

BETWEEN :

HER MAJESTY THE QUEEN..... PLAINTIFF; 1951
Nov. 5, 6, 7
& 8

AND

B.V.D. COMPANY LIMITED..... DEFENDANT. 1952
Feb. 27

*Crown—Action to recover money paid as special subsidies to defendant—
Non-compliance with condition on which subsidy paid—Crown not
bound by statement made by officer of Crown corporation without
authority—Right of Crown to sue—Defendant held liable to repay to
Crown amount of subsidy received by it.*

The action is one in which the Crown seeks to recover from defendant money paid it as special subsidies by the Commodity Prices Stabilization Corporation, a Crown corporation, in respect of importations of cotton fabrics in 1947, the defendant having been required to invoice and ship the goods manufactured from such cotton fabrics not later than December 31, 1947. The payment of all subsidies was within the discretion of the Wartime Prices and Trade Board which had full power to impose such conditions upon payment of subsidy as it might consider proper.

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Held: That the Wartime Prices and Trade Board having imposed a condition on payment of subsidy which condition was accepted by the defendant, the defendant was neither entitled to receive the special subsidy nor to retain it if paid unless that condition were fulfilled, and unless the defendant in some legal manner was released from the necessity of complying with that condition the subsidy received by it must be repaid to plaintiff.

2. That a statement in a letter to defendant signed by a supervising examiner of the Commodity Prices Stabilization Corporation made without authority could not bind either the Wartime Prices and Trade Board, the Commodity Prices Stabilization Corporation or the Crown.
3. That the Commodity Prices Stabilization Corporation was the agent of the Crown and the action is properly instituted in the name of the Crown.

INFORMATION exhibited by the Deputy Attorney General of Canada to recover from defendant money paid it as special subsidies by the Commodity Prices Stabilization Corporation, a Crown corporation.

The action was tried before the Honourable Mr. Justice Cameron at Montreal.

Roger Ouimet, Q.C. and *Luc Couture* for plaintiff.

Jean Martineau Q.C. for defendant.

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

CAMERON J. now (February 27, 1952) delivered the following judgment:

In this information the Crown seeks to recover from the defendant the sum of \$39,126.54 paid to it as special subsidies by a Crown corporation—the Commodity Prices Stabilization Corporation (hereinafter to be called “the Corporation”)—in respect of importations of cotton fabrics in 1947, it being alleged that the subsidies so paid were paid subject to the condition and undertaking of the defendant that it would invoice and ship the goods manufactured from the said cotton fabrics not later than December 31, 1947. The defendant admits that certain portions of the goods for which it received special subsidies were not invoiced and shipped until after that date, but alleges *inter alia* that the said sum is not recoverable by reason of a letter written by an official of the Corporation

dated October 22, 1947 (Ex. A), and a notice by the
 Wartime Prices and Trade Board dated September 13,
 1947 (Ex. 24).

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Paras. 4 to 9 of the information set forth the various claims of the plaintiff which total \$81,369.80; and by para. 10 thereof, credit is given for \$42,243.26, that sum apparently being made up in part of subsidies to which the defendant was entitled, and in part by repayment of subsidies by the defendant. The plaintiff now claims a balance of \$39,126.54 and interest.

At the opening of the trial, the parties filed an admission as follows:

Should the defendant be found liable in respect of the claim for the refund of special subsidies (C-29 Application) set out in paragraph 7 of the information herein, the parties have agreed to the exactness of the amount mentioned in the conclusion of said information and conceive of judgment accordingly.

In view of that admission, I am relieved of the necessity of inquiring into the particulars of the claims advanced in paras. 4, 5, 6, 8 and 9 of the information.

Para. 7 thereof is as follows:

An amount of \$38,128.27 became due as a necessary refund of special subsidies on goods for which said special subsidies were paid by the corporation to the defendant on the express condition that they be all invoiced and shipped by the defendant, at the latest on the 31st of December, 1947;

In order to understand the powers and duties of the Corporation, it is necessary to set out certain facts. Under the system of price control, maximum price regulations were established on November 1, 1941. It was then found that the administration and enforcement of such regulations was affected by prices prevailing in foreign markets. By Order in Council P.C. 9870, dated December 17, 1940 (Ex. 1), the Minister of Finance was authorized to cause the incorporation of a private company to be wholly owned by His Majesty and to be known as the Commodity Prices Stabilization Corporation.

With the intent and for the purpose of facilitating, under the direction of the Wartime Prices and Trade Board, the control of prices of goods, wares and merchandise in Canada . . .

