

13, 1952

In the Privy Council.

No. 32 of 1951.

ON APPEAL
FROM THE SUPREME COURT OF CANADA

UNIVERSITY OF LON.

JUL 10 1952

INSTITUTE OF ADVAN.
LEGAL STUDIES

BETWEEN

THE ATTORNEY-GENERAL OF CANADA
and THE CANADIAN WHEAT BOARD - - - *Appellants*

AND

HALLET AND CAREY LIMITED and
JEREMIAH J. NOLAN - - - - - *Respondents.*

Record of Proceedings—Vol. 2
(Canadian Wheat Board Action)
Pages 1 to 156

CHARLES RUSSELL & CO.,
37 Norfolk Street,
Strand, W.C.2,
Solicitors for the Appellants.

LAWRENCE JONES & CO.,
Winchester House,
Old Broad Street, E.C.2.
Solicitors for the Respondents.

In the Supreme Court of Canada
On Appeal from the Court of Appeal for Manitoba

BETWEEN: THE CANADIAN WHEAT BOARD,
(Plaintiff) APPELLANT,

AND

MANITOBA POOL ELEVATORS,
CANADIAN CONSOLIDATED GRAIN COMPANY LIMITED,
UNITED GRAIN GROWERS TERMINALS LIMITED,
FORT WILLIAM ELEVATOR COMPANY LIMITED,
(the four last mentioned corporations ceased to be parties to
this action pursuant to Order of the Court made first day of
February, 1949, on consent of all parties)

HALLET AND CAREY LIMITED, *(Defendants)* RESPONDENT,

AND

JEREMIAH J. NOLAN,
(Added by Order of the Court made the 22nd day of March,
1948),
(Defendant) RESPONDENT.

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In the King's Bench

This 8th day of October, A.D. 1947.

BETWEEN:

THE CANADIAN WHEAT BOARD,

PLAINTIFF,

AND

10 MANITOBA POOL ELEVATORS,
CANADIAN CONSOLIDATED GRAIN COMPANY LTD.,
UNITED GRAIN GROWERS TERMINALS LIMITED,
FORT WILLIAM ELEVATOR COMPANY LIMITED,
HALLET AND CAREY LIMITED,

DEFENDANTS,

AND

JEREMIAH J. NOLAN,

(Added by Order of the Court made the 22nd day of March,
1948).

DEFENDANT.

(signed) J. A. ROBINS
Deputy Prothonotary.

20

STATEMENT OF CLAIM

1. The Plaintiff is a corporation duly incorporated by The Canadian Wheat Board Act, 1935, and has its headquarters at the City of Winnipeg in the Province of Manitoba.

2. The Defendant, Hallet and Carey Limited, is a corporation duly incorporated under the laws of the Dominion of Canada and carries on the business of a grain merchant in the said City of Winnipeg.

3. The Defendants, Canadian Consolidated Grain Company Limited, United Grain Growers Terminals Limited and Fort William Elevator Company Limited are corporations duly incorporated under the laws of the Dominion
30 of Canada and the Defendant, Manitoba Pool Elevators, is a corporation duly

incorporated under the laws of the Province of Manitoba and all Defendants have offices and carry on the business of grain merchants and warehousemen at the City of Winnipeg aforesaid and elsewhere in the Dominion of Canada.

4. On or about the 3rd day of April, A.D. 1947, by virtue of the terms of an Order of the Governor General in Council of the 3rd day of April, 1947 (P.C. 1292), the Plaintiff became the owner of forty thousand bushels of Number 3 C.W. Six Row Barley and the Plaintiff is and has at all material times since the 3rd day of April, 1947, been the owner of the said barley and at all material times has been entitled and is entitled to the possession of the
10 said barley.

5. On the 3rd day of April, 1947, and at all material times after that date, the said barley was in the possession and control of the Defendants, and is in the possession and control of the Defendants. The Defendants, Manitoba Pool Elevators, Canadian Consolidated Grain Company Limited, United Grain Growers Terminals Limited and Fort William Elevator Company Limited each had, on the said 3rd day of April, and now has in its possession the amount of the said barley referred to in the warehouse receipts issued by such Defendant and hereinafter described and at all material times since the said 3rd day of
20 April, 1947, the Defendant Hallet and Carey Limited had and now has possession and control of documents issued pursuant to the Canada Grain Act relating to the said forty thousand bushels of barley which said documents consisted of warehouse receipts issued and registered under the provisions of the Canada Grain Act and a Lake Shippers Clearance Association transfer certificate, particulars of which are as follows:

DEFENDANT	Warehouse Receipt Number	Number of Bushels of Barley	Storage Date
Manitoba Pool Elevators	12677	612-14	Dec. 2/46
Manitoba Pool Elevators	12676	1,000-00	Dec. 2/46
30 Manitoba Pool Elevators	12534	1,757-34	Dec. 7/46
Manitoba Pool Elevators	12573	1,836-32	Dec. 9/46
Manitoba Pool Elevators	12634	1,971-42	Dec. 10/46
Manitoba Pool Elevators	12788	2,015-10	Dec. 12/46
Manitoba Pool Elevators	12914	1,806-22	Dec. 16/46
Manitoba Pool Elevators	12980	1,958-16	Dec. 18/46
Canadian Consolidated Grain Co. Ltd.	1661	1,930-10	Dec. 20/46
Fort William Elevator Company Limited	3102	111-12	Dec. 28/46
Manitoba Pool Elevators	13974	2,028-26	Dec. 30/46
Manitoba Pool Elevators	13512	1,867-14	Jan. 3/47
40 Manitoba Pool Elevators	13632	1,840-30	Jan. 8/47
United Grain Growers Terminals Ltd.	26540	1,833-06	Jan. 10/47
Manitoba Pool Elevators	13802	2,207-14	Jan. 13/47
Manitoba Pool Elevators	13931	1,773-46	Jan. 16/47
Manitoba Pool Elevators	14078	9,479-08	Jan. 21/47
Lake Shippers Clearance Association Transfer Certificate	3747	3,970-00	Nov. 30/46

6. On or about the 3rd day of April, 1947, by the said Order in Council (P.C. 1292), the Plaintiff was empowered to order that the said documents be delivered to the Plaintiff and the Plaintiff did thereafter issue orders requiring the Defendant, Hallet and Carey Limited to deliver to the Plaintiff the said documents and the Plaintiff is entitled and at all material times since the making of the said orders has been entitled to the possession of the said documents.

7. The Plaintiff has repeatedly demanded that the Defendants deliver up to the Plaintiff the said barley and the said documents but the Defendants
10 have neglected and refused and still neglect and refuse to deliver the said barley or any portion thereof or any of the said documents and the Defendants have unlawfully and wrongfully detained and continue to detain from the Plaintiff the said barley and the said documents.

8. As a result of the wrongful refusal and neglect of the Defendants to deliver the barley and the documents aforesaid to the Plaintiff, storage and carrying charges have accrued and will continue to accrue upon and in relation to the said barley until delivery of the said barley to the Plaintiff and the Plaintiff has and will thereby suffer damage.

9. In the alternative, the Plaintiff says, as the fact is, that it has repeated-
20 ly demanded from each of the Defendants, delivery of the said forty thousand bushels of Number 3 C.W. Barley or the portion thereof in the possession or control of that Defendant and has demanded delivery of the said documents from the Defendant, Hallet and Carey Limited, but the Defendants have all wrongfully refused to deliver any of the said barley or any of the said documents and have thereby converted the same to the use of the Defendants and wrongfully deprived the Plaintiff of the same.

10. The Plaintiff therefore claims:

- (a) possession of the said forty thousand bushels of Number 3 C.W. Six Row Barley.
- 30 (b) Possession of the said documents described in Paragraph 5 hereof.
- (c) Special damages in the amount of storage and carrying charges which may accrue upon or in relation to the said barley from the date of the wrongful refusal of the Defendants to deliver the same to the Plaintiff until final judgment herein and delivery of the said barley and the said documents to the Plaintiff.
- (d) The costs of this action.
- (e) Such further and other relief as the nature of this case may require and to this Honorable Court may seem meet.

11. In the alternative, the Plaintiff claims:

- (a) Damages.
- (b) The costs of this action.
- (c) Such further and other relief as the nature of this case may require and to this Honorable Court may seem meet.

Issued this 8th day of October, A.D. 1947 by Henry B. Monk, K.C., of the City of Winnipeg, in the Province of Manitoba, Solicitor for the Plaintiff.

In the King's Bench

BETWEEN:

THE CANADIAN WHEAT BOARD,

PLAINTIFF,

AND

MANITOBA POOL ELEVATORS,
CANADIAN CONSOLIDATED GRAIN COMPANY LIMITED,
UNITED GRAIN GROWERS TERMINALS LIMITED,
FORT WILLIAM ELEVATOR COMPANY LIMITED,
10 HALLET AND CAREY LIMITED,

DEFENDANTS.

STATEMENT OF DEFENCE OF HALLET AND CAREY LIMITED

1. Defendant admits paragraphs 1, 2 and 3 of the plaintiff's statement of claim. In answer to paragraph 4 of the plaintiff's statement of claim this defendant denies that by virtue of the terms of an order of the Governor-in-Council of the 3rd day of April, 1947, (P.C. 1292) the plaintiff became the owner of 40,000 bushels of No. 3 C.W. six row barley and this defendant denies that the plaintiff is and has at all material times since the 3rd day of April 1947 been the owner of the said barley and denies that the
20 plaintiff has at any time been entitled or is entitled to possession thereof.

2. In answer to paragraph 5 of the plaintiff's statement of claim this defendant admits that he had and now has constructive possession and control of all said barley and possession and control of the documents entitling this defendant to the delivery of the said 40,000 bushels of barley which said documents are referred to in paragraph 5 of plaintiff's statement of claim.

3. This defendant says and the fact is that it has constructive possession and control of said barley and possession and control of said documents as agent for Jeremiah J. Nolan of Chicago, Illinois, grain merchant, and not otherwise and that this defendant has no beneficial interest whatsoever in the
30 said barley or in said documents of title and that this defendant holds construc-

tive possession of the said barley and possession of the said documents of title subject to the order of the said Jeremiah J. Nolan. This defendant denies paragraph 6 of the plaintiff's statement of claim and each and every allegation therein contained.

4. In answer to paragraphs 7 and 8 of plaintiff's statement of claim this defendant denies that it has unlawfully and wrongfully detained and is unlawfully and wrongfully detaining the said barley and the said documents and denies that the plaintiff will suffer damages alleged.

5. In answer to paragraph 9 of plaintiff's statement of claim this defendant denies that it has wrongfully refused to deliver said barley of the said documents and denies that they have converted same to their own use or wrongfully deprived the plaintiff of the same.

6. In further reply and answer to the plaintiff's statement of claim this defendant denies that order-in-council P.C. 1292 was passed pursuant to any statutory or other authority vested in the Governor-General-in-Council and denies that the plaintiff had any right, power or authority to demand from this defendant the said barley or the said documents of title.

7. This defendant further says that order-in-council P.C. 1292 is wholly ultra vires of the Governor-General-in-Council and is unconstitutional, inoperative and of no force or effect whatsoever.

8. In the alternative the defendant says that if the said order-in-council is not wholly ultra vires the Governor-in-Council sections 22, 24, 25, 26 and 36 thereof (hereinafter referred to as the "said sections") are wholly ultra vires the Governor-in-Council and are unconstitutional, inoperative and of no force and effect whatsoever.

9. This defendant further says that The National Emergency Transitional Powers Act, 1945, being chapter 25 of the Statutes of Canada, 1945 (hereinafter referred to as the "said Act") pursuant to which the Governor-in-Council purported to promulgate P.C. 1292 is wholly ultra vires of the Parliament of Canada and is unconstitutional, inoperative and of no force or effect whatsoever.

10. The said Act does not delegate the powers purported to be exercised by the Governor-in-Council and the said order-in-council exceeds the powers (if any) delegated by the said Act.

11. The Parliament of Canada has not the power to authorize the Governor-in-Council to pass the said order-in-council or alternatively the said sections thereof.

12. The said order-in-council purports to make provision for certain matters pursuant to the provisions in the said Act for the purpose of maintaining, controlling and regulating supplies and prices to ensure economic stability and an orderly transition to conditions of peace but the defendant says that the said order-in-council and particularly section 22 thereof exceeds and goes beyond the powers (if any) conferred by the said Act for the purpose of maintaining, controlling and regulating supplies and prices to ensure economic stability and an orderly transition to conditions of peace.

13. On April 3, 1947, the date of the said order-in-council there was no
10 national emergency continuing or otherwise or arising out of the war against Germany or Japan or otherwise, sufficient to justify, warrant or call for the vesting in The Canadian Wheat Board of all oats and barley as provided in the said order-in-council.

14. In the alternative if there was any continued existence of national emergency arising out of the war against Germany and Japan, which is denied, it did not justify, warrant or make necessary the said order-in-council or alternatively section 22 thereof.

15. The said order-in-council or alternatively the said sections thereof do not go beyond local or provincial concern or interest and are not from their
20 inherent nature the concern of the Dominion as a whole and are not matters affecting the peace, order and good government of Canada and are not necessary for the safety of the Dominion as a whole.

16. The confiscation or expropriation or vesting in the The Canadian Wheat Board of the defendant's barley is not related to nor does it further or result in the maintaining or the controlling or the regulating of supplies or prices to ensure economic stability or an orderly transition to conditions of peace.

17. The vesting of oats and barley in The Canadian Wheat Board amounts to expropriation or confiscation and is not authorized by the said
30 Act, and amounts to an invasion of provincial jurisdiction over property and civil rights which are wholly within the jurisdiction of the provinces of Canada.

18. The said Act could not validly nor does it grant or delegate power such as that attempted to be exercised in the said order-in-council and particularly could not validly grant or delegate nor does it grant or delegate power to confiscate or expropriate oats or barley which are private property nor to vest oats or barley which are private property in The Canadian Wheat Board.

19. The Governor-in-Council on April 3, 1947, could not have deemed it nor did he deem it necessary or advisable nor necessary nor advisable by reason of any continued existence of the national emergency arising out of the

war against Germany and Japan for the purpose of maintaining or controlling or regulating supplies or prices to ensure economic stability and an orderly transition to conditions of peace or for any other purpose authorized by the said Act, to make provision for the vesting in The Canadian Wheat Board of all oats and barley in commercial positions in Canada and products of oats and barley in Canada.

20. The said order-in-council contains legislation which could not have been adopted by the Parliament of Canada itself and the said order-in-council would have been ultra vires the Parliament of Canada and therefore the
10 Parliament of Canada could not validly delegate to the Governor-in-Council the power to enact the said order-in-council.

21. By reason of the matter alleged in paragraphs 6 to 20 both inclusive, hereof the said Act and the said order-in-council are wholly ultra vires the Parliament of Canada and Governor-in-Council respectively and therefore unconstitutional, inoperative and of no force and effect whatsoever.

22. In the alternative by reason of the matters alleged in paragraphs 6 to 20 both inclusive hereof section 2 of the said Act and the said sections of the said order-in-council are wholly ultra vires the Parliament of Canada and Governor-in-Council respectively and are unconstitutional, inoperative and of
20 no force and effect whatsoever.

23. In further alternative this defendant says that the plaintiff was not authorized either by the said Act or by the said order-in-council to acquire, take over or confiscate the property of a citizen of a foreign country although such property might be locally situate in Canada.

24. This defendant submits that the plaintiff's statement of claim discloses no cause of action or ground for relief against this defendant.

25. This defendant submits that the plaintiff's statement of claim should be dismissed with costs.

DELIVERED this 6th day of November, 1947 by Fillmore, Riley & Wat-
30 son, solicitors for the defendant Hallet and Carey Limited.

In the King's Bench

BETWEEN:

THE CANADIAN WHEAT BOARD,

PLAINTIFF,

AND

MANITOBA POOL ELEVATORS,
CANADIAN CONSOLIDATED GRAIN COMPANY LIMITED,
UNITED GRAIN GROWERS TERMINALS LIMITED,
FORT WILLIAM ELEVATOR COMPANY LIMITED,

10 HALLET AND CAREY LIMITED,

DEFENDANTS.

NOTICE is hereby given pursuant to Section 72 of The King's Bench Act R.S.M. 1940, c. 44 as amended that Notice of Trial of this action has been given for Monday, the 22nd day of March, 1948, at the Court House in the City of Winnipeg in the Province of Manitoba.

In this action, The National Emergency Transitional Powers Act, Statutes of Canada 1945, Chapter 25 as amended and Order-in-Council of His Excellency The Governor General in Council, P.C. 1292, dated April 3, 1947, are in question. The constitutional points proposed to be argued are disclosed in the
20 Record, copy of which is attached hereto.

Dated the 18th day of March, 1948.

"HENRY B. MONK"
HENRY B. MONK, K.C.
Solicitor for the Plaintiff.

To: The Attorney-General of Manitoba.

In the King's Bench

THE HONOURABLE }
THE CHIEF JUSTICE } The 22nd day of March, 1948.

BETWEEN :

THE CANADIAN WHEAT BOARD,

PLAINTIFF,

AND

10 MANITOBA POOL ELEVATORS,
CANADIAN CONSOLIDATED GRAIN COMPANY LIMITED,
UNITED GRAIN GROWERS TERMINALS LIMITED,
FORT WILLIAM ELEVATOR COMPANY LIMITED,
HALLET AND CAREY LIMITED,

DEFENDANTS.

UPON motion being made this day unto this Court on behalf of the Defendants, Manitoba Pool Elevators, Canadian Consolidated Grain Company Limited, United Grain Growers Terminals Limited and Fort William Elevator Company Limited, for an Order adding JEREMIAH J. NOLAN as a party defendant to this action, and upon hearing Counsel for all parties as well as J. A. MacAulay, K.C., Counsel for the said Jeremiah J. Nolan, and Counsel
20 for Hallet and Carey Limited and the said Jeremiah J. Nolan having consented to the making of this Order, and the Plaintiff by its Counsel having waived any objection thereto,

IT IS ORDERED that the said Jeremiah J. Nolan be joined as a party defendant in this action, and that Counsel for all parties to the action do deliver the necessary pleadings and make all necessary amendments to the pleadings

and the record and the proceedings herein to enable the Court to effectually and completely adjudicate on the questions involved in the action.

SIGNED this 5th day of May, A.D. 1948.

A. J. CHRISTIE

Prothonotary.

“Approved as to form
HENRY B. MONK
Solicitor for CANADIAN WHEAT BOARD and for ATTORNEY GENERAL of CANADA.”

10 “G. E. TRITSCHLER
Solicitor for DEFENDANT NOLAN.”

“IVAN J. R. DEACON
Solicitor for UNITED GRAIN GROWERS TERMINALS LTD. and CAN. CONSOLIDATED GRAIN CO. LTD.

“H. ST. CLAIR SCARTH
Solicitor for MANITOBA POOL ELEVATORS and FORT WILLIAM ELEVATOR COMPANY LIMITED.”

“W. P. FILLMORE
Solicitor for HALLET & CAREY LIMITED.”

20 Entered May 5, 1948.
JUDGMENT AND ORDER
Book 69, Folio 542
A. J. Christie, E.C.

In the King's Bench

BETWEEN :

THE CANADIAN WHEAT BOARD,

PLAINTIFF,

AND

MANITOBA POOL ELEVATORS,
CANADIAN CONSOLIDATED GRAIN COMPANY LIMITED,
UNITED GRAIN GROWERS TERMINALS LIMITED,
FORT WILLIAM ELEVATOR COMPANY LIMITED,
10 HALLET AND CAREY LIMITED,

DEFENDANTS,

AND

JEREMIAH J. NOLAN,

(Added by Order of the Court made March 22nd, 1948).

DEFENDANT.

STATEMENT OF DEFENCE OF JEREMIAH J. NOLAN TO AMENDED STATEMENT OF CLAIM

1. This Defendant is a grain merchant residing in the City of Chicago, in the United States of America.

20 2. This Defendant admits the allegations made in paragraphs numbered 1, 2 and 3 of the Statement of Claim.

3. In answer to paragraph 4 of the Statement of Claim, this Defendant denies that by virtue of the terms of an Order of the Governor-General-in-Council of the 3rd day of April, 1947, (P.C. 1292) the Plaintiff became the owner of forty thousand bushels of Number 3 C.W. Six Row Barley, and this Defendant denies that the Plaintiff is or that it has at all material times since the 3rd day of April, 1947, been the owner of the said barley, and denies that the Plaintiff has at any time been entitled or is entitled to possession thereof.

4. This Defendant denies each and all of the allegations contained in 30 paragraph 5 of the Statement of Claim, and says as the facts are:

(a) This Defendant is the owner of, and is entitled to the possession of the forty thousand bushels of Number 3 C.W. Six Row Barley referred to in the Statement of Claim. The Defendant, Hallet and Carey Limited, is the agent of this Defendant, and as such agent, at all material times, the Defendant, Hallet and Carey had and now has constructive possession and control of all said barley and possession and control of the documents entitling the Defendant, Hallet and Carey Limited, to the delivery of the said forty thousand bushels of barley, which said documents are referred to in paragraph 5 of the Plaintiff's Statement of Claim.

10 (b) The Defendant, Hallet and Carey Limited, has no beneficial interest whatsoever in the said barley or in said documents of title and holds constructive possession of the said barley and possession of the said documents of title subject to the order of this Defendant.

(c) This Defendant has demanded that the Defendant Hallet and Carey Limited, deliver up to this Defendant the said barley and the said documents of title thereto, but the Defendant, Hallet and Carey Limited, has neglected and refused and still neglects and refuses to deliver up the said barley or any portion thereof, or the said documents of title thereto, and the Defendant, Hallet and Carey Limited, unlawfully and wrongfully
20 detains from this Defendant the said barley and the said documents of title thereto.

5. This Defendant denies the allegations made in paragraph numbered 6 of the Statement of Claim.

6. In answer to paragraphs 7 and 8 of the Statement of Claim, this Defendant denies that the other Defendants have unlawfully or wrongfully detained or are unlawfully or wrongfully detaining the said barley or the said documents from the Plaintiff, and denies that the Plaintiff will suffer damages as alleged.

7. In answer to paragraph 9 of the Statement of Claim, this Defendant
30 denies that the other Defendants have wrongfully refused to deliver said barley or the said documents to the Plaintiff, or wrongfully deprived the Plaintiff of the same.

8. In further reply and answer to the Statement of Claim, this Defendant denies that Order-in-Council P.C. 1292 was passed pursuant to any statutory or other authority vested in the Governor-General-in-Council and denies that the Plaintiff had any right, power or authority to demand from the other Defendants the said barley or the said documents of title.

9. This Defendant says that said Order-in-Council P.C. 1292 is wholly ultra vires of the Governor-General-in-Council and is unconstitutional, inoperative and of no force or effect whatsoever.

10. In the alternative, this Defendant says that if the said Order-in-Council is not wholly ultra vires the Governor-in-Council, Sections 22, 24, 25, 26 and 36 thereof (hereinafter referred to as the "said sections") are wholly ultra vires the Governor-in-Council and are unconstitutional, inoperative and of no force and effect whatsoever.

11. This Defendant further says that The National Emergency Transitional Powers Act, 1945, being chapter 25 of the Statutes of Canada, 1945 (hereinafter referred to as the "said Act") pursuant to which the Governor-in-Council purported to promulgate P.C. 1292 is wholly ultra vires of the Parliament of Canada and is unconstitutional, inoperative and of no force and effect whatsoever.

12. In the alternative, if the said Act is not wholly ultra vires the Parliament of Canada, Subsections (b) (c) and (e) of subsection 1 of Section 2 of the said Act are wholly ultra vires the Parliament of Canada and are unconstitutional, inoperative and of no force or effect whatsoever.

13. The said Act does not delegate the powers purported to be exercised 20 by the Governor-in-Council and the said Order-in-Council exceeds the powers (if any) delegated by the said Act.

14. The Parliament of Canada has not the power to authorize the Governor-in-Council to pass the said order-in-council or alternatively the said sections thereof.

15. The said order-in-council purports to make provision for certain matters pursuant to the provisions in the said Act for the purpose of maintaining, controlling and regulating supplies and prices to ensure economic stability and an orderly transition to conditions of peace but this defendant says that the said order-in-council and particularly section 22 thereof exceeds and goes 30 beyond the powers (if any) conferred by the said Act for the purpose of maintaining, controlling and regulating supplies and prices to ensure economic stability and an orderly transition to conditions of peace.

16. On April 3, 1947, the date of the said order-in-council there was no national emergency continuing or otherwise or arising out of the war against Germany or Japan or otherwise, sufficient to justify, warrant or call for the vesting in The Canadian Wheat Board of all oats and barley as provided in the said order-in-council.

17. In the alternative if there was any continued existence of a national emergency arising out of the war against Germany and Japan, which is denied, it did not justify, warrant or make necessary the said order-in-council or alternatively section 22 thereof.

18. The said order-in-council or alternatively the said sections thereof do not go beyond local or provincial concern or interest and are not from their inherent nature the concern of the Dominion as a whole and are not matters affecting the peace, order and good government of Canada and are not necessary for the safety of the Dominion as a whole.

10 19. The confiscation or expropriation or vesting in The Canadian Wheat Board of the defendant's barley is not related to nor does it further or result in the maintaining or the controlling or the regulating of supplies or prices to ensure economic stability or an orderly transition to conditions of peace.

20. The vesting of oats and barley in The Canadian Wheat Board amounts to expropriation or confiscation and is not authorized by the said Act, and amounts to an invasion of provincial jurisdiction over property and civil rights which are wholly within the jurisdiction of the provinces of Canada.

21. The said Act could not validly nor does it grant or delegate power such as that attempted to be exercised in the said order-in-council and particu-
20 larly could not validly grant or delegate nor does it grant or delegate power to confiscate or expropriate oats or barley which are private property nor to vest oats or barley which are private property in The Canadian Wheat Board.

22. The Governor-in-Council on April 3, 1947, could not have deemed it nor did he deem it necessary or advisable nor necessary nor advisable by reason of any continued existence of the national emergency arising out of the war against Germany and Japan for the purpose of maintaining or controlling or regulating supplies or prices to ensure economic stability and an orderly transition to conditions of peace or for any other purpose authorized by the said Act, to make provision for the vesting in The Canadian Wheat Board of
30 all oats and barley in commercial positions in Canada and products of oats and barley in Canada.

23. The said order-in-council contains legislation which could not have been adopted by the Parliament of Canada itself and the said order-in-council would have been ultra vires the Parliament of Canada and therefore the Parliament of Canada could not validly delegate to the Governor-in-Council the power to enact the said order-in-council.

24. By reason of the matters alleged in paragraphs 8 to 23 both inclusive, hereof the said Act and the said order-in-council are wholly ultra vires the

Parliament of Canada and Governor-in-Council respectively and therefore unconstitutional, inoperative and of no force and effect whatsoever.

25. In the alternative by reason of the matters alleged in paragraphs 8 to 23 both inclusive hereof section 2 of the said Act and the said section of the said order-in-council are wholly ultra vires the Parliament of Canada and Governor-in-Council respectively and are unconstitutional, inoperative and of no force and effect whatsoever.

26. In further alternative this defendant says that the plaintiff was not authorized either by the said Act or by the said order-in-council to acquire, 10 take over or confiscate the property of a citizen of a foreign country although such property might be locally situate in Canada.

27. This defendant submits that the plaintiff's statement of claim discloses no cause of action or ground for relief against this defendant.

28. This defendant submits that the plaintiff's statement of claim should be dismissed with costs.

DELIVERED this 27th day of May, A.D. 1948, by Aikins, Loftus, MacAulay, Thompson and Tritschler, solicitors for the Defendant, Jeremiah J. Nolan.

In the King's Bench

BETWEEN :

THE CANADIAN WHEAT BOARD,

PLAINTIFF,

AND

MANITOBA POOL ELEVATORS,
CANADIAN CONSOLIDATED GRAIN COMPANY LIMITED,
UNITED GRAIN GROWERS TERMINALS LIMITED,
FORT WILLIAM ELEVATOR COMPANY LIMITED,
10 HALLET AND CAREY LIMITED,

DEFENDANTS,

AND

JEREMIAH J. NOLAN,

(Added by Order of the Court made the 22nd day of March,
1948).

DEFENDANT.

AMENDED REPLY

1. Save as hereinafter expressly admitted or in the Statement of Claim herein alleged, the Plaintiff denies each and every allegation contained in the 20 Statement of Defence filed by each Defendant herein.

2. In reply generally to the Statements of Defence of the Defendants, Manitoba Pool Elevators, Canadian Consolidated Grain Company Limited, United Grain Growers Terminals Limited, and Fort William Elevator Company Limited (hereinafter referred to as the said Defendants), the Plaintiff admits that each of the said Defendants received into storage and still has in storage the barley referred to in paragraph 3 of the Statement of Defence of such Defendant, and admits that warehouse receipts for such barley were issued by each of the said Defendants as in the Statements of Defence of the said Defendants alleged, and admits that the said warehouse

receipts were endorsed to the Defendants Halley and Carey Limited as alleged; but the Plaintiff denies that the said Defendants or any of them is entitled to retain any portion of the said barley in storage until surrender to such Defendant of any of the warehouse receipts relating thereto or payment of storage charges as alleged, and further denies that the said Defendants or any one of them is prevented or prohibited by the provisions of the Canada Grain Act or any regulations made thereunder from making delivery of any of the said barley without the surrender of such warehouse receipts, and the Plaintiff says that notwithstanding the terms of the said
10 Act or the said regulations, on the enactment of the Order of the Governor in Council of the third day of April, 1947 (P.C. 1292) the Plaintiff became the owner of the barley referred to in the Statement of Claim herein and is and has been at all material times since the said date the owner of the said barley and entitled to possession of the same without delivery of or surrender of warehouse receipts.

3. In reply generally to the Statement of Defence of the Defendant, Hallet and Carey Limited, the Plaintiff specifically denies each and every allegation contained in each and every paragraph thereof except the allegations contained in paragraph 2 of the said Statement of Defence of the Defendant,
20 Hallet and Carey Limited.

4. In reply generally to the Statement of Defence of the Defendant, Jeremiah J. Nolan, the Plaintiff specifically denies each and every allegation contained in each and every paragraph thereof.

DELIVERED this 15th day of June, A.D. 1948, by Henry B. Monk, K.C., of the City of Winnipeg in the Province of Manitoba, Solicitor for The Canadian Wheat Board.

In the King's Bench

BETWEEN :

THE CANADIAN WHEAT BOARD,

PLAINTIFF,

AND

MANITOBA POOL ELEVATORS,
CANADIAN CONSOLIDATED GRAIN COMPANY LIMITED,
UNITED GRAIN GROWERS TERMINALS LIMITED,
FORT WILLIAM ELEVATOR COMPANY LIMITED,
10 HALLET AND CAREY LIMITED,

DEFENDANTS,

AND

JEREMIAH J. NOLAN,
(added by Order of the Court made the 22nd day of March,
1948).

DEFENDANT.

AMENDED STATEMENT OF DEFENCE OF THE DEFENDANT MANITOBA POOL ELEVATORS

1. This Defendant admits the allegations contained in paragraphs 1, 2
20 and 3 of the Plaintiff's Statement of Claim.
2. In answer to paragraph 4 of the Plaintiff's Statement of Claim, this
Defendant denies that by virtue of the Order of the Governor-General-in-
Council of the 3rd day of April, 1947, (P.C. 1292) the Plaintiff became the
owner of 40,000 bushels of No. 3 C.W. six row barley, and denies that the
Plaintiff has at any time been the owner of the said barley, or been entitled,
or is entitled to possession of the said barley.
3. This Defendant denies each and all of the allegations contained in
paragraph 5 of the Plaintiff's Statement of Claim, and says as the facts are:—

(a) That this Defendant received for storage into its Terminal Elevators at Port Arthur and Fort William, in the Province of Ontario, 30,225 bushels and 10 pounds of barley on or about the dates and in the amounts set opposite its name in the particulars set forth in paragraph 5 of the Plaintiff's Statement of Claim, and upon receipt thereof and in accordance with the provisions of "The Canada Grain Act" and regulations made pursuant thereto, this Defendant issued warehouse receipts therefor to the owners, numbered as in the said paragraph alleged, and after registration of the same pursuant to the said Act and regulations, delivered the said receipts to the owners, who 10 subsequently caused to be assigned or endorsed the same to the Defendant, Hallet and Carey Limited.

(b) That the said 30,225 bushels and 10 pounds of barley are still in the said Terminal Elevators of this Defendant, and the said warehouse receipts have never been delivered up, surrendered or otherwise returned to this Defendant, and are still outstanding and are not within the power, possession or control of this Defendant.

4. This Defendant denies each and every allegation contained in paragraphs 6, 7 and 8 of the Plaintiff's Statement of Claim, and says as the facts are:—

20 (a) That it duly received the said barley for storage as alleged in paragraph 3 hereof, and still has and is entitled to retain the same in storage until surrender to it of the said warehouse receipts and payment of its storage charges.

(b) That no demand was made by the Plaintiff upon this Defendant as alleged, except such demand as is contained in a letter dated the 1st day of October, 1947, and written by Henry B. Monk for the Plaintiff to this Defendant.

(c) That this Defendant is prohibited under the provisions of "The Canada Grain Act" and regulations made thereunder from making delivery 30 of the said barley without surrender to it of the warehouse receipts issued by it in respect of the said barley.

(d) That the receipts issued by this Defendant in respect of the said barley stored with it as alleged in paragraph 3 hereof, have never been delivered up, surrendered or otherwise returned to this Defendant, and the same are still outstanding and are not within the power, possession or control of this Defendant.

(e) That by letter bearing date the 30th day of September, 1947, addressed to this Defendant, Messrs. Aikins, Loftus, MacAulay, Thompson & Tritschler,

Solicitors for the Defendant Nolan, notified this Defendant, that the Defendant Nolan had brought an action in the Court of King's Bench in which he claims possession of the said barley in the possession of this Defendant, and of the warehouse receipts covering the same, and that he further challenges the position taken by the Plaintiff and is contesting in the said action the constitutionality of the legislative enactments upon which the Plaintiff purports to base its claim, and that if this Defendant delivers the said barley to the Plaintiff, the Defendant Nolan will hold this Defendant liable in damages.

(f) That pursuant to the terms under which the said barley was received 10 by this Defendant and the regulations made under "The Canada Grain Act", it is entitled to storage and other charges as provided in the said regulations.

