~~C.C1.g.10~~

13, 1952

In the Privy Council.

No. 32 of 1951.

ON APPEAL
FROM THE SUPREME COURT OF CANADA

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. 3
(Canadian Wheat Board Action)
Pages 157 to 346

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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EXHIBIT No. 1 (17)

BOARD OF GRAIN COMMISSIONERS FOR CANADA

REGULATION No. 1

At a regular meeting of the Board of Grain Commissioners for Canada held at Winnipeg in the Province of Manitoba on the fourteenth day of September, 1938, the said Board did make the Regulation as set out hereunder in accordance with Section 15 (v) of the Canada Grain Act, 1930.

REGISTRATION AND CANCELLATION OF TERMINAL ELEVATOR WAREHOUSE RECEIPTS

1. The word "registered" when used in reference to a warehouse receipt shall mean that a distinctive rubber stamp, bearing the date and the word "registered" is superimposed on the warehouse receipt in the space provided, and signed by the Registrar of Warehouse Receipts or Deputy Registrar of Warehouse Receipts.

2. The manager or operator of every public or semi-public terminal elevator as soon as possible after the 31st of July in each year, unless otherwise determined by the Board, shall prepare and deliver to the Registrar of Warehouse Receipts a statement of all outstanding warehouse receipts at that date. Such statement shall be made by grades, showing the warehouse receipt number and the bushels.

3. The manager or operator of every public or semi-public terminal elevator shall present to the Registrar of Warehouse Receipts for registration warehouse receipts for all grain unloaded in his public or semi-public terminal elevator. Such warehouse receipts shall state the quantity and grade of grain, the date unloaded and the person on whose account the grain has been received. The Registrar of Warehouse Receipts shall compare the same with the records of his office and if he shall find that the same is issued for grain actually received in store into the elevator, and if for the correct quantity and grade of grain so received therein as shown by the records in his office, he is directed and authorized to stamp the same with his official stamp as registered, and to make a record thereof in the proper books of his office.

4. When any grain is shipped from any public or semi-public terminal elevator, the manager or operator thereof shall tender to the Registrar of Warehouse Receipts for "registration for cancellation" registered warehouse receipts covering the same both as to quantity and grade. All such receipts

tendered to the Registrar of Warehouse Receipts as aforesaid shall be accompanied by a report showing the number of the warehouse receipt; the number of bushels and kind of grain represented by such receipt, and such receipts shall be presented to the Registrar of Warehouse Receipts for cancellation as soon as possible after the shipment of the grain, in no case exceeding forty-eight hours after such grain has been shipped from the elevator.

5. Each manager or operator of a semi-public terminal elevator shall furnish the Registrar of Warehouse Receipts daily with a correct statement of the amount of each kind and grade of grain received into store in his elevator on the previous day; also the amount of each kind and grade of grain shipped by each elevator during the previous day and a certified statement showing the balance in store at the close of business each day of each kind and grade of grain.

6. The manager or operator of a public or semi-public terminal elevator may present to the Registrar of Warehouse Receipts warehouse receipts to be split into two or more parts. A cancellation report shall be made showing date, number, bushels and grade of warehouse receipts being cancelled, and a registration report showing date, number, bushels and grade of the new warehouse receipts. Such new warehouse receipts shall be registered by the Registrar of Warehouse Receipts.

7. The manager or operator of a semi-public terminal elevator may present to the Registrar of Warehouse Receipts two or more warehouse receipts for consolidation. A cancellation report shall be made up showing date, number of bushels, grade and number of warehouse receipts being cancelled and a registration report showing date, number of bushels, grade, and number of the new warehouse receipt. Such new warehouse receipt shall be registered by the Registrar of Warehouse Receipts. Consolidations for grades No. 1 Manitoba Hard, No. 1 Manitoba Northern, No. 2 Manitoba Northern, No. 3 Manitoba Northern, No. 1 C.W. Garnet and No. 2 C.W. Garnet must be for the same grade as is shown on the warehouse receipts presented for cancellation; all other consolidations may be registered as to grade for a grade different from that shown on the cancelled warehouse receipts, provided that the total outstanding warehouse receipts including the said warehouse receipt for grain of such grade, shall not exceed the total quantity of grain of such grade shown to be in store at that date. Warehouse receipts to cover mixtures of different grades other than of No. 1 Manitoba Hard, No. 1 Manitoba Northern, No. 2 Manitoba Northern, No. 3 Manitoba Northern, No. 1 C.W. Garnet and No. 2 C.W. Garnet must be surrendered to the Registrar of Warehouse Receipts for cancellation within forty-eight

hours after the time the actual mixing takes place and new warehouse receipts for the consolidation presented for registration at the same time. When tough grain of the first four grades of Red Spring wheat specified in Schedule 1 to the Canada Grain Act, 1930 and of the grades of Nos. 1 and 2 C.W. Garnet is dried by mixing such tough grain with the corresponding straight grade of wheat, warehouse receipts on account of such stock adjustments will only be accepted for registration:

(*a*) When the tough wheat is of the same grade as the straight grade wheat, and

(*b*) When such tough wheat has not previously been mixed with grain of other grades.

8. All warehouse receipts for grain issued by the manager or operator of any public or semi-public terminal elevator shall be in the form approved by the Board and shall for each elevator be numbered consecutively. No two receipts bearing the same number shall be issued from the same elevator during any one year, except in the case of a lost or destroyed receipt. in which case the new receipt shall bear the same date and number as the original and shall be plainly marked on its face "duplicate".

9. The Registrar of Warehouse Receipts shall furnish the manager or operator of every public or semi-public terminal elevator with a Signature Card and the manager or operator shall complete such Card with a specimen signature of all the officers or employees who are authorized to sign and countersign warehouse receipts in their behalf.

10. The manager of every public or semi-public terminal elevator shall pay to the Board a registration fee of four cents (4c.) per thousand bushels for inward registration, and four cents (4c.) per thousand bushels for registration for cancellation.

11. All warehouse receipts shall be signed and countersigned in ink before being presented for registration.

12. Regulation No. 1 made by the Board on the twelfth day of September, 1930, is hereby repealed.

Signed and sealed at Winnipeg, Manitoba, this fourteenth day of September, 1938.

E. B. RAMSAY,
Chief Commissioner.

D. A. MacGIBBON,
Commissioner.

J. RAYNER,
Secretary.

Regulation No. 2, 1930

BOARD OF GRAIN COMMISSIONERS FOR CANADA

At a regular meeting of the Board of Grain Commissioners for Canada, held at Winnipeg on the twelfth day of September, 1930, the said Board did make the regulation as set out hereunder, in accordance with section 15 (*s*) of the Canada Grain Act, 1930. Published in *The Canada Gazette*, September 27, 1930.

Maximum Shrinkage Allowances which may be made on the Delivery of Grain to Country Elevators

No elevator shall take more than the allowance for shrinkage, waste in handling, storing and transmitting the grain to a terminal than the weight in pounds set forth in this shrinkage table. All shrinkage on tough and damp grain shall not be more than double the allowance as set forth in this schedule. This shrinkage table shall be placed conspicuously in all licensed country elevators for free inspection of the public.

	Wheat	Flax and Rye	
Gross Bushels	Gross Weight in Pounds		Shrinkage Allowance
	lbs.	lbs.	lbs.
Up to and including:			
25 bush.	1,500	1,400	5
Over 25 "	1,500	1,400	10
to 42 "	2,520	2,352	
Over 42 "	2,520	2,352	15
to 58 "	3,480	3,248	
Over 58 "	3,480	3,248	20
to 75 "	4,500	4,200	
Over 75 "	4,500	4,200	25
to 92 "	5,520	5,152	
Over 92 "	5,520	5,152	30
to 108 "	6,480	6.048	
Over 108 "	6,480	6,048	35
to 125 "	7,500	7,000	
Over 125 "	7,500	7,000	40
to 142 "	8,520	7,952	
Over 142 "	8,520	7,952	45
to 158 "	9,480	8,848	

EXHIBIT No. 1 (2)

VOL. III—No. 6

EXTRACT

STATUTORY ORDERS AND REGULATIONS

OTTAWA, CANADA, AUGUST 12, 1946

The Western Grain Regulations

P.C. 3222

AT THE GOVERNMENT HOUSE AT OTTAWA

TUESDAY, the 30th day of July, 1946.

PRESENT:

HIS EXCELLENCY

THE GOVERNOR GENERAL IN COUNCIL:

Whereas regulations made and established by Orders in Council P.C. 859 of the 9th day of February, 1945, P.C. 2550 of the 12th day of April, 1945, as continued by Order in Council P.C. 7414 of the 28th day of December, 1945, conferring upon the Canadian Wheat Board the powers and duties therein specified, expire on the 31st day of July, 1946;

And whereas the Minister of Trade and Commerce represents that it is deemed necessary and advisable, by reason of the continued existence of the national emergency arising out of the war against Germany and Japan, for the purpose of maintaining, controlling and regulating supplies, prices and transportation to ensure economic stability and an orderly transition to conditions of peace and for the purpose of assisting the relief of suffering and the restoration and distribution of essential supplies in Canada and in foreign countries, that are in grave distress as a result of the war, that the annexed regulations be made and established;

Therefore, His Excellency the Governor General in Council, on the recommendation of the Minister of Trade and Commerce, and under and by virtue of the powers conferred by The National Emergency Transitional Powers Act, 1945, is pleased to make the annexed regulations entitled "Western Grain Regulations" and they are hereby made and established accordingly.

A. M. HILL,

Asst. Clerk of the Privy Council.

WESTERN GRAIN REGULATIONS

(Canadian Wheat Board)

1. These Regulations may be cited as the "Western Grain Regulations".

INTERPRETATION

2. (1) In these regulations and in any order made pursuant to these regulations, unless the context otherwise requires,

(*a*) "Act" means The Canadian Wheat Board Act, 1935, as amended;

(*b*) "actual producer" means a producer actually engaged in the production of grain;

(*c*) "Advance Equaliation Payment" means a payment authorized by section twenty-three;

(*d*) "authorized acreage" means the acreage authorized by the Board to be used as the basis for the delivery under a quota of wheat from lands described in any permit book;

(*e*) "barley" means barley grown in the designated area and includes barley whether processed or in natural form;

(*f*) "Board" means The Canadian Wheat Board constituted by The Canadian Wheat Board Act, 1935, as amended;

(*g*) "crop year" means the interval between the first day of August in any year and the thirty-first day of July in the following year both inclusive;

(*h*) "dealer", except in Part I, means any elevator, mill or feed dealer licensed under the provisions of The Canada Grain Act or licensed by the Board;

(*i*) "delivery point" means a place on a railway at which there are facilities for the delivery of grain;

(*j*) "designated area" means that area comprised by the Province of Manitoba, the Province of Saskatchewan, the Province of Alberta and those parts of the Province of British Columbia known as the Peace River District and the Creston-Wynndel areas, and such other parts of the Province of British Columbia and such parts of the Province of Ontario lying in the Western Division as the Board may from time to time designate;

(*k*) "elevator" means any premises into which grain may be received, or out of which it may be discharged, directly from or into railway cars or vessels, and, notwithstanding anything contained in any general or special Act, includes any such premises owned or operated by His Majesty, either directly or through any individual, public body or company, and includes any premises into which grain may be received or discharged by, for, or on behalf of any dealer;

(*l*) "elevator agent" means the operator as defined in The Canada Grain Act, as amended, of an elevator;

(*m*) "flaxseed" means flaxseed produced in Canada;

(*n*) "grain" includes wheat, barley, rye, oats, flaxseed, sunflower seed and rape seed;

(*o*) "mill operator" includes any person acting as agent of a mill operator;

(*p*) "oats" means oats grown in the designated area and includes oats whether processed or in natural form;

(*q*) "operator" means an operator, as defined in The Canada Grain Act, of an elevator, and includes the agent of a dealer authorized to accept delivery of oats or barley on behalf of the dealer;

(*r*) "order" means any order of the Board, including "Instructions to the Trade", made or given under the authority of these regulations;

(*s*) "permit book" means a Canadian Wheat Board delivery permit issued pursuant to these regulations by the Board for a crop year;

(*t*) "person" includes any partnership, association or corporation;

(*u*) "pool period" means the period of five years commencing on the first day of August, nineteen hundred and forty-five;

(*v*) "producer" includes, as well as any actual producer, any person entitled as landlord, vendor or mortgagee to the grain grown by an actual producer or to any share therein;

(*w*) "purchaser" means any person, including a dealer purchasing oats or barley from a dealer or a producer;

(*x*) "quota" means the quantity of grain authorized to be delivered from grain produced on lands described in a permit book as fixed from time to time by the Board whether expressed as the quantity which may be delivered from each authorized acre in respect thereof or seeded acre thereon or otherwise;

(*y*) "rape seed" means rape seed produced in Canada;

(*z*) "retail sale" means a sale of oats or barley by the producer thereof to any purchaser;

(*aa*) "sunflower seed" means sunflower seed produced in Canada;

(*bb*) "wheat" means wheat grown in the designated area;

(*cc*) a reference to a section by number only is a reference to the section so numbered in these regulations.

(2) Unless it is otherwise provided in these regulations or the context otherwise requires, words and expressions used in these regulations shall be given the same meaning as is respectively accorded to such words and expressions when used in The Canadian Wheat Board Act, 1935, as amended.

PART I

DELIVERY OF GRAIN

3. In this Part "dealer" means any feed dealer licensed under the provisions of The Canada Grain Act, or licensed by the Board, and the manager or agent of any feed dealer.

4. (1) Except with the permission of the Board, no person shall deliver grain to a country elevator, loading platform, mill, mill elevator, terminal elevator, railway car or dealer unless

(*a*) he is the actual producer of, or is entitled as a producer to the grain;

(*b*) at the time of delivery he produces to the elevator agent, mill operator or dealer, or in the case of grain loaded directly into a railway car, to the agent or employee of the railway, a permit book under which he is entitled to deliver the grain;

(*c*) the grain was produced in the crop year with respect to which the permit book was issued on the lands described in the permit book or in any other crop year on any lands whatsoever;

(*d*) the grain is delivered at the delivery point named in the permit book; and

(*e*) the quantity of grain delivered, whether sold or delivered for storage, together with all grain of the same kind previously delivered under the permit book does not exceed the quota established by the Board for such delivery point for grain of the kind delivered at the time it is delivered.

(2) This section shall not apply in respect of the delivery by any operator or manager of any elevator, mill operator or any other dealer of grain which is in store in any elevator or mill licensed under The Canada Grain Act or which is in store or in transit in railway cars or vessels.

5. (1) No elevator agent, mill operator or dealer shall receive delivery of grain from any person delivered in contravention of section four.

(2) Where grain is delivered by a producer to an elevator, mill or dealer, the elevator agent, mill operator or dealer shall, immediately upon completion of the delivery of the grain, truly and correctly record and enter the net weight in bushels, after dockage, of the grain so delivered in the permit book under which delivery is made and shall initial the entry in the permit book.

(3) Where, with the permission of the Board, grain is loaded by a producer directly into a railway car,

(*a*) no agent or employee of the railway shall issue a bill of lading in respect of the grain so delivered unless the delivery is made in

accordance with subsection one of section four which shall apply in respect of such delivery;

(*b*) the producer shall send the permit book under which the grain is delivered to the office of the company handling the shipment together with a bill of lading under which the grain is shipped and the net weight in bushels, after dockage, of the grain so delivered shall be recorded and entered and such entry shall be initialled in the said permit book, by or on behalf of such company.

6. (1) Whenever a quota of the grain produced on any land becomes deliverable, any producer entitled to a definite share of the crop as landlord, vendor, mortagee or otherwise shall be entitled to have delivered in his name a share of such quota proportionate to the said definite share of such producer of the crop and shall have full right to make delivery as a producer and for such purpose the producer in possession of the permit book shall make the permit book available; provided that the actual producer shall be entitled to deliver the first five bushels of wheat permitted to be delivered for each authorized acre shown in the permit book, but such priority for delivery of the first five bushels shall not diminish the total amount of wheat which any other producer is entitled to receive and deliver or have delivered from the land covered in the permit book; this proviso shall not apply where the actual producer is merely a tenant under lease from a landlord and is not a mortgagor or purchaser.

(2) Nothing in this section shall in any way derogate from or interfere with the law of any province.

(3) The enforcement of this regulation shall be the direct concern and responsibility of the interested parties themselves and no legal obligation shall devolve on the Board with respect thereto.

7. (1) Where wheat is delivered by a producer to a mill for gristing purposes to obtain flour solely for the use of the producer and his household, a statement of the quantity of wheat so delivered shall, at the time of the delivery of the wheat to the mill be entered by the mill operator in the permit book under which the producer is entitled to deliver grain during the crop year, and such entry shall be marked "family gristing" and the quantity of wheat so delivered shall not be included in computing the quantity of wheat delivered under the permit book for the purposes of paragraph (*e*) of subsection one of section four.

(2) No person shall deliver flour in exchange for wheat except at a mill and until after such wheat has been delivered at the mill.

(3) No producer shall sell, barter or otherwise dispose of flour obtained by him as a result of the delivery of wheat to a mill in exchange for flour or for gristing purposes.

(4) No mill operator shall establish depots or agencies for the purpose of exchanging flour for wheat on a gristing basis or transport flour from a mill to be exchanged for wheat on a gristing basis.

8. Unless otherwise ordered by the Board, any producer who has delivered grain to an elevator, mill, mill elevator, terminal elevator or dealer in contravention of these regulations or the orders or regulations of the Board, shall take re-delivery of such grain forthwith and shall repay any monies received for such grain to such elevator, mill, mill elevator, terminal elevator or dealer immediately, but this section or compliance therewith shall not be construed to relieve such producer or any elevator agent, mill operator or dealer from compliance with any other section or from the penalty for a breach of any section of these regulations.

PERMIT BOOKS

9. No permit book shall be issued to any person other than a producer.

10. (1) A producer may obtain a blank permit book from an elevator agent.

(2) The producer shall enter in the permit book the name of the delivery point at which he proposes to deliver grain and shall complete before a Municipal Secretary or other person authorized to administer oaths the two statutory declarations contained at the front of the permit book accurately describing in the declarations the lands on which the grain which he proposes to deliver is to be or has been produced, and shall return the permit book to the elevator agent.

(3) Both such statutory declarations shall be signed in ink or by indelible pencil by the producer taking the declaration and by the person before whom the declaration is made.

(4) When a producer returns a permit book to an elevator agent with the delivery point named and the declarations completed in accordance with this section, the elevator agent shall apply to the Board on forms supplied by it for an order fixing the authorized acreage for the lands described in the permit book and shall attach and forward with such application the first statutory declaration contained in the permit book.

(5) The elevator agent shall retain custody of the permit book until the Board has fixed the said authorized acreage and notified him thereof and no

grain produced on the lands described in such permit book shall be delivered or received until the Board has so notified the agent and the authorized acreage has been entered in the book.

(6) Upon being notified by the Board of the authorized acreage for the lands described in a permit book the elevator agent shall enter this figure in the permit book in the proper place and return the permit book to the producer.

(7) The second statutory declaration of the producer shall be retained in the permit book and no person shall remove it from the book.

11. (1) No permit book shall be issued naming a delivery point where there is no licensed country elevator.

(2) The Board may change the delivery point named in a permit book if the change is deemed advisable by the Board.

12. A producer entitled to deliver grain under a permit book at the delivery point named therein may load grain which he is so entitled to deliver into a railway car at a delivery point where there is no elevator with the written permission of the Board.

13. The actual producer on any land shall have the prior right to possession of the permit book in which such land is described.

14. (1) No person shall apply for or receive and no elevator agent shall issue more than one permit book for each farm or group of farms operated as a unit and the Board may, for the purposes of this section, determine whether two or more farms are operated as a unit.

(2) The Board may, notwithstanding anything contained in subsection one of this section, upon application by a producer and upon being satisfied that two or more farms operated by a producer are not operated as a unit and that it is not practicable for the producer to deliver the grain produced on such farms at one delivery point, authorize a separate permit book to be issued in respect of the lands comprised in each such farm naming different delivery points for the grain produced thereon.

15. No person shall mutilate or deface any permit book or any entry therein and no person except the elevator agent, mill operator or dealer who made any entry therein shall alter or otherwise change the effect of an entry in a permit book and such agent, operator, or dealer shall initial any such alteration or change and no person shall erase an entry from the permit book.

16. At the request of any officer of the law or of a duly authorized agent, inspector, clerk or employee of the Board, any person delivering or who has delivered grain shall produce and surrender the permit book under

which the said delivery is being or has been made, and any holder of a permit book or the agent, operator, or manager of any elevator, mill or warehouse shall, at the request of such officer of the law or duly authorized agent, inspector, clerk or employee of the Board, produce and surrender, as directed, any permit book held by him or in his custody.

APPLICATION

17. This part shall apply to grain produced in the designated area and to the handling, delivery, sale, disposal, milling, processing, receipt, storage, purchasing or acquisition of such grain and to any producer of such grain and any person engaged in such handling, delivery, sale, disposal, milling, processing, receipt, storage, purchasing or acquisition.

PART II

WHEAT

18. (1) Notwithstanding anything contained in the Act, the Board shall

(*a*) subject to subsection two of this section, buy all wheat offered for sale by producers in accordance with the provisions of these regulations and the quotas established thereunder;

(*b*) pay to producers delivering wheat to the Board on or after the first day of August, nineteen hundred and forty-six, at the time of delivery or at any time thereafter as may be agreed upon, a sum certain per bushel basis in store Fort William/Port Arthur or Vancouver, to be fixed by the Board with the approval of the Governor in Council in the case of each grade of wheat: Provided that such sum certain shall in the case of wheat of the grade Number One Manitoba Northern be one dollar and thirty-five cents and in the case of each other grade such other sum certain as in the opinion of the Board brings such grade into proper price relationship with Number One Manitoba Northern;

(*c*) sell and dispose of from time to time for such prices as it may consider reasonable all wheat delivered to the Board by producers during that part of the pool period commencing on the first day of August, nineteen hundred and forty-six: Provided that the Board shall sell wheat to millers, processors, manufacturers, feeders and dealers for domestic requirements in Canada at and for the price of one dollar and twenty-five cents per bushel for wheat of the grade Number One Manitoba Northern, basis in store Fort William/Port Arthur or Vancouver and in the case of each other grade at and for such

price as in the opinion of the Board brings each of such grades into proper price relationship with Number One Manitoba Northern;

(*d*) utilize and employ such marketing agencies in the sale, purchase, shipment, handling or storage of wheat or wheat products as the Board in its discretion may determine; the intention being that existing marketing agencies be utilized and employed to the extent that they are useful in the operations of the Board;

(*e*) pay to every producer the sum of ten cents for each bushel of wheat sold and delivered by him to the Board on or after the first day of August, nineteen hundred and forty-five, but prior to the first day of August, nineteen hundred and forty-six, and such payments shall be made out of the monies received by the Board in payment for wheat delivered to it during the pool period.

(2) During that part of the pool period commencing on the first day of August, nineteen hundred and forty-seven, the Board shall in any crop year receive, take delivery of or buy wheat to such an amount as the Governor in Council may direct but the final deliverable amount shall not be less than a quota of fourteen bushels per acre on the authorized acreage.

(3) The Board shall be reimbursed out of monies to be provided by a vote from the Consolidated Revenue Fund for all monies disbursed, including carrying charges by or on behalf of the Board in connection with or incidental to the operation of the Board in respect of wheat sold for domestic requirements pursuant to paragraph (*c*) of subsection one of this section.

(4) This section shall be read and construed as one with the Act but shall have full force and effect notwithstanding anything in the Act and all provisions of the Act shall, except as provided in these regulations, apply and have full force and effect in respect of all deliveries made by producers to the Board and all wheat purchased by the Board from producers during that part of the pool period commencing on the first day of August, nineteen hundred and forty-six.

19. (1) Section thirteen of The Canadian Wheat Board Act shall not apply to wheat sold and delivered to the Board during the pool period.

(2) As soon as the board receives payment in full for all wheat delivered during the pool period, there shall be deducted from the receipts all monies disbursed by or on behalf of the Board for expenses, including the payments made pursuant to paragraph (*e*) of subsection one of section eighteen and all payments connected with or incident to the operations of the Board, including the remuneration, allowances, travelling and living expenses of the Com-

missioners, the members of the Advisory Committee and the officers, clerks and employees of the Board.

(3) After deducting the aforesaid expenses the balance shall be distributed *pro rata* amongst the producers holding certificates issued during the pool period pursuant to paragraph (*e*) of section seven of The Canadian Wheat Board Act, 1935, in accordance with the regulations of the Board approved by the Governor in Council.

(4) Producers holding certificates with respect to the same grade of wheat, irrespective of the crop year to which they relate, shall be entitled to their share of the distribution made pursuant to subsection three of this section at the same rate per bushel.

20. No person shall, except with the permission of the Board, either for himself or as agent for or otherwise on behalf of another person

(*a*) provide, maintain or operate any facilities for the purpose of enabling any person to trade in wheat;

(*b*) buy wheat from a producer for resale or for export or for processing or manufacturing purposes; or

(*c*) sell wheat for export.

PART III

OATS AND BARLEY

Exports—Equalization Fund

21. No person shall export, ship or send out of Canada oats or barley, or any product containing oats or barley, except with the permission of the Board obtained upon payment of such charge or fee as the Board may from time to time determine.

22. The Board shall deposit monies received for the issue of permits for the export of oats or any products thereof in a fund hereinafter called the "Oats Equalization Fund" and monies received for the issue of permits for the export of barley or any products thereof in a fund hereinafter called the "Barley Equalization Fund".

Advance Equalization Payments

23. (1) Upon application by a producer within the designated area who has sold by retail sale and delivered within a crop year oats or barley produced on land described in his permit book, which had been threshed or cleaned but not otherwise processed before the said sale and delivery, the Board shall pay to the producer ten cents in respect of each bushel of oats and fifteen cents in

respect of each bushel of barley so sold and delivered, if the following conditions hereinafter referred to as the "prescribed conditions" have been fulfilled:

(*a*) where the sale was made to a dealer,

(i) the oats or barley so sold and delivered were weighed at the time of delivery by the dealer or an operator acting on behalf of the dealer;

(ii) the dealer or his operator, immediately upon completion of the weighing, recorded and entered in the permit book under which the oats or barley were delivered all particulars of sale, including the name of the vendor and of the dealer, the quantity of oats or barley sold and the date of the sale and initialled the entries thereof; and

(iii) the producer and the dealer jointly reported all particulars of the sale to the Board.

