ing the 31st day of December, 1919, the prices fixed by my said Order of 26th
September, 1918 ;

AND WHEREAS I have given consideration to the present conditions of
the paper market both in regard to supply and market price, and I have come
to the conclusion that there should be an increase in price commencing on
the first day of January, 1920. 30

I DO THEREFORE ORDER AND DIRECT that the manufacturers of news-
print paper within the Dominion of Canada do supply to the newspaper
publishers throughout Canada newsprint paper in sheets at the rate of \$4.60
per hundred pounds in carload lots ; \$4.75 per hundred pounds in less than
carload lots but of 2 tons or over ; all to be f.o.b. at mills of the various manu-
facturers for the period of six months from the first day of January, 1920 to
the first day of July, 1920 ; and that the prices thereafter for sheet news
shall be 60 cents and 67½ cents per 100 pounds respectively in excess of the
lowest export price for roll news as determined by the published prices of
the International Paper Company, the Canadian Export Paper Company 40
and the George H. Mead Company.

The maximum commission for jobbers or other middlemen selling news-
print obtained from any of the manufacturers of newsprint in Canada shall
be as follows ; Fifteen cents per hundred pounds on carload lots ; forty cents
per hundred pounds on less than carload lots ; sixty cents per hundred pounds
on less than ton lots. The commission shall be added at the mill or at the
warehouse. The cost at the warehouse will be the net mill price plus freight,
cartage, and other reasonable necessary expenses incurred in getting the paper

to the warehouse. In billing customers these items and the commission shall be stated separately.

I DO FURTHER ORDER that the manufacturers shall when called upon furnish actual figures of the total tonnage of newsprint produced, sold and shipped for the Canadian market and export market respectively.

Under the power reserved by me to revise my former interim Orders, I do confirm the prices fixed by my former Orders for the period up to the 1st July, 1918, and for the period from 1st December, 1918, to 31st December, 1919.

10

R. A. PRINGLE,
Controller.

December 22nd, 1919.

Part Exhibit 1.
(Plaintiff's Exhibit.)
Order of Controller Pringle.

WHEREAS by Order-in-Council dated 3rd November, 1917, I was authorized and empowered to fix the quantity and price of newsprint paper to be furnished to the publishers in Canada by the manufacturers during the continuance of the War ;

20 AND WHEREAS by Chap. 63 of the Statutes of Canada 9-10 Geo. V., my powers, jurisdiction and authority as Commissioner and Controller of Paper are confirmed and extended.

AND WHEREAS I did on the 17th day of November, 1917, make an order fixing price of newsprint to prevail to the 20th of January, 1918, and whereas I did on the 19th day of January, 1918, make an order fixing the price of newsprint up to and including the 1st day of February, 1918 ; and WHEREAS on the 21st day of January, 1918, I made an order fixing price of newsprint from the 1st day of February to the 1st day of May, 1918, and WHEREAS on the 29th day of April, 1918, I made an order fixing price from the 1st day of May, 30 1918, to the 1st day of June, 1918 ; AND WHEREAS on the 31st day of May, 1918, I made an order fixing price from the 1st day of June, 1918, to the 1st day of July, 1918. All of the above orders contained a provision for revision of price in the event of it being subsequently ascertained that the prices fixed in said order were either too high or too low.

AND WHEREAS by my order dated 26th September, 1918, I did fix the prices to be paid for newsprint paper for the period from 1st July, 1918, to 1st December, 1918, and by such order I did declare that the Fort Frances Pulp & Paper Co. Ltd., were entitled to receive \$3.65 per 100 lbs., for newsprint in rolls in carload lots, and \$3.80 per 100 lbs., for newsprint in rolls 40 in less than carload lots, subject however to certain reductions which are fully set out in said order.

AND WHEREAS both the publishers and manufacturers appealed from my order of 26th September, 1918, to the Paper Control Tribunal and the Paper Control Tribunal by their judgment bearing date the 18th day of August, 1919, reduced the price as set out in said judgment.

AND WHEREAS by my Interim Orders dated 30th November, 1918 ; 31st January, 1919 ; 31st March, 1919 ; 31st May, 1919 ; 31st July, 1919 ; 30th September, 1919, and 31st October, 1919, I have continued up to and

*In the
Supreme
Court of
Ontario.*

Exhibits.
Part Ex. 1.
Order of
Controller
Pringle.
22nd Decem-
ber, 1919.

—continued

Part Ex. 1.
Order of
Controller
Pringle.
24th Decem-
ber, 1919.

*In the
Supreme
Court of
Ontario.*

Exhibits.
Order of
Controller
Pringle.
24th Decem-
ber, 1919.

—continued.

including 31st December, 1919, the prices fixed by my said order of 26th September, 1918, subject to revision by me as provided in last mentioned order.

AND WHEREAS having regard to the judgment of the Paper Control Tribunal it has become desirable that I should finally fix price.

AND WHEREAS it has now become necessary to take into consideration the whole situation in regard to the supply of newsprint by the Fort Frances Pulp & Paper Co. Ltd., to the western publishers and to fix a price that would give to them a reasonable profit over and above actual cost.

AND WHEREAS I have come to the conclusion that it would only be equitable to the Fort Frances Pulp and Paper Co. Ltd., to allow them a price of \$66.00 per ton for newsprint in rolls in carload lots, and \$67.50 for newsprint in rolls in less than carload lots from 1st January, 1918, to 1st July, 1918. 10

AND WHEREAS the period from 1st July, 1918, to 1st day of December, 1918, is covered by the judgment of the Paper Control Tribunal.

NOW THEREFORE under and by virtue of the powers conferred by said order-in-council of 3rd November, 1917, and by Chap. 63 of 9-10 Geo. V., I do confirm the price fixed by my former orders up to and including the 1st day of January, 1920, with the exception of the period from 1st January, 1918, to 1st July, 1918, and for that period I do order and direct that the publishers shall pay to the Fort Frances Pulp & Paper Co. Ltd., \$66.00 per ton for newsprint in rolls in carload lots, and \$67.50 for newsprint in rolls in less than carload lots. 20

AND in pursuance of a direction contained in the judgment of the Paper Control Tribunal, dated 18th August, 1919, I DO ORDER that the Fort Frances Pulp & Paper Co. Ltd., do account to their customers in Canada for the amount paid by them for newsprint paper shipped during the period from 1st July, 1918, to 30th November, 1918, both days inclusive in excess of the prices fixed by the Paper Control Tribunal, being \$3.30 per hundred pounds for roll news in carload lots and \$3.37½ per hundred pounds for roll news in less than carload lots. AND I DO FURTHER ORDER that the Fort Frances Pulp & Paper Co. Ltd., do account to its customers in Canada for the amount paid by them for newsprint paper shipped during the period from 1st December, 1918, to 31st December, 1919, both days inclusive in excess of the prices for said periods fixed by my order. AND I DO ORDER that the customers of the Fort Frances Pulp & Paper Co. Ltd., do account to the Fort Frances Pulp & Paper Co. Ltd., for the difference in price fixed by my previous orders dealing with the period from 1st January, 1918, to 1st July, 1918, and the price now fixed by this order. 30

IN THE EVENT of the western publishers, or any of them, having difficulty with the Fort Frances Pulp & Paper Co. Ltd., in regard to the amount that should be credited to them under the judgment of the Paper Control Tribunal or that should be charged to them under this order for the increased price from 1st January, 1918, to 1st July, 1918, or in the event of the Fort Frances Pulp & Paper Co. Ltd., having difficulty with the publishers, or any one of them in regard to the adjustment of the accounts owing to the changes above set out, then the accounts between the parties shall be determined by me. 40

AND I DO FURTHER ORDER that the Fort Frances Pulp & Paper Co. Ltd., shall, when called upon, furnish actual figures of the total tonnage of

newsprint paper produced, sold and shipped for the Canadian market and export market respectively.

The order herein contained that the Fort Frances Pulp & Paper Co. Ltd., shall supply newsprint paper to publishers in Canada is only intended to compel that company to supply to its Canadian customers its due proportion of its production in Canada, which is approximately 5,000 tons per year, unless arrangements are made whereby paper from other mills is placed at my disposal as Controller, or at the disposal of some other officer of the Canadian Government to be shipped to the American customers of the Fort Frances Pulp & Paper Co. Ltd., in which case the Company shall supply to its customers in Canada at the prices hereby fixed, in addition to its due proportion of approximately 5,000 tons per annum, a further amount of paper equal to the tonnage so placed at the disposal of myself or other official.

AND I Do ORDER that the Western publishers do pay to the said Fort Frances Pulp & Paper Co. Ltd., any excess of freight it may have to pay on such paper from the Soo to Chicago or Minneapolis, over and above the amount it would have to pay to transport the said paper from Fort Frances to Chicago or Minneapolis, but in no event to exceed the sum of \$2.00 per ton.

OWING to the provisions made in my order of 17th December, 1919, as to prices to govern all manufacturers of newsprint other than the Fort Frances Pulp & Paper Co. Ltd., from 1st January, 1920, to 1st July, 1920, it will be necessary for the western publishers to pay the prices set out in said order of 17th December, 1919, for any tonnage Fort Frances Pulp & Paper Co. Ltd., may have to supply to them over and above its quota in addition to the freight already referred to in this order.

THIS ORDER is made without prejudice to the rights of any interested parties in regard to differentials for any period prior to the date of this order.

THIS ORDER is subject to appeal and any parties desiring to appeal to the Paper Control Tribunal are required to serve notice of appeal on me within thirty days of the date hereof.

DATED at Ottawa, this 24th day of December, A.D., 1919.

(Signed) R. A. PRINGLE,
Controller.

Part Exhibit 1.
(Plaintiff's Exhibit.)
Order-in-Council

P.C. 2586

AT THE GOVERNMENT HOUSE AT OTTAWA
Tuesday the 30th day of December, 1919.

40 PRESENT :

HIS EXCELLENCY THE GOVERNOR-GENERAL IN COUNCIL

His Excellency the Governor-General in Council, on the recommendation of the Minister of Finance, is pleased to approve and doth hereby approve the annexed Orders issued by the Controller of News Print, Book Paper, etc., on the 17th and 22nd December, 1919, respectively.

"E. J. LEMAIRE,"

Clerk of the Privy Council.

*In the
Supreme
Court of
Ontario.*

Part Ex. 1.
Order-in-
Council.
20th Decem-
ber, 1919.

—continued.

Part Ex. 1.
Order-in-
Council.
30th Decem-
ber, 1919.

In the
Supreme
Court of
Ontario.

Part Exhibit 1.
(Plaintiff's Exhibit.)
Order of Controller Pringle.

Part Ex. 1.
Order of
Controller
Pringle.
December,
31st, 1919.

WHEREAS by Order-in-Council dated 3rd November, 1917, I was authorized and empowered to fix the quantity and price of newsprint paper to be furnished by the manufacturers to the publishers in Canada during the continuance of the War.

AND WHEREAS by Ch. 63 of the Statutes of Canada, 9-10 Geo. V., my powers, jurisdiction and authority as Commissioner and Controller of Paper are confirmed and extended.

AND WHEREAS by my order of 26th September, 1918, I did fix the prices to be paid for newsprint paper for the period from 1st July to 1st December, 1918, and by such order I did declare that the Fort Frances Pulp & Paper Co. Ltd., were entitled to receive \$3.65 per 100 lbs., for newsprint paper in carload lots, and \$3.80 per 100 lbs., for newsprint paper in rolls in less than carload lots, f.o.b. the mill, subject however, to certain reductions which are fully set out in said order.

AND WHEREAS both the publishers and manufacturers appealed from my said order of 26th September, 1918, to the Paper Control Tribunal by their judgment bearing date the 18th day of August, 1919, reduced the prices set out in said judgment.

AND WHEREAS by my Interim Orders dated 30th November, 1918, 31st January, 1919, 31st March, 1919, 31st May, 1919, 31st July, 1919, 30th September, 1919, and 31st October, 1919, I have continued up to and including the 31st day of December, 1919, the prices fixed by my said order of 26th September, 1918, subject to revision by me as provided in last mentioned order.

AND WHEREAS by my order of December 24th, 1919, I did confirm the prices fixed by my former orders up to and including the 31st day of December, 1919, with the exception of the period of 1st July to 1st December, 1918, which period is covered by the judgment of the Paper Control Tribunal, and the period from 1st January to 1st July, 1918, for which period by my said order of 24th December, 1919, I did order and direct that the publishers should pay to the Fort Frances Pulp and Paper Co. Ltd., \$66.00 per ton for newsprint in rolls in carload lots, and \$67.50 for newsprint in rolls in less than carload lots.

AND WHEREAS it is necessary for me to fix the price to which the Fort Frances Pulp and Paper Co. Ltd., are entitled from 1st January to 1st February 1920.

NOW THEREFORE UNDER and by virtue of the powers conferred by said Order-in-Council of November 3rd, 1917, and by Ch. 63 of 9-10 Geo. V., I do order and direct that the publishers shall pay to the Fort Frances Pulp & Paper Co., Ltd., for the period from 1st January to 1st February, 1920, for newsprint in rolls in carload lots \$3.45 per 100 lbs. and \$3.52½ per 100 lbs. for newsprint in rolls in less than carload lots, f.o.b. mill.

The prices fixed in the preceding paragraph hereof apply only to the Canadian quota of the Fort Frances Pulp & Paper Co., Ltd. Any tonnage supplied by the Fort Frances Pulp & Paper Co., Ltd., over and above their Canadian quota, to Canadian publishers is to be paid for by the publishers at the rate of \$80.00 per ton as fixed by my order of December 24th, 1919.

Dated at Ottawa, this 31st day of December, 1919.

(Signed) R. A. PRINGLE, Controller.

Exhibit 22.
(Plaintiff's Exhibit.)
**Comparative Statement showing Canadian and American Prices
for Years 1917, 1918 and 1919.**

*In the
Supreme
Court of
Ontario.*

Exhibits.
Ex. 22.
Comparative State-
ment showing Canadian
and
American
prices for
years 1917,
1918, and
1919.

		CANADIAN PRICE			AMERICAN PRICE			
10	Date	As fixed by Minister of Customs and later by Controller	As revised by order of Tribunal dated 18th Aug. 1919.	As revised by Order of Tribunal dated 8th July, 1920	As fixed by contract.	As fixed by Federal trade Commis- sion's award, 18th June, 1918.	As fixed by Circuit Court Judge's award of 2nd Oct., 1918.	As fixed by Supple- mentary award of Federal Trade Commission of 19th Oct. 1918.
	1917							
	March	\$50	.....	.....	\$65	.....	.....	.....
	April	50	.....	.....	65	.....	.....	.....
20	May	50	.....	.....	65	.....	.....	.....
	June	50	.....	.....	65	.....	.....	.....
	July	50	.....	.....	65	.....	.....	.....
	August	50	.....	.....	65	.....	.....	.....
	September ..	50	.....	.....	65	.....	.....	.....
	October	50	.....	.....	65	.....	.....	.....
	November ..	50	.....	.....	65	.....	.....	.....
	December ..	50	.....	.....	65	.....	.....	.....
	1918.							
	January	50	.....	.....	.....	\$64	\$70	.....
	February ..	57	.....	.....	.....	64	70	.....
30	March	57	.....	.....	.....	64	70	.....
	April	57	.....	.....	.....	62	70	.....
	May	57	.....	.....	.....	62	70	.....
	June	57	.....	.....	.....	62	70	\$72.65
	July	73	\$66	.....	.....	62	70	72.65
	August	73	66	.....	.....	62	70	75.05
	September ..	73	66	.....	.....	62	70	75.05
	October	73	66	.....	.....	.....	.....	75.05
	November ..	73	66	.....	.....	.....	.....	75.05
	December ..	73	.....	\$69	\$75	.....	.....	.....
	1919.							
40	January	73	.....	\$69	\$78	.....	.....	.....
	February ..	73	.....	69	78	.....	.....	.....
	March	73	.....	69	78	.....	.....	.....
	April	73	.....	69	78	.....	.....	.....
	May	73	.....	69	78	.....	.....	.....
	June	73	.....	69	78	.....	.....	.....
	July	73	.....	69	78	.....	.....	.....
	August	73	.....	69	78	.....	.....	.....
	September ..	73	.....	69	78	.....	.....	.....
	October	73	.....	69	78	.....	.....	.....
	November ..	73	.....	69	78	.....	.....	.....
	December ..	73	.....	69	78	.....	.....	.....