(g) That storage and other charges due this Defendant in respect of the said barley are owing from the respective dates on which the said barley was received for storage by this Defendant, as such dates are more particularly set forth in paragraph 5 of the Plaintiff's Statement of Claim.

5. This Defendant denies the allegations contained in paragraph 9 of the Plaintiff's Statement of Claim, and says as the fact is that this Defendant is entitled to retain the said barley in its possession until the warehouse receipts issued in respect of the said barley have been surrendered to it, and its 20 storage and carrying charges have been paid in full.

6. In further reply and answer to the Plaintiff's Statement of Claim this Defendant denies that Order-in-Council P.C. 1292 was passed pursuant to any statutory or other authority vested in the Governor-General-in-Council and denies that the Plaintiff had any right, power or authority to demand from this defendant the said barley or the said documents of title.

7. The Defendant further says that Order-in-Council P.C. 1292 is wholly ultra vires of the Governor-General-in-Council and is unconstitutional, inoperative and of no force or effect whatsoever.

8. In the alternative the Defendant says that if the said Order-in-Council 30 is not wholly ultra vires of the Governor-in-Council sections 22, 24, 25, 26 and 36 thereof (hereinafter referred to as the "said sections") are wholly ultra vires of the Governor-in-Council and are unconstitutional, inoperative and of no force and effect whatsoever.

9. This Defendant further says that The National Emergency Transitional Powers Act, 1945, being chapter 25 of the Statutes of Canada, 1945 (hereinafter referred to as the "said Act") pursuant to which the Governor-

in-Council purported to promulgate P.C. 1292 is wholly ultra vires of the Parliament of Canada and is unconstitutional, inoperative and of no force or effect whatsoever.

10. The said Act does not delegate the powers purported to be exercised by the Governor-in-Council and the said Order-in-Council exceeds the powers (if any) delegated by the said Act.

11. The Parliament of Canada has not the power to authorize the Governor-in-Council to pass the said Order-in-Council or alternatively the said sections thereof.

10 12. The said Order-in-Council purports to make provisions for certain matters pursuant to the provisions in the said Act for the purpose of maintaining, controlling and regulating supplies and prices to ensure economic stability and an orderly transition to conditions of peace but the Defendant says that the said Order-in-Council and particularly section 22 thereof exceeds and goes beyond the powers (if any) conferred by the said Act for the purpose of maintaining, controlling and regulating supplies and prices to ensure economic stability and an orderly transition to conditions of peace.

13. On April 3, 1947, the date of the said Order-in-Council there was no national emergency continuing or otherwise or arising out of the war against
20 Germany or Japan or otherwise, sufficient to justify, warrant or call for the vesting in The Canadian Wheat Board of all oats and barley as provided in the said Order-in-Council.

14. In the alternative if there was any continued existence of national emergency arising out of the war against Germany and Japan, which is denied, it did not justify, warrant or make necessary the said Order-in-Council or alternatively section 22 thereof.

15. The said Order-in-Council or alternatively the said sections thereof do not go beyond local or provincial concern or interest and are not from their inherent nature the concern of the Dominion as a whole and are not matters
30 affecting the peace, order and good government of Canada and are not necessary for the safety of the Dominion as a whole.

16. The confiscation or expropriation or vesting in The Canadian Wheat Board of the Defendant's barley is not related to nor does it further or result in the maintaining or the controlling or the regulating of supplies or prices to ensure economic stability or an orderly transition to conditions of peace.

17. The vesting of oats and barley in The Canadian Wheat Board amounts to expropriation or confiscation and is not authorized by the said Act,

and amounts to an invasion of provincial jurisdiction over property and civil rights which are wholly within the jurisdiction of the provinces of Canada.

18. The said Act could not validly nor does it grant or delegate power such as that attempted to be exercised in the said Order-in-Council and particularly could not validly grant or delegate nor does it grant or delegate power to confiscate or expropriate oats or barley which are private property nor to vest oats or barley which are private property in The Canadian Wheat Board.

19. The Governor-in-Council on April 3, 1947, could not have deemed it
10 nor did he deem it necessary or advisable nor necessary nor advisable by reason of any continued existence of the national emergency arising out of the war against Germany and Japan for the purpose of maintaining or controlling or regulating supplies or prices to ensure economic stability and an orderly transition to conditions of peace or for any other purpose authorized by the said Act, to make provision for the vesting in The Canadian Wheat Board of all oats and barley in commercial positions in Canada and products of oats and barley in Canada.

20. The said Order-in-Council contains legislation which could not have been adopted by the Parliament of Canada itself and the said Order-in-Council
20 would have been ultra vires of the Parliament of Canada and therefore the Parliament of Canada could not validly delegate to the Governor-in-Council the power to enact the said Order-in-Council.

21. By reason of the matters alleged in paragraphs 6 to 20 both inclusive, hereof the said Act and the said Order-in-Council are wholly ultra vires of the Parliament of Canada and Governor-in-Council respectively and therefore unconstitutional, inoperative and of no force and effect whatsoever.

22. In the alternative by reason of the matters alleged in paragraphs 6 to 20 both inclusive hereof section 2 of the said Act and the said sections of the said Order-in-Council are wholly ultra vires of the Parliament of Canada
30 and Governor-in-Council respectively and are unconstitutional, inoperative and of no force and effect whatsoever.

23. In further alternative this Defendant says that the Plaintiff was not authorized either by the said Act or by the said Order-in-Council to acquire, take over or confiscate the property of a citizen of a foreign country although such property might be locally situate in Canada.

24. This Defendant submits that the Plaintiff's Statement of Claim discloses no cause of action or ground for relief against this Defendant.

25. This Defendant submits that the Plaintiff's Statement of Claim should be dismissed with costs.

40 DELIVERED this 2nd day of July, 1948, by Scarth & Honeyman, Solicitors for the Defendant, Manitoba Pool Elevators.

In the King's Bench

BETWEEN :

THE CANADIAN WHEAT BOARD,

PLAINTIFF,

AND

MANITOBA POOL ELEVATORS,
CANADIAN CONSOLIDATED GRAIN COMPANY LIMITED,
UNITED GRAIN GROWERS TERMINALS LIMITED,
FORT WILLIAM ELEVATOR COMPANY LIMITED,
10 HALLET AND CAREY LIMITED,

DEFENDANTS,

AND

JEREMIAH J. NOLAN,

(Added by Order of the Court made the 22nd day of March,
1948.)

DEFENDANT.

AMENDED STATEMENT OF DEFENCE OF THE
DEFENDANT MANITOBA POOL ELEVATORS

1. This Defendant admits the allegations contained in paragraphs 1, 2
20 and 3, of the Plaintiff's Statement of Claim.

2. In answer to paragraph 4 of the Plaintiff's Statement of Claim, this
Defendant denies that by virtue of the Order of the Governor-General-in-
Council of the 3rd day of April, 1947, (P.C. 1292) the Plaintiff became the
owner 40,000 bushels of No. 3 C.W. six row barley, and denies that the
Plaintiff has at any time been the owner of the said barley, or been entitled,
or is entitled to possession of the said barley.

3. This Defendant denies each and all of the allegations contained in
paragraph 5 of the Plaintiff's Statement of Claim, and says as the facts are:—

(a) That this Defendant received for storage into its Elevator at Fort William, in the Province of Ontario, 111 bushels and 12 pounds of barley on or about the date and in the amount set opposite its name in the particulars set forth in paragraph 5 of the Plaintiff's Statement of Claim, and upon receipt thereof and in accordance with the provisions of "The Canada Grain Act" and regulations made pursuant thereto, this Defendant issued warehouse receipt therefor to the owner, numbered as in the said paragraph alleged, and after registration of the same pursuant to the said Act and regulations, delivered the said receipt to the owner, who subsequently caused to be assigned or endorsed the same to the Defendant, Hallet and Carey Limited.

(b) That the said 111 bushels and 12 pounds of barley are still in the said Elevator of this Defendant, and the said warehouse receipt has never been delivered up, surrendered or otherwise returned to this Defendant, and is still outstanding and is not within the power, possession or control of this Defendant.

4. This Defendant denies each and every allegation contained in paragraphs 6, 7 and 8 of the Plaintiff's Statement of Claim, and says as the facts are:—

(a) That it duly received the said barley for storage as alleged in paragraph 3 hereof, and still has and is entitled to retain the same in storage until surrender to it of the said warehouse receipt and payment of its storage charges.

(b) That no demand was made by the Plaintiff upon this Defendant as alleged, except such demand as is contained in a letter dated the 1st day of October, 1947, and written by Henry B. Monk for the Plaintiff to this Defendant.

(c) That this Defendant is prohibited under the provisions of "The Canada Grain Act" and regulations made thereunder from making delivery of the said barley without surrender to it of the warehouse receipt issued by it in respect of the said barley.

(d) That the receipt issued by this Defendant in respect of the said barley stored with it as alleged in paragraph 3 hereof, has never been delivered up, surrendered or otherwise returned to this Defendant, and the same is still outstanding and is not within the power, possession or control of this Defendant.

(e) That by letter bearing date the 30th day of September, 1947, addressed to this Defendant, Messrs. Aikins, Loftus, MacAulay,

Thompson & Tritschler, solicitors for the Defendant Nolan, notified this Defendant that the Defendant Nolan had brought an action in the Court of King's Bench in which he claims possession of the said barley in the possession of this Defendant, and of the warehouse receipt covering the same, and that it further challenges the position taken by the Plaintiff and is contesting in the said action the constitutionality of the legislative enactments upon which the Plaintiff purports to base its claim, and that if this Defendant delivers the said barley to the Plaintiff, the Defendant Nolan will hold this Defendant liable in damages.

10 (f) That pursuant to the terms under which the said barley was received by this Defendant and the regulations made under "The Canada Grain Act", it is entitled to storage and other charges as provided in the said regulations.

(g) That storage and other charges due this Defendant in respect of the said barley are owing from the date on which the said barley was received for storage by this Defendant, as set forth in paragraph 5 of the Plaintiff's Statement of Claim.

5. This Defendant denies the allegations contained in paragraph 9 of the Plaintiff's Statement of Claim, and says as the fact is that this Defendant
20 is entitled to retain the said barley in its possession until the warehouse receipt issued in respect of the said barley has been surrendered to it, and its storage and carrying charges have been paid in full.

6. In further reply and answer to the Plaintiff's Statement of Claim this Defendant denies that Order-in-Council P.C. 1292 was passed pursuant to any statutory or other authority vested in the Governor-General-in-Council and denies that the Plaintiff had any right, power or authority to demand from this defendant the said barley or the said document of title.

7. The Defendant further says that Order-in-Council P.C. 1292 is wholly ultra vires of the Governor-General-in-Council and is unconstitutional, inoper-
30 ative and of no force or effect whatsoever.

8. In the alternative the Defendant says that if the said Order-in-Council is not wholly ultra vires of the Governor-General-in-Council, sections 22, 24, 25, 26 and 36 thereof (hereinafter referred to as the "said sections") are wholly ultra vires of the Governor-General-in-Council and are unconstitutional, inoperative and of no force and effect whatsoever.

9. This Defendant further says that The National Emergency Transitional Powers Act, 1945, being chapter 25 of the Statues of Canada, 1945

(hereinafter referred to as the "said Act") pursuant to which the Governor-General-in-Council purported to promulgate P.C. 1292 is wholly ultra vires of the Parliament of Canada and is unconstitutional, inoperative and of no force or effect whatsoever.

10. The said Act does not delegate the powers purported to be exercised by the Governor-General-in-Council and the said Order-in-Council exceeds the powers (if any) delegated by the said Act.

11. The Parliament of Canada has not the power to authorize the Governor-General-in-Council to pass the said Order-in-Council or alternatively
10 the said sections thereof.

12. The said Order-in-Council purports to make provision for certain matters pursuant to the provisions in the said Act for the purpose of maintaining, controlling and regulating supplies and prices to ensure economic stability and an orderly transition to conditions of peace but the Defendant says that the said Order-in-Council and particularly Section 22 thereof exceeds and goes beyond the powers (if any) conferred by the said Act for the purpose of maintaining, controlling and regulating supplies and prices to ensure economic stability and an orderly transition to conditions of peace.

13. On April 3, 1947, the date of the said Order-in-Council there was
20 no national emergency continuing or otherwise sufficient to justify, warrant or call for the vesting in The Canadian Wheat Board of all oats and barley as provided in the said Order-in-Council.

14. In the alternative, if there was any continued existence of national emergency arising out of the war against Germany and Japan, which is denied, it did not justify, warrant or make necessary the said Order-in-Council or alternatively section 22 thereof.

15. The said Order-in-Council or alternatively the said sections thereof do not go beyond local or provincial concern or interest and are not from their inherent nature the concern of the Dominion as a whole and are not matters
30 affecting the peace, order and good government of Canada and are not necessary for the safety of the Dominion as a whole.

16. The confiscation or expropriation or vesting in The Canadian Wheat Board of the Defendant's barley is not related to nor does it further or result in the maintaining or the controlling or the regulating of supplies or prices to ensure economic stability or an orderly transition to conditions of peace.

17. The vesting of oats and barley in The Canadian Wheat Board amounts to expropriation or confiscation and is not authorized by the said Act, and amounts to an invasion of provincial jurisdiction over property and civil rights which are wholly within the jurisdiction of the provinces of Canada.

18. The said Act could not validly nor does it grant or delegate power such as that attempted to be exercised in the said Order-in-Council and particularly could not validly grant or delegate nor does it grant or delegate power to confiscate or expropriate oats or barley which are private property nor to vest oats or barley which are private property in The Canadian Wheat Board.

19. The Governor-General-in-Council on April 3, 1947, could not have deemed it nor did he deem it necessary or advisable nor necessary nor advisable by reason of any continued existence of the national emergency arising out of the war against Germany and Japan for the purpose of maintaining or controlling or regulating supplies or prices to ensure economic stability and an orderly transition to conditions of peace or for any other purpose authorized by the said Act, to make provision for the vesting in The Canadian Wheat Board of all oats and barley in commercial positions in Canada and products of oats and barley in Canada.

20. The said Order-in-Council contains legislation which could not have been adopted by the Parliament of Canada itself and the said Order-in-Council would have been ultra vires of the Parliament of Canada and therefore the Parliament of Canada could not validly delegate to the Governor-General-in-Council the power to enact the said Order-in-Council.

21. By reason of the matter alleged in paragraphs 6 to 20 both inclusive, hereof, the said act, and the said Order-in-Council are wholly ultra vires of the Parliament of Canada and of the Governor-General-in-Council respectively and therefore unconstitutional, inoperative and of no force and effect whatsoever.

22. In the alternative by reason of the matters alleged in paragraphs 6 to 20, both inclusive, hereof, section 2 of the said Act and the said sections of the said Order-in-Council are wholly ultra vires of the Parliament of Canada and of the Governor-General-in-Council respectively and are unconstitutional, inoperative and of no force and effect whatsoever.

23. In further alternative this Defendant says that the Plaintiff was not authorized either by the said Act or by the said Order-in-Council to acquire, take over or confiscate the property of a citizen of a foreign country although such property might be locally situate in Canada.

24. This Defendant submits that the Plaintiff's Statement of Claim discloses no cause of action or ground for relief against this Defendant.

25. This Defendant submits that the Plaintiff's Statement of Claim should be dismissed with costs.

DELIVERED this day of July, A.D. 1948, by Cecil B. Philp, K.C.,
Solicitor for the Defendant, The Fort William Elevator Company Limited.

In the King's Bench

BETWEEN:

THE CANADIAN WHEAT BOARD,

PLAINTIFF,

AND

MANITOBA POOL ELEVATORS,
CANADIAN CONSOLIDATED GRAIN COMPANY LIMITED,
UNITED GRAIN GROWERS TERMINALS LIMITED,
FORT WILLIAM ELEVATOR COMPANY LIMITED,
10 HALLET AND CAREY LIMITED,

DEFENDANTS.

AND

JEREMIAH J. NOLAN,

(Added by Order of the Court made the 22nd day of March,
1948).

DEFENDANT.

AMENDED STATEMENT OF DEFENCE OF THE DEFENDANT CANADIAN CONSOLIDATED GRAIN COMPANY LIMITED

1. This defendant admits the allegations contained in paragraphs 1, 2
20 and 3 of the plaintiff's statement of claim.

2. In answer to paragraph 4 of the plaintiff's statement of claim, this
defendant denies that by virtue of the Order of the Governor-General-in-
Council of the 3rd day of April, 1947, (P.C. 1292) the plaintiff became the
owner of 40,000 bushels of No. 3 C.W. six row barley, and denies that the
plaintiff has at any time been the owner of the said barley or been entitled or
is entitled to possession of the said barley.

3. This defendant denies each and all of the allegations contained in
paragraph 5 of the plaintiff's statement of claim, and says, as the facts are:

30 (a) That this defendant received for storage into its terminal eleva-
tor at the City of Port Arthur, in the Province of Ontario, from its

country grain elevators, on or about the 20th day of December, 1946, 1930 bushels and 10 pounds of No. 3 C.W. six row barley, and upon receipt thereof and in accordance with the provisions of The Canada Grain Act and regulations made pursuant thereto, this defendant issued its warehouse receipt for the said grain in favour of itself, Canadian Consolidated Grain Company Limited, and after registration of the same pursuant to the said Act and regulations, assigned or endorsed the said receipt to the defendant Hallet and Carey Limited.

10 (b) That the said 1930 bushels 10 pounds of barley are still in the terminal elevator of this defendant and the said warehouse receipt has never been delivered up, surrendered or otherwise returned to this defendant and is still outstanding and is not within the power, possession or control of this defendant.

4. This defendant denies each and every allegation contained in paragraphs 6, 7 and 8 of the plaintiff's statement of claim, and says, as the facts are:

20 (a) That it duly received the said barley for storage as alleged in paragraph 3 hereof, and still has and is entitled to retain the same in storage until surrender to it of the said warehouse receipt and payment of its storage charges.

(b) That no demand was made by the plaintiff upon this defendant, as alleged, except such demand as is contained in a letter dated October 1st, 1947, written by Henry B. Monk, for the plaintiff, to this defendant.

(c) That this defendant is prohibited under the provisions of The Canada Grain Act and regulations made thereunder from making delivery of the said barley without the surrender to it of the warehouse receipt issued by it in respect of the said barley.

30 (d) That the receipt issued by this defendant in respect of the said 1930 bushels and 10 pounds of barley has never been delivered up, surrendered or otherwise returned to this defendant and is still outstanding and is not within the power, possession or control of this defendant.

(e) That by letter bearing date the 30th day of September, 1947, addressed to this defendant, Messrs. Aikins, Loftus, MacAulay, Thompson & Tritzschler, Solicitors for the defendant Nolan, notified this defendant that the defendant Nolan had brought an action in the Court of King's Bench in which he claims possession of the said barley in the possession of this defendant, and of the warehouse receipt covering the same, and that it further challenges the position taken by the plaintiff

and is contesting in the said action the constitutionality of the legislative enactments upon which the plaintiff purports to base its claim, and that if this defendant delivers the said barley to the plaintiff, the defendant Nolan will hold this defendant liable in damages.

(f) That pursuant to the terms under which the said barley was received by this defendant and the regulations made under The Canada Grain Act, it is entitled to storage and other charges as provided in the said regulations.

10 (g) That storage and other charges due this defendant in respect of the said barley are owing from the 20th day of December, 1946.

5. This defendant denies the allegations contained in paragraph 9 of the plaintiff's statement of claim, and says as the fact is that this defendant is entitled to retain the said barley in its possession until the warehouse receipt issued in respect of the said barley has been surrendered to it, and its storage and carrying charges have been paid in full.

6. In further reply and answer to the plaintiff's statement of claim, this defendant denies that Order-in-Council P.C. 1292 was passed pursuant to any statutory or other authority vested in the Governor-General-in-Council and denies that the plaintiff had any right, power or authority to demand from this 20 defendant the said barley or the said documents of title.

7. This defendant further says that Order-in-Council P.C. 1292 is wholly ultra vires of the Governor-General-in-Council and is unconstitutional, inoperative and of no force or effect whatsoever.

8. In the alternative this defendant says that if the said Order-in-Council is not wholly ultra vires of the Governor-General-in-Council, sections 22, 24, 25, 26 and 36 thereof (hereinafter referred to as the "said sections") are wholly ultra vires of the Governor-General-in-Council and are unconstitutional, inoperative and of no force and effect whatsoever.

9. This defendant further says that The National Emergency Transi-
30 tional Powers Act, 1945, being chapter 25 of the Statutes of Canada, 1945, (hereinafter referred to as the "said Act") pursuant to which the Governor-General-in-Council purported to promulgate P.C. 1292, is wholly ultra vires of the Parliament of Canada and is unconstitutional, inoperative and of no force or effect whatsoever.

10. The said Act does not delegate the powers purported to be exercised by the Governor-General-in-Council and the said Order-in-Council exceeds the powers (if any) delegated by the said Act.

11. The Parliament of Canada has not the power to authorize the Governor-General-in-Council to pass the said Order-in-Council or alternatively the said sections thereof.

12. The said Order-in-Council purports to make provision for certain matters pursuant to the provisions in the said Act for the purpose of maintaining, controlling and regulating supplies and prices to ensure economic stability and an orderly transition to conditions of peace but this defendant says that the said Order-in-Council and particularly section 22 thereof exceeds and goes beyond the powers (if any) conferred by the said Act for the purpose of
10 maintaining, controlling and regulating supplies and prices to ensure economic stability and an orderly transition to conditions of peace.

13. On April 3rd, 1947, the date of the said Order-in-Council, there was no national emergency continuing or otherwise or arising out of the war against Germany or Japan or otherwise, sufficient to justify, warrant or call for the vesting in The Canadian Wheat Board of all oats and barley as provided in the said Order-in-Council.

14. In the alternative, if there was any continued existence of national emergency arising out of the war against Germany and Japan, which is denied, it did not justify, warrant or make necessary the said Order-in-Council or
20 alternatively section 22 thereof.

15. The said Order-in-Council or alternatively the said sections thereof do not go beyond local or provincial concern or interest and are not from their inherent nature the concern of the Dominion as a whole and are not matters affecting the peace, order and good government of Canada and are not necessary for the safety of the Dominion as a whole.

16. The confiscation or expropriation or vesting in The Canadian Wheat Board of the defendant's barley is not related to nor does it further or result in the maintaining or the controlling or the regulating of supplies or prices to ensure economic stability or an orderly transition to conditions of peace.

30 17. The vesting of oats and barley in The Canadian Wheat Board amounts to expropriation or confiscation and is not authorized by the said Act, and amounts to an invasion of provincial jurisdiction over property and civil rights which are wholly within the jurisdiction of the provinces of Canada.

18. The said Act could not validly nor does it grant or delegate power such as that attempted to be exercised in the said Order-in-Council and particularly could not validly grant or delegate nor does it grant or delegate power to confiscate or expropriate oats or barley which are private property nor to vest oats or barley which are private property in The Canadian Wheat Board.

19. The Governor-General-in-Council on April 3rd, 1947, could not have deemed it nor did he deem it necessary or advisable nor necessary nor advisable by reason of any continued existence of the national emergency arising out of the war against Germany and Japan for the purpose of maintaining or controlling or regulating supplies or prices to ensure economic stability and an orderly transition to conditions of peace or for any other purpose authorized by the said Act, to make provision for the vesting in The Canadian Wheat Board of all oats and barley in commercial positions in Canada and products of oats and barley in Canada.

10 20. The said Order-in-Council contains legislation which could not have been adopted by the Parliament of Canada itself and the said Order-in-Council would have been ultra vires of the Parliament of Canada and therefore the Parliament of Canada could not validly delegate to the Governor-General-in-Council the power to enact the said Order-in-Council.

21. By reason of the matters alleged in paragraphs 6 to 20, both inclusive, hereof the said Act and the said Order-in-Council are wholly ultra vires of the Parliament of Canada and Governor-General-in-Council respectively and therefore unconstitutional, inoperative and of no force and effect whatsoever.

20 22. In the alternative by reason of the matters alleged in paragraphs 6 to 20 both inclusive hereof section 2 of the said Act and the said sections of the said Order-in-Council are wholly ultra vires of the Parliament of Canada and Governor-General-in-Council respectively and are unconstitutional, inoperative and of no force and effect whatsoever.

23. In further alternative this defendant says that the plaintiff was not authorized either by the said Act or by the said Order-in-Council to acquire, take over or confiscate the property of a citizen of a foreign country although such property might be locally situate in Canada.

24. This defendant submits the plaintiff's statement of claim discloses no cause of action or ground for relief against this defendant.

30 25. This defendant submits that the plaintiff's statement of claim should be dismissed with costs.

DELIVERED this 22nd day of July, 1948, by SWIFT, MACLEOD, DEACON & ORMOND, Solicitors for the defendant Canadian Consolidated Grain Company Limited.

In the King's Bench

BETWEEN:

THE CANADIAN WHEAT BOARD,

PLAINTIFF,

AND

MANITOBA POOL ELEVATORS,
CANADIAN CONSOLIDATED GRAIN COMPANY LIMITED,
UNITED GRAIN GROWERS TERMINALS LIMITED,
FORT WILLIAM ELEVATOR COMPANY LIMITED,
10 HALLET AND CAREY LIMITED,

DEFENDANTS,

AND

JEREMIAH J. NOLAN,

(Added by Order of the Court made the 22nd day of March,
1948).

DEFENDANT.

AMENDED STATEMENT OF DEFENCE OF THE DEFENDANT UNITED GRAIN GROWERS TERMINALS LIMITED

1. This defendant admits the allegations contained in paragraphs 1, 2
20 and 3 of the plaintiff's statement of claim.

2. In answer to paragraph 4 of the plaintiff's statement of claim, this defendant denies that by virtue of the Order of the Governor-General in Council of the 3rd day of April, 1947, (P.C. 1292) the plaintiff became the owner of 40,000 bushels of No. 3 C.W. six row barley, and denies that the plaintiff has at any time been the owner of the said barley or been entitled or is entitled to possession of the said barley.

3. This defendant denies each and all of the allegations contained in paragraph 5 of the plaintiff's statement of claim, and says, as the facts are:

(a) That this defendant received for storage into its terminal elevator at the City of Port Arthur, in the Province of Ontario, from United Grain Growers Limited, on or about the 10th day of January, 1947, 1833 bushels and 6 pounds of No. 3 C.W. six row barley, and upon receipt thereof and in accordance with the provisions of The Canada Grain Act and regulations made pursuant thereto, this defendant issued its warehouse receipt for the said grain in favour of United Grain Growers Limited, and after registration of the same pursuant to the said Act and regulations, delivered said receipt to United Grain Growers Limited,
10 which Company subsequently assigned or endorsed the said receipt to the defendant Hallet and Carey Limited.

(b) That the said 1833 bushels 6 pounds of barley are still in the terminal elevator of this defendant and the said warehouse receipt has never been delivered up, surrendered or otherwise returned to this defendant and is still outstanding and is not within the power, possession or control of this defendant.

4. This defendant denies each and every allegation contained in paragraphs 6, 7 and 8 of the plaintiff's statement of claim, and says, as the facts are:

20 (a) That it duly received the said barley for storage, as alleged in paragraph 3 hereof, and still has and is entitled to retain the same in storage until surrender to it of the said warehouse receipt and payment of its storage charges.

(b) That no demand was made by the plaintiff upon this defendant, as alleged, except such demand as is contained in a letter dated October 1st, 1947, written by Henry B. Monk, for the plaintiff, to this defendant.

(c) That this defendant is prohibited under the provisions of The Canada Grain Act and regulations made thereunder from making delivery of the said barley without the surrender to it of the warehouse receipt issued by it in respect of the said barley.
30

(d) That the receipt issued by this defendant in respect of the said 1833 bushels and 6 pounds of barley has never been delivered up, surrendered or otherwise returned to this defendant and is still outstanding and is not within the power, possession or control of this defendant.

(e) That by letter bearing date the 30th day of September, 1947, addressed to this defendant, Messrs. Aikins, Loftus, MacAulay, Thompson & Tritchler, Solicitors for the defendant Nolan, notified this defendant that the defendant Nolan had brought an action in the Court of

King's Bench in which he claims possession of the said barley in the possession of this defendant, and of the warehouse receipt covering the same, and that it further challenges the position taken by the plaintiff and is contesting in the said action the constitutionality of the legislative enactments upon which the plaintiff purports to base its claim, and that if this defendant delivers the said barley to the plaintiff, the defendant Nolan will hold this defendant liable in damages.

10 (f) That pursuant to the terms under which the said barley was received by this defendant and the regulations made under The Canada Grain Act, it is entitled to storage and other charges as provided in the said regulations.

(g) That storage and other charges due this defendant in respect of the said barley are owing from the 10th day of January, 1947.

5. This defendant denies the allegations contained in paragraph 9 of the plaintiff's statement of claim, and says as the fact is that this defendant is entitled to retain the said barley in its possession until the warehouse receipt issued in respect of the said barley has been surrendered to it, and its storage and carrying charges have been paid in full.

20 6. In further reply and answer to the plaintiff's statement of claim, this defendant denies that Order-in-Council P.C. 1292 was passed pursuant to any statutory or other authority vested in the Governor-General-in-Council and denies that the plaintiff had any right, power or authority to demand from this defendant the said barley or the said documents of title.

7. This defendant further says that Order-in-Council P.C. 1292 is wholly ultra vires of the Governor-General-in-Council and is unconstitutional, inoperative and of no force or effect whatsoever.

30 8. In the alternative this defendant says that if the said Order-in-Council is not wholly ultra vires of the Governor-General-in-Council, sections 22, 24, 25, 26 and 36 therefore (hereinafter referred to as the "said sections") are wholly ultra vires of the Governor-General-in-Council and are unconstitutional, inoperative and of no force and effect whatsoever.

9. This defendant further says that The National Emergency Transitional Powers Act, 1945, being chapter 25 of the Statutes of Canada, 1945, (hereinafter referred to as the "said Act") pursuant to which the Governor-General-in-Council purported to promulgate P.C. 1292, is wholly ultra vires of the Parliament of Canada and is unconstitutional, inoperative and of no force or effect whatsoever.

10. The said Act does not delegate the powers purported to be exercised by the Governor-General-in-Council and the said Order-in-Council exceeds the powers (if any) delegated by the said Act.

11. The Parliament of Canada has not the power to authorize the Governor-General-in-Council to pass the said Order-in-Council or alternatively the said sections thereof.

12. The said Order-in-Council purports to make provision for certain matters pursuant to the provisions in the said Act for the purpose of maintaining, controlling and regulating supplies and prices to ensure economic stability
10 and an orderly transition to conditions of peace but this defendant says that the said Order-in-Council and particularly section 22 thereof exceeds and goes beyond the powers (if any) conferred by the said Act for the purpose of maintaining, controlling and regulating supplies and prices to ensure economic stability and an orderly transition to conditions of peace.

13. On April 3rd, 1947, the date of the said Order-in-Council, there was no national emergency continuing or otherwise or arising out of the war against Germany or Japan or otherwise, sufficient to justify, warrant or call for the vesting in the Canadian Wheat Board of all oats and barley as provided in the said Order-in-Council.

20 14. In the alternative, if there was any continued existence of national emergency arising out of the war against Germany and Japan, which is denied, it did not justify, warrant or make necessary the said Order-in-Council or alternatively section 22 thereof.

15. The said Order-in-Council or alternatively the said sections thereof do not go beyond local or provincial concern or interest and are not from their inherent nature the concern of the Dominion as a whole and are not matters affecting the peace, order and good government of Canada and are not necessary for the safety of the Dominion as a whole.

16. The confiscation or expropriation or vesting in The Canadian Wheat
30 Board of the defendant's barley is not related to nor does it further or result in the maintaining or the controlling or the regulating of supplies or prices to ensure economic stability or an orderly transition to conditions of peace.

17. The vesting of oats and barley in The Canadian Wheat Board amounts to expropriation or confiscation and is not authorized by the said Act, and amounts to an invasion of provincial jurisdiction over property and civil rights which are wholly within the jurisdiction of the provinces of Canada.

18. The said Act could not validly nor does it grant or delegate power such as that attempted to be exercised in the said Order-in-Council and particu-

larly could not validly grant or delegate nor does it grant or delegate power to confiscate or expropriate oats or barley which are private property nor to vest oats or barley which are private property in The Canadian Wheat Board.

19. The Governor-General-in-Council on April 3rd, 1947, could not have deemed it nor did he deem it necessary or advisable nor necessary nor advisable by reason of any continued existence of the national emergency arising out of the war against Germany and Japan for the purpose of maintaining or controlling or regulating supplies or prices to ensure economic stability and an orderly transition to conditions of peace or for any other purpose authorized by the
 10 said Act, to make provision for the vesting in The Canadian Wheat Board of all oats and barley in commercial positions in Canada and products of oats and barley in Canada.

20. The said Order-in-Council contains legislation which could not have been adopted by the Parliament of Canada itself and the said Order-in-Council would have been ultra vires of the Parliament of Canada and therefore the Parliament of Canada could not validly delegate to the Governor-General-in-Council the power to enact the said Order-in-Council.

21. By reason of the matters alleged in paragraphs 6 to 20, both inclusive, hereof the said Act and the said Order-in-Council are wholly ultra vires
 20 of the Parliament of Canada and Governor-General-in-Council respectively and therefore unconstitutional, inoperative and of no force and effect whatsoever.

22. In the alternative by reason of the matters alleged in paragraphs 6 to 20 both inclusive hereof section 2 of the said Act and the said sections of the said Order-in-Council are wholly ultra vires of the Parliament of Canada and Governor-General-in-Council respectively and are unconstitutional, inoperative and of no force and effect whatsoever.

23. In further alternative this defendant says that the plaintiff was not authorized either by the said Act or by the said Order-in-Council to acquire,
 30 take over or confiscate the property of a citizen of a foreign country although such property might be locally situate in Canada.

24. This defendant submits that the plaintiff's statement of claim discloses no cause of action or ground for relief against this defendant.

25. This defendant submits that the plaintiff's statement of claim should be dismissed with costs.

DELIVERED this 22nd day of July, 1948, by SWIFT, MACLEOD, DEACON & ORMOND, Solicitors for the defendant United Grain Growers Terminals Limited.