Under that Order in Council, and as amended by P.C. 5863, dated July 7, 1942 (Ex. 2), it was provided that upon incorporation of the said company "the said company shall

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have such powers, in addition to those contained in the Letters Patent and in the Companies Act, as are herein contained, and the said company shall further have power to do all such things as may be deemed necessary and expedient for the purpose of carrying out any of the objects of the company and of carrying out the agreement between His Majesty and the said company referred to in section 3 hereof."

2.(1) The Wartime Prices and Trade Board is hereby authorized from time to time to delegate to the said company such of the powers of the said Board, as are now or may hereafter be conferred upon it, as the said Board may deem advisable.

(2) The said company is hereby authorized

(a) subject to the terms of the agreement between His Majesty and the said company referred to in section 3 hereof, to pay such sum or sums by way of subvention, subsidy, bonus, or otherwise to any person, firm or corporation as may be deemed advisable; provided, however, that the said company shall not enter into any agreement binding itself to pay any such sum or sums to any person, firm or corporation except with the approval of the Minister of Finance.

By the terms of the Draft Agreement attached to P.C. 5863, it was provided:

1. The payment by the company of any financial assistance to or for the benefit of any person, firm or corporation by way of subvention, subsidy, bonus or otherwise shall be in accordance with principles formulated from time to time by the Wartime Prices and Trade Board and approved by the Minister.

It will be seen, therefore, that the policy to be adopted in connection with payments of subsidies to importers was set by the Wartime Prices and Trade Board and that policy was administered by the Corporation, which also received applications for and paid the regular subsidies. From time to time, the Wartime Prices and Trade Board issued statements of policy and amendments thereto, and notice thereof was given to importers, including the defendant.

Importers of goods into Canada who desired to apply for a subsidy were required to complete and file with the Corporation, Form C4A, in respect of each application (Ex. 11). Prior to using that form, they were supplied with Form C4A-S1, entitled "Instructions and Conditions Respecting the Use of Form C4A" (Ex. 10), which they

were required to acknowledge on a detachable form at the end thereof, reading as follows:

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I/We hereby acknowledge receipt of the "Instructions and Conditions" relative to applications for subsidy (on C.P.S.C. Form C4A or any revised or substituted form) in respect of imported goods which have been or may be processed or manufactured prior to sale by the applicant in Canada.

I/We hereby acknowledge, undertake and agree

(1) that I/we have read and understand the said Instructions and Conditions and hold on file in our office a copy thereof, and

(2) that all applications for subsidy to which the said Instructions and Conditions are applicable will be made in accordance therewith without reservation or qualification.

On each C4A application thereafter, the instructions and conditions were not repeated, but in the certificate of the applicant importer, he certified:

(1) That I/we have received, read and understand the Instructions and Conditions (Form C4A-S1) or as may be amended (applicable to this form).

(2) That all of the goods on which import subsidy is hereby applied for . . . (e) have been or will be sold in compliance with Wartime Prices and Trade Board regulations.

The defendant on very many occasions applied for and was granted regular subsidies. On June 19, 1945, it completed and forwarded to the Corporation, duly executed, the detachable portion of Form C4A-S1 (Ex. 14) containing the acknowledgment and undertaking above set forth, and which remained in effect at all relevant times.

Ex. 4 is a "Statement of Policy on Subsidies on Imported Textiles" issued by the Wartime Prices and Trade Board of February 22, 1947. By that statement, an import of cotton fabrics from the United States was not eligible for *any subsidy* unless a prior purchase approval had been obtained for it on C.P.S.C. Form C28 before the purchase. For the first time, the Board stated its policy to protect importers in the event that the general subsidies were removed or reduced. Its purpose was stated in para. 2 as follows:

2. To give importers of cotton fabrics and cotton yarns, from the United States and elsewhere, a means of obtaining a further protection in regard to subsidy. Under the new provisions of this statement, importers may get reasonable protection on their firm forward purchases in the event (i) that price ceilings and existing subsidies are removed before the goods arrive or (ii) that price ceilings are raised and existing subsidies are reduced before the goods arrive.

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It further provided:

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Any import of cotton fabrics or cotton yarns from the United States, which is covered by a valid form C28, is automatically eligible for this protection. In addition, any import of such goods from countries other than the United States may be made eligible for the same protection by application to the Cotton Administration.

The protection given to the importer will be subject to the following provisions: . . .