*In the
Supreme
Court of
Ontario.*

Part Exhibit 3.
(Defendants' Exhibit.)
Order-in-Council No. 24.

Exhibits.
Part Ex. 3.
Order-in-
Council, No.
24.
5th January,
1920.

AT THE GOVERNMENT HOUSE AT OTTAWA
Monday, 5th day of January, 1920.

Present : His Excellency
The Governor-General in Council.

His Excellency the Governor-General in Council on the recommenda-
tion of the Minister of Finance and under the provisions of the War Measures
Act, is pleased to authorize and doth hereby authorize the Minister of Customs 10
to refuse, upon the request of the Commissioner and Controller of Newsprint,
Book Paper, etc., export licenses to any one seeking to export Newsprint, the
product of a mill which has refused or is refusing to comply with any order
of the said Commissioner and Controller.

E. J. LEMAIRE,
Clerk of the Privy Council.

Part Ex. 1.
Letter of
Controller
Pringle to
Sir Henry
Drayton.
16th Janu-
ary, 1920.

Part Exhibit 1.
(Plaintiff's Exhibit.)
Letter Controller Pringle to Sir Henry Drayton.

January 16th, 1920. 20

SIR HENRY DRAYTON,
Minister of Finance.
Ottawa.

My dear Sir Henry :

I am afraid I will have to ask you to relieve me from the distribution of
newsprint. I may say that the last two or three months the matter has been
most troublesome and has been taking my whole time. Some of the manu-
facturers, as you are aware, are refusing to comply with my orders, which will
necessitate drastic action being taken. My staff is limited and the work is
becoming very burdensome. You have other Departments of the Govern- 30
ment under which probably this distribution could be better carried on, and
orders enforced.

I have certain duties to discharge under Ch. 63 of Dominion Statutes,
1919 (1st Session). These I will discharge at as early a date as possible. I
have two on my staff at the moment—I only had one until a short time ago—
one of them I am letting go on the 1st of February; the other it may be neces-
sary for me to retain for some time longer until I wind matters up under the
Statute and until I make my report in the bookprint investigation.

Yours very truly,
(Signed) R. A. PRINGLE. 40

Exhibit 8.

(Defendants' Exhibit.)

Telegram R. A. Pringle to J. B. McNicol

January 16th, 1920.

J. B. McNicol, Esq.,
Fort Frances, Ont.

Wires received. Have resigned as controller. Forwarding your wires to Minister Finance who will advise you as to course to pursue. In meantime do your utmost to get paper to western publishers.

R. A. PRINGLE.

10

*In the
Supreme
Court of
Ontario.*

Exhibits.
Ex. 8.
Telegram,
R. A. Pringle
to J. B.
McNicol.
16th Janu-
ary, 1920.

Part Exhibit 1.

(Plaintiff's Exhibit.)

Minute of Meeting of Committee of Privy Council.

P. C. 145.

CERTIFIED COPY OF A MINUTE OF A MEETING OF THE
COMMITTEE OF THE PRIVY COUNCIL, APPROVED BY HIS
EXCELLENCY THE GOVERNOR-GENERAL, ON THE 22ND
JANUARY, 1920.

The Committee of the Privy Council, on the recommendation of the
20 Right Honourable Sir George E. Foster, Acting Prime Minister, advise that
the resignation of R. A. Pringle, K.C., as Controller of Newsprint and other
paper, be accepted.

E. J. LEMAIRE,
Clerk of the Privy Council.

Part Ex. 1.
Minute of
Meeting of
the Com-
mittee of the
Privy
Council.
22nd Janu-
ary, 1920.

Part Exhibit 1.

(Plaintiff's Exhibit.)

Minute of Meeting of Committee of Privy Council.

P. C. 154.

CERTIFIED COPY OF A MINUTE OF A MEETING OF THE
COMMITTEE OF THE PRIVY COUNCIL, APPROVED BY
HIS EXCELLENCY THE GOVERNOR-GENERAL ON HE
22ND JANUARY, 1920.

30

The Committee of the Privy Council, on the recommendation of the
Minister of Finance, advise tht R. W. Breadner, Esquire, of Ottawa, Ontario,
be appointed Controller of Newsprint and other paper in place of R. A.
Pringle, K.C., resigned.

E. J. LEMAIRE,
Clerk of the Privy Council.

Part Ex. 1.
Minute of
Meeting of
the Com-
mittee of the
Privy
Council.
22nd Janu-
ary, 1920.

*In the
Supreme
Court of
Ontario.*

Exhibits.
Part Ex. 1.
Order of
Controller
Pringle.
23rd Janu-
ary, 1920.

Part Exhibit 1.
(Plaintiff's Exhibit.)
Order of Controller Pringle.

WHEREAS His Excellency the Governor-General in Council, with a view to ensure to publishers of Canadian newspapers an adequate supply of newsprint paper at reasonable prices, and under and by virtue of the powers in that behalf conferred by section 6 of the War Measures Act, 1914, or otherwise vested in the Governor-General in Council, was pleased to make certain regulations respecting the price, sale, control, storage, distribution, export and transport, etc., of newsprint paper in sheets or rolls, and by Order-in-Council dated the 16th day of April, 1917, the Minister of Customs was given authority among other things to make such order or orders as he might deem necessary or advisable for the distribution and delivery of newsprint paper in sheets or rolls by the Manufacturers to the Publishers and to fix the quantity and price of newsprint paper in sheets or rolls furnished or to be furnished to the Publishers in Canada by the Manufacturers from the 1st day of March, 1917, to the 1st day of June, 1917. 10

AND WHEREAS by subsequent Orders-in-Council of May 25th, 1917, and September 1st, 1917, the time was extended and the Honourable the Minister of Customs under the authority given him by the Order-in-Council of the 16th day of April, 1917, and the further Orders-in-Council extending the time, did from time to time make orders fixing the quantity and price of newsprint paper in sheets or rolls to be furnished by the Manufacturers to the Publishers up to and including the 20th day of November, A.D. 1917, and in all orders made by the Honourable the Minister of Customs there was the following provision :— 20

“AND WHEREAS under existing conditions the supply of newsprint paper to Canadian publishers is not proportionately distributed between them and by reason of the fact that the prices fixed are lower than the manufacturers are receiving from export business, I do order that each manufacturer should bear his due proportion of the cost so entailed in complying with above, and that if arrangements are not made between the manufacturers for the pooling of such costs, and for adjustment between themselves in proportion to the percentage of their output supplied to Canadian publishers that an accounting be made, and the manufacturer or manufacturers who have supplied a greater percentage of Canadian tonnage than properly attributable to them shall be paid by the other manufacturers sufficient to place them in the same position as the manufacturer or manufacturers who have not supplied their proper percentage of paper to the Canadian publishers.” 30 40

AND WHEREAS by Order-in-Council dated the 3rd day of November, 1917, I was appointed Commissioner and Controller with full power to make such order or orders as I might deem necessary or advisable for the distribution and delivery of newsprint, etc., and to carry out all the terms and conditions of the different orders made from time to time by the Honourable the Minister of Customs.

AND WHEREAS acting under the authority of said Order-in-Council of 3rd November, 1917, I have made orders from time to time fixing the price of newsprint, and in all such orders there was a provision in regard to the protection of the manufacturer or manufacturers who supplied a greater percentage of Canadian tonnage than properly attributable to them similar in terms to the order made by the Honourable the Minister of Customs.

AND WHEREAS by order made in December, 1919, confirmed by Order-in-Council, each manufacturer of newsprint in Canada is compelled to furnish his proper quota of newsprint for a period of six months from January 1st, 1920, with the exception of the Fort Frances Pulp and Paper Company, Limited, who are to furnish this quota from the 24th day of December, 1919, until the 1st day of February, 1920.

AND WHEREAS several of the manufacturers of newsprint in Canada have in obedience to my orders supplied a very much larger proportion of paper to Canadian Publishers than properly attributable to them between the 1st day of March, 1917, and the 1st day of January, 1920.

AND WHEREAS I did on the 6th day of August, 1918, make an order covering differentials for the months of March, April, May, June, July, August, September, October, November and December, of the year 1917, which said order provided for payment of differentials to the Fort Frances Pulp and Paper Company, Limited.

AND WHEREAS said order was appealed from to the Paper Control Tribunal, in 1919, who gave judgment on the 18th day of August, 1919, but did not make known the principles upon which they based their finding until the 3rd day of December, 1919.

AND WHEREAS no order has been put into effect in regard to differentials since the order of the 6th day of August, 1918, and the whole question of differentials remains to be disposed of.

NOW THEREFORE under the powers vested in me by the Order-in-Council of the 3rd day of November, 1917, and by Chapter 63 of Dominion Statutes, 1919 (first Session) I do hereby order and direct that G. T. Clarkson, of the City of Toronto, do prepare at the earliest date possible statements, showing the differentials to which the different mills who have supplied a greater percentage of Canadian tonnage than properly attributable to them, are entitled. Said statements shall cover the full period from the 1st day of March, 1917, down to the 1st day of January, 1920, and in the preparation of such statements G. T. Clarkson shall have regard to the principles laid down by the Paper Control Tribunal, and shall state also the proper amounts to be paid by each of the contributing mills by way of differential. Upon completion of the statements copies are to be served on all mills who shall be entitled to receive or contribute amounts by way of differential, and they will have the right to appeal to the Paper Control Tribunal from such findings of the Accountant, as well as from the principles as covered by this Order within thirty days from receipt of such statements. I FURTHER ORDER AND DIRECT that the manufacturers shall forthwith when called upon by G. T. Clarkson, furnish to him all information necessary in his opinion for the preparation of such statements. Service of any statement or notice, required to be given

*In the
Supreme
Court of
Ontario.*

—
Exhibits.
Part Ex. 1.
Order of
Controller
Pringle.
23rd Janu-
ary, 1920.

—continued.

*In the
Supreme
Court of
Ontario.*

under this Order shall be considered as effected if mailed by registered post addressed to the head office of any manufacturer.

DATED at Toronto this 23rd day of January, A.D. 1920.

(Signed) R. A. PRINGLE,
Controller.

Exhibits.
Part Ex. 1.
Order of
Controller
Pringle.
23rd January,
1920.

—continued.

Exhibit 5.

(Plaintiff's Exhibit.)

Copy of letter W. D. Taylor to Abitibi Power & Paper Company, Limited, and others

Ex. 5.
Copy of
Letter W. D.
Taylor to
Abitibi
Power &
Paper
Company,
Limited, and
others.
28th January
1920.

Sent by registered mail to :

J. R. Booth, Esq., Ottawa.	10
Brompton Pulp & Paper Co., Ltd., 710 Transportation Bldg., Montreal.	
Canada Paper Company, Limited, Windsor Mill, Que.	
Donnaconna Paper Co., Ltd., Donnaconna, Que.	
The E. B. Eddy Co., Ltd., Hull, Que.	
Fort Frances Pulp & Paper Co., Fort Frances, Ont.	
Laurentide Company, Limited, Grand Mere, Que.	
Spanish River Pulp & Paper Mills, Ltd., Bank of Hamilton Bldg., Toronto.	
Price Bros., Ltd., Quebec.	
News Pulp & Paper Co., Ltd., Montreal.	
St. Maurice Paper Co., Ltd., Montreal.	20
Belgo-Canadian Pulp & Paper Co., Ltd., Shawenegan Falls, Que.	
Ontario Paper Co., Ltd., Thorold, Ont.	

28th January, 1920.

ABITIBI POWER & PAPER COMPANY, LIMITED,
Montreal, Que.

Gentlemen :—

NEWSPRINT DIFFERENTIAL.

We enclose herewith copy of order in the above matter made on 23rd January, 1920, by Mr. R. A. Pringle.

I shall be obliged if you will forward me the following information for each month from 1st January, 1918, to 31st December, 1919 :

- | | | |
|---|-----|-----|
| 1. Production. | | |
| 2. Tonnage of Roll News sold in Canada under contract. | | |
| 3. Average price per ton | do. | do. |
| 4. Tonnage of Sheet News sold in Canada under contract. | | |
| 5. Average price per ton | do. | do. |
| 6. Tonnage of Roll News sold in Canada not under contract. | | |
| 7. Average price per ton | do | do. |
| 8. Tonnage of Sheet News sold in Canada not under contract. | | |
| 9. Average price per ton | do. | do. |
| 10. Tonnage of Roll News sold outside Canada under contract. | | 40 |
| 11. Average price per ton | do. | do. |
| 12. Tonnage of Sheet News sold outside Canada under contract. | | |

13. Average price per ton do. do.
 14. Tonnage of Roll News sold outside Canada not under contract.
 15. Average price per ton do. do.
 16. Tonnage of Sheet News sold outside Canada not under contract.
 17. Average price per ton do. do.

*In the
Supreme
Court of
Ontario.*

Ex. 5.
Copy of
Letter W.
Taylor to
Abitibi
Power &
Paper
Company,
Limited, and
others.
29th January
1920.

The figures given in answer to the above should not include shipments made to or on account of another mill in Canada.

Where paper has been shipped to or on account of or received from another mill the following information is required :

- 10 (a) For paper received from or placed to your order by other Mills,
 1. Name of mill shipping.
 2. Month in which received.
 3. Quantity each month.
 4. Price.
 5. Month in which it is included in your shipments reported.
- (b) For paper shipped to or to order of other mills,
 1. Name of mill to whom or to whose order shipped.
 2. Month in which shipped.
 3. Quantity each month.
 4. Price.
- 20

—continued.

The average prices given should be the final prices charged where there has been any alteration from the price originally billed.

Please acknowledge receipt and state date by which you expect to furnish me with your return.

WDT:DB
Enc.

Yours faithfully,
W. D. TAYLOR.

Part Exhibit 1.
(Plaintiff's Exhibit.)

Minute of Meeting of Committee of Privy Council.

P.C. 228.

CERTIFIED TO BE A TRUE COPY OF A MINUTE OF A MEETING
OF THE COMMITTEE OF THE PRIVY COUNCIL, APPROVED BY
HIS EXCELLENCY THE GOVERNOR-GENERAL ON THE 29TH
JANUARY, 1920.

Part Ex. 1.
Minute of
Meeting of
the Com-
mittee of the
Privy
Council.
29th January
1920.

30

The Committee of the Privy Council, on the recommendation of the Minister of Finance, advise that the resignation of Mr. Robert W. Breadner as Commissioner and Paper Controller be accepted, and that the Order-in-Council of the 22nd of January, 1920, appointing Mr. Breadner as said Commissioner and Paper Controller be rescinded.

40 The Committee, on the same recommendation, further advise that the said appointment of Mr. Breadner be superseded and vacated, and that the office of Commissioner and Paper Controller be declared vacant; provided that nothing herein contained shall be deemed to affect the existence, continuance, powers or duties of the said office.

[SEAL]

“E. J. LEMAIRE,”
Clerk of the Privy Council.

*In the
Supreme
Court of
Ontario.*

Part Exhibit 1.
(Plaintiff's Exhibit.)
Order-in-Council.

Exhibits.
Part Ex. 1.
Order-in-
Council.
29th January
1920.

P. C. 230.

AT THE GOVERNMENT HOUSE AT OTTAWA.
Thursday, the 29th day of January, 1920.

Present : His Excellency

The Governor-General in Council.

His Excellency the Governor-General in Council on the recommendation of the Minister of Finance, is pleased to order and it is hereby ordered that until the publication of a proclamation by the Governor-General in Council under the authority of The War Measures Act, 1914, declaring that war no longer exists, the Board of Commerce of Canada shall:—

(a) have, exercise and perform all powers, jurisdiction, authority and duties which were heretofore or are exercisable by the Commissioner and Controller of Paper, provided that the Orders of said Board with respect to newsprint paper, sulphate and sulphide, shall be effective and have the force of law as and when made and shall not require confirmation by Order-in-Council, nor shall the exercise by said Board of any of said powers or the performance by said Board of any of said duties, be subject to appeal except as by the Board of Commerce Act provided ;

(b) be appointed such Commissioner and Controller of Paper ;

(c) have jurisdiction, power and authority to direct, require and compel shipment by manufacturers of newsprint paper of such quantities of newsprint paper as, in the opinion of the Board, are necessary and can be provided from any paper mill or persons, place or places in Canada ;

(d) have power and jurisdiction to order and direct that the breach or non-observance by any person or corporation of any Order or direction which the said Board may make or give under authority of this Order shall entail the same consequences and liability for the same penalties as are provided by section 20, subsection (2) of the Combines and Fair Prices Act, including the cumulative responsibility of co-directors and associate directors and officers of companies and corporations, and that all other provisions of law as to the jurisdiction of courts and otherwise as to procedure to enforce orders as set forth in the said Acts shall apply to all matters hereunder ; and shall have all powers and authority to continue and carry on to completion all business and proceedings now pending in the office of the Commsisioner and Controller of Paper.