In the Court of Appeal

BETWEEN:

THE CANADIAN WHEAT BOARD,

(Plaintiff) APPELLANT,

AND

MANITOBA POOL ELEVATORS,
CANADIAN CONSOLIDATED GRAIN COMPANY LIMITED,
UNITED GRAIN GROWERS TERMINALS LIMITED,
FORT WILLIAM ELEVATOR COMPANY LIMITED,
10 HALLET AND CAREY LIMITED,

(Defendants) RESPONDENTS,

AND

JEREMIAH J. NOLAN,

(Added by Order of the Court made the 22nd day of March,
1948),

(Defendant) RESPONDENT.

NOTICE OF APPEAL

TAKE NOTICE that an application will be made to the Court of Appeal by or on behalf of the Plaintiff Appellant, at the present or next ensuing sitting
20 thereof by way of appeal from the verdict, order, decision and judgment of the Honorable Chief Justice Williams in the trial of this action in the Court of King's Bench for Manitoba on the 22nd, 23rd and 24th days of March, A.D. 1948, and rendered and pronounced herein on or about the 19th day of April, A.D. 1948, and entered on the 25th day of October, A.D. 1948, whereby the said learned Chief Justice did give judgment for the defendants, respondents and whereby he dismissed the plaintiff's claim with costs, for an order that the judgment aforesaid may be set aside and reversed and that the plaintiff, appellant be granted the relief claimed in the statement of claim.

AND FURTHER TAKE NOTICE that the grounds which will be
30 urged in support of such appeal are as follows:

1. That the judgment is against law, evidence and the weight of evidence.
2. That the learned trial judge erred in failing to hold that Order in Council P.C. 1292 of the third day of April, A.D. 1947, was duly passed in accordance with authority conferred by The National Emergency Transitional Powers Act, 1945.
3. That the learned trial judge erred in not holding that The National Emergency Transitional Powers Act, 1945, authorized the Governor in Council to make an order for the appropriation or expropriation of property and/or the barley referred to in the said Order in Council if the Governor in
10 Council deems such an order necessary or advisable by reason of the continued existence of the emergency referred to in subsection (1) of section 2 of the said Act for the purposes set forth in paragraphs (a) to (e), both inclusive, of the said subsection, and in not holding that the Parliament of Canada had the power to appropriate or expropriate property or to appropriate or expropriate the barley referred to in the said Order in Council, and/or to pass sections 22 to 27, both inclusive, and section 36 of the said Order in Council.
4. That the learned trial judge erred in holding that the power to enact an Order in Council under The National Emergency Transitional Powers Act, 1945, and particularly the said Order in Council P.C. 1292, must be found in
20 paragraphs (a) to (e) of subsection (1) of section 2 of the said Act, and in failing to hold that the power to enact Order in Council under the said Act and the said Order in Council was conferred upon the Governor in Council by Section 2, subsection (1) of the said Act, and in failing to find that the powers so conferred upon the Governor in Council constitute a law-making authority, and an authority to pass such legislative enactments as the Governor in Council deems necessary or advisable by reason of the continued existence of the emergency referred to in the said subsection (1) for the purposes set forth in the said paragraphs (a) to (e), both inclusive. The learned trial judge should further have found that subject to the condition that the Governor in
30 Council deems an enactment or order necessary or advisable as aforesaid, the Governor in Council is by the said Act vested with plenary powers of legislation as large and of the same character and nature as the Parliament of the Dominion of Canada and had the power to pass the said Order in Council and sections 22 to 27, both inclusive, and section 36 thereof.
5. The learned trial judge erred in failing to hold that the Governor in Council was authorized by subsection (1) of section 2 of The National Emergency Transitional Powers Act, 1945, to make such orders and regulations as he, by reason of the continued existence of the emergency referred to

therein, deemed necessary or advisable for any of the purposes set out in paragraphs (a) to (e) thereof both inclusive; and in failing to hold that the Governor in Council, having deemed it necessary to make the aforesaid Order by reason of the continued existence of the said emergency for the purpose set out in paragraph (c) of the said subsection, had power to make and did duly make the aforesaid Order.

6. That the learned trial judge erred in finding that when the Governor in Council had declared that the measures contained in the said Order in Council were deemed by the Governor in Council necessary or advisable by
10 reason of the continued existence of the said emergency for the purposes set forth in section 2, subsection (1), paragraphs (a) to (e), both inclusive, of the said Act, the Court had jurisdiction or it was competent or that it was relevant for the Court to enquire into or consider whether the said Order in Council or any of its terms were in fact necessary or advisable, as aforesaid, for the purposes aforesaid, or were proper, or adequate or were directed to any of the said purposes, and further erred in failing to find:—

(a) that The National Emergency Transitional Powers Act, 1945, conferred on the Governor in Council the power to make such orders as the Governor in Council might deem necessary or advisable as aforesaid
20 for the purposes set forth in section 2, subsection (1) paragraphs (a) to (e), both inclusive, of the said Act, and that the said Act empowered the Governor in Council to make the said Order in Council P.C. 1292 and sections 22 to 27, both inclusive, and section 36 thereof.

(b) that when an Order in Council has been passed by the Governor in Council which the Governor in Council has professed to consider necessary or advisable, as aforesaid, for the said purposes, it is not competent to any court to canvass the considerations which have or may have led the Governor in Council to deem such Order necessary or advisable for the purposes aforesaid.

30 (c) that it is not pertinent to the judiciary to consider the wisdom or the propriety of the particular policy which is embodied in an Order in Council passed under the authority of the said Act, and in particular the said Order in Council and the said sections thereof.

(d) that the determination of the policy to be followed is exclusively a subject for the Parliament of Canada and those to whom it has granted its powers and is not subject to review by the Court.

7. That the learned trial judge erred in admitting and considering evidence which was irrelevant and immaterial and in admitting as evidence and

considering orders of The Canadian Wheat Board and viva voce evidence which was not relevant and was not material to matters in issue in the action, and, without limiting the generality of the foregoing, in admitting the following documents issued by the plaintiff, appellant:

Instructions to the Trade Numbers 59, 60, 61, 62, 63, 64, 65, 66, 68, 70 and 83.

8. That the learned trial judge erred in finding that the said Act did not authorize or empower the Governor in Council to make such orders as he may deem necessary or advisable as aforesaid imposing new controls, or measures, 10 or controls or measures which had not previously been established under the War Measures Act.

9. That the said Order in Council can be supported and upheld as a mode of system of taxation.

And on such further and other grounds as counsel may advise and deem necessary or as may be disclosed in the evidence or material filed.

DATED at Winnipeg this 28th day of October, A.D. 1948.

“HENRY B. MONK”

HENRY B. MONK,

Solicitor to The Canadian Wheat Board

20 *To:*

Registrar of the COURT of APPEAL.

And to:

MANITOBA POOL ELEVATORS *and their Solicitors, Messrs. SCARTH & HONEYMAN.*

CANADIAN CONSOLIDATED GRAIN COMPANY LIMITED *and their Solicitors, Messrs. SWIFT, MACLEOD & CO.*

UNITED GRAIN GROWERS TERMINALS LIMITED *and their Solicitors, Messrs. SWIFT, MACLEOD & CO.*

FORT WILLIAM ELEVATOR COMPANY LIMITED *and their Solicitors, Messrs.*
30 SCARTH & HONEYMAN.

HALLET AND CAREY LIMITED *and their Solicitors, Messrs, FILLMORE, RYLEY & WATSON.*

JEREMIAH J. NOLAN *and his Solicitors, Messrs. AIKINS, LOFTUS & CO.*

In the Court of Appeal

BETWEEN :

THE CANADIAN WHEAT BOARD,

Plaintiff (APPELLANT),

AND

MANITOBA POOL ELEVATORS,
CANADIAN CONSOLIDATED GRAIN COMPANY LIMITED,
UNITED GRAIN GROWERS TERMINALS LIMITED,
FORT WILLIAM ELEVATOR COMPANY LIMITED,
10 HALLET AND CAREY LIMITED,

Defendants (RESPONDENTS),

AND

JEREMIAH J. NOLAN,

(Added by Order of the Court made March 22nd, 1948).

Defendant (RESPONDENT),

NOTICE OF MOTION

TAKE NOTICE that by special leave of Mr. Justice Coyne, this day granted allowing such an application to be made at the time and place hereinafter set forth and allowing service of short notice of such application, an
20 application will be made by or on behalf of the Plaintiff Appellant to the presiding judge of the Court of Appeal in his chambers in the Court House at the City of Winnipeg in Manitoba on Tuesday the 16th day of November, 1948, at two thirty o'clock in the afternoon or so soon thereafter as Counsel may be heard for an order:—

1. That the defendant Hallet and Carey Limited and Jeremiah J. Nolan do bring in and deposit with this Honourable Court the warehouse receipts and certificates referred to in paragraph 5 of the Statement of Claim.

2. That the said barley and warehouse receipts and certificates being the property the subject of this action, namely forty thousand bushels of 3 C.W. six row barley be sold by the Plaintiff Appellant and pursuant to the directions of the judge of this Honourable Court at the current market price and the proceeds thereof, without deduction of storage or other charges by any party, be paid into the Court of King's Bench to the credit of this action without prejudice to the rights of any party and to be held in lieu of the said barley pending the final determination of this action and to be disposed of by the Court in lieu of the said barley on the final determination of this action.

10 3. In the alternative that the said barley, warehouse receipts and certificates be detained and preserved until the final determination of the action.

4. That all proceedings under the judgment herein be stayed until the final determination of this action.

AND TAKE FURTHER NOTICE that in support of such application will be read the affidavit of John M. Hunt and the exhibits therein referred to and the evidence in this action and such further and other material as Counsel may advise or the learned judge permit.

DATED at Winnipeg this 12th day of November, A.D. 1948.

"HENRY B. MONK"

20

HENRY B. MONK,
Solicitor, The Canadian Wheat Board.

To:

MANITOBA POOL ELEVATORS *and their Solicitors, Messrs. SCARTH & HONEYMAN.*

CANADIAN CONSOLIDATED GRAIN COMPANY LIMITED *and their Solicitors, Messrs. SWIFT, MACLEOD & CO.*

UNITED GRAIN GROWERS TERMINALS LIMITED *and their Solicitors, Messrs. SWIFT, MACLEOD & CO.*

FORT WILLIAM ELEVATOR COMPANY LIMITED *and their Solicitors, Messrs.*
30 SCARTH & HONEYMAN.

HALLET AND CAREY LIMITED *and their Solicitors, Messrs. FILLMORE, RYLEY & WATSON.*

JEREMIAH J. NOLAN *and his Solicitors, Messrs. AIKINS, LOFTUS & CO.*

In the Court of Appeal

THE CHIEF JUSTICE OF MANITOBA THE HONOURABLE S. E. RICHARDS THE HONOURABLE J. B. COYNE THE HONOURABLE A. K. DYSART THE HONOURABLE J. E. ADAMSON	}	Tuesday, the 7th day of December, 1948.
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BETWEEN :

THE CANADIAN WHEAT BOARD,
(Plaintiff) APPELLANT,

10 AND

MANITOBA POOL ELEVATORS,
 CANADIAN CONSOLIDATED GRAIN COMPANY LIMITED,
 UNITED GRAIN GROWERS TERMINALS LIMITED,
 FORT WILLIAM ELEVATOR COMPANY LIMITED,
 HALLET AND CAREY LIMITED,
(Defendants) RESPONDENTS,

(SEAL) AND

JEREMIAH J. NOLAN,
 (Added by Order of the Court made the 22nd day of March,
 1948),
(Defendant) RESPONDENT.

20

AND

In the Court of King's Bench

IN COURT THE CHIEF JUSTICE OF MANITOBA (<i>ad hoc</i>)	}	Tuesday, the 7th day of December, 1948.
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BETWEEN :

JEREMIAH J. NOLAN,
 PLAINTIFF,

30 AND

HALLET & CAREY LTD.,
 DEFENDANTS.

Upon the application of the Plaintiff Appellant that the barley, the property the subject matter of this action, be sold and the proceeds paid into court in lieu thereof, and upon reading the Notice of Motion and the Affidavit of John M. Hunt filed, and upon the application coming before Mr. Justice Coyne on the 16th day of November, A.D. 1948, and being then adjourned sine die, and subsequently referred to this Court, and upon the application coming this day before this Court and after reading the said Affidavit and the Notice of Motion herein, and after hearing counsel for all parties,

IT IS ORDERED:

10 1. THAT the defendants, Hallet and Carey Limited, and Jeremiah J. Nolan do deliver forthwith to the solicitors for the Manitoba Pool Elevators the warehouse receipts and certificate referred to in paragraph 5 of the Statement of Claim herein, duly endorsed for transfer and sale.

2. THAT the 40,000 bushels of 3 C.W. Six Row barley referred to in the Statement of Claim herein and in the said warehouse receipts and certificate, being the property the subject of these actions, be sold for cash forthwith by the defendant, Manitoba Pool Elevators through the agency of a broker at the current market price and the proceeds thereof, without deduction of storage or any charges by any party excepting broker's commission on the
20 sale of the said barley, be paid into the Court of King's Bench to the joint credit of these actions as above described to be held until the final determination of these actions and thereafter subject to the order of this Court and of the Chief Justice of this Court as an ex officio judge of the Court of King's Bench, and to be disposed of in lieu of the said barley on the final determination of these actions.

3. THAT the said monies which are the proceeds of the said sale shall be paid into Court as aforesaid without prejudice to and preserving the rights of all parties in each of the said actions and that the rights of all of the parties to each of the said actions and of the Attorney General of Canada, as they now
30 exist, shall not be prejudiced by the sale of the barley as aforesaid or the payment of the money into Court as aforesaid or by the making of this order.

CERTIFIED

"A. J. CHRISTIE"
Registrar.

SIGNED this 8th day of December, 1948.

"A. J. CHRISTIE"
Prothonotary.

"Let this Order go
"E. A. MACPHERSON, C.J."
ex officio a Judge of the King's Bench."

10

Entered December 8th, 1948
Judgment and Order
Book 71, Folio 123,
"K. D. DEANS", E.C.

In the Court of Appeal

THE CHIEF JUSTICE OF MANITOBA	} Tuesday, the 1st day of February, A.D. 1949.
THE HONOURABLE S. E. RICHARDS	
THE HONOURABLE J. B. COYNE	
THE HONOURABLE A. K. DYSART	
THE HONOURABLE J. E. ADAMSON	

AND

In the Court of King's Bench

IN COURT

10 THE CHIEF JUSTICE OF MANITOBA	} Tuesday, the 1st day of February, A.D. 1949.
(<i>ad hoc</i>)	

BETWEEN :

THE CANADIAN WHEAT BOARD,
(Plaintiff) APPELANT,

AND

MANITOBA POOL ELEVATORS,
CANADIAN CONSOLIDATED GRAIN COMPANY LIMITED,
UNITED GRAIN GROWERS TERMINALS LIMITED,
FORT WILLIAM ELEVATOR COMPANY LIMITED,
20 HALLET AND CAREY LIMITED,
(Defendants) RESPONDENTS,

(SEAL)

AND

JEREMIAH J. NOLAN,
(Added by Order of the Court made the 22nd day of March,
1948),
(Defendant) RESPONDENT.

AND BETWEEN :

JEREMIAH J. NOLAN,
(Plaintiff) RESPONDENT,

AND

HALLET AND CAREY LIMITED,

(Defendant) RESPONDENT,

AND

THE ATTORNEY-GENERAL OF CANADA,

(Added by Order of the Court made the 15th day of October,
1948),

(Defendant) APPELLANT.

O R D E R

10 UPON THE APPLICATION of the (Defendants) Respondents,
Manitoba Pool Elevators, Canadian Consolidated Grain Company Limited,
United Grain Growers Terminals Limited and Fort William Elevator Company
Limited, and upon hearing counsel for the other parties to the Actions;

IT IS ORDERED:—

1. That without prejudice to the rights of the other parties to the said
Actions as against one another, out of the proceeds of the sale of the 40,000
bushels of barley paid into the Court of King's Bench to the joint credit of
these Actions as above described, there be paid to Manitoba Pool Elevators
the sum of \$8,782.65; to Canadian Consolidated Grain Company Limited the
20 sum of \$473.62; to United Grain Growers Terminals Limited the sum of
\$437.02 and to Fort William Elevator Company Limited the sum of \$27.01,
being the elevator storage charges on said barley from the date of the receipt
thereof to the date of the sale thereof.

2. That without prejudice to the rights of the other parties to the said
Actions as against one another and to the balance of the said proceeds,
Manitoba Pool Elevators, Canadian Consolidated Grain Company Limited,
United Grain Growers Terminals Limited and Fort William Elevator Company
Limited shall henceforth cease to be Parties to the Action brought by the
Appellant, The Canadian Wheat Board and to the Appeal in the said Action.

30 3. That the matter of costs throughout in respect of the Applicants shall
be reserved to be dealt with on the disposition of the said Action by the Court
of Appeal.

CERTIFIED:

SEAL

"A. J. CHRISTIE"
Registrar

SIGNED this 3rd day of February, A.D. 1949.

"A. J. CHRISTIE"
Prothonotary.

"Let this Order go
"J. B. COYNE"
10 *ex officio a Judge of the King's bench*"

Approved:
"HENRY B. MONK"
*on behalf of THE CANADIAN WHEAT BOARD, and
THE ATTORNEY-GENERAL OF CANADA,*

Approved:
"G. E. TRITSCHLER"
on behalf of JEREMIAH J. NOLAN

Approved:
FILLMORE, RILEY & WATSON
20 "C. FILLMORE"
on behalf of HALLET and CAREY LIMITED.

Approved:
"H. ST. CLAIR SCARTH"
*on behalf of MANITOBA POOL ELEVATORS and
FORT WILLIAM ELEVATOR COMPANY LIMITED*

Approved:
"IVAN M. DEACON"
*on behalf of CANADIAN CONSOLIDATED GRAIN COMPANY LIMITED, and
UNITED GRAIN GROWERS TERMINALS LIMITED.*

30 Entered February 3rd, 1949
Judgment and Order
Book 71, Folio 163,
"W. A. DUDGEON", E.C.

In the Court of Appeal

IN CHAMBERS

The Honourable
Mr. Justice J. B. Coyne

} Monday the 2nd day of May, A.D. 1949.

BETWEEN:

THE CANADIAN WHEAT BOARD,
AND (Plaintiff) APPELLANT,

10 MANITOBA POOL ELEVATORS,
CANADIAN CONSOLIDATED GRAIN COMPANY LIMITED,
UNITED GRAIN GROWERS TERMINALS LIMITED,
FORT WILLIAM ELEVATOR COMPANY LIMITED,
HALLET AND CAREY LIMITED, (Defendants) RESPONDENT,

AND

JEREMIAH J. NOLAN,
(Added by Order of the Court made the 22nd day of March,
1948), (Defendant) RESPONDENT.

O R D E R

20 UPON motion being made this day on behalf of the (Plaintiff) Appellant herein for an order that the time within which an appeal may be launched to the Supreme Court of Canada from the judgment of the Court of Appeal for Manitoba herein pronounced on the 10th day of March, 1949, be enlarged and extended until the 1st day of July, 1949, and that the (Plaintiff) Appellant may be at liberty on or before the 1st day of July, 1949, to appeal from the said judgment of this Court; and for an order staying execution in this action until the said 1st day of July, 1949; and upon hearing read the Affidavit of John MacLean Hunt filed and the exhibit therein referred to; and upon hearing Counsel for all parties;

30 IT IS ORDERED that the time within which an appeal to the Supreme Court of Canada from the judgment of the Court of Appeal for Manitoba herein pronounced on the 10th day of March, 1949, may be launched, shall be and is hereby enlarged and extended until the 1st day of July, 1949; and that the (Plaintiff) Appellant is at liberty to launch an appeal from the said judgment of this Court on or before the said 1st day of July, 1949;

IT IS FURTHER ORDERED that execution in this action be stayed until the said 1st day of July, 1949.

SIGNED this 2nd day of May, 1949.

“J. B. COYNE”, J.A.

In the King's Bench

THE CANADIAN WHEAT BOARD

vs

MANITOBA POOL ELEVATORS ET AL

AND

J. J. NOLAN

vs

HALLET & CAREY LTD.

AND THE ATTORNEY-GENERAL OF CANADA

10 I CERTIFY that there is standing on the Books to the credit of this Cause the sum of Thirty-eight thousand, five hundred and seventy-six and 49/100 dollars.

DATED the twenty-first day of June 1949.

\$38,576.49 Principal

\$ Interest

\$38,576.49 Total

J. A. ROBINS,
Accountant.

20 *Note:—If there are any stop orders, etc., there should be a notation thereof.*

In the Court of Appeal for Manitoba

IN CHAMBERS the }
 Honourable Mr. } Twenty-eighth day of June 1949.
 Justice Coyne }

BETWEEN :

THE CANADIAN WHEAT BOARD,
(Plaintiff) APPELLANT,

AND

10 MANITOBA POOL ELEVATORS,
 CANADIAN CONSOLIDATED GRAIN COMPANY LIMITED,
 UNITED GRAIN GROWERS TERMINALS LIMITED,
 FORT WILLIAM ELEVATOR COMPANY LIMITED,
 (the four last mentioned corporations ceased to be parties to this
 action pursuant to Order of the Court made first day of February,
 1949, on consent of all parties)

HALLET AND CAREY LIMITED,
(Defendants) RESPONDENT,

AND

20 JEREMIAH J. NOLAN,
 (Added by Order of the Court made the 22nd day of October,
 1948),
(Defendant) RESPONDENT.

Upon the application of The Canadian Wheat Board, the above-named
 (Plaintiff) Appellant, for an order allowing this appeal to the Supreme Court
 of Canada from the judgment, order and decision of the Court of Appeal of the
 Province of Manitoba rendered and pronounced herein on Thursday the 10th
 day of March, 1949, and upon reading the Affidavits of John MacLean Hunt
 and Ivor James Rochester Deacon filed and upon hearing counsel for The
 Canadian Wheat Board and counsel for all other parties; and upon counsel
 30 for the (Defendants) Respondent Manitoba Pool Elevators, Canadian
 Consolidated Grain Company Limited, United Grain Growers Terminals

Limited, and Fort William Elevator Company Limited, contending that the said respondents ceased to be parties to this action by virtue of a certain order made herein by this Court and the Court of King's Bench on the first day of February, 1949; and further contending that the only matter in controversy between the said respondents and the appellant is the matter of their costs and they should not be parties to any appeal herein; and it appearing that the amount or value of the matter in controversy in this whole appeal exceeds the sum of two thousand dollars (\$2,000.00) and that this appeal is launched and prosecuted by The Canadian Wheat Board on behalf of the Crown in the
10 right of the Dominion of Canada; it is ordered, without prejudice to any right of the (Defendants) Respondent Manitoba Pool Elevators, Canadian Consolidated Grain Company Limited, United Grain Growers Terminals Limited, Fort William Elevator Company Limited, to advance and submit their said contentions hereafter as they may be advised: that the said appeal be and the same is hereby allowed without security, and that execution in the action be stayed until the final determination of the Appeal.

"J. B. C."

Signed the 28th day of June, 1949.

"J. B. COYNE, J.A."

In the Court of Appeal for Manitoba

BETWEEN :

THE CANADIAN WHEAT BOARD,

(Plaintiff) APPELLANT,

AND

MANITOBA POOL ELEVATORS,
CANADIAN CONSOLIDATED GRAIN COMPANY LIMITED,
UNITED GRAIN GROWERS TERMINALS LIMITED,
FORT WILLIAM ELEVATOR COMPANY LIMITED,

10 (the four last mentioned corporations ceased to be parties to this
 action pursuant to Order of the Court made first day of February,
 1949, on consent of all parties).

HALLET AND CAREY LIMITED,

(Defendants) RESPONDENT,

AND

JEREMIAH J. NOLAN,

(Added by Order of the Court made the 22nd day of October,
1948).

(Defendant) RESPONDENT.

20 TAKE NOTICE, that The Canadian Wheat Board, the above-named
 (Plaintiff) Appellant, hereby appeals to the Supreme Court of Canada from
 the judgment, order or decision of the Court of Appeal for the Province of
 Manitoba rendered and pronounced in this cause on the 10th day of March,
 1949, whereby the said Court of Appeal dismissed with costs the appeal of
 The Canadian Wheat Board, the above-named (Plaintiff) Appellant, from the
 decision and judgment of the Honourable Chief Justice Williams on the trial
 of this action rendered and pronounced in this cause in the Court of King's
 Bench for Manitoba on or about the 19th day of April, 1948 and entered on

the 25th day of October, 1948 and whereby the said Court of Appeal did dismiss the claim of the (Plaintiff) Appellant with costs.

DATED at Winnipeg in Manitoba this 28th day of June, 1949.

“HENRY B. MONK”

HENRY B. MONK, K.C.
Solicitor for The Canadian Wheat Board,
the above-named (Plaintiff) Appellant.

To: HALLET AND CAREY LIMITED
JEREMIAH J. NOLAN
10 MANITOBA POOL ELEVATORS
CANADIAN CONSOLIDATED GRAIN COMPANY LIMITED
UNITED GRAIN GROWERS TERMINALS LIMITED
FORT WILLIAM ELEVATOR COMPANY LIMITED

AND TO:

FILLMORE, RILEY AND WATSON
AIKINS, LOFTUS AND COMPANY
SWIFT, MCLEOD AND DEACON
SCARTH AND HONEYMAN

their solicitors

In the King's Bench

BETWEEN

THE CANADIAN WHEAT BOARD,

PLAINTIFF,

AND

MANITOBA POOL ELEVATORS,
CANADIAN CONSOLIDATED GRAIN COMPANY LIMITED,
UNITED GRAIN GROWERS TERMINALS LIMITED,
FORT WILLIAM ELEVATOR COMPANY LIMITED,
10 HALLET & CAREY LIMITED, AND JEREMIAH J. NOLAN,

DEFENDANTS.

BETWEEN

JEREMIAH J. NOLAN,

PLAINTIFF,

AND

HALLET & CAREY LIMITED,

DEFENDANT.

The trial of these actions had and taken before Chief Justice E. K. Williams, at the court house, in the city of Winnipeg, in the Province of
20 Manitoba, on the 22nd day of March, 1948, at the hour of 10:30 o'clock in the forenoon.

PRESENT: Mr. Henry B. Monk, K.C., and Mr. John M. Hunt appeared for the plaintiff The Canadian Wheat Board.

Mr. H. S. Scarth, K.C., appeared for Manitoba Pool Elevators.

Mr. I. J. R. Deacon for Canadian Consolidated Grain Company Limited, and United Grain Growers Terminals Limited.

Opening—Discussion of Counsel

Mr. Cecil B. Philp, K.C., appeared for Fort William Elevator Company Limited.

Mr. W. P. Fillmore, K.C., appeared for Hallet and Carey Limited.

Mr. John A. MacAulay, K.C., and Mr. George E. Tritschler, K.C., appeared for Jeremiah J. Nolan.

Mr. Henry B. Monk, K.C., appeared for the Attorney-General of Canada.

MR. MONK: Before proceeding with this action, my lord, there is an amendment to the pleadings which I have sought, and which my friends will
 10 not object to. Page 2 of the pleadings, paragraph 5 of the statement of claim, is amended by deleting the following words from lines 8, 9, and 10 of paragraph 5, "constructive possession and control of all of the said barley and possession and control of the documents entitling the defendant Hallet & Carey Limited to the delivery of," and inserting the words "possession and control of documents issued pursuant to the Canada Grain Act relating to." My lord, I have had a page re-typed with the amendment made, and if it meets with your lordship's convenience I would file it.

THE COURT: The amendment is not objected to?

MR. MONK: No.

20 THE COURT: It will be allowed, and instead of filing this page as an exhibit it will be substituted for the page in the record.

MR. MONK: It is, of course, understood that the denials in the defendants' pleadings apply.

THE COURT: Yes, I think they apply automatically.

MR. SCARTH: The warehousemen in the action ordinarily could apply to the Court for an interpleader order, but due to the fact that the Crown is one of the parties that has not been found possible.

MR. FILLMORE: If I might interject, Hallet & Carey Limited did apply for an interpleader order, and counsel for the plaintiff in this action took the
 30 position that this was a Crown agency, and that the Crown could not be implied without its consent, and therefore our interpleader application was dismissed.

MR. SCARTH: I would like to say, further, my lord, there are now two actions current, that is, the one that we call the main action where all the

Opening—Discussion of Counsel

parties except Nolan are represented, and a separate action between Nolan and Hallet & Carey Limited. But the same grain, the same storage tickets, and I think practically the same questions are in issue. The Main issue seems to be whether Order-in-Council P.C. 1292 is *intra* or *ultra vires*. In the admissions, so that your lordship may understand this, there are admitted facts between all the parties, and one set of admissions apply to both actions.

MR. MONK: For the purpose of this action the parties have agreed to a statement of facts.

10 THE COURT: For the purpose of the main action?

MR. MONK: Of both actions. Attached to the agreed statement of facts are photographic copies of the warehouse receipts referred to in the pleadings, copies of the various Orders-in-Council, copies of the relevant instructions to the trade issued by the Canadian Wheat Board, and copies of correspondence between the various parties. It is agreed between us, my lord, that all of these copies should be admitted as if the originals had been presented and duly proved in evidence to your lordship.

THE COURT: Yes, very satisfactory.

MR. FILLMORE: I think it should be mentioned here, my lord, that the
20 defendant Hallet & Carey Limited, and I think also counsel for Mr. Nolan, will say that we do not agree that the statement of facts submitted to your lordship contains everything that is relevant. We say there is another document which is relevant and which will be tendered after the case is opened. I just mention that so it will be understood that this is not to be taken as all inclusive.

THE COURT: No. This is agreed on as far as it goes?

MR. FILLMORE: Yes, that is satisfactory. Each party is at liberty if they wish to call additional evidence.

THE COURT: Yes. I think we will mark this statement of facts as an exhibit.

30 *(Statement of facts referred to, produced and marked exhibit 1).*

MR. SCARTH: I would like to refer your lordship to paragraphs 5 (a) and (b), and the second paragraph of (c).

“(a) On or about the 31st day of July 1943, the said Nolan instructed Hallet & Carey Limited to buy 40,000 bushels of No. 3 C.W. Six-row barley for him and Hallet & Carey Limited has at all material times since that date held barley for his account.

Opening—Discussion of Counsel

(b) Pursuant to the instructions mentioned in the next preceding subparagraph Hallet and Carey Limited as agents for the said Nolan, purchased 40,000 bushels of No. 3 C.W. Six-row barley for his account, and, on or about the storage dates referred to therein, acquired for him the warehouse receipts and Lake Shipper's Clearance Association transfer certificate (which are hereinafter referred to as 'the said documents'), copies of which are hereto annexed as exhibit 1."

THE COURT: The date of the original purchase appears to be 1943, and 10 the date of the warehouse receipt set out in the pleadings is 1946.

MR. FILLMORE: There is an explanation there. This particular barley that was held in 1947 may have been acquired from time to time, or it may not have been barley purchased in 1943. Those certificates of 1946 and 1947 represent the barley finally appropriated to the account of Nolan. There is a system in the trade of lending barley and changing the appropriation of the tickets from time to time. But this particular barley, and these particular certificates, were appropriated by Hallet & Carey and held by them for Mr. Nolan, and in each action these are the certificates and this is the barley the plaintiff seeks.

THE COURT: Does anything turn on it?

20 MR. TRITSCHLER: According to paragraph 5 (a), on or about the 31st day of July, 1943, Nolan gave instructions to buy the barley, and then in (b) pursuant to the instructions in 5 (a) they purchased 40,000 bushels, and on or about the storage dates referred to therein acquired for him warehouse receipts, and then looking at the warehouse receipts they are all dated 1946.

MR. MONK: The only question that could turn on it is the question of the amount of the storage. We believe, and as Mr. Tritschler has stated, that there were originally instructions given first in 1943 to buy barley, and from time to time various special bin documents in the hands of Hallet & Carey Limited were allocated to Mr. Nolan's account.

30 THE COURT: Have they always been special bin documents?

MR. MONK: These are.

THE COURT: Have they been so since the beginning?

MR. MONK: I don't know.

THE COURT: Does anything turn on that?

MR. MONK: I doubt if it does. The documents which did relate to the

Opening—Discussion of Counsel

grain which we seized are these documents which indicate that the actual physical grain that we claim had been affected by Order-in-Council 1292 only went into storage on the dates of the documents. It may not have been in existence at the date the original instructions were given to Hallet & Carey.

MR. FILLMORE: I don't think anything turns on it except perhaps the amount of the lien for storage charges. That may not be material in the action.

THE COURT: I notice there was a claim for \$7000 for storage.

MR. FILLMORE: That is not admitted by the plaintiff. They take the
10 position they are not concerned with the amount of the storage charges, that under the Order-in-Council they had the right to take over at a stated price, it doesn't matter whether there was \$1000 or \$7000, that was to be the lookout of the holder of the barley. They paid a stated price, and he whose barley was taken over had to pay his own storage charges.

THE COURT: If Hallet & Carey owned this barley the only way they could get their storage costs out of it was in the sale price, I am correct in that?

MR. FILLMORE: Yes. The plaintiff's position is that we have to pay ourselves when we get the money from them.

THE COURT: There is no issue that arises that the price at which the
20 Wheat Board claimed to have taken this barley over was a lower price than your clients could have got and that they could have reimbursed themselves for the additional cost of the storage.

MR. FILLMORE: We have always had security on the documents, and I suppose if we had delivered up the documents we would have got enough money to pay ourselves.

THE COURT: Does the question of storage really enter into this at all?

MR. FILLMORE: I doubt it.

MR. MACAULAY: This barley was purchased in 1943, as is admitted in the statement of facts, and there is a practice in the trade to lend grain or
30 storage documents to the purchaser. Hallet & Carey in this instance was the firm through which Nolan purchased this grain. Nolan intended to carry this barley from 1943. By lending the barley to Hallet & Carey for certain periods he was able to avoid payment of storage charges for the periods during which it was lent, and he was satisfied to do that on Hallet & Carey's request. This amount of storage charged is accumulated storage from the time it was

Opening—Discussion of Counsel

purchased in the first instance, after deducting the storage credits which he received for the periods of loading. I don't think anything turns on it, my lord. We will put a witness in the box, and if we feel it is necessary to supplement the admitted statement of facts we will do so at the time that witness is in the box.

MR. SCARTH: I would draw your attention to one further paragraph, sub-paragraph 5 (c):

“Hallet and Carey Limited had and has possession and control of the said
10 documents as agents for the said Nolan and has and had no beneficial interest therein or in the barley therein referred to except it claims a lien for storage and carrying charges.”