(*b*) where the sale was made to a person other than a dealer,

(i) the oats or barley so sold and delivered were weighed at the time of delivery by a dealer or operator;

(ii) the dealer or the operator immediately upon completion of the weighing, recorded and entered in the permit book produced by the producer selling the oats or barley and in the permit book or feed purchase permit produced by the purchaser, all particulars of the sale including the name of the vendor and purchaser, the quantity of oats or barley sold and the date of the sale, and initialled the entries thereof;

(iii) the producer, the purchaser and the dealer or operator weighing the oats or barley, jointly reported all particulars of the sale to the Board; and

(iv) the purchaser has made to the dealer by whom or by whose operator the oats and barley were weighed a refund to the Board of Advance Equalization Payments previously made to him, if any, required by section twenty-six.

(2) An Advance Equalization Payment shall be made on behalf of the Board by the dealer by whom or by whose operator the oats or barley, in respect of which the payment is made, are weighed, after fulfilment of the prescribed conditions:

(*a*) in the case of a retail sale of oats or barley to the dealer, at the time of the completion of the sale and delivery of the oats or barley; and

(*b*) in the case of all other retail sales, after approval of the application for Advance Equalization Payment by the Board.

(3) An Advance Equalization Payment may be made by the issue to the producer entitled thereto of a cash ticket having stamped or written thereon the words "Canadian Wheat Board Equalization Payment", or as the Board may prescribe.

(4) A dealer shall be entitled to charge and receive from producers selling and delivering oats or barley by retail sale as aforesaid, such service charges as may from time to time be fixed by the Board for services required under these regulations.

24. (1) Notwithstanding section twenty-three, an Advance Equalization Payment shall not be made to producers in respect of retail sales of oats or barley,

(*a*) to persons entitled as landlord, tenant, vendor or mortgagee or otherwise by contract or operation of law, to the oats or barley grown by the producer or any share thereof;

(*b*) mixed with other grains otherwise than as authorized by the Canada Grain Act or any regulation may pursuant thereto;

(*c*) to be fed to live stock or poultry on the lands described in the producer's permit book; or

(*d*) delivered by a producer for the purpose of having the said oats or barley chopped, ground, mashed, crimped, or otherwise processed for the use of the producer or to be fed to live stock or poultry on the lands described in the producer's permit book.

(2) Where an Advance Equalization Payment is made to a producer which is prohibited by this section, or where pursuant to the sale of oats or barley in respect of which an Advance Equalization Payment is made, the oats or barley so sold are used for the purposes specified in paragraph (*c*) or (*d*) of subsection one of this section, the producer to whom the payment was made shall be liable to refund the payment to the Board, and without limitation on the powers of the Board otherwise to revoke or suspend the permit book under which the producer is entitled to deliver grain, the Board may revoke the said permit book or may suspend the right to deliver grain under the said permit book until the refund is made.

Purchases by Persons Other Than Dealers

25. (1) Except with the permission of the Board, no person other than a dealer shall purchase oats or barley whether in natural form or cleaned,

chopped, ground, mashed or crimped, unless

(*a*) he is entitled to the use of a permit book or a feed purchase permit;

(*b*) the purchase is made from a dealer or a producer;

(*c*) the oats or barley are weighed by a dealer or operator at the time of the purchase;

(*d*) the net weight in bushels after dockage is entered in the said permit book or feed purchase permit by the dealer or operator weighing the oats or barley; and

(*e*) he makes to the dealer by whom or by whose operator the oats or barley are weighed the refund to the Board of Advance Equalization Payments previously made to him, if any, required by section twenty-six.

(2) No person who has purchased oats or barley under a permit book or feed purchase permit shall

(*a*) feed such oats or barley to live stock or poultry on lands other than those described in the permit book or the feed purchase permit; or

(*b*) resell such oats or barley whether in natural form, or cleaned, chopped, ground, mashed or crimped, or the products of such oats or barley.

26. (1) Every purchaser who purchases oats or barley whether in natural form or cleaned, chopped, ground, mashed or crimped, shall, at the time of the purchase, refund to the Board the amount of the Advance Equalization Payments, if any, previously made in respect of sales of the same kind of grain made in the same crop year under the permit book used by the purchaser, by paying to the Board at the time of the said purchase ten cents in respect of each bushel of oats and fifteen cents in respect of each bushel of barley, whether in natural form or processed as aforesaid, purchased by him, but no purchaser shall be required to refund or pay to the Board any sum in excess of the total amount of the Advance Equalization Payments so made, less any repayments thereof previously made to the Board during such crop year.

(2) Any refund payable to the Board under this section or under subsection two of section twenty-four shall be recoverable as a debt due to the Crown and, without prejudice to any other remedy, may be recovered by the Board as a civil debt.

27. (1) Except with the permission of the Board, no person other than a dealer or a producer shall sell oats or barley.

(2) No dealer or producer shall sell oats or barley whether in natural form or cleaned, chopped, ground, mashed or crimped, to any purchaser unless

the sale is made in accordance with section twenty-five, and the refund, if any, required by section twenty-six has been made to the Board.

(3) When oats or barley is purchased by any person from a dealer or a producer, the dealer or operator by whom the oats or barley are weighed shall, immediately upon the completion of the weighing of the oats or barley so purchased, truly and correctly record and enter the net weight in bushels, after dockage, of the oats or barley so purchased, and the name of the vendor and of the purchaser and the date of the purchase, in the permit book or feed purchase permit produced by the purchaser, and, if the vendor is a producer, in the permit book produced by him, and shall initial such entries.

Feed Purchase Permits

28. (1) Application may be made to the Board upon forms prescribed and supplied by the Board for the issuance to the applicant of a feed purchase permit authorizing the purchase of oats or barley.

(2) No feed purchase permit shall be issued to any producer who is entitled to use a permit book for the purchase or delivery of oats or barley.

(3) There shall not be issued more than one feed purchase permit relating to any farm or group of farms operated as a unit and the person in actual possession and occupation of the farm described in a feed pruchase permit shall have the prior right to possession of such feed purchase permit.

(4) No person shall apply for or receive, and there shall not be issued more than one feed purchase permit for each farm or group of farms operated as a unit and the Board may, for the purpose of this section, determine whether two or more farms are operated as a unit, notwithstanding that the same may be operated by different persons, and to whom the feed purchase permit shall be issued.

29. (1) Any producer who is entitled to the use of a permit book for the delivery of grain shall be entitled to the use of the said permit book for the purchase of oats or barley and for such purpose the producer in possession of the permit book shall make the said permit book available.

(2) Any person entitled to a share of the crop produced on any land as landlord, vendor, mortgagee or otherwise shall be entitled to the use of the feed purchase permit in which such lands are described for the purpose of purchasing oats or barley and for such purpose the person in possession of such feed purchase permit shall make such feed purchase permit available.

(3) The enforcement of this section shall be the direct concern and responsibility of the interested parties and no legal obligation shall devolve on the Board with respect thereto.

30. Sections twenty-five, twenty-six, twenty-seven, twenty-eight and twenty-nine shall not apply to

(*a*) a purchaser who has not bought or sold more than ten bushels of oats or barley in any period of two weeks' duration during the same crop year; or

(*b*) persons who are parties to retail sales of oats or barley if no application is made by the vendor for payment of an Advance Equalization Payment in respect thereof.

Producer's Participation in Surplus

31. After the end of each crop year the Board shall deduct from the total funds accumulated in the Oats Equalization Fund during that crop year

(*a*) the total amount paid to producers of oats by the Board in that crop year pursuant to the provisions of section twenty-three and

(*b*) all other moneys disbursed by or on behalf of the Board in connection with the payment to producers of oats required with reference to that crop year by section twenty-three and without limiting the foregoing, all expenses of or incidental to the operations of the Board relating to the payment of Advance Equalization Payments to producers during that crop year, including the remuneration, allowances, travelling and living expenses of the Commissioners, officers, clerks and employees of the Board attributable to such payments.

and thereafter the surplus, if any, shall be distributed equitably among producers entitled to receive or who have received Advance Equalization Payments in respect of sales of oats during that crop year; provided that the Board shall be reimbursed in respect of any deficit, after making such deductions, out of moneys appropriated by Parliament.

32. After the end of each crop year the Board shall deduct from the total funds accumulated in the Barley Equalization Fund during that crop year

(*a*) total amount paid to producers of barley by the Board in that crop year pursuant to the provisions of section twenty-three; and

(*b*) all other moneys disbursed by or on behalf of the Board in connection with the payments to producers of barley required with reference to that crop year by section twenty-three and without limiting the foregoing, all expenses of or incidental to the operations of the Board relating to the payment of Advance Equalization Payments to producers during that crop year, including the remuneration, allowances, travelling and living expenses of the Commissioners, officers, clerks and employees of the Board attributable to such payments,

and thereafter the surplus, if any, shall be distributed equitably among producers entitled to receive or who have received Advance Equalization Payments in respect of sales of barley during that crop year; provided that the Board shall be reimbursed in respect of any deficit, after making such deductions, out of moneys appropriated by Parliament.

Oats and Barley Price Stabilization

33. The Board is hereby empowered to buy Winnipeg barley futures or cash barley at a price per bushel which will assure that producers in Western Canada will be continuously offered the following prices per bushel for barley basis in store Fort William/Port Arthur:—

No. 1 Canada Western Two-Row or Six-Row or No. 2 Canada Western Two-Row or Six-Row	60 cents
No. 3 Canada Western	58 cents
No. 1 Feed	56 cents

and such prices for each other grade of barley as in the opinion of the Board brings such grade into proper relationship with the grades of barley hereinbefore named.

34. The Board is hereby empowered to buy Winnipeg oats futures or cash oats at a price per bushel which will assure that producers in Western Canada will be continuously offered the following prices per bushel for oats basis in store Fort William/Port Arthur:—

No. 2 Canada Western Oats	45 cents
Extra No. 3 Canada Western, No. 3 Canada Western or Extra No. 1 Feed	42 cents
No. 1 Feed	40 cents

and such prices for each other grade of oats as in the opinion of the Board brings such grade into proper relationship with the grades of oats hereinbefore named.

35. It shall be the duty of the Board to buy all oats or barley offered by producers for sale at the prices established in accordance with sections thirty-three and thirty-four.

36. (1) Any net losses arising from the operations of the Board under this Part shall be paid from and out of moneys appropriated by Parliament.

(2) Any net profits arising from operations of the Board under this Part in respect of oats in any crop year shall accrue to the Oats Equalization Fund as soon as such profit is ascertained and after all oats acquired by the Board during that crop year have been disposed of.

(3) Any net profits arising from the operations of the Board under this Part in respect of barley in any crop year shall accrue to the Barley Equalization Fund as soon as such profit is ascertained and after all barley acquired by the Board during that crop year has been disposed of.

PART IV

FLAXSEED

37. The Canadian Wheat Board is empowered to buy flaxseed at three dollars and twenty-five cents per bushel for the grade Number One Canada Western Flaxseed, basis in store Fort William/Port Arthur or Vancouver, and the grade Number One Canada Eastern Flaxseed basis in store, Montreal, and at prices for each other grade of flaxseed as in the opinion of the Board brings such grade into proper price relationship with Number One Canada Western Flaxseed.

38. No person shall, except with the permission of the Board, either for himself or as agent for or otherwise on behalf of another person,

(*a*) provide, maintain or operate any facilities for the purpose of enabling any person to trade in flax;

(*b*) buy flaxseed from a producer for resale or for export or for processing or manufacturing purposes; or

(*c*) sell flaxseed for export.

39. It shall be the duty of the Board

(*a*) to buy all flaxseed offered for sale by producers at the prices established in accordance with section thirty-seven; and

(*b*) to sell and dispose of, from time to time, all flaxseed which the Board may acquire for such prices as it may consider reasonable; provided that in the case of sales made for domestic processing, the Board shall sell to such domestic crushers, feed, breakfast or cereal food manufacturers and manufacturers of pharmaceutical products on such bases per bushel as are named by the Oils and Fats Administrator of the Wartime Prices and Trade Board; and provided further that the Board shall endeavour to fill domestic demands before selling for export.

40. Any net losses to the Board arising from these operations shall be paid from moneys to be provided by a vote from the Consolidated Revenue Fund and any surplus revenue shall accrue to the same fund.

PART V

SUNFLOWER SEED AND RAPE SEED

41. (1) The Board is empowered to buy sunflower seed from producers at five cents per pound for the grade Number One Canada Western Sunflower Seed, delivered f.o.b. shipping points named by the Board and in accordance with such instructions as are issued by the Board and at prices for each other grade of sunflower seed as, in the opinion of the Board, brings such grade into proper price relationship with Number One Canada Western Sunflower Seed.

(2) The Board is empowered to buy Rape Seed from producers at six cents per pound for Rape Seed in reasonably clean condition, moisture content not exceeding limits to be determined and announced by the Board, delivered f.o.b. shipping points named by the Board and in accordance with such instructions as are issued by the Board.

(3) The Board shall have power to establish discounts for sunflower seed or rape seed which fails to meet the standards of quality specified in this section.

42. It shall be the duty of the Board:—

(*a*) to buy all sunflower seed offered to the Board by producers at the prices established in accordance with section forty-one;

(*b*) to buy all rape seed grown in the Western Division offered to the Board by producers at prices established in accordance with section forty-one;

(*c*) to sell or otherwise dispose of, at such prices as the Board considers reasonable, sunflower seed and rape seed which the Board may acquire; provided that in sales for domestic processing the Board shall sell to such processing plants and at such prices as are named by the Oils and Fats Administrator of the Wartime Price and Trade Board.

43. Any losses to the Board on these operations shall be paid from and charged to moneys appropriated by Parliament, and any profits shall accrue to the Consolidated Revenue Fund.

PART VI

OFFENCES

44. Every person who

(*a*) being required to make any return or declaration under these regulations or any order, furnishes any false information or makes any false statement in such return or declaration or fails fully to complete such return or declaration;

(*b*) makes any false entry in a permit book or a feed purchase permit or furnishes any false particulars of any retail sale to the Board for the purposes of, or to assist any person in obtaining an Advance Equalization Payment under these regulations; or who

(*c*) contravenes or omits to comply with these regulations or with any order

shall be guilty of an offence and liable on summary conviction to a fine not exceeding five thousand dollars or to imprisonment for a term not exceeding two years or to both such fine and such imprisonment.

PART VII

POWERS OF BOARD

45. (1) For the purpose of giving effect to these regulations or for the purpose of establishing any method or manner of regulating the handling, delivery, sale, milling or processing of grain other than that herein set out which the Board deems advisable, the Board may, by order,

(*a*) prohibit any person

(i) from handling, delivering, selling, disposing of, milling or processing, or

(ii) from receiving, storing, purchasing, or acquiring any kind of grain, or any grade or quality of any kind of grain, or any quantity of any such kind, grade or quality in excess of such quantity as may be fixed by the Board by way of quota or otherwise, either generally or for such time or times or except on such terms and conditions or in such manner as the Board deems advisable and may, in any order prescribe, or except under a permit or licence from the Board issued under such terms and conditions as the Board may deem advisable

(*b*) prohibit any person from exporting from Canada or importing into Canada any kind of grain or any grade or quality of any kind of grain, or any quantity of any such kind, grade or quality in excess of such quantity as may be fixed by the Board by way of quota or otherwise, either generally or except under a licence from the Board issued on such terms and conditions or for such consideration or fee as the Board may prescribe or except on such terms and conditions or in such manner as the Board may in any order prescribe;

(*c*) determine the amount of any fee or charge to be paid to the Board as consideration for the issue of any licence or permit by the Board for the import or export into or from Canada of grain or any grade or quality thereof;

(d) fix or limit the quantity or grade of any grain or grain product which may be sold, purchased, shipped, handled or stored by any person or establish a quota for any person or class of persons in respect thereof;

(*e*) direct the allocation of railway cars for the shipment of grain to any delivery point or to any elevator or loading platform at any delivery point or to any person;

(*f*) direct the allocation of Canadian lake vessel tonnage for the shipment of grain;

(*g*) require any person to offer grain owned by him for sale to another person on such terms and conditions as the Board may prescribe;

(*h*) exclude any person or any kind of grain or any grade or quality of any kind of grain or any lands from the operation of all or any of the provisions of these regulations as the Board deems advisable;

(*i*) prescribe the manner in which oats or barley sold by producers shall be weighed by dealers or operators and determine and fix the charges to be paid to dealers for services required by these regulaions;

(*j*) require any person to make reports or returns to the Board furnishing such information relating to the handling, delivery, sale, disposition of, receipt, storage, purchase, acquisition of, miling or processing of grain by him or to any facilities therefor owned, possessed or controlled by him, as the Board deems advisable;

(*k*) prescribe the manner in and conditions on which a licence required under any order of the Board or a permit may be issued or varied or, in the event of conviction of the licensee or permit holders for an offence under these regulations, revoked or varied;

(*l*) require any person to keep such records of sales of oats or barley as the Board deems advisable and prescribe the form thereof;

(*m*) prescribe the means by and manner in which Advance Equalization Payments shall be made;

(*n*) prescribe such form of permit books or other forms as it deems necessary for the administration of these regulations or for any order made pursuant to these regulations;

(*o*) provide for any matter necessary or incidental to the foregoing, or to the effective operation of any order made by the Board in relation to the foregoing;

(*p*) amend, revoke or cancel any order issued or made pursuant to these regulations.

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

(3) The Interpretation Act and every provision thereof shall be applicable to and in respect of every order made pursuant to this Part except insofar as any such provision is inconsistent with the intent or object of such order or would give to any word, expression or clause thereof an interpretation repugnant to the subject matter or the context or is in such order declared to be not applicable thereto.

46. Notwithstanding anything contained in the Act, the Board shall have all such corporate powers as are necessary to enable it to do anything required or authorized to be done by it under or pursuant to these regulations, and, without limiting the generality of the foregoing, shall for such purposes have power

(*a*) to buy, take delivery of, store or transport or sell, or otherwise dispose of grain or grain products;

(*b*) to pay elevator or other agents of the Board commission, storage or other charges, remuneration or compensation, as may be agreed upon, subject to any provisions of The Canada Grain Act or any other statute or law relating thereto;

(*c*) to enter into contracts or agreements of any kind and with any person whatsoever with respect to the purchase, sale, handling, storage, transportation, or insurance of grain or grain products;

(*d*) to employ such officers, clerks and employees as may be necessary for the administration of these regulations.

47. (1) The Board may enter into ordinary commercial banking arrangements on its own credit, and borrow money on the security of grain or grain products delivered to the Board, and the Governor in Council may

authorize the Minister of Finance to guarantee advances made to the Board or to make loans or advances to the Board on such terms and conditions as may be agreed upon.

(2) The Board may pay out money borrowed by it under the authority of this section for the purchase of grain or grain products under these regulations and also for expenses of the Board in connection with the administration of these regulations.

48. (1) Subject as provided in the Act, when the Board deems it advisable for the purposes of its operations, the Board may invest any moneys now or hereafter in its possession or control, whether arising from the sale of wheat or other grains or otherwise, in securities of the Government of Canada and may sell any securities so acquired by it and re-invest the proceeds thereof or any part thereof in like manner from time to time.

(2) The Canadian Wheat Board shall, at the time of realization, use every capital profit realized by it from the sale of a security acquired under this section in payment or part payment of expenses incurred by the Board in its operations.

(3) Every capital loss sustained by the Board from the sale of a security acquired under this section shall for all purposes be deemed to be an expense incurred by the Board in the course of its operations at the time of the sale of the security.

(4) The Board shall make all purchases and sales of securities authorized by this section through the agency of the Bank of Canada.

49. Notwithstanding any law to the contrary, the Board shall have power to authorize any person with whom the Board enters into an agreement relating to the forwarding or sale of wheat to borrow from any bank on the security of the wheat made available to such person by and received by such person from the Board and to give security on such wheat in accordance with the bank's usual requirements; such security in respect of such wheat to be effective only to the extent of the value of such wheat as fixed by the Board at the time of the making of such advances, and the bank may take security on such wheat under the provisions of section eighty-six or section eighty-eight of the Bank Act, and any such person shall be, and is deemed and declared to be the owner of such wheat for all such purposes and to such extent and in case of default by any such person the bank shall sell or dispose of such wheat to the Board only and the Board shall take delivery from the bank in lieu of such person and pay to the bank the Board's price for such wheat, as fixed at the time of the making of such advances, delivered at Fort William or Port Arthur or such other delivery point as may be authorized by the Board, plus charges,

allowances and the costs of transporting such wheat to the delivery point directed by the Board, and the security shall thereupon cease and the Board shall have clear title to such wheat.

50. Notwithstanding any law to the contrary, the Board shall have power to authorize any person with whom the Board enters or has entered into a Handling Agreement, to borrow from his or its Bank on the security of wheat delivered to and received by any such person, and to give security on such wheat, such security in respect of such wheat to be effective only to the extent of the advances actually made on such wheat not exceeding the amount of Board prices therefor, as fixed by or under the Act, plus transportation charges actually paid out, and other charges and allowances authorized by the Board, and any such person shall be and is deemed and declared to be the owner of such wheat for all such purposes and to such extent, and in case of default by any such person the Bank shall sell or dispose of such wheat to the Board only, and the Board shall take delivery on the terms of such handling Agreement, from the Bank in lieu of any such person, and pay to the Bank the Board's fixed carlot prices for such classes and grades of wheat delivered at Fort William/Port Arthur or Vancouver or such other delivery point as may be authorized by the Board, plus charges and allowances authorized by the Board, and the security shall thereupon cease and the Board shall have clear title to such wheat; such payment shall be a complete fulfilment of the Board's obligations to any such person in respect thereof as if such payment were made to such person.

PART VIII

DUTIES OF THE BOARD

51. It shall be the duty of the Board

(*a*) to appoint a responsible firm of Chartered Accountants for the purpose of auditing accounts and records and certifying such reports of the Board as the Governor in Council may require;

(*b*) to report in writing to the Minister as soon as possible after the end of each month, as at the close of business on the last day of said month, its purchases and sales of all grains during the month and the quantities of grain then on hand, the contracts to take delivery of grain then held, the cost of same to the Board and the financial results of the Board's operations, which report shall be certified by the auditors of the Board;

(*c*) to make such other reports and furnish such further information as the Minister may from time to time require;

(*d*) to keep proper books of account, giving such particulars therein as may be requisite for proper accounting in accordance with established practice; and

(*e*) to give effect to any Order in Council that may be passed with respect to the operations of the Board under this Part.

PART IX

GENERAL

52: In any proceedings in any Court or before any Justice taken in respect of any alleged breach of any statute, Order in Council or law respecting grain, including any Order of the Board thereunder, or any regulation in or under any such statute, Order in Council or law,

(*a*) any order, licence or other document purporting to be made, given or issued by or on behalf of or under authority of the Board shall, if purporting to be signed or countersigned by an official, be received as *prima facie* evidence that such order, licence or other document was so made, given or issued;

(*b*) any document purporting to be certified by an official to be a true copy of any order, licence or other document made, given or issued by or on behalf of or under authority of the Board shall be received as *prima facie* evidence that such order, regulation, instruction, licence or other document was so made, given or issued;

(*c*) the words "an official" in the foregoing two paragraphs shall mean any one of the following members or officers of the Board: Chief Commissioner; Assistant Chief Commissioner; Commissioner; Secretary; Comptroller.

53. Any contract or agreement for the sale, purchase, shipment, handling, or storage of wheat or wheat products entered into in contravention of any provision of these regulations or of any order made by the Board pursuant to these regulations shall be void.

54. All claims for amounts in respect of which persons on the day these regulations come into force are, by Order in Council P.C. 2570 of the eleventh day of April, nineteen hundred and forty-four, prohibited from commencing or continuing any action, suit or proceeding, are hereby extinguished.

55. (1) The Board shall make such inquiries and investigations as it deems necessary to ascertain what supplies of wheat are or may be available from time to time, the location and ownership of same, the transportation and elevator facilities available in connection therewith, as well as all conditions connected with the marketing and market price that can be obtained for same.

(2) for the purpose of any inquiry or investigation held by the Board under subsection one of this section, the Board and the several members thereof shall have all the powers of a commissioner under Part I of the Inquiries Act.

56. A permit issued by the Board pursuant to these regulations, except permits for the export of oats or barley, unless sooner cancelled, expires at the end of the crop year in respect of which it is issued.

57. These regulations shall be operative notwithstanding any statute or law to the contrary but shall not be construed as in any way limiting or restricting any powers conferred on the Board by any other statute or law and shall come into effect on the first day of August, nineteen hundred and forty-six.

EXHIBIT No. 1 (18)

(Extract from the CANADA GAZETTE *(Part II) of Wednesday, February 26, 1947.)*

(SEAL)

SOR/47-176

BOARD OF GRAIN COMMISSIONERS FOR CANADA

REGULATION No. 38

At a special meeting of the Board of Grain Commissioners for Canada held in WINNIPEG, MANITOBA, on the THIRTIETH DAY of DECEMBER, 1946, the Board made the regulation as set out hereunder in accordance with the provisions of Sections 15 (*g*) and (*r*) of the Canada Grain Act, 1930 and amendments thereto.

MAXIMUM TARIFF OF CHARGES—TERMINAL ELEVATORS AT FORT WILLIAM, PORT ARTHUR AND WINNIPEG

Under the provisions of the Canada Grain Act, 1930, as amended, and subject to the capacity of the elevator and the nature of its equipment, grain shall be received at terminal elevators at Fort William, Port Arthur or Winnipeg upon the following conditions and subject to charges not in excess of those specified herein.

1. *Elevation Charges:*

Receiving, elevating, shipping, storing and insurance against fire for the first fifteen days:

(*a*) Wheat, Oats, Barley and Corn—One and three-eighths cents (1⅜c.) per bushel;

(*b*) Rye—One and three-quarter cents (1¾c.) per bushel;

(*c*) Flax—Two cents (2c.) per bushel;

(*d*) Mixed Grain(handled as mixtures)—Two cents (2c.) per hundred pounds;

(*e*) Screenings—Three cents (3c.) per hundred pounds.

Tough, damp, condemned, heating, heated or fireburnt grain may always be refused. If received and stored it shall be at the owner's risk of deterioration. All damp grain and tough flax shall be dried without notice as soon after unloading as facilities will permit.