“E. J. LEMAIRE,”

Clerk of the Privy Council.

Part Exhibit 24.

(Defendants' Exhibit.)

Minutes of Meeting of Newsprint Section.

Part Ex. 24.
Minutes of
Meeting of
News Print
Section.
30th January
1920.

The Newsprint Section of the Canadian Pulp & Paper Association met in annual session at the Ritz-Carlton Hotel, Montreal, Friday, January 30th, 1920.

Mr. George M. McKee, Chairman, presided.

There were present Messrs. Bothwell, Stadler, Chahoon, Curtis, P. B. Wilson, J. F. Booth, C. H. L. Jones, J. F. Taylor, Thorne, and Campbell.

The minutes of the preceding meeting were read and approved.

The Secretary presented a copy of an order, issued by R. A. Pringle, Paper Controller, dated at Toronto, January 23rd, 1920, and received by the Section's legal adviser, Mr. George H. Montgomery, K.C., ordering and directing G. T. Clarkson of Toronto prepare statements showing the differentials to which the different mills who have supplied a greater percentage
 10 of Canadian tonnage than properly attributable to them are entitled, said statements to cover the full period from 1st March, 1917, down to January 1st, 1920, and ordering and directing the mills to supply the necessary information when called upon.

Several of the members called attention to the fact that, with one exception, the mills had agreed among themselves that there should be no more differentials.

Upon motion, the Secretary was instructed to refer the Order back to Mr. Montgomery for further advice in consequence of a public announcement having been made of a change in the personnel of the newsprint controller-
 20 ship.

Mr. George M. McKee was unanimously re-elected chairman of the Section for the ensuing year.

There being no further business the Section adjourned to meet at the call of the Chairman.

EDWARD BECK,
 Secretary *pro tem.*

Order-in-Council dated at Toronto 23rd of January, 1920, follows.

Letter W. D. Taylor to R. W. Breadner,—not filed as an Exhibit but filed by the Respondents on the appeal to the Appellate Division and now indexed as
 30 Exhibit 46.

30th January, 1920

R. W. BREADNER, ESQ.,
 Newsprint Commissioner,
 Ottawa, Ontario.

RE NEWSPRINT INVESTIGATION

Dear Sir : RE DIFFERENTIAL.

In reply to your request for information as to the position of affairs relative to the differential to be paid and received by the different manu-
 40 facturers of newsprint in Canada, we beg to state that the first statements as to differentials were prepared at the end of 1917, covering the period up to the 30th September, 1917. All Companies, with the exception of the Fort Frances Pulp & Paper Company and the News Pulp & Paper Company, reached a settlement by agreement (on the basis of 50% of the amounts

*In the
 Supreme
 Court of
 Ontario.*

Exhibits.
 Part Ex. 24.
 Minutes of
 Meeting of
 News Print
 Section.
 30th January
 1920.

---continued.

Part Ex. 46.
 Letter W. D.
 Taylor to
 R. W. Bread-
 ner—not
 filed as an
 exhibit but
 filed by the
 Respondents
 on the appeal
 to the Appel-
 late Division
 (now indexed
 as Exhibit
 46). 30th
 January,
 1920.

*In the
Supreme
Court of
Ontario.*

Exhibits.
Part Ex. 46.
Letter W. D.
Taylor to
R. W. Bread-
ner—not
filed as an
exhibit but
filed by the
Respondents
on the appeal
to the Appel-
late Division
(now indexed
as Exhibit
46). 30th
January,
1920.

—continued.

shown to be due or receivable by the different mills as per the statement) and decided that the differentials should not be exacted between them on and after the 31st January, 1918.

With respect to the News Pulp & Paper Company it was contended by the other manufacturers that its supply in Canada was "contracted" tonnage, or in other words, tonnage which it was bound under contract to supply to Canadian customers. Under these circumstances it was contended and claimed that such tonnage was not available for export, and, therefore, the other mills were not required to contribute in respect to it or for any portion of the supply which over-ran the Canadian quota of the News Print & Paper Company. In the statement of differentials prepared as before mentioned this view was given effect to, with the result that the News Pulp & Paper Company was not shown to be entitled to any differential. The News Pulp & Paper Company objects to this method of calculation of the differential, but no decision has as yet been given as to its rights, although the question was raised before Mr. Pringle. 10

The Fort Frances Pulp & Paper Company would not agree to the compromise reached between the other manufacturers but held out for the full amount which it claimed it had lost by over-supply in Canada. An order was made for payment of such differential to it on the basis worked out for the period from March to December 31st, 1917, and was appealed against, and in September, 1919, judgment was given by the Appeal Tribunal fixing the amount payable to the Fort Frances Pulp & Paper Company as up to December 31st, 1917. 20

No statement of differential for the period after December, 1917, had been issued for the reasons that :

(a) Until the Appeal Tribunal gave its decision as to the proper basis to be adopted in working out the differential to December 31st, 1917, no advantage could be gained in preparing such a statement, as it would not have been accepted by the manufacturers and the basis which the Appeal Tribunal would uphold as correct was unknown. 30

(b) After the Appeal Tribunal had given its decision as to the price of newsprint for the five months July to November, 1919, Mr. Pringle intimated that he might find it necessary to alter the price which he had fixed for the months prior to July, 1918. If the prices were to be altered it meant that no statement prepared as to differential on the basis of other figures would have been of any advantage but on the contrary would merely have served to complicate the situation. Mr. Pringle subsequently did alter the price for the period and his judgment in the premises having been appealed, the basis for determination of the differential is now uncertain and will remain so until the Appeal Tribunal gives judgment. 40

The position at present, therefore, is as follows :

Issue exists as to whether the News Pulp & Paper Company is entitled to differential for the period between March, 1917, and December 31st, 1919.

Mr. Pringle's judgment fixing the Canadian price for certain periods is now under Appeal and sittings of the Appeal Tribunal have been set for 23rd February, 1919, to try the issue.

Until the Appeal Court gives its decision on the Appeal now before it on Canadian prices any differential statement prepared would be subject to change in the event of the Appeal Court upsetting Mr. Pringle's judgment.

In order to facilitate matters and bring the question of differential as near termination as rests within our power, we have, by virtue of an order of Mr. Pringle, dated the 23rd January, 1920, made request upon the different mills to furnish us with information necessary for the preparation of different statements, whereafter we shall prepare a statement for the period between March and December, 1917, on the basis which would obtain if the News
 10 Pulp & Paper Company be held to have the right to participate in the differential. For the period succeeding and between January 1st, 1918, and December 31st, 1919, we shall prepare alternate statements, first, on the basis that the News Pulp & Paper Company has the right to participate, and second, on the basis that it has not the right to participate in differentials. This will, so far as we can see, carry the matter to the furthest point to which we can go.

Yours faithfully,

WDT:DB.

W. D. TAYLOR.

*In the
Supreme
Court of
Ontario.*

Part Ex. 46.
Letter W. D.
Taylor to
R. W. Bread-
ner—not
filed as an
exhibit but
filed by the
Respondents
on the appeal
to the Appel-
late Division
(now indexed
as Exhibit
46). 30th
January,
1920.

—continued.

20

Exhibit 15.

(Defendants' Exhibit.)

Letter J. R. Booth to Clarkson, Gordon and Dilworth.

J. R. BOOTH
MANUFACTURER.

Ottawa, Canada, Jan. 31st, 1920.

Messrs. Clarkson, Gordon & Dilworth,
Chartered Accountants,
Toronto, Ont.

Dear Sirs :—

30 I have your letter of the 28th inst. requesting me to send you information to enable you to compile figures relative to the Newsprint differential.

I may say that I do not see any advantage in furnishing these figures, as I do not consider that I am subject to the payment of any differential. I wrote to the former Controller in January, 1918, and explained to him that I was anxious to make my quota of Canadian tonnage and I could not see my way to pay any differential. I suggested to him then that to avoid any question of freight rate, he could transfer to this Mill some of the excess Canadian tonnage then being manufactured by the Eddy Company, sub-
 40 whether this was sufficient to make up my quota, I cannot of course say. However, in any event, I consider that having placed myself on record as desirous of making the paper, and not paying a differential, I am not liable for any claim of this kind.

Yours truly,

J. R. BOOTH.

Per H. I. THOMAS.

Ex. 15.
Letter, J. R.
Booth to
Clarkson,
Gordon &
Dilworth.
31st January
1920.

*In the
Supreme
Court of
Ontario.*

Exhibit 35.
(Plaintiff's Exhibit.)
Letter F. W. Sharp to R. A. Pringle.

February 3rd, 1920.

Exhibits.
Ex. 35.
Letter, F. W.
Sharp to
R. A. Pringle
3rd February
1920.

R. A. PRINGLE, Esq., K.C.,
122 Wellington St.,
Ottawa, Ont.

Dear Mr. Pringle :—

I am this morning in receipt of a copy of a letter to the Belgo-Canadian Pulp & Paper Company from Clarkson, Gordon & Dilworth, dated 28th January, 1920. This calls for production and tonnage information for the period from January 1st, 1918, to 31st December, 1919. 10

During the course of last year you called upon me to obtain figures from the various Mills covering the period from 1st January to 30th June, 1918 (we had already secured for you the figures to December 31st, 1917). We got these figures and forwarded the statements to you. Belgo Pulp & Paper are now enquiring if it is necessary for them to go over the work again in so far as the first six months of the year are concerned. I would be glad if you will advise. I would call to your attention that figures were obtained from the following Mills so that it would seem unnecessary for them to report further for the first six months : 20

Abitibi.	Belgo-Can. Pulp & Paper Co.
Booth.	Canada Paper.
Donnacona.	Eddy.
Ontario.	Fort Frances.
Price Bros.	Laurentide.
Spanish River.	News Pulp & Paper Co.
St. Maurice.	

On the strength of the figures for the six months named, acting on your instructions, a Differential Account was made out and issued as per our letter of July 8th, 1919, reading : 30

“I am at last in a position to give you the figures which you ask for and enclose statement herewith, together with an explanatory letter to Mr. Clarkson to whom I have submitted copies of the statement for perusal.”

“As soon as I have Mr. Clarkson's comments on the figures I will advise you.”

As Mr. Clarkson has agreed with these figures to June would it not seem unnecessary to take up the matter again at least for the first six months of 1918 ? 40

The statements were worked out on the same principle as the two former statements which were settled by the Mills between themselves with the exception as you remember of Fort Frances and News Pulp & Paper Company. The statements above referred to are drawn out so as to include or exclude those two Mills.

I would add that though Mr. Clarkson is calling for the figures for January,

1918, in the settlement between the Mills the month of January, 1918, was included.

I am wondering why the matter of this Differential is now going directly to Mr. Clarkson, seeing that we were so familiar with the whole situation and the principles involved and as a matter of fact, drew up the details of the three previous statements.

Yours truly,
"F. W. SHARP."

FWS:P.

*In the
Supreme
Court of
Ontario.*
—
Exhibits.
Ex. 35.
Letter, F. W.
Sharp to
R. A. Pringle
3rd February
1920.

—continued.

10

Part Exhibit 1.
(Plaintiff's Exhibit.)
Judgment of Paper Control Tribunal.

THE PAPER CONTROL TRIBUNAL.

THE HON. MR. JUSTICE WHITE, *Chairman.*
THE HON. MR. JUSTICE ARCHER,
THE HON. MR. JUSTICE MIDDLETON.

The eighth day of July, 1920.

The appeals of the Fort Frances Pulp and Paper Company hereinafter called the Company, and of the Canadian Newspaper Publishers' Special Paper Committee and The Canadian Daily Newspapers' Association and the newspapers represented by the said Committee and the said Association for convenience hereinafter called "the publishers," from the order made by the Commissioner and Controller of Newsprint on the 24th day of December, 1919, and the appeal of the said Company from the order of the Commissioner and Controller bearing date the 31st December, 1919, having come on to be heard before this tribunal at the City of Montreal, on the 15th day of March, 1920, and at the City of Ottawa on the 16th and 17th days of March, and again in Montreal on the 8th July, 1920, in the presence of Counsel for the Appellants and the Respondents, whereupon and upon hearing read the said orders appealed from and the proceedings had and taken before the said Commissioner and Controller and the evidence adduced before us, and our order made on the 18th day of August, 1919, and the report made at our request and under our instructions and with the assent of Counsel for both parties by Messrs. Clarkson, Gordon & Dilworth, under date the 12th of April, 1920 ;

WE DO DETERMINE AND ORDER :

(1) That the appeal of the Fort Frances Pulp and Paper Company from the said order of the 24th December, 1919, should be, and the same is, dismissed.

(2) That the appeal of the "publishers" from the said order of the 24th December, 1919, should be, and the same is allowed.

AND WE DO FURTHER DETERMINE AND ORDER that the price chargeable by the Fort Frances Pulp and Paper Company Ltd., to the publishers shall be :
From January 1st to 31st, 1918 \$50 a ton.
From February 1st to June 30th, 1918 \$57 per ton.

Part Ex. 1.
Judgment of
Paper
Control
Tribunal on
appeal from
orders of
Paper Con-
troller of
24th and 31st
December
1919. 8th
July, 1920.

*In the
Supreme
Court of
Ontario.*

Exhibits.
Part Ex. 1.
Judgment of
Paper
Control
Tribunal on
appeal from
orders of
Paper Con-
troller of
24th and
31st Decem-
ber, 1919.

—continued.

From July 1st to November 30th, 1918. . . . \$66 per ton.
From Dec. 1st, 1918, to Dec. 31st, 1919. . . . \$69 per ton.
with an additional charge of \$3.00 per ton in each case for shipments in less than carload lots.

(3) AND WE DO FURTHER DETERMINE AND ORDER that the appeal of the Fort Frances Pulp and Paper Company from the order of the 31st December, 1919, should be, and the same is, allowed, and that the price to be paid by the publishers to the said Company from and after the 1st January, 1920, shall be \$80 per ton, with an additional charge of \$3.00 per ton for shipments in less than carload lots.

10

AND WE DO FURTHER DETERMINE AND ORDER that the said Company shall refund and repay to each of the said publishers respectively the amount by which the amounts charged by the said Company to such publisher exceeds the amount payable upon our finding and determination, such amounts being subject to a set-off for any balance due by any publisher to the Company for paper supplied either before or since the 31st December, 1919.

(Signed) A. S. WHITE.

(Signed) CHAS. ARCHER.

(Signed) W. E. MIDDLETON.

(Signed) THOMAS P. OWENS,

20

Registrar.

I certify the above to be a true copy of the original judgment in my possession.

“THOMAS P. OWENS,”

Registrar Paper Control Tribunal.

Part Exhibit 28.

(Defendants' Exhibit.)

Letter W. N. Tilley to R. A. Pringle.

Part Ex. 28.
Letter W. N.
Tilley to
R. A. Pringle
8th Novem-
ber, 1921.

November 8th, 1921.

30

R. A. PRINGLE, ESQ., K.C.,
Ottawa, Ontario.

Dear Sir :— RE PAPER CONTROL.

Referring to my conversation with you in Ottawa last week the points upon which I should like to have information are the following :

1. Was the amount payable to the Fort Frances Company under your order of 6th August, 1918, paid to that Company by the contributing mills upon such order being approved by the Governor-in-Council on 23rd August, 1918 ? If it was then paid and payment was made through you, I should like to know the date of the pay- 40
ment to the Fort Frances Company.
2. Can you furnish me with a copy of the judgment of the Paper Control Tribunal on the appeal by the contributing mills from your order as to differentials of 6th August, 1918 ?
3. If this judgment decreased the amount payable by the Fort Frances Company, was a refund made by that Company ? If a refund was

made and payment of same was made through you, what was the date of the payment by the Fort Frances Company ?

4. If payment of the amount owing by the contributing mills was not made sooner, was same paid following the judgment of the Paper Control Tribunal ? If payment was made at that time and was made through you, what was the date of the payment to the Fort Frances Company.