- (d) *A date or dates before which the goods, or the products made from them, will be sold in Canada must be specified;*
- (e) Any subsidy payment will be subject to recovery by the corporation (i) to the extent that the actual selling prices of the imported goods or the products made from them exceed the prices designated under (b) above, and (ii) to the extent that the subsidized goods are exported . . .

When existing subsidies on imported cotton fabrics or cotton yarns are discontinued, no further subsidy will be paid to any importer of such goods except under the terms of this statement.

This statement of policy shall be effective on and after February 24, 1947.

While that Statement of Policy was in effect, the defendant on May 31, 1947, placed eighteen orders for cotton fabrics in the United States. In each case it applied for and was granted the necessary prior purchase price approval by the Corporation. The goods so ordered, however, were not brought into Canada until late September and October, 1947, the earliest date of entry being September 26, 1947.

In the meantime, the Wartime Prices and Trade Board, by a government notice duly gazetted, and dated June 2, 1947, had issued a further "Statement of Policy on Import Subsidies" effective on that date (Ex. 6). It replaced the Statement of Policy of January 13, 1947, and amendments, and also that of February 24, 1947. Therein it repeated the statement contained in previous ones that payment of subsidies was discretionary, as follows:

1. The payment of subsidies is discretionary, not obligatory; no person has any legal right to an import subsidy or any other subsidy administered by or under direction of the Board. *It follows that subsidies shall not be payable, and if already paid may be recovered, on any imports not falling within the conditions of eligibility for import subsidy herein set forth.*

It also listed in Schedule I the "goods eligible for subsidy subject to the limitations and conditions set forth in section 4(a) of the Statement of Policy on Import Subsidies," and in Schedule II those eligible under section 4(b) thereof, the

imported goods of the defendant being shown in Schedule I; and it further provided that:

3. Eligibility for subsidy within the above classes is limited to those goods listed or described in Schedules I and II hereto *when sold in compliance with regulations from time to time made effective by the Board*, and subject to the limitations set out elsewhere in this statement. The Board may from time to time make additions to or deletions from the said Schedules; and goods classified by the Department of National Revenue for Customs purposes under a tariff item not in effect on January 1, 1946, are deemed to be included in Schedule II hereto and are subject to all the limitations applying to that Schedule.

Under the heading "Special Subsidy Protection in the Event Existing Subsidies are Removed or Reduced," it provided:

9. (a) *General*: From time to time goods may be made ineligible for subsidy by removal from Schedule I or II hereto or may be made eligible for reduced subsidy, with higher maximum prices or suspension from maximum prices being provided concurrently. In such cases the Corporation is prepared to give consideration to applications for special subsidy protection for such goods entered for consumption at Customs after the effective date of the change in status provided such importations arise from firm purchase commitments of reasonable character and amount entered into prior to the date of such change but not prior to December 1, 1941. The special subsidy protection which may be available is designed to assure the importer that he will be subsidized, if subsidy is necessary, on a basis appropriate to the price at which in the opinion of the Board such goods can reasonably be expected to be sold in Canada in the changed circumstances.

This special subsidy protection is subject to the following terms and conditions:

- (i) The importer must file notice of his intention to apply for the special subsidy on goods imported after the date on which existing subsidies on them have been reduced or removed. He must file this notice with the Corporation at Ottawa on a form provided by the Corporation during the 10 days immediately following the date on which such goods are entered for consumption at Customs.
- (ii) The Board will designate a selling price at which in its opinion such goods can reasonably be expected to be sold in Canada under the changed conditions and a corresponding base cost for subsidy purposes. The price so designated will in no case be lower than the maximum price in effect immediately prior to the change in subsidy regulations and will usually be higher.
- (iii) *A date or dates before which the goods, or products made from them are to be sold in Canada if the goods are to qualify for special subsidy protection will be specified by the Board.*
- (iv) Any subsidy payment under this special protection will be subject to recovery by the Corporation.
 - (a) in an appropriate amount in relation to the extent that the actual selling prices of the imported goods or products made from them exceed the prices designated by the Board,

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- (b) to the extent that the subsidized goods are exported, and
 (c) to the extent that such special subsidy contributes to profits in excess of 116 $\frac{2}{3}$ per cent of standard profits for the applicant during the fiscal period or periods ending within the 15 months immediately following the date on which the particular goods in question are made ineligible for subsidy.