2. *Storage Charges:* (Including insurance against fire)

For each succeeding day or part thereof after the first fifteen days:

(*a*) Wheat, Oats, Barley, Rye, Flax and Corn—One-thirtieth of one cent (1/30c.) per bushel;

(*b*) Mixed Grain (handled as mixtures)—Two-thirtieths of one cent (2/30c.) per hundred pounds;

(*c*) Screenings—One-tenth of one cent (1/10c.) per hundred pounds.

3. *Cleaning Charges:*

(1) *For removal of dockage* (other than grain for which a return is made):

(*a*) *Wheat and Oats:*

Containing less than 3% dockage—No charge;

Containing from 3% to 5% dockage—One-half cent (½c.) per bushel;

Containing from 5½% to 10% dockage—One cent (1c.) per bushel;

Containing more than 10% dockage—One and one-half cents (1½c.) per bushel.

(*b*) *Barley:*

Containing less than 5½% dockage—One-half cent (½c.) per bushel;

Containing from 5½% to 10% dockage—One cent (1c.) per bushel;

Containing more than 10% dockage—One and one-half cents (1½c.) per bushel.

(*c*) *Rye:*

Containing less than 3% dockage—No charge;

Containing from 3% to 5% dockage—One cent (1c.) per bushel;

Containing from 5½% to 10% dockage—One and one-half cents (1½c.) per bushel;

Containing more than 10% dockage—Two cents (2c.) per bushel.

(*d*) *Flax:*

Containing les than 5½% dockage—No charge;

Containing from 5½% to 10% dockage—One and one-half cents (1½c.) per bushel;

Containing more than 10% dockage—Two cents (2c.) per bushel.

(2) *For removal of other grain,* except mixed feed oats, from grain carrying a return of such other grain (c.c. cars) in addition to charges, if any, under subsection (1) hereof.

All Grain:

Containing not more than 10% other grain—Three cents (3c.) per hundred pounds;

Containing more than 10% but nor more than 15% other grain—Four cents (4c.) per hundred pounds;

Containing more than 15% of other grain—Five cents (5c.) per hundred pounds.

(3) *For removal of Mixed Feed Oats* from wheat carrying a return of mixed feed oats:

One-half cent (½c.) per bushel in addition to charges under subsection 1(a) hereof.

4. *Returns for Dockage:*

(*a*) *Wheat:*

On shipments assessed dockage of three per cent (3%) or more a return for all such screenings less one-half of one per cent (½%) of the gross weight of the shipment for waste shall be made to the shipper.

Separate returns shall be made for other grain or mixed feed oats (wild oats) in shipments designated "Clean till clean" on account of containing two and one-half per cent (2½%) or more oats; three per cent (3%) or more flax; three and one-half per cent (3½%) or more mixed feed oats or five per cent (5%) or more broken wheat.

On shipments which are designated "Clean till clean" for mixed feed oats (wild oats) a deduction of one-half of one per cent (½%) of the gross weight of the shipment for waste shall be deducted from the return for the mixed feed oats.

(*b*) *Oats:*

On shipments assessed dockage of three per cent (3%) or more a return for all such screenings less one-half of one per cent (½%) of the gross weight of the shipment for waste shall be made to the shipper. A separate return shall be made for flax in shipments designated "Clean till clean" on account of containing three per cent (3%) or more of flax.

(*c*) *Barley:*

On shipments assessed dockage a return for all such screenings less one-half of one per cent (½%) of the gross weight of the shipment for waste shall be made to the shipper. A separate return shall be made for flax in shipments designated "Clean till clean" on account of containing three per cent (3%) or more flax.

(*d*) *Rye:*

On shipments assessed dockage of three per cent (3%) or more a return for all such screenings less one per cent (1%) of the gross weight of the shipment for waste shall be made to the shipper.

Separate returns shall be made for other grain in shipments designated "Clean till clean" on account of containing two and one-half per cent (2½%) or more oats; three per cent (3%) or more flax or five per cent (5%) or more broken rye.

(*e*) *Flax:*

On shipments assessed dockage of five and one-half per cent (5½%) or more a return for all such screenings less two per cent (2%) of the gross weight of the shipment for waste shall be made to the shipper.

Separate returns shall be made for other grain or mixtures of grains in shipments designated "Clean till clean" on account of containing two and one-half per cent (2½%) or more of other grain or mixtures of grains.

(*f*) *Quality of Screenings:*

The holder of warehouse receipts or shut-outs covering dockage shall be entitled to receive the average quality of screenings in accordance with sample tests which shall be made in such manner as shall be determined by the Inspection Branch.

(*g*) *Disposition of Screenings:*

If instructions for the disposition of screenings covered by outstanding returns are not received within thirty days from the date of unloading, such screenings may be disposed of for account of whom it may concern.

5. *Special Separations:*

Separations of mixed grain or straight grade grain to improve grade, five cents (5c) per hundred pounds computed on gross weight of car.

On all such separations a deduction of one per cent (1%) of the gross weight shall be made to cover invisible loss in separation, except in cases where the inspection certificate issued in respect of such grain before separation does not specify the actual percentages of domestic grain or dirt to be removed, when settlement shall be made on the basis of the actual net weights after the separation.

6. *Drying Charges:*

Tough Grain—Three Cents (3c) per bushel.
Damp or wet grain—Five Cents (5c) per bushel.

7. *Bulkheads:*

For removal and additional expense in handling and unloading car—Five Dollars ($5.00) per bulkhead.

8. *Sacked Grain:*

For unloading—Five Cents (5c) per sack.

9. *Preparing cars for Loading:*

Four Dollars ($4.00) per car when paper is used.

10. *Basis of Charges:*

Charges for cleaning, drying or other treatment shall be computed on gross weight of the shipment.

Charges for elevation and storage shall be computed on net weight of grain received.

Charges accruing after issuance of initial completed out-turn and expense bill shall follow the grain.

All charges must be paid before grain is shipped.

11. *Allowance for Invisible Loss and Shrinkage:*

All grain delivered to terminal elevators shall be subject to a deduction from the gross weight of the car to cover invisible loss and shrinkage in handling as follows:

Wheat	— 30 pounds per car
Oats, Barley & Mixed Grain	— 50 pounds per car
Corn	— 56 pounds per car
Rye	— 70 pounds per car
Flax	— 80 pounds per car

12. *Unspecified Grain:*

Salvaged or other unspecified grain shall only be received, stored and treated subject to special charges to be agreed upon at the time, subject to the approval of the Board of Grain Commissioners.

13. Service required after the usual working hours on week days and on Sundays and legal holidays shall be subject to special charges to be arranged between the manager of the elevator and the owner or shipper of the grain.

14. Tariffs of charges lower than the maximum charges specified herein may be filed with the Board by the manager of any terminal elevator but such lower charges shall apply, subject to the provisions of Section 134 of the Act, to all grain received at such elevator during the crop year for which such tariffs of charges are filed.

15. Regulation No. 38 made by the Board on the first day of August, 1944, as amended on the third day of August, 1945, and the eleventh day of September, 1946, is hereby repealed.

16. This regulation shall come into force on the first day of January, 1947.

SIGNED and SEALED at WINNIPEG, in the province of MANITOBA, this THIRTIETH DAY of DECEMBER, 1946.

D. G. McKENZIE
Chief Commissioner

D. A. MacGIBBON
Commissioner

[L.S.]

C. M. HAMILTON
Commissioner

J. RAYNER,
Secretary.

Part of Exhibit No. 1(18)

BOARD OF GRAIN COMMISSIONERS FOR CANADA

TERMINAL ELEVATOR CHARGES

Regulations Nos. 38 and 40, made by the Board on the 30th day of December, 1946, and amended on the 1st day of August, 1947, have been further amended effective 1st OCTOBER, 1947, by repealing Sections 1 thereof and substituting therefor the following:

"1. *Elevation Charges:*

Receiving, elevating, shipping, storing and insurance against fire for the first ten days:

(*a*) Wheat, Oats, Barley and Corn—One and One-half Cents (1½c.) per bushel;

(*b*) Rye—One and Seven-eighths Cents (1⅞c.) per bushel;

(*c*) Flax—Two and Five-eighths Cents (2⅝c.) per bushel;

(*d*) Mixed Grain (handled as Mixtures)—Two Cents (2c.) per hundred pounds;

(*e*) Screenings—Three and One-half Cents (3½c.) per hundred pounds.

Except that all grain shipped from terminal elevators in railway cars shall be subject to an additional charge of one-quarter of one cent (¼c.) per bushel.

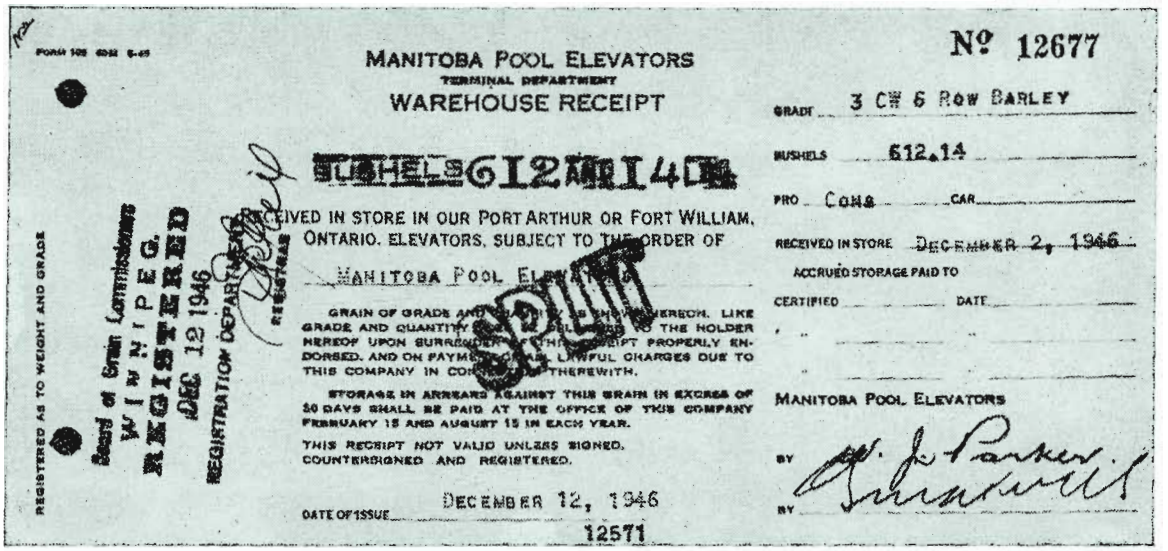
Tough, damp, condemned, heating, heated or fireburnt grain may always be refused. If received and stored it shall be at the owner's risk of deterioration. All damp grain and tough flax shall be dried without notice as soon after unloading as facilities will permit."

By Order of the Board:

"J. RAYNER"
Secretary.

WINNIPEG, Manitoba,
September 27th, 1947.

EXHIBIT No. 1 (1)



MANITOBA POOL ELEVATORS
TERMINAL DEPARTMENT
WAREHOUSE RECEIPT

No 12677

GRADE 3 CW 6 Row BARLEY
BUSHELS 612.14
PRO Cons CAR
RECEIVED IN STORE DECEMBER 2, 1946
ACCRUED STORAGE PAID TO
CERTIFIED DATE

BUSHELS 612 14

RECEIVED IN STORE IN OUR PORT ARTHUR OR FORT WILLIAM, ONTARIO, ELEVATORS, SUBJECT TO THE ORDER OF

MANITOBA POOL ELEVATORS

GRAIN OF GRADE AND [illegible] HEREON, LIKE GRADE AND QUANTITY [illegible] TO THE HOLDER HEREOF UPON SURRENDER OF THIS RECEIPT PROPERLY ENDORSED, AND ON PAYMENT OF ALL LAWFUL CHARGES DUE TO THIS COMPANY IN CONNECTION THEREWITH.

STORAGE IN ARREARS AGAINST THIS GRAIN IN EXCESS OF 30 DAYS SHALL BE PAID AT THE OFFICE OF THIS COMPANY FEBRUARY 15 AND AUGUST 15 IN EACH YEAR.

THIS RECEIPT NOT VALID UNLESS SIGNED, COUNTERSIGNED AND REGISTERED.

DATE OF ISSUE DECEMBER 12, 1946

12571

MANITOBA POOL ELEVATORS

BY W. J. Parker

BY

REGISTERED AS TO WEIGHT AND GRADE

Board of Grain Commissioners
WINNIPEG.
REGISTERED
DEC 12 1946
REGISTRAR

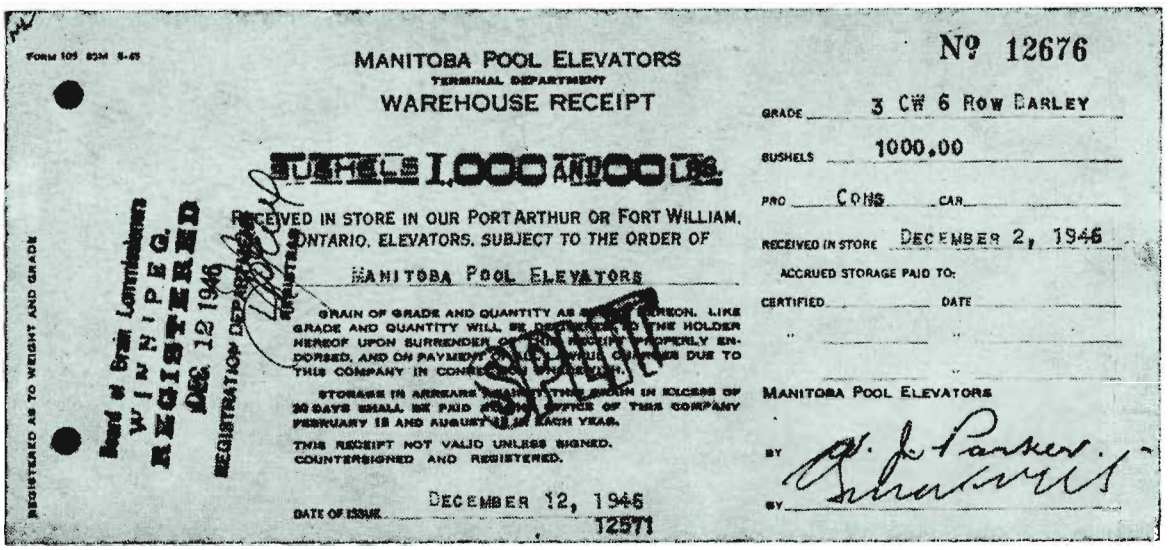
REGISTRATION DEPARTMENT

ENDORSEMENTS

IN PAYMENT OF ALL CHARGES
DELIVER TO THE ORDER OF
HALLET & CAREY LTD.
MANITOBA POOL ELEVATORS
TERMINAL DEPT.

CANCELLED
1-3

EXHIBIT No. 1 (1)—*Continued*



Form 105 82M 5-45

MANITOBA POOL ELEVATORS
TERMINAL DEPARTMENT
WAREHOUSE RECEIPT

No 12676

GRADE 3 CW 6 Row BARLEY

BUSHELS 1000.00

PRO COMS CAR

RECEIVED IN STORE DECEMBER 2, 1946

ACCRUED STORAGE PAID TO:

CERTIFIED DATE

BUSHELS 1,000 AND 00 LBS.

RECEIVED IN STORE IN OUR PORT ARTHUR OR FORT WILLIAM, ONTARIO, ELEVATORS, SUBJECT TO THE ORDER OF

MANITOBA POOL ELEVATORS

GRAIN OF GRADE AND QUANTITY AS ... HEREON. LIKE GRADE AND QUANTITY WILL BE DELIVERED TO THE HOLDER HEREOF UPON SURRENDER OF ... PROPERLY ENDORSED, AND ON PAYMENT OF ... DUE TO THIS COMPANY IN CONNECTION ...

STORAGE IN ARREARS ... THIS GRAIN IN EXCESS OF 30 DAYS SHALL BE PAID ... OFFICE OF THIS COMPANY FEBRUARY 15 AND AUGUST 15 IN EACH YEAR.

THIS RECEIPT NOT VALID UNLESS SIGNED, COUNTERSIGNED AND REGISTERED.

DATE OF ISSUE DECEMBER 12, 1946

12571

MANITOBA POOL ELEVATORS

BY G. J. Parker

BY

REGISTERED AS TO WEIGHT AND GRADE

Board of Grain Commissioners
WINNIPEG
REGISTERED
DEC 12 1946

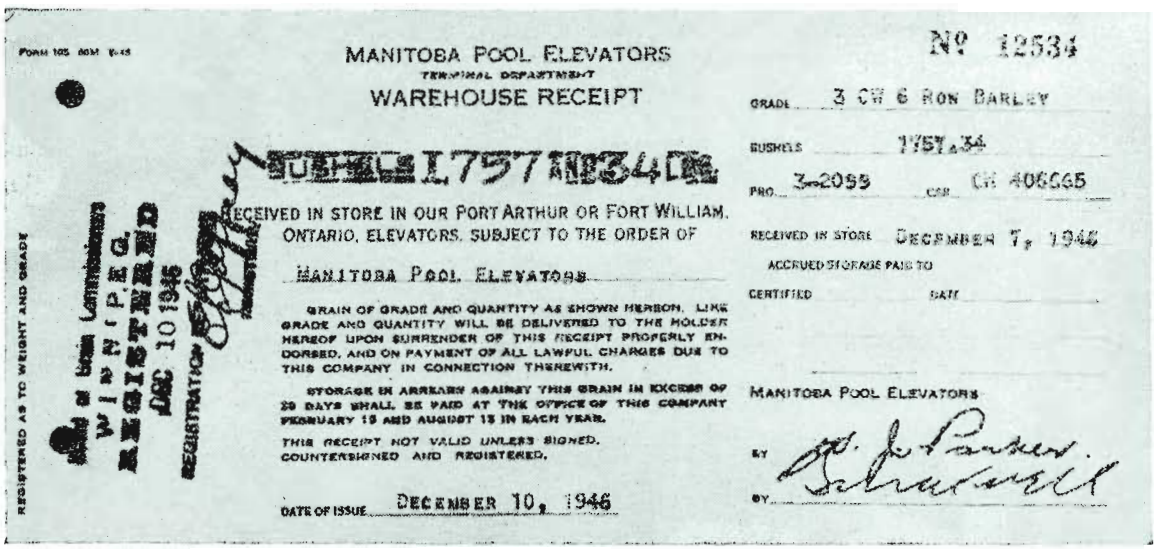
REGISTRATION DEPARTMENT

ENDORSEMENTS

ON PAYMENT OF ALL CHARGES DELIVER TO THE ORDER OF HALLET & CAREY LTD.

MANITOBA POOL ELEVATORS
TERMINAL DEPT.

EXHIBIT No. 1 (1)—*Continued*



Form 105 80M 9-45

MANITOBA POOL ELEVATORS
TERMINAL DEPARTMENT
WAREHOUSE RECEIPT

No 12534

GRADE 3 CW 6 ROW BARLEY

BUSHELS 1757.34

PRO 3-2099 CAR CR 406665

RECEIVED IN STORE DECEMBER 7, 1946

ACCRUED STORAGE PAID TO

CERTIFIED DATE

BUSHELS 1757 34/60

RECEIVED IN STORE IN OUR PORT ARTHUR OR FORT WILLIAM, ONTARIO, ELEVATORS, SUBJECT TO THE ORDER OF

MANITOBA POOL ELEVATORS

GRAIN OF GRADE AND QUANTITY AS SHOWN HEREON, LIKE GRADE AND QUANTITY WILL BE DELIVERED TO THE HOLDER HEREOF UPON SURRENDER OF THIS RECEIPT PROPERLY ENDORSED, AND ON PAYMENT OF ALL LAWFUL CHARGES DUE TO THIS COMPANY IN CONNECTION THEREWITH.

STORAGE IN ARREARS AGAINST THIS GRAIN IN EXCESS OF 20 DAYS SHALL BE PAID AT THE OFFICE OF THIS COMPANY FEBRUARY 15 AND AUGUST 15 IN EACH YEAR.

THIS RECEIPT NOT VALID UNLESS SIGNED, COUNTERSIGNED AND REGISTERED.

DATE OF ISSUE DECEMBER 10, 1946

MANITOBA POOL ELEVATORS

BY G. L. Parker.

BY Edwards

REGISTERED AS TO WEIGHT AND GRADE

Grain Commission
WINNIPEG
REGISTERED
DEC 10 1946
REGISTRATION

ENDORSEMENTS
ON PAYMENT OF ALL CHARGES
DELIVER TO THE ORDER OF
HALLETT, CAMLEY AND
MANITOBA POOL ELEVATORS

EXHIBIT No. 1 (1)—*Continued*

MANITOBA POOL ELEVATORS
TERMINAL DEPARTMENT
WAREHOUSE RECEIPT

No 12573

GRADE 3 CW 6 ROW BARLEY

BUSHELS 1836.32

PRO 3-2106 CAR CP 211155

RECEIVED IN STORE DEC 9 1946

ACCRUED STORAGE PAID TO

CERTIFIED DATE

BUSHELS 1,836 AND 32 LBS.

RECEIVED IN STORE IN OUR PORT ARTHUR OR FORT WILLIAM, ONTARIO, ELEVATORS, SUBJECT TO THE ORDER OF

MANITOBA POOL ELEVATORS

GRAIN OF GRADE AND QUANTITY AS SHOWN HEREON. LIKE GRADE AND QUANTITY WILL BE DELIVERED TO THE HOLDER HEREOF UPON SURRENDER OF THIS RECEIPT PROPERLY ENDORSED AND ON PAYMENT OF ALL LAWFUL CHARGES DUE TO THIS COMPANY IN CONNECTION THEREWITH.

STORAGE IN ARREARS AGAINST THIS GRAIN IN EXCESS OF 30 DAYS SHALL BE PAID AT THE OFFICE OF THIS COMPANY FEBRUARY 15 AND AUGUST 15 IN EACH YEAR.

THIS RECEIPT NOT VALID UNLESS SIGNED, COUNTERSIGNED AND REGISTERED.

DATE OF ISSUE DEC 11 1946

MANITOBA POOL ELEVATORS

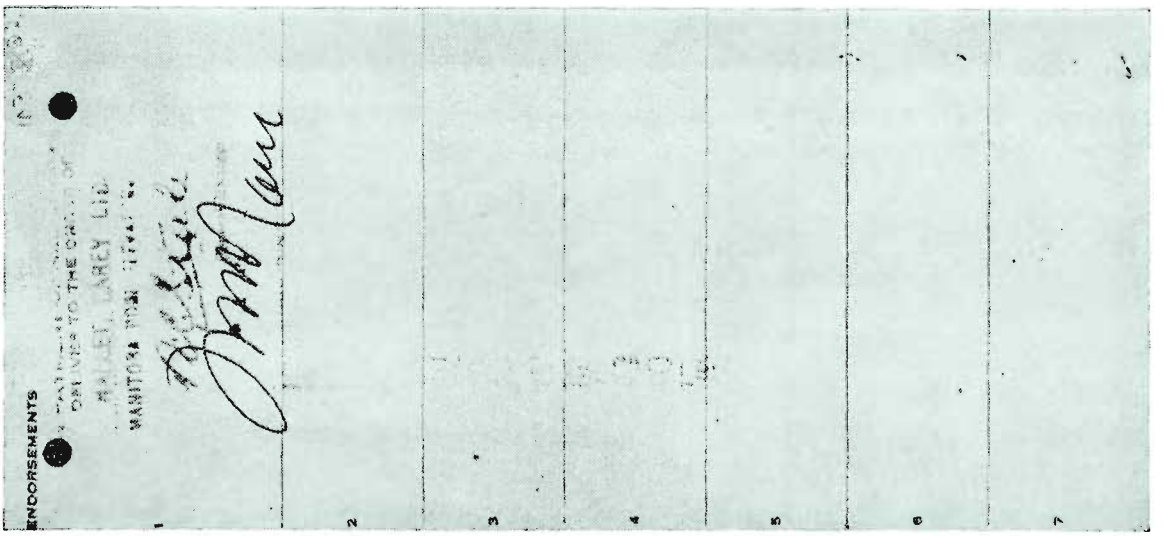
BY W. J. Parker

BY

REGISTERED AS TO WEIGHT AND GRADE

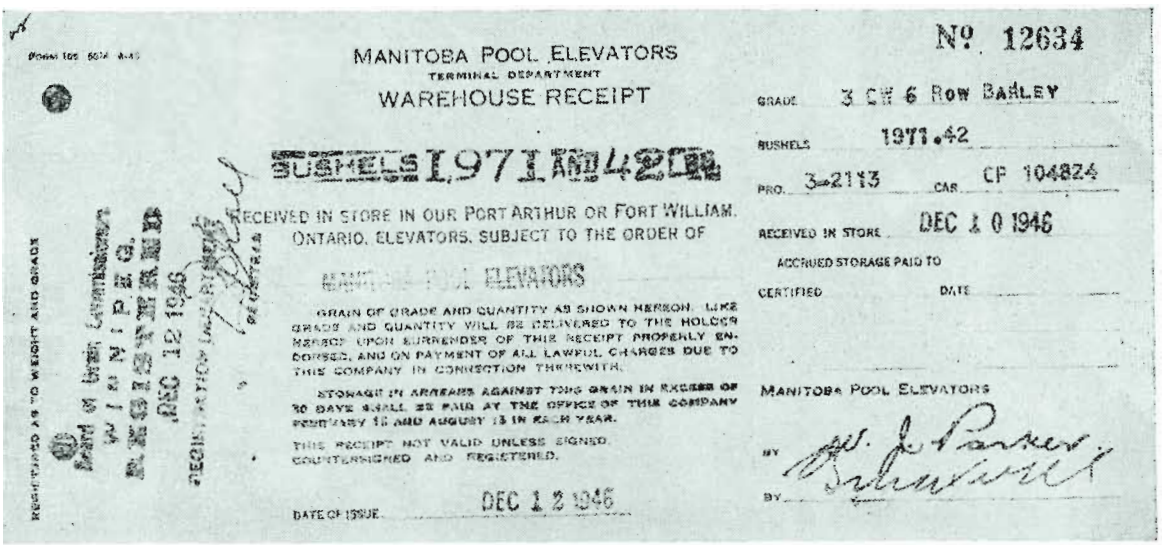
Board of Grain Commissioners
WINNIPEG.
REGISTERED
DEC 11 1946

REGISTRAR



ENDORSEMENTS

EXHIBIT No. 1 (1)—*Continued*



MANITOBA POOL ELEVATORS
TERMINAL DEPARTMENT
WAREHOUSE RECEIPT

No. 12634

GRADE 3 CW 6 Row BARLEY
BUSHELS 1971.42
PRO. 3-2113 CAR CP 104824
RECEIVED IN STORE DEC 1 0 1946
ACCRUED STORAGE PAID TO
CERTIFIED DATE

BUSHELS 1971 AND 42/100

RECEIVED IN STORE IN OUR PORT ARTHUR OR FORT WILLIAM, ONTARIO, ELEVATORS, SUBJECT TO THE ORDER OF

[illegible] ELEVATORS

GRAIN OF GRADE AND QUANTITY AS SHOWN HEREON, LIKE GRADE AND QUANTITY WILL BE DELIVERED TO THE HOLDER HEREOF UPON SURRENDER OF THIS RECEIPT, PROPERLY ENDORSED, AND ON PAYMENT OF ALL LAWFUL CHARGES DUE TO THIS COMPANY IN CONNECTION THEREWITH.