5. Apparently another order was made by you, but not issued, fixing the amount payable to the Fort Frances Company for differentials for some period subsequent to December, 1917 (see proceedings of 9th October, 1919). Could you let me have a copy of this order and of any later order whether issued or unissued directing payment of differentials to the Fort Frances Co. ?

10

I am sorry to have to trouble you about this matter, but you will appreciate that I did not keep very close track of this phase of Paper Control as my clients were not particularly interested in it when the proceedings were pending.

Yours faithfully,
W. N. TILLEY.

WNT/O.

20

Part Exhibit 28.

(Defendants' Exhibit.)

Letter R. A. Pringle to W. N. Tilley.

PRINGLE, THOMPSON, BURGESS & COTE.

122 Wellington Street,

Ottawa, Nov. 9th, 1921.

W. N. TILLEY, Esq. K.C.,
Messrs. Tilley, Johnston & Parmenter,
Barristers, etc.,
Toronto, Ont.

30

Dear Sir :—

Yours of 8th inst. duly received. I take from your letter and also from conversation I had with you that what you are desirous of knowing is the exact amount paid to the Fort Frances Co. I find this amount to be \$80,000. (Oct. 31/18, \$70,000, and Nov. 8/18, \$10,000.) The Paper Control Tribunal in their judgment of 18th August, 1919, which was not handed down for some time subsequent to that date (if my recollection serves me right), found that the Fort Frances Co. were only entitled to \$72,507.12, so you will see that they were overpaid to the extent of \$7,492.88. They have never refunded this amount and of course the manufacturers claim they are entitled to it.

40

No further order was ever issued by me. An order was made just about the time that the order-in-council was put through by the Government appointing Breadner as controller. Under this order, my recollection is that

*In the
Supreme
Court of
Ontario.*

Part Ex. 28.
Letter W. N.
Tilley to
R. A. Pringle
8th Novem-
ber, 1921.

—continued.

Part Ex. 28.
Letter, R. A.
Pringle to
W. N. Tilley.
9th Novem-
ber, 1921.

*In the
Supreme
Court of
Ontario.*

Mr. Clarkson and Mr. Sharp were to undertake the ascertaining of the differentials and the money was to be paid in to the Bank. This order, however, never became effective.

Exhibits.
Part Ex. 28.
Letter, R. A.
Pringle to
W. N. Tilley.
9th November,
1921.

Any further information I can give you will be pleased to do so.

ENC. COPY
JDGT.

Yours very truly,

“R. A. PRINGLE.”

Exhibit 10.

(Plaintiff's Exhibit.)

**Statement of Differentials Prepared for Paper Appeal Tribunal for a Period
from 1st March to 31st December, 1917**

10

MEMORANDUM FOR DIFFERENTIALS.

Ex. 10.
Statement of
Differentials
prepared for
Paper
Appeal
Tribunal for
period 1st
March to
31st Decem-
ber, 1917.

The statements attached hereto deal with all Canadian Newsprint Mills, except the Newsprint Mills on the Pacific Coast and the Crabtree Mill. The last named mill was a small producer of newsprint for March, April and May, 1917, but has not since then manufactured any. When a settlement on differential was accepted by these mills which reached a settlement the Crabtree Mill and the Pacific Coast Mills were disregarded.

The statements have been prepared and the final figures accumulated on a monthly basis. If the period March to December is to be considered as one unbroken period the final figures would be altered through—

20

- (a) Alteration of tonnage on which amounts are calculated through variation in the percentage of Canadian supply to production;
- (b) Alteration of tonnages on which amounts are calculated in cases where in any month the quantity of uncontracted sales in Canada has been less than a company's share of Canadian supply but the deficiency would be made up in other months;
- (c) Alteration of differential allowed per ton through averaging the prices received over the ten months instead of taking the average price for each month.

30

Returns were received from each mill showing—

- (a) Total production in each month.
- (b) Tonnage supplied by it to Canadian consumers and average price distinguishing contracted from uncontracted tonnage.
- (c) Tonnage supplied to United States and average price received.

From the information so given the total production of all mills and the total quantities supplied to Canadian consumers has been computed for each month. The relation of these two totals establishes for each month the quantity of its production each mill should have supplied to the Canadian trade.

40

If the tonnage supplied in Canada by any mill is less in any month than the proportion it should have contributed the mill has been shown as short in supply for the difference between the quantity of its share and the quantity it actually contributed. On the other hand if the quantity supplied in Canada was in excess of its share it has been shown as over in its supply and entitled

to receive compensation on the quantity over-supplied, with this qualification, however, that if the mill had made deliveries in Canada under contracts greater than its share of Canadian supply it has been included as entitled to relief for the quantity of uncontracted tonnage supplied in Canada only.

Mills short in their share of Canadian supply have been shown as required to contribute on the quantity short an amount per ton equal to the difference between the price they would have received if they had made a sale of the quantity in Canada, *i.e.*, the fixed price of \$50 per ton and the price actually received on sale of uncontracted tonnage in the United States where the quantity
 10 of uncontracted tonnage sold exceeded their shortage in supply. If a mill's shortage in supply exceeded its uncontracted tonnage in the United States the shortage has been taken at two prices, (a) on a quantity equal to the quantity of their uncontracted tonnage at their average price received on uncontracted tonnage sold in the United States, and (b) for the balance of the shortage at their average price received on contracted tonnage.

Mills over in their share of Canadian supply have been shown as entitled to receive on the quantity over an amount per ton equal to the difference between the fixed Canadian price of \$50 per ton and the average price they did receive on uncontracted sales made in the United States. Where there
 20 were no uncontracted sales the price taken has been the average uncontracted selling price in the United States for all companies during the month.

Finally the difference between the excess received by the contributing mills and the loss sustained by the receiving mills calculated as set out above has been apportioned between contributing and receiving mills so as to affect each equally on the money values to be received or paid, *e.g.* : In the month of March the excess received by the contributing mills has been increased by 11.342% and the loss sustained by the receiving mills has been decreased by the same percentage. The percentage varies in each month. It was felt to be inequitable to apportion the difference on a tonnage basis only as this
 30 would not have affected equally in each case the real measure of loss and gain, *viz.*, the money amount involved.

The returns of the News Pulp and Paper Company show the tonnage of their sales in Canada as uncontracted on which they received an average price less than the fixed Canadian price of \$50 per ton.

The mills which reached a settlement amongst themselves considered that the sales made by this company in Canada were contracted sales and that the company was not entitled to share in the differential to which the quantity it over-supplied the Canadian trade would have entitled it if such sales had been uncontracted. The question of whether their tonnage was contracted or
 40 uncontracted has not yet been disposed of. In the present statement it has been considered as contracted

*In the
Supreme
Court of
Ontario.*

Exhibits.
Ex. 10.
Statement of
Differentials
prepared for
Paper
Appeal
Tribunal for
period 1st
March to
31st Decem-
ber, 1917.

—continued—

Exhibit 10.
(Plaintiff's Exhibit.)

Statement of Differentials Prepared for Paper Appeal Tribunal for a Period from 1st March to 31st December, 1917

DISTRIBUTION OF AMOUNT OF DIFFERENTIAL RECEIVABLE BY THE FORT FRANCES PULP AND PAPER COMPANY, LIMITED, FOR THE PERIOD MARCH TO DECEMBER, 1917, AMONGST THE CONTRIBUTING COMPANIES.

In the
Supreme
Court of
Ontario.
—
Exhibits.
Ex. 10.
Statement of
Differentials
prepared for
Paper
Appeal
Tribunal for
period 1st
March to
31st Decem-
ber, 1917.

	March	April	May	June	July	August	September	October	November	December	Total
Contributing Companies—											
Abitibi.....	\$ 649.67	\$ 674.71	\$1,119.33	\$ 642.42	\$ 649.76	\$ 777.01	\$ 407.57	\$ 979.71	\$ 1,162.26	\$ 852.95	\$ 7,915.39
Booth.....	651.11	472.56	269.53	291.15	467.45	535.51	240.50	144.02	587.96	642.34	4,302.13
Brompton.....	337.80	1,042.50	718.62	177.66	755.86	408.90	238.37	432.41	467.30	447.46	5,026.88
Donnaconna.....	930.87	674.46	879.22	495.15	757.65	803.93	544.92	874.39	978.60	1,112.05	8,051.24
Ontario.....	565.76	464.29	649.00	385.53	603.96	625.18	415.96	890.35	1,039.20	915.23	6,554.46
Price.....	207.30	252.82	143.86	94.25	1,390.23	468.10	204.92	1,687.20	821.25	1,275.13	6,544.56
Spanish River.....	1,443.92	1,602.98	2,376.84	1,395.04	2,212.79	2,930.95	1,396.09	3,899.68	4,626.30	3,961.44	25,846.03
St. Maurice.....	493.14	593.02	991.41	621.79	776.47	796.30	618.52	1,292.97	1,241.19	841.62	8,266.43
	\$5,279.57	\$5,777.34	\$7,147.31	\$4,102.99	\$7,614.17	\$7,345.88	\$4,066.85	\$10,200.73	\$10,924.06	\$10,048.22	\$72,507.12
Fort Frances Pulp & Paper Company.....	\$5,279.57	\$5,777.34	\$7,147.31	\$4,102.99	\$7,614.17	\$7,345.88	\$4,066.85	\$10,200.73	\$10,924.06	\$10,048.22	\$72,507.12

SUMMARY.

20	Abitibi.....	\$ 7,915.39
	Booth.....	4,302.13
	Brompton.....	5,026.88
	Donnaconna.....	8,051.24
	Ontario.....	6,554.46
	Price.....	6,544.56
	Spanish River.....	25,846.03
	St. Maurice.....	8,266.43
		\$72,507.12

SUMMARY OF DISTRIBUTION OF DIFFERENTIAL BETWEEN ALL CONTRIBUTING AND RECEIVING COMPANIES, MARCH TO DECEMBER, 1917.

	March	April	May	June	July	August	September	October	November	December	Total
Contributing Companies—											
Abitibi.....	\$ 3,040.66	\$ 3,655.13	\$ 5,527.22	\$ 5,498.56	\$ 3,384.91	\$ 3,339.62	\$ 2,816.72	\$ 2,839.49	\$ 3,539.15	\$ 3,333.84	\$36,975.30
Booth.....	3,047.46	2,560.02	1,330.96	2,492.06	2,435.14	2,301.66	1,662.10	417.41	1,790.38	2,510.62	20,547.81
Brompton.....	1,581.06	5,647.46	3,548.54	1,520.68	3,937.61	1,757.46	1,647.41	1,253.25	1,422.95	1,748.91	24,065.33
Donnaconna.....	4,356.82	3,653.70	4,341.55	4,238.06	3,946.96	3,455.30	3,765.98	2,534.23	2,979.89	4,346.50	37,618.99
Ontario.....	2,647.98	2,515.18	3,204.72	3,299.93	3,146.32	2,687.03	2,874.74	2,580.52	3,164.42	3,577.24	29,698.08
Price.....	970.25	1,369.59	707.93	806.69	7,242.36	2,011.90	1,416.20	4,890.00	2,500.77	4,983.82	26,899.51
Spanish River.....	6,758.17	8,683.76	11,736.79	11,940.55	11,527.53	12,597.28	9,648.44	11,302.45	14,087.31	15,483.46	113,765.74
St. Maurice.....	2,308.12	3,212.55	4,895.60	5,322.12	4,045.04	3,422.52	4,274.59	3,747.42	3,779.49	3,289.52	38,296.97
	\$24,710.52	\$31,297.39	\$35,293.31	\$35,118.65	\$39,665.87	\$31,572.77	\$28,106.18	\$29,564.77	\$33,264.36	\$39,273.91	\$327,867.73
Receiving Companies—											
Belgo-Canadian.....	\$ 207.03	\$4,380.48	\$3,981.79	\$9,047.85	\$ 2,769.06	\$ 2,881.94	\$ 3,721.86	\$ 2,101.44	\$ 5,646.57	\$14,593.79	\$49,271.81
Canada.....	367.04	1,772.46	2,278.03	358.91	836.80	1,148.17	1,394.77	163.88	1,173.95	1,113.97	10,607.98
Eddy.....	13,617.55	12,666.16	15,334.81	14,471.07	13,135.77	12,125.18	12,113.90	15,722.43	14,245.16	11,805.08	135,257.11
Fort Frances.....	5,279.57	5,777.34	7,147.31	4,102.99	7,614.17	7,345.88	4,066.85	10,200.73	10,924.06	10,048.22	72,507.12
Laurentide.....	5,239.33	6,700.95	6,551.37	7,137.83	15,310.07	8,071.60	6,808.80	1,376.29	1,772.85	1,772.85	60,243.71
News.....											
	\$24,710.52	\$31,297.39	\$35,293.31	\$35,118.65	\$39,665.87	\$31,572.77	\$28,106.18	\$29,564.77	\$33,264.36	\$39,273.91	\$327,867.73

DIFFERENTIAL ADJUSTMENT—MARCH, 1917.

	Production Tons	Sales in Canada Tons			Average Selling Prices Received in Canada		Sales in United States Tons			Average Selling Prices in United States		Share of Canadian Supply 15.436% of Production	Short in Canadian Supply	Over in Canadian Supply after considering Canadian Sales under Contract
		Contracted	Uncontracted	Total	Contracted	Uncontracted	Contracted	Uncontracted	Total	Contracted	Uncontracted			
10 Abitibi.....	4,594	270	180	450	\$47.35	\$50.79	3,384.3	.....	3,384.3	\$60.54	.....	709.1	259.1	.....
Booth.....	3,681	104	238	342	39.20	51.50	.....	3,078	3,078	.....	\$62.10	568.2	226.2	.....
Brompton.....	1,134	.....	33	33	.....	56.52	1,101	.....	1,101	60.00	.....	175	142	.....
Donnaconna.....	2,535	.....	.....	.....	.....	.....	2,564	.....	2,564	60.00	.....	391.3	391.3	.....
Ontario.....	2,848	.....	.....	.....	.....	.....	2,848	.....	2,848	55.41	.....	439.6	439.6	.....
Price.....	5,532	240	334	574	35.90	50.00	.....	.....	4,802	53.11	.....	854.2	280.2	.....
Spanish River.....	11,403	.....	11	11	.....	50.43	11,257	.....	11,257	53.47	.....	1,760.2	1,749.2	.....
St. Maurice.....	1,345	.....	.....	.....	.....	.....	1,299	.....	1,347	60.00	60.00	207.3	207.3	.....
Belgo-Canadian.....	4,809	1,679	14	1,693	39.75	55.23	3,404	211	3,615	50.45	66.68	742.3	.....	14
Canada Sheets.....	42	6	36	42	46.40	70.00	.....	.....	.....	.....	.....	6.4	.....	.....
" Rolls.....	958	104	133	133	39.89	50.00	221	42	263	60.00	70.00	147.9	.....	20.7
20 Eddy Sheets.....	168	37	126	163	45.40	75.40	.....	.....	.....	.....	.....	25.9	.....	.....
" Rolls.....	1,320	126	1,092	1,218	40.00	50.60	.....	.....	.....	.....	.....	203.7	.....	1,151.4
Fort Frances.....	3,681	681	397	1,078	45.23	50.00	487	2,101	2,588	43.76	65.00	568.2	.....	397
Laurentide Sheets.....	109	45	63	108	50.33	87.41	1	.....	1	60.56	.....	16.8	.....	.....
" Rolls.....	5,505	906	380	1,286	38.59	50.00	3,612	20	3,632	56.09	111.55	850.1	.....	443
News.....	808	660	.....	660	47.03	.....	.....	148	148	.....	60.00	124.6	.....	.....
	50,472	4,858	2,933	7,791			34,980.3	5,648	40,628.3			7,790.8	3,694.9	2,026.1

In the Supreme Court of Ontario. Exhibits. Ex. 10. Statement of Differentials prepared for Paper Appeal Tribunal for period 1st March to 31st December, 1917

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30	Average Price Received on Contracted Tonnage Sold in United States	Average Price Received on Uncontracted Tonnage Sold in United States	Average Price in United States for Uncontracted Sales	Differential	Tons	Excess Amount Received on Sale in United States of quantity Short Supplied to Canadian Trade	Loss Sustained on Sale in Canada of quantity Over Supplied in Canada	Adjustment to Equalize Totals of Previous Columns 11.342%	Allocation of Amount Payable to Fort Frances over Contributing Companies	
Abitibi.....	\$60.54	.....	.....	\$10.54	259.1	\$2,730.91	.....	\$3,040.66	\$ 649.67
Booth.....	.....	\$62.10	.....	12.10	226.2	2,737.02	.....	3,047.46	651.11
Brompton.....	60.00	.....	.....	10.00	142	1,420.00	.....	1,581.06	337.80
Donnaconna.....	60.00	.....	.....	10.00	391.3	3,913.00	.....	4,356.82	930.87
Ontario.....	55.41	.....	.....	5.41	439.6	2,378.24	.....	2,647.98	565.75
40 Price.....	53.11	.....	.....	3.11	280.2	871.42	.....	970.25	207.30
Spanish River.....	53.47	.....	.....	3.47	1,749.2	6,069.72	.....	6,758.17	1,443.92
St. Maurice.....	60.00	60.00	.....	10.00	207.3	2,073.00	.....	2,308.12	493.14
Belgo-Canadian.....	.....	66.68	.....	16.68	14	.....	\$ 233.52	\$ 207.03	.....
Canada.....	.....	70.00	.....	20.00	20.7	.....	414.00	367.04	.....
Eddy.....	.....	.....	\$63.34	13.34	1,151.4	.....	15,359.67	13,617.55	.....
Fort Frances.....	.....	65.00	.....	15.00	397	.....	5,955.00	5,279.57	.....
Laurentide.....	.....	.....	63.34	13.34	443	.....	5,909.62	5,239.33	.....
News.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
						\$22,193.31	\$27,871.81	\$24,710.52	\$24,710.52	5,279.57

DIFFERENTIAL ADJUSTMENT—APRIL, 1917.