The point we make is that Hallet and Carey on the admissions is a mere agent, very similar to ourselves, and the real person interested, or the owner of this barley, is not a party to our action. The difficulty that would arise through want of parties here is this, let us suppose you find in this action that the Order-in-Council is *intra vires*, we are going to be bound, and the Canadian Wheat Board will immediately demand that we deliver over the grain. Supposing in the action of Nolan vs. Hallet & Carey you find similarly, Mr.
20 Nolan could appeal to a court of final resort, and he would not be bound by the judgment in the present action, although the owner of the grain. That is, the awkward position we as warehousemen are placed in. I am not going to elaborate on that only to show that there is a want of parties in the present action, in other words, the real owner is not added as a party, and to avoid multiplicity he should be added. I believe all parties will agree, and I would like to move that Mr. Nolan be added as a party defendant. We would have moved sooner but we thought the actions were to be consolidated and tried as one, but ultimately that was not found possible and that is the reason we did not intervene sooner.

30 THE COURT: Mr. MacAulay?

MR. MACAULAY: We started action in the first instance, Nolan against Hallet & Carey, and the Wheat Board apparently wished to have the conduct of the action and started action and did not make Nolan a party to the action. Mr. Nolan at the present time is ill and he is unable to be here. I was able to talk to him on the telephone on Saturday, though, and he has placed his position before the Court in a letter which is one of the exhibits to the statement of facts. After discussing the matter with him I told him that I thought this action

Opening—Discussion of Counsel

could proceed without his presence since his view was outlined there, and I interpreted anything else he wanted to say as just a violent speech which the Court might not allow him to make in the witness box.

THE COURT: You could always make it for him standing where you are.

MR. MACAULAY: So, my lord, all Nolan seeks is to have the issue tried, and he is not attempting to obtain any advantage by reason of the fact the Wheat Board did not add him as a party defendant. I can see no objection.
 10 All we want to do, and all he wants to do is to have the issue tried, and there will have to be an appropriate amending of the pleading.

THE COURT: Mr. Monk?

MR. MONK: I have no objection. At the time this action was commenced there was no special identity between the grain claimed in his action and the grain we are attempting to seize. It has now been established they are one and the same.

THE COURT: Then I will make an order that Mr. Nolan be added as a party in what we call the main action, and the necessary amendments if required can be made in the pleading, and I am sure counsel will agree on that.

20 MR. MONK: My lord, the plaintiff does not intend to call *viva voce* evidence in chief in this case, and with your permission I would like to read into the record the agreed statement of facts.

THE COURT: Yes, I would be glad if you would. Do you intend to read it without comment?

MR. FILLMORE: I presume Mr. Donovan, the court reporter, does not require to write this down.

THE COURT: No, but if it is written up later he can incorporate it. Do you intend to read it without comment?

MR. MONK: I intend to read the admissions but not all the exhibits such
 30 as the Orders-in-Council.

MR. MCAULAY: The Court has to have the picture sometime, and I think it would be advisable that Mr. Monk read the exhibits, they are not too lengthy.

THE COURT: I think the Orders-in-Council should be read. There may at some stage arise the question of emergency, and there might be some evidence offered on the question of emergency.

MR. MACAULAY: That is right.

“In the King’s Bench

BETWEEN :

THE CANADIAN WHEAT BOARD,

vs

**MANITOBA POOL ELEVATORS,
CANADIAN CONSOLIDATED GRAIN COMPANY LIMITED,
UNITED GRAIN GROWERS TERMINALS LIMITED,
FORT WILLIAM ELEVATOR COMPANY LIMITED,
HALLET AND CAREY LIMITED,**

10 AND BETWEEN :

JEREMIAH J. NOLAN,

vs

HALLET AND CAREY LIMITED.

AGREED STATEMENT OF FACTS

1. The Canadian Wheat Board is a corporation incorporated by The Canadian Wheat Board Act, 1935, being chapter 53 of The Statutes of Canada, 1935, and has its headquarters in the city of Winnipeg in Manitoba.

2. Manitoba Pool Elevators is a corporation incorporated under the laws of the Province of Manitoba. Canadian Consolidated Grain Company Limited, **20** and United Grain Growers Terminals Limited, and Fort William Elevator Company Limited are corporations incorporated under the laws of the Dominion of Canada. All the corporations mentioned in this paragraph carry on the business of grain merchants and warehousemen. Each has offices at the said City of Winnipeg and offices and warehouses elsewhere in the Dominion of Canada.

Opening—Discussion of Counsel

3. Jeremiah J. Nolan is a grain merchant residing in the city of Chicago in the United States of America. He is a citizen of the United States of America.

4. Hallet and Carey Limited is a corporation incorporated under the laws of the Dominion of Canada and carries on the business of grain merchant in the said city of Winnipeg.

5. (a) On or about the 31st day of July, 1943, the said Nolan instructed Hallet and Carey Limited to buy 40,000 bushels of No. 3 C.W. Six-row barley
10 for him and Hallet and Carey Limited has at all material times since that date held barley for his account.

(b) Pursuant to the instructions mentioned in the next preceding subparagraph, Hallet and Carey Limited as agents for the said Nolan, purchased 40,000 bushels of No. 3 C.W. Six-row barley for his account, and, on or about the storage dates referred to therein, acquired for him the warehouse receipts and Lake Shipper's Clearance Association transfer certificate (which are hereinafter referred to as "the said documents"), copies of which are hereto annexed as exhibit 1."

MR. MONK: You will find at the bottom of each warehouse receipt what
20 is known as the storage date is indicated. You will find those are the storage dates referred to in the statement of claim. I would also call your attention that the warehouse receipts are not special bin receipts. We understand it was special bin but they were not special bin receipts, they only call for delivery of grain of like graded quantity. You will note all except one have been endorsed to Hallet & Carey Limited.

MR. MACAULAY: Since Mr. Monk makes that comment I would inquire the purpose of the comment.

MR. MONK: To clear the record, and show they are ordinary warehouse receipts, but we understand they were special bin, and we are prepared to admit
30 it.

THE COURT: You are prepared to admit it?

MR. MONK: We have admitted it in the facts. I did not want any confusion to arise on that later on.

(Mr. Monk continues reading from Agreed Statement of Facts).

"(c) The said documents were each issued, or assigned and endorsed to Hallet and Carey Limited. The barley referred to in the said documents is the

Opening—Discussion of Counsel

barley and the said documents are the documents which are claimed by the respective plaintiffs in these actions.

Hallet and Carey Limited now has, and has had at all material times since the said storage dates shown in the said documents respectively, the possession and control of the said documents.

Hallet and Carey Limited had and has possession and control of the said documents as agents for the said Nolan and has and had no beneficial interest therein or in the barley therein referred to except it claims a lien for storage
10 and carrying charges.

The said documents were, immediately prior to the passing of Order-in-Council 1292, the documents of title to the said barley and then entitled Hallet and Carey Limited to delivery of the said barley upon surrender of the said documents and payment of storage and other charges of the warehousemen.

6. The corporation mentioned in paragraph 2 hereof have had at all times since the storage dates referred to in the said documents, and now have, physical possession of the said barley in the quantities indicated by the said documents. The said barley is now in storage in the Province of Ontario in warehouses operated by the said corporations and the quantity of the said
20 barley referred to in each of the said documents has been in storage as aforesaid since the storage date referred to in the same document.

7. The said barley was not acquired on or after the 18th day of March, 1947, from the producers thereof or from The Canadian Wheat Board and was in commercial positions in Canada on the 3rd day of April, 1947, within the meaning of the said Order-in-Council P.C. 1292 of 1947.

8. On the 30th day of July, 1946, the Governor General in Council passed Order-in-Council No. P.C. 3222 of 1946 (The Western Grain Regulations) a copy of which is hereto annexed as exhibit 2.”

MR. MONK: My lord, that is a pamphlet that is attached. It is quite a
30 lengthy regulation. We will have to in argument refer to various portions of it, but I think it is sufficient at this point to say we put it all in, and we refer to a definition of an order under that regulation on page 2.

“(r) ‘order’ means any order of the Board, including ‘Instructions to the Trade’ made or given under the authority of these regulations.”

THE COURT: Yes.

Opening—Discussion of Counsel

MR. MONK: And I would call attention to part 3 which was revoked by 1292, and there was a new part substituted by 1292 which I will read later on—perhaps I should say amended.

THE COURT: Yes.

(Mr. Monk continues reading).

“9. On the 25th of March, 1947, the Governor General in Council passed Order-in-Council P.C. 1112 of 1947, copy of which is hereto annexed as exhibit 3.”

10 MR. MONK: My lord, this is the Order-in-Council which extends the operation of the National Emergency Transitional Powers Act. We will put it all in. It was passed upon addresses of the Senate and the House of Commons pursuant to the terms of the National Emergency Transitional Powers Act, and extended the Act in force to the 15th day of May, 1947. The Order is dated the 25th day of March, 1947. This document will be referred to in detail in argument and therefore I am not going into more detail now.

THE COURT: Yes.

(Mr. Monk continues reading).

20 “10. On the 3rd day of April, 1947, the Governor General in Council passed Order-in-Council No. P.C. 1292 of 1947, copy of which is hereto annexed as exhibit 4”.

MR. MONK: My lord, I turn to exhibit 4 and put the whole of the order in as part of our case. Without dealing with the preamble or other portions of it, section 22 of the order—before I turn to 22, this order revoked part 3 of the Western Grain Regulations, and substituted this new part 3 for it.

THE COURT: Yes.

MR. MONK: The new part 3, section 22, reads:

30 “22. All oats and barley in commercial positions in Canada, except such oats and barley as were acquired by the owner thereof from the Canadian Wheat Board or from the producers thereof on or after the eighteenth day of March, nineteen hundred and forty seven, are hereby vested in the Canadian Wheat Board.”

You will note “previous maximum price” means with respect to barley, 64¾ cents per bushel basis Fort William.

THE COURT: It is (e) that applies?

Opening—Discussion of Counsel

MR. MONK: Yes. We are putting the whole order in. The order then provides for the cancellation of trading contracts and for the payment by people who had oats or barley on the 17th day of March and who sold them prior to the coming into force of this order, for the payment by them of a sum equal to the difference between the previous maximum price and their sale price.

Section 26 then clarifies any contract in force at the date, and the rest of the order deals with exports, equalization payments, oats and barley stabilization fund, barley adjustment payment, and sections 34 and 35 deal with the
10 producers' participation in surplus.

Section 36 is directly in issue in this action.

"36. (1) For the purpose of giving effect to this part, the Board may, by order

(a) direct that any contract or agreement entered into prior to the coming into operation of this section for the sale, purchase, handling, shipment or storage of oats or barley shall be terminated or varied and prescribe terms and conditions on which such termination or variation shall be made;

(b) require any person to do any act or thing necessary to terminate, close out, clear or cancel by the sale, purchase or delivery of oats or barley any
20 contract or agreement for the sale or purchase of oats or barley negotiated on or through any futures market in Canada; and

(c) require any person to deliver to the Board any documents of title relating to, or documents entitling any person to delivery of, oats or barley vested in the Board by section twenty-two, that he has in his custody, possession or control.

(2) In this section oats and barley include products and the powers conferred on the Board by this section in respect of oats and barley shall extend to and may be exercised by the Board with respect to products."

(Mr. Monk continues reading from Statement of Facts).

30 "11. On April 7th, 1947, The Canadian Wheat Board issued instructions to the trade No. 74, copy of which is hereto annexed as exhibit 5."

MR. MONK: It is to be remembered that instructions to the trade is an order under these regulations.

THE COURT: Yes.

MR. MONK: I will put all of exhibit 5 in.

"Pursuant to the powers vested in it by Order-in-Council P.C. 1292 of April 3rd, 1947:

Opening—Discussion of Counsel

(1) The Board hereby orders and directs all companies having in their custody, possession or control warehouse receipts or other documents of title covering oats and barley of the categories listed hereunder, as of the close of business, Saturday, April 5th, 1947, to deliver forthwith to the Board the said warehouse receipts or other documents of title. Settlement will be made by the Board for the grain covered by the said warehouse receipts or other documents of title in accordance with the terms of Order-in-Council P.C. 1292. Deliveries should be accompanied by detailed invoices.

10 Categories of oats and barley covered by this requirement are as follows:

(a) Oats and barley in terminal positions in Canada upon which the company has paid or is obligated to pay special selection and/or diversion premiums, or which have been specially selected or binned for the purpose of obtaining premium prices at time of sale, or otherwise.

(b) Oats and barley in terminal positions in Canada of which the company has custody, possession or control for the account of non-residents of Canada.

(c) All other oats and barley in terminal positions in Canada which have not previously been adjusted with the Board either by resale to the company
20 by the Board or otherwise.

(2) The Board hereby orders and directs that any contracts entered into prior to the coming into operation of Order-in-Council P.C. 1292 for the sale, purchase, handling, shipment or storage of oats and barley of the categories referred to in this instruction shall be hereby terminated and are of no further force or effect.

(3) The Board hereby directs that in cases where the company has in its custody, possession or control oats and barley covered by warehouse receipts or other documents of title which are in the possession of non-residents of Canada, it is required hereby to report full details as to the quality, quantity
30 and location of such stocks to the Board forthwith.

This instruction does not cover stocks of barley, other than seed, held by or for the account of, Canadian maltsters or manufacturers of pot and pearl barley.

Yours very truly,

THE CANADIAN WHEAT BOARD

Approved for the Board by GEO. McIVOR,
Chief Commissioner."

Opening—Discussion of Counsel

(Mr. Monk continues reading from Agreed Statement of Facts).

“12. Under date of April 14, 1947, the said Jeremiah J. Nolan wrote to the said Hallet and Carey Limited a letter, copy of which is hereto annexed as exhibit 6.”

MR. MONK: My lord, we do not put that in as part of our case.

THE COURT: I understand; it can go in and it is available to all parties. They are admitted facts and counsel have the right to make such argument upon their relevancy as they see fit. But this is the record.

10 MR. MACAULAY: Yes, I think my friend should read it as part of the Statement of Facts which he is putting in.

MR. MONK: I have no objection to reading it.

THE COURT: This is the strenuous letter.

MR. MONK: This is semi-speech.

“Gentlemen:

In view of the statements which your Mr. Powell has made to me over long distance telephone, I wish to put my position plainly before you so that you will understand the risks which are involved if you disobey the instructions I have given you.

20 About March 17th you informed me that The Canadian Wheat Board was taking over my 40,000 bushels of No. 3 C.W. 6 row barley, which I have in store at Fort William and that the Board would pay me a price arbitrarily fixed without consultation with me of 64¾¢ per bushel which, as you know, is less than my cost, and would leave me out of pocket approximately \$7,500 carrying charges which I have incurred in connection with this grain.

Upon inquiry it was revealed that there was no statutory authority for this attempt by The Canadian Wheat Board to take my property and that they said that they were basing their action upon a statement of Government policy made in the Canadian Parliament on March 17th by the Minister of Agri-
30 culture.

Although my knowledge of Canadian constitutional principle is not extensive, I felt that the Board's action was illegal. It transpires that I was right, but you now inform me that the Board has put forward a new demand upon you for this barley and has directed you to deliver up my documents of title thereto. You say the Board now bases its claim upon a new ground; namely, an Order-in-Council passed at Ottawa on April 3rd last.

Opening—Discussion of Counsel

I cannot believe that Canadian law will support this arbitrary totalitarian action of the Wheat Board and it is my view that the Board cannot substantiate illegal demands by subsequent Orders-in-Council, nor do I believe that the Canadian Government approves the confiscation of the property of its citizens or of foreigners trading in Canada who have acquired property in good faith. Such action does violence to principles which I feel are still deeply held and respected in your country as well as mine.

I have other honestly acquired property in Canada and I fear that if a
10 Board can, without discussion, confiscate my grain, then no foreign held assets are safe, and despite the inconvenience and expense to which this matter will put me, I cannot submit to this totalitarian technique without a protest.

I object to the Board's taking my grain at any price. I feel that its action does not reflect considered Canadian Government opinion and is a deplorable step in bureaucratic confiscation which is unprecedented in times of peace. It is my view that this sort of thing can only damage Canada's trading reputation among the few remaining countries which still respect civil liberties.

I challenge the action of the Canadian Wheat Board entirely and I intend
20 to contest in the Canadian courts the constitutionality of the legislative enactments upon which the Board purports to base its actions. I forbid you to deliver to The Canadian Wheat Board my documents of title to the above mentioned barley, which documents you hold as my agents and I forbid you to deliver to the Board the above mentioned barley. Should you do either of these things, I shall hold you liable in damages.

Yours truly,

JEREMIAH J. NOLAN.

302 Board of Trade Building
141 West Jackson Blvd.,
Chicago 4, Illinois."

30 *(Mr. Monk continues reading from the Agreed Statement of Facts).*

"13. Under date of April 18, 1947, Aikins, Loftus, MacAulay & Company solicitors for the said Jeremiah J. Nolan wrote Hallet and Carey Limited a letter, copy of which is hereto annexed as exhibit 7.

"We act on behalf of Mr. Jeremiah J. Nolan of Chicago, Illinois. Mr. Nolan is the owner of 40,000 bushels of No. 3 C.W. 6 row barley which is in

Opening—Discussion of Counsel

store at Fort William. As Mr. Nolan's agent, you are at present holding the documents of title to this barley.

You have advised Mr. Nolan that The Canadian Wheat Board has, in Instructions to Trade 74, directed that the documents of title to this barley be delivered to the Board.

Mr. Nolan takes the position that the Board's Instructions to Trade No. 74 is invalid as is likewise Order-in-Council P.C. 1292 upon which it purports to be based.

10 Mr. Nolan intends to contest the constitutional validity of this legislation.

On behalf of Mr. Nolan we must advise you not to deliver to The Canadian Wheat Board his documents of title to the barley, or the barley itself.

Yours truly,

AIKINS, LOFTUS, MACAULAY & COMPANY."

(Mr. Monk continues reading from Agreed Statement of Facts).

"14. Under date of May 27, 1947, The Canadian Wheat Board served an order upon Hallet and Carey Limited, copy of which order is hereto annexed as exhibit 8."

"THE CANADIAN WHEAT BOARD
INSTRUCTIONS TO THE TRADE

20

To: MESSRS. HALLET AND CAREY LIMITED

O R D E R

Whereas certain stocks of oats and barley vested in The Canadian Wheat Board by Order-in-Council P.C. 1292 of the 3rd day of April, 1947, and the documents of title relating thereto have not been delivered to The Canadian Wheat Board;

The Canadian Wheat Board, pursuant to the powers conferred upon it by the said Order-in-Council doth hereby order:

30 That on or before the 29th day of May, 1947, you do deliver to The Canadian Wheat Board all stocks of oats and barley in your possession vested in the Canadian Wheat Board by the said Order-in-Council and all warehouse receipts or documents of title relating thereto; and, without limiting the generality of the foregoing, the following certificates and warehouse receipts:

Opening—Discussion of Counsel

TERMINAL	Warehouse Receipt Number	Number of Bushel of Barley	Storage Date
Manitoba Pool	12677	612-14	Dec. 2/46
Manitoba Pool	12676	1,000-00	Dec. 2/46
Manitoba Pool	12534	1,757-34	Dec. 7/46
Manitoba Pool	12573	1,836-32	Dec. 9/46
Manitoba Pool	12634	1,971-42	Dec. 10/46
10 Manitoba Pool	12788	2,015-10	Dec. 12/46
Manitoba Pool	12914	1,806-22	Dec. 16/46
Manitoba Pool	12980	1,958-16	Dec. 18/46
Canadian Consolidated	1661	1,930-10	Dec. 20/46
Fort William	3102	111-12	Dec. 28/46
Manitoba Pool	13974	2,028-26	Dec. 30/46
Manitoba Pool	13512	1,867-14	Jan. 3/47
Manitoba Pool	13632	1,840-30	Jan. 8/47
United Grain Growers	26540	1,833-06	Jan. 10/47
Manitoba Pool	13802	2,207-14	Jan. 13/47
20 Manitoba Pool	13931	1,773-46	Jan. 16/47
Manitoba Pool	14078	9,479-08	Jan. 21/47
L.S.C.A. Transfer Certificate	3747	3,970-00	Nov. 30/46

And take further notice that payment for the said stocks will be made to you pursuant to the terms of the said Order-in-Council.

Dated this 27th day of May, 1947.

THE CANADIAN WHEAT BOARD

GEORGE H. McIVOR, *Chief Commissioner*

L. M. ARNOLD, *Member.*"

The COURT: This is the first time Hallet & Carey got specific instructions 30 about these warehouse receipts; previously they got Instructions to the Trade generally?

Mr. MONK: Yes, this is the first direct order to Hallet & Carey.

Mr. MACAULAY: There had been litigation prior to this time by reason of Instructions to the Trade. Hallet & Carey had made application for an interpleader order prior to the date of the Instructions to them. The matter was before the Court in April.

Mr. MONK: My recollection is that is so, my lord.

Mr. MACAULAY: It was following the interpleader proceedings that the definite instructions were given.

Opening—Discussion of Counsel

Mr. MONK: The Board advised Hallet & Carey that no proceedings would be taken to obtain possession of the barley during the pendency of the interpleader proceedings, and this order was issued after the interpleader proceedings were disposed of.

The COURT: Earlier Instructions to the Trade did get to Hallet & Carey, no question about that.

Mr. MACAULAY: No question about that. I am going to suggest when he gets through reading this statement of facts he puts in the Instructions to the
10 Trade which have a bearing on this matter.

Mr. MONK: There may be some argument about the documents admissible, but there is no doubt previous Instructions to the Trade were circulated to all the Trade and we believe Hallet & Carey got a copy of it.

The COURT: We have Instructions No. 74; you say there were earlier?

Mr. MACAULAY: Instructions 59 to 74, eight of them had to deal with oats and barley, and 59 being the one referred to in Nolan's letter which had been communicated to him by Hallet & Carey. My position is 59 has to deal with this particular matter. All the other Instructions to the Trade between 59 and 74 should be submitted to the Court.

20 Mr. MONK: We object to those going in. We do not deny they were issued.

The COURT: You say they are not relevant. Mr. Monk is in control of his own case and he doesn't have to put them in, but you can put them in later on, Mr. MacAulay.

(Mr. Monk continues reading from Agreed Statement of Facts.)

"15. On or about the 27th day of May, 1947, The Canadian Wheat Board wrote to Manitoba Pool Elevators a letter, copy of which is hereto annexed as exhibit 9. A letter in identical terms was written on the same date by The Canadian Wheat Board to the Fort William Elevator Company Limited, Canadian Consolidated Grain Company Limited and to United Grain Growers,
30 Terminal Division."

"As you are aware, certain stocks of oats and barley were vested in The Canadian Wheat Board by Order-in-Council P.C. 1292 of the 3rd day of April, 1947, pursuant to the terms of the said order.

Opening—Discussion of Counsel

The Canadian Wheat Board has received delivery of substantially all of the oats and barley affected by the said order but there remains a small amount of barley which has been vested in the Board by the terms of the said Order-in-Council and has as yet not been delivered to it. This barley is represented by the following warehouse receipts and certificate:

TERMINAL	Warehouse Receipt Number	Number of Bushels of Barley	Storage Date
Manitoba Pool	12677	612-14	Dec. 2/46
Manitoba Pool	12676	1,000-00	Dec. 2/46
10 Manitoba Pool	12534	1,757-34	Dec. 7/46
Manitoba Pool	12573	1,836-32	Dec. 9/46
Manitoba Pool	12634	1,971-42	Dec. 10/46
Manitoba Pool	12788	2,015-10	Dec. 12/46
Manitoba Pool	12914	1,806-22	Dec. 16/46
Manitoba Pool	12980	1,958-16	Dec. 18/46
Canadian Consolidated	1661	1,930-10	Dec. 20/46
Fort William	3102	111-12	Dec. 28/46
Manitoba Pool	13974	2,028-26	Dec. 30/46
Manitoba Pool	13512	1,867-14	Jan. 3/47
20 Manitoba Pool	13632	1,840-30	Jan. 8/47
United Grain Growers	26540	1,833-06	Jan. 10/47
Manitoba Pool	13802	2,207-14	Jan. 13/47
Manitoba Pool	13931	1,773-46	Jan. 16/47
Manitoba Pool	14078	9,479-08	Jan. 21/47
L.S.C.A. Transfer Certificate	3747	3,970-00	Nov. 30/46

We are writing this letter to notify you that the Board has issued an order that the said barley and the said certificate and warehouse receipts relating thereto be delivered to the Board as the Board is the owner of the barley represented by the said documents. These documents should not be
30 honored unless presented by or through The Canadian Wheat Board.

Yours very truly,

GEORGE H. McIVOR, *Chief Commissioner.*

Mr. MONK: A similar letter was written to each of the warehousemen.

The COURT: The order was exhibit 8 to the Brief?

Mr. MONK: Yes, the last preceding exhibit.

(Mr. Monk continues reading from Agreed Statement of Facts.)

"16. Under date of May 28, 1947. Fillmore, Riley and Watson, solicitors for Hallet & Carey Limited, wrote a letter to Henry B. Monk, solicitor for The Canadian Wheat Board, copy of which is hereto annexed as exhibit 10."

Opening—Discussion of Counsel

Mr. MONK: This letter is addressed to Messrs. Morkin & Monk, but I received it on behalf of The Canadian Wheat Board.

“Our clients, Hallet and Carey Limited, have handed us the notice dated the 27th of May, 1947, served upon them yesterday by The Canadian Wheat Board.

As you know, I represent Hallet and Carey Limited and I should appreciate it if you would deal with me in connection with any matters arising out of the barley in question.

10 You are aware that my clients have been sued by Nolan for the possession of this barley, and the documents of title thereto. I am preparing a defence to this action in which I will raise your clients' claim and the legislation and Order-in-Council upon which it is based. My clients and I are well aware of the Board's claim to the barley and the documents of title. My clients' desire has been and is to divest itself of the property in question and leave the dispute to be settled between the Board and Nolan. In the recent proceedings before Mr. Justice Major only the attitude adopted by the Board prevented Hallet and Carey Limited from achieving this object, and only that attitude is responsible for my clients still being concerned in this matter.

20 In view of the position taken by the Board in the proceedings before Mr. Justice Major, I do not understand the Board's adding to the inconvenience and embarrassment of my clients by the serving of further notices, which, as I see it, merely repeat a demand already made and of which we are well aware. If there is a new purpose behind the recent notice, I think that in the circumstance you might disclose it to me.

I cannot advise my clients to deliver the barley or the documents of title to the Board any more than I could advise them to deliver the same to Nolan. You may consider that my clients would be adequately protected in delivering the barley and documents of title to the Board for the reason that if Nolan
30 succeeds in his action and obtains damages against my clients, the Board would rally to my clients' aid. The attitude of the Board throughout the proceedings before Mr. Justice Major gave no ground for anticipating cooperation from the Board in this matter.

This view is reinforced by the fact that while the Board and you are aware of the action that has been brought against my clients by Nolan, the Board's repeated demand for the barley is not coupled with any offer to cooperate.

Yours truly,

FILLMORE, RILEY & WATSON.”

Opening—Discussion of Counsel

(Mr. Monk continues reading from Agreed Statement of Facts.)

“17. Under date of September 26, 1947, Aikins, Loftus, MacAulay and Company solicitors for the said Jeremiah J. Nolan, wrote a letter to H. B. Monk, solicitor for The Canadian Wheat Board, copy of which is hereto annexed as exhibit 11.”

“We have been delaying further proceedings in this action in accordance with your request, but should like to make some progress in it soon. We understand you have in contemplation the bringing of an action by the Board
10 against the defendants in our action and perhaps also the warehousemen who have custody of the grain.

We think it will be agreed that the issues are squarely raised in the current action. Your client has the right to be heard in it and we are satisfied that it can be arranged for it to take as prominent a part as it desires in the current proceedings. If, however, it is thought that by bringing a separate action your client will have a better control of the presentation of its case, we shall accommodate the Board by waiting a further reasonable time.

In the event that an action is commenced on behalf of your client, it does seem to us that by adding the warehousemen the proceedings will be
20 complicated without assisting in the determination of the issues. It is not conceivable that if in the current action the decision is against the plaintiff, the Board would still have to take action against the warehousemen. If any doubt is felt on this score, we are prepared to obtain any assurance you might desire to set your client's doubts at rest.

We would appreciate hearing from you.

Yours very truly,

G. E. TRITSCHLER.”

(Mr. Monk continues reading from Agreed Statement of Facts.)

“18. Under date of September 30, 1947, Aikins, Lostus, MacAulay and
30 Company, solicitors for the said Jeremiah J. Nolan, wrote a letter to Manitoba Pool Elevators, copy of which is hereto annexed as exhibit 12. A letter in identical terms, but with appropriate change of reference, was written on the same date by Aikins, Loftus, MacAulay & Company to Canadian Consolidated Grain Company Limited, United Grain Growers Terminals Limited and to Fort William Elevator Company Limited.”

Opening—Discussion of Counsel

“Re Nolan vs Hallet & Carey (Warehouse Receipts Nos. 12677, 12676, 12534, 12573, 12634, 12788, 12914, 12980, 13974, 13512, 13632, 13802, 13931, 14078.

“As you are doubtless aware, Mr. Nolan has brought an action in the Court of King’s Bench in which he claims possession of certain barley and warehouse receipts from Hallet & Carey Limited. The above mentioned warehouse receipts, and the barley which is in your possession, are part of the property claimed in this action.

10 As you know, the Canadian Wheat Board also claims the same warehouse receipts and barley. The legislation upon which the Board bases its claim and the legal position of the Board are squarely challenged in the action, which is now ready for trial. In this action, the Board and the Attorney-General of Canada will be afforded an opportunity of being represented, and every question which is of interest to the Board and the Federal authorities can be effectively disposed of.

We have advised counsel for the Board that we see no reason for involving the warehousemen in the controversy. If the present action is decided against Mr. Nolan, there will be no need for the Board to take any action
20 against the warehousemen in order to get the barley. If the action should be decided in Mr. Nolan’s favor, we should not expect the Board to place any obstacle in the way of the warehousemen delivering the barley to the holder of the warehouse receipts.

Our purpose in writing to you is to inform you that Mr. Nolan challenges the position taken by the Board, and that he is contesting in our courts the constitutionality of the legislative enactments upon which the Board purports to base its claims. We must advise you that should you deliver to the Board Mr. Nolan’s barley represented by the above mentioned warehouse receipts, you will be held liable in damages.

30 As we have said, it seems a pity that the warehousemen should be bothered in this matter at all, but as we understand some attempt may be made to persuade the warehousemen to ignore the warehouse receipts, we think it necessary to place our client’s position before you. We do so with some diffidence, as we feel it quite unlikely that the sanctity of the warehouse receipt principle will be jeopardized by any Canadian warehouseman, or that you would consider taking any step while the important question involved is before the courts.

Yours very truly,

AIKINS, LOFTUS, MACAULAY & COMPANY.”

Opening—Discussion of Counsel

The COURT: That is what is called the argument *ad hominem*.

(*Mr. Monk continues reading from Agreed Statement of Facts.*)

"19. Under date of the 1st day of October, 1947, Henry B. Monk, as solicitor for The Canadian Wheat Board, wrote a letter to Manitoba Pool Elevators, copy of which is hereto annexed as exhibit 13. A letter in identical terms was written on the same date by Henry B. Monk, as solicitor for The Canadian Wheat Board, to Canadian Consolidated Grain Company Limited, United Grain Growers Terminals Limited and Fort William Elevator Company 10 Limited."

"We are writing to confirm demands which we have made upon you for delivery of barley which you hold and which has been vested in the Board by the provisions of Order-in-Council P.C. 1292. As you are aware, the documents which have been issued and which are outstanding relating to this grain are the following:

TERMINAL	Warehouse Receipt Number	Number of Bushels	Storage Date
Manitoba Pool	12677	612-14	Dec. 2/46
20 Manitoba Pool	12676	1,000-00	Dec. 2/46
Manitoba Pool	12534	1,757-34	Dec. 7/46
Manitoba Pool	12573	1,836-32	Dec. 9/46
Manitoba Pool	12634	1,971-42	Dec. 10/46
Manitoba Pool	12788	2,015-10	Dec. 12/46
Manitoba Pool	12914	1,806-22	Dec. 16/46
Manitoba Pool	12980	1,958-16	Dec. 18/46
Canadian Consolidated	1661	1,930-10	Dec. 20/46
Fort William	3102	111-12	Dec. 28/46
Manitoba Pool	13974	2,028-26	Dec. 30/46
30 Manitoba Pool	13512	1,867-14	Jan. 3/47
Manitoba Pool	13632	1,840-30	Jan. 8/47
United Grain Growers Terminals	26540	1,833-06	Jan. 10/47
Manitoba Pool	13802	2,207-14	Jan. 13/47
Manitoba Pool	13931	1,773-46	Jan. 16/47
Manitoba Pool	14078	9,479-08	Jan. 21/47
L.S.C.A. Transfer "Cert."	3747	3,970-00	Nov. 30/46

As we advised you verbally, under the provisions of P.C. 1292, the physical barley is vested in The Canadian Wheat Board and the Board is empowered to order and has ordered that the documents relating to such grain 40 be delivered to it. We must accordingly demand that you make delivery of the portion of the above mentioned barley which you hold to the Board forthwith

Opening—Discussion of Counsel

by acknowledging that you hold the same for the account of the Board only or by issuing to the Board warehouse receipts relating to the same.

Yours truly,
HENRY B. MONK, *Solicitor.*"

(Mr. Monk continues reading from Agreed Statement of Facts.)

"20. Under date of the 3rd day of October, 1947, Messrs. Scarth and Honeyman, as solicitors for the Manitoba Pool Elevators, wrote a letter to The Canadian Wheat Board, a copy of which is annexed as exhibit 14."

10 "Manitoba Pool Elevators has forwarded to us your letter to them under date of October 1st, 1947, demanding delivery of the barley held in store by them under the Warehouse Receipts mentioned in your letter.

Our client has also received a letter from Messrs. Aikins, Loftus, MacAulay, Thompson & Tritschler under date of September 30th, 1947, referring to the same Warehouse Receipts mentioned in your letter of October 1st, and notifying our client that their client, Jeremiah J. Nolan, claims possession of the barley covered by the said receipts and the Warehouse Receipts themselves from Messrs. Hallet and Carey Limited. In that letter they further advise our client that Mr. Nolan has brought action in the Court of King's
20 Bench against Messrs. Hallet and Carey Limited for possession of the said barley and Warehouse Receipts, and challenges the right of your Board to them.