STORAGE IN ARREARS AGAINST THIS GRAIN IN EXCESS OF 30 DAYS SHALL BE PAID AT THE OFFICE OF THIS COMPANY FEBRUARY 15 AND AUGUST 15 IN EACH YEAR.

THIS RECEIPT NOT VALID UNLESS SIGNED, COUNTERSIGNED AND REGISTERED.

DATE OF ISSUE DEC 1 2 1946

MANITOBA POOL ELEVATORS

BY W. J. Parker

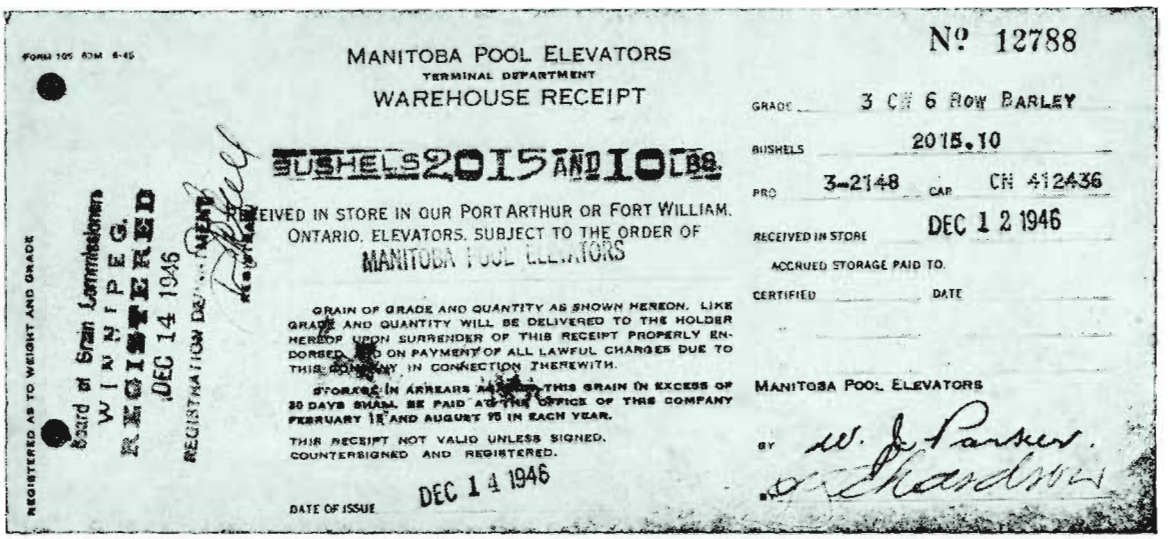
BY [illegible]

REGISTERED AS TO WEIGHT AND GRADE

REGISTRAR OF WESTERN GRAIN ELEVATORS
WINNIPEG
REGISTERED
DEC 12 1946

ENDORSEMENTS
PAY TO THE ORDER OF ALL BANKERS
DELIVER TO THE ORDER OF
HALLET, CAREY LTD.
MANITOBA POOL ELEVATORS
per [illegible]
Manager

EXHIBIT No. 1 (1)—*Continued*



MANITOBA POOL ELEVATORS
TERMINAL DEPARTMENT
WAREHOUSE RECEIPT

No 12788

GRADE 3 CW 6 ROW BARLEY

BUSHELS 2015.10

PRO 3-2148 CAR CN 412436

RECEIVED IN STORE DEC 12 1946

ACCRUED STORAGE PAID TO

CERTIFIED DATE

BUSHELS 2015 AND 10 LBS.

RECEIVED IN STORE IN OUR PORT ARTHUR OR FORT WILLIAM, ONTARIO, ELEVATORS, SUBJECT TO THE ORDER OF MANITOBA POOL ELEVATORS

GRAIN OF GRADE AND QUANTITY AS SHOWN HEREON, LIKE GRADE AND QUANTITY WILL BE DELIVERED TO THE HOLDER HEREOF UPON SURRENDER OF THIS RECEIPT PROPERLY ENDORSED AND ON PAYMENT OF ALL LAWFUL CHARGES DUE TO THIS COMPANY IN CONNECTION THEREWITH.

STORAGE IN ARREARS AS TO THIS GRAIN IN EXCESS OF 30 DAYS SHALL BE PAID AT THE OFFICE OF THIS COMPANY FEBRUARY 15 AND AUGUST 15 IN EACH YEAR.

THIS RECEIPT NOT VALID UNLESS SIGNED, COUNTERSIGNED AND REGISTERED.

DATE OF ISSUE DEC 14 1946

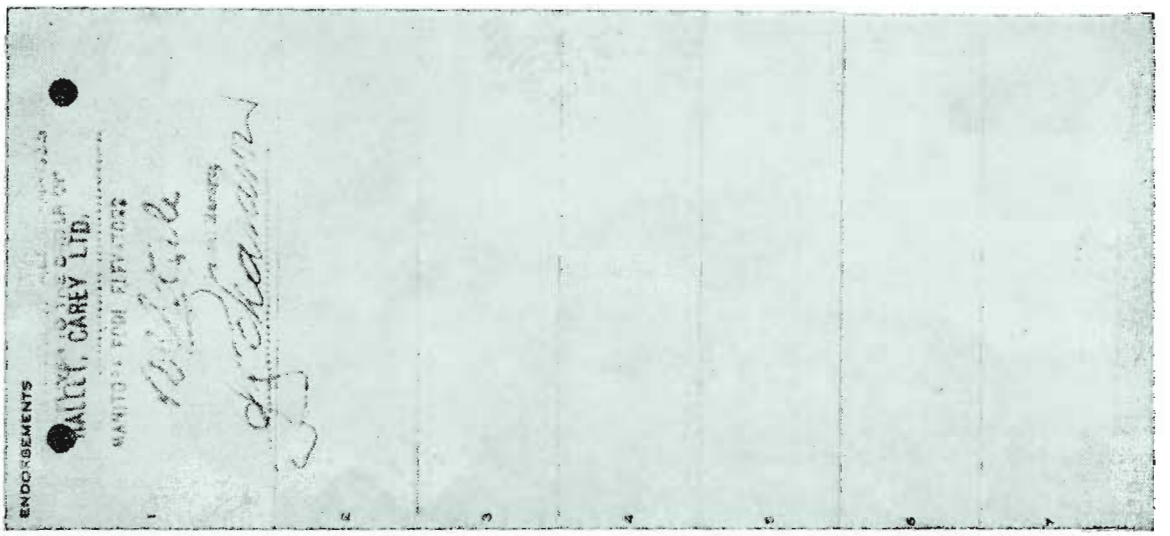
MANITOBA POOL ELEVATORS

BY W. J. Parker.

REGISTERED AS TO WEIGHT AND GRADE

Board of Grain Commissioners
WINNIPEG.
REGISTERED
DEC 14 1946

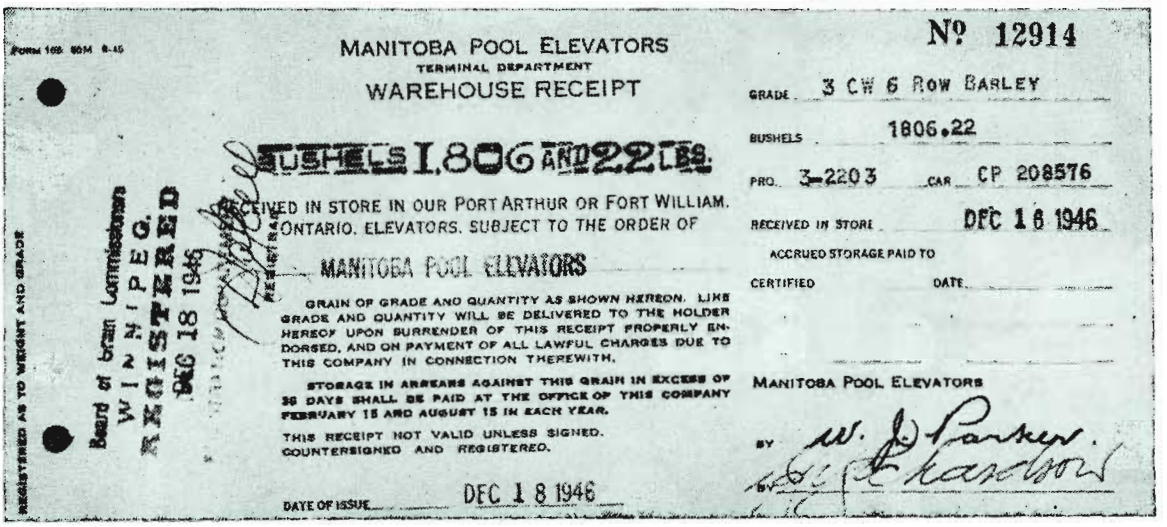
REGISTRATION DEPARTMENT



ENDORSEMENTS

PALLEY, CAREY LTD.

EXHIBIT No. 1 (1)—*Continued*



MANITOBA POOL ELEVATORS
TERMINAL DEPARTMENT
WAREHOUSE RECEIPT

Nº 12914

GRADE 3 CW 6 ROW BARLEY

BUSHELS 1806.22

PRO. 3-2203 CAR CP 208576

RECEIVED IN STORE DEC 16 1946

ACCRUED STORAGE PAID TO

CERTIFIED DATE

BUSHELS 1,806 AND 22 LBS.

RECEIVED IN STORE IN OUR PORT ARTHUR OR FORT WILLIAM, ONTARIO, ELEVATORS, SUBJECT TO THE ORDER OF

MANITOBA POOL ELEVATORS

GRAIN OF GRADE AND QUANTITY AS SHOWN HEREON. LIKE GRADE AND QUANTITY WILL BE DELIVERED TO THE HOLDER HEREOF UPON SURRENDER OF THIS RECEIPT PROPERLY ENDORSED, AND ON PAYMENT OF ALL LAWFUL CHARGES DUE TO THIS COMPANY IN CONNECTION THEREWITH.

STORAGE IN ARREARS AGAINST THIS GRAIN IN EXCESS OF 30 DAYS SHALL BE PAID AT THE OFFICE OF THIS COMPANY FEBRUARY 15 AND AUGUST 15 IN EACH YEAR.

THIS RECEIPT NOT VALID UNLESS SIGNED, COUNTERSIGNED AND REGISTERED.

DATE OF ISSUE DEC 18 1946

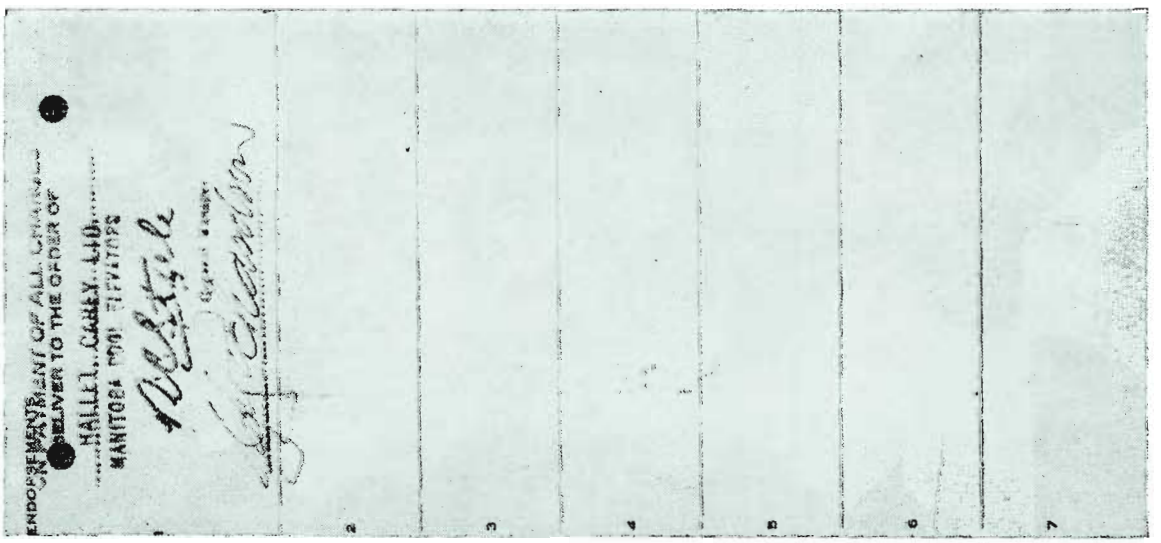
MANITOBA POOL ELEVATORS

BY W. J. Parker.

BY

REGISTERED AS TO WEIGHT AND GRADE

Board of Grain Commissioners
WINNIPEG
REGISTERED
DEC 18 1946



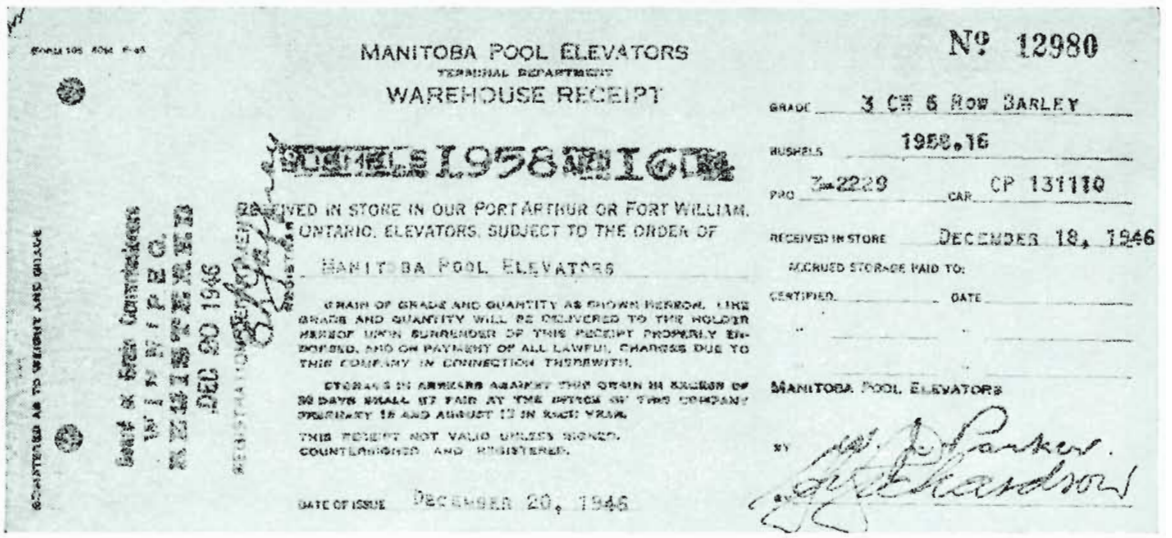
ENDORSEMENTS ON BACK HEREOF ARE PART OF THIS CONTRACT

DELIVER TO THE ORDER OF

HALLETT, CAREY & CO.

MANITOBA POOL ELEVATORS

EXHIBIT No. 1 (1)—*Continued*



MANITOBA POOL ELEVATORS
TERMINAL DEPARTMENT
WAREHOUSE RECEIPT

No 12980

GRADE 3 CW 6 ROW BARLEY

BUSHELS 1958.16

PRO 3-2229 CAR CP 131110

RECEIVED IN STORE DECEMBER 18, 1946

ACCRUED STORAGE PAID TO:

CERTIFIED DATE

BUSHELS 1958 16

RECEIVED IN STORE IN OUR PORT ARTHUR OR FORT WILLIAM, ONTARIO, ELEVATORS, SUBJECT TO THE ORDER OF

MANITOBA POOL ELEVATORS

GRAIN OF GRADE AND QUANTITY AS SHOWN HEREON, LIKE GRADE AND QUANTITY WILL BE DELIVERED TO THE HOLDER HEREOF UPON SURRENDER OF THIS RECEIPT PROPERLY ENDORSED, AND ON PAYMENT OF ALL LAWFUL CHARGES DUE TO THIS COMPANY IN CONNECTION THEREWITH.

STORAGE IN ARREARS AGAINST THIS GRAIN IN EXCESS OF 30 DAYS SHALL BE PAID AT THE OFFICE OF THIS COMPANY PRIMARILY IN AND AGAINST IT IN SAID YARD.

THIS RECEIPT NOT VALID UNLESS SIGNED, COUNTERSIGNED AND REGISTERED.

DATE OF ISSUE DECEMBER 20, 1946

MANITOBA POOL ELEVATORS

BY W. D. Parker.

BY Ed Richardson

SCRATCHED AS TO WEIGHT AND GRADE

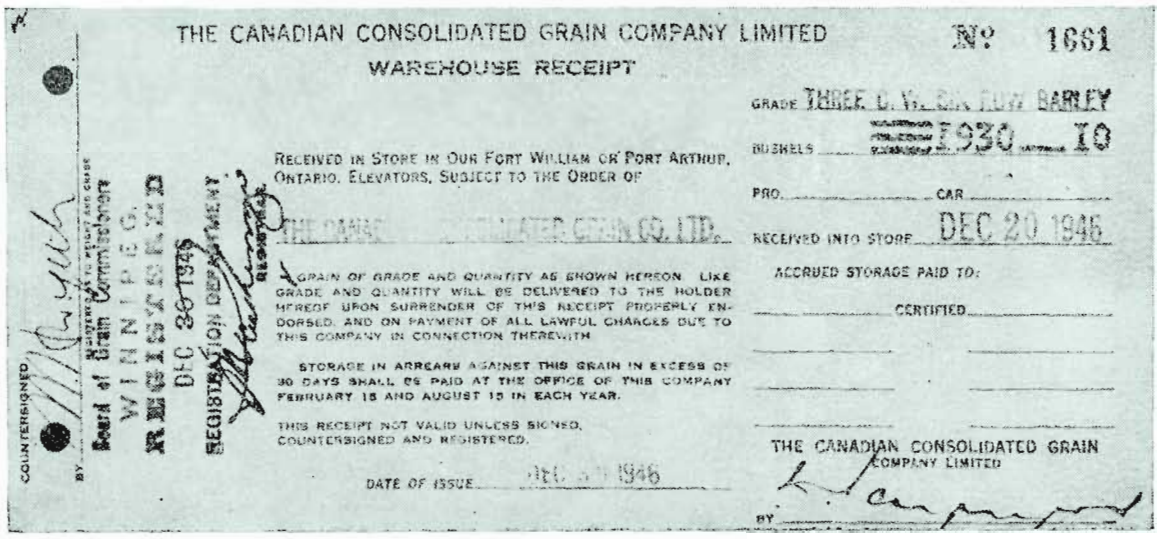
DEC 20 1946

REGISTRATION CLERK

ENDORSEMENTS

HALLET, CAREY LTD.

EXHIBIT No. 1 (1)—*Continued*



THE CANADIAN CONSOLIDATED GRAIN COMPANY LIMITED

WAREHOUSE RECEIPT

No 1661

GRADE THREE C. W. EXTRA FEED BARLEY

BUSHELS 1930 10

PRO. CAR

RECEIVED INTO STORE DEC 20 1946

ACCRUED STORAGE PAID TO:

CERTIFIED

RECEIVED IN STORE IN OUR FORT WILLIAM OR PORT ARTHUR, ONTARIO, ELEVATORS, SUBJECT TO THE ORDER OF

THE CANADIAN CONSOLIDATED GRAIN CO. LTD.

GRAIN OF GRADE AND QUANTITY AS SHOWN HEREON LIKE GRADE AND QUANTITY WILL BE DELIVERED TO THE HOLDER HEREOF UPON SURRENDER OF THIS RECEIPT PROPERLY ENDORSED, AND ON PAYMENT OF ALL LAWFUL CHARGES DUE TO THIS COMPANY IN CONNECTION THEREWITH.

STORAGE IN ARREARS AGAINST THIS GRAIN IN EXCESS OF 30 DAYS SHALL BE PAID AT THE OFFICE OF THIS COMPANY FEBRUARY 15 AND AUGUST 15 IN EACH YEAR.

THIS RECEIPT NOT VALID UNLESS SIGNED, COUNTERSIGNED AND REGISTERED.

DATE OF ISSUE DEC 20 1946

THE CANADIAN CONSOLIDATED GRAIN COMPANY LIMITED

BY

COUNTERSIGNED

BY

Board of Grain Commissioners

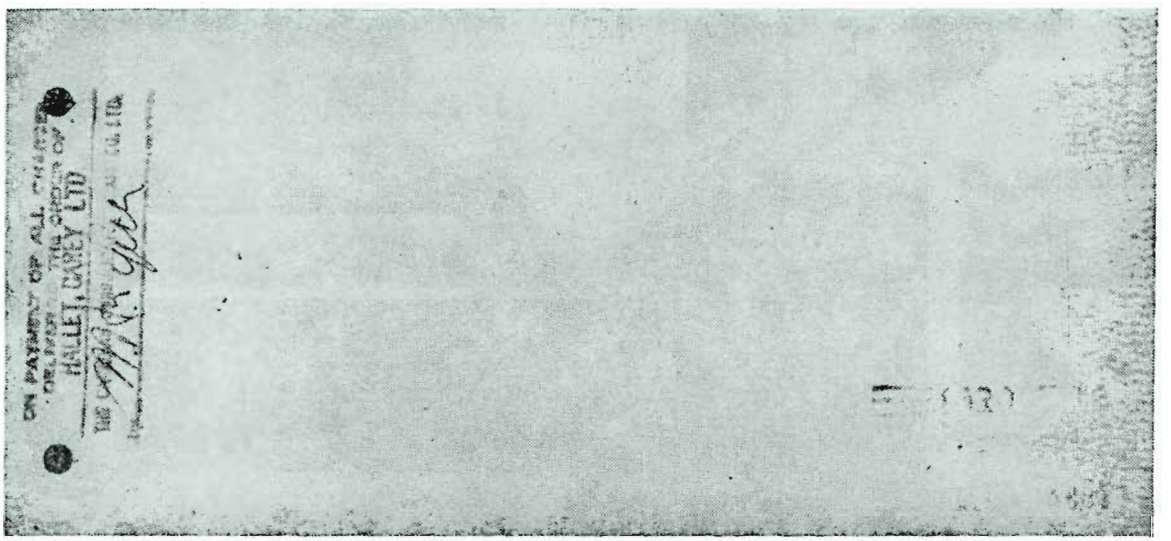
WINNIPEG.

REGISTERED

DEC 20 1946

REGISTRATION DEPARTMENT

REGISTRAR

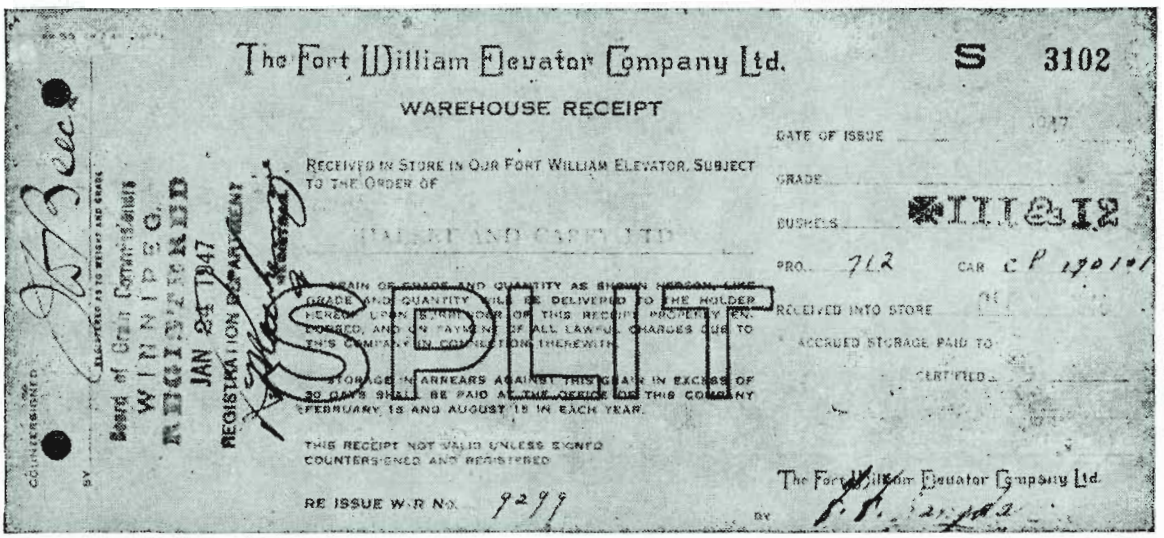


ON PAYMENT OF ALL CHARGES DELIVER THE GRADE OF

HALLET, CAREY LTD

THE CANADIAN CONSOLIDATED GRAIN CO. LTD.

EXHIBIT No. 1 (1)—*Continued*



The Fort William Elevator Company Ltd. S 3102

WAREHOUSE RECEIPT

DATE OF ISSUE ... 1947

RECEIVED IN STORE IN OUR FORT WILLIAM ELEVATOR, SUBJECT TO THE ORDER OF

GRADE

BUSHELS #11612

PRO. 712 CAR CP 190191

RECEIVED INTO STORE

ACCRUED STORAGE PAID TO

CERTIFIED

SPECIMEN

AGAIN OF GRADE AND QUANTITY AS SHOWN HEREON, LIKE GRADE AND QUANTITY WILL BE DELIVERED TO THE HOLDER HEREOF UPON SURRENDER OF THIS RECEIPT PROPERLY ENDORSED, AND ON PAYMENT OF ALL LAWFUL CHARGES DUE TO THIS COMPANY IN CONNECTION THEREWITH.

STORAGE IN ARREARS AGAINST THIS GRAIN IN EXCESS OF 30 DAYS SHALL BE PAID AT THE OFFICE OF THIS COMPANY FEBRUARY 15 AND AUGUST 15 IN EACH YEAR.