	Production Tons	Sales in Canada Tons			Average Selling Prices Received in Canada		Sales in United States Tons			Average Selling Prices in United States		Share of Canadian Supply 13.324% of Production	Short in Canadian Supply	Over in Canadian Supply after considering Canadian Sales under Contract
		Contracted	Uncontracted	Total	Contracted	Uncontracted	Contracted	Uncontracted	Total	Contracted	Uncontracted			
Abitibi	4,927	...	449	449	...	\$48.50	5,034.7	49.9	5,084.6	\$62.19	\$70.00	656.5	207.5	.....
Booth	3,212	101	182	283	\$39.20	54.04	.....	2,509.3	2,509.3	.....	64.11	427.9	144.9	.....
Brompton	1,244	.....	21	21	.....	50.14	1,003	220	1,223	60.00	81.17	165.7	144.7	.....
Donnaconna	2,190	.....	.....	.....	.....	.....	2,060	.....	2,060	60.00	.....	291.8	291.8	.....
Ontario	2,787	.....	.....	.....	.....	.....	2,787	.....	2,787	55.41	.....	371.3	371.3	.....
Price	4,643	220	199	419	36.08	50.00	4,090	.....	4,090	55.48	.....	618.6	199.6	.....
Spanish	10,980	.....	36	36	.....	51.36	11,251	.....	11,251	54.86	.....	1,463	1,427	.....
St. Maurice	1,852	.....	.....	.....	.....	.....	1,423	.....	1,423	60.40	.....	246.7	246.7	.....
Belgo-Canadian	4,967	748	254	1,002	41.33	50.95	2,965	113	3,078	50.40	73.06	661.8	.....	254
Canada Sheets	45	9	36	45	45.35	67.95	.....	.....	.....	.....	.....	6	.....	.....
Rolls	838	110	43	153	41.18	51.20	262	102	364	61.60	80.00	111.6	.....	79
Eddy Sheets	129	36	78	114	44.80	73.80	.....	.....	.....	.....	.....	17.2	.....	.....
Rolls	1,278	107	1,031	1,138	39.40	50.00	.....	.....	.....	.....	.....	170.3	.....	1,064.5
Fort Frances	3,250	172	776	948	43.60	50.00	303	2,001	2,304	40.63	65.00	433	.....	515
Laurentide Sheets	135	77	47	124	83.12	78.09	11	.....	11	61.40	.....	18	.....	.....
Rolls	5,079	741	401	1,142	38.77	50.00	2,756	155	2,911	57.68	70.00	676.7	.....	448
News	740	561	.....	561	47.03	.....	.....	179	179	.....	65.29	98.6	.....	.....
	48,296	2,892	3,553	6,435	.....	.....	33,945.7	5,329.2	39,274.9	.....	.....	6,434.7	3,033.5	2,360.5

In the Supreme Court of Ontario.
Exhibits. Ex. 10. Statement of Differentials prepared for Paper Appeal Tribunal for period 1st March to 31st December, 1917.
—continued.

	Average Price Received on Contracted Tonnage Sold in United States	Average Price received on Uncontracted Tonnage Sold in United States	Average Price in United States for Uncontracted Sales	Differential	Tons	Excess Amount Received on Sales in United States of quantities Short Supplied to Canadian Trade	Loss Sustained by Sale in Canada of quantity Over Supplied in Canada	Adjustment to Equalize Totals of Previous Columns 25.212,506%	Allocation of Amount Payable to Fort Frances over Contributing Companies	
Abitibi	\$62.19	.....	.....	\$12.19	157.6	\$1,921.14	.....	\$3,655.13	\$ 674.71
Booth	.....	\$70.00	.....	20.00	49.9	998.00	.....	.....	.....
Brompton	.....	64.11	.....	14.11	144.9	2,044.54	.....	2,560.02	472.56
Donnaconna	60.00	.....	.....	31.17	144.7	4,510.30	.....	5,647.46	1,042.50
Ontario	55.41	.....	.....	10.00	291.8	2,918.00	.....	3,653.70	674.46
Price	55.41	.....	.....	5.41	371.3	2,008.73	.....	2,515.18	464.29
Spanish River	55.48	.....	.....	5.48	199.6	1,093.81	.....	1,369.59	252.82
St. Maurice	54.86	.....	.....	4.86	1,427	6,935.22	.....	8,863.76	1,602.98
Belgo-Canadian	60.40	.....	.....	10.40	246.7	2,563.68	.....	3,212.55	593.02
Canada	.....	73.06	.....	23.06	254	.....	\$5,857.24	.....	\$4,380.48
Eddy	.....	80.00	.....	30.00	79	.....	2,370.00	.....	1,772.46
Fort Frances	.....	.....	\$65.91	15.91	1,064.5	.....	16,936.19	.....	12,666.16
Laurentide, Rolls	.....	65.00	.....	15.00	515	.....	7,725.00	.....	5,777.34
News	.....	70.00	.....	20.00	448	.....	8,960.00	.....	6,700.95
						\$24,995.42	\$41,848.43	\$31,297.39	\$31,297.39	\$5,777.34

DIFFERENTIAL ADJUSTMENT—MAY, 1917.

	Production Tons	Sales in Canada Tons			Average Selling Prices Received in Canada		Sales in United States Tons			Average Selling Prices in United States		Share of Canadian Supply 13.89% of Production	Short in Canadian Supply	Over in Canadian Supply after considering Canadian Sales under Contract	
		Contracted	Uncontracted	Total	Contracted	Uncontracted	Contracted	Uncontracted	Total	Contracted	Uncontracted				
10	Abitibi	5,333	325	325		\$48.50	4,917	46	4,963	\$61.90	\$60.00	740.7	415.7		
	Booth	3,381	284	384	39.20	55.04		2,764	2,764		63.67	469.6	85.6		
	Brompton	1,315	25	25		50.80	1,197	93	1,290	60.00	76.60	182.6	157.6		
	Donnaconna	2,748					2,884		2,884	60.00		381.7	381.7		
	Ontario	3,750					3,750		3,750	55.41		520.8	520.8		
	Price	3,381	240	430	35.05	50.00	4,562		4,562	58.00		747.8	77.8		
	Spanish River	12,198	38	38		52.59	11,631		11,631	56.23		1,654.3	1,656.3		
	St. Maurice	2,577					2,200	68	2,268	61.00	66.40	357.9	357.9		
	Belgo-Canadian	5,412	1,121	236	1,357	40.02	47.48	3,688	166	3,854	54.25	69.56	751.7	236	
	Canada Sheets	59	5	59	45.43	70.00						8.1			
	Rolls	994	139	53	192	39.84	53.05	337	43	380	59.00	75.20	138.1	104.8	
20	Eddy Sheets	139	10	128	138	45.60	69.00					19.3		118.7	
	Rolls	1,337	117	1,166	1,283	39.60	50.60					185.7		1,097.3	
	Fort Frances	3,669	126	936	1,062	43.60	50.00	306	2,284	2,590	41.31	65.00	509.6	552.4	
	Laurentide Sheets	144	89	31	120	69.81	77.50	24		24	61.03				
	Rolls	5,865	876	505	1,381	39.58	50.00	2,342	1,037	3,379	62.21	64.17	814.6	536	
	News	850	627		627	47.02			223	223		64.40	118		
		55,152	3,450	4,211	7,661			37,838	6,724	44,562			7,660.5	3,653.4	2,645.2

In the Supreme Court of Ontario. — Exhibits. Ex. 10. Statement of Differentials prepared for Paper Appeal Tribunal for period 1st March to 31st December, 1917. — continued

30		Average Price Received on Contracted Tonnage Sold in United States	Average Price Received on Uncontracted Tonnage Sold in United States	Average Price in United States for Uncontracted Sales	Differential	Tons	Excess Amount Received on Sales in United States of quantities Short Supplied to Canadian Trade	Loss Sustained on Sale in Canada of quantity Over Supplied in Canada	Adjustment to Equalize Totals of Previous two Columns 13.742%	Allocation of Amount Payable to Fort Frances over Contributing Companies	
	Abitibi	\$61.90			\$11.90	369.7	\$ 4,399.43				
	Booth		\$60.00		10.00	46	460.00		\$5,527.22	\$1,119.33	
	Brompton	60.00	63.67		13.67	85.6	1,170.15		1,330.96	269.53	
	Donnaconna		76.60		10.00	64.6	646.00				
	Ontario	60.00			26.60	93	2,473.80		3,548.54	718.62	
	Price	55.41			10.00	381.7	3,817.00		4,341.55	879.22	
40	Spanish River	58.00			5.41	520.8	2,817.53		3,204.72	649.00	
	St. Maurice	56.23			8.00	77.8	622.40		707.93	143.36	
	Belgo-Canadian	61.00			6.23	1,656.3	10,318.75		11,736.79	2,376.84	
	Canada		66.40		11.00	289.9	3,188.90				
	Eddy		69.56		16.40	68	1,115.20		4,895.60	991.41	
	Fort Frances		75.20		19.56	236		\$4,616.16	\$3,981.79		
	Laurentide			\$64.62	25.20	104.8		2,640.96	2,278.03		
	News				14.62	1,216.0		17,777.92	15,334.81		
			65.00		15.00	552.4		8,286.00	7,147.31		
			64.17		14.17	536		7,595.12	6,551.37		
							\$31,029.16	\$40,916.16	\$35,293.31	\$35,293.31	\$7,147.31

DIFFERENTIAL ADJUSTMENT—JUNE, 1917.

	Production Tons	Sales in Canada Tons			Average Selling Prices Received in Canada		Sales in United States Tons			Average Selling Prices in United States		Share of Canadian Supply 13.77% of Production	Short in Canadian Supply	Over in Canadian Supply after considering Canadian Sales under Contract
		Contracted	Uncontracted	Total	Contracted	Uncontracted	Contracted	Uncontracted	Total	Contracted	Uncontracted			
10 Abitibi.....	5,602	...	386	386	.....	\$48.50	5,132.5	67.3	5,199.8	\$62.49	\$60.00	771.4	385.4	.....
Booth.....	3,343	96	214	310	\$39.20	55.54	.....	2,770.8	2,770.8	.....	64.01	460.3	150.3	.....
Brompton.....	696	...	26	26	.....	52.40	603	67	670	60.00	68.76	95.8	69.8	.....
Donnaconna.....	2,601	...	...	...	.....	.....	2,452	.....	2,452	60.00	.....	358.1	358.1	.....
Ontario.....	3,743	...	...	...	.....	.....	3,743	.....	3,743	55.41	.....	515.4	515.4	.....
Price.....	4,978	167	431	598	35.65	50.00	4,258	.....	4,258	57.79	.....	685.5	87.5	.....
Spanish River.....	11,316	...	6	6	.....	51.40	11,003	.....	11,003	56.50	.....	1,558.2	1,558.2	.....
St. Maurice.....	2,535	...	...	...	.....	.....	2,528	118	2,646	61.80	65.00	349.1	349.1	.....
Belgo-Canadian.....	5,217	1,170	451	1,621	39.78	53.21	3,294	163	3,457	55.52	74.57	718.4	.....	451
Canada Sheets.....	24	8	16	24	53.91	70.00	.....	.....	.....	.....	.....	3.3	.....	.....
" Rolls.....	683	62	41	103	39.76	50.51	221	.....	211	62.00	.....	94	.....	29.7
Eddy Sheets.....	117	14	126	140	45.40	70.20	.....	.....	.....	.....	.....	16.1	.....	.....
" Rolls.....	1,216	125	1,116	1,241	40.60	51.00	.....	.....	.....	.....	.....	167.4	.....	1,197.5
20 Fort Frances.....	3,508	79	739	818	43.60	50.00	258	2,458	2,716	41.53	65.00	483	.....	335
Laurentide Sheets.....	120	84	36	120	81.80	82.50	.....	.....	.....	.....	.....	16.5	.....	.....
" Rolls.....	5,513	504	729	1,233	41.24	50.00	2,390	649	3,039	60.49	65.14	759.1	.....	577.4
News.....	756	529	.....	529	47.03	.....	.....	227	227	.....	64.53	104.1	.....	.....
	51,968	2,838	4,317	7,155			35,872.5	6,520.1	42,392.6			7,155.7	3,467.8	

In the Supreme Court of Ontario. Exhibits. Ex. 10. Statement of Differentials prepared for Paper Appeal Tribunal for period 1st March to 31st December, 1917. —continued.

30	Average Price Received on Contracted Tonnage Sold in United States	Average Price Received on Uncontracted Tonnage Sold in United States	Average Price in United States for Uncontracted Sales	Differential	Tons	Excess Amount Received on Sales in United States of quantities Short Supplied to Canadian Trade	Loss Sustained by Sale in Canada of quantity Over Supplied in Canada	Adjustment to Equalize Totals of Previous Columns 18.348%	Allocation of Amount Payable to Fort Frances over Contributing Companies	
Abitibi.....	\$62.49	.....	.....	\$12.49	31.81	\$ 3,973.07	.....	\$ 5,498.56	\$ 642.42
Booth.....	.....	\$60.00	.....	10.00	67.3	673.00	.....	.....	.....
Brompton.....	.....	64.01	.....	14.01	150.3	2,105.70	.....	2,492.06	291.15
Donnaconna.....	60.00	.....	.....	10.00	2.8	28.00	.....	1,520.68	177.66
Ontario.....	.....	68.76	.....	18.76	67	1,256.92	.....	.....	.....
Price.....	.....	.....	.....	10.00	358.1	3,581.00	.....	4,238.06	495.15
Spanish River.....	55.41	.....	.....	5.41	515.4	2,788.31	.....	3,299.93	385.53
St. Maurice.....	57.79	.....	.....	7.79	87.5	681.62	.....	806.69	94.25
Belgo-Canadian.....	56.50	.....	.....	6.50	1,552.2	10,089.30	.....	11,940.55	1,395.04
Canada.....	61.80	.....	.....	11.80	231.1	2,726.98	.....	5,322.12	621.79
Eddy.....	.....	65.00	.....	15.00	118.	1,770.00	.....	.....	.....
Fort Frances.....	.....	64.57	.....	24.57	451	.....	\$11,081.08	.....	.....
Laurentide.....	.....	.....	\$64.80	14.80	29.7	.....	439.56	\$9,047.85	.....
News.....	.....	.....	64.80	14.80	1,197.5	.....	17,723.00	358.91	.....
	.....	65.00	.....	15.00	335	.....	5,925.00	14,471.07	.....
	.....	65.14	.....	15.14	577.4	.....	8,741.83	4,102.99	.....
	.....	64.53	.....	14.53	.....	.....	.....	7,137.83	.....
						\$29,673.90	\$43,010.47	\$35,118.65	\$35,118.65	\$4,102.99

DIFFERENTIAL ADJUSTMENT—JULY, 1917.