(b) *Special note on Goods Covered by Validated C28 Forms:* For the past several months special subsidy protection similar to that described in Clause (a) of this section has been provided by the Statement of Policy on Subsidies on Imported Textiles effective February 24th for importations of cotton yarns and fabrics covered by validated C-28 forms. For all purchases covered by properly validated C-28 forms issued on and before May 31, 1947, this special subsidy protection is not subject to the profit limitation described in Clause (c) of paragraph (iv) above. However, on all purchases covered by C-28 forms issued on and after June 2, 1947, the special subsidy protection will be subject to the profit limitation described in that clause. Importers are reminded that to claim the special subsidy protection provided for goods covered by properly validated C-28 forms they must file notice of intention to apply for the special subsidy with the Corporation at Ottawa on Form C-29 during the 10 days immediately following the date on which such goods are entered for consumption at Customs.

In the meantime, also, the Wartime Prices and Trade Board had issued a further government notice entitled "Statement of Policy on Import Subsidies," dated September 12, 1947 (Ex. 25). That statement gave notice that effective September 15, 1947, Schedule I of the Statement of Policy of June 2, 1947, was deleted, the effect of which was to discontinue the general subsidies previously payable on the goods mentioned in that schedule, including cotton fabrics. Under the heading "Important Notice," it was stated:

Applicants who may be interested in the special subsidy provided in paragraph 9 of the Statement of Policy on Import Subsidies effective June 2, 1947, respecting goods removed from Schedule I or Schedule II of the statement should read carefully paragraph 9, particularly 9(a) (i) which requires notification of intent to apply for subsidy within 10 days from date the goods are entered for consumption at customs and 9(a) (iv) (c) which provides that special subsidy will not be paid if it contributes to profits in excess of 116 $\frac{2}{3}$ per cent of standard profits.

As I have said above, the eighteen orders which had been placed by the defendant in the United States on May 31, 1947, were not received in Canada until after September 15, 1947, and in respect of these goods the defendant could not claim the general subsidy previously applicable. Subject to due compliance with the regulations and to the undertakings given by it, the defendant was entitled to apply for the special subsidy. Accordingly, in respect of eighteen

orders, it prepared Form C29 entitled "Notice of Intent to Apply for Special Subsidy in Accordance with Statement of Policy of Subsidies on Imported Textiles, effective February 24, 1947, as amended, or as may be amended," and in each case under Item 4, stated that the date prior to which it would sell the goods mentioned was April 30, 1948. These forms were sent to the Corporation and on October 22, 1947, one D. I. Shaver, the assistant supervising examiner of the Corporation, wrote the defendant (Ex. A) as follows:

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We are in receipt of some 12 C. 29 Forms submitted in triplicate by your good selves in which in Section 4 of the Form we note that you have inserted the date April 30, 1948 as the "date prior to which applicant will sell goods". On the covering Advice Form on which you will be designated appropriate basic costs for special subsidy purposes to be used on any application for subsidy on our Form C4A to be submitted covering these importations we would advise that we shall show in Section (h) at the bottom of the Advice Form the date December 31, 1947 as the date prior to which the goods must be invoiced and shipped in order to be priced for subsidy purposes at the figure designated in Section (f) of the Advice Form.

At the present time we are able to designate the same basic costs that you have been given by pre-decontrol Price Notifications which take into account the selling price increases effective July 1, 1947. It is evident that such Advice Forms as are issued at the present on this basis allow you to sell the garments on the same basis of subsidy as that in effect prior to decontrol, so long as the garments are invoiced and shipped prior to December 31, 1947, and that such an agreement will stand irregardless of any adjustments of the Canadian price level for comparable fabrics up to the date of December 31, 1947.

You will appreciate that we are unable to afford subsidy assistance on the same basis as that in effect before September 15, 1947 for any longer period than up to the first of next year, since it is our understanding that no agreement has been entered into with the Wartime Prices and Trade Board by the Shirt Manufacturers to hold the price line at the pre-decontrol level beyond the first of next year. *If there is any price increase on an industry-wide basis at that time basic costs for special subsidy purposes will be adjusted upwards to reflect the amount of such an increase.*

We have the alternative of holding the Forms C. 29 in abeyance until such time as the Canadian market level for the fabric covered is clarified for the first quarter of 1948. However, we feel that you may wish to invoice and ship some of the goods prior to December 31, 1947 and we would advise that upon receipt of the Advice Forms covering the C. 29's in question, you are quite free to apply for subsidy on the bases designated on the Advice Forms (showing in Col. J (a) of our Form C4A the basic cost designated in Section (f) of the Advice Forms) on all garments invoiced and shipped prior to December 31, 1947. On any garments invoiced and shipped subsequent to that date we shall have to await clarification of the Board's policy.