THIS RECEIPT NOT VALID UNLESS SIGNED COUNTERSIGNED AND REGISTERED

RE ISSUE W.R No. 9299

The Fort William Elevator Company Ltd.

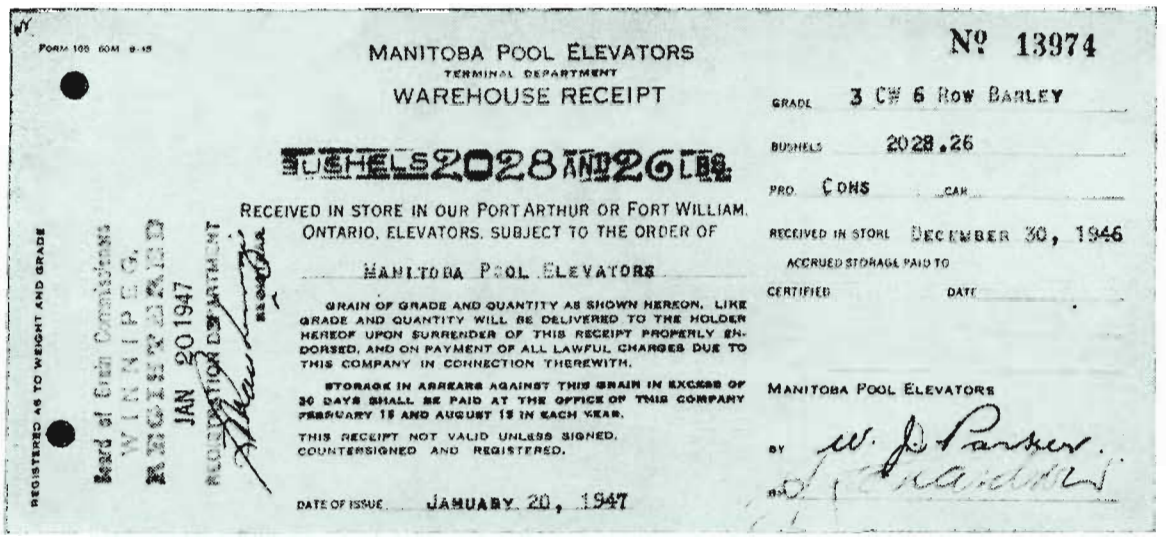
BY

COUNTERSIGNED

BY

Board of Grain Commissioners WINNIPEG. REGISTERED JAN 24 1947 REGISTRATION DEPARTMENT

EXHIBIT No. 1 (1)—*Continued*



FORM 105 60M 9-45

REGISTERED AS TO WEIGHT AND GRADE

Board of Grain Commissioners
WINNIPEG
REGISTERED
JAN 20 1947
PRODUCTION DEPARTMENT

MANITOBA POOL ELEVATORS
TERMINAL DEPARTMENT
WAREHOUSE RECEIPT

No 13974

BUSHELS 2028 AND 26 LBS.

RECEIVED IN STORE IN OUR PORT ARTHUR OR FORT WILLIAM, ONTARIO, ELEVATORS, SUBJECT TO THE ORDER OF

MANITOBA POOL ELEVATORS

GRAIN OF GRADE AND QUANTITY AS SHOWN HEREON, LIKE GRADE AND QUANTITY WILL BE DELIVERED TO THE HOLDER HEREOF UPON SURRENDER OF THIS RECEIPT PROPERLY ENDORSED, AND ON PAYMENT OF ALL LAWFUL CHARGES DUE TO THIS COMPANY IN CONNECTION THEREWITH.

STORAGE IN ARREARS AGAINST THIS GRAIN IN EXCESS OF 30 DAYS SHALL BE PAID AT THE OFFICE OF THIS COMPANY FEBRUARY 15 AND AUGUST 15 IN EACH YEAR.

THIS RECEIPT NOT VALID UNLESS SIGNED, COUNTERSIGNED AND REGISTERED.

DATE OF ISSUE JANUARY 20, 1947

GRADE 3 CW 6 ROW BARLEY

BUSHELS 2028.26

PRO. CONS CAR

RECEIVED IN STORE DECEMBER 30, 1946

ACCRUED STORAGE PAID TO

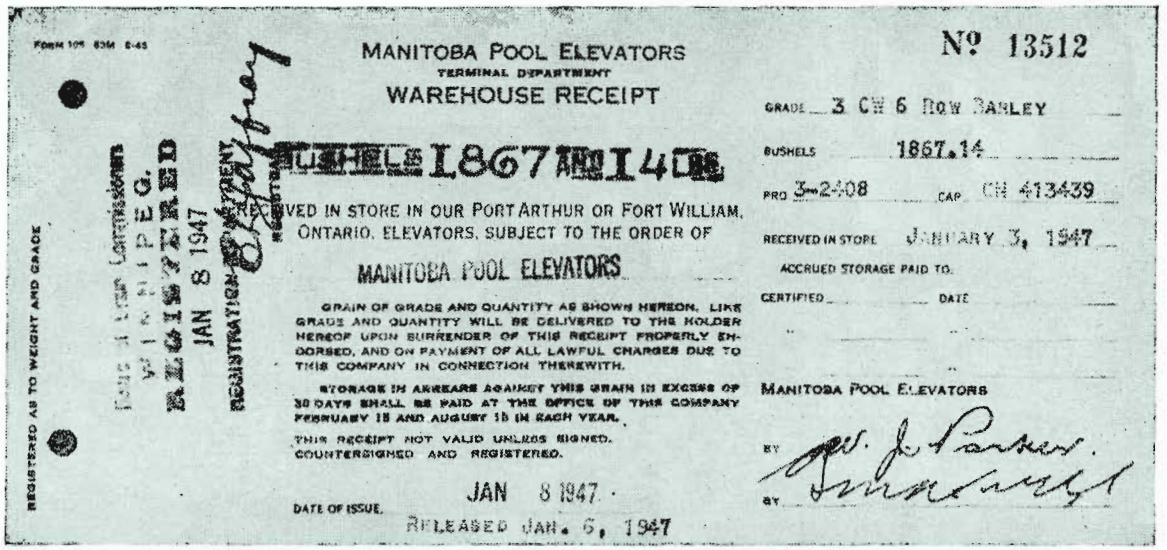
CERTIFIED DATE

MANITOBA POOL ELEVATORS

BY W. J. Parker.

ENDORSEMENTS [illegible] OF ALL CHARGES
DELIVER TO THE ORDER OF
HALLET & CAREY LTD.
MANITOBA POOL ELEVATORS
TERMINAL DEPT.

EXHIBIT No. 1 (1)—*Continued*



Form 105 6M 8-45

REGISTERED AS TO WEIGHT AND GRADE

WINNIPEG, REGISTERED JAN 8 1947 REGISTRATION AGENT

MANITOBA POOL ELEVATORS
TERMINAL DEPARTMENT
WAREHOUSE RECEIPT

No 13512

BUSHELS 1867 AND 14 LBS

RECEIVED IN STORE IN OUR PORT ARTHUR OR FORT WILLIAM, ONTARIO, ELEVATORS, SUBJECT TO THE ORDER OF

MANITOBA POOL ELEVATORS

GRAIN OF GRADE AND QUANTITY AS SHOWN HEREON, LIKE GRADE AND QUANTITY WILL BE DELIVERED TO THE HOLDER HEREOF UPON SURRENDER OF THIS RECEIPT PROPERLY ENDORSED, AND ON PAYMENT OF ALL LAWFUL CHARGES DUE TO THIS COMPANY IN CONNECTION THEREWITH.

STORAGE IN ARREARS AGAINST THIS GRAIN IN EXCESS OF 30 DAYS SHALL BE PAID AT THE OFFICE OF THIS COMPANY FEBRUARY 15 AND AUGUST 15 IN EACH YEAR.

THIS RECEIPT NOT VALID UNLESS SIGNED, COUNTERSIGNED AND REGISTERED.

DATE OF ISSUE JAN 8 1947

RELEASED JAN. 6, 1947

GRADE 3 CW 6 Row BARLEY

BUSHELS 1867.14

PRO 3-2408 CAR CN 413439

RECEIVED IN STORE JANUARY 3, 1947

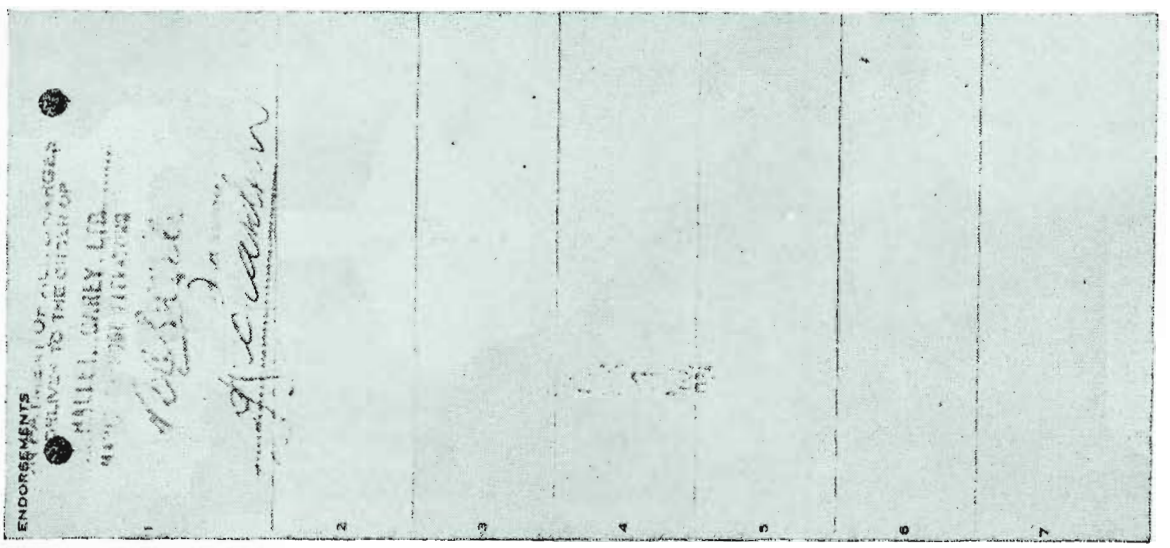
ACCRUED STORAGE PAID TO

CERTIFIED DATE

MANITOBA POOL ELEVATORS

BY W. J. Parker.

BY Assistant



ENDORSEMENTS

EXHIBIT No. 1 (1)—*Continued*

FORM 105 ISSM 6-45

REGISTERED AS TO WEIGHT AND GRADE

Board of Grain Commissioners
WINNIPEG.
RECEIVED
JAN 10 1947
REGISTRATION DEPARTMENT

MANITOBA POOL ELEVATORS
TERMINAL DEPARTMENT
WAREHOUSE RECEIPT

No 13632

BUSHELS 1,840 AND 30 LBS.

RECEIVED IN STORE IN OUR PORT ARTHUR OR FORT WILLIAM, ONTARIO, ELEVATORS, SUBJECT TO THE ORDER OF

MANITOBA POOL ELEVATORS

GRAIN OF GRADE AND QUANTITY AS SHOWN HEREON, LIKE GRADE AND QUANTITY WILL BE DELIVERED TO THE HOLDER HEREOF UPON SURRENDER OF THIS RECEIPT PROPERLY ENDORSED, AND ON PAYMENT OF ALL LAWFUL CHARGES DUE TO THIS COMPANY IN CONNECTION THEREWITH.

STORAGE IN ARREARS AGAINST THIS GRAIN IN EXCESS OF 30 DAYS SHALL BE PAID AT THE OFFICE OF THIS COMPANY FEBRUARY 15 AND AUGUST 15 IN EACH YEAR.

THIS RECEIPT NOT VALID UNLESS SIGNED, COUNTERSIGNED AND REGISTERED.

DATE OF ISSUE JANUARY 10, 1947

GRADE 3 CW 6 Row BARLEY

BUSHELS 1840.30

PRO 3-2435 CAR CP 176658

RECEIVED IN STORE JANUARY 8, 1947

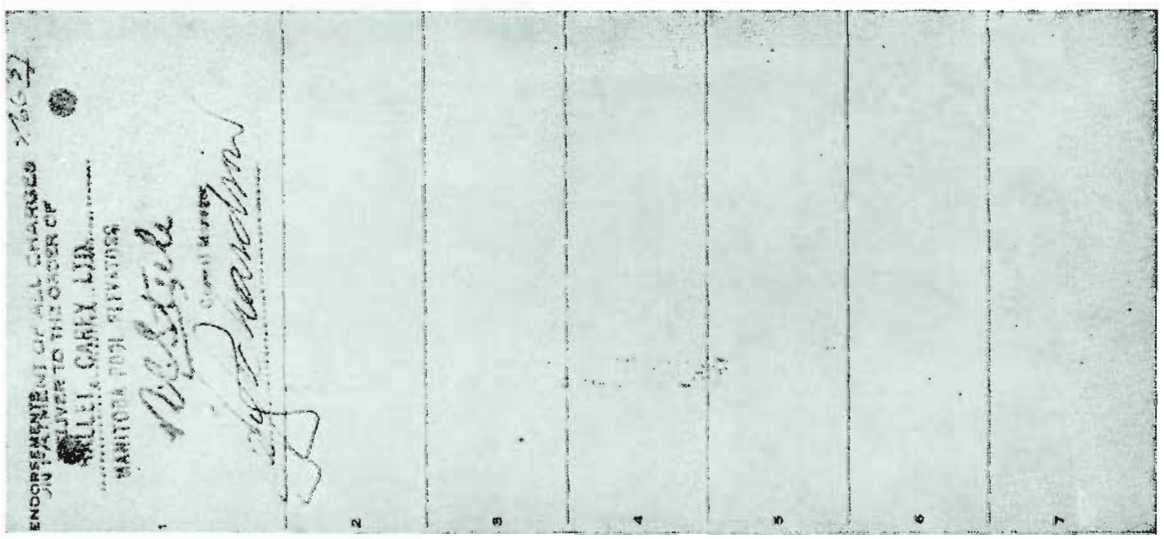
ACCRUED STORAGE PAID TO

CERTIFIED DATE

MANITOBA POOL ELEVATORS

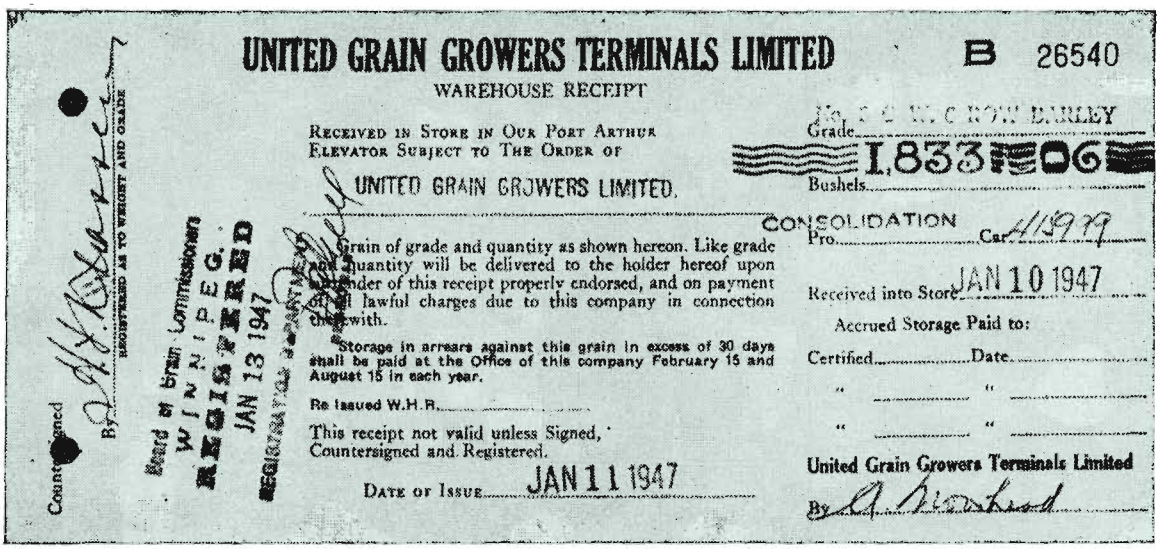
BY W. J. Parker

BY



ENDORSEMENT OF ALL CHARGES
IN PAYMENT TO THE ORDER OF
MILLER GRAIN LTD.
MANITOBA POOL ELEVATORS

EXHIBIT No. 1 (1)—*Continued*



UNITED GRAIN GROWERS TERMINALS LIMITED

B 26540

WAREHOUSE RECEIPT

RECEIVED IN STORE IN OUR PORT ARTHUR ELEVATOR SUBJECT TO THE ORDER OF

UNITED GRAIN GROWERS LIMITED.

Grade [illegible] CW BARLEY

Bushels 1,833 06

CONSOLIDATION

Pro. ..... Car 115979

Grain of grade and quantity as shown hereon. Like grade and quantity will be delivered to the holder hereof upon surrender of this receipt properly endorsed, and on payment of all lawful charges due to this company in connection therewith.

Storage in arrears against this grain in excess of 30 days shall be paid at the Office of this company February 15 and August 15 in each year.

Re Issued W.H.R. .....

This receipt not valid unless Signed, Countersigned and Registered.

DATE OF ISSUE JAN 11 1947

Received into Store JAN 10 1947

Accrued Storage Paid to:

Certified ..... Date .....

" ..... " .....

" ..... " .....

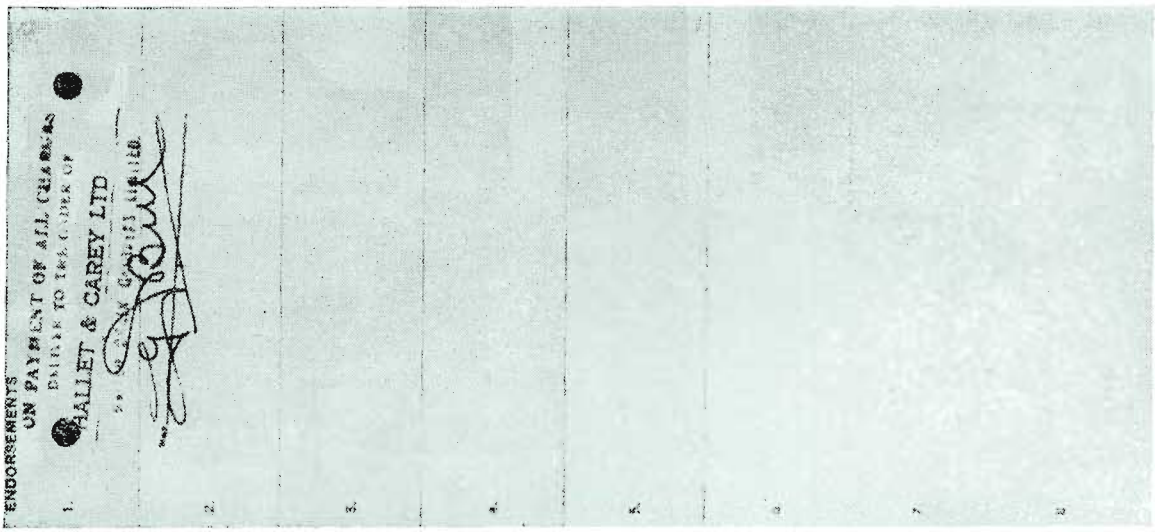
United Grain Growers Terminals Limited

By [signature]

Countersigned By [signature]

Board of Grain Commissioners WINNIPEG REGISTERED JAN 13 1947

REGISTERED AS TO WEIGHT AND GRADE

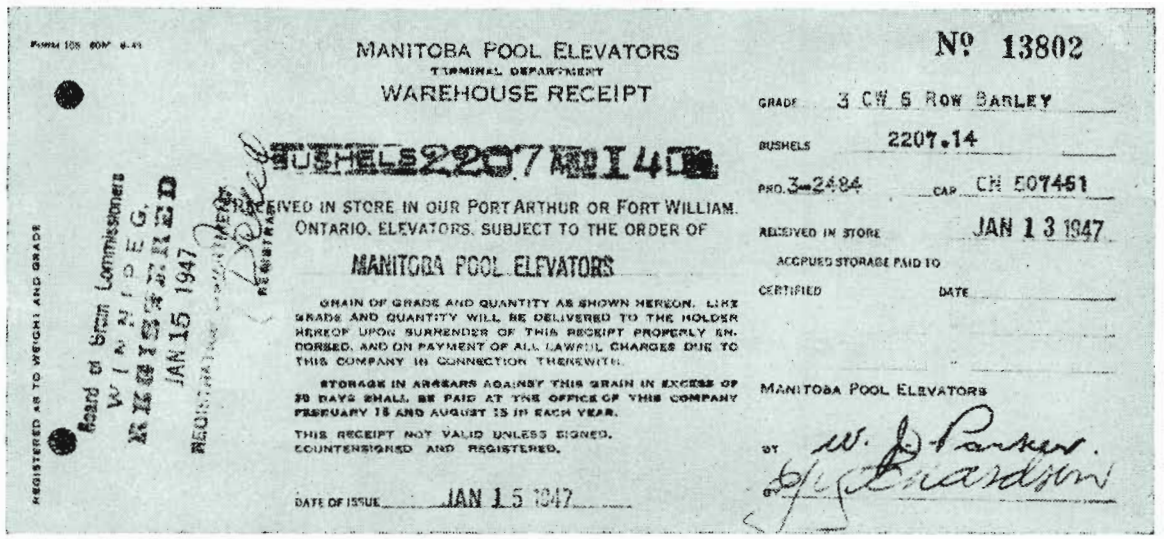


ENDORSEMENTS ON PAYMENT OF ALL CHARGES DELIVER TO THE ORDER OF

HALLET & CAREY LTD

[signature]

EXHIBIT No. 1 (1)—*Continued*



MANITOBA POOL ELEVATORS
TERMINAL DEPARTMENT
WAREHOUSE RECEIPT

No 13802

REGISTERED AS TO WEIGHT AND GRADE

Board of Grain Commissioners
WINNIPEG.
REGISTERED
JAN 15 1947

BUSHELS 2207 AND 14

RECEIVED IN STORE IN OUR PORT ARTHUR OR FORT WILLIAM, ONTARIO, ELEVATORS, SUBJECT TO THE ORDER OF

MANITOBA POOL ELEVATORS

GRAIN OF GRADE AND QUANTITY AS SHOWN HEREON. LIKE GRADE AND QUANTITY WILL BE DELIVERED TO THE HOLDER HEREOF UPON SURRENDER OF THIS RECEIPT PROPERLY ENDORSED, AND ON PAYMENT OF ALL LAWFUL CHARGES DUE TO THIS COMPANY IN CONNECTION THEREWITH.

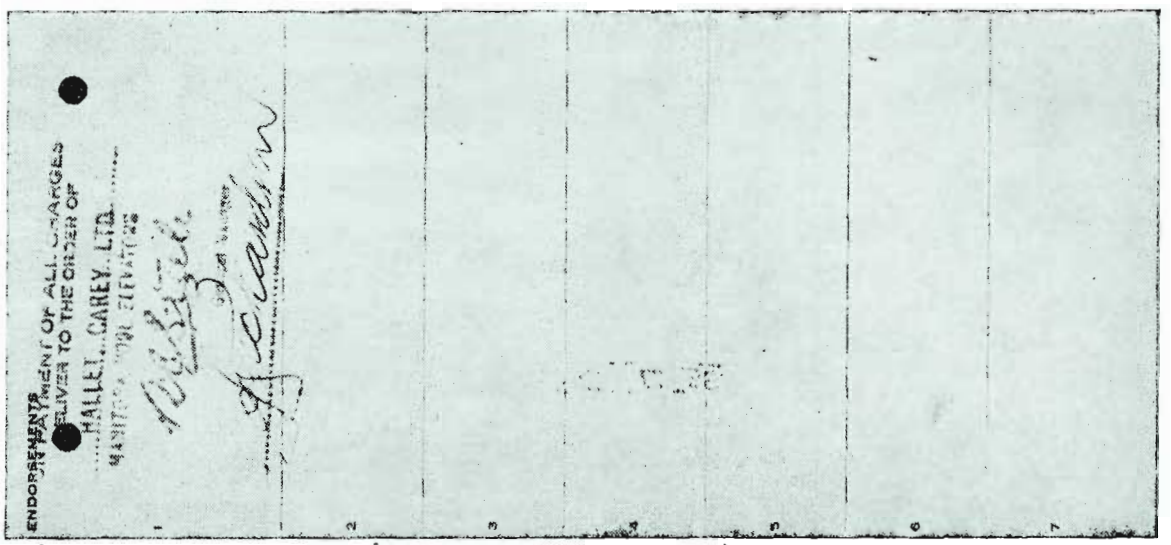
STORAGE IN ARREARS AGAINST THIS GRAIN IN EXCESS OF 20 DAYS SHALL BE PAID AT THE OFFICE OF THIS COMPANY FEBRUARY 15 AND AUGUST 15 IN EACH YEAR.

THIS RECEIPT NOT VALID UNLESS SIGNED, COUNTERSIGNED AND REGISTERED.

DATE OF ISSUE JAN 15 1947

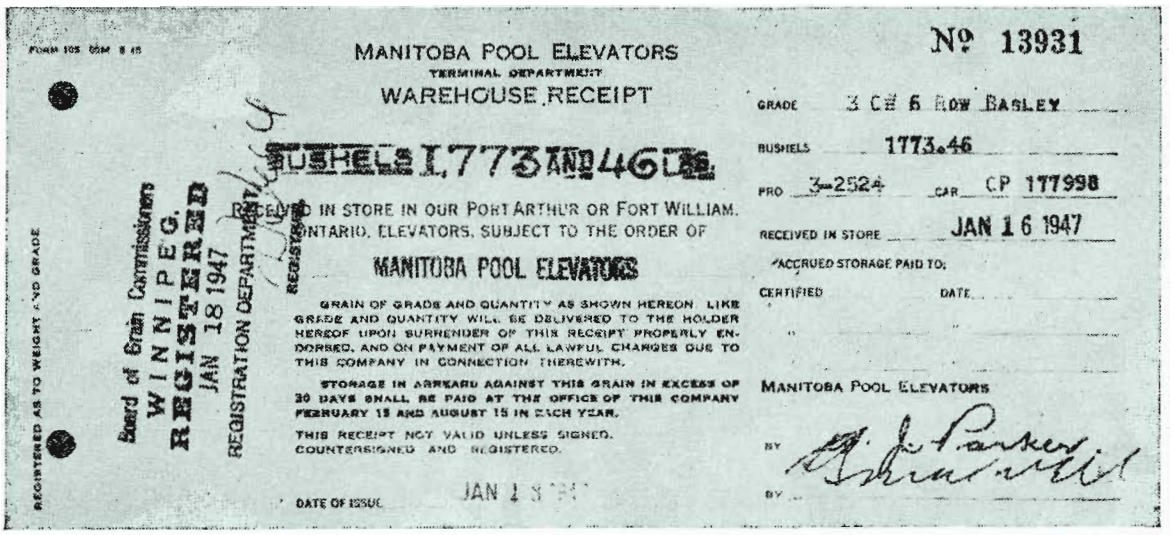
GRADE 3 CW S ROW BARLEY
BUSHELS 2207.14
PRO. 3-2484 CAR CN 507461
RECEIVED IN STORE JAN 13 1947
ACCRUED STORAGE PAID TO
CERTIFIED DATE

MANITOBA POOL ELEVATORS
BY W. J. Parker.
BY J. C. Bradson



ENDORSEMENTS
PAYMENT OF ALL CHARGES
DELIVER TO THE ORDER OF
HALLET, CAREY, LTD.