	Production Tons	Sales in Canada Tons			Average Selling Prices Received in Canada		Sales in United States Tons			Average Selling Prices in United States		Share of Canadian Supply 13.743% of Production	Short in Canadian Supply	Over in Canadian Supply after considering Canadian Sales under Contract
		Contracted	Uncontracted	Total	Contracted	Uncontracted	Contracted	Uncontracted	Total	Contracted	Uncontracted			
Abitibi.....	4,967	...	344	344	.....	\$50.00	4,605.4	23.3	4,628.7	\$58.50	\$58.50	682.6	338.6	.....
Booth.....	3,050	90	161	251	\$39.20	53.30	.....	2,609.9	2,609.9	.....	62.31	419.2	168.2	.....
10 Brompton.....	1,176	...	3	3	.....	59.00	.....	406	1,173	60.00	71.11	161.6	158.6	.....
Donnacona.....	2,442	.....	.....	.....	.....	.....	.....	2,544	2,544	60.00	.....	335.6	335.6	.....
Ontario.....	3,598	.....	.....	.....	.....	.....	.....	3,598	3,598	55.41	.....	494.5	494.5	.....
Price.....	4,991	186	192	378	35.15	50.00	.....	818	4,613	58.41	70.00	685.9	307.9	.....
Spanish River.....	10,816	.....	30	30	.....	52.16	11,132	.....	11,132	56.73	.....	1,486.4	1,456.4	.....
St. Maurice.....	2,503	.....	.....	.....	.....	.....	2,043	45	2,088	60.60	56.00	344	344	.....
Belgo-Canadian.....	4,812	943	172	1,115	40.68	55.12	2,642	240	2,882	55.36	69.54	661.3	.....	172
Canada Sheets.....	46	4	42	46	47.82	68.00	.....	.....	.....	.....	.....	6.3	.....	.....
“ Rolls.....	931	106	50	156	38.80	50.52	307	.....	307	62.20	.....	127.9	.....	67.8
Eddy Sheets.....	110	1	94	95	45.80	72.00	.....	.....	.....	.....	.....	15.1	.....	.....
“ Rolls.....	1,205	85	1,065	1,150	39.40	51.80	.....	.....	.....	.....	.....	165.6	.....	1,064.3
20 Fort Frances.....	3,259	.....	1,064	1,064	.....	50.00	212	1,951	2,163	40.99	65.00	447.9	.....	616.1
Laurentide Sheets.....	222	130	41	171	86.10	83.34	51	.....	51	71.62	.....	30.5	.....	.....
“ Rolls.....	5,251	301	1,277	1,578	40.45	50.00	2,564	186	2,750	60.15	68.64	721.6	.....	996.9
News.....	785	513	.....	513	47.04	.....	.....	272	272	.....	61.86	107.9	.....	.....
	50,164	2,359	4,535	6,894			34,260.4	6,551.2	40,811.6			6,893.9	3,603.8	2,917.1

In the Supreme Court of Ontario. — Exhibits. Ex. 10. Statement of Differentials prepared for Paper Appeal Tribunal for period 1st March to 31st December, 1917.

—continued.

30	Average Price Received on Contracted Tonnage Sold in United States	Average Price Received on Uncontracted Tonnage Sold in United States	Average Price in United States for Uncontracted Sales	Differential	Tons	Excess Amount Received on Sale in United States of quantities Short Supplied to Canadian Trade	Loss Sustained by Sale in Canada of quantity Over Supplied in Canada	Adjustment to Equalize Totals of Previous Columns 17.608%	Allocation of Amount Payable to Fort Frances over Contributing Companies	
Abitibi.....	\$58.50	.....	.....	\$ 8.50	338.6	\$2,878.10	.....	.....	\$ 649.76
Booth.....	.....	\$58.50	.....	8.50	.....	.....	.....	\$3,384.91	.....
Brompton.....	.....	62.31	.....	12.31	168.2	2,070.54	.....	2,435.14	467.45
Donnacona.....	60.00	.....	.....	21.11	158.6	3,348.05	.....	3,937.61	755.86
Ontario.....	55.41	.....	.....	10.00	335.6	3,356.00	.....	3,946.96	757.65
Price.....	.....	70.00	.....	5.41	494.5	2,675.24	.....	3,146.32	603.96
Spanish River.....	56.73	.....	.....	20.00	307.9	6,158.00	.....	7,242.36	1,390.23
40 St. Maurice.....	60.60	.....	.....	6.73	1,456.4	9,801.57	.....	11,527.53	2,212.79
.....	.....	56.00	.....	10.60	299.	3,169.40	.....	.....	.....
.....	.....	69.54	.....	6.00	45.	270.00	.....	4,045.04	776.47
Belgo-Canadian.....	.....	.....	.....	19.54	172.	.....	\$3,360.88	\$ 2,769.06	.....
Canada.....	.....	.....	\$64.98	12.20	67.8	.....	1,015.64	836.80	.....
Eddy.....	.....	.....	64.98	14.98	1,064.3	.....	15,943.21	13,135.77	.....
Fort Frances.....	.....	65.00	.....	15.00	616.1	.....	9,241.50	7,614.17	.....
Laurentide.....	.....	68.64	.....	18.64	996.9	.....	18,582.21	15,310.07	.....
News.....	.....	61.86	.....	11.86	.....	.....	.....	.....	.....
						\$33,726.90	\$48,143.44	\$39,665.87	\$39,665.87	\$7,614.17

DIFFERENTIAL ADJUSTMENT—AUGUST, 1917.

	Production Tons	Sales in Canada Tons			Average Selling Prices Received in Canada		Sales in United States Tons			Average Selling Prices in United States		Share of Canadian Supply 11.01% of Production	Short in Canadian Supply	Over in Canadian Supply after considering Canadian Sales under Contract
		Contracted	Uncontracted	Total	Contracted	Uncontracted	Contracted	Uncontracted	Total	Contracted	Uncontracted			
Abitibi.....	5,576	...	262	262	.....	\$50.00	4,964.2	46.8	5,010.5	\$58.50	\$58.50	613.7	351.7	.....
Booth.....	3,510	85	137	222	\$39.20	50.62	.....	2,914.8	2,914.8	.....	62.54	386.3	164.3	.....
Brompton.....	1,299	...	23	23	.....	55.80	459	817	1,276	60.00	63.11	143	120	.....
Donnacona.....	2,810	...	.....	.....	.....	.....	2,847	.....	2,847	60.00	.....	309.3	309.3	.....
Ontario.....	4,040	...	.....	.....	.....	.....	4,040	.....	4,040	55.41	.....	444.6	444.6	.....
Price.....	5,675	223	312	535	35.76	50.00	4,131	638	4,769	58.20	70.10	624.6	89.6	.....
Spanish River.....	12,010	...	6	6	.....	50.29	12,015	.....	12,015	58.57	.....	1,321.8	1,315.8	.....
St. Maurice.....	2,827	...	.....	.....	.....	.....	2,717	65	2,782	60.60	57.00	311.1	311.1	.....
Belgo-Canadian.....	4,925	907	186	1,093	39.63	49.19	2,948	260	3,208	53.59	67.57	542.0	.....	186
Canada Sheets.....	61	5	56	61	45.70	70.00	.....	.....	.....	.....	6.7	.....	.....	.....
" Rolls.....	996	49	93	142	38.69	50.74	321	24	345	61.40	65.00	109.6	.....	86.7
Eddy Sheets.....	132	8	118	126	44.80	70.40	.....	.....	.....	.....	.....	14.5	.....	.....
" Rolls.....	1,230	98	877	975	39.60	50.20	.....	.....	.....	.....	.....	135.4	.....	951.1
Fort Frances.....	3,492	.....	939	939	.....	50.00	179	2,390	2,569	41.04	65.00	384.3	.....	554.7
Laurentide Sheets.....	128	87	31	118	74.44	84.56	10	.....	10	65.97	.....	14.1	.....	.....
" Rolls.....	5,936	257	902	1,159	42.53	49.12	2,101	671	2,772	59.02	65.00	653.4	.....	609.5
News.....	802	442	.....	442	47.05	.....	.....	360	360	.....	67.83	88.3	.....	.....
	55,449	2,161	3,942	6,103			36,732.2	8,186.1	44,918.3			6,102.7	3,106.4	2,388

In the Supreme Court of Ontario. — Exhibits. Ex. 10. Statement of Differentials prepared for Paper Appeal Tribunal for period 1st March to 31st December, 1917.

--continued.

	Average Price Received on Contracted Tonnage Sold in United States	Average Price Received on Uncontracted Tonnage Sold in United States	Average Price in United States for Uncontracted Sales	Differential	Tons	Excess Amount Received on Sale in United States of quantities Short Supplied to Canadian Trade	Loss Sustained on Sale in Canada of quantity Over Supplied in Canada	Adjustment to Equalize Totals of Previous Columns 11.713%	Allocation of Amount Payable to Fort Frances over Contributing Companies	
Abitibi.....	\$58.50	.....	.....	\$ 8.50	.....	.....	.....	\$ 3,339.62	\$ 777.01
Booth.....	.....	\$58.50	.....	8.50	351.7	\$ 2,989.45	.....	2,301.66	535.51
Brompton.....	.....	62.54	.....	12.54	164.3	2,060.32	.....	1,757.46	408.90
Donnacona.....	60.00	63.11	.....	13.11	120.	1,573.20	.....	3,455.30	803.93
Ontario.....	55.41	.....	.....	10.00	309.3	3,093.00	.....	2,687.03	625.18
Price.....	.....	70.10	.....	5.41	444.6	2,405.29	.....	2,011.90	468.10
Spanish River.....	58.57	.....	.....	20.10	89.6	1,800.96	.....	12,597.28	2,930.95
St. Maurice.....	60.60	.....	.....	8.57	1,315.8	11,276.41	.....	.....	.....
Belgo-Canadian.....	.....	57.00	.....	10.60	246.1	2,608.66	.....	3,422.52	796.30
Canada.....	.....	67.57	.....	7.00	65	455.00	.....	.....	.....
Eddy.....	.....	65.00	.....	17.55	186	.....	\$3,264.30	\$ 2,881.94	.....
Fort Frances.....	.....	65.00	.....	15.00	86.7	.....	1,300.50	148.17	.....
Laurentide.....	.....	.....	\$64.44	14.44	951.1	.....	13,733.88	12,125.18	.....
News.....	.....	65.00	.....	15.00	554.7	.....	8,320.50	7,345.88	.....
		65.00	.....	15.00	609.5	.....	9,142.50	8,071.60	.....
		67.83	.....	17.83	.....	.....	.....	.....	.....
						\$28,262.29	\$35,761.68	\$31,572.77	\$31,572.77	\$7,345.88

DIFFERENTIAL ADJUSTMENT—SEPTEMBER, 1917.

	Production Tons	Sales in Canada Tons			Average Selling Prices Received in Canada		Sales in United States Tons			Average Selling Prices in United States		Share of Canadian Supply 13.21% of Production	Short in Canadian Supply	Over in Canadian Supply after considering Canadian Sales under Contract	
		Contracted	Uncontracted	Total	Contracted	Uncontracted	Contracted	Uncontracted	Total	Contracted	Uncontracted				
10	Abitibi.....	5,260	400	400	.....	\$50.00	5,315	137.5	5,452.5	\$58.50	\$58.50	694.6	294.6	.....
	Booth.....	2,949	177	271	\$39.20	54.64	.....	2,521.1	2,521.1	.....	62.48	389.4	118.4	.....
	Brompton.....	1,152	42	42	.....	50.60	641	469	1,110	60.00	63.29	152.2	110.2	.....
	Donnaconna.....	2,535	.....	.....	.....	.....	2,461	.....	2,461	60.00	.....	334.8	334.8	.....
	Ontario.....	3,577	.....	.....	.....	.....	3,577	.....	3,577	55.41	.....	472.4	472.4	.....
	Price.....	4,552	192	331	523	35.12	50.00	3,431	506	3,937	59.29	66.10	601.2	78.2	
	Spanish River.....	10,669	12	12	.....	49.19	10,628	.....	10,628	56.14	.....	1,409.0	1,397.0	.....
	St. Maurice.....	2,569	.....	.....	.....	.....	2,146	.....	2,146	61.20	.....	339.3	339.3	.....
	Belgo-Canadian.....	5,039	1,078	443	1,521	38.79	50.60	2,740	212	2,952	55.63	59.60	665.5	.....
	Canada Sheets.....	37	4	33	37	45.70	70.00	.....	.....	.....	.....	4.9	.....	.....
	Rolls.....	819	72	120	192	38.77	51.40	321	.....	321	60.80	.....	108.2	115.9
20	Eddy Sheets.....	171	1	116	117	44.20	70.60	.....	.....	.....	.....	.....	22.6	.....
	Rolls.....	1,095	117	856	973	39.20	52.20	47	47	.....	65.00	.....	144.6	922.8
	Fort Frances.....	3,053	.....	713	713	.....	50.00	2,311	2,311	.....	65.00	403.2	.....	309.8
	Laurentide Sheets.....	121	47	26	73	82.88	82.54	48	48	71.62	.....	16	.....	.....
	Rolls.....	5,298	367	963	1,330	42.33	49.00	2,247	151	2,398	59.95	61.32	699.7	687.3	
	News.....	719	349	.....	349	47.07	.....	.....	370	370	.....	67.14	95	.....
		49,615	2,321	4,232	6,553	33,555	6,724.6	40,279.6	6,552.6	3,144.9	2,478.8

In the Supreme Court of Ontario. Exhibits. Ex. 10. Statement of Differentials prepared for Paper Appeal Tribunal for period 1st March to 31st December, 1917. —continued.

30		Average Price Received on Contracted Tonnage Sold in United States	Average Price Received on Uncontracted Tonnage Sold in United States	Average Price in United States for Uncontracted Sales	Differential	Tons	Excess Amount Received on Sale in United States of quantities Short Supplied to Canadian Trade	Loss Sustained by Sale in Canada of quantity Over Supplied in Canada	Adjustment to Equalize Totals of Previous Columns 12.484%	Allocation of Amount Payable to Fort Frances over Contributing Companies	
	Abitibi.....	\$58.5	.....	.....	\$ 8.50	294.6	\$2,504.10	.....	\$2,816.72	\$ 407.57
	Booth.....	.....	\$58.50	.....	8.50	.....	.....	.....	.....	.....
	Brompton.....	.....	62.48	.....	12.48	118.4	1,477.63	.....	1,662.10	240.50
	Donnaconna.....	.....	63.29	.....	13.29	110.2	1,464.56	.....	1,647.41	238.37
	Ontario.....	60.00	.....	.....	10.00	334.8	3,348.00	.....	3,765.98	544.92
	Price.....	55.41	.....	.....	5.41	472.4	2,555.68	.....	2,874.74	415.96
40	Spanish River.....	.....	66.10	.....	16.10	78.2	1,259.02	.....	1,416.20	204.92
	St. Maurice.....	56.14	.....	.....	6.14	1,397.0	8,577.58	.....	9,648.44	1,396.09
	Belgo-Canadian.....	61.20	.....	.....	11.20	339.3	3,800.16	.....	4,274.59	618.52
	Canada.....	.....	59.60	.....	9.60	443	.....	\$4,252.80	.....	.....
	Eddy.....	.....	115.9	\$63.75	13.75	115.9	1,593.62	.....	1,394.77	.....
	Fort Frances.....	.....	65.00	.....	15.00	922.8	.....	13,842.00	.....	.....
	Laurentide.....	.....	65.00	.....	15.00	309.8	.....	4,647.00	.....	4,066.85
	News.....	.....	61.32	.....	11.32	687.3	.....	7,780.23	.....	6,808.80
		.....	67.14	.....	17.14	.....	.....	.....	.....	.....
		\$24,986.73	\$32,115.65	\$28,106.18	\$28,106.18	\$4,066.85

DIFFERENTIAL ADJUSTMENT—OCTOBER, 1917.