In the circumstances our client, as Warehouseman, is quite ready and willing to deliver up the barley to the party who may be found entitled by law to receive such delivery upon surrender to it of its outstanding Warehouse Receipts. Until the question of ownership is determined, we do not see how we can advise our client to jeopardize its position by making delivery out to either party.

Yours truly,
SCARTH & HONEYMAN."

30 *(Mr. Monk continues reading from Agreed Statement of Facts.)*

"21. Under date of the 6th day of October, 1947, United Grain Growers Terminals Limited wrote a letter to Henry B. Monk, as solicitor for The Canadian Wheat Board, a copy of which is annexed as exhibit 15."

"Re: Warehouse Receipt 26540 and P.C. 1292.

"We have yours of the 1st instant. We have also had a letter from the solicitor of Mr. J. J. Nolan insisting upon his right to possession of the barley

Opening—Discussion of Counsel

represented by the above described warehouse receipt. That letter makes it clear that Mr. Nolan is contesting your right to this grain and the legislative authority under which your claim is made.

It is obvious that there is an issue which must be determined by the Courts and until it is so settled we would not be justified in making delivery of the grain to either complainant. We must, therefore, continue to hold the grain with our undertaking to deliver it to whichever complainant the Court decides is entitled to it.

10

Yours truly,

J. E. BROWNLEE,

Vice-President and Acting General Manager."

(Mr. Monk continues reading from Agreed Statement of Facts.)

"22. Under date of the 8th day of October, 1947, Cecil B. Philp, as solicitor for the Fort William Elevator Company Limited, wrote a letter to The Canadian Wheat Board, copy of which is hereto annexed as exhibit 16."

"Your letter of October 1st to The Fort William Elevator Company Limited, 252 Grain Exchange Building, Winnipeg, Manitoba, relevant to Order-in-Council P.C. 1292, and your demand as therein set out respecting
20 the grain as noted has been referred to me.

My clients have also forwarded to me a letter they received from Messrs. Aikins, Loftus, MacAulay & Company under date of September 30, 1947, in which they notify my clients that a client of theirs, J. J. Nolan, makes a claim for possession of the same grain and that he has started an action which is now pending in our Court of King's Bench relevant to same.

My client takes the position that it is a warehouseman and is ready, willing and able to deliver the grain to the party who is properly entitled by law to receive delivery thereof, and upon delivery to it of the warehouse receipts covering the grain in question.

30 Taking the whole matter into consideration I cannot advise my client to make the acknowledgment as demanded by you until the question of ownership is finally decided.

Yours truly,

CECIL B. PHILP."

Opening—Discussion of Counsel

(Mr. Monk continues reading from Agreed Statement of Facts.)

"23. The prices of No. 3 C.W. Six-row barley basis Fort William/Port Arthur or Vancouver on the dates hereinafter set out were as follows :

March 17th, 1947	64 ³ / ₄ ¢ per bushel
April 3rd, 1947	93¢ " "
September 30th, 1947	93¢ " "
October 1st, 1947	93¢ " "

which were the ceiling prices on the said dates.

10 24. The storage rates incurred on the said barley since 17th March, 1947, have been at the rate of 1/30th of one cent per bushel per day.

25. Neither the said barley nor the said documents of title thereto referred to in paragraph (6) hereof have ever been delivered to The Canadian Wheat Board.

26. On April 3rd, 1947, the said Nolan was indebted to Hallet and Carey Limited for storage and carrying charges since July 31st, 1943, for which Hallet and Carey Limited claims a lien on the said barley and the said documents.

27. The Canadian Wheat Board declined to pay storage or carrying 20 charges on the said barley.

28. No storage charges were tendered or paid to any of the defendants referred to in paragraph 2 hereof, relating to any portion of the said barley.

29. That on or about the 14th day of September 1938, The Board of Grain Commissioners made Regulation No. 1, a copy of which is hereto annexed as exhibit 17."

Mr. MONK: Regulation No. 1 brought all of the Grain Commissioners' Regulations in. My clients make no particular reference to them.

"30. That on or about the 30th day of December, 1946, the Board of Grain Commissioners made Regulation No. 38, a copy of which is hereto 30 annexed as exhibit 18."

Mr. MONK: I would also put that in on the same basis.

"31. No regulation or Order-in-Council referred to herein has been revoked."

Mr. MONK: I think we should add to that, except as indicated in 1292. I think we all overlooked the fact that part 3 was amended.

Opening—Discussion of Counsel

The COURT: Yes, that is obvious on the face of it.

Mr. MONK: Then this Agreed Statement of Facts is dated the 20th day of March, A.D. 1948, and signed by counsel for the parties.

Mr. MONK: That is the case for the plaintiff, my lord.

The COURT: Have counsel for defendants agreed on which order they shall proceed?

Mr. FILLMORE: As Nolan is now a co-defendant, in view of my client's position, I will ask Mr. MacAulay and Mr. Tritschler to proceed. I understand
10 they will tender certain evidence which they can tender on behalf of Hallet & Carey Limited as well.

Mr. MACAULAY: I am suggesting to my friend since Instructions to the Trade 59, 60, 61, 62, 63, 64, 68 and 74 are relevant—they were issued by his clients; they have to deal with oats and barley; they have to deal with the barley in question in this action—and since under the Order-in-Council Instructions to the Trade have the effect of an Order, and since these Orders-in-Council were pleaded against us in our action taken against Hallet & Carey to recover the barley, he should put those before the Court.

The COURT: Unless he voluntarily does so I can't direct him to.

20 Mr. MACAULAY: I realize that. I think he should voluntarily do so.

Mr. MONK: I won't voluntarily put them before the Court, as I feel they are not relevant. I do not wish to put them in as part of my case. If my friend wishes to tender them we are prepared to admit that the Instructions to the Trade were duly issued by the Board and were circulated. Our objection is based only on relevance and admissibility. Do I understand my friend is tendering them to the Court as part of his case? He has copies of them.

Mr. MACAULAY: Yes, I have copies of them. I am calling the witness, in any event. I will call Mr. Hand of Hallet & Carey. This witness is called on behalf of Hallet & Carey Limited and the defendant Jeremiah J. Nolan.

Albert Henry Hand for Defendants—Direct Examination

ALBERT HENRY HAND, being first duly sworn, testified as follows:

Direct Examination by Mr. MacAulay:

Q. What is your occupation, Mr. Hand?—A. Secretary-Treasurer of Hallet & Carey Limited.

Q. In that capacity you were in charge of stocks and invoices? You supervise the stocks and invoices of Hallet & Carey?—A. That is right.

Q. How long have you been in the grain business?—A. Approximately thirty years.

10 Q. How long have you been with Hallet & Carey Limited?—A. Twenty-three years.

Q. In your capacity as Secretary-Treasurer of Hallet & Carey Limited you have under your control Instructions to the Trade received from The Canadian Wheat Board?—A. That is right.

Q. And these Instructions to the Trade are contained in one file?—A. They are, yes.

Q. And that is the file?—A. Yes.

Mr. MONK: You intend to put in 59 and subsequent?

Mr. MACAULAY: Yes.

20 Mr. MONK: I raise an objection to the admissibility of this evidence on these grounds. This action deals and will turn on the validity or invalidity of Order-in-Council 1292. One of the questions that may be at issue before your lordship is the purpose of the Order, as set out in the preamble of that Order. These Instructions to the Trade which my friend is producing were issued by The Canadian Wheat Board prior to the date of the Order-in-Council. They run in date from March 17 down to April 3. Attached to them are excerpts from Hansard, from statements made in the House of Commons.

By the Court:

Q. Who were those attached by ?

30 Mr. MONK: The Canadian Wheat Board made these attachments and circulated them. My lord, our contention is raised on behalf of the Attorney General of Canada, and it is this, that what The Canadian Wheat Board may have thought or may have done prior to April 3 is not evidence against the Governor in Council, and as it is undoubted the statements in Hansard, or in the House of Commons, are not evidence of intention. The cases are quite clear,

Albert Henry Hand for Defendants—Direct Examination

and they could not be admitted. The mere fact that you have copied them does not thereby make them admissible against the Governor in Council or the Attorney General of Canada. My lord, the Supreme Court decided in the case of Gosselin vs The King, which you will find in 33 Supreme Court Reports, p. 255. This was a case in which it was attempted to adduce statements made in the House of Commons in an endeavor to indicate the purpose of an enactment.

The Chief Justice of the Supreme Court said: "I entirely concur in my
10 brother Davies' reasoning and conclusions upon the merit of the question involved in this appeal, and I have nothing further to add to his opinion which I have had the opportunity to peruse. I deem it expedient, however, to say a few words upon the question raised during the argument of the reference by counsel to the debates in Parliament for the purpose of construing any statute. Such a reference has always been refused by my predecessors in this Court and, when counsel in this case began to read from the Canadian Hansard the remarks made in Parliament when the Canada Evidence Act in question was under discussion, I did not feel justified in departing from the rule so laid down, though, personally, I would not be unwilling, in cases of ambiguity in
20 statements, to concede that such a reference might sometimes be useful."

Then he goes on to say that such statements are not admissible, and proceeds to deal at length on that point. Undoubtedly these statements would not be admissible in this action against the Attorney General of Canada to show the purpose of any enactment. I contend the mere fact that the Canadian Wheat Board before the passing of the Order-in-Council of its own volition issued certain orders and attaches thereto certain excerpts from Hansard, does not make it admissible against the Attorney General of Canada.

Mr. MACAULAY: There is no evidence that The Canadian Wheat Board did this on its own volition. The Canadian Wheat Board presumably took this
30 action as a result of instructions it received. My friend has taken the position that in other matters The Canadian Wheat Board is an emanation of the Crown, and these documents to which my friend is objecting are documents created by the Canadian Wheat Board, they are documents created by the plaintiffs in this action, who comes into this Court and asks for certain relief. If we were attempting to submit evidence of something which appeared in Hansard which my friend did not communicate to my clients and use as authority, or presumed authority, for what it was attempting to force Hallet & Carey to do, then there would be some argument, but here are extractions from Hansard coming from the plaintiff in this action. They originated these,

Albert Henry Hand for Defendants—Direct Examination

we did not. They sent them to us, and took a strong stand and dictated to all the traders they were bound from the date of the statement in Parliament. It is true they intimated what the policy was going to be in regard to oats and barley. Somebody might obtain an advantage. That statement is made in Parliament and the Order-in-Council does not appear for a couple of weeks, but they served notice on the public, and The Canadian Wheat Board served notice on the defendant what the Government policy was as stated on March 17. They sent the documents to us, and they attempted to bind us. I suggest
10 there is no question of their admissibility.

The COURT: Mr. Fillmore, anything to add?

Mr. FILLMORE: This is a very important matter, and if the evidence is not admitted, subject to objection it will comprise an argument which may go to the root of the whole issue. There are wider questions involved, as to whether the Court must shut its eyes and look straight ahead and consider only the bald documents. My instructions are that Order 59, and the document attached, do not purport to be extracts from Hansard, my instructions are they purport to be the Government policy on oats and barley as announced in Parliament in 1947. Then the Board goes ahead on its own and states what
20 the situation is, and what the Government policy is, and what their policy is, and what is going to happen. The point is a very important one, and I would suggest that the documents be admitted subject to objection, otherwise if we are going to argue the point further we are going to stop and argue the whole case right here and now, which I am prepared to do at any time.

The COURT: Do counsel for the warehousemen wish to take any part in this argument, either in that capacity or *amicus curiae*?

Mr. MACAULAY: These are not statements made in debate, they are statements of Government policy sent out by the plaintiff. I think if your lordship takes a look at the documents it becomes readily apparent what the
30 intention was behind it.

The COURT: Mr. MacAulay, is this correct, that the real and fundamental question is whether this Order-in-Council is *intra* or *ultra vires*?

Mr. MACAULAY: No, there are other issues which will become apparent as it proceeds, and which the Statement of Facts indicates.

The COURT: Assuming that the Wheat Board had given fifteen orders all of which were bad on the face of it, and then gave a sixteenth order that was

Albert Henry Hand for Defendants—Direct Examination

good, how would the giving of the fifteen unpopular orders affect the issue on the order that was good?

Mr. MACAULAY: It could affect it, as my friend, Mr. Fillmore, says,—I don't want to argue the case. My friend, Mr. Monk, said he was satisfied to have the documents go in subject to objection.

The COURT: He says they are not relevant.

Mr. MACAULAY: And the relevancy can only be determined if the whole matter is argued. I suggest that they go in subject to objection, and your lord-
10 ship can then determine their relevancy and give proper weight to Mr. Monk's objection.

The COURT: It is common ground they are documents that were given by the Wheat Board to Hallet & Carey.

Mr. MACAULAY: That is right, my lord.

Mr. MONK: And to all members of the Trade.

The COURT: This is a matter of very considerable importance, and if I am wrong I can be set right. I am going to admit them subject to your objection, Mr. Monk, and the question of relevancy will have to be determined by me
20 before the matter is finally disposed of. They may be relevant in part only, and again it will be a question of weight as well. I will allow them to be put in subject to your objection.

Mr. MACAULAY: You admit that Hallet & Carey received them?

Mr. MONK: We sent them to Hallet & Carey and we believe they received them.

The COURT: Should they be marked as one exhibit or as separate exhibits?

Mr. MACAULAY: I think they should be marked separately, my lord.

Mr. MONK: Yes, I think also they should be marked separately, because some of them are more relevant than others.

Mr. FILLMORE: That is an admission I am glad is on the record.

30 Mr. MONK: I should have said more nearly relevant than others.

Albert Henry Hand for Defendants—Direct Examination

(Instructions to the Trade No. 59 and Outline of Government Policy on Oats and Barley as Announced in Parliament Mar. 17, 1947, marked exhibit 2.)

“THE CANADIAN WHEAT BOARD
INSTRUCTION TO TRADE
No. 59

TO ALL COMPANIES AND DEALERS IN OATS AND BARLEY:
Gentlemen:

10 In accordance with the new Government policy announced in Parliament March 17th, 1947, regarding oats and barley (an outline of which is attached,) the Board issues the following instructions effective midnight, March 17th, 1947.

1. Advance Equalization Payments on oats and barley delivered and sold by producers to agents of the Board or to others on farm-to-farm and farm-to-feeder transactions are discontinued forthwith. All previous instructions concerning the advance equalization payments on oats and barley are hereby cancelled.

2. Support Prices on Oats and Barley; The Canadian Wheat Board will
20 maintain support prices on Canada Western Barley and Canada Western Oats as follows:

No. 1 Feed Barley—90¢ per bushel basis in store Fort William/Port Arthur.

(Prices for other grades to be announced later.)

No. 1 Feed Oats—61½¢ per bushel basis in store Fort William/Port Arthur.

(Prices for other grades to be announced later.)

3. Maximum Prices on Oats and Barley; On behalf of the Wartime Prices and Trade Board the maximum prices on oats and barley grown in
30 Western Canada are announced as follows:

Barley—93¢ per bushel, basis in store Fort William/Port Arthur or Vancouver.

Oats—65¢ per bushel, basis in store Fort William/Port Arthur or Vancouver.

4. Adjustment Payment on Barley; An adjustment payment of 10¢ per bushel will be made on barley delivered and sold between August 1st, 1946, and March 17th, 1947, inclusive, to producers within the “designated area” who have received or are entitled to receive the advance equalization payment in respect of the sale of such barley.

Albert Henry Hand for Defendants—Direct Examination

5. Take-over of Existing Stocks; All Western Oats and Barley in commercial channels in Canada as at midnight, March 17th, 1947, must be sold to the Canadian Wheat Board basis $51\frac{1}{2}\text{¢}$ per bushel for all grades of oats and $64\frac{3}{4}\text{¢}$ per bushel for all grades of barley, in store Fort William/Port Arthur or Vancouver.

This requirement includes oats and barley stocks in store and in transit and stocks sold but not delivered whether whole, ground or otherwise processed, or contained in prepared mixtures. A statement of all stocks on hand as at 10 March 17th, 1947, will be required. (Further details as to the manner in which this information is to be submitted will be furnished as soon as possible.)

6. Selling Prices for Board Stocks; Pending publication of Board selling spreads, it will be in order for holders of oats and barley taken over by the Board to sell reasonable quantities from these stocks for Board account to satisfy immediate local requirements for feed. Since a new subsidy for oats and barley used for feeding purposes is now payable by the Agricultural Supplies Board, such sales must be made at an advance in price of 10¢ per bushel in the case of oats and 25¢ per bushel in the case of barley, wherever stocks are in a position where the feed subsidy from the Agricultural Supplies Board 20 can be collected, and an adjustment must be made with The Canadian Wheat Board in respect of such sales. Conversely, wherever stocks have passed the position at which feed subsidy from the Agricultural Supplies Board can be collected, the price must not be increased and no adjustment need be made with the Board.

7. Outstanding Contracts and Export Commitments.

(a) Oats and Barley taken over by the Board at former ceiling prices will be sold back to the same handlers for domestic consumption at the new support prices, provided that :

1. Proof is furnished to the Board by the seller of a contract entered into 30 with his purchaser prior to March 18th, 1947.
2. Confirmation is submitted in writing by the buyer to the seller that he agrees to accept the new price basis and allow all other terms of contract to remain in effect.

(b) Sufficient oats and barley taken over by the Board at former ceiling prices will be sold back to exporters at the same price immediately in order that they may complete outstanding authorized export commitments.

Albert Henry Hand for Defendants—Direct Examination

(c) In the event of a purchaser refusing to accept the new increased price basis on a contract entered into prior to March 18th, the Board will take over such oats and barley at the former ceiling prices and allowances will be made for the purpose of taking care of such items as carrying charges in terminal positions, special selection premiums and other items which are considered, in the judgment of the Board fair and reasonable, always having regard to the terms of the original contracts.

8. Export of Oats and Barley; No whole or ground oats and/or barley
10 may be sold for export after midnight, March 17th, 1947, except by The Canadian Wheat Board.

Yours very truly,

THE CANADIAN WHEAT BOARD

*Approved for the Board by: W. C. McNamara
Assistant Chief Commissioner."*

Mar. 17, 1947.

Mr. MONK: I make the same objection to the statement of policy, my lord.

The COURT: Yes.

20 "OUTLINE OF GOVERNMENT POLICY ON OATS AND BARLEY
AS ANNOUNCED IN PARLIAMENT, MAR. 17, 1947.

1. Effective tomorrow, March 18th, the system of advance equalization payments will be discontinued and the Canadian Wheat Board will stand ready to buy all oats and barley offered to it at new support prices. In the case of barley these prices will be based on 90¢ for One Feed barley in place of the former support price of 56¢ in store Fort William/Port Arthur, and other grades at appropriate differentials to be fixed from time to time by the Wheat Board. In the case of oats the new support price will be based on 61½¢ for One Feed oats in place of the former support price of 40¢ in store Fort William/-
30 Port Arthur, and other grades at appropriate differentials to be fixed from time to time by the Wheat Board. These support prices will remain in effect until July 31st, 1948.

2. At the same time price ceilings for all grades will be raised in the case of barley to 93¢ and in the case of oats to 65¢ basis in store Fort William/-Port Arthur or Vancouver. The ceiling prices correspond with the support prices for the highest grades of barley and oats.

Albert Henry Hand for Defendants—Direct Examination

3. In order to avoid discrimination against producers who have already delivered barley during the present crop year, an adjustment payment will be made of 10¢ per bushel in respect of deliveries between August 1, 1946, and March 17, 1947, inclusive, thus raising the over-all returns to about 90¢ per bushel. As there is a loss in the barley equalization account for the 1946-47 crop year no further payments are to be expected in respect of barley delivered during the present crop year. The oats equalization account for the crop year 1946-47 will, however, remain open and net profits in that account if any will
10 be distributed later to producers who deliver oats during the period August 1, 1946, to July 31, 1947.

4. In order to avoid the fortuitous profits to commercial holders of oats and barley that would otherwise result from the action that has been described, handlers and dealers will be required to sell to the Wheat Board on the basis of existing ceilings of 64¾¢ per bushel for barley and 51½¢ per bushel for oats, all stocks in their possession at midnight tonight, March 17th. Under certain conditions these stocks will be returned to the holder for resale. Allowances will be made for the purpose of taking care of such items as carrying charges in terminal positions, special selection premiums, etc., which are
20 considered in the judgment of the Board fair and reasonable.

5. For the time being, because of the continuation of price ceilings on animal products, payments of 10¢ per bushel for oats and 25¢ per bushel for barley will be made within the same conditions as the 25¢ payment on wheat purchased for feeding purposes. The payment of these subsidies will have the effect of leaving the cost of these feed grains to the feeder approximately at their present levels.

6. The Wheat Board, either directly or through agents will become the sole exporter of oats and barley. Any exports by the Board will be from grain acquired by the Board under the price support plan and the new profits there-
30 from will be paid into equalization accounts for the benefit of producers for distribution.

It is necessary to make a fairly detailed statement of these changes so as to clarify the position of the various interests concerned, but, from the point of view of producers the important point is that they will now have an additional return of approximately 10¢ to 13¢ per bushel for all the barley they market from this date forward and several cents per bushel on the better grades of oats over and above total returns they have been receiving during the present crop year. In addition, producers will continue to receive any net profits realized by the Board as an additional payment at the end of the season.

Albert Henry Hand for Defendants—Direct Examination

Feeders, on the other hand, will be protected against any important increase in costs of the oats and barley they buy by appropriate subsidies until the release of the products they sell from ceiling price control. It will be observed that under this plan buyers and sellers may trade with each other without intervention of the Board, within the limits of the new floors and ceilings.

As has been indicated on previous occasions it is the policy of the Government to continue to pay freight on grain for feeding purposes and millfeeds 10 shipped East from Fort William/Port Arthur and West from Calgary and Edmonton into British Columbia until July 31st, 1948."

(General Instructions to Trade No. 60 dated March 18, 1947, produced and marked exhibit 3.)

“THE CANADIAN WHEAT BOARD
GENERAL INSTRUCTIONS TO TRADE

No. 60

Crop Year 1946 - 1947

TO ALL COMPANIES:

Gentlemen: *Re: Mixed Feed Oats, Whole or Ground or otherwise processed*

20 All Companies are requested to submit a detailed statement immediately covering Mixed Feed Oats, whole or ground; or otherwise processed, giving the following information:

	Whole	Ground	Otherwise Processed
(a) Stocks on hand			
(b) Open Purchases			
(c) Open Sales			
(d) Unfilled Export Permits			

In the case of (b) and (c), please show name of seller and purchaser, 30 together with individual amounts.

Very truly yours,

THE CANADIAN WHEAT BOARD

*Approved for the Board by: W. C. McNamara
Assistant Chief Commissioner.”*

March 18, 1947.

Albert Henry Hand for Defendants—Direct Examination

(Instructions to Trade No. 61 dated March 18, 1947, produced and marked exhibit 4.)

“THE CANADIAN WHEAT BOARD
INSTRUCTIONS TO TRADE

No. 61

Crop Year 1946 - 1947

TO ALL COMPANIES AND DEALERS IN OATS AND BARLEY:

Gentlemen: *Re: Oats and Barley Support Prices*

10 CANADA WESTERN OATS:

Further to our Instructions to Trade No. 59 of March 17th, 1947, the Board will support Canada Western Oats, basis in store Fort William/Port Arthur, at the following prices:

No. 1 C.W. Oats	65 cents per bus. until further notice
No. 2 C.W. Oats	65 cents per bus. “ “ “
Extra No. 3 C.W. Oats	64 cents per bus. “ “ “
No. 3 C.W. Oats	63 cents per bus. “ “ “
Extra No. 1 Feed Oats	63 cents per bus. “ “ “
No. 1 Feed Oats	61½ cents per bus. until July 31, 1948.

20 CANADA WESTERN BARLEY:

Further to our Instructions to Trade No. 59 of March 17, 1947, the Board will support Canada Western Barley, basis in store Fort William/Port Arthur, at the following prices:

No. 1 C.W. 6 Row Barley	93 cents per bus. until further notice
No. 2 C.W. 6 Row Barley	93 cents per bus. “ “ “
No. 1 C.W. 2 Row Barley	93 cents per bus. “ “ “
No. 2 C.W. 2 Row Barley	93 cents per bus. “ “ “
No. 2 C.W. Yellow Barley	92 cents per bus. “ “ “
No. 3 C.W. Yellow Barley	91 cents per bus. “ “ “
30 No. 3 C.W. 6 Row Barley	91 cents per bus. “ “ “
No. 1 Feed Barley	90 cents per bus. until July 31, 1948.

Very truly yours,

THE CANADIAN WHEAT BOARD

March 18, 1947.

*Approved for the Board by: W. C. McNamara
Assistant Chief Commissioner.”*

Albert Henry Hand for Defendants—Direct Examination

(Instructions to Trade No. 62 dated March 19, 1947, produced and marked exhibit 5.)

“THE CANADIAN WHEAT BOARD
INSTRUCTIONS TO TRADE

No. 62

Crop Year 1946 - 1947

TO ALL COMPANIES AND DEALERS IN OATS AND BARLEY:

Gentlemen: *Re: Outstanding Domestic Contracts Oats or Barley*

10 Section 7 (a) of Instructions to Trade No. 59 of March 17th, 1947, reads as follows:

Oats and Barley taken over by the Board at former ceiling prices will be sold back to the same handlers for domestic consumption at the new support prices, provided that:

1. Proof is furnished to the Board by the seller of a contract entered into with his purchaser prior to March 18th, 1947.
2. Confirmation is submitted in writing by the buyer to the seller that he agrees to accept the new price basis and allow all other terms of contract to remain in effect.

20 As support prices have not been announced for grades of oats lower than One Feed or for grades of barley lower than One Feed or for off grades of either grain (see Instructions to Trade No. 61, March 18th,) any grades of oats or barley lower than One Feed, including all off grades, taken over by the Board at former ceiling prices will be sold back to the same handlers for domestic consumption at 61½¢ per bushel in the case of oats, and 90¢ per bushel in the case of barley, provided that:

1. Proof is furnished to the Board by the seller of a contract entered into with his purchaser prior to March 18th, 1947.
 2. Confirmation is submitted in writing by the buyer to the seller that he
- 30 agrees to accept the new price basis and allow all other terms of contract to remain in effect.

This instruction does not apply to new sales made subsequent to March 17th, 1947.

March 19, 1947.

Yours very truly,

THE CANADIAN WHEAT BOARD

*Approved for the Board by: W. C. McNamara
Assistant Chief Commissioner.”*

Albert Henry Hand for Defendants—Direct Examination

(Instructions to Trade No. 63 dated March 19, 1947, produced and marked exhibit 6.)

“THE CANADIAN WHEAT BOARD
INSTRUCTIONS TO TRADE

No. 63

TO ALL COMPANIES AND DEALERS IN OATS AND BARLEY:

Dear Sirs:

10 *Re: Registered, Certified or Commercial Grades of Oats and Barley taken over by the Board March 17, 1947.*

All concerned are advised that stocks of Registered, Certified or Commercial Seed Oats and/or barley on hand in commercial channels as at midnight, March 17th, 1947, must be sold to The Canadian Wheat Board.

The Board is prepared to return such stocks to holders immediately upon payment of 13½¢ per bushel in the case of oats and 28¼¢ per bushel in the case of barley and the selling price of such oats and/or barley may be increased accordingly.

Yours very truly,

THE CANADIAN WHEAT BOARD

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*Approved for the Board by: W. C. McNamara
Assistant Chief Commissioner.”*

March 19, 1947.

(Instructions to Trade No. 64, dated March 20, 1947, produced and marked exhibit 7.)

“THE CANADIAN WHEAT BOARD
INSTRUCTIONS TO TRADE

No. 64

TO ALL COMPANIES:

Dear Sirs:

30 *Re: Oats and Barley taken over by the Board as at midnight, March 17, 1947.*

Holders of oats and/or barley taken over by the Board as at midnight, March 17th, 1947, and unsold as of that time, are advised that the Board will consider applications from such holders to repurchase the oats and/or barley taken over by the Board on the basis of the present ceiling prices of 65¢ in the case of all grades of oats and 93¢ in the case of all grades of barley.

Albert Henry Hand for Defendants—Direct Examination

Holders desirous of taking advantage of the above offer should communicate with the Board immediately giving particulars, and if confirmed by the Board, will be required to forward details in writing accompanied by a marked cheque for 28 $\frac{1}{4}$ ¢ per bushel for the quantity involved in the case of barley and 13 $\frac{1}{2}$ ¢ per bushel for the quantity involved in the case of oats.

Yours very truly,

THE CANADIAN WHEAT BOARD

*Approved for the Board by: W. C. McNamara
Asst. Chief Commissioner.*

10 March 20, 1947.

(Instructions to Trade No. 68, dated March 26, 1947, produced and marked exhibit 8.)

“THE CANADIAN WHEAT BOARD
INSTRUCTIONS TO TRADE
No. 68

TO ALL COMPANIES AND DEALERS IN OATS AND BARLEY:

Gentlemen:

The following grades of grain are excluded from the provisions of Instructions to Trade No. 59:

- 20 Mixed Feed Oats
 No. 3 C.W. Mixed Grain

These grades will therefore be excluded from the statement of stocks on hand as at March 17th, 1947, required by the Board in accordance with Para. 5 of the aforementioned circular.

Yours very truly,

THE CANADIAN WHEAT BOARD

*Approved for the Board by: W. C. McNamara
Asst. Chief Commissioner.*

March 26, 1947.

- Mr. MACAULAY: Instructions to Trade No. 74 is in as part of exhibit 1.
30 Those are all the Instructions that I consider relevant. There may be another exhibit relating to oats and barley, and if Mr. Monk asks me to put

Albert Henry Hand for Defendants—Direct Examination

them in, I will put them in. There are others referring to rape seed, but in that period these are the relevant ones.

The COURT: It is understood that exhibits 2 to 8 are admitted subject to Mr. Monk's objection.

Mr. MONK: And the attachment.

The COURT: That covers the whole exhibit.

(THE COURT ADJOURNED AT 12:30 p.m., March 22, 1948, to 2 p.m., THE SAME DATE.)

10 ·

2 p.m., March 22, 1948.

Mr. MACAULAY: My lord, I found that Order No. 69 was not in my file, and I asked Mr. Monk if he could get me a copy of it. He thought he could find a copy and be back before 2, and that is why he is not here.

The COURT: All right, Mr. MacAulay.

(The Court waited a few minutes for Mr. Monk to appear.)

Mr. MACAULAY: Order No. 74 is part of exhibit 1.

I find that Instructions Nos. 65 and 66 are the only other Orders referring to oats and barley and I think they should be before the Court so that the Court would know these are the only ones.

20 The COURT: What about 69?

Mr. MACAULAY: It had to do with wheat acreage quotas and I was going to indicate the nature of all the other Instructions to Trade.

Mr. MONK: There were other orders issued subsequently throughout the crop year, and from time to time, which dealt with other aspects of oats and barley trading in which the Board was interested, but they have no direct bearing on the matters in issue in this action. They are issued from time to time as the occasion arises under the Wheat Board Act.

Mr. MACAULAY: I was going to refer to them in sequence, and if there are any to which I do not refer Mr. Monk can indicate what they are.

30 The COURT: Very well.

Albert Henry Hand for Defendants—Direct Examination

(Instructions to Trade No. 65 dated March 20, 1947, produced and marked exhibit 9.)

“THE CANADIAN WHEAT BOARD
INSTRUCTIONS TO TRADE

No. 65

TO ALL COMPANIES:

Dear Sirs:

Re: Local Sales of Board Oats and/or Barley Ex Country Elevators

- 10** Effective immediately and until further notice, local sales ex country elevators of Board stocks of oats and/or barley will be made basis the Fort William spot price for the grade involved or the support price, whichever is the higher. With reference to Administrator's Order No. A2303, if March 19th, 1947, re Maximum Prices for oats and barley, companies are advised that they may add to these prices a diversion premium of not more than 1½¢ per bushel in the case of either grain. This is the gross margin allowable.

In the case of off-grades, and grades lower than No. One Feed oats or No. One Feed barley, the selling price will be the spot price or 61½¢ per bushel in the case of oats, and the spot price or 90¢ in the case of barley, whichever **20** is the higher in either case.

Companies are requested to instruct all elevator agents to this effect and to advise such agents that they must take steps to keep informed of the spot prices for these grains through the Daily Broadcast of the Market Quotation Service.

Yours very truly,

THE CANADIAN WHEAT BOARD

*Approved for the Board by: W. C. McNamara
Asst. Chief Commissioner.”*

March 20, 1947.

Albert Henry Hand for Defendants—Direct Examination

(Instructions to Trade No. 66, date March 20, 1947, produced and market exhibit 10.)

“THE CANADIAN WHEAT BOARD
INSTRUCTIONS TO TRADE
No. 66

TO ALL COMPANIES:

Dear Sirs:

Re: Shipping Instructions on Oats and Barley Held for Board Account

10 Oats and/or Barley taken over by the Board as at midnight, March 17th, 1947, may be shipped to Fort William/Port Arthur without reference to the Board, having due regard to shipping instructions issued by the Board from time to time with reference to wheat.

It must be understood, however, that Board stocks of oats and/or barley taken over at stations with a favorable Vancouver Export/Fort William freight differential may not be shipped to Coast terminals for export purposes unless such shipments have first been authorized by The Canadian Wheat Board's Calgary office.

20 Companies will be required to absorb the Vancouver Export/Fort William freight differential on oats and/or barley shipped to Coast terminals for export on Board authorization after midnight, March 17th, 1947. When completing delivery of such grain to the Board, an allowance for the freight differential involved must be shown on the delivery report.

The above does not apply to shipments of oats and/or barley to Coast terminals or elsewhere for domestic purposes. Companies requiring oats and/or barley to fill sales for domestic use in Western Canada (including B.C.,) or for all rail shipment to Eastern Canada, will be required to purchase such stocks from the Board prior to shipment.

Yours very truly,

30

THE CANADIAN WHEAT BOARD

*Approved for the Board by: W. C. McNamara
Assistant Chief Commissioner.”*

March 20, 1947.

Albert Henry Hand for Defendants—Direct Examination

Mr. MACAULAY: You have a copy of the other orders which were issued after this date.

Mr. MONK: I have them but not here.