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It is upon that part of the letter I have underlined that the defendant relies in the main, and it will be referred to later. The C.29 forms were duly processed by the Corporation, and in the Advice Forms completed by the Corporation (and as referred to in Ex. A) the date prior to which the goods must be invoiced and shipped was stated to be December 31, 1947. Following the receipt of these Advice Forms, the defendant made eighteen individual applications for special subsidy on Forms C4A in the month of November, 1947.

On December 18, 1947, the Corporation issued and forwarded a Notice to Importers (including the defendant), (Ex. 22), which included the following:

The Wartime Prices and Trade Board has advised the Corporation that effective at the close of business December 31, 1947, *no subsidy will be available on goods made ineligible for subsidy and not invoiced and delivered by the importer on or before that date.* The Board has instructed the Corporation to recover the subsidy content in the subsidized imported goods listed below, held in inventory at that time (whether in the same condition as imported, in process or in finished state) by the persons or firms who received regular or special subsidy thereon—

Cotton goods, i.e., goods chiefly by weight of cotton

Soya Bean Oil Meal,

Goatskins, Kidskins, Sheepskins, Lambskins, raw, whether dry, salted or pickled.

In view of the foregoing it is necessary that this Corporation receive from you on or before the 15th of January, 1948, a report of your inventory, i.e., goods not invoiced and shipped by you on or before December 31, 1947, in respect of the above noted goods which you have imported and upon which you have received or have made application for either regular or special subsidy, and also in respect of the above noted goods which you have purchased from Commodity Prices Stabilization Corporation Ltd.

On December 27, 1947, the Corporation forwarded a further Notice to Importers dated December 27, 1947, extending the date for taking inventory and making filing returns by one month. It stated, however, that "the foregoing does not in any way affect Forms C.29" and it was therefore wholly inapplicable to the defendant's application for special subsidy, inasmuch as Form C.29 related solely to applications for special subsidy.

The evidence indicates that the Corporation had adopted the practice of paying subsidies to companies as an accountable advance and later reclaiming such as were found on examination and inspection to have been unwarranted by.

reason of non-compliance with the regulations and conditions. It was considered necessary to do this in order to avoid long delays in payment of the subsidies. That practice was followed in each of the C.29 applications of the defendant, and the full amount of the subsidy was paid to it without waiting for proof of the fact that all the goods manufactured had been invoiced and shipped prior to December 31, 1947. In respect of five of the applications, no difficulty arises as the goods in respect of which these applications were made were invoiced and shipped prior to December 31, 1947. Those applications are Exhibits 29 to 33.

Ex. 12 contains the other thirteen C4A applications, and in each case there are attached the C.29 Notice of Intent Forms and the Advice Forms specifying the date prior to which the goods must be invoiced and shipped as December 31, 1947, the dates of the latter forms being October 22, October 23 and October 31, 1947. The Advice Forms state that it would now be in order to submit applications for special subsidy on Form C4A, and also "nothing herein contained is to be deemed to imply any assurance or guarantee that subsidy will be paid." It is admitted that the goods referred to in these thirteen applications were not invoiced and shipped until after December 31, 1947.

When this was ascertained, the Corporation made a claim upon the defendant for the full amount of the special subsidies paid in respect of these thirteen items, and issued two debit notes in respect thereof, each being dated May 27, 1948. The first one was for a return of \$21,948.69 in respect of Claims 179, 181, 184 and 185; and the other for \$38,128.27 in respect of the other nine claims. The defendant declined to repay the said amounts and on June 8, 1949, Mr. G. H. Glass, one of the vice presidents of the Corporation, called upon Mr. Stewart, president of the defendant company. Following the discussion, Mr. Stewart wrote the chairman of the Wartime Prices and Trade Board on the same date (Ex. 26), outlining what had taken place and the nature of the defendant's claim to retain the unpaid balance of \$38,903.72. That letter states in part as follows:

As a result of correspondence between us, Mr. G. H. Glass was kind enough to call on me this morning so that I could present our point of view to him completely and fully. This I did, and at his request I am writing this letter so that the whole picture will be clear to you.

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In May 1947, after receiving approvals we purchased certain fabrics in the U.S.A. which were imported and cleared through Customs before the 31st of October, 1947.

On September 13th, we received a notice from Mr. R. W. Main which led us to believe that this merchandise could be sold at ceiling prices then prevailing and the full subsidy would be paid. It also led us to believe that if the goods were sold above ceiling prices that subsidy would be recovered only to the extent that prices were increased.