EXHIBIT No. 1 (1)—*Continued*



MANITOBA POOL ELEVATORS
TERMINAL DEPARTMENT
WAREHOUSE RECEIPT

No 13931

BUSHELS 1,773 AND 46 LBS.

RECEIVED IN STORE IN OUR PORT ARTHUR OR FORT WILLIAM, ONTARIO, ELEVATORS, SUBJECT TO THE ORDER OF

MANITOBA POOL ELEVATORS

GRAIN OF GRADE AND QUANTITY AS SHOWN HEREON LIKE GRADE AND QUANTITY WILL BE DELIVERED TO THE HOLDER HEREOF UPON SURRENDER OF THIS RECEIPT PROPERLY ENDORSED, AND ON PAYMENT OF ALL LAWFUL CHARGES DUE TO THIS COMPANY IN CONNECTION THEREWITH.

STORAGE IN ARREARS AGAINST THIS GRAIN IN EXCESS OF 30 DAYS SHALL BE PAID AT THE OFFICE OF THIS COMPANY FEBRUARY 15 AND AUGUST 15 IN EACH YEAR.

THIS RECEIPT NOT VALID UNLESS SIGNED, COUNTERSIGNED AND REGISTERED.

DATE OF ISSUE JAN 1 S '47

REGISTERED AS TO WEIGHT AND GRADE

Board of Grain Commissioners
WINNIPEG.
REGISTERED
JAN 18 1947
REGISTRATION DEPARTMENT

REGISTERED

GRADE 3 C.W. 6 ROW BARLEY

BUSHELS 1773.46

PRO 3-2524 CAR CP 177998

RECEIVED IN STORE JAN 16 1947

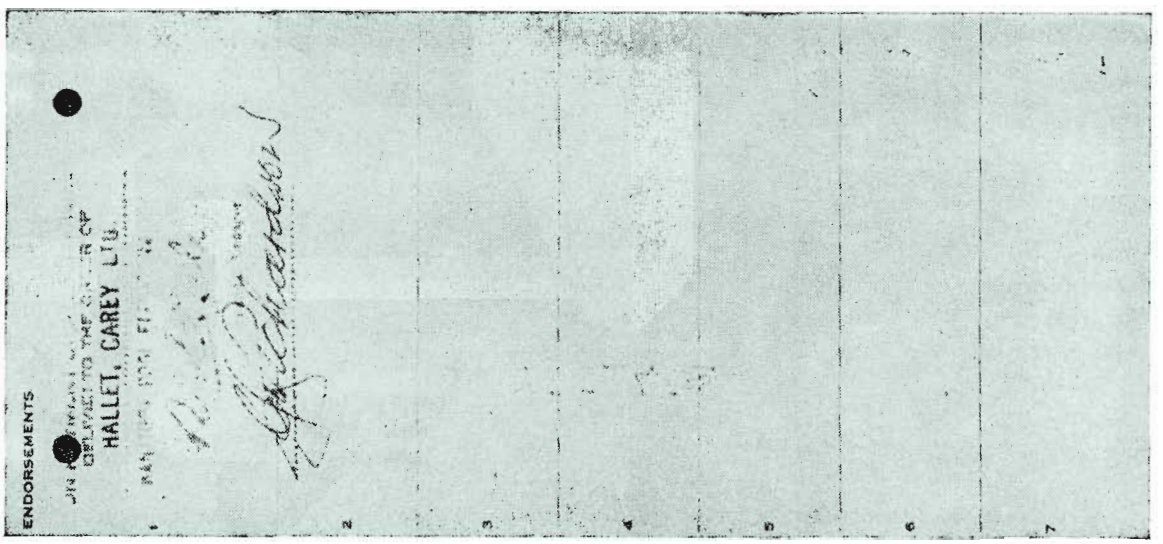
ACCRUED STORAGE PAID TO:

CERTIFIED DATE

MANITOBA POOL ELEVATORS

BY G. J. Parker

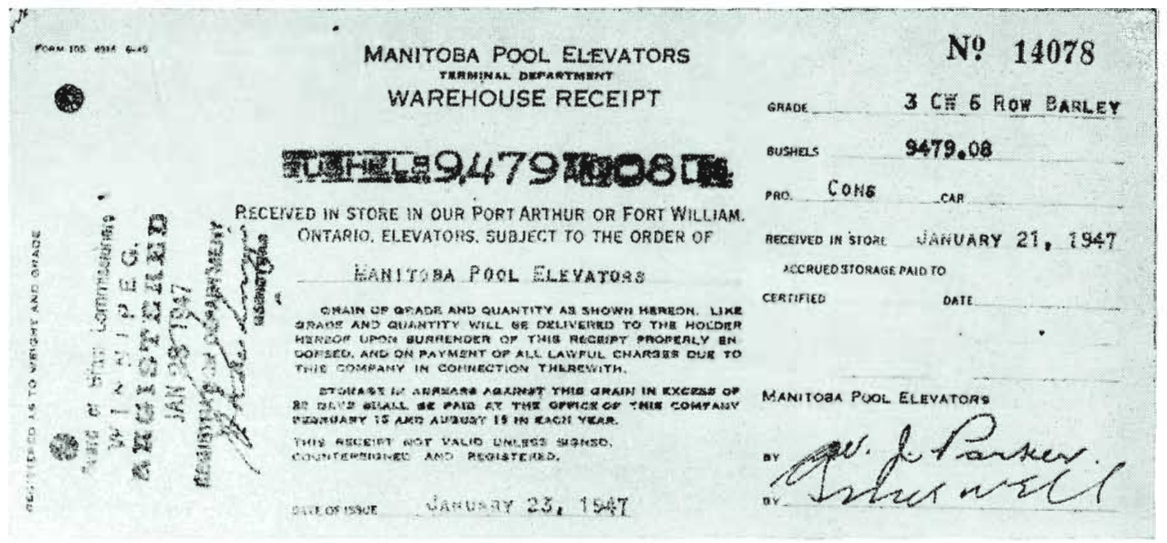
BY



ENDORSEMENTS

DELIVERED TO THE ... OF
HALLET, CAREY LTD.

EXHIBIT No. 1 (1)—*Continued*



MANITOBA POOL ELEVATORS
TERMINAL DEPARTMENT
WAREHOUSE RECEIPT

No 14078

GRADE 3 CW 6 ROW BARLEY

BUSHELS 9479.08

PRO. CONS CAR

RECEIVED IN STORE JANUARY 21, 1947

ACCRUED STORAGE PAID TO

CERTIFIED DATE

9479 08

RECEIVED IN STORE IN OUR PORT ARTHUR OR FORT WILLIAM, ONTARIO, ELEVATORS, SUBJECT TO THE ORDER OF

MANITOBA POOL ELEVATORS

GRAIN OF GRADE AND QUANTITY AS SHOWN HEREON, LIKE GRADE AND QUANTITY WILL BE DELIVERED TO THE HOLDER HEREOF UPON SURRENDER OF THIS RECEIPT PROPERLY ENDORSED, AND ON PAYMENT OF ALL LAWFUL CHARGES DUE TO THIS COMPANY IN CONNECTION THEREWITH.

STORAGE IN ARREARS AGAINST THIS GRAIN IN EXCESS OF 30 DAYS SHALL BE PAID AT THE OFFICE OF THIS COMPANY FEBRUARY 15 AND AUGUST 15 IN EACH YEAR.

THIS RECEIPT NOT VALID UNLESS SIGNED, COcountersigned AND REGISTERED.

DATE OF ISSUE JANUARY 23, 1947

MANITOBA POOL ELEVATORS

BY W. J. Parker

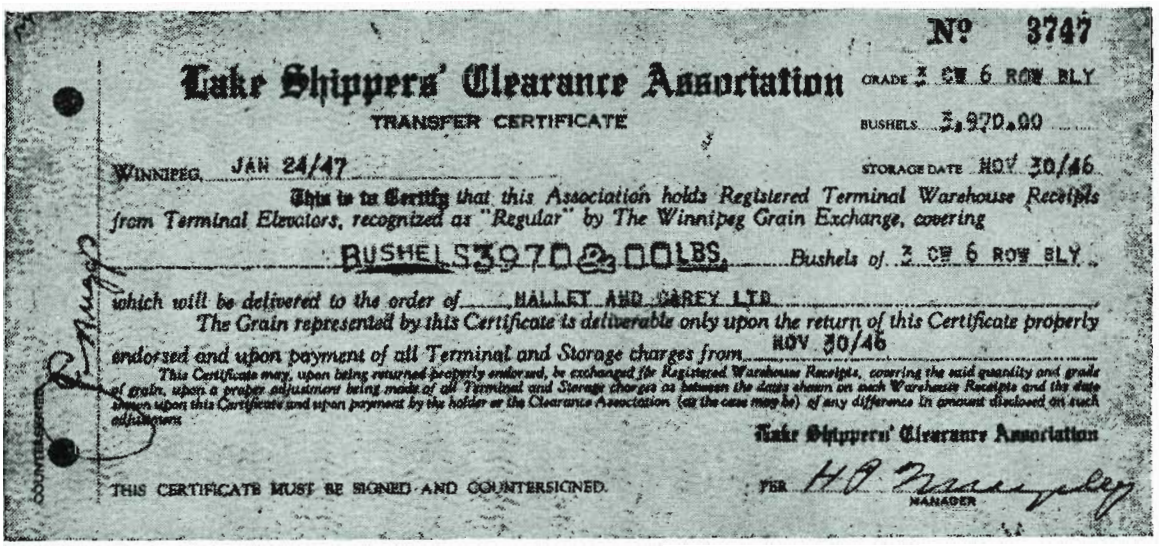
BY

REGISTERED AS TO WEIGHT AND GRADE

Board of Grain Commissioners for Canada
WINNIPEG
REGISTERED
JAN 28 1947

ENDORSEMENTS

EXHIBIT No. 1 (1)—*Continued*



No 3747

Lake Shippers' Clearance Association

TRANSFER CERTIFICATE

GRADE 3 CW 6 ROW BLY

BUSHELS 3,970.00

WINNIPEG JAN 24/47

STORAGE DATE NOV 30/46

This is to Certify that this Association holds Registered Terminal Warehouse Receipts from Terminal Elevators, recognized as "Regular" by The Winnipeg Grain Exchange, covering

BUSHELS 3970 @ 00 LBS. *Bushels of* 3 CW 6 ROW BLY

which will be delivered to the order of HALLET AND CAREY LTD

The Grain represented by this Certificate is deliverable only upon the return of this Certificate properly endorsed and upon payment of all Terminal and Storage charges from NOV 30/46

This Certificate may, upon being returned properly endorsed, be exchanged for Registered Warehouse Receipts, covering the said quantity and grade of grain, upon a proper adjustment being made of all Terminal and Storage charges as between the dates shown on such Warehouse Receipts and the date shown upon this Certificate and upon payment by the holder or the Clearance Association (as the case may be) of any difference in amount disclosed on such adjustment.

Lake Shippers' Clearance Association

THIS CERTIFICATE MUST BE SIGNED AND COUNTERSIGNED.

PER H.O. Macaulay MANAGER

COUNTERSIGNED

EXHIBIT No. 2

THE CANADIAN WHEAT BOARD

INSTRUCTIONS TO TRADE

No. 59

TO ALL COMPANIES AND DEALERS IN OATS AND BARLEY:

Gentlemen:

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 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 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.

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 51½¢ per bushel for all grades of oats and 64¾¢ 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 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 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 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.

(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 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 Board by

W. C. McNAMARA,

Assistant Chief Commissioner.

Reference:
J. W. ALLEN
W. J. BROOKING
R. C. FINDLAY
J. F. FRASER
W. B. ROBBINS

March 17, 1947.

OUTLINE OF GOVERNMENT POLICY ON OATS AND BARLEY AS ANNOUNCED IN PARLIAMENT, MARCH 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 90c. for One Feed barley in place of the former support price of 56c. 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 61½c. for One Feed oats in place of the former support price of 40c. in store Fort William/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 93c. and in the case of oats to 65c. 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.

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 10c. per bushel in respect of deliveries between August 1, 1946 and March 17, 1947 inclusive, thus raising the over-all returns to about 90c. 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 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 64¾c. per bushel for barley and 51½c. 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 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 10c. per bushel for oats and 25c. per bushel for barley will be made within the same conditions as the 25c. 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 net profits therefrom 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 10c. to 13c. 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.

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 shipped East from Fort William/Port Arthur and West from Calgary and Edmonton into British Columbia until July 31st, 1948.

EXHIBIT No. 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*

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, together with individual amounts.

Very truly yours,

THE CANADIAN WHEAT BOARD,

Approved for the Board by

W. C. McNAMARA,

Assistant Chief Commissioner.

Reference:
S. W. TELFER,

March 18, 1947.

EXHIBIT No. 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*

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

CANADA WESTERN BARLEY:

Further to our Instructions to Trade No. 59 of March 17th, 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.	" " "
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
Approved for the Board by
W. C. McNAMARA,
Assistant Chief Commissioner.

Reference:
W. J. BROOKING

March 18, 1947

EXHIBIT No. 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

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.

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 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.

Yours very truly,

THE CANADIAN WHEAT BOARD

Approved for the Board by

W. C. McNAMARA

Assistant Chief Commissioner.

Reference:
W. J. BROOKING

March 19th, 1947.

EXHIBIT No. 6

THE CANADIAN WHEAT BOARD
INSTRUCTIONS TO TRADE
No. 63

To all Companies and Dealers in Oats and Barley:

Dear Sirs:

Re: Registered, Certified or Commercial Grades of Oats and Barley taken over by the Board March 17th, 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

Approved for the Board by

W. C. McNAMARA
Assistant Chief Commissioner.

Reference:
W. B. ROBBINS.
March 19th, 1947.

EXHIBIT No. 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 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 phich a person may sell oats shall be
   (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
   (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.

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 maltsters 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 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.

Approved:
D. GORDON, *Chairman, Wartime Prices and Trade Board.*

EXHIBIT No. 7

THE CANADIAN WHEAT BOARD
INSTRUCTIONS TO TRADE
No. 64

To all Companies:

Dear Sirs:

Re: Oats and Barley taken over by the Board as at Midnight, March 17th, 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.

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.

Yours very truly,

THE CANADIAN WHEAT BOARD

Approved for the Board by

W. C. McNAMARA
Assistant Chief Commissioner.

Reference:
W. B. ROBBINS.

March 20th, 1947.

EXHIBIT No. 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

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, of 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 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
Assistant Chief Commissioner.

Reference:
W. B. ROBBINS.

March 20th, 1947.

EXHIBIT No. 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

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 instruction 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.

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,

THE CANADIAN WHEAT BOARD

Approved for the Board by

W. C. McNAMARA

Assistant Chief Commissioner.

Reference:

W. B. ROBBINS.

March 20th, 1947.

EXHIBIT No. 1 (3)

National Emergency Transitional Powers Act
continued in force to May 15, 1947.

P.C. 1112
AT THE GOVERNMENT HOUSE AT OTTAWA
TUESDAY, the 25th day of MARCH, 1947

PRESENT:

His Excellency the Governor General in Council:

WHEREAS Section 6 of the National Emergency Transitional Powers Act, 1945 as amended by Chapter 60, 10 George VI provides as follows:

"6. (1) Subject as hereinafter provided, this Act shall expire on the thirty-first day of December, one thousand nine hundred and forty-six, if Parliament meets during November or December, one thousand nine hundred and forty-six, but if Parliament does not so meet it shall expire on the sixtieth day after Parliament first meets during the year one thousand nine hundred and forty-seven or on the thirty-first day of March, one thousand nine hundred and forty-seven, whichever date is the earlier: Provided that, if at any time while this Act is in force, addresses are presented to the Governor General by the Senate and House of Commons respectively, praying that this Act should be continued in force for a further period, not in any case exceeding one year, from the time at which it would otherwise expire and the Governor in Council so orders, this Act shall continue in force for that further period.

(2) Section nineteen of the Interpretation Act shall apply upon the expiry of this Act as if this Act had then been repealed."

AND WHEREAS addresses of the Senate and the House of Commons have been presented to His Excellency the Governor praying that the said Act should be continued in force to the fifteen day of May, 1947;

THEREFORE His Excellency the Governor General in Council, on the recommendation of the Right Honourable W. L. Mackenzie King, the Prime Minister, is pleased to order and doth hereby order that the National Emergency Transitional Powers Act, 1945, shall continue in force to the fifteenth day of May, 1947.

A. D. P. HEENEY,
Clerk of the Privy Council.

EXHIBIT No. 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:—

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
Assistant Chief Commissioner.

Reference:
W. B. ROBBINS

March 26th, 1947.

EXHIBIT No. 11

THE CANADIAN WHEAT BOARD

INSTRUCTIONS TO TRADE

No. 71

To all Companies:

Dear Sirs: *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 co-operation 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:—

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

(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

Approved for the Board by

W. C. McNAMARA
Assistant Chief Commissioner.

Reference:
W. B. ROBBINS.
April 2nd, 1947.

EXHIBIT No. 1 (4)

P.C. 1292

PRIVY COUNCIL

CANADA

AT THE GOVERNMENT HOUSE AT OTTAWA
THURSDAY, the 3rd day of APRIL, 1947.

PRESENT:

His Excellency the Governor General in Council:

WHEREAS it is necessary, by reason of the continued existence of the national emergency arising out of the war against Germany and Japan, for the purpose of maintaining, controlling and regulating supplies and prices to ensure economic stability and an orderly transition to conditions of peace, to make provision for

(a) 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;

(b) the closing out and termination of any open futures contracts relating to oats or barley outstanding in any futures market in Canada; and

(c) the prohibition of the export of oats or barley by persons other than the Canadian Wheat Board until otherwise provided;

and other matters incidental thereto as set forth in the Regulations set out below;

THEREFORE, His Excellency the Governor General in Council, on the recommendation of the Acting Minister of Trade and Commerce, and under the powers conferred by the National Emergency Transitional Powers Act, 1945, is pleased for the reasons aforesaid, to order that the Western Grain Regulations (P.C. 3222, of July 31, 1946) be and they are hereby amended by revoking Part III thereof, the said revocation to be deemed to be effective in respect of section twenty-three of the said Part III on and after the eighteenth day of March, nineteen hundred and forty-seven, and by substituting therein the following Regulations as Part III thereof:

PART III

Oats and Barley

21. In this Part, unless the context otherwise requires

(a) "Barley" means barley grown in the designated area and includes barley whether in natural form or cleaned, chopped, ground, mashed or crimped, or otherwise processed or contained in any product;

(b) "Oats" means oats grown in the designated area and includes oats whether in natural form or cleaned, chopped, ground, mashed or crimped, or otherwise processed or contained in any product;

(c) "Oats and barley in commercial positions" means oats and barley which are not the property of the producer thereof and are in store in warehouses, elevators or mills whether licensed or unlicensed, or in railway cars or vessels or in other facilities in Canada for the storage or transportation of grain;

(d) "Owner" includes a person entitled to the delivery of oats or barley under or by virtue of a contract for the carriage or storage of oats or barley, but does not include a person who is a party to a contract for the purchase of oats or barley the property in which has not passed to him;

(e) "previous maximum price" means

(i) with respect to oats, fifty-one and one-half cents per bushel, and

(ii) with respect to barley, sixty-four and three quarter cents per bushel, basis in store Fort William/Port Arthur or Vancouver;

(f) "product" means any substance produced by processing or manufacturing oats or barley either alone or together with any other material, except such products as were excluded from the operation of the Western Grain Regulations prior to the coming into operation of this regulation.

Oats and Barley Vested in Board

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.

23. (1) The Board shall pay to a person who, immediately prior to the coming into operation of section twenty-two, was the owner of oats or barley vested in the Board by the said section in respect of each bushel so vested,

(a) if he was the owner of the oats and barley at midnight on the seventeenth day of March, nineteen hundred and forty-seven,—an amount equal to the previous maximum price thereof; adjusted as provided in subsection two of this section;

(b) if he became the owner of the said oats or barley on or after the eighteenth day of March, nineteen hundred and forty-seven, by reason of a purchase at a price not exceeding the previous maximum price thereof adjusted as provided in the said subsection two,—an amount equal to the said previous maximum price as so adjusted; or

(c) if he became the owner of the said oats or barley on or after the eighteenth day of March, nineteen hundred and forty-seven, pursuant to a purchase at a price exceeding the previous maximum price adjusted as provided in the said subsection two,—an amount equal to the price per bushel at which he purchased the oats or barley.

(2) The previous maximum price of oats or barley referred to in subsection one may, in computing the amount payable by the Board, be adjusted in respect of freight, storage or handling charges or special selection premiums, as may be determined by the Board.

24. Any person

(a) who was the owner of oats or barley in commercial positions at midnight on the seventeenth day of March nineteen hundred and forty-seven, or who, after that day and before the coming into operation of this section, became the owner of oats or barley pursuant to a purchase at a price not exceeding the previous maximum price, and

(b) who before the coming into operation of this section sold the said oats or barley otherwise than to the Board or at a price not exceeding the previous maximum price,

shall pay to the Board an amount in respect of each bushel of the said oats or barley so sold by him equal to the difference between the said previous maximum price therefor, adjusted as provided in subsection two of section twenty-three, and the price that is payable by the Board for oats or barley purchased by it under section thirty.

25. (1) All oats futures contracts and all barley futures contracts negotiated by or through members of the Winnipeg Grain Exchange and made on or prior to the seventeenth day of March, nineteen hundred and forty-seven, and open on the date of the coming into operation of this section, shall be finally cleared and cancelled on or before a day to be fixed by order of the

Board at the relevant closing prices registered on the Winnipeg Grain Exchange on the seventeenth day of March, nineteen hundred and forty-seven.

(2) Where no price was registered on the Winnipeg Grain Exchange on the seventeenth day of March, nineteen hundred and forty-seven, in respect of any grade of oats or barley, the Board may fix the price in respect of such grade for the purposes of this section at such price as it deems reasonable, having regard to the prices quoted on the Winnipeg Grain Exchange on the said day.

26. All contracts for the sale of oats or barley in commercial positions, other than futures contracts mentioned in sections twenty-five, entered into on or prior to the seventeenth day of March, nineteen hundred and forty-seven, pursuant to which the property in the said oats and barley had not pased to the purchaser prior to the coming into operation of this section, are hereby rescinded and declared to be void and of no further force and effect.

27. (1) The board shall, from time to time, sell and dispose of all oats or barley vested in it by section twenty-two at such prices as it may consider reasonable.

(2) Net profits arising from the operations of the Board in respect of oats and barley vested in it by section twenty-two, and any monies paid to the Board under section twenty-four, shall be paid into the Consolidated Revenue Fund.

(3) The Board shall be reimbursed in respect of net losses arising from the operations of the Board in respect of oats and barley vested in it by section twenty-two out of monies provided by Parliament.

Exports—Equalization Fund

28. No person, except the Canadian Wheat Board, shall export, ship or send out of Canada oats or barley or any product, except with the permission of the Board obtained upon payment of such charge or fee as the Board may from time to time determine.

29. The Board shall deposit monies received for the issue of permits for the export of oats or any products thereof in the Oats Equalization Fund and monies received for the issue of permits for the export of barley or any products thereof in the Barley Equalization Fund, which said Funds are hereby continued as if section twenty-two of the Western Grain Regulations as enacted by Order in Council P.C. 3222, of the thirty-first day of July, nineteen hundred and forty-six, had not been revoked.

Oats and Barley Stabilization

30. (1) The Board is hereby empowered to buy Winnipeg oats futures or cash oats at a price per bushel which will assure that producers in Western Canada will be continuously offered the following prices per bushel for oats, basis in store in terminal elevators at Fort William or Port Arthur:—

No. 1 Feed Sixty-one and one-half cents

and such prices for each other grade of oats as in the opinion of the Board from time to time brings such grade into proper relationship with the grade of oats hereinbefore named.

(2) The Board is hereby empowered to buy Winnipeg barley futures or cash barley at a price per bushel which will assure that producers in Western Canada will be continuously offered the following prices per bushel for barley, basis in store in terminal elevators at Fort William or Port Arthur:—

No. 1 Feed ninety cents

and such prices for each other grade of barley as in the opinion of the Board from time to time brings such grade into proper relationship with the grade of barley hereinbefore named.

31. It shall be the duty of the Board to buy all oats and barley offered for sale from time to time to it in accordance with the provisions of sections thirty and thirty-one, and the Board shall sell and dispose of, from time to time, at such prices as it may consider reasonable, all oats or barley so acquired by it.

32. (1) Any net profits arising from the operations of the Board under sections thirty and thirty-one in respect of oats shall accrue to the Oats Equalization Fund as soon as such profit is ascertained and after all oats acquired by the Board during the crop year ending on the thirty-first day of July, nineteen hundred and forty-seven, have been disposed of.

(2) Net profits arising from the operations of the Board under sections thirty and thirty-one in respect of barley shall accrue to the Barley Equalization Fund as soon as such profit is ascertained and after all barley acquired by the Board during the crop year ending on the thirty-first day of July, nineteen hundred and forty-seven has been disposed of.

(3) The Board shall be reimbursed in respect of net losses arising from the operations of the Board under sections thirty and thirty-one out of moneys provided by Parliament.