	Production Tons	Sales in Canada Tons			Average Selling Prices Received in Canada		Sales in United States Tons			Average Selling Prices in United States		Share of Canadian Supply 12.8867% of Production	Short in Canadian Supply	Over in Canadian Supply after considering Canadian Sales under Contract
		Contracted	Uncontracted	Total	Contracted	Uncontracted	Contracted	Uncontracted	Total	Contracted	Uncontracted			
Abitibi.....	5,909.4	...	393.2	393.2	...	\$50.00	5,173.7	...	5,173.7	\$58.50	...	761.5	368.3	.....
Booth—Sheets.....	.....	.....	4	4	.....	67.40	.....	858	858	.....	\$66.80	.....	.....	.....
—Rolls.....	3,321	200	185	385	\$39.20	50.00	.....	2,132	2,132	.....	61.80	428	39	.....
Brompton—Sheets.....	.....	.....	1.3	1.3	.....	65.00	.....	81.8	81.8	.....	70.00	.....	.....	.....
—Rolls.....	1,000.9	.....	.....	.....	.....	.....	.....	613	304.8	917.8	60.00	60.82	129	127.7
Donnaconna.....	2,168	.....	.....	.....	.....	.....	2,272	.....	2,272	60.00	.....	279.4	279.4	.....
Ontario.....	4,111	.....	.....	.....	.....	.....	4,110	.....	4,110	55.37	.....	529.8	529.8	.....
Price.....	4,614	105	137	242	35.38	50.00	4,016	.....	4,786	59.35	65.29	594.6	594.6	.....
Spanish River—Sheets.....	.....	2.7	.....	2.7	65.63	.....	44.6	.....	44.6	58.45	.....	.....	.....	.....
—Rolls.....	11,600	26.2	.....	26.2	50.00	.....	11,278	.....	11,278	58.50	.....	1,494.9	1,466	.....
St. Maurice.....	2,744.5	.....	.....	.....	.....	.....	1,912.1	.....	1,935.5	61.80	60.00	353.7	353.7	.....
Belgo-Canadian.....	5,283	929	142	1,071	39.30	51.97	3,563	.....	3,563	56.07	.....	680.8	.....	142
Canada—Sheets.....	30	3	27	30	44.40	70.00	.....	.....	.....	.....	.....	.....	.....	.....
—Rolls.....	638	3	65	68	39.00	50.20	144	103	247	60.00	62.60	86.1	.....	11.9
Eddy—Sheets.....	185	5	180	185	47.20	70.40	.....	.....	.....	.....	.....	.....	.....	.....
—Rolls.....	1,235	82	875	957	39.40	50.20	.....	179	179	.....	65.00	183	.....	959
Fort Frances.....	3,311.8	.....	1,049	1,049	.....	50.00	27	2,251	2,278	41.06	65.00	426.8	.....	622.2
Laurentide—Sheets.....	.....	112.8	39	151.8	88.84	77.47	73	.....	73	69.59	.....	.....	.....	.....
—Rolls.....	6,122	1,541	54	1,595	47.00	50.00	2,261	.....	2,261	59.23	.....	788.9	.....	93
News.....	798	678	.....	678	47.00	.....	.....	120	120	.....	62.00	102.8	.....	.....
	53,071.6	3,687.7	3,151.5	6,839.2			35,487.4	6,823	42,310.4			6,839.3	3,516.5	1,828.1

In the Supreme Court of Ontario. Exhibits. Ex. 10. Statement of Differentials prepared for Paper Appeal Tribunal for period 1st March to 31st December, 1917.

—continued.

	Average Price Received on Contracted Tonnage Sold in United States	Average Price Received on Uncontracted Tonnage Sold in United States	Average Price in United States for Uncontracted Sales	Differential	Tons	Excess Amount Received on Sale in United States of quantities Short Supplied to Canadian Trade	Loss Sustained by Sale in Canada of quantity Over Supplied in Canada	Adjustment to Equalize Totals of Previous Columns 9.297%	Allocation of Amount Payable to Fort Frances over Contributing Companies	
Abitibi.....	\$58.50	.....	.....	\$ 8.50	368.3	\$3,130.55	.....	\$ 2,839.49	\$ 979.71
Booth.....	.....	\$61.80	.....	11.80	39	460.20	.....	417.41	144.02
Brompton.....	.....	60.82	.....	10.82	127.7	1,381.71	.....	1,253.25	432.41
Donnaconna.....	60.00	.....	.....	10.00	279.4	2,794.00	.....	2,534.23	874.39
Ontario.....	55.37	.....	.....	5.37	529.8	2,845.03	.....	2,580.52	890.35
40 Price.....	.....	65.29	.....	15.29	352.6	5,391.25	.....	4,890.00	1,687.20
Spanish River.....	58.50	.....	.....	8.50	1,466	12,461.00	.....	11,302.45	3,899.68
St. Maurice.....	61.80	.....	.....	11.80	330.3	3,897.54	.....	.....	.....
	.....	60.00	.....	10.00	23.4	234.00	.....	3,747.42	1,292.97
Belgo-Canadian.....	.....	.....	\$63.54	13.54	142	.....	\$ 1,922.68	\$2,101.44	.....
Canada.....	.....	62.60	.....	12.60	11.9	.....	149.94	163.88	.....
Eddy.....	.....	65.00	.....	15.00	959	.....	14,385.00	15,722.43	.....
Fort Frances.....	.....	65.00	.....	15.00	622.2	.....	9,333.00	10,200.73	.....
Laurentide.....	.....	.....	63.54	13.54	93	.....	1,259.22	1,376.29	.....
News.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
						\$32,595.28	\$27,049.84	\$29,564.77	\$29,564.77	\$10,200.73

DIFFERENTIAL ADJUSTMENT—NOVEMBER, 1917.

	Production Tons	Sales in Canada Tons			Average Selling Price Received in Canada		Sales in United States Tons			Average Selling Prices in United States		Share of Canadian Supply 14.914% of Production	Short in Canadian Supply	Over in Canadian Supply after considering Canadian Sales under Contract	
		Contracted	Uncontracted	Tot 1	Contracted	Uncontracted	Contracted	Uncontracted	Total	Contracted	Uncontracted				
10	Abitibi.....	5,850	...	463.6	463.8	...	\$50.00	5,671.4	...	5,671.4	\$58.50	...	872.5	408.7	.....
	Booth Sheets.....	...	...	64	64	...	65.40	...	721	...	\$66.20	...	...	...	.....
	" Rolls.....	3,074	101	142	243	\$39.20	50.00	...	1,985	1,985	61.60	...	458.5	151.5	.....
	Brompton Sheets.....	...	...	5.7	5.7	...	75.00	...	21.2	21.2	62.00	...	...	...	.....
	" Rolls.....	1,101.6	...	22.2	22.2	...	50.00	612.3	440.1	1,052.4	60.00	60.24	164.3	136.4	.....
	Donnaconna.....	1,961	...	...	...	...	...	1,820	...	1,820	60.00	...	292.5	292.5	.....
	Ontario.....	3,886	...	...	...	...	...	3,885	...	3,885	55.36	...	579.5	579.5	.....
	Price.....	5,033	209	302	511	35.39	50.00	4,023	97	4,120	59.16	61.84	750.6	239.6	.....
	Spanish River Sheets.....	11,026	12.8	...	12.8	61.26	...	14.8	...	14.8	58.31	...	...	...	.....
	" Rolls.....	...	4.8	...	4.8	50.00	...	11,071	...	11,071	58.50	...	1,644.4	1,626.8	.....
	St. Maurice.....	2,718.6	...	50.5	50.5	...	50.00	2,449.1	70	2,519.1	61.40	56.60	405.4	354.9	.....
20	Belgo-Canadian.....	5,218	1,044	443	1,487	40.47	49.47	3,338	...	3,338	57.10	...	778.2	...	443
	Canada Sheets.....	69	4	65	69	45.55	68.60	...	...	...	...	...	10.3	...	99.7
	" Rolls.....	858	104	65	169	38.60	51.80	286	63	349	60.00	62.00	128	...	...
	Eddy Sheets.....	168	1	167	168	50.00	70.40	...	...	...	...	...	25	...	1,117.6
	" Rolls.....	1,156	118	1,029	1,147	39.40	50.20	...	...	...	...	...	172.4	...	...
	Fort Frances.....	3,518.8	...	1,267	1,267	...	50.00	2,244	2,244	2,244	65.00	...	524.8	...	742.2
	Laurentide Sheets.....	...	49.7	48	97.7	70.70	61.20	90	...	90	65.89	...	...	...	...
	" Rolls.....	5,788	1,337.4	52	1,389.4	50.14	51.20	3,220	...	3,220	57.92	...	863.2	...	100
	News.....	793	616	...	616	47.00	...	177	177	177	...	63.40	118.3	...	...
		52,219.0	3,601.7	4,186.2	7,787.9			36,480.6	5,818.3	41,577.9			7,787.9	3,789.9	2,502.5
30															
		Average Price Received on Contracted Tonnage Sold in United States	Average Price Received on Uncontracted Tonnage Sold in United States	Average Price in United States for Uncontracted Sales	Differential	Tons	Excess Amount Received on Sales in United States of quantities Short Supplied to Canadian Trade	Loss Sustained by Sale in Canada of quantity Over Supplied in Canada	Adjustment to Equalize Totals of Previous Columns 1.876%	Allocation of Amount Payable to Fort Frances over Contributing Companies					
	Abitibi.....	\$58.50	...	...	\$ 8.50	408.7	\$ 3,473.95	...	\$ 3,539.15	\$1,162.26					
	Booth.....	...	61.60	...	11.60	151.5	1,757.40	...	1,790.38	587.96					
	Brompton.....	...	60.24	...	10.24	136.4	1,396.74	...	1,422.95	467.30					
40	Donnaconna.....	60.00	...	...	10.00	292.5	2,925.00	...	2,979.89	978.60					
	Ontario.....	55.36	...	...	5.36	579.5	3,106.12	...	3,164.42	1,039.20					
	Price.....	59.16	...	...	9.16	142.6	1,306.22	...	...	...		
	Spanish River.....	...	61.84	...	11.84	97.	1,148.48	...	2,500.77	821.25					
	St. Maurice.....	58.50	...	...	8.50	1,626.8	13,827.80	...	14,087.31	4,626.30					
	Belgo-Canadian.....	61.40	...	...	11.40	284.9	3,247.86	...	...	...		
	Canada.....	...	56.60	...	6.60	70.	462.00	...	3,779.49	1,241.19					
	Eddy.....	...	...	62.99	12.99	443.	...	5,754.57	\$5,646.57	...					
	Fort Frances.....	...	...	62.00	12.00	99.7	...	1,196.40	1,173.95	...					
	Laurentide.....	...	...	62.99	12.99	1,117.6	...	14,517.62	14,245.16	...					
	News.....	...	...	62.99	12.99	100.	...	11,133.00	10,924.06	...					
		...	63.40	...	13.40	...	...	1,209.00	1,274.62	...					
							\$32,651.57	\$33,900.59	\$33,264.36	\$33,264.36	\$10,924.06				

In the Supreme Court of Ontario.
Ex. 10.
Statement of Differentials prepared for Paper Appeal Tribunal for period 1st March to 31st December, 1917.
—continued

DIFFERENTIAL ADJUSTMENT—DECEMBER, 1917.

	Production Tons	Sales in Canada Tons			Average Selling Prices Received in Canada		Sales in United States Tons			Average Selling Prices in United States		Share of Canadian Supply 17.69% of Production	Short in Canadian Supply	Over in Canadian Supply after considering Canadian Sales under Contract
		Contracted	Uncontracted	Total	Contracted	Uncontracted	Contracted	Uncontracted	Total	Contracted	Uncontracted			
Abitibi.....	4,977.4	...	485	485	...	\$50.00	4,204	...	4,204	\$58.50	...	880.60	395.6	.....
Booth Sheets.....	...	...	87	87	...	66.00	...	670	670	...	\$65.60	...	...	.....
" Rolls.....	3,105	111	133	244	39.20	50.00	...	2,038	2,038	...	61.60	...	549.3	218.3
10 Brompton Sheets.....	...	...	2.8	2.8	...	75.00	...	40.4	40.4	...	66.60	...	...	.....
" Rolls.....	1,141.6	...	22.8	22.8	...	50.00	518.2	557.4	1,075.6	60.00	60.00	202	176.4	.....
Donnacona.....	2,478	...	...	...	...	...	2,581	...	2,581	60.00	...	438.4	438.4	.....
Ontario.....	3,798	...	...	...	...	...	3,798	...	3,798	55.37	...	671.9	671.9	.....
Price.....	5,515	108	312	420	34.80	50.00	3,196	191	3,387	59.07	59.00	975.7	555.7	.....
Spanish River Sheets.....	...	5.2	...	5.2	52.25	...	48.8	...	48.8	58.46	...	...	...	.....
" Rolls.....	10,577	28.8	...	28.8	50.00	...	9,496	...	9,496	58.50	...	1,871.3	1,837.3	.....
St. Maurice.....	2,469.4	...	119.6	119.6	...	50.00	2,022.5	75.8	2,098.3	60.60	60.00	486.9	317.3	.....
Belgo-Canadian.....	4,762	1,057	1,151	2,208	40.18	50.49	2,355	...	2,355	58.37	...	842.50	...	1,151
Canada Sheets.....	44	6	38	44	45.80	70.00	...	...	...	...	...	7.8	...	...
" Rolls.....	944	45	190	235	38.60	50.40	313	82	395	60.00	60.60	167	...	104.2
20 Eddy Sheets.....	130	5	125	130	48.40	71.00	...	...	...	...	...	23	...	...
" Rolls.....	1,137	46	983	1,029	40.20	50.20	...	...	...	...	...	201.1	...	934.9
Fort Frances.....	3,056.8	...	1,205	1,205	...	50.00	...	1,848	1,848	...	65.00	540.8	...	664.2
Laurentide Sheets.....	...	67	44.4	111.4	32.30	67.03	109	...	109	64.39	...	...	...	...
" Rolls.....	5,502	1,837	96	1,933	50.38	50.00	2,396	...	2,396	60.75	...	973.40	...	140.4
News.....	726	600	...	600	47.00	...	...	126	126	...	60.40	...	...	...
	50,363.2	3,916.0	4,994.6	8,910.6			31,037.5	5,628.6	36,666.1			8,910.1	4,610.9	2,994.7

In the Supreme Court of Ontario.
Exhibits. Ex. 10. Statement of Differentials prepared for Paper Appeal Tribunal for period 1st March to 31st December, 1917.

—continued.

30	Average Price Received on Contracted Tonnage Sold in United States	Average Price received on Uncontracted Tonnage Sold in United States	Average Price in United States for Uncontracted Sales	Differential	Tons	Excess Amount Received on Sales in United States of quantities Short Supplied to Canadian Trade	Loss Sustained by Sale in Canada of quantity Over Supplied in Canada	Adjustment to Equalize Totals of Previous Columns .855%	Allocation of Amount Payable to Fort Frances over Contributing Companies	
Abitibi.....	\$58.50	.....	.....	\$ 8.50	395.6	\$ 3,362.60	.....	\$ 3,333.84	\$ 852.95
Booth.....	.....	\$61.60	.....	11.60	218.3	2,532.28	.....	2,510.62	642.34
Brompton.....	.....	60.00	.....	10.00	176.4	1,764.91	.....	1,748.91	447.46
Donnacona.....	60.00	.....	.....	10.00	438.4	4,384.00	.....	4,346.50	1,112.05
Ontario.....	55.37	.....	.....	5.37	671.9	3,608.10	.....	3,577.24	915.23
40 Price.....	59.37	.....	.....	9.07	364.7	3,307.83	.....	.....	.....
Spanish River.....	58.50	59.00	.....	9.00	191.	1,719.00	.....	4,983.82	1,275.13
St. Maurice.....	60.60	.....	.....	8.50	1,837.3	15,617.05	.....	15,483.46	3,961.44
Belgo-Canadian.....	.....	60.00	.....	10.60	241.5	2,559.90	.....	.....	.....
Canada.....	.....	60.00	.....	10.00	75.8	758.00	.....	3,289.52	841.62
Eddy.....	.....	.....	\$62.52	12.52	1,151.	.....	\$14,410.52	\$14,533.79	.....
Fort Frances.....	.....	60.60	.....	10.60	104.2	.....	1,104.52	1,113.97	.....
Laurentide.....	.....	62.52	.....	12.52	934.9	.....	11,704.95	11,805.08	.....
News.....	.....	65.00	.....	15.00	664.2	.....	9,963.00	10,048.22	.....
	.....	62.52	.....	12.52	140.4	.....	1,737.81	1,772.85	.....
	.....	60.40	.....	10.40	.....	.....	.....	.....	.....
						\$39,612.76	\$38,940.80	\$39,273.91	\$39,273.91	\$10,048.22

Exhibit 11.
(Plaintiff's Exhibit.)