On October 22nd, a letter was written to us by the C.P.S.C.L. confirming this opinion as they stated in their letter that if, after the 31st of December, there was any price increase on an industry-wide basis that basic costs for special subsidy purposes would be adjusted upwards to reflect the amount of such an increase.

Having therefore formed this opinion and having had it confirmed by the C.P.S.C.L., we felt that we were perfectly safe-guarded on a just and equitable basis and we, therefore, concentrated our manufacturing efforts on producing merchandise which we had offered and sold to the retail trade for Fall and Christmas delivery, and in this effort we were successful as we shipped and delivered every twelfth of a dozen on time, of the garments which we had sold.

On December 18th, a circular letter was sent to us by the C.P.S.C.L. stating the conditions under which subsidy was to be recovered, and on December 27th an amended notice was sent which specifically disclosed the attitude of the C.P.S.C.L. regarding merchandise held in inventory controlled by Forms C29.

It seems to us that to inform us in this way four days before the order was to go into effect left us in a hopeless position and was absolutely unreasonable.

During our interview yesterday Mr. Glass drew to our attention the fact that on the C.P.S.C.L. basis we owed them \$50,632.52, whereas we took the attitude that if the C29 Form merchandise was adjusted on our basis, we only claimed \$38,903.72 and he wanted to know what our attitude was concerning this balance. We told him that there was nothing to discuss as we felt that the balance of their claim was perfectly fair and just. He asked us, therefore, if we were prepared to pay this amount and we assured him that we were, as the only other amount in question at all was a small matter of \$222.82. He then took up a further claim of \$955.78 which was not included in the large amount of \$50,632.52. This was for goods purchased from the C.P.S.C.L. on which an adjustment was necessary and we immediately acknowledged the justice of this claim.

As a result of this part of the conversation we are enclosing with the copy of this letter which we are sending to Mr. Glass a cheque for \$955.78 covering this extra claim together with a cheque for \$11,505.98 which covers the difference between \$50,632.52 claimed by the C.P.S.C.L. less our claim of \$38,903.72 less the amount of \$222.82 which Mr. Glass allowed us as he felt that our statements concerning this small difference were fair and justified.

It could not be successfully contended that what took place between Glass and Stewart was a settlement of the matters in dispute. The latter clearly indicates that as a result of the discussion, Stewart was asked to place his view

in writing before the Wartime Prices and Trade Board. However, that letter and Mr. Stewart's evidence do indicate that what was left unsettled was not the claim for the amount of \$38,128.27 shown in the second debit note—as urged by counsel for the Crown—but whether in respect of all thirteen claims the defendant was entitled to retain all of the special subsidy less the amounts received by the defendant (who sold the goods after December 31, 1947) in excess of the fixed prices applicable up to that date. There is no evidence whatever that the claims in the first debit note were settled in full at any time.

The sole question for consideration, therefore, is whether the defendant was bound to invoice and ship the goods referred to in Ex. 12 by December 31, 1947, as a condition to its receiving and retaining the special subsidy. Were it not for Shaver's letter (Ex. A), there would be no difficulty whatever. Counsel for the defendant admits that it was within the powers of the Wartime Prices and Trade Board or the Corporation to impose such a condition. It was frequently brought to the notice of all importers that payment of subsidies was discretionary and not obligatory; and Ex. 2 clearly provides that the payment of any subsidy "shall be in accordance with the principles formulated from time to time by the Wartime Prices and Trade Board and approved by the Minister."

In 1947, price controls were gradually being relaxed or dropped. The Wartime Prices and Trade Board was therefore concerned with the necessity of limiting or eliminating the payment of subsidies on goods which would not be sold until after the maximum price regulations applicable thereto had been relaxed or entirely lifted. It therefore adopted the plan of requiring an importer who intended to claim a subsidy to state the date prior to which it intended to invoice and ship the goods. The date so given was not necessarily accepted as satisfactory, but in the Advice Notice sent by the Corporation to the importer, the Corporation stated the date prior to which the goods *must* be invoiced and shipped if subsidy was to be granted in whole or in part, such date being determined by the Wartime Prices and Trade Board and communicated to the Corporation. The first notice of this policy regarding special subsidies, insofar as it would apply to the defendant, was given by the Statement of Policy of February 27,

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1947 (Ex. 4), long prior to the date when the goods in question were ordered. That statement intimated in very clear terms that the protection (i.e. special subsidy) to be given to the importer would be subject to certain specific provisions, including "a date or dates before which the goods or the products made from them would be sold in Canada must be specified." Then, by the Statement of Policy of June 2, 1947 (Ex. 6), it was provided:

This special subsidy protection is subject to the following terms and conditions;

- (iii) a date or dates before which the goods, or products made from them, are to be sold in Canada if the goods are to qualify for special subsidy protection will be specified by the board.