Barley Adjustment Payment

33. The Board shall, out of the Barley Equalization Fund or out of moneys provided by Parliament, pay to every producer the sum of ten cents

for each bushel of barley sold and delivered by him on or after the first day of August, nineteen hundred and forty-six, but prior to the eighteenth day of March, nineteen hundred and forty-seven and in respect of which he has received or is, on the seventeenth day of March, nineteen hundred and forty-seven, entitled to receive an Advance Equalization Payment.

Producers' Participation in Surplus

34. The Board shall deduct from the total funds accumulated in the Oats Equalization Fund during the crop year ending on the thirty-first day of July, nineteen hundred and forty-seven,

(a) the total amount paid by the Board as Advance Equalization Payments to producers of oats sold and delivered on or prior to the seventeenth day of March, nineteen hundred and forty-seven,

(b) all other moneys disbursed by or on behalf of the Board in connection with the payment of Advance Equalization Payments to producers of oats for that crop year and, without limiting the foregoing, all expenses of or incidental to the operations of the Board relating to the payment of such Advance Equalization Payments, including the remuneration, allowances, travelling and living expenses of the Commissioners, officers, clerks and employees of the Board attributable to such Payments,

and the surplus, if any, shall be distributed equitably among producers who have received or were, on the seventeenth day of March, nineteen hundred and forty-seven, entitled to receive an Advance Equalization Payment as aforesaid, or who, on or after the eighteenth day of March, nineteen hundred and forty-seven, sold and delivered oats to a dealer; Provided that if the said Fund is less than the amount authorized to be deducted therefrom under this section there shall be paid to the Fund out of moneys provided by Parliament such amount as will cause the Fund to equal the said deductions.

35. The Board shall deduct from the total funds accumulated in the Barley Equalization Fund during the crop year ending on the thirty-first day of July, 1947,

(a) the total amount paid by the Board as Advance Equalization Payments to producers of barley sold and delivered on or prior to the seventeenth day of March, 1947.

(b) the total amount paid to producers of barley by the Board pursuant to the provisions of section thirty-three,

(c) all other moneys disbursed by or on behalf of the Board in connection with the payment of Advance Equalization Payments to producers

of barley for that crop year and to payments made under section thirty-three, and, without limiting the foregoing, all expenses of or incidental to the operations of the Board relating to the making of such payment, including the remuneration, allowances, travelling and living expenses of the Commissioners, officers, clerks and employees of the Board attributable to such Payments,

and the surplus, if any, shall be distributed equitably among producers who have received or were, on the seventeenth day of March, 1947, entitled to receive an Advance Equalization Payment as aforesaid, or who, on or after the eighteenth day of March, 1947, sold and delivered barley to a dealer: Provided that if the said Fund is less than the amount authorized to be deducted therefrom under this section there shall be paid to the Fund out of moneys provided by Parliament such amount as will cause the Fund to equal the said deductions.

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 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."

(sgd) A. D. P. HEENEY
Clerk of the Privy Council.

EXHIBIT No. 1 (5)

THE CANADIAN WHEAT BOARD
INSTRUCTIONS TO TRADE
No. 74

Crop Year 1946-47

To all Companies:

Gentlemen:

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

(1) The Board hereby orders and directs all companies having in their custody, posession 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.

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 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 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,

10 THE CANADIAN WHEAT BOARD

Approved for the Board by

GEO. MCIVOR
Chief Commissioner.

April 7th, 1947.

EXHIBIT No. 1 (6)

April 14, 1947.

Hallet and Carey Limited
Grain Exchange Building
Winnipeg, Manitoba
Canada

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.

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 Agriculture.

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.

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 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 canont 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 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"

JJN:AT/b

Jeremiah J. Nolan
302 Board of Trade Building
141 West Jackson Blvd.
Chicago 4, Illinois

EXHIBIT No. 1 (7)

AIKINS, LOFTUS, MacAULAY & COMPANY

Somerset Bldg.
Winnipeg, Canada

April 18, 1947.

Hallet & Carey Limited,
563 Grain Exchange Bldg.,
WINNIPEG, Manitoba.

Dear Sirs,

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 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.

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

Per:

DCM/MC/b

Register

EXHIBIT No. 1 (8)

THE CANADIAN WHEAT BOARD

423 Main Street
WINNIPEG

INSTRUCTIONS TO THE TRADE

To: Messrs. Hallet and Carey Limited

ORDER

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:

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:

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
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
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

"F. L. M. ARNOLD"
Member

EXHIBIT No. 1 (9)

THE CANADIAN WHEAT BOARD
Legal Department
WINNIPEG

May 27th, 1947.

Manitoba Pool Elevators,
Terminal Department,
Wheat Pool Building,
Winnipeg, Manitoba.

Dear Sirs,

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.

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
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
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 honored unless presented by or through The Canadian Wheat Board.

Yours very truly,

"GEORGE H. McIVOR"
Chief Commissioner.

GMc'AM/b

10 *Registered Mail*

EXHIBIT No. 1 (10)

FILLMORE, RILEY & WATSON
Barristers and Solicitors

Winnipeg, CANADA
May 28th, 1947.

Messrs. Morkin & Monk,
Barristers, etc.,
426 Somerset Building,
WINNIPEG, Manitoba.

Attention Mr. Monk

Dear Sirs,

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 Hallett and Cary Limited and I should appreciate it if you would deal with me in connection with any matters arising out of the barley in question.

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 Hallett and Cary Limited from achieving this object, and only that attitude is responsible for my clients still being concerned in this matter.

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 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 co-operation 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 co-operate.

Yours truly,

FILLMORE, RILEY & WATSON,

per W. P. Fillmore

WPF:LD

EXHIBIT No. 12

THE CANADIAN WHEAT BOARD
INSTRUCTIONS TO TRADE
No. 83

TO ALL COMPANIES

Gentlemen:

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,
Assistant Chief Commissioner.

Reference:
WM. AITKEN
24th July, 1947.

EXHIBIT No. 1 (11)

AIKINS, LOFTUS, MACAULAY, THOMPSON & TRITSCHLER
Barristers & Solicitors

Somerset Building,
Portage Avenue,
Winnipeg, Manitoba.
September 26, 1947.

H. B. MONK, Esq., K.C.,
Messrs. MORKIN, MONK & GOODWIN,
Barristers, etc.,
426 Somerset Building,
WINNIPEG, Manitoba.

Dear Henry: *Re: Nolan vs. Hallet & Carey Limited Gen. 10215*

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 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 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,

GET/MC.

G. E. TRITSCHLER.

EXHIBIT No. 1 (12)

AIKINS, LOFTUS, MACAULAY & COMPANY

Somerset Building,
Winnipeg, Canada.

September 30, 1947.

Manitoba Pool Elevators,
Wheat Pool Building,
WINNIPEG, Man.

Dear Sirs: *Re: Jeremiah J. Nolan v. Hallet & Carey Limited 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.

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 against the warehousemen in order to get the barley. If the action should be decided in Mr. Nolan's favour, 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.

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,

10 AIKINS, LOFTUS, MACAULAY & COMPANY,

Per

GET/c/b

EXHIBIT No. 1 (13)

October 1st, 1947.

United Grain Growers Terminals Limited,
Hamilton Bldg., Winnipeg, Manitoba.

Fort William Elevator Company Ltd.,
252 Grain Exchange Bldg., Winnipeg, Manitoba.

Manitoba Pool Elevators,
Winnipeg, Manitoba.

The Canadian Consolidated Grain Co. Ltd.,
957 Grain Exchange Building, Winnipeg, Manitoba.

Dear Sirs:

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 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
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 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 Certificate	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 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 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.

10

Henry B. Monk/b/eh

EXHIBIT No. 1 (14)

SCARTH & HONEYMAN,
Barristers, Solicitors, etc.

915 Paris Building,
WINNIPEG, Canada.
October 3, 1947.

Re: Manitoba Pool Elevators

Dear Sirs:

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 iny our 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 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,

H.S.S.:MM/b

SCARTH & HONEYMAN,

per "H.S.S.".

Canadian Wheat Board,
Legal Department,
426 Somerset Bldg.,
Winnipeg, Manitoba.

EXHIBIT No. 1 (15)

UNITED GRAIN GROWERS TERMINALS LIMITED

309 Grain Exchange,
Winnipeg, Manitoba.
October 6th, 1947.

MR. HENRY B. MONK,
Solicitor, The Canadian Wheat Board,
430 Somerset Building,
Winnipeg.

Dear Sir: *Re: Warehouse Receipt No. 26540 and Order-in-Council 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 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.

Yours truly,

J. E. BROWNLEE,
Vice-President and
Acting General Manager.

JEB:AF

EXHIBIT No. 1 (16)

CECIL B. PHILIP, K.C.,
Barrister, Solicitor, Etc.

615 Somerset Building,
WINNIPEG, Canada.
October 8, 1947.

The Canadian Wheat Board,
Legal Department,
430 Somerset Building,
Winnipeg, Manitoba.

Dear Sirs: *Re: The Fort William Elevator Company Limited.*

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 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.

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,

"C. B. PHILP",

CECIL B. PHILIP.

CBP:em/b

EXHIBIT No. 1

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.

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, 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.

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 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.

(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 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 barlely therein referred to except it claims a lien for storage 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 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.

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. On the 3rd 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.

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

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.

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.

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.

15. Or 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, Terminal Division.

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

17. Under date of September 26, 1947, Aikins, Loftus, MacAulay & 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.

18. Under date of September 30, 1947, Aikins, Loftus, MacAuley & 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.

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 Limited.

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, copy of which is annexed as Exhibit 14.

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.

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.

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	64¾¢	per bushel
April 3rd, 1947	93¢	per bushel
September 30th, 1947	93¢	per bushel
October 1st, 1947	93¢	per bushel

which were the ceiling prices on the said dates.

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 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 on Exhibit 17.

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 annexed as Exhibit 18.

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

DATED this 20th day of March A.D. 1948.

"HENRY B. MONK"
of Counsel for the Attorney-General of Canada

"H. ST. CLAIR SCARTH"
of Counsel for Manitoba Pool Elevators

"IVAN M. DEACON"
of Counsel for Canadian Consolidated Grain Company Limited

"IVAN M. DEACON"
of Counsel for United Grain Growers Terminals Limited

"H. ST. CLAIR SCARTH"
of Counsel for Fort William Elevator Company Limited

"W. P. FILLMORE"
of Counsel for Hallet and Carey Limited

"G. E. TRITSCHLER"
of Counsel for Jeremiah J. Nolan

"HENRY B. MONK"
of Counsel for The Canadian Wheat Board

EXHIBIT No. 14

SANFORD EVANS STATISTICAL SERVICE
(CREST)

OATS

Commercial Stocks Oats

STOCKS IN STORE IN COMMERCIAL POSITIONS
(Board of Grain Commissioners)

	March 14/47	March 21/47	April 3/47
10 Country Elevators	12,535,000	12,835,000	10,810,000
Interior Private & Mill Elevators	1,078,000	1,259,000	1,204,000
Interior Terminals	398,791	353,103	344,534
Vancouver-New Westminster	918,643	1,189,137	1,434,265
Churchill	75	75	75
Fort William-Port Arthur	8,728,670	9,315,358	9,999,539
Eastern Elevators—			
Canadian Lakeports	2,383,040	1,884,487	890,123
Canadian St. Lawrence ports	308,865	300,631	252,932
Halifax-St. John	17,853	—	26,268
20 Storage Afloat	—	—	—
U.S. Lakeports	933,000	496,000	261,000
U.S. Seaboard	70,000	158,000	197,997
Intransit—Lake	—	—	—
Canadian Railways-Western Div.	1,851,127	1,713,584	1,859,801
Canadian Railways-Eastern Div.	573,382	553,947	761,127
U. S. A.	145,000	264,000	199,000
TOTAL STOCKS	29,941,446	30,322,322	28,240,661

SANFORD EVANS STATISTICAL SERVICE
(CREST)

BARLEY

Commercial Stocks Barley

STOCKS IN STORE IN COMMERCIAL POSITIONS

(Board of Grain Commissioners)

	March 14/47	March 21/47	April 3/47
Country Elevators	7,635,000	7,565,000	6,510,000
Interior Private & Mill Elevators	2,768,000	2,703,000	2,723,000
Interior Terminals	1,070,147	984,404	883,282
Vancouver-New Westminster	137,785	139,968	165,035
Churchill	—	—	—
Fort William-Port Arthur	5,281,270	5,626,810	5,918,361
Eastern Elevators—			
Canadian Lakeports	862,229	813,266	675,498
Canadian St. Lawrence ports	107,944	110,930	89,539
Halifax-St. John	796	796	796
Storage Afloat	331,809	208,866	—
U.S. Lakeports	162,000	—	—
U.S. Seaboard	290,514	373,597	536,474
Intransit—Lake	—	—	—
Canadian Railways-Western Div.	971,843	799,563	798,069
Canadian Railways-Eastern Div.	291,694	230,972	302,534
U. S. A.	60,000	138,917	—
TOTAL STOCKS	19,971,031	19,696,089	18,602,588

SANFORD EVANS STATISTICAL SERVICE
(CREST)

On Farms
Oats & Barley

ON PRAIRIE FARMS

(Board of Grain Commissioners)

MARCH 14, 1947—	OATS	BARLEY
Deliveries, August 1/46-July 31/47	101,234,058	69,105,904
Deliveries, August 1/46-March 14/47	67,631,059	50,290,058
10 Deliveries, March 15/47-July 31/47	33,602,999	18,815,846
Carryover on Prairie Farms, July 31, 1947	39,812,000	15,453,000
STOCKS ON PRAIRIE FARMS AVAILABLE FOR DELIVERY, March 15, 1947	73,414,999	34,268,846
MARCH 21, 1947—		
STOCKS ON PRAIRIE FARMS AVAILABLE FOR DELIVERY, March 22, 1947	71,040,175	33,331,984
APRIL 3, 1947—		
STOCKS ON PRAIRIE FARMS AVAILABLE FOR DELIVERY,		
20 April 4, 1947	68,632,307	32,132,972

SANFORD EVANS STATISTICAL SERVICE
(CREST)

Total Stocks
Oats

STOCKS OF CANADIAN OATS
IN CANADA AND THE UNITED STATES

(Dominion Bureau of Statistics)

AS AT MARCH 31

		1946	1947
10	Country and private terminal elevators	7,300,076	11,222,467
	Western mills and mill elevators	1,090,746	1,398,104
	Interior terminal elevators	1,283,180	318,094
	Vancouver-New Westminster elevators	496,423	1,400,132
	Victoria and Prince Rupert elevators	—	—
	Churchill elevator	57	75
	Fort William-Port Arthur elevators	18,703,169	9,623,828
	In transit, lakes	—	—
	In transit, rail	3,546,910	2,538,866
	Eastern elevators	4,359,698	1,253,904
20	Eastern mills	660,821	605,000
	In U.S. positions	248,280	669,633
	Total Commercial Stocks	37,689,360	29,030,103
	On Farms	130,477,000	154,935,000
	TOTAL	168,166,360	183,965,103

SANFORD EVANS STATISTICAL SERVICE
(CREST)

Total Stocks
Barley

STOCKS OF CANADIAN BARLEY IN CANADA AND THE UNITED STATES

(Dominion Bureau of Statistics)

AS AT MARCH 31

	1946	1947
10 Country and private terminal elevators	6,319,310	9,041,624
Western mills and mill elevators	415,437	462,323
Interior terminal elevators	1,688,587	888,713
Vancouver-New Westminster elevators	183,058	155,462
Fort William-Port Arthur elevators	10,748,647	5,823,478
In transit, rail	841,930	1,029,876
Eastern elevators	5,121,932	799,823
Eastern mills	456,345	136,400
In U.S. positions	50,000	536,918
Total Commercial Stocks	25,825,246	18,874,617
20 On Farms	41,036,000	57,960,000
TOTAL	66,861,246	76,834,617

SANFORD EVANS STATISTICAL SERVICE
(CREST)

Prices
Oats & Barley

PRICES

(cents per bushel)

	1947	
	March 17	April 7
OATS		
Cash 2 CW,		
Basis Ft. William-Pt. Arthur	51½	
Equalization Fee	10	
	61½	65
Minneapolis		
2 White Oats—Cash	93⅞–94⅞	90½–91½
Chicago		
2 White Oats—Cash	101–102	93¾–94
BARLEY		
Cash 3 CW 6 Row,		
Basis Ft. William-Pt. Arthur	64¾	
Equalization Fee	15	
	79¾	93
Minneapolis—Cash		
Mellow Malting		
Good—14.5% Moisture	196–199	186–189
Chicago—Cash		
Malting Barley (nominal)	150–195	160–200

EXHIBIT No. 15

SANFORD EVANS STATISTICAL SERVICE
(CREST)

STOCKS OF CANADIAN OATS AND BARLEY
(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
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

SANFORD EVANS STATISTICAL SERVICE
(CREST)

CARRYOVER OF CANADIAN OATS AND BARLEY

(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

EXHIBIT No. 16

40,00 BUSHELS 3-6 Row BARLEY @ 69¾=$27,900.00

	Date bot.					Interest
	July 31/43 to Aug. 3/43—31	days on	27,900.00	@	3½%	$82.94
	Aug. 31/43 to Sept. 30/43—30	"	27,982.94	"		80.59
	Sept. 30/43 to Oct. 31/43—31	"	28,063.53	"		83.42
	Oct. 31/43 to Nov. 27/43—27	"	28,146.95	"		72.87
	July 31/45 to Aug. 8/45— 8	"	28,219.82	"		21.65
	Oct. 17/45 to Oct. 31/45—14	"	28,241.47	"		37.91
10	Oct. 31/45 to Nov. 30/45—30	"	28,279.38	"		81.35
	Nov. 30/45 to Dec. 31/45—31	"	28,360.73	"		84.31
	Dec. 31/45 to Jan. 31/46—31	"	28,445.04	"		84.56
	Jan. 31/46 to Feb. 28/46—28	"	28,529.60	"		76.60
	Feb. 28/46 to Mar. 31/46—31	"	28,606.20	"		85.03
	Mar. 31/46 to Apr. 3/46—30	"	28,691.23	"		82.54
	Apr. 30/46 to May 31/46—31	"	28,773.77	"		85.53
	May 31/46 to June 30/46—30	"	28,859.30	"		83.02
	June 30/46 to July 31/46—31	"	28,942.32	"		86.03
	July 31/46 to Aug. 31/46—31	"	29,028.35	"		86.29
20	Aug. 31/46 to Sept. 30/46—30	"	29,114.64	"		83.76
	Sept. 30/46 to Nov. 25/46—25	"	29,198.64	"		70.00
	Dec. 31/46 to Jan. 31/47—31	"	29,268.64	"		87.00
	Jan. 31/47 to Feb. 28/47—28	"	29,355.64	"		78.82
	Feb. 28/47 to Mar. 17/47—17	"	29,434.46	"		47.98
						$1,582.20
	Mar. 17/47 to April 24/47—38	"	29,482.44	"		107.42
	Total Interest charges to date					$1,689.62

EXHIBIT No. 17

		$	$
Received delivery through Clearing Association on July contracts, Lake Shippers' Transfer, 3 CW 6-Row Barley—40,000 bushels @ 64¾¢			25,900.00
Received payment for 40,000 bushels Barley through D. F. Rice & Co. August 23rd, 1945			
Statement of Storage			
Lake Shippers' Transfer dated July 31st, 1943 to March 17th, 1947;	(1,137 days @ 1/45		10,106.36
March17th,1947;	(188 days @ 1/30		2,506.40
			12,612.76
March 17th, 1947 to April 7th, 1947:	(21 days @ 1/30	280.00	
Storage Credits allowed J. Nolan by Hallet and Carey account loans			
November 27th, 1943 to July 31st, 1945	(612 days @ 1/45	5,439.60	
August 8th, 1945 to October 17th, 1945	(70 days @ 1/45	622.00	
November 25th, 1946 to December 31st, 1946	(36 days @ 1/30	480.00	6,541.60
Storage owing by J. Nolan July 31st, 1943 to March 17th, 1947			$ 6,071.16

EXHIBIT No. 18

HALLET AND CAREY LIMITED

Date	Rate	Bushels	Days Storage	Net Amount
July 31/43 to Nov. 27/43	1/45	40,000	119	$1,057.76
July 31/45 to Aug. 8/45	1/45	40,000	8	71.08
Oct. 17/45 to Sept. 10/46	1/45	40,000	328	2,915.52
Sept. 10/46 to Nov. 25/46	1/30	40,000	76	1,013.20
Dec. 31/46 to Feb. 28/47	1/30	40,000	59	786.80
Feb. 28/47 to Mar. 17/47	1/30	40,000	17	226.80
3-6 Row Barley Due Hallet & Carey				$6,071.16

EXHIBIT No. 19

Terminal	Warehouse Receipt No.	Grade	Bushels	Date Stored	Days to Mar. 17/47	Rate	Amount
Man. Pool	12677	3 cw6Row	612.14	Dec. 2/46	95	1/30	$19.39
—	12676	—	1,000.00	Dec. 2/46	95	—	31.67
—	12534	—	1,757.34	Dec. 7/46	90	—	52.73
—	12573	—	1,836.32	Dec. 9/46	88	—	53.87
—	12634	—	1,971.42	Dec. 10/46	87	—	57.18
—	12788	—	2,015.10	Dec. 12/46	85	—	57.09
—	12914	—	1,806.22	Dec. 16/46	81	—	48.77
—	12980	—	1,958.16	Dec. 18/46	79	—	51.56
Can. Cons.	1661	—	1,930.10	Dec. 20/46	77	—	49.55
Fort Wm.	3102	—	111.12	Dec. 28/46	69	—	2.56
Man. Pool	13974	—	2,028.26	Dec. 30/46	67	—	45.30
—	13512	—	1,867.14	Jan. 3/47	63	—	39.21
—	13632	—	1,840.30	Jan. 8/47	58	—	35.58
U.G.G.	26540	—	1,833.06	Jan. 10/47	56	—	34.22
Man. Pool	13802	—	2,207.14	Jan. 13/47	53	—	39.00
—	13931	—	1,773.46	Jan. 16/47	50	—	29.57
—	14078	—	9,479.08	Jan. 21/47	45	—	142.19
L.S.C.A.	3747	—	3,970.00	Nov. 30/46	112	—	148.21
			40,000.00				$937.65
			March 17th to April 7th, 1947—21 days				280.00
							$1,217.65

In the King's Bench

The Honourable The Chief Justice } Monday, the 19th day of April, 1948.

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,
HALLET AND CAREY LIMITED,

DEFENDANTS,

AND

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

DEFENDANT.

This action coming on for trial on the 22nd, 23rd and 24th days of March, 1948, before this Court in the presence of Counsel for all the parties; on hearing read the pleadings and hearing the evidence adduced, and what was alleged by Counsel aforesaid; this Court was pleased to direct this action to stand over for judgment, and the same coming on this day of judgment:

1. THIS COURT DOTH ORDER AND ADJUDGE that the Plaintiff's action be and the same is hereby dismissed.

2. THIS COURT DOTH FURTHER ADJUDGE AND DECLARE that the Order of the Governor General in Council of the 3rd day of April, 1947, (P.C. 1292) is ultra vires of the Governor General in Council insofar

as it purports to enact Sections 22 to 27 both inclusive and Section 36 of Part 3 of the Western Grain Regulations of July 30, 1946, (P.C. 3222) and that the said sections of the said Western Grain Regulations are ultra vires of the Governor General in Council.

3. AND THIS COURT DOTH FURTHER ORDER AND ADJUDGE that each of the Defendants do recover against the Plaintiff its costs of this action to be taxed without regard to the limit fixed by Rule 630.

SIGNED the 25th day of October 1948.

Fiat
21 October 1948
"E. K. WILLIAMS"
CJKB

(Sgd) "J. A. ROBINS"
Deputy Prothonotary.

ENTERED October 25th 1948
JUDGMENT and ORDER
Book 70
(Sgd) "R. L. THORNE" E.C.

In the King's Bench

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,

AND

JEREMIAH J. NOLAN,

VS

HALLET AND CAREY LIMITED.

WILLIAMS, C.J.K.B.

The main issues raised in these two actions which, by agreement of counsel, were tried together are:

1. Is the National Emergency Transitional Powers Act 1945, chapter 25 of the Statutes of Canada, 1945, hereinafter referred to as "The Transitional Act," *ultra vires* in whole or part?
2. Is Order-in-Council P.C. 1292, passed April 3, 1947, hereinafter referred to as P.C. 1292, *ultra vires,* or alternatively, are sections 22, 24, 25, 26 and 36 thereof *ultra vires?*

The required notice was duly given to the Attorney-General of Canada and to the Attorney-General of Manitoba. The former appeared by Counsel appointed by him, namely, Mr. H. B. Monk, K.C., who also appeared for the Canadian Wheat Board, hereinafter referred to as "The Board". The Attorney-General of Manitoba did not wish to be heard.

In order to shorten the trial Counsel filed an agreed statement of facts, (exhibit 1), to which were attached as exhibits a large number of documents. The right to object to the relevancy of any of this material was reserved.

Counsel for Nolan, and for Hallet and Carey Ltd., called witnesses and tendered other documents in evidence. Counsel for the Attorney-General and the Board, whom I shall hereafter refer to as the plaintiffs, waived proof of some of the documents but objected to the relevancy of all such evidence, oral or documentary. I admitted this evidence subject to the objections which were to be dealt with in my judgment.

It will, I think simplify the consideration of this complicated case if I set out all the facts, including those the relevancy of which is challenged, as nearly as may be in chronological order, before I deal with the questions of admissibility which affect several of the phases of these actions.

At the trial, on the application of Counsel for Manitoba Pool Elevators and Fort William Elevator Company Ltd., and with the consent of all parties, I added Nolan as a defendant in the Board's action.

On March 17th, 1947, Jeremiah J. Nolan, a grain merchant residing in Chicago, a citizen of the United States, was the owner of 40,000 bushels of No. 3 C.W. Six-Row barley, the price of which, basis Fort William/Port Arthur or Vancouver, on that date was 64¾ cents per bushel and which he had purchased in 1943.

This barley was on that date, in varying quantities, in the terminal elevators at Fort William or Port Arthur, in the Province of Ontario, of Manitoba Pool Elevators, Canadian Consolidated Grain Company Ltd., United Grain Growers Terminals Limited, and Fort William Elevator Company Limited respectively. I shall refer to these companies as "the warehousemen."

Each of the warehousemen had issued its warehouse receipt, or receipts, for the quantity of barley stored by it, each of which was issued or assigned and endorsed to Hallet and Carey Limited, to whom I shall refer as "Hallet", and Hallet held these documents at Winnipeg as agents for Nolan and had no beneficial interest in them, or in the barley referred to in them, except that it asserted a claim to a lien for certain storage and carrying charges.