Mr. MACAULAY: Instructions to Trade No. 70 I think my friend will admit had to do with durum wheat, spring and Alberta winter wheats.

Mr. MONK: Yes, my lord.

Mr. MACAULAY: Instructions to Trade No. 71 re grain shipments had nothing to do with oats and barley.

10 Mr. MONK: Grain includes oats and barley.

Mr. MACAULAY: My friend says grain includes oats and barley so I will put this in.

(Instructions to Trade No. 71 dated April 2nd, 1947, produced and marked exhibit 11.)

“THE CANADIAN WHEAT BOARD
INSTRUCTIONS TO TRADE
No. 71

TO ALL COMPANIES:

Dear Sirs:

20 *Re: Grain Shipments*

The Railways have advised us that they will make every effort to move all stocks of grain available in country elevators between now and the end of the present crop year.

As the volume of grain to be moved is very considerable, it will require the cooperation of all concerned if the Railways are to complete this movement by July 31st next. In order that the available Railway equipment can be used with maximum efficiency, it is requested that companies make sure their agents understand:

- 30 (1) That orders must be placed with the local Railway agents for sufficient cars to enable all stocks of grain on hand in the elevator, or annexes, to be shipped.

Albert Henry Hand for Defendants—Direct Examination

(2) That cars must be loaded promptly as they are supplied.

(3) That cars must be loaded to their maximum capacity.

It will be appreciated if you would notify your agents as above.

Yours very truly,

THE CANADIAN WHEAT BOARD

April 2, 1947.

*Approved for the Board by: W. C. McNamara
Assistant Chief Commissioner."*

Mr. MACAULAY: Instructions to Trade No. 72 deals with "The Necessity
10 of Increasing Wheat Stocks Country Elevators Manitoba and Saskatchewan,"
dated April 3, 1947.

Instructions to Trade No. 73 dated April 7, 1947, re shipping instructions
on Board wheat.

Instructions to Trade No. 74 is already before the Court.

Instructions to Trade No. 75 dated April 25, 1947, re rape seed, 1946-1947
crop.

Instructions to Trade No. 76 dated April 1948 is re shipment of Board
wheat, and a memo. attached urgency of shipment of Board wheat.

Instructions to Trade No. 77 dated May 8, 1947, re shipping instructions
20 on Board wheat.

Instructions to Trade No. 78 dated May 13, 1947, "New Provision for
Issuance of Emergency Wheat Receipts 1947."

Instructions to Trade No. 79 dated May 21, 1947, entitled re shipping
instructions on Board wheat.

Instructions to Trade No. 80 dated May 31, 1947, re delivery of rape seed
of producers.

Instructions to Trade No. 81 dated June 11, 1947, re shipping instructions
on Board wheat.

Instructions to Trade No. 82 dated July 18, 1947, re shipment of Board
30 wheat.

Instructions to Trade No. 83 dated July 24, 1947. I would ask my friend,
Mr. Monk, if this has anything to do with oats and barley.

Mr. MONK: It may have.

Mr. MACAULAY: I will put it in.

Albert Henry Hand for Defendants—Direct Examination

(Instructions to Trade No. 83, dated July 24, 1947, produced and marked exhibit 12.)

The COURT: That is also subject to Mr. Monk's objection.

"THE CANADIAN WHEAT BOARD
INSTRUCTIONS TO TRADE
No. 83

TO ALL COMPANIES:

Gentlemen:

10 The fiscal year of the Board ends on 31st July 1947, and in order to expedite the closing of the records it is essential that all debit notes to the Board covering charges for general expenses, such as postage, express on stationery, etc., payable by the Board as at 31st July, 1947, be presented as early as possible after that date. All other transactions relating to the 1946-47 crop year should also be completed as speedily as possible.

Your cooperation in this regard will be appreciated.

Yours very truly,

THE CANADIAN WHEAT BOARD

*Approved for the Board by: W. C. McNamara
Asst. Chief Commissioner."*

20 July 24, 1947.

Mr. MACAULAY: I take it July 31st is the end of the crop year and I think Mr. Monk will agree that completes the sequence of Instructions to Trade issued by the Wheat Board up to that date.

Mr. MONK: That is relating to grains which are in commercial channels in Canada. There are instructions issued to exporters and shippers. This is the series issued to the Line Companies.

Mr. MACAULAY: And would have to do with the taking over of oats and barley, and they constitute all the Instructions to the Trade in connection with the taking over of oats and barley pursuant to the various policies.

30 Mr. MONK: These are the only instructions issued on oats and barley; there were instructions issued on othe branches of the Trade.

Albert Henry Hand for Defendants—Direct Examination

Mr. MACAULAY: If there were any other instructions issued and Mr. Monk wants to put them in he is at liberty to do so.

A. H. HAND, recalled:

By Mr. MacAulay:

Q. What stocks of oats and barley did Hallet and Carey Limited hold on March 17, 1947?—A. In the case of oats we reported stocks of 758,509 bushels and 21 pounds; in the case of barley we reported to the Board a total of 815,729 bushels and 20 pounds, I might say here that the 815,000 bushels
10 includes 40,000 bushels belonging to Mr. Nolan.

Q. I presume you had open purchase contracts in addition to the figures you have given us?—A. In the case of barley, yes, we reported open purchase contracts of 299,623 bushels and 20 pounds.

Q. In what position were those oats and barley on March 17, 1947?—A. They were all in terminal position, that is, at the Lake Head.

Q. On or about March 17, 1947, did Hallet & Carey Limited receive a document entitled Instructions to the Trade No. 59?—A. We did.

Q. That was Instructions to Trade, No. 59, that you received?—A. Yes.

The COURT: That is exhibit 2?

20 Mr. MACAULAY: Yes, my lord.

Q. This document was produced from the files of Hallet & Carey Limited, exhibit 2?—A. That is true.

Q. And at the time it was received it had this document attached "Outline of Government Policy on Oats and Barley as Announced in Parliament March 17, 1947"?—A. Yes, that is as we received it.

Q. You heard the other exhibits 3 to 12 read to the Court?—A. Yes.

Q. Hallet & Carey Limited received those Instructions to Trade also on or about their respective dates?—A. That is true.

Q. Those were also produced from the files of Hallet & Carey?—A. That
30 is true.

Q. You are familiar with the content of those various instructions and have been ever since the date of their issue?—A. Yes.

Q. Are you familiar with the contents of Instructions to Trade No. 64 which has been filed as exhibit 7? Would you like to see the document?—A. I would, yes.

Q. (Mr. MacAulay hands exhibit 7 to witness.)—A. Yes.

Albert Henry Hand for Defendants—Direct Examination

Q. As a result of receiving Instructions 59 and 64 and the other Instructions to Trade, which have been produced here, what did Hallet and Carey do?—A. We compiled statements of our stocks and sent a check to the Wheat Board for the difference between the old and the new prices. In the case of barley there was a considerable amount allowed us for past carrying charges and so on.

Q. So there was an allowance made to Hallet & Carey Limited for carrying charges on special bin barley?—A. That is true.

10 Q. And on special bin oats?—A. We did not have any special bin oats.

Q. There was no allowance made in connection with carrying charges on Nolan's barley?—A. No.

Q. What was the maximum you paid to the Wheat Board on oats?—A. The maximum difference on oats was 13½ cents a bushel.

Q. What did that represent?—A. That is the difference between the old ceiling price of 51½ cents and the new ceiling price of 65 cents.

Q. When the Wartime Price and Trade Board permitted the increase in price ceiling did all grades of oats and barley go to the ceiling?—A. Yes, immediately.

20 Q. Do you remember what were the relationships between the ceiling fixed by the Wartime Prices and Trade Board and the world prices fixed for oats and barley?

Mr. MONK: I object to that. Was there a world price?

By Mr. MacAulay:

Q. The Minneapolis and Chicago prices, were they higher or lower?—A. They were considerably higher.

Q. So all grades of oats and barley immediately reached the ceiling prices and sold at ceiling prices from that time on?—A. Correct.

Q. When were the Wartime Prices and Trade Board ceilings raised?—30 A. I believe the date was October 22nd.

Q. No, I mean when the ceiling—the previous ceiling on barley was 64¾?—A. That is true.

Q. When was the ceiling increased?—A. I couldn't tell you.

Q. Was it increased before or after the receipt of Instructions to Trade No. 59 or simultaneously?—A. I think it was about the same time.

Q. Instructions to Trade indicate that the ceilings had been increased?—A. That is true.

Albert Henry Hand for Defendants—Direct Examination

Q. So it was on or about March 17, 1947?—A. Yes.

Q. And was this difference of 13½ cents a bushel represented by the difference between the old ceiling price of 51½ cents and the new ceiling price of 65 cents on oats?—A. That is right.

Q. What was the maximum paid on barley?—A. The maximum amount on barley was 28¼ a bushel.

Q. What does that represent?—A. The difference between the old price of 64¾ and the new ceiling price of 93 cents.

10 Q. Was that the amount of this check which Hallet and Carey delivered to the Wheat Board—give me the date of the delivery to the Wheat Board of the check.—A. In the case of oats a check was given to the Wheat Board on April 25, 1947; in the case of barley the check was sent on April 30, 1947.

Q. In computing the amounts of these respective checks you acted on Instructions to Trade No. 59 and 64 more particularly?—A. That is right.

Q. These exhibits 2 and 7?—A. Yes.

Q. Did you give us the amount of the checks?—A. No, I did not.

Q. Give us that.—A. In the case of oats our check was \$72,469.39; in the case of barley \$118,647.47.

20 The COURT: That was 13½ cents a bushel on oats and 28¼ cents on each bushel of barley.

By Mr. MacAulay:

Q. Those are the maximum figures?—A. Yes.

Q. The evidence was that all grain traded at the ceiling prices immediately afterwards but the adjustments depended on grade, or did they?—A. Yes, to a great extent they did.

Q. That is, a check for the difference between the old and new prices varied according to the grade of the oats and barley?—A. Yes.

30 Q. But the point you make was that immediately after the price ceilings were removed all prices went up to the ceiling prices.

Mr. MACAULAY: I wonder if your lordship has the matter correctly. Instructions to Trade No. 64 says: "Holders desirous of taking advantage of the above offer should communicate with the Board immediately giving particulars, and if confirmed by the Board, will be required to forward details in writing accompanied by a marked cheque for 28¼¢ per bushel for the quantity involved in the case of barley and 13½¢ per bushel for the quantity involved in the case of oats."

Albert Henry Hand for Defendants—Direct Examination

Q. Was it a straight 28¼ cents on each bushel of barley and 13½ cents on each bushel of oats, or did the adjustment vary according to grade?—

A. I would say that the price varied.

Q. From what to what on barley?—A. From 51½ to 61½, 63, and 65 cents.

The COURT: Exhibit 7 is definite instructions without reference to grades at all.

Mr. MACAULAY: Exhibit 7, Instructions to Trade No. 64, says: "Holders 10 of oats and/or barley taken over by the Board as at midnight, March 17, 1947, and unsold as of that time, are advised that the Board will consider applications from such holders to repurchase the oats and/or barley taken over by the Board on the basis of the present ceiling prices of 65¢ in the case of all grades of oats and 93¢ in the case of all grades of barley."

Q. That was the amount of the check in any event?—A. That is true.

Q. It represented an adjustment in price on all the oats and barley held by Hallet & Carey as at March 17, 1947, with the exception of the Nolan barley?—A. That is right.

Q. When the figures were in the course of preparation there was an 20 arrangement between you and the Wheat Board that you could deduct carrying charges on special bin barley?—A. In the case of barley, yes.

Q. As at what date? Carrying charges up to what date?—A. Up until March 17, 1947.

Q. From what time?—A. I can't give you a date on that, for the simple reason we carried barley for a considerable length of time.

Q. Was it from the time you purchased it in the first instance or you just can't give us that information?—A. Most of it from the time we purchased it. You are referring to special bin barley now, I presume?

Q. Special bin barley. Did Hallet & Carey turn over to the Wheat Board 30 as a result of these Instructions to Trade to which you have referred any oats or any barley?—A. No.

Q. All you did was to give an adjusting check?—A. That is true.

Q. You did not turn over any oats or any barley?—A. No.

Q. Did Hallet & Carey Limited have documents of title relating to these oats and barley referred to?—A. Yes, we did.

Q. Did you turn over any documents of title to the Wheat Board in connection with the stocks of oats and barley held by Hallet & Carey?—A. We turned over no documents.

Albert Henry Hand for Defendants—Direct Examination

Q. Why did you just give an adjusting check?—A. That was the manner in which the Wheat Board wanted it done, and presumably the same as all the rest of the holders of oats and barley did.

Q. You say that is the way they handled it with all holders of oats and barley, they just asked for a check for the difference?—A. As far as I know, yes.

Q. No grain was turned over and no documents turned over?—A. No.

Q. You are familiar with the contents of Order-in-Council 1292?—
10 A. Fairly well, yes.

Q. And the Instructions to Trade which have been filed here are the only Instructions Hallet & Carey received from the Wheat Board in regard to the turning over of oats and barley pursuant to the terms of Order-in-Council 1292?—A. As far as I know, yes.

Q. When was the next rise in the price of coarse grains?—A. That would be on the opening of the market on the Winnipeg Grain Exchange on October 22, 1947.

Q. The price ceilings were removed on oats and barley?—A. That is right, and trading resumed on the Winnipeg Grain Exchange in oats and
20 barley.

Q. Immediately the price ceilings were removed trading was commenced?—A. That is right.

Q. And on that day at what price did 3 C.W. 6 Row Barley trade?—
A. The first price I have got is October 23, the day after the market opened, and 3 C.W. 6 Row barley was \$1.22.

Q. That would be for future delivery?—A. No, for spot.

Q. What was the highest price oats traded on the same day, October 23?—
A. 2 C.W. oats, that is the top grade, was worth 87 cents.

Q. At the time price ceilings were removed on October 22, 1947, was there
30 any action taken by the Government or the Canadian Wheat Board similar to that in March 1947? That is, was any adjustment required to be made with the Canadian Wheat Board as there was in March and April 1947?—
A. No.

Q. Did the Board under Order-in-Council 1292 or the various Instructions filed as exhibits attempt to control supplies of oats and barley?—A. I would say no, as far as we were concerned.

Q. Once you gave them the check what did you do?—A. We still had the barley and carried on our business in the usual way.

Albert Henry Hand for Defendants—Direct Examination

Q. Prior to March 17, 1947, you had contracts for oats and barley I imagine?—A. That is right.

Q. Did you fill those contracts after March 17, 1947?—A. Yes.

Q. Did you accept new contracts from other customers after March 17, 1947?—A. Yes.

Q. You filled those contracts in the ordinary course of business?—A. That is right.

Q. That is, there was no control of your supplies of oats and barley at all; 10 once you gave this adjusting check you carried on business as usual.

Mr. MONK: This man is my friend's witness and he is being led quite substantially. I don't mind him being led on points not vital but I think he should be allowed to give his own evidence.

The COURT: Is this a matter about which there is a dispute?

Mr. MONK: Yes, there is a dispute about this particular point.

The COURT: If there is a dispute on that point I think you are leading, Mr. MacAulay.

Mr. MACAULAY: Very well, my lord.

By Mr. MacAulay:

20 Q. Did the Board under the Order-in-Council and under the various Instructions which have been filed as exhibits regulate the supplies of oats and barley?—A. No.

Q. Why do you say no?—A. Because the Wheat Board did not have the oats and barley in the first place; we had them and carried on our business in the usual way. There was one restriction, if you might call it that, and that was in respect of special bin barley, which was accumulated or held for the purpose of shipping to malsters. A restriction was put on that by the fact that we had to obtain a permit.

Q. That is, before and after this Order-in-Council you could only export 30 with the permission of the Board?—A. On the issuance of a permit.

Q. And before this Order-in-Council when you made an application for a permit was it given?—A. In most cases yes.

Q. And after the issue of the Order-in-Council did you make application for permits?—A. No.

Q. You say that this applied only to what kind of barley?—A. Malting.

Albert Henry Hand for Defendants—Direct Examination

Q. What percentage of your total supplies on hand on March 17, 1947, was represented by malting barley?—A. We showed 644,657 bushels and 34 pounds of special bin barley.

Q. Sold that special bin barley to malsters in Canada, or did you?—A. The biggest bulk of that went to the Canadian Malsters, yes

Q. Aside from malting barley did you or did you not after March 17, 1947, carry on your business without any supervision from the Board?—A. Yes.

10 Q. Did you or did you not carry on your business without any direction from the Board except insofar as malting barley was concerned?—A. Yes, with the one exception that they did ask that we try and distribute feed barley into Ontario and Quebec.

Q. Was it a suggestion?—A. Yes, they asked us to do that.

Q. Did you ever receive any communication from the Board inquiring if you had done that?—A. No.

Q. They made the request and that is all you heard of it, is that correct?—A. Yes, that is right.

Q. Was there any shortage of oats and barley on March 17, 1947?—A. No, I don't think there was.

20 Q. So far as barley was concerned what was the amount of your open contracts on March 17, 1947?—A. That is, for sale?

Q. Yes, open contract for sale?—A. On March 17th we showed an open sales contract of 945,292 bushels and 30 pounds.

Q. How much barley had you on hand?—A. Our stocks plus our open purchases amounted to 1,115,000.

By the Court:

Q. That is, the 815,000 and the 299,600?—A. That is right, that 1,115,000 includes the 40,000 belonging to Mr. Nolan.

By Mr. MacAulay:

30 Q. What was the only difference between the way you treated Nolan's barley and the way you treated other barley you had on hand in adjusting with the Wheat Board?—A. The only difference in that case was that on our own barley we paid the Wheat Board a check for the difference as shown in these invoices; in the case of Nolan's barley we did not, we sent no check on Nolan's barley.

Q. Why didn't you send a check on Mr. Nolan's barley?—A. It was Mr. Nolan's barley and his instructions to us were definitely to the contrary.

*Albert Henry Hand for Defendants—Direct Examination
and Cross Examination*

Q. Has Hallet & Carey been buying and selling oats and barley since March 17, 1947?—A. Yes.

Q. Have you always been able to buy all the supplies you wished?—A. Yes, we have been able to get enough.

Q. You have been able to fill all orders for oats and barley you have received?—A. Yes.

Mr. MACAULAY: That is all.

10 Mr. FILLMORE: No questions.

Cross-Examination by Mr. Monk:

Q. Mr. Hand, I think you said you have been in the grain business a considerable length of time?—A. That is true.

Q. How long have you been with Hallet & Carey?—A. For twenty-three years.

Q. Do you know how trading in oats and barley and the marketing was carried on previous to March 17th?—A. I have a fair idea, yes.

Q. There was a ceiling price in effect for some months previous to March 17th?—A. Yes.

20 Q. That was what price?—A. 51½ cents on oats, and on barley 64¾.

Q. There was a floor price or support price in effect?—A. Yes, I believe there was.

Q. Do you know what that was in respect to barley? This is before March 17th?—A. No, I am sorry I can't remember offhand.

Q. The Orders-in-Council that have been filed indicate that the floor price on barley was 60 cents for Canada Western 2 row or 3 row. Does that sound in accordance with your knowledge?—A. I imagine that is right; it sounds all right.

30 Q. So that prior to March 17th and prior to April 3rd barley was marketed between a floor price and a ceiling price?—A. No, I would say that they were trading at the ceiling price.

Q. But the Canadian Wheat Board at all times stood ready to buy it at the support price?—A. That is the idea.

Q. That is, if the price got down to the support price the Canadian Wheat Board would buy all that was offered at that price?—A. That is the idea, yes.

Q. It never did get down to the support price?—A. No.

Albert Henry Hand for Defendants—Cross Examination

Q. On or about March 17th there was a change in the system, and a new ceiling price was established; what was that new ceiling price on barley?—

A. 93 cents.

Q. Was there a new support price?—A. I believe there was. It was on the basis of 90 cents for 1 feed barley.

Q. And the price of 3 C.W. 6 row would be in excess of No. 1 feed?—

A. It would be as much or more, I believe about 93 cents.

Q. That is, the new floor price would be in excess of the old ceiling
10 price?—A. Yes.

The COURT: Does that mean that the support price and the ceiling price might be the same?

Mr. MONK: Conceivably, yes.

A. No.

The COURT: If the new ceiling price was 93, and the new support price was 90 cents on the basis of 1 feed barley, 3 C.W. might be 92 or 93. Don't you come into line?

Mr. MONK: The only differential is in grades, depending on demand.

The COURT: The support price might be as high as the ceiling price?

20 Mr. MONK: Conceivably, but it never was.

Mr. MACAULAY: Where are you getting those support prices from?

Mr. MONK: From 1292, and Western Grain Regulations

By Mr. Monk:

Q. If anybody had barley on March 17th when this adjustment took place they could not help but make a profit because both the ceiling and the floor went over the previous ceiling in respect of barley, is that not the situation?—

A. That is true.

Q. And the Canadian Wheat Board stood open still to buy any barley offered at the new floor price?—A. If it was offered.

30 Mr. MACAULAY: Do you mean after March 17th?

Mr. MONK: Yes.

Q. At this time you had considerable stocks of barley on hand, 815,000 bushels, I think you said you had?—A. Yes.

Albert Henry Hand for Defendants—Cross Examination

Q. What ultimately happened to that barley, can you tell?—A. Yes, I think so, it was all disposed of.

Q. Can you tell us where it was disposed of?—A. I can't give you exact figures, but I can give you approximate figures. I think I showed there was about 600,000 odd bushels of special bin barley, of which the greater amount, as a matter of fact, approximately half a million bushels, went to Canadian malsters.

Q. At this time there was a serious demand for barley in Eastern Canada?
10 —A. There was a demand for barley.

Q. There was a shortage, I think?—A. No.

Q. You are not prepared to admit that?—A. No, I would not admit that. We had considerable barley sold in the East all the way along.

Q. When you made the adjustment check payable to the Wheat Board and delivered it did you not after that have to submit your offers to the Wheat Board for approval before you could get the barley to fill them?—A. To fill domestic sales, and the likes of that, no.

Q. Did you submit any of your offer wires to the Wheat Board after that date?—A. Not to my knowledge, no.

20 Q. This adjustment that was made was in addition to the adjustment made having regard to the position of the barley?—A. In our case, no.

Q. In your case, no, because it was all in one position?—A. Yes.

Q. There may have been such adjustments in other cases?—A. There could have been, I wouldn't know.

Q. In some instances storage charges were paid to you on this barley?—
A. Yes, particularly in the case of the malting or special bin barley.

Q. And no storage charges were paid back further than December 1st, previous to the date of the take-over, that would be December 1st 1946?—

A. Oh, yes.

30 Q. Could you tell us which ones were paid back past that date, and how far back?—A. Practically all of the malting or special bin barley was purchased prior to December 1, 1946.

Q. What adjustment for storage was made? And how far back did it go from the date of the take-over?—A. At any rate, back to the date we purchased the stuff.

Q. How far back did you purchase it?—A. That is difficult to say, it was a considerable time. As a matter of fact, it goes back before the beginning of that crop year. We carried barley over from the previous crop year.

Albert Henry Hand for Defendants—Cross Examination

Q. You are sure you had an adjustment of storage back to those dates?—

A. Yes, as a matter of fact, I think I can give you an amount.

Q. No. You mentioned that the Canadian Wheat Board asked you to distribute this barley in Eastern Canada. When you say they asked you to do it was it a letter, phone call, or what type of communication was it?—A. It would be in general conversation.

Q. With one of the members of the Board?—A. Yes.

Q. Was the conversation between yourself and one of the members of the Board?—A. No, not myself. I believe any conversations which did take place were with Mr. Powell, President of Hallet & Carey.

Q. But you had no personal dealings?—A. No, not personally.

Q. Was all of this barley sold in Eastern Canada?—A. Yes, all of it outside of that sold to Canadian Malsters.

Q. Since March 17th there have been no exports of barley?—A. That is correct.

Q. On the basis of the adjustment you made with the Board the barley was sold back at the new support or ceiling price?

Mr. MACAULAY: He didn't say it was sold back.

20 A. No, it wasn't sold back, we never lost possession of the barley. We made an adjustment, some at the ceiling price and some at the support price.

Q. At the date of April 3rd there was an Order-in-Council passed and on April 7th you received Instructions to Trade No. 74, is that not so?—A. Yes.

Q. Prior to that time you had furnished to the Board a statement of the barley which you had on hand?—A. No, our statement on barley to the Board was not filed with the Board until April 12th.

Q. You then disclosed to the Board the barley which you had?—A. That is true.

Q. Then your shipment to the Board was made of that barley less 40,000 30 bushels, which is in dispute in this action?—A. That is right.

Q. And on March 17th you had open sales for all of this barley?—A. On March 17th, no not all of it; we had open sales contracts for 945,000 of it.

Q. Did you advise your purchasers of the effect of the Order-in-Council and the Board's action?—A. That is right.

Q. What did you do in respect of the new contract? Did you advise them their contracts were cancelled?—A. No, we simply told them the situation, and in all cases they came back and said they were willing to take the barley at the new prices.

Albert Henry Hand for Defendants—Direct Examination

Q. In all these cases was this barley sold to the same people who had previously purchased it, those open purchases you show on March 17th?—
A. Yes, they were completed to those people.

Q. At the new prices?—A. Yes.

Q. Was there any communication with the Wheat Board as to whom your purchasers of barley might be?—A. As at March 17th?

Q. At any time was the Board advised who was purchasing this barley from you?—A. Not necessarily.

10 Q. Do you know if they were or not?—A. They were up to March 17th, for the simple reason that we submitted a statement of our open sales up to that time. After March 17th, no.

Q. Let us refer to the special bin barley which you had on March 17th. I think you said half a million bushels went to malsters?—A. Approximately, yes.

Q. Was the Canadian Wheat Board advised of that, or do you know whether the Board knew it?—A. I would say they had knowledge of it, yes.

Q. The rest of the barley, some 200,000 bushels that you held in your special bins, where was that disposed of?—A. It went out in the ordinary trade
20 in the usual way to fill sales, Eastern sales, the Eastern domestic trade.

Q. Was that under the direction of the Wheat Board?—Did the Board issue any instructions on that sale?—A. No.

Q. What about the sales to malsters, wasn't that directed by the Board?—
A. There was one small portion on which we had a communication with the Board, yes. I think it amounted to somewhere in the neighborhood of 176,000 bushels.

Mr. MONK: That is all.

The COURT: Any questions arising out of the cross-examination, Mr. MacAulay.

30 *By Mr. MacAulay:*

Q. Mr. Hand, why did the price of barley go up on March 17, 1947?—
A. The Wartime Prices and Trade Board raised the ceiling.

Mr. MONK: This is not re-examination.

The COURT: No, this is not re-examination.

Mr. MONK: I don't know why anybody knows why a price goes up, and certainly not because the ceiling is raised.

Albert Henry Hand for Defendants—Cross Examination
Charles Kroft for Defendants—Direct Examination

Mr. MACAULAY: This is right on the point my friend was asking about support prices.

By Mr. MacAulay:

Q. Did the Wheat Board to your knowledge have to support the price on any grade of barley after March 17, 1947?—A. No.

Q. Why?—A. Because it was never down to the support price.

Q. At what prices did it trade?—A. It traded at the ceiling prices and 10 more later on after the market opened.

CHARLES KROFT, being first duly sworn, testified as follows:

Direct Examination by Mr. MacAulay:

Q. Your full name is Charles Kroft?—A. That is right.

Q. What is your occupation?—A. General Manager McCabe Grain Company Limited.

Q. You are attending here under subpoena?—A. I am.

Q. How long have you been in the grain business?—A. Approximately twenty-five years.

Q. How long have you been with McCabe Grain Co.?—A. Twenty-three 20 years.

Q. What stocks of oats and barley did McCabe Grain Company own on March 17, 1947?—A. We held at that time 853,432 bushels of oats, and 780,319 bushels of barley. I don't have the pounds here.

Q. In what position were the oats and barley on March 17, 1947?—
 A. They were in country, feed plants, and terminal elevator positions.

Q. Those in the country elevators were in country elevators in Manitoba, Saskatchewan, and Alberta?—A. That is correct.

Q. And in feed plants in the same Provinces?—A. In the three Provinces.

Q. And in terminals, at the Head of the Lakes?—A. At the Head of the 30 Lakes.

Q. On or about March 17, 1947, did McCabe Grain Company Limited receive any document entitled Instructions to Trade from The Canadian Wheat Board?—A. Yes.

Q. What document was that?—A. I recall Regulation No. 59, Instructions to Trade.

Charles Kroft for Defendants—Direct Examination

Q. Which has been filed as exhibit 2?—A. Yes.

Q. And McCabe Grain Company Limited received all the other Instructions to Trade which have been filed as exhibits and which you have heard read?—A. Yes.

Q. Are you familiar with the contents of those Instructions?—A. Yes, in a general way.

Q. Are you familiar with the contents of Instructions to Trade No. 64?—A. I would like to look at it.

10 Q. That is exhibit 7. I will show you Instructions to Trade No. 59, which is exhibit 2, and at the time McCabe Grain Company received that it had attached to it "Outline of Government Policy on Oats and Barley as Announced in Parliament March 17, 1947"?—A. That is correct.

Q. And Instructions to Trade No. 64, which has been filed as exhibit 7, you are familiar with that?—A. I am.

Q. What did McCabe Grain Company do as the result of Instructions to Trade No. 59 and 64?—A. We made up certain statements covering our position at the time which we submitted to The Canadian Wheat Board.

20 Q. Yes?—A. And subsequently we issued to them a number of checks covering the differences between the old ceiling prices and the new ceiling prices.

Q. What was the maximum paid on oats?—A. The maximum paid on oats was 13½ cents a bushel.

Q. What did it represent?—A. That represented the difference between the old ceiling price of 51½ and the new ceiling price of 65 cents per bushel.

Q. What was the maximum paid on barley?—A. 28¼ cents per bushel.

Q. What did that represent?—A. That represented the difference between the old ceiling price of 64¾ and the new ceiling price of 93 cents a bushel.

30 Q. Did you pay them the 13½ cents on all stocks of oats?—A. As I recall now we did not pay them 13½ cents on all oats.

Q. On what did you pay?—A. There was a difference in the price to which we adjusted to the new level of 2 or 3 cents a bushel. I don't recall the exact quantities that we might have adjusted at the new prices.

Q. But you did adjust you think on some quantities at 13½ cents?—A. We did.

Q. Would that represent the major or minor portion?—A. I would say that would represent the major portion.

Q. You did adjust with them on some of the barley at 28¼ cents?—A. Yes.

Albert Henry Hand for Defendants—Cross Examination

Q. Did that represent the major or minor portion?—A. The major portion.

Q. As a result of these Instructions to Trade, exhibits 2 and 7, did you turn over to the Wheat Board any oats or barley?—A. No, we did not turn over any oats or barley.

Q. Did you have documents of title covering the oats and barley to which you have referred?—A. Yes, either that or they were in store around elevators or feed mills in the country.

10 Q. Did you turn over any documents of title covering oats and barley which you had on hand on March 17, 1947?—A. We did not.

Q. Was the adjustment made on the basis of oats and barley held on March 17, or some other date?—A. It was on the basis of the stocks we held on March 17, 1947.

Q. What was the sum total of what you did?—A. We issued checks to the Wheat Board covering the difference between the old ceiling prices and the new ceiling prices.

Q. Why did you do that?—A. We were so instructed by the Wheat Board to do that.

20 Q. Did you have any conversation with any employees of the Wheat Board on or about that date?—A. I had a number of conversations with different employees and officials of the Wheat Board.

Q. Between March 17th and March 31st?—A. Yes, I don't recall the exact dates, but there were a number of conversations in that period.

Q. Can you recall the persons with whom you discussed the matter?—A. I would say on one occasion or another I discussed the matter with possibly half a dozen different employees.

Q. Did you discuss it with Mr. Arnold?—A. Yes, I discussed the matter with Mr. Arnold.

30 Q. What Instructions did he give you in regard to turning over the stocks?—A. He instructed us to make the adjustment with the Wheat Board subject to the orders to the Trade.

Q. On the basis of their Instructions to Trade?—A. Well, on the basis—he instructed us to make the adjustments so as to bring the price of these grains up to the new price.

Q. When did you have this conversation with him?—A. Subsequent to March 17th, I don't recall the exact time or date.

Charles Kroft for Defendants—Direct Examination

Q. Would it be in the proximity of March 17th?—A. I would say it was a period of possibly two weeks during which time there were a number of conversations.

Q. Within two weeks of March 17th?—A. I would say approximately within two weeks of March 17th.

Q. At these conversations he asked you to do what?—A. He asked me to adjust with the Wheat Board for the difference between the new and the old price on these grades.

10 Q. Was any reference made to any Instructions to Trade which had been issued?—A. Yes, there were references made to various Instructions to Trade.

Q. To which Instructions to Trade was reference made?—A. I don't recall definitely which Instruction was commonly referred to, but we did discuss both 59 and 64 on occasion.

Q. Did he suggest that you make a settlement on the basis of Instructions to Trade 59 or 64, or on the basis of some other Instructions to Trade?—A. No, it would be on the basis of those Instructions.

Q. On the basis of those two Instructions?—A. That is right.

Q. You are familiar with the contents of Order-in-Council 1292?—A.

20 I am.

Q. And the Instructions to Trade pursuant to 1292?—A. Yes.

Q. Which of these Instructions are pursuant to 1292?—A. The various Instructions that came out, 59 and 64 are two of the Instructions.

Q. Were there any Instructions to Trade issued with reference to Order-in-Council 1292 with the exception of those that have been filed?—A. I am not familiar with all those that have been filed. I don't know how many others were filed besides 59 and 64.

Q. Do you know of any other Instructions to Trade which were issued having a bearing on Order-in-Council 1292 aside from these?—A. I don't
30 know of any others.

Q. You know of no other Instructions to Trade having to do with the subject matter of Order-in-Council 1292 except the exhibits which have now been shown to you, and which are marked exhibits 2 to 12 respectively?—A. No, I don't know of any others.

Q. Who are the largest handlers of oats and barley in the grain trade in Winnipeg?—A. It is difficult for me to say for sure. I might name some amongst others, such as the Manitoba, Alberta, and Saskatchewan Pools, the United Grain Growers, James Richardson & Sons, Hallet & Carey, Reliance Grain, and McCabes.

Charles Kroft for Defendants—Direct Examination

Q. Have you any knowledge as to whether or not adjusting checks were taken from all grain companies such as was done in the case of McCabe?—A. I have no knowledge of other checks taken from other grain companies.