It is true that the defendant did ask to be allowed to sell its goods prior to April 30, 1948, but that application was disallowed, and in all the Advice Notices issued in October, the defendant was formally notified that in each case the goods *must* be invoiced and shipped before December 31, 1947. The Advice Notice also contained the following: "if extension of terminal date is desired, your application must be made to your administrator of the W.P.T.B. not less than ten days before the date shown in Item (h) above."

No application, however, was made by the defendant under that provision. Finally, the further Notice to Importers issued by the Wartime Prices and Trade Board on December 18, 1947 (Ex. 22), gave formal and final notice to the defendant that no subsidy would be available on goods made ineligible for subsidy which were not invoiced and delivered on or before December 31, 1947; and that the Board had instructed the Corporation to recover the subsidy content in the subsidized goods listed (including cotton goods) and held in inventory at that date by those who received regular or special subsidy. The defendant received that notice also, but did nothing about the matter. Each of the C4A applications for special subsidy contained certificates that the defendant had received, read and understood the instructions and conditions (Form C4A-S1—or as may be amended), and that all the goods on which import subsidy was applied for "have been or will be sold in compliance with Wartime Prices and Trade Board regulations." These certificates by the defendant were given after it had been notified that it must dispose of the goods before December 31, 1947.

It seems to me that as all subsidies were discretionary and as the Board had full power to impose such conditions upon payment of subsidy as it might consider proper; and as it did impose such a condition which was duly communicated to and accepted by the defendant, the defendant, *prima facie*, was neither entitled to receive the special subsidy nor to retain it if paid unless that condition were fulfilled. The payments so made to the defendant were made contrary to the declared policy of the Board. Unless, therefore, the defendant in some legal manner was released from the necessity of complying with that condition, the subsidy must be repaid.

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Mr. Shaver's letter of October 22, 1947 (Ex. A), is written on the stationery of the C.P.S. Corporation, Ltd., and is signed by him over the name of his office, "Assistant Supervising Examiner." After acknowledging receipt of the C.29 Forms, and noting that the defendant wished to have April 30, 1948, fixed as the terminal date, the letter gives specific notice that the Advice Forms will fix December 31, 1947, as the terminal date; and such Advice Forms when issued were in accordance with that statement. In para. 3, he gives the reason for the terminal date being so fixed, namely, that no agreement had been entered into by shirt manufacturers with the Wartime Prices and Trade Board to hold the price line beyond that date. Then he adds the sentence which has given rise to the whole dispute:

If there is any price increase on an industry-wide basis at that time basic costs for special subsidy purposes will be adjusted upwards to reflect the amount of such an increase.

The defendant relied on that single sentence as being an authoritative statement of policy under which it could keep its goods in inventory after December 31, 1947, and thereafter receive a special subsidy on the adjusted basic costs if there were a price increase on an industry-wide basis thereafter.

Now, there is no evidence that any such policy as is suggested in that sentence was ever adopted by the only policy-making body—the Wartime Prices and Trade Board—and no supervising examiner of the Corporation would have the right to set such a policy or anticipate that the Board would do so. It is in evidence that in no such case was the time extended beyond December 31, 1947, to any importer. That statement of Shaver's was made without

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any authority whatsoever and could not bind either the Board, the Corporation, or the plaintiff herein. The concluding sentence of the letter is of great importance and states precisely the situation; namely, "On any garments invoiced and shipped subsequent to that date we shall have to await clarification of the Board's policy." That was a clear warning to the defendant that if it did not ship and invoice the goods prior to the terminal date, it would do so at its own risk.

In the letter, Shaver stated in effect that the existing policy of the Board was to require all goods to be disposed of prior to the terminal date, but as to goods not so disposed of, the Board's policy had not yet been established. That letter reasonably interpreted should have constituted a warning to the defendant that it must dispose of the goods by the date fixed or be faced with the loss of all the special subsidy unless the Board later decided that the subsidy would be paid on goods held in inventory at that date, on some specific basis. Instead of heeding the clear warning given in the concluding sentence, the defendant chose to rely on the one sentence in para. 3. The whole letter might conceivably have led to an uncertainty in the minds of the officials of the defendant company as to their true position, and that uncertainty could have been resolved by asking for a formal ruling by the Corporation; or by an application to its administrator as provided for in the Advice Notice. In my opinion, the letter, insofar as it purports to settle the policy to be applied to goods in inventory after December 31, 1947, was written without authority and was totally insufficient to relieve the defendant from the full observance of the prescribed condition.