Statement of Differential payable to Fort Francis Pulp and Paper Company Limited on their quota of newsprint oversupply in Canada.

*In the
Supreme
Court of
Ontario.*

Exhibits.
Ex. 11.
Statement of
Differential
payable to
Fort Frances
Pulp &
Paper
Company
Limited on
their quota
of news-
print over-
supply in
Canada.

MEMORANDUM.

The attached summary of schedule gives the Differential payable to the Fort Frances Pulp and Paper Company, Limited, on the basis that they are entitled to a Differential of \$18.15 per ton, being \$15.00 the difference between the Canadian price of \$50.00 and \$65.00 at which their free tonnage was sold in the United States, together with an allowance of \$3.15 for loss of drawback on manufactured sulphite imported from the United States and used in the manufacture of paper sold in Canada. The amount of Differentials so ascertained has been apportioned among the contributing mills on the basis of the contributions required from them in the adjustment with other mills to 30th September, 1917.

MARCH, 1917.

	Production—Tons 3,681.0.		
	Share of Canadian Supply	15.436%	Tons 568.2
20	Canadian Sales		Tons 1,078
	Less : Canadian Contracted Tonnage		681
	Over-supplied		Tons 397
	NOTE : Contracted Tonnage in excess of share of Canadian Supply. Differential based on difference between Contracted Tonnage and Canadian Sales.		
	397 Tons at \$18.15		<u>\$7,205.55</u>
30	Divisible—		
	Abitibi	\$	886.65
	Booth		888.63
	Brompton		461.04
	Donnacona		1,270.44
	Ontario		772.15
	Price		282.94
	Spanish River		1,970.66
	St. Maurice		673.04
			<u>\$7,205.55</u>

APRIL, 1917.

40	Production—Tons 3,250.		
	Share of Canadian Supply	13.324%	Tons 433
	Canadian Sales		948
	Canadian Contracted Tonnage—172 Tons.		
	Over-supplied Canadian Trade.		Tons 515
	515 Tons at \$18.15		<u>\$9,347.25</u>

In the
Supreme
Court of
Ontario.
—
Exhibits.
Ex. 11.
Statement of
Differentials
payable to
Fort Frances
Pulp &
Paper
Company
Limited on
their quota
of news-
print over-
supply in
Canada.
—continued.

Divisible—			
Abitibi	\$1,093.82		
Booth	764.37		
Brompton	1,686.22		
Donnaconna	1,090.92		
Ontario	750.99		
Price	408.93		
Spanish River	2,592.80		
St. Maurice	959.20		
		<u>\$9,347.25</u>	10

MAY, 1917.

Production—Tons 3,669.
Share of Canadian Supply..... 13.89% Tons 509.6
Canadian Sales..... 1062

Canadian Contracted Tonnage—Tons 126.
Over-supply to Canadian Trade. Tons 552.4

552.4 Tons at \$18.15..... \$10,026.60

Divisible—			
Abitibi	\$1,569.69		20
Booth	377.97		
Brompton	1,011.01		
Donnaconna	1,232.94		
Ontario	910.10		
Price	201.04		
Spanish River	3,333.11		
St. Maurice	1,390.74		
		<u>\$10,026.60</u>	

JUNE, 1917.

Production—Tons 3,508.
Share of Canadian Supply..... 13.77% Tons 483
Canadian Sales..... 818
Canadian Contracted Tonnage..... Tons 79

Over-supply to Canadian Trade. Tons 335

335 Tons at \$18.15..... \$6,080.25

Divisible—			
Abitibi	\$ 964.92		
Booth	437.52		
Brompton	268.58		
Donnaconna	744.04		40
Ontario	579.34		
Price	141.63		
Spanish River	2,009.24		
St. Maurice	934.98		
		<u>\$6,080.25</u>	

JULY, 1917.

Production—Tons 3,259.

Share of Canadian Supply.....	13.763%	Tons	447.8
Canadian Sales.....			1,064.0
Canadian Contracted Tonnage....	Nil		
Over-supply to Canadian Trade.		Tons	616.2

616.2 Tons at \$18.15.....				\$11,184.03
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Divisible—

10	Abitibi.....	\$	954.34
	Booth.....		686.36
	Brompton.....		1,110.50
	Donnaconna.....		1,112.80
	Ontario.....		887.16
	Price.....		2,041.85
	Spanish River.....		3,250.36
	St. Maurice.....		1,140.66

				\$11,184.03
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AUGUST, 1917.

20 Production—Tons 3,492.

Share of Canadian Supply.....	11.01%	Tons	384.5
Canadian Sales.....			939

Canadian Contracted Tonnage....

Over-supply to Canadian Trade.		Tons	554.5
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554.5 Tons at \$18.15.....				\$10,064.17
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Divisible—

30	Abitibi.....	\$1,064.50
	Booth.....	734.12
	Brompton.....	559.90
	Donnaconna.....	1,101.09
	Ontario.....	856.39
	Price.....	642.37
	Spanish River.....	4,014.56
	St. Maurice.....	1,091.24

			\$10,064.17
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SEPTEMBER, 1917.

Production—Tons 3,053.

Share of Canadian Supply.....	13.01%	Tons	403.3
Canadian Sales.....			713

40 Canadian Contracted Tonnage.... Nil

Over-supply to Canadian Trade.			309.7
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309.7 Tons at \$18.15.....				\$5,621.05
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Divisible—

Abitibi.....	\$	563.47
Booth.....		332.80
Brompton.....		329.30
Donnaconna.....		753.10
Ontario.....		574.76
Price.....		283.47
Spanish River.....		1,929.36
St. Maurice.....		854.79

			\$5,621.05
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In the
Supreme
Court of
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Exhibits.
Ex. 11.

Statement of
Differentials
payable to
Fort Frances
Pulp &
Paper
Company
Limited on
their quota
of news-
print over-
supply in
Canada.

—continued.

Exhibit 12.
(Plaintiff's Exhibit.)

Statement of Differentials Payable to Fort Frances Pulp and Paper Company, Limited, for the months of October, November and December, 1917.

*In the
Supreme
Court of
Ontario.*

Exhibits.
Ex. 12.

	October	November	December	Total	Statement of Differential payable to Fort Frances Pulp & Paper Company Limited for the months of October, November and Decem- ber, 1917.
Abitibi.....	\$1,084.73	\$1,433.05	\$1,023.35	\$3,541.13	
Booth.....	159.05	724.65	770.66	1,654.36	
Brompton.....	478.76	576.31	536.84	1,591.91	
Donnacona.....	968.12	1,206.49	1,334.20	3,508.81	
10 Ontario.....	985.61	1,281.63	1,098.07	3,365.31	
Price.....	1,868.06	1,012.84	1,529.83	4,410.73	
St. Maurice.....	1,431.17	1,530.74	1,009.75	3,971.66	
Spanish River.....	4,317.43	5,705.22	4,752.53	14,775.18	
	<u>\$11,292.93</u>	<u>\$13,470.93</u>	<u>\$12,055.23</u>	<u>\$36,819.09</u>	

Differential payable to Fort Frances Pulp and Paper Company,
including Loss on Drawback on Sulphite of \$3.15 per ton
Newsprint..... **\$36,819.09**

OCTOBER.

20	CANADIAN SALES				Company's Proportion of Canadian Supply	Short or <i>Over</i> in Supply	
	Produc- tion	Under Contract	Not Under Contract	Total			
	Abitibi.....	5909.4	.....	393.2	393.2	761.5	368.3
	Belgo-Canadian.....	5283	929	142	1071	680.8 A.	142
	Booth.....	3321	200	189	389	427.9	38.9
	Brompton.....	1000.9	.....	1.3	1.3	129.0	127.7
	Canada Paper.....	668	5.5	92.2	97.7	86.1	11.6
	Donnacona.....	2168	.....	.....	.....	279.4	279.4
30	Eddy.....	1420	87	1055	1142	183	959
	Fort Frances.....	3311.8	.....	1049	1049	426.8	622.2
	Laurentide.....	6122	1653.8	93	1746.8	788.9 A.	93
	News.....	798	.....	678	678	102.8	.....
	Ontario.....	4111	.....	.....	.....	529.7	529.7
	Price.....	4614	105	137	242	594.6	352.6
	Spanish River.....	11600	28.9	.....	28.9	1494.8	1465.9
	St. Maurice.....	2744.5	.....	.....	.....	353.6	353.6
		<u>53071.6</u>	<u>3009.2</u>	<u>3829.7</u>	<u>6838.9</u>	<u>6838.9</u>	

40 Percentage of total Canadian Sales to Production—12.886%.
A. Canadian deliveries under contract in excess of company's proportion
of Canadian supply and quantity over-supplied taken at
quantity delivered not under contract.

OCTOBER.

In the
Supreme
Court of
Ontario.
—
Exhibits.
Ex. 12.
Statement of
Differentials
payable to
Fort Frances
Pulp &
Paper
Company
Limited for
the months
of October,
November
and Decem-
ber, 1917.

—continued.

	Short in Supply	Average U. S. Price	Differen- tial	Value of Shortage at Differential	Proportion of Amount Payable to Fort Frances Pulp & Paper Co.
Abitibi.....	368.3 A	\$58.50	\$ 8.50	\$3,130.55	\$1,084.73
Booth.....	38.9 B	61.80	11.80	459.02	159.05
Brompton.....	127.7 B	60.82	10.82	1,381.71	478.76
Donnaconna.....	279.4 A	60.00	10.00	2,794.00	968.12
Ontario.....	529.7 A	55.37	5.37	2,844.49	985.61
Price.....	352.6 B	65.29	15.29	5,391.25	1,868.06
Spanish River.....	1465.9 A	58.50	8.50	12,460.15	4,317.43
	A	61.80			
St. Maurice.....	353.6 B	60.00 C	4,130.36	1,431.17
				\$32,591.53	\$11,292.93

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Differential Payable to Fort Frances, including loss of drawback on Sulphite of \$3.15 per ton Newsprint : 622.2 tons at \$18.15 \$11,292.93

- A. Average price, Rolls under contract. 20
- B. Average price, Rolls not under contract.
- C. Value extended for quantity of non-contract tonnage at excess of non-contract price and for balance of shortage in supply at excess of contract price over Canadian fixed price of \$50 per ton.

NOVEMBER.

	CANADIAN SALES				Company's Proportion of Canadian Supply	Short or Over in Supply
	Produc- tion	Under Contract	Not Under Contract	Total		
Abitibi.....	5850	.....	463.8	463.8	872.4	408.6
Belgo-Canadian.....	5218	1044	443	1437	778.2A.	443
Booth.....	3074	101	206	307	458.4	151.4
Brompton.....	1101.6	.....	27.9	27.9	164.3	136.4
Canada Paper.....	927	108	129.5	237.5	138.2	99.3
Donnaconna.....	1961	.....	.....	.....	292.4	292.4
Eddy.....	1324	119	1196	1315	197.4	1117.6
Fort Frances.....	3518.8	.....	1267	1267	524.8	742.2
Laurentide.....	5788	1387.1	100	1487.1	863.2A.	100
News.....	793	.....	616	616	118.3	.....
Ontario.....	3886	.....	.....	.....	579.5	579.5
Price.....	5033	209	302	511	750.6	239.6
Spanish River.....	11026	17.6	.....	17.6	1644.3	1626.7
St. Maurice.....	2718.6	.....	50.5	50.5	405.4	354.9
	52219.0	2985.7	4801.7	7787.4	7787.4	

30

40

Percentage of Total Canadian Sales to Production—14.913%.

A. Canadian deliveries under contract in excess of company's proportion of Canadian supply and quantity over supplied taken at quantity delivered not under contract.

*In the
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Ontario.*

Exhibits.
Ex. 12.
Statement of
Differentials
payable to
Fort Frances
Pulp &
Paper
Company
Limited for
the months
of October,
November
and Decem-
ber, 1917.

- continued

NOVEMBER.

	Short in Supply	Average U. S. Price	Differen- tial	Value of Shortage at Differential	Proportion of Amount Payable to Fort Frances Pulp & Paper Co.	
10						
	Abitibi.....	408.6 A	\$58.50	\$ 8.50	\$3,473.10	\$1,433.05
	Booth.....	151.4 B	61.60	11.60	1,756.24	724.65
	Brompton.....	136.4 B	60.24	10.24	1,396.74	576.31
	Donnaconna.....	292.4 A	60.00	10.00	2,924.00	1,206.49
	Ontario.....	579.5 A	55.36	5.36	3,106.12	1,281.63
	Price.....	239.6 A	59.16	C	2,454.70	1,012.84
	Spanish River.....	1626.7 A	58.50	8.50	13,826.95	5,705.22
		B	61.84			
20	St. Maurice.....	354.9 A	61.40	C	3,709.86	1,530.74
		B	56.60			
					\$32,647.71	\$13,470.93

Differential payable to Fort Frances Pulp & Paper Company including loss of Drawback on Sulphite of \$3.15 per ton of Newsprint : 742.2 tons at \$18.15..... \$13,470.93

A. Average Price, Rolls under contract.

B. Average Price, Rolls not under contract.

C. Value extended for quantity of non-contract tonnage at excess of non-contract price and for balance of shortage in supply at excess of contract price over Canadian fixed price of \$50.00 per ton.

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DECEMBER.

	Short in Supply	Average U. S. Price	Differen- tial	Value of Shortage at Differential	Proportion of Amount Payable to Fort Frances Pulp & Paper Co.	
	Abitibi.....	395.6 A	\$58.50	\$ 8.50	\$3,362.60	\$1,023.35
	Booth.....	218.3 B	61.60	11.60	2,532.28	770.66
	Brompton.....	176.4 B	60.00	10.00	1,764.00	536.84
40	Donnaconna.....	438.4 A	60.00	10.00	4,384.00	1,334.20
	Ontario.....	671.9 A	55.37	5.37	3,608.10	1,098.07
	Price.....	555.7 A	59.07			
		B	59.00	C	5,026.83	1,529.83
	Spanish River.....	1837.2 A	58.50	8.50	15,616.20	4,752.53
		A	60.60			
	St. Maurice.....	317.3 B	60.00	C	3,317.90	1,009.75
					\$39,611.91	\$12,055.23

In the
Supreme
Court of
Ontario.

Differential payable to Fort Frances Pulp & Paper Co., including
loss of drawback on Sulphite of \$3.15 per ton of Newsprint :
664.2 tons at \$18.15..... \$12,055.23

Exhibits.
Ex. 12.
Statement of
Differentials
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Paper
Company
Limited for
the months
of October,
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ber, 1917.

- A. Average Price, Rolls under contract.
- B. Average Price, Rolls not under contract.
- C. Value extended for quantity of non-contract tonnage at excess of non-contract price and for balance of shortage in supply at excess of contract price over Canadian fixed price of \$50.00 per ton.

DECEMBER.

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	CANADIAN SALES				Company's Proportion of Canadian Supply	Short or <i>O-er</i> in Supply
	Produc- tion	Under Contract	Not Under Contract	Total		
Abitibi.....	4977.4	.....	485	485	880.6	395.6
Belgo-Canadian.....	4762	1057	1151	2208	842.5A.	1151
Booth.....	3105	111	220	331	549.3	218.3
Brompton.....	1141.6	.....	25.6	25.6	202	176.4
Canada Paper.....	988	50.3	228.2	278.5	174.8	103.7
Donnacona.....	2478	.....	.....	.....	438.4	438.4
Eddy.....	1267	51	1108	1159	224.2	934.8
Fort Frances.....	3056.8	.....	1205	1205	540.8	664.2
Laurentide.....	5502	1904	140.4	2044.4	973.4A.	140.4
News.....	726	.....	600	600	128.4	.....
Ontario.....	3798	.....	.....	.....	671.9	671.9
Price.....	5515	108	312	420	975.7	555.7
Spanish River.....	10577	34	34	1871.2	1837.2
St. Maurice.....	2469.4	119.6	119.6	436.9	317.3
	50363.2	3315.3	5594.8	8910.1	8910.1	

20

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—continued.

Percentage of Total Canadian Sales to Production—17.691%.

- A. Canadian deliveries under contract in excess of company's proportion of Canadian Supply and quantity over supplied taken at quantity delivered not under contract.