Q. Was there any intimation to you from any Wheat Board official as to how the matter was being handled with all grain companies?—A. On occasions we were advised that others were handling the matter in the way it was ultimately adjusted.

Q. Do you know of any case where the barley was delivered to the Wheat Board?—A. I don't know of any case.

Q. When were the price ceilings raised on oats and barley?—A. On March 17th, on both oats and barley.

Q. Then you learned of the increase in price ceilings on March 17th or March 18th?—A. We were advised on the afternoon of March 17th.

Q. What was the source of your information?—A. I had the information direct from the Wheat Board.

Q. The Wheat Board advised you of the increase. Did the Wheat Board advise you at the same time of the Government policy in respect to oats and barley?—A. Yes, I was called over amongst others and advised of this change in policy.

Q. When was that?—A. On the afternoon of March 17th.

Q. You attended a meeting at the Wheat Board office?—A. That is correct.

Q. With other handlers of oats and barley?—A. With representatives of certain committees or certain associations in the trade who were requested to come over and be advised of this by The Canadian Wheat Board.

Q. When you talk about the Wheat Board you mean The Canadian Wheat Board?—A. Correct.

Q. When the price ceiling on oats and barley was increased or raised what happened to the prices of oats and barley?—A. The prices immediately went up to the new ceiling as established by the Wartime Prices and Trade Board.

Q. Did that apply to all grades or to some grades?—A. As far as I know that all applied to all grades. I don't know of any grades that did not trade immediately at the new ceiling prices.

Q. You say you don't know of any grades that did not immediately deal at the new ceiling prices?—A. That is correct.

Q. Do you mean that the poorest grade of barley traded at the ceiling price?—A. To my knowledge poorest grade of barley commonly traded in the trade traded at the new ceiling prices.

Charles Kroft for Defendants—Direct Examination

Q. And they continued to trade at the new ceiling prices?—A. Yes, continued to trade at the new ceiling prices until the ceilings were removed.

Q. When were the ceilings removed?—A. The ceilings were removed on October 21, 1947, although trading did not actually commence until October 23rd.

Q. When ceilings were removed on October 21—trading commenced when?—A. Trading on the Winnipeg Grain Exchange did not commence until the 23rd.

10 Q. At what price did barley trade at on the Winnipeg Grain Exchange on October 23rd?—A. Quite a spread on that day, but the high price for December barley was \$1.31, and May barley on the same day was \$1.30. I don't have actual records of cash or spot barley.

Q. The lower grades would trade below that?—A. Yes, immediately quite a spread established in the different grades.

Q. What was the situation in regard to oats on October 23rd?—A. December oats 96¾; May oats 95½ for the futures, option prices.

Q. At the time the ceilings were removed on October 21 were you called upon to give an adjusting check to the Wheat Board as was done in March?
20 —A. We were not.

Q. Are you familiar with other commodities whose prices were permitted to rise without take-over of ownership by Government or payment of moneys?

Mr. MONK: I object to that.

The COURT: Taken subject to objection.

A. Only in a very general way. I know that butter prices were adjusted upwards without any takeover of existing stocks. Hog and cattle prices had the ceilings removed without the stocks being taken over by anybody. Off-hand I don't remember any others.

30 Q. Are you familiar with any other commodities whose prices were permitted to rise and where there was a take-over or price adjustment required similar to the adjustment on prices of oats and barley in March, 1947?—A. I am afraid I do not have any definite information on that.

Q. Was any of this barley to which you have referred special bin barley?
—A. Yes, we had considerable stocks of special bin barley. I don't have the exact figures, but approximately half our total stocks.

Q. Did the Board under this Order-in-Council or various Instructions to Trade which have been filed as exhibits 2 to 12 control the supplies of oats and barley?—A. I don't think they controlled the supplies of oats and barley.

Charles Kroft for Defendants—Direct Examination

Q. Were you able to complete the contracts of sale which you had made prior to March 17, 1947?—A. Yes.

Q. You completed those after March 17, 1947?—A. Yes, that is right.

Q. Were you able to enter into new contracts of sale?—A. After the 17th?

Q. Yes?—A. Yes, we were.

Q. Did the Wheat Board attempt to supervise your business or regulate your supplies in any manner?—A. With the one exception, of some malting
10 barley which we sold to one of the Canadian Malting Companies, and the price on that was agreed between the Malting Company, the Wheat Board, and ourselves before the final sale was made.

Q. Would that represent a small percentage?—A. As I recollect now approximately 100,000 bushels.

Q. Which was approximately 12½ per cent of your supplies on hand?—
A. Approximately.

Q. The other 700,000—was it?—A. A total of 780,000.

Q. And the other 680,000 did you carry on business as usual or was there some change?—A. No, we carried on business as usual.

20 Q. Did the Board under this Order or under the various Instructions to Trade maintain supplies of oats and barley?—A. I don't think they maintained supplies of oats and barley.

Q. Was there any shortage of oats and barley on March 17, 1947?—A. It is rather a difficult question to answer, we were able to—

Mr. MONK: Is this man in a position to answer generally?

The COURT: A question of weight, I think, Mr. Monk.

Q. Did McCabe Brothers experience any shortage of oats and barley on March 17, 1947?—A. Within reason we were able to complete all our contracts.

Q. Were you familiar with the amount of oats and barley which was in
30 the country at the time?—A. No, I don't remember the exact stocks at the time.

Q. Was there a quota on the oats and barley at the time which the Wheat Board permitted to be delivered to elevators?—A. At the time?

Q. Yes?—A. No, there were quotas previously, but I don't think the quotas were in existence on March 17.

Q. I am talking of the 1946-1947 crop?—A. I can't be sure on that. I have run into so many years where they had quotas, and I am not sure whether there was a quota in the fall of 1946.

Charles Kroft for Defendants—Direct Examination

Q. Would you explain what happened under the quota system?—A. Under that quota system a farmer has only been able to deliver to an elevator a percentage of the barley he has grown based on the acreage he grew.

Q. What happened to the rest of it?—A. He was forced to hold it back until such time as further instructions were issued by the Wheat Board which would permit him to deliver an additional quantity.

Q. You don't know whether there were quotas on barley?—A. I don't remember for that year.

10 Mr. MACAULAY: That is all.

The COURT: Mr. Fillmore?

Mr. FILLMORE: No, my lord.

The COURT: Mr. Scarth?

Mr. SCARTH: No questions, my lord.

The COURT: Mr. Monk?

Cross-Examination by Mr. Monk:

Q. In mentioning the quota system would you tell us a little more about it? That is a system whereby in the commencement of the crop year a farmer gets an authorized acreage?—A. That is correct.

20 Q. And from there on his deliveries are in proportion to the authorized acreage allotted to him?—A. That is correct.

Q. Isn't it true in the past years at the start of a new crop year there has been a relatively small quota, and successively by Orders the quota has been increased?—A. Referring to 1946-1947?

Q. No, speaking generally?—A. That is correct, yes.

Q. And ultimately the quota was opened which means a farmer can deliver as much oats or barley as he likes?—A. It has so worked out in most years.

30 Q. The object of the system is to apportion elevator space, or one of the objects?—A. I would say one of the objects, yes.

Q. At this time, at the time of the matters in question here, the quota was open?—A. Yes.

Q. So that any farmer could deliver any amount of barley he cared to?—A. Yes.

Mr. FILLMORE: You mean in March, 1947?

Charles Kroft for Defendants—Cross Examination

Mr. MONK: Yes.

Q. You have said that you don't remember any other products that were handled in the same way as oats and barley when the price was increased?—A. I said I didn't know of any.

Q. Do you remember the increase in flax seed prices?—A. Yes.

Q. When the ceiling was increased?—A. Yes.

Q. An adjustment was made at that time, was it not?—A. Yes, I think I was referring to commodities outside of what we ordinarily handle in the
10 grain business when he made that reference.

Q. And flax seed was handled on the same basis?—A. Yes.

Q. And wheat was handled on the same basis when the price was raised from 70 to 90 cents?—A. I don't recollect how that was handled.

Q. There was an adjustment made. Do you remember making an adjustment payment when the price was raised from 70 to 90?—A. That goes back to 1940?

Q. That is right.—A. I am afraid I can't remember definitely, I don't remember.

Q. But the flax seed you remember?—A. I remember that.

20 Q. You heard the evidence of the last witness?—A. Yes.

Q. You understand what the support price is?—A. Yes.

Q. What is the support price?—A. The support price is the price at which the Canadian Wheat Board was prepared to buy oats and barley.

Q. At any time in the market?—A. Yes, within a stipulated limit of time.

Q. That is, it has an open bid at that price?—A. Yes.

Q. Do you know what the support price was prior to March 17th for oats or barley?—A. I believe it was 60 cents a bushel for the top grade of barley, with a discount of 4 cents.

Q. Do you remember what it was after March 17th? I suggest to you
30 it was 91 cents for C.W.—A. 1 feed is 90; I don't recollect the spread between the two.

Q. That would mean after March 17th the Wheat Board stood ready to buy any quantity at 90 cents?—A. That is right.

Q. Do you know of any other commodity when the ceiling was raised the floor was raised too?—A. I don't know.

Q. Do you know of any other commodity where the floor is raised above the previous ceiling?—A. I don't know of any.

Q. Where operators are put in a position where they cannot help but make a profit?—A. I don't know of any.

Charles Kroft for Defendants—Cross Examination

Q. You mentioned that you don't know whether there was a shortage or not of barley in March, 1947?—A. I think I said that, yes.

Q. Isn't it a fact that at the end of the crop year 1947 there was the lowest carry-over in the trade in history?—A. Are you referring to wheat, oats and barley?

Q. Barley?—A. If that is the case I didn't know it.

Q. You have given us the stocks which you had on hand at March 17th. They would be divided, I suppose, into two classes, those which were subject
10 to domestic open sale and those subject to export open sale?—A. I do not believe we had export open sales at the time of the take-over with the exception of a quantity which I am not sure you will class as oats or not, mixed feed oats.

Q. You had a considerable amount of special bin barley on March 17th?—
A. Yes.

Q. For some number of months prior to March 17th there had been no export of barley allowed?—A. That is correct.

Q. And you had acquired that barley knowing that it could not be exported?—A. Knowing that we could not export it at the time. There were
20 exports permitted up to the close of navigation of 1946.

Q. Yes, but after that it was announced there would be no further exports?—A. Yes, we could not secure permits for export at the time.

Q. Was there any reason given to you for that decision?—A. I don't recollect any definite reason given to us at the time. I believe there was a general announcement made to the effect due to the shortage of supplies exports might not be permitted.

Q. The shortage of supplies in Canada?—A. In Canada.

Q. In any event, you knew exports would not be permitted when you acquired this barley?—A. I didn't know it. To explain myself, for a good
30 many months prior to the fall of—I think it was during November, 1946, we were advised that exports would not be permitted, although we were permitted to select barley for malting purposes. Then prior to the commencement of navigation a large quantity of exports were permitted. I suppose without any actual knowledge of the situation we were prepared to assume exports might be again permitted at a later date.

Q. Would I be correct that you acquired the special bin stocks knowing that they could not be immediately exported, but with the hope that they might be exported in the future?—A. Yes.

Charles Kroft for Defendants—Cross Examination

Q. Now, for whom were those acquired?—A. In our case they were acquired—

Mr. FILLMORE: I don't know whether the witness wants to give names of clients and customers.

The COURT: No, I didn't understand he was going to ask for customers, he was asking whether domestic or foreign.

A. They were acquired with the intention of selling them to foreign buyers, who intimated to us they were prepared to buy when they could get
10 permits.

Q. That is, you had general instructions to acquire barley for foreign buyers for purposes which needed malting barley?—A. That is right.

Q. And that is the reason those stocks were acquired and held?—A. Yes.

Q. After the take-over those stocks were not disposed of to foreign buyers?—A. No.

Q. They were sold domestically?—A. That is right.

Q. And that was, as a result of the direction and suggestion of the Wheat Board, was it not?—A. I don't believe there were any directions given with the exception in regard to this malting barley, and it was suggested the only
20 way we could get the price at which the Wheat Board were willing to allow us to sell the barley that it would have to go to the malting company.

Q. Your sales were made subject to the direction and permission of the Wheat Board?—A. Just in this one case.

Q. My information is that the special bin barley in your possession was only left in your possession subject to very specific conditions that it be sold in Canada; what have you to say to that?—A. Well, certainly we were told we were not going to be permitted to export it, but I don't recollect receiving specific instructions beyond that point.

Q. Did you know that the Wheat Board were ready to take over these
30 stocks from you at March 17th or April 3rd?—A. I didn't have any more information than that given to us in the circulars or Orders to the Trade.

Q. Did you offer any stocks to the Trade?—A. No.

Q. I suppose if you had done that you would have been out of the oats and barley business?—A. I don't know what would happen if we offered them to the Trade.

Q. You were making a merchandizing profit on your business?—A. We were in the merchandizing business, yes.

Charles Kroft for Defendants—Cross Examination

Q. You mentioned an adjustment with the Board. Was there not more than one basis of adjustment with the Board? Wasn't the adjustment on grain resold to you for domestic sales different from that which was given to you on export commitments?—A. There was no grain resold to us, and we did not have any export commitments, with one exception of some mixed feed oats.

Q. You had no commitments on barley?—A. No.

Q. Merely held subject to this general arrangement you have outlined?—A. That is right.

10 Q. The adjustment made between yourself and the Board was only on the one basis because your stocks were only of the one character?—A. That is correct.

Q. Now, Mr. Kroft, we have been discussing barley. The same situation in regard to support and ceiling prices pertained with relation to oats on March 17th?—A. Yes, correct.

Q. And the Orders which were made referred to both oats and barley?—A. That is correct.

Q. Did you have any open domestic or export sales of oats at this time, or any unsold stocks?—A. Yes.

20 The COURT: That answer doesn't help me very much because it refers to three things.

Mr. MONK: Yes, I will deal with them separately, my lord.

Q. What were your domestic open sales on oats?—A. I am afraid my figures here do not show it. We show our net sales from our open purchases.

Q. Can you divide your domestic, export and unsold stock from the figures you have before you?—A. I have our unsold stocks, and our total stocks, and the one figure which is the net position of our open sales and open purchases. I did not bring any more information than that here.

Q. Perhaps we can get at it this way: I suggest to you that your domestic
30 open sales were adjusted at the support level?—A. I believe that is correct. I don't remember all the details but there was a spread in the adjustment we made with the Wheat Board.

Q. That is, the amount you had allocated for domestic open sales was adjusted between the former ceilings and the new support prices?—A. I believe that is correct.

Q. Your export open sales were adjusted at 51½ cents which is the difference between—there was no adjustment?—A. That is correct, we did not have to adjust for the export sales we might have had open at the time.

Charles Kroft for Defendants—Re-Examination

Q. That is because you had already had permits?—A. Yes, issued prior to that date that would cover those contracts.

Q. And there would be no adjustment on them?—A. That is correct.

Q. What about your unsold stocks, on what basis were they adjusted?—
A. As I recollect they were adjusted at the 13½ cents a bushel on the oats, the difference between the old and new ceiling prices.

Re-Examination by Mr. MacAulay:

Q. Before Order-in-Council 1292 you had to obtain a permit from the
10 Board to export malting barley, didn't you?—A. That is correct.

Q. The situation was not changed?—A. No, that situation has existed for five or six years.

Q. Was it necessary at any time for the Wheat Board to support the price of oats and barley between March 17, 1947, and October 21, 1947?

Mr. MONK: I object to that.

The COURT: I will take it subject to your objection.

Mr. MONK: My suggestion is this man may be asked whether they did or did not but not whether it was necessary.

A. In my opinion it was not necessary.

20 *By Mr. MacAulay:*

Q. Do you know some of the prices of oats and barley on March 17th, 1947, in Minneapolis and Chicago?—A. Just approximately.

Q. Approximately then with respect to the new ceiling prices on oats and barley established by the Wartime Prices and Trade Board?—A. The prices in Minneapolis and Chicago were considerably higher than those prevailing after the establishment of the new ceiling prices.

Q. You adjusted with the Wheat Board on unsold oats and barley at the new ceiling prices?—A. That is right.

Q. On what basis did you adjust with respect to domestic open sales?—
30 A. At the new support prices.

Q. That was the basis covered by Instructions to Trade?—A. Yes, with their various Instructions to Trade.

Q. Which have been filed as exhibits 2 to 12?—A. Yes.

Q. Was that on the basis of what the Wheat Board told you they wanted you to do?—A. That is correct.

Q. In other words, between March 17th and March 31st they told you what to do and what adjustments you had to make, price adjustment in respect

Charles Kroft for Defendants—Re-Examination

to all your stocks before you could hold them and complete your sale?—A. That is right.

Q. And whatever dictation you received from them that is what you did?—A. That is right.

Mr. MONK: I would like to examine on one point, my lord?

The COURT: You may do so.

By Mr. Monk:

Q. Mr. Kroft, at this time on March 17th when the ceilings were raised
 10 and floor prices were raised you knew that The Canadian Wheat Board stood ready to take all your stocks at the new support level if you wished to sell them?—A. The Instructions that went out to the Trade said they would take all stocks at the new support level.

Mr. MACAULAY: Instructions to the Trade are filed.

The COURT: No, he is being examined apart from the Instructions to Trade.

By Mr. Monk:

Q. You knew the Board was ready to buy your stocks at the new support level?—A. Yes, I said I knew they would buy all stocks.

20 Q. And you knowing that made the adjustment that was required?—A. We made the adjustment that was required.

Q. You have made some remarks about it being necessary for the Board to support the market.

The COURT: The witness says in his opinion it wasn't necessary for the Board to support the market, and that is part of the re-examination I am allowing you to re-cross examine on.

Q. During what time did you think it was not necessary?—A. Well, I didn't think it was necessary for the Board to support the market from the time the ceilings were raised up until the time the ceilings were removed
 30 completely.

Q. That is subsequent to March 17th?—A. Yes, well, I didn't think it was necessary for them to support the price prior to that either.

Q. Did you know they at times supported the price in oats and barley?—A. Yes.

Charles Kroft for Defendants—Re-Examination

Gordon Greer Pirt for Defendants—Direct Examination

Q. That is, the price in the market had fallen to the support level?—A. That is quite a number of years ago.

Q. Within the last three years?—A. I don't recollect the exact date, but there was a different level of prices at that time.

GORDON GREER PIRT, being first duly sworn, testified as follows:

Direct Examination by Mr. MacAulay:

Q. What is your occupation?—A. At present I am acting office manager
10 of Reliance Grain Company.

Q. How long have you been in the grain business?—A. Twenty-seven years.

Q. How long with the Reliance Grain?—A. Ever since their incorporation in 1927, twenty-one years.

Q. You have had experience in all branches of the grain business?—A. In all branches.

Q. What stocks of oats and barley did Reliance Grain have on hand on March 17, 1947?—A. We had in both export and line division 1,252,000 bushels and 32 pounds; in barley, 404,039 bushels and 35 pounds.

20 Q. What position were those oats and barley on March 17th?—A. They were in our country elevators and in terminal position.

Q. And the Company's country elevators are located in Manitoba, Saskatchewan, and Alberta?—A. That is right.

Q. And in terminal position that would be at the Head of the Lakes?—A. Yes.

Q. And on March 17, 1947, did Reliance Grain receive any Instructions to Trade from The Canadian Wheat Board?—A. Yes, we did.

Q. I show you a document here, exhibit 2, and ask you if it was a similar document that was received?—A. Yes.

30 Q. Attached to that document which you received in Instructions to Trade No. 59 was there an outline of Government policy on oats and barley as announced in Parliament on March 17, 1947 similarly attached to exhibit 2?—A. Yes.

Q. I want you to look at these other Instructions to Trade. Did Reliance Grain Company receive copies of those documents, on or about their respective dates they bear, exhibits 3 to 12?—A. Yes.

Gordon Greer Pirt for Defendants—Direct Examination

Q. And did Reliance Grain receive any other Instructions to Trade having to do with the turnover of oats and barley pursuant to the statement of Government policy attached to exhibit 2?—A. It did not receive any other Instructions to Trade, but they did receive country operation circular unnumbered. I have it in my files at the office. In a general way it governed the procedure for the adjustment of oats and barley in country elevators. I do not see that one here.

Q. You received that because you had some of your oats and barley in
10 country elevator position?—A. Yes.

Q. These documents I think you said were received, the Instructions to Trade, exhibits 2 to 12, on or about the respective dates they bear?—A. Yes.

Q. What did the Reliance Grain Company do as a result of these various Instructions to Trade?—A. We made an adjustment with the Board.

Q. You made the adjustment more particularly on the basis of which of these Instructions?—A. 59 and 64, and another one which brings in the grades and prices of the support price, I think it was 61.

Q. In order to make the adjustment with the Wheat Board there are only three of these you say that are important?—A. Yes.

20 Q. The adjustment was made pursuant to 59, 61 and 64 which are exhibits 2, 4 and 7?—A. Yes.

Q. You say in making this adjustment with the Wheat Board you followed exhibits 2, 4, and 7?—A. Yes.

Q. Did you follow these exhibits 2, 4 and 7 in making adjustments of both country elevator stocks and terminal position stocks?—A. Yes.

Q. But you say that there was some other document indicating the procedure in connection with country elevator stocks?—A. Yes.

Q. The prices or basis upon which the adjustment was made is all determined by these three?—A. That is true.

30 Q. After May 3, 1947, did you receive any other Instructions to Trade from the Wheat Board which would assist in determining the adjustment?—A. Not to my knowledge.

Q. The adjustment was made on the basis of these exhibits, the first of which was received on March 17 and the others prior to the 1st of April?—A. Yes.

Q. The adjustment was made on the basis of these Instructions received on or about March 17th, No. 59, and on or about March 18, No. 61, and on or about March 20, No. 64?—A. That is right.

Gordon Greer Pirt for Defendants—Direct Examination

Q. And you say no other documents or Instructions were received following April 3rd which indicated the method of computing the adjustment?

—A. No.

Q. Or altered the method of computing the adjustment?—A. In so far as price, no. There was another one in there about mixed feed oats. I don't know what date that was, I think that was subsequently to those others, but prior to April 3rd.

Q. Take a look and see if it is not in there?—A. Yes, that is the one of
10 March 26.

Q. How was the adjustment completed?—A. We gave the Board one check for the export department. The country elevator department was adjusted from time to time as and when cars were shipped and became unloaded. Perhaps there may be 60 or 75 checks involved in that. We paid \$107,589.75 for the export. In the Line Division a balance of approximately \$129,955.63 was adjusted from time to time over the next possibly two months.

Q. What was the maximum you paid on oats?—A. 13½ cents.

Q. What did it represent?—A. It represented the change in price from the previous ceiling to the new price ceiling.

20 Q. That is, from 51½ cents to 65?—A. That is right, 51½ to 65.

Q. Did you pay them 13½ on all stocks of oats carried?—A. Not on all stocks of oats, no. We paid 10 to 13½ cents. The open sales were adjusted at the support price, and they varied according to grade.

Q. Yes. On how much oats did you pay them the 13½ cents?—A. I haven't got that breakdown here.

Q. Was it major or minor portion?—A. On 790,921 bushels we paid varied spreads. We paid on 461,463 bushels 13½ cents, and from 10 to 13½ on 790,921 bushels.

Q. And you say that computation was made on the basis of exhibit 4?—
30 A. That is true.

Q. That is Instructions to Trade No. 61. What did you do so far as barley was concerned?—A. We adjusted 250,094 bushels at 28¼ cents—I might say of that 250,000 bushels there was a small amount which was adjusted at 38¼ cents, paying a premium which we recovered from another company. We paid the Wheat Board, and recovered it from another company. I have forgotten the details, something about a malting premium and equalization payments. The balance of 153,945 bushels was adjusted at 25 cents to 28¼ cents.

Gordon Greer Pirt for Defendants—Direct Examination

Q. On the basis of Instructions to Trade No. 61, exhibit 4?—A. That is right.

Q. Did you hand over any oats or barley to the Wheat Board?—A. No.

Q. Did you have documents of title covering the oats and barley to which you have referred?—A. Yes.

Q. Did you hand over any documents of title?—A. No.

Q. Did you have any discussion with any of the officials of the Wheat Board as to the nature of the adjustment?—A. Yes, as to the nature of the
10 bushels. We did not have any conversation as to money, except to designate which bushels fitted in each category. A question came up with the Wheat Board regarding some mixed feed oats, and the Board went after us for an adjustment, and we got together with them in their office, and discussed what would happen to these mixed feed oats. We came to an agreement between ourselves, and immediately made the adjustment and gave them our check. That was sometime in April.

Q. It was a check they were after?—A. Oh, naturally.

Q. Is that all they seemed to be after, money?—A. Oh, I don't know.

Q. You made this adjustment with them on the basis of these three
20 Instructions to Trade to which we have referred?—A. Yes.

Q. Exhibits 2, 4 and 7?—A. Yes.

Q. Did you have any intimation from any official of the Wheat Board as to what adjustment was being made with other companies on oats and barley?—A. No, all I did hear was that the other companies had settled already.

Q. Did you hear that from the Wheat Board?—A. I couldn't say so.

Q. Did you attend a meeting at the Wheat Board?—A. Yes.

Q. Was there any statement made then as to how the matter was being handled with other companies?—A. I would hesitate to swear to that, I don't
30 remember the actual words that took place.

Q. Was there any representations or urging or otherwise on the part of the Wheat Board as far as Reliance Grain was concerned?—A. There had been prior to the meeting.

Q. All right, tell us about it?—A. They had contacted the vice-president—

Q. They did not contact you?—A. Not me, no.

Q. When was the next rise in price of coarse grains permitted after March 17?—A. October 22, 1947.

Gordon Greer Pirt for Defendants—Direct Examination

Q. What happened on March 17 on arrival of price ceilings?—A. All grades of oats and barley that were quoted rose to the new ceiling and stayed there.

Q. Did they all sell at the new ceiling price?—A. Yes, all quoted grades. I don't know about the really low grades, like rejected and heated. We don't handle all grades.

Q. All grades mentioned in exhibit 4 did they sell at the ceiling price?—A. Yes.

10 Q. All grades of oats mentioned in exhibit 4 immediately traded at the price ceilings and continued to trade there?—A. That is true.

Q. Did the same thing happen in regard to all grades of barley listed on exhibit 4, or was the situation otherwise?—A. No, that is true.

Q. What do you mean, they did or did not trade at the ceiling price?—A. They did go to the ceiling prices.

Q. Did they continue at the ceiling prices?—A. Yes.

Q. Do you know of any time between March 17 and October 22, 1947, when any of these grades of oats or barley sold below the ceiling prices?—A. No.

20 Q. I refer to all grades of oats and barley mentioned on exhibit 4. They all remained at the ceiling prices from March 17 until October 22, 1947?—A. They did.

Q. Do you know anything about the price of oats and barley in the Minneapolis and Chicago markets on March 17, 1947?—A. Chicago was approximately 35 to 45 cents a bushel higher.

Q. On what?—A. On oats and barley; 35 for oats and 45 for barley approximately.

Q. What happened on October 23 in the Winnipeg market when the ceilings were removed?—A. May oats closed at 84; May barley at 1.15; 2 C.W. 30 oats cash oats ceiling at 87 cents; 2 C.W. 6 row barley 1.27.

Q. Did the Board under Order-in-Council 1292, or various Instructions to Trade pursuant to it, control the supply of oats and barley?—A. No.

Q. Did they regulate the supplies of oats and barley?—A. No.

Q. Once you paid them your check what did they do? Once you gave them these adjusting checks how did you carry on your business?—A. We kept on business in the same manner as we did before exactly.

Q. The same way as prior to March 17, 1947?—A. That is right.

Q. Did you receive any directions or supervision from the Board in regard to sales?—A. Not to my knowledge.

*Gordon Geer Pirt for Defendant—Direct Examination
and Cross Examination*

Q. Did you complete sales contracts with customers which you had prior to March 17, 1947?—A. Yes.

Q. Did you continue to make sales contracts in the ordinary way or did you not?—A. We did continue to make contracts in the ordinary way.

Q. And to fill the orders?—A. Yes.

Q. Were you always able to get the oats and barley that you needed to fulfill your contracts?—A. Yes.

10 Q. Did you or did you not experience any shortage in supplies between March 17 and October 22, 1947?—A. No.

Q. Mr. Pirt, prior to March 17, 1947, a farmer was he entitled to deliver oats and barley to any elevator under his permit?—A. Any elevator at the delivery point mentioned in his permit.

Q. Just to any elevator at the delivery point mentioned in his permit?—A. Yes.

Q. And if he wanted to market his oats and barley he had to take it to a particular point?—A. To a particular elevator point.

20 Q. Was there any change made in this after April 5, 1947?—A. Yes, there was a change made after that date. The Permit Department opened the delivery point restriction—withdrawed the restriction of delivery points, and it was any point and any elevator.

Q. Up until the crop year of 1947 there was a restriction on the delivery point on oats and barley to the point mentioned in the permit?—A. Yes.

Q. And after the passing of the Order-in-Council that was changed and a farmer was permitted to deliver any place, is that right?—A. Yes.

The COURT: Mr. Monk, if the other counsel do not wish to ask anything you may cross-examine.

Cross Examination by Mr. Monk:

30 Q. Just carrying on with what Mr. MacAulay was discussing with you, under the quota system at the beginning of each year the farmer chooses an elevator point when he applies for his permit?—A. Yes, that is right.

Q. And that elevator point may have one or two or more elevators at it?—A. Yes.

Q. And he is entitled to deliver at any elevator within the quota current at that time at that point?—A. At that point, yes.

Q. At the time, down to the end of March, 1947, quotas were opened as far as oats and barley were concerned?—A. That is right.

Gordon Greer Pirt for Defendants—Cross Examination

Q. That would mean the farmer could deliver any amount of oats and barley but he must deliver to one of the elevators at the point which he had chosen, is that correct?—A. That is correct.

Q. And subsequently a change came into effect which you referred to which allowed him to deliver any amount of oats and barley not only at the point he had chosen but at any other elevator point, is that correct?—A. That is correct.

Q. So that the change you refer to was merely as to the point of delivery
10 and not as to the amount?—A. There might be a point there if there was room at the point.

Q. Mr. Pirt, what is your position with Reliance Elevator Company?—A. I am acting office manager. I was assistant office manager a year ago when this took place.

Q. What have you to do with the sales of oats and barley, or have you anything to do with it?—A. Just in a supervisory capacity, that is all.

Q. In March, 1947, I suggest you could have sold twice the amount of oats and barley you were able to obtain?—A. Well, we are speaking from a different angle. We have a country elevator department, an export department,
20 and our vice-president makes all the sales for the export. The assistant general manager makes the sales for the country elevators. I did not make sales for either of them, I just supervise sales that have been made.

Q. So when you say there was or was not a shortage all your knowledge is you were able to obtain sufficient oats or barley to fill the contracts that were made?—A. Yes.

Q. You are not prepared to say you could not have sold a great deal more than you obtained?—A. Well, at that time we had 700,000 bushels of oats and barley which we had not sold, which we could have sold prior to March 17.

Q. Part of that oats and barley was special bin stocks?—A. Yes.

30 Q. That had been acquired since close of navigation, or removed to terminal position since close of navigation?—A. It was in terminal position after close of navigation.

Q. You knew at the time that was moved down to Fort William or Port Arthur that export permits would not be granted?—A. Presumably, yes.

Q. Were these stocks acquired for foreign buyers?—A. That I couldn't say; that did not come within the province of my work.

Q. Do you know for whom they were acquired?—A. I know one lot was bought for Canada Malting; outside of that I don't know who the others were bought for.

Gordon Greer Pirt for Defendants—Cross Examination

Q. Was most of your special bin stocks malting barley?—A. Yes, I would say so.

Q. As far as you know only a very small part of it was for Canada Malting?—A. Yes.

Q. Was any other portion of it for any Canadian malting house or Canadian user of malting barley?—A. That I couldn't say.

Q. You don't know?—A. I don't know.

Q. After the take-over it was not exported?—A. No.

10 Q. And it was sold in Eastern Canada?—A. I presume it was.

Q. Do you know?—A. It would have to be sold there, we haven't got it now, and it was the only place it could be sold.

Q. Did you get instructions to trade No. 74. I will show you a copy of it?—A. Yes, I have seen this.

Q. It is dated April 7, 1947.—A. That is right.

Q. Can you say you received that on or about its date?—A. I would say we did.

Q. That order in paragraph 1, and the sub-paragraphs (a), (b) and (c) require you to deliver the documents relating to any oats or barley you had in
20 your possession?—A. Yes.

Q. It indicates that the settlement will be made by the Board for the grain covered by warehouse receipts or other documents of title in accordance with the terms of P.C. 1292. Did you know that indicated that settlement would be made to you at the previous maximum price 64¾ cents a bushel for barley?—A. I would say so.

Q. Had you made your adjustment with the Board at the time you received this Order?—A. No, we had not.

Q. When did you make your adjustment.—A. We had made adjustments on the Line Division because we knew there would be an adjustment, and the
30 Line Division grain was moving into position, and we started making adjustments before submitting statements to the Board but the date of export department adjustment with the Board was April 25th.

Q. Some three weeks in all after the date of this Order?—A. That is right.

Q. In the meantime the ceiling on oats and barley had been increased, is that correct?—A. That is right.

Q. The ceiling was increased on March 17?—A. Yes.

Gordon Greer Pirt for Defendants—Cross Examination

The COURT: 74 is not dated March 17, it is April 7.

Mr. MONK: Yes, April 7.

Mr. MACAULAY: The ceiling increased 23 days before that.

By Mr. Monk:

Q. Why did you not deliver the documents to the Board in accordance with the Order?—A. We knew we were going to make adjustments, it was just the details holding us up.

10 Q. Did anybody explain to you the nature of your adjustment, that it was in effect a sale to the Board of the grain in question and re-sale back to the company of the same grain?—A. I don't think anybody ever explained it to me that way.

Q. You always treated it merely as a difference between certain prices?—A. Yes.

Q. Yet you had an order directing you to deliver documents. Did you ever discuss with anybody in the company why the documents were not delivered?—A. No.

Q. Yet you saw this order.—A. Three or four of the orders go to the vice-president and general manager.

20 Q. But you saw it?—A. Yes, I saw it.

Q. Was that within your jurisdiction at that time?—A. No, I had no power to make an adjustment. I knew there would be an adjustment. The interpretation I put on this order is that it was directed at those who had no intention of making an adjustment.