To a minor extent the defendant relied also on the notice of the Wartime Prices and Trade Board dated September 12, 1947, entitled "Notice to Users of Imported Cotton Fabrics—Recovery of Subsidy in Inventories" (Ex. 24). I have read it carefully and cannot find that it is of any assistance whatever in supporting the defendant's contention. Its provisions relate solely to the subsidy content of goods in inventory at the date of decontrol, i.e., September 15, 1947, and on that date the goods in question were not in the defendant's inventory. It merely provides that, contrary to the usual practice of recovering the subsidy

content in goods at the time of decontrol, the subsidy content in goods in the hands of the cutting up trades on September 15, 1947, would not be recoverable provided the importers lived up to their undertaking not to raise prices until all such goods had been disposed of; but to the extent that they did raise prices, subsidy would be recoverable. It is true that the attention of the importers is drawn to the profit limitations placed on the special subsidy granted on C.28 applications made after June 2, 1947, but it does not in any way affect the other requirements of the Statement of Policy of that date, one of which was that the goods must be sold by the terminal date.

That statement (Ex. 24) was not intended and did not affect goods which were not in inventory on September 15, 1947. The final paragraph requiring the Corporation to obtain inventory figures as of that date establishes that beyond question. The undertaking of the trade related only to such inventories; and it was for that reason and the further reason given by Shaver in the letter of October 22 (Ex. A), namely, that the shirt manufacturers had not agreed to "hold the line" beyond December 31, 1947, that a terminal date had to be established as of that date. I can find nothing in that statement which would in any way relieve the defendant from the condition laid down by the Corporation with the approval of the Wartime Prices and Trade Board and accepted by the defendant, that to receive the special subsidy on goods imported after decontrol, the goods must be invoiced and shipped by the terminal date.

In argument, counsel for the defendant submitted that the proceedings should have been instituted in the name of the Corporation rather than in the name of His Majesty. The Letters Patent incorporating the C.P.S. Corporation Ltd. are not in evidence, but it is submitted that under the provisions of clause (2) of the agreement attached to Ex. 1, the Corporation could sue or be sued in its own name. In my opinion, the defendant cannot at this stage raise any such objection. The issue was not raised in the pleadings and following the filing of the Admission of Parties, the whole controversy at the trial was related to the single question as to whether the defendant had been released from the condition imposed by the Wartime Prices and

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Trade Board. In fact, the admission itself seems to indicate that if that question were answered in the negative, the defendant consented to judgment as prayed. Moreover, the Statement of Defence in para. 12 states that the defendant has paid to the plaintiff certain sums in respect of the total claim, thereby recognizing the right of the plaintiff to recover any additional amount that might be found payable.

Quite apart from these considerations, I think the plaintiff is entitled to bring these proceedings. That the Corporation was the agent of the plaintiff was well known to the defendant. The information alleges that the subsidies were paid by the Corporation "for and on behalf of His Majesty" and that it is admitted by the Statement of Defence. I think it cannot be questioned that whether or not the agent (the Corporation) could sue on its own behalf, the principal (the plaintiff) would have a concurrent right to sue. In Bowstead's Digest of The Law of Agency, 11th Ed., p. 193, it is stated:

Every principal, whether disclosed or undisclosed, may sue or be sued in his own name on any contract duly made on his behalf and in respect of any money paid or received by his agent on his behalf. Provided always that the right of the principal to sue, and his liability to be sued, on a contract made by his agent, may be excluded by the terms of the contract.

Then, in Article 90 on p. 192 of the same volume, it is stated:

The Crown may sue . . . on any contract duly made on its behalf by a public agent.

and,

"Public agent" means an agent of the Crown or Government.

I think that the principles above mentioned are of equal application to this case and I therefore reject the submission made by counsel for the defendant.

I find, therefore, that the defendant is liable in respect of the claim for refund of special subsidies (C. 29 Applications) set out in para. 7 of the information; and in accordance with the admission filed, there will be judgment against the defendant for the sum of \$39,126.54, with interest at 5 per cent thereon from February 23, 1950, to this date, together with costs to be taxed.

Judgment accordingly.