Q. That is, if they did not adjust they were to surrender their grain?—A. That is the way I took it.

Q. And you did subsequently make an adjustment?—A. We did, yes.

30 Q. Was any allowance made to you with regard to storage on the grain you had in your possession?—A. Yes, some allowance was made on the special bin grain, and also some stocks in store in terminal. Storage interest, cost of cleaning, some allowance made.

Q. But it didn't extend to grain purchased before December 1st previous.—A. I don't think it did. I think our grain was all purchased after that date.

Q. Any that was purchased after that would be paid in full, the storage would have been paid in full.—A. Yes.

Gordon Greer Pirt for Defendants—Cross Examination

(ADJOURNED AT 5 p.m., March 22, 1948,
to 10:30 a.m., March 23, 1948.)

Discussion of Counsel following Adjournment

10:30 a.m., March 23, 1948.

Mr. MONK: My lord, there has been one question raised since the adjournment, and I want to make it quite clear that we are all of the same understanding relating to the Agreed Statement of Facts. It was my understanding, and I thought it was the Court's understanding, that in respect of all
10 the letters, Instructions to Trade, and other documents which are in the Agreed Statement of Facts, that it was agreed that they were sent and received on or about their dates by the parties to whom they were addressed.

The COURT: I had that understanding.

Mr. MONK: Yes, in so far as Instructions to Trade that we objected to and that were filed subject to our objection, or that are in as evidence subject to objection, it is understood that they were issued by the Board and were circulated to all members of the trade.

The COURT: I understood that it was just a question of relevancy with which I will have to deal later on.

20 Mr. MACAULAY: Yesterday I did not have Instructions to Trade No. 69. We did not anticipate that it was an instruction that referred to oats or barley. Mr. Monk has now produced a copy of Instructions to Trade No. 69, and an announcement by the Honorable J. A. MacKinnon, Minister of Trade and Commerce, March 31, 1947, in regard to wheat delivery quotas, but it does not deal with oats and barley. That was the only order issued between March 17 and July 31.

The COURT: What is the date of that?

Mr. MACAULAY: April 1, 1947. And those referring to oats and barley were put in, you will recall.

30 The COURT: Yes.

Mr. MACAULAY: And all other orders passed between March 17 and July 31 were placed on record. Now, I think I will file Administrator's Order No. A2303 dealing with maximum prices for oats and barley.

Mr. MONK: We have no objection to this being filed.

Discussion of Counsel following Adjournment

(Administrator's Order A2303 referred to, produced and marked exhibit 13.)

"THE CANADIAN WHEAT BOARD
ADMINISTRATOR'S ORDER No. A-2303
MAXIMUM PRICES FOR OATS AND BARLEY

Under powers conferred by The Wartime Prices and Trade Board on The Canadian Wheat Board, it is hereby ordered as follows:

1. This Order comes into effect on the 18th day of March, 1947, and
10 revokes and replaces all previous orders relating to maximum prices of oats and barley.

2. In this Order, unless the context otherwise requires,
(a) 'oats' means oats grown in the Western Division;
(b) 'barley' means barley grown in the Western Division.

and other words and expressions shall be given the same meaning as is respectively accorded to such words and expressions when used in the Canada Grain Act.

3. The maximum price at which a person may sell oats shall be
20 (a) at the cities of Fort William, Port Arthur or Vancouver, sixty-five cents per bushel basis in store in terminal elevators.
(b) at any point in the Western Division other than the cities of Fort William, Port Arthur or Vancouver aforesaid, sixty-five cents per bushel less the usual freight charge to Fort William, Port Arthur or Vancouver.
(c) at any point in the Eastern Division, sixty-five cents per bushel plus the usual freight and handling charges from the cities of Fort William or Port Arthur to the point of delivery of such oats.

4. The maximum price at which a person may sell barley shall be
30 (a) at the cities of Fort William, Port Arthur or Vancouver, ninety-three cents per bushel basis in store in terminal elevators.
(b) at any point in the Western Division other than the cities of Fort William, Port Arthur or Vancouver aforesaid, ninety-three cents per bushel less the usual freight charge to Fort William, Port Arthur or Vancouver.
(c) at any point in the Eastern Division, ninety-three cents per bushel plus the usual freight and handling charges from the cities of Fort William or Port Arthur to the point of delivery of such barley.

*Discussion of Counsel following Adjournment**Beatrice Maud Richardson for Defendants—Direct Examination*

5. Notwithstanding anything contained in section four of this Order, on the sale of barley suitable for malting or the manufacture of pot or pearl barley, a person offering such barley for sale may bargain for and receive and malsters and manufacturers of pot and pearling barley in Canada may pay to such person a premium in respect of the sale of such barley not exceeding five cents per bushel and if, during shipment, such barley is diverted from its original destination, an additional premium for such diversion not exceeding one and
10 one-half cents per bushel.

6. Notwithstanding anything contained in this Order, on the sale of oats and barley which during shipment is diverted from its original destination or shipped direct to a special destination, a person offering such oats or barley for sale may bargain for and receive and the purchaser thereof may pay a premium in respect of the diversion or shipment of such oats or barley to a special destination not exceeding one and one-half cents per bushel.

Dated at Winnipeg, March 19, 1947.

W. C. McNAMARA,
*Assistant Chief Commissioner
for The Canadian Wheat Board
as Administrator of Grain Prices.*

20

Approved:

D. GORDON, *Chairman, Wartime Prices and Trade Board.*"

The COURT: Does anything turn on transmission of authority from Wartime Prices and Trade Board to Mr. McNamara.

Mr. MACAULAY: I don't think so.

Mr. MONK: No, my lord.

BEATRICE MAUD RICHARDSON, being first duly sworn, testified as follows:

30 *Direct Examination by Mr. MacAulay:*

Q. What is your occupation?—A. I am in charge of the grain statistics for the Sanford Evans Company.

Q. How long have you been so employed?—A. For the past twenty years.

Beatrice Maud Richardson for Defendants—Direct Examination

Q. The Sanford Evans Statistical Service prepares what statistics in connection with grain?—A. They prepare statistics of the movement of stocks and exports compiled from the Board of Grain Commissioners figures or the Dominion Bureau of Statistics.

Q. And they have been doing that for the whole period of your employment?—A. Yes, since about 1920.

Q. And these statistics are furnished to whom?—A. To subscribers, grain men, business men, bankers, so forth, and so on.

10 Q. Is this the only grain statistical service in the city of Winnipeg?—
A. I believe so.

Q. Or in the Province of Manitoba.—A. Or in the Province of Manitoba?

Q. Do you know of any other grain statistical service in Canada?—A. Not in Canada, that is an independant statistical service.

Mr. MACAULAY: I think my friend will admit anything that is necessary in regard to the Sanford Evans Statistical Service.

Mr. MONK: That is a pretty broad request. What have you in mind?

Mr. MACAULAY: All right, don't bother.

By Mr. MacAulay:

20 Q. Can you tell the Court what stocks of oats were in store in commercial positions in March of 1947?

The COURT: If this material is in written form instead of making me write it down it would be a great help to me to have it in that form. Perhaps you could agree subject to relevancy that these figures could just be put in and marked as an exhibit.

Mr. MONK: I was rising to object to the relevancy of this evidence. We take the position that the fact that there was or was not a shortage or any other emergent situation in the barley and oat trading or grain trade is completely irrelevant. If there is an emergency it goes only to the validity of
30 the statute, and not an emergency in any one trade. The fact that an order was made where there is no emergency does not render it invalid.

The COURT: I am sure I have got the line of your argument. It will go in subject to your objection, Mr. Monk.

Beatrice Maud Richardson for Defendants—Direct Examination

(Statement of Canadian stocks and prices of oats and barley, referred to, produced and marked exhibit 14.)

By Mr. MacAulay:

Q. You have a copy of a statement which you have just produced, Miss Richardson, entitled "Oats and Barley Canadian Stocks and Prices," exhibit 14?

Mr. MONK: My lord, it is understood that we are admitting this as a result of statistical service of Sanford Evans Statistical Service, but without
10 admitting the accuracy of the amount of grain that they say was in store, only that it is the result of their service.

The COURT: Yes, in the event that you wish to put in statistics compiled in any other way you may do so.

By Mr. MacAulay:

Q. The first page of exhibit 14 shows commercial stocks in store. Tell me how those figures were compiled, and the source of information?—A. They are compiled from returns of the Board of Grain Commissioners which are issued weekly.

Q. And as at March 14, 1947, the stocks in store in commercial positions
20 were in the positions indicated on page 1, is that correct?—A. According to the figures of the Board of Grain Commissioners.

Q. According to the figures of the Board of Grain Commissioners from which these statistics were compiled. And the same applies to the figures under heading of March 21, 1947?—A. Yes, sir.

Q. That is, the total stocks were 30,322,322, and those stocks of oats on March 21, 1947, were in the positions indicated on page 1?—A. According to the returns of the board of Grain Commissioners.

Q. And the respective amounts were in the respective positions indicated on the statement?—A. Yes.

30 Q. And that also applies to the total stocks on April 3, 1947, and to the stocks in the respective positions on April 3, 1947?—A. That is right.

Q. In other words, all this information contained on page 1 of exhibit 14 was compiled from reports of the Board of Grain Commissioners?—A. Yes.

Q. Why haven't you figures of these stocks and their positions on March 17, 1947?—A. These figures are only issued weekly. Usually the week ends on Friday, and Friday happened to be March 14, 21, and April 3.

Beatrice Maud Richardson for Defendants—Direct Examination

Q. Will you turn to page 2 entitled "Commercial Stocks of Barley," and will you explain page 2 for us?—A. These are compiled from the same sources as the oat stocks, the Board of Grain Commissioners' figures, which are released weekly.

Q. Does the same reason apply for not having stocks as at March 17, 1947?—A. Yes.

Q. So the stocks in store in commercial position of barley on March 14, 1947, were 19,971,031 bushels, is that correct?—A. It is.

10 Q. And on March 21, 1947, 19,696,089 bushels?—A. Yes.

Q. And on April 3, 1947, 18,602,588?—A. Yes, sir.

Q. And these respective stocks were in the positions and in the amounts indicated on your statement?—A. As reported by the Board of Grain Commissioners.

Q. Turning to page 3 of exhibit 14 entitled "On Prairie Farms." "On Farms Oats and Barley." Will you explain that statement.—A. These figures are also compiled from the Board of Grain Commissioners' figures. They issue weekly a statement of deliveries of the grain from prairie farms, and these figures are compiled from those reports.

20 Q. The same dates apply, March 14, March 21, and April 3, for the same reasons, is that correct?—A. Yes.

Q. This statement indicates the deliveries August 1, 1946, to July 31st, 1947, on oats and barley?—A. Yes, sir.

Q. The amounts shown under oats and barley are the amounts of those deliveries?—A. That is right.

Q. It also indicates deliveries August 1, 1946, to March 14, 1947 on oats and barley?—A. Yes.

Q. It also indicates deliveries March 15, 1947, to July 31, 1947, on oats and barley?—A. That is right.

30 Q. And the carryover on the prairie farms as at July 31, 1947?—A. That is right.

Q. Why do you select July 31, 1947?—A. Because it is the end of the crop year.

Q. And the stocks on prairie farms available for delivery on March 15, 1947, were 73,414,999 bushels of oats, and 34,268,846 bushels of barley?—A. That is right.

Q. You say all the information contained on that page was prepared from weekly returns of the Board of Grain Commissioners?—A. All except the

Beatrice Maud Richardson for Defendants—Direct Examination

stocks on prairie farms. That is the figure issued by the Dominion Bureau of Statistics, carryover on prairie farms.

Q. Carryover on prairie farms July 31, 1947, 39,812,000, those figures are not supplied by the Board of Grain Commissioners but by—?—A. Dominion Bureau of Statistics.

Q. Aside from the figure of carryover on prairie farms, as supplied by the Dominion Bureau of Statistics, every other figure is prepared from the Board of Grain Commissioners weekly reports?—A. Yes, sir.

10 Q. Looking at page 4, "Stocks of Canadian Oats in Canada and the United States," those figures are prepared as at March 31, 1946, and March 31, 1947, is that correct?—A. Yes, sir.

Q. The authority for those figures is what?—A. Dominion Bureau of Statistics.

Q. Does the Board of Grain Commissioners issue any figures in respect of these matters, stocks in Canada and the United States?—A. Will you repeat the question?

Q. You say you use the Dominion Bureau of Statistics figures for this statement; does the Board of Grain Commissioners issue any figures from
20 which these stocks could be compiled?—A. The Dominion Bureau of Statistics issues all stocks of Canadian grain as at March 31, and July 31. They include stocks in commercial positions and stocks on farms.

Q. And so as at March 31, 1946, the total commercial stocks of oats in Canada and the United States was 37,689,360 bushels, is that correct?—A. Yes, sir.

Q. And March 31, 1947, 29,030,103 bushels.—A. That is right.

Q. And on farms as at March 31, 1946, 130,477,000 and as at March 31, 1947, 154,935,000?—A. Yes, sir.

Q. So according to the Dominion Bureau of Statistics figures as at March
30 31, 1946, the total stocks of oats in Canada and the United States was 168,166,360, and as at March 31, 1947, 183,965,103 bushels?—A. Yes, sir.

Q. On page 5 what do you show?—A. We show stocks of Canadian barley in Canada and the United States compiled on the same basis as the oats figured from the report of the Dominion Bureau of Statistics.

Q. You say they reported those stocks as at March 31, and what date?—A. July 31, the end of the crop year.

Q. Those are the only two dates for which they prepare and supply figures?—A. That is right.

Beatrice Maud Richardson for Defendants—Direct Examination

Q. So that there were stocks of Canadian barley in Canada and the United States as at March 31, 1946, total commercial stocks of 25,825,246 bushels?—

A. Yes, sir.

Q. And on farms 41,036,000 bushels, or a total of 66,861,246 bushels?—

A. That is right.

Q. And on March 31, 1947, the total commercial stocks were 18,874,617 bushels, on farms 57,960,000 bushels, or a total of 76,834,617 bushels?—

A. That is right.

10 Q. And of those stocks of Canadian barley there were only in United States positions on March 31, 1946, 50,000 bushels?—A. That is right.

Q. And on March 31, 1947, 536,918 bushels?—A. Yes.

Q. And all the rest of those total stocks were in Canadian position in the respective places indicated in the statement?—A. Yes.

By the Court:

Q. How about in transit grain?—A. Yes, there might be some grain in transit in the United States, rail figure. I don't know how much there would be.

By Mr. MacAulay:

Q. That is the way it is reported by the Dominion Bureau of Statistics?—

20 A. Yes.

Q. Do they indicate in their figures whether it is in transit in Canada or in the United States?—A. No, they do not.

Q. On the next page what do you show?—A. The prices as at March 17 and April 7, 1947. The Winnipeg prices are from the Winnipeg Grain Exchange records; the Minneapolis and Chicago prices are from the market record of the Minneapolis exchange.

Q. That indicates that on March 17, 1947, cash 2 C.W. oats was worth 51½ cents, plus an equalization fee of 10 cents, or 61½ cents; and on April 7, 65 cents?—A. That is right.

30 Q. Is there any significance in the increase between March 17 and April 7?—A. I don't think I am prepared to make any statement on that.

Q. You are just saying those are the prices?—A. These are the prices.

Q. 2 white oats. Does that correspond with your 2 C.W. oats, is that the same grade?—A. That I don't know. It is very difficult to get comparable grades between Canadian oats and barley and United States oats and barley, but this is as close as we can get.

Q. As like a grade as could be obtained?—A. As far as I know.

Beatrice Maud Richardson for Defendants—Direct Examination

Q. And Minneapolis 2 white oats at like grade or near like grade as you could select the price was $93\frac{7}{8}$ to $94\frac{7}{8}$ on March 17, and on April 7 $90\frac{1}{2}$ to $91\frac{1}{2}$?
—A. Yes, sir.

Q. Chicago 2 white oats, cash—what observation did you make?—A. We thought we should show the same grade in Chicago as we did in Minneapolis.

Q. And in selecting that 2 white oats—?—A. I think it is comparable with our 2 C.W. oats in Winnipeg.

Q. The price in Chicago, 101-102 on March 17, and on April 7 $93\frac{3}{4}$ to 10 94.—A. Yes.

Q. Now, the barley, will you explain those figures.—A. We have taken 3 C.W. 6 row against Minneapolis mellow malting barley of good quality with 14.5 per cent moisture, and as that grade is not quoted at Chicago, they only quote malting barley nominally, at the prices we have indicated.

Q. How about the moisture content of cash 3 C.W. 6 row?—A. I don't know.

Q. Why did you select mellow malting in Minneapolis to compare with 3 C.W. 6 row?—A. We thought it was comparable with the malting barley in Winnipeg.

20 Q. And the price on March 17 with equalization was $79\frac{3}{4}$, and on April 7th 93 cents?—A. That is right.

Q. And Minneapolis cash mellow malting 196-199 on March 17, what you considered comparable barley?—A. Yes.

Q. And on April 7th 186 to 189?—A. Yes.

Q. Did you select Chicago cash malting barley on the same basis?—A. No, that is only a quotation for barley in the Chicago cash market, malting barley. They grouped it together as malting barley.

Q. You don't know whether or not it is comparable to cash 3 C.W. 6 row?
—A. No.

30 Q. You selected that because it was the only quotation?—A. Yes.

Q. Is that the practice in Chicago to call it only malting barley?—A. It was on those dates.

Q. And the price 150 to 195 on March 17 and 160 to 200 on April 7th?—A. Yes.

Q. Going to page 1 again on oats, and dealing with stocks of oats, on March 14, 1947, on March 21, 1947, and on April 3, 1947, you are dealing with stocks in store in commercial positions?—A. Yes, sir.

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Q. What part of that oats was grown in a designated area? You are familiar with the definition of designated area in Western grain regulations and in the Order-in-Council, are you?—A. Yes, sir.

Q. What portion of those oats was grown in the designated area?—A. I don't know.

Q. Are there no statistics?—A. When they say stocks in store they do not show Eastern or Western.

Q. Some of it would be eastern and some western?—A. Maybe so.

10 Q. There are no statistics to indicate what proportion of these oats was grown in a designated area?—A. No.

Q. And in regard to the stocks of barley in store in commercial positions the figures you gave us in the respective positions as at March 14, 1947, March 21, 1947, and April 3, 1947, what part of that barley was grown in a designated area?—A. I don't know.

Q. That includes all the stocks no matter where grown in Canada in commercial positions?—A. That is right.

Q. There are no statistics to indicate what part of either oats or barley in commercial positions as at these dates was grown in a designated area?—
20 A. No figures showing which is east or west in barley.

Q. When you refer to eastern barley you refer to barley grown in what Provinces?—A. In Ontario, Quebec, and the Maritime Provinces

Q. When you refer to both eastern oats and barley you refer to oats and barley grown in Ontario, Quebec, and the Maritimes?—A. Yes.

The COURT: Does it necessarily mean that all these oats and barley were grown in Canada?

Mr. MACAULAY: I will ask the witness that.

A. Yes, sir, stocks of Canadian oats.

Q. All these oats and barley shown on exhibit 14 were grown in Canada,
30 you can say that?—A. Yes.

Q. I have another document "Stocks of Canadian Oats and Barley as at March 31 in the various years 1938, to 1947," Beginning with March 31, 1947, and it goes down to 1938. And the same information on "Carry-over of Canadian Oats and Barley July 31, 1938 to 1947," the end of the crop year.

Mr. MONK: I have the same objection, my lord.

The COURT: Yes.

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(Statement of stocks of Canadian Oats and Barley and Carryover of Canadian Oats and Barley, referred to, produced and marked exhibit 15).

Q. You now produce another statement which has been filed as exhibit 15 showing stocks of Canadian Oats and Barley. Where do these figures come from?—A. They are compiled from the Dominion Bureau of Statistics figures.

Q. The authority for those figures is Dominion Bureau of Statistics?—

10 A. That is right.

Q. This includes stocks on Canadian farms and in commercial positions March 31, 1938 to 1947?—A. Yes.

Q. Including both those years?—A. Yes.

Q. And the figures shown opposite oats for the respective years 1938 to 1947 show the stocks of oats on Canadian farms and in commercial positions on March 31 each of the years?—A. That is right.

Q. And the same applies to the barley shown on this statement?—A. Yes, sir.

20 Q. On page 2 you supply the figures compiled from the same source as at July 31, 1938 to 1947?—A. That is right.

The COURT: I think it is advisable to have the Court Reporter copy this statement into the record.

Mr. MACAULAY: Very well, my lord.

“Exhibit 15.

SANFORD EVANS STATISTICAL SERVICE
(Dominion Bureau of Statistics)

MARCH 31

NOTE: Includes stocks on Canadian farms and in commercial positions.

	OATS	BARLEY
1947.....	183,965,103	76,834,617
30 1946.....	168,166,360	66,861,246
1945.....	243,000,337	89,172,115
1944.....	255,762,276	115,724,492
1943.....	393,465,447	167,055,656
1942.....	106,644,038	37,596,031
1941.....	145,152,502	35,834,025
1940.....	154,447,775	37,562,109
1939.....	145,753,914	35,792,549
1938.....	78,227,045	25,737,521

*Beatrice Maud Richardson for Defendants—Direct Examination
and Cross Examination*

SANFORD EVANS STATISTICAL SERVICE
(Dominion Bureau of Statistics)

JULY 31

NOTE: Includes stocks on Canadian farms and in commercial positions.

	OATS	BARLEY
1947.....	67,996,649	28,636,494
1946.....	77,491,528	29,937,099
10 1945.....	98,255,162	28,919,181
1944.....	108,479,383	45,949,269
1943.....	149,340,515	69,278,502
1942.....	28,607,188	10,821,462
1941.....	41,563,379	10,642,658
1940.....	46,931,028	12,653,875
1939.....	48,887,155	12,804,186
1938.....	19,498,653	6,630,934

Mr. MONK: I wish to cross-examine reserving my objection.

The COURT: Very well, you may, Mr. Monk.

20 *Cross Examination by Mr. Monk:*

Q. Miss Richardson, you have, I suppose, in your organization figures relating to marketing and movements of oats and barley in Canada for several years prior to 1946 and 1947?—A. Yes.

Q. Deliveries and movements of western oats and barley into eastern Canada have shown a steady increase have they not, during the last five or six years?—A. I haven't the figures before me; I couldn't answer that.

Q. Are you familiar with the figures?—A. Yes, but I do not keep them in my mind.

Q. Would you say that is a fact, not tying you to an exact figure?—A. I
30 would have to look the figures up.

Q. You don't remember whether they have shown an increase or not?—
A. No, I do not.

Q. Have you any figures which would show the demand for oats or barley in eastern Canada either in the years relative to these figures or in other years?

A. The only figures that would show the demand would be the shipments from Fort William and Port Arthur to the East.

Q. You have them but you are not familiar with them?—A. That is right.

Q. As between the East and West commercial marketing of oats and

Beatrice Maud Richardson for Defendants—Cross Examination

barley is considerably smaller in the East, that is, from farms?—A. I believe that is so, but there are no figures released on deliveries from eastern farmers.

Q. You have no information on that?—A. No.

Q. I have noticed, Miss Richardson, in several of the figures in the first exhibit you submitted, exhibit 14, you refer to carry-over on prairie farms and stocks on farms. Do you know how those figures are obtained?—A. They are released by the Dominion Bureau of Statistics; I am not familiar with how they compile them.

10 Q. You just take their figure and carry on with your computation?—A. Yes, that is right.

Q. You have no means of knowing the accuracy or in-accuracy of their figures?—A. No.

Q. On the second last page of your first exhibit, exhibit, 14, you show stocks Fort William-Port Arthur; in transit, rail; Eastern elevators; Eastern mill. By Eastern elevators and Eastern mills I suppose you mean elevators and mills east of Fort William in Canada?—A. Yes, I think that is right.

Q. Have you figures for 1945, for instance, on the same date for the same positions?—A. I haven't them here, but we have them in the office.

20 Q. Have you had occasion to look at them? Are you familiar with them at all?—A. No, I have not.

Q. Could you tell me if your 1945 figures would be substantially the same as your 1946 figures?—A. In total or in Eastern elevators?

Q. No, I am talking of items Fort William-Port Arthur; in transit, rail; Eastern elevators, and Eastern Mills?—A. No, I don't remember the figures.

Q. You don't remember whether they are greater or less?—A. No.

Q. Generally for several years, 1946 and prior, there was a considerable demand for oats and barley in Eastern Canada, is that not so?—A. I believe that is so.

30 Q. And the shipments and amount of grain got down there I suggest your figures would show about the same in each year? In 1946 and several years prior?—A. I wouldn't know without looking up the figures.

Q. You will agree, Miss Richardson, that there is a considerable disparity in the figures between 1946 and 1947, and considerable reductions?—A. According to the figures of the Dominion Bureau of Statistics there is a decrease in stocks between 1946 and 1947 in these positions.

Q. Those are the positions in Eastern Canada?—A. In Eastern elevators and Eastern mills.

Beatrice Maud Richardson for Defendants—Cross Examination

Q. And Port Arthur?—A. I think Port Arthur and Fort William are considered in the Western division.

Q. I think you are right, but those are the stocks that would be available for eastern consumption?—A. I am not sure what the demand would be around Fort William and Port Arthur.

Q. Do you know of any other stocks in Canada in the East which are not included in the items Fort William-Port Arthur; in transit, rail; Eastern elevators, and Eastern mills?—A. Eastern farm stocks are not included.

10 Q. With Eastern farm stocks that would include all the stocks in commercial positions?—A. Yes.

Q. And you haven't any figure here which would show the demand?—A. No, I have not.

Q. I am going to ask you a hypothetical question; answer it if you can. It would appear there was special demand in 1946 from your figures, in view of the stocks shown in the Eastern positions, is that correct?—A. I couldn't say without having comparable figures for several years back.

Q. If, shall we put it this way, the stocks which are shown in your statement as being available for Eastern consumption in 1946 represented
20 the demand at that time, and the same demand continued in 1947, would you say there would be a shortage in the area or would there be a sufficient supply?
—A. I don't think I want to comment on the figures.

The COURT: It occurs to me that certain arguments could be made from these figures either way. Surely there are men here in this city who could give first-hand evidence as to the demand both east and west, men who had been actually making sales, men in the Wheat Board and in the companies. Another thing, at sometime or other, the Court will have to be instructed as to what oats and barley are used for, for human consumption or for the making of beer. If we are going into the question of emergency the Court will have
30 to know that.

Another thing running through my mind is it might be conceivably possible that commitments for Government contracts, if there are any relating to oats and barley, might become of considerable importance, if it is to be considered from the standpoint of emergency. Off hand, subject to further instructions by counsel, I read national emergency within the territorial limits of Canada and not an emergency which might be created by the fact that some organization has entered into contracts to sell Canadian grown grain elsewhere.

Beatrice Maud Richardson for Defendants—Cross Examination
Albert Henry Hand for Defendants—Re-Direct Examination

Mr. MONK: Our position is a national emergency as you suggest, but an emergency once having been declared, Parliament having declared an emergent situation, the fact that the order is or is not directed at a local situation is not relevant.

The COURT: I understand your argument, but I am anticipating thoughts which a number of learned gentlemen on the other side may put forth.

ALBERT HENRY HAND, recalled:

10 Mr. FILLMORE: I am recalling Mr. Hand in connection with storage charges only.

Direct Examination by Mr. Fillmore:

Q. You are under oath, Mr. Hand?—A. Yes.

Q. What does this statement which I now show you indicate?—A. That shows the amount of accumulated interest on Mr. Nolan's barley from the date of purchase, first shown here July 31, 1943, up to and including March 17, 1947.

Q. And the amount is?—A. At that date the amount is \$1582.20.

Mr. FILLMORE: I will put that in, my lord.

20 The COURT: Yes.

(Statement of accumulated interest on Nolan's barley, referred to, produced and marked exhibit 16).

Q. What does the statement you now have in your hand show?—
 A. That shows the amount of storage still owing on Mr. Nolan's barley as at March 17, 1947. It shows an amount here of the actual storage from the date of purchase until March 17 inclusive, an amount of \$12,612.76. During the period from July 31 to March 17 we had permission from Mr. Nolan to use this barley from time to time, and the second item shows credits allowed
 30 to Mr. Nolan by Hallet & Carey for the period in which we used his barley, three different periods, and the total amount of credits on those three periods is \$6,541.60, leaving a net balance owing by Mr. Nolan of \$6,071.16.

Q. That is as of what date?—A. March 17, 1947.

Albert Henry Hand for Defendants—Re-Direct Examination

(Statement of storage owing by Mr. Nolan referred to, produced and marked exhibit 17).

Q. What is the paper you are now looking at?—A. That shows the same result computed in a different way. It shows the dates that he was liable for storage. It does not show the dates we handled or used the barley.

(Statement of storage on Nolan's barley referred to, produced and marked exhibit 18).

10

Q. And the final statement here shows what?—A. This shows the actual storage on the warehouse receipts now in question in this action from the date of the warehouse receipt to March 17.

Q. And the storage charges on the 40,000 bushels of barley indicated by the warehouse receipts in question in this action amounts to what?—A. \$937.65 to March 17, 1948.

Q. It also shows March 17 to April 7, 1947, twenty-one days \$280?—A. Yes.

(Statement of storage on Nolan's grain referred to, produced and marked exhibit 19).

20

Cross Examination by Mr. Monk:

Q. Mr. Hand, this exhibit 19, shows the actual storage which had accrued due on March 17 and April 7 on the physical barley represented by these particular receipts shown in the exhibit?—A. That is true.

Q. And on March 17 any person who held those documents could obtain delivery of the 40,000 bushels from the warehousemen by presenting the documents and paying this amount of storage?—A. That is true.

Q. The other computations that have been shown are computations of
30 Hallet & Carey's account against Mr. Nolan?—A. Yes.

Q. This exhibit 19 is the computation of the warehousemen's account against the holders of the receipt?—A. We compiled it.

Q. It is your computation of what he would get?—A. Yes.

Q. That is what you compute him to be entitled to under those documents?—A. That is true.

Q. Mr. Hand, yesterday you said something about the duration of storage that was paid by The Canadian Wheat Board on your stocks other

Albert Henry Hand for Defendants—Cross Examination

than Mr. Nolan's stocks which were adjusted with the Board. Do you wish to change your statement in any way?—A. I think I referred yesterday to the fact that I went back to the time we took possession of the barley.

Q. I think you did.—A. Now, I may be in error on that. I would like to look back at our submission to the Board at the time we made the check. I am not certain of the date. It has been drawn to my attention that it is wrong.

Q. Have you a copy of your submission to the Board?—A. No, I haven't.

10 *By Mr. Fillmore:*

Q. You can let us know, Mr. Hand, and if there is any correction of the date we can put it on the record.—A. Yes, that can be verified by The Canadian Wheat Board, they have a copy of it.

Q. You told us yesterday that you settled or adjusted with the Canadian Wheat Board for all of your oats and barley except the quantity of 40,000 bushels which you were holding for Mr. Nolan?—A. Yes.

Q. No application was made by your firm to The Canadian Wheat Board to re-purchase this barley from the Board, speaking of the 40,000 bushels?—A. No, there was never any adjustment made with the Board on the 40,000
20 bushels.

Mr. MONK: With your lordship's permission there are one or two questions I would like to ask this witness in relation to that matter.

The COURT: Yes.

By Mr. Monk:

Q. Hallet & Carey received Instructions to Trade shown in the Agreed Statement of Facts No. 74?—A. Yes.

Q. Did that come to your personal attention?—A. Do you mean by that was it sent directly to me?

Q. In the course of your work with Hallet & Carey is that your
30 responsibility? Do these come to your attention or to somebody else?—A. I might say in most cases they go to Mr. Powell, president of the Company, but they do come to me also.

Q. Did you also receive the order shown as exhibit 8 of exhibit 1 and dated 27th day of May?—A. Yes.

Q. Both of these documents were requirements that you, Hallet & Carey, deliver your stocks and the documents therein named in exhibit 8 to the Board. Why did you not deliver the stocks to the Board?—A. Those

Albert Henry Hand for Defendants—Cross Examination

receipts there covering 40,000 bushels of 3 C.W. 6-row barley belonged to Mr. Nolan, not Hallet & Carey, and Mr. Nolan gave us definite instructions not to turn it over or make any adjustment.

Q. As far as your other stocks were concerned I suggest that you bought them back from the Board, and that the money you paid to the Board was an adjustment of price?

The COURT: Isn't that a matter for me to decide.

Mr. MONK: Probably.

10 Mr. FILLMORE: It would be better to bring out the facts.

The COURT: I think you have the facts. I have to determine now what was done.

By Mr. Fillmore:

Q. In this case of Mr. Nolan, Hallet & Carey Limited held the warehouse receipts, you held the documents and you still have them?—A. That is true.

Q. Would you deliver them up voluntarily without getting the total amount of your storage charges?—A. To Mr. Nolan, do you mean?

Q. Yes?—A. No.

20 Q. Would you transfer the documents of title voluntarily to anyone else without getting your full storage charges?—A. Not unless we had instructions from Mr. Nolan to do so.

Q. By storage charges I take it you mean \$6000 plus interest, the total amount that Mr. Nolan owes to you?—A. Yes.

Q. That is what you want before you would part with your documents of title?—A. We would want to be assured we were going to get that money, yes.

Mr. MONK: I have no further questions.

Mr. MACAULAY: That is the defence, my lord.

30 Mr. FILLMORE: That is the defence for Hallet & Carey Limited, my lord.

Mr. SCARTH: I am offering no evidence with one exception possibly. I haven't checked the figures on the storage down to March 17. I will do that with my clients and I may ask for leave to submit evidence if it does not agree with the statements submitted.

The COURT: Very well, you will have that right.

Albert Henry Hand for Defendants—Cross Examination

Mr. SCARTH: Mr. Deacon was ill yesterday and I speak for him.

Mr. MONK: I understand all the defences are closed. It is not the purpose of the plaintiff to present any evidence in rebuttal. I might suggest with your permission, my lord, that we adjourn and commence the argument after the noon hour.

The COURT: That will be satisfactory to me.

(At 2 p.m., on the same date counsel presented argument, and judgment was subsequently rendered).

10

CERTIFIED to be a faithful transcript of my shorthand notes taken at the trial of this case.

OFFICIAL COURT REPORTER.
Official Court Reporter.