The barley had been purchased by Hallet on instructions of Nolan, and Hallet has at all material times since that date held the barley for Nolan's account.

The warehousemen have had, at all times since they issued their receipts, and now have, physical possession of the barley, which I have been informed is special binned, in the quantities indicated by the documents.

The warehouse receipts are dated in December 1946, or January 1947, but represent the actual barley purchased as aforesaid in 1943. The barley was

"lent" by Nolan from time to time, a practice in the Grain Trade, but was returned to him each time, the last time being in December 1946, and January 1947, when the new warehouse receipts came into existence.

On March 17, 1947, the Board, a corporation incorporated by the Canadian Wheat Board Act, 1935, being chapter 53 of the Statutes of Canada 1935, issued its Instructions to (the) Trade No. 59, and sent a copy to Hallet and all other members of the Trade. This document (exhibit 2) reads:

"TO ALL COMPANIES AND DEALERS IN OATS AND BARLEY:

Gentlemen:

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 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 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.

5. *Take-over 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 51½¢ per bushel for all grades of oats and 64¾¢ 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 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 10¾ 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 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 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.

(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 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.

Reference:

J. W. ALLEN
W. J. BROCKING
R. C. FINDLAY
J. F. FRASER
W. B. ROBBINS

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

1. Effective tomorow, 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 at 40¢ in store Fort William/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.

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 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 17. 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 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 net profits therefrom 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.

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 shipped East from Fort William/Port Arthur and West from Calgary and Edmonton into British Columbia until July 31st, 1948."

The Board was at all material times the Administrator of grain prices for the War Time Prices and Trade Board. On March 17, 1947, the maximum price on barley was 63¾ cents per bushel, and on oats 51½ cents per bushel. The "support price", that is the price at which the Board would purchase all grain offered to it, for barley was 60 cents per bushel.

The effect of Exhibit 2 was to raise the maximum prices of barley to 93 cents per bushel and of oats to 61½ cents per bushel, effective as of March 18, 1947.

By Instructions to Trade No. 61, (Exhibit 4) of March 18, 1947, the Board fixed the "support prices" for oats and barley, and that for No. 3 C.W. Six-Row barley was 91 cents.

Export of barley and oats was prohibited without a permit from the Board. This prohibition has been in effect for some years.

Nolan's barley was "in commercial channels in Canada as at midnight, March 17, 1947".

It is not possible to obtain figures showing the amount of barley and oats in commercial positions on March 17, 1947, but Exhibit 14 shows that on March

14, 1947, the amount of barley in commercial positions was 19,971,031 bus. and on March 21, 1947, 19,696,089 bus. The amount of oats in such position on the same dates was 29,941,446 bus. and 30,322,322 bus. respectively.

There are no figures to show how much of these grains were grown in the "designated area", (see P.C. 1292 below), but the evidence is that the great bulk of it was.

Exhibit 14 also shows that there were large stocks of barley and oats on prairie farms available for delivery; on March 14, 34,268,846 bus. of barley and 73,414,999 bus. of oats; and on March 21, 1947, 33,331,984 bus. of barley and 71, 040,175 bus. of oats.

Grades of barley corresponding to No. 3 C.W. Six-Row barley sold on March 17, 1947, at Minneapolis for $1.96 to $1.99 and at Chicago for $1.50 to $1.95 (Exhibit 14).

Between March 18, 1947, and April 3, 1947, the Board issued other Instructions to the Trade but the two which require consideration are No. 61 (Exhibit 4) and No. 64 (Exhibit 7) which read:

"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*

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.

CANADA WESTERN BARLEY:

Further to our Instructions to Trade No. 59 of March 17th, 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.	"	"	"
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

Approved for the Board by, W. C. McNamara
Assistant Chief Commissioner.

Reference:

W. J. BROOKING

March 18, 1947.

"THE CANADIAN WHEAT BOARD

INSTRUCTIONS TO TRADE

No. 64

TO ALL COMPANIES:

Dear Sirs: *Re: Oats and Barley taken over by the Board as at Midnight, March 17th, 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.

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.

Yours very truly,

THE CANADIAN WHEAT BOARD

Approved for the Board by, W. C. McNamara

Ast. Chief Commissioner.

Reference:

W. B. ROBBINS.

March 20th, 1947.

On April 3, 1947, the Governor-in-Council passed P.C. 1292. This is a lengthy order but should be set out in full.

"

P.C. 1292

PRIVY COUNCIL

CANADA

AT THE GOVERNMENT HOUSE AT OTTAWA

THURSDAY, the 3rd day of APRIL, 1947.

Present:

HIS EXCELLENCY

THE GOVERNOR GENERAL IN COUNCIL:

WHEREAS it is necessary, by reason of the continued existence of the national emergency arising out of the war against Germany and Japan, for the purpose of maintaining, controlling and regulating supplies and prices to ensure economic stability and an orderly transition to conditions of peace, to make provision for

(a) 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;

(b) the closing out and termination of any open futures contracts relating to oats or barley outstanding in any futures market in Canada; and

(c) the prohibition of the export of oats or barley by persons other than the Canadian Wheat Board until otherwise provided;

and other matters incidental thereto as set forth in the Regulations set out below;

THEREFORE, His Excellency the Governor General in Council, on the recommendation of the Acting Minister of Trade and Commerce, and under the powers conferred by the National Emergency Transitional Powers Act, 1945, is pleased for the reasons aforesaid, to order that the Western Grain Regulations (P.C. 3222, of July 31, 1946) be and they are hereby amended by revoking Part III thereof, the said revocation to be deemed to be effective in respect of section twenty-three of the said Part III on and after the eighteenth day of March, nineteen hundred and forty-seven, and by substituting therein the following Regulations as Part III thereof:

PART III

OATS AND BARLEY

21. In this Part, unless the context otherwise requires

(a) "Barley" means barley grown in the designated area and includes barley whether in natural form or cleaned, chopped, ground, mashed or crimped, or otherwise processed or contained in any product;

(b) "Oats" means oats grown in the designated area and includes oats whether in natural form or cleaned, chopped, ground, mashed or crimped, or otherwise processed or contained in any product;

(c) "Oats and barley in commercial positions" means oats and barley which are not the property of the producer thereof and are in store in warehouses, elevators or mills whether licensed or unlicensed, or in railway cars or vessels or in other facilities in Canada for the storage or transportation of grain;

(d) "Owner" includes a person entitled to the delivery of oats or barley under or by virtue of a contract for the carriage or storage of oats or barley, but does not include a person who is a party to a contract for the purchase of oats or barley the property in which has not passed to him;

(e) "previous maximum price" means

(i) with respect to oats, fifty-one and one-half cents per bushel, and

(ii) with respect to barley, sixty-four and three quarter cents per bushel,

basis in store Fort William/Port Arthur, or Vancouver;

(f) "product" means any substance produced by processing or manufacturing oats or barley either alone or together with any other material, except such products as were excluded from the operation of the Western Grain Regulations prior to the coming into operation of this regulation.

Oats and Barley Vested in Board

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.

23. (1) The Board shall pay to a person who, immediately prior to the coming into operation of section twenty-two, was the owner of oats or barley vested in the Board by the said section in respect of each bushel so vested,

(a) if he was the owner of the oats and barley at midnight on the seventeenth day of March, nineteen hundred and forty-seven,—an amount equal to the previous maximum price thereof; adjusted as provided in subsection two of this section;

(b) if he became the owner of the said oats or barley on or after the eighteenth day of March, nineteen hundred and forty-seven, by reason of a purchase at a price not exceeding the previous maximum price thereof adjusted as provided in the said subsection two,—an amount equal to the said previous maximum price as so adjusted; or

(c) if he became the owner of the said oats or barley on or after the eighteenth day of March, nineteen hundred and forty-seven, pursuant to a purchase at a price exceeding the previous maximum price adjusted as provided in the said subsection two,—an amount equal to the price per bushel at which he purchased the oats or barley.

(2) The previous maximum price of oats or barley referred to in subsection one may, in computing the amount payable by the Board, be adjusted in respect of freight, storage or handling charges or special selection premiums, as may be determined by the Board.

24. Any person

(a) who was the owner of oats or barley in commercial positions at midnight on the seventeenth day of March nineteen hundred and forty-seven, or who, after that day and before the coming into operation of this section, became the owner of oats or barley pursuant to a purchase at a price not exceeding the previous maximum price, and

(b) who before the coming into operation of this section sold the said oats or barley otherwise than to the Board or at a price not exceeding the previous maximum price, shall pay to the Board an amount in respect of each bushel of the said oats or barley so sold by him equal to the difference between the said previous maximum price therefor, adjusted as provided in subsection two of section twenty-three, and the price that is payable by the Board for oats or barley purchased by it under section thirty.

25. (1) All oats futures contracts and all barley futures contracts negotiated by or through members of the Winnipeg Grain Exchange and made on or prior to the seventeenth day of March, nineteen hundred and forty-seven, and open on the date of the coming into operation of this section, shall be finally cleared and cancelled on or before a day to be fixed by order of the Board at the relevant closing prices registered on the Winnipeg Grain Exchange on the seventeenth day of March, nineteen hundred and forty-seven.

(2) Where no price was registered on the Winnipeg Grain Exchange on the seventeenth day of March, nineteen hundred and forty-seven, in respect of any grade of oats or barley, the Board may fix the price in respect of such grade for the purposes of this section at such price as it deems reasonable, having regard to the prices quoted on the Winnipeg Grain Exchange on the said day.

26. All contracts for the sale of oats or barley in commercial positions, other than futures contracts mentioned in sections twenty-five, entered into on or prior to the seventeenth day of March, Nineteen hundred and forty-seven, pursuant to which the property in the said oats and barley had not passed to the purchaser prior to the coming into operation of this section, are hereby rescinded and declared to be void and of no further force and effect.

27. (1) The Board shall, from time to time, sell and dispose of all oats or barley vested in it by section twenty-two at such prices as it may consider reasonable.

(2) Net profits arising from the operations of the Board in respect of oats and barley vested in it by section twenty-two, and any monies paid to the Board under section twenty-four, shall be paid into the Consolidated Revenue Fund.

(3) The Board shall be reimbursed in respect of net losses arising from the operations of the Board in respect of oats and barley vested in it by section twenty-two out of monies provided by Parliament.

Exports—Equalization Fund

28. No person, except the Canadian Wheat Board, shall export, ship or send out of Canada oats or barley or any product, except with the permission of the Board obtained upon payment of such charge or fee as the Board may from time to time determine.

29. The Board shall deposit monies received for the issue of permits for the export of oats or any products thereof in the Oats Equalization Fund and monies received for the issue of permits for the export of barley or any products thereof in the Barley Equalization Fund, which said Funds are hereby continued as if section twenty-two of the Western Grain Regulations as enacted by Order in Council P.C. 3222, of the thirty-first day of July, nineteen hundred and forty-six, had not been revoked.

Oats and Barley Statilization

30. (1) The Board is hereby empowered to buy Winnipeg Oats futures or cash oats at a price per bushel which will assure that producers in Western Canada will be continuously offered the following prices per bushel for oats, basis in store in terminal elevators at Fort William or Port Arthur:—

No. 1 Feed ..... Sixty-one and one-half cents

and such prices for each other grade of oats as in the opinion of the Board from time to time brings such grade into proper relationship with the grade of oats hereinbefore named.

(2) The Board is hereby empowered to buy Winnipeg barley futures or cash barley at a price per bushel which will assure that producers in Western Canada will be continuously offered the following prices per bushel for barley, basis in store in terminal elevators at Fort William or Port Arthur:—

No. 1 Feed ..... ninety cents

and such prices for each other grade of barley as in the opinion of the Board from time to time brings such grade into proper relationship with the grade of barley hereinbefore named.

31. It shall be the duty of the Board to buy all oats and barley offered for sale from time to time to it in accordance with the provisions of sections thirty and thirty-one, and the Board shall sell and dispose of, from time to time, at such prices as it may consider reasonable, all oats or barley so acquired by it.

32. (1) Any net profits arising from the operation of the Board under sections thirty and thirty-one in respect of oats shall accrue to the Oats Equalization Fund as soon as such profit is ascertained and after all oats acquired by the Board during the crop year ending on the thirty-first day of July, nineteen hundred and forty-seven, have been disposed of.

(2) Net profits arising from the operations of the Board under sections thirty and thirty-one in respect of barley shall accrue to the Barley Equalization Fund as soon as such profit is ascertained and after all barley acquired by the Board during the crop year ending on the thirty-first day of July, nineteen hundred and forty-seven has been disposed of.

(3) The Board shall be reimbursed in respect of net losses arising from the operations of the Board under sections thirty and thirty-one out of moneys provided by Parliament.

Barley Adjustment Payment

33. The Board shall, out of the Barley Equalization Fund or out of moneys provided by Parliament, pay to every producer the sum of ten cents for each bushel of barley sold and delivered by him on or after the first day of August, nineteen hundred and forty-six, but prior to the eighteenth day of March, nineteen hundred and forty-seven and in respect of which he has received or is, on the seventeenth day of March, nineteen hundred and forty-seven, entitled to receive an Advance Equalization Payment.

Producer's Participation in Surplus

34. The Board shall deduct from the total funds accumulated in the Oats Equalization Fund during the crop year ending on the thirty-first day of July, nineteen hundred and forty-seven,

(a) the total amount paid by the Board as Advance Equalization Payments to producers of oats sold and delivered on or prior to the seventeenth day of March, nineteen hundred and forty-seven,

(b) all other moneys disbursed by or on behalf of the Board in connection with the payment of Advance Equalization Payments to producers of oats for that crop year and, without limiting the foregoing, all expenses of or incidental to the operations of the Board relating to the payment of such Advance Equalization Payments, including the remuneration, allowances, travelling and living expenses of the Commissioners, officers, clerks and employees of the Board attributable to such Payments,

and the surplus, if any, shall be disturbed equitably among producers who have received or were, on the seventeenth day of March, nineteen hundred and forty-seven, entitled to receive an Advance Equalization Payment as aforesaid, or who, on or after the eighteenth day of March, nineteen hundred and forty-seven, sold and delivered oats to a dealer; Provided that if the said Fund is less than the amount authorized to be deducted therefrom under this section, there shall be paid to the Fund out of moneys provided by Parliament such amount as will cause the Fund to equal the said deductions.

35. The Board shall deduct from the total funds accumulated in the Barley Equalization Fund during the crop year ending on the thirty-first day of July, 1947,

(a) the total amount paid by the Board as Advance Equalization Payments to producers of barley sold and delivered on or prior to the seventeenth day of March, 1947,

(b) the total amount paid to producers of barley by the Board pursuant to the provisions of section thirty-three,

(c) all other moneys disbursed by or on behalf of the Board in connection with the payment of Advance Equalization Payments to producers of barley for that crop year and to payments made under section thirty-three, and, without limiting the foregoing, all expenses of or incidental to the operations of the Board relating to the making of such payment, including the remuneration, allowances, travelling and living expenses of the Commissioners, officers, clerks and employees of the Board attributable to such Payments,

and the surplus, if any, shall be distributed equitably among producers who have received or were, on the seventeenth day of March, 1947, entitled to receive an Advance Equalization Payment as aforesaid, or who, on or after the eighteenth day of March, 1947, sold and delivered barley to a dealer: Provided that if the said Fund is less than the amount authorized to be deducted therefrom under this section there shall be paid to the Fund out of moneys provided by Parliament such amount as will cause the Fund to equal the said deductions.

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 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 power 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.

(sgd) A. D. P. HEENEY
Clerk of the Privy Council."

On April 7, 1947, the Board issued its Instructions to the Trade No. 74. (Exhibit 1-5), reading:

"

THE CANADIAN WHEAT BOARD
INSTRUCTIONS TO TRADE
No. 74
Crop Year 1946-47

TO ALL COMPANIES:

Gentlemen:

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

(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.

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 the 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 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 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 malsters or manufacturers of pot and pearl barley.

Yours very truly,

THE CANADIAN WHEAT BOARD

Approved for the Board by Geo. McIvor
Chief Commissioner

April 7th,
1947."

In a letter dated April 14, 1947, (Exhibit 1-6), Nolan said to Hallet amongst other things.

"I challenge the action of The Canadian Wheat Board entirely and I intend 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."

A similar warning was given to Hallet by Nolan's Winnipeg Solicitors in a letter dated April 18, 1947. (Ex. 1-7).

All of the owners of barley and oats, except Nolan, followed the procedure outlined in Instruction No. 64. (Exhibit 7) *supra:* the owners of barley paying to the Board 28¼ cents per bushel and the owners of oats 13½ cents per bushel. They kept their grain, they did not deliver the documents of title for it to the Board, and were allowed to deal with it without any direction from or supervision by the Board subject to the long standing prohibition against exporting.

It will be remembered that by sec. 27(2) of P.C. 1292, *supra,* the net profits arising from the Board's operations in respect of oats and barley vested in the Board by sec. 22, were to be paid into the Consolidated Revenue Fund.

On April 24, 1947, Hallet served a Notice of Motion returnable before a Judge in Chambers for relief by way of interpleader naming Nolan and the Board as claimants. On the return of the motion, Mr. Monk, K.C. as Counsel for the Board, opposed the making of the order on the ground that the Board was an agent or servant of the Crown and as such could not be forced to interplead without its consent. He relied on Oatway v. Canadian Wheat Board (1945) 52 M.R. 283, (appeal quashed (1945) S.C.R. 204), and Montreal v. Montreal Locomotive Works Ltd., (1947) 1 D.L.R. 161. After argument the motion was dismissed by my brother Major.

By 11 Geo. VI, cap. 15, assented to May 14, 1947, The Canadian Wheat Board Act 1935, was amended by enacting, amongst many other provisions, the following:

> "4(2) The Board is, for all purposes, an agent of his Majesty in right of Canada, and its powers under this Act may be exercised by it only as an agent of His Majesty in the said right." (cap. 15, s. 2).

On May 22, 1947, a statement of claim was issued out of this Court by which Nolan sued Hallet for possession of his barley and for the documents of title thereto.

On May 27, 1947, the Board served the following Order (Exhibit 1-8) on Hallet.

"THE CANADIAN WHEAT BOARD
423 Main Street
WINNIPEG

INSTRUCTIONS TO THE TRADE

To: Messrs. Hallet and Carey Limited

ORDER

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:

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:

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
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
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

(signed) GEORGE H. McIVOR

Chief Commissioner

L. M. ARNOLD

Member."

On the same day the Board notified each of the warehousemen that the order had been made and that warehouse receipts "should not be honoured unless presented by or through The Canadian Wheat Board".

Thereafter certain correspondence ensued between the solicitors for the various parties ending on October 8, 1947: (see Exhibit 1).

On June 4, 1947, Hallet filed its defence in Nolan's action setting up Instructions to the Trade No. 59 and No. 74, and the order of May 27, 1947, and pleading Order-in-Council P.C. 1292, passed under the Transitional Act.

On July 8, Nolan filed a Reply in which he attacked the validity (1) of the Board's proceedings; (2) of the Transitional Act and especially clauses (b) (c) and (e) of section 2(1) thereof, and (3) of P.C. 1292 and especially sections 22, 24, 25, 26 and 36 thereof; on grounds stated at length.

On October 8, 1947, the Board commenced its action against the warehousemen and Hallet to obtain possession of the barley and of the warehouse receipts, and for damages. The statements of defence in these actions raise the same issues as in the first action.

Neither the barley in question nor the warehouse receipts have been delivered to the Board.

The case was excellently and carefully argued by counsel for the plaintiffs, the defendants, and Hallet, and I am much indebted to them for their assistance. Counsel for the warehousemen took no part in the argument.

The matters to be dealt with are of considerable importance and difficulty and require a most careful study and analysis of the decided cases.

Counsel for the plaintiffs stated to me that he based his submission that P.C. 1292 is *intra vires* on the ground that it is authorized by the Transitional Act and that he did not intend to support it on any other ground. This, fortunately, limits somewhat the inquiry I have to make.

P.C. 1292 purports to be passed under the authority of the Transitional Act which came into force on January 1, 1946 (sec. 5) and which was to expire as provided by sec. 6 unless addresses were presented for its continuance (see sec. 6). Such addresses were presented and by Order-in-Council P.C. 1112, March 25, 1947 (see Exhibit 1-3) the Act was continued in force to May 15, 1947.

At the outset, counsel for the plaintiffs advanced an argument which, if sound, has some rather startling implications.

He first of all agrees that the Court in considering the validity of the Transitional Act may hear evidence on the question whether there is or is not a national emergency which would justify the passing of the Act and may also hear evidence on the question whether, if there was such an emergency, it has or has not ceased to exist. He agrees, also, that the Court may, notwithstanding the declaration in the preamble of the Act that there is an emergency, decide that there is not, or that it has ceased to exist, if the evidence warrants such a finding. This view is supported by the authorities to be referred to.

But when he comes to P.C. 1292 he reaches the startling part of his argument. It is this: If the Act is *intra vires* because there is a national emergency, no matter what that emergency may be, the Court may not inquire if the Order-in-Council is valid, as the Governor-in-Council has declared that it is deemed necessary and advisable to enact the provisions therein contained. In other words such a declaration puts it beyond the power of the Court to inquire into the validity of P.C. 1292. It is urged most vigorously that it is "not pertinent to the judiciary to consider the wisdom or the propriety of the particular policy which is embodied in the emergency legislation" and that "determination of the policy to be followed is exclusively a matter for the Parliament of the Dominion and those to whom it has delegated its powers".

It is not necessary to give examples to show to what this argument would lead. It would confer on the Governor-in-Council powers without limit.

After the most careful consideration I have come to the conclusion that the argument is not only not supported by the authorities but is contrary to them.

It is necessary first to read section 2(1) of the Transitional Act:

"The Governor-in-Council may do and authorize such acts and things, and make from time to time such orders and regulations, as he may, by reason of the continued existence of the national emergency arising out of the war against Germany and Japan, deem necessary or advisable for the purpose of

(a) providing for and maintaining the armed forces of Canada during the occupation of enemy territory and demobilization and providing for the rehabilitation of members thereof,

(b) facilitating the readjustment of industry and commerce to the requirements of the community in time of peace,

(c) maintaining, controlling and regulating supplies and services, prices, transportation, use and occupation of property, rentals, employment, salaries and wages to ensure economic stability and an orderly transition to conditions of peace,

(d) assisting the relief of suffering and the restoration and distribution of essential supplies and services in any part of His Majesty's dominions or in foreign countries that are in grave distress as the result of the war; or

(e) continuing or discontinuing in an orderly manner, as the emergency permits, measures adopted during and by reason of war."

The argument as I have said is that if the Governor-in-Council passes an order-in-conucil in which he states, that it is necessary by reason of the continued existence of the national emergency arising out of the war against Germany and Japan to make any provision whatsoever, that statement cannot be questioned by any Court and that having "deemed" his order necessary or advisable his decision is final and unimpeachable in this Court.

Counsel goes so far as to say that this principle applies even if the order made does not come within any of the cases enumerated in clauses (a) to (e) of sec. 2(1), *supra,* and that that enumeration is not exhaustive but merely sets out some of the things the Governor-in-Council may deem necessary or advisable to deal with.

P.C. 1292 is clearly drawn with sec. 2(1) (c) in mind because it begins:

"Whereas it is necessary by reason of the continued existence of the national emergency arising out of the war against Germany and Japan, for the purpose of maintaining, controlling and regulating supplies and prices to ensure economic stability and an orderly transition to conditions of peace to make provisions for . . ."

I am also confronted with the argument that while I may hear and decide upon any evidence to show that there was or was not such an emergency as is referred to in the Transitional Act or that such emergency was or was not continuing, I may not hear any evidence which bears upon the question whether any of the provisions of P.C. 1292 are necessary or advisable or whether they come within the powers given by the Transitional Act.

This argument so far as it effects P.C. 1292, and which is vigorously challenged by the defendants, is based upon statements in the following decisions: Fort Frances Pulp and Power Co. v. Manitoba Free Press Co. (1923) A.C. 695; Reference re Chemicals Regulations (1943) S.C.R. 1 (by Duff, C. J., pp. 9-12, and Rinfret, J. pp. 17-19); Reference re Persons of Japanese Race (1946) S.C.R. 248 (by Rinfret, C.J., p. 277, and Rand, J., p. 285, and the same case in the Privy Council (1947) 1 D.L.R. 577, (1947) L.J.R. 834 (1947) A.C. 87 (by Lord Wright, p. 586 D.L.R.) and Nakashima v. The King (1947) Ex. C.R. 486 (by Thorson, P. p. 501).

The principles laid down, I respectfully suggest, are well summed up by Lord Wright in the Japanese case, *supra,* where he said ((1947) L.J.R. 841):

"Upon certain general matters of principle there is not since the decision in Fort Frances Pulp and Power Co. v. Manitoba Free Press Co., (1923) A.C. 695; 130 L.T. 101, any room for dispute. Under the British North America Act property and civil rights in the several provinces are committed to the Provincial Legislatures, but the Parliament of the Dominion in a sufficiently great emergency such as that arising out of war has power to deal adequately with that emergency for the safety of the Dominion as a whole. The interests of the Dominion are to be protected and it rests with the Parliament of the Dominion to protect them. What those interests are the Parliament of the Dominion must be left with considerable freedom to judge. Again, if it be clear that an emergency has not arisen or no longer exists, there can be no justification for the exercise or continued exercise of the exceptional powers. The rule of law as to the distribution of powers between the Parliament of the Dominion and the Parliaments of the Provinces comes into play. But very clear evidence that an emergency has not arisen or that the emergency no longer exists is required to justify the judiciary, even though the question is one of *ultra vires,* in overruling the decision of the Parliament of the Dominion that exceptional measures were required or were still required. To this may be added as a corollary that it is not pertinent to the judiciary to consider the wisdom or the propriety of the particular policy which is embodied in the emergency legislation. Determination of the policy to be followed is exclusively a matter for the Parliament of the Dominion and those to whom it has delegated its powers. Lastly it should be observed that the judiciary are not concerned when considering a question of *ultra vires* with the question whether the Executive will in fact be able to carry into effective operation the emergency provisions which the Parliament of the Dominion either directly or indirectly has made. It is unnecessary therefore for their Lordships to take into review or even to recount the particular circumstances obtaining within the Dominion that led to the Order in question or the arrangements made with a view to

their execution. The validity of the War Measures Act was not attacked before their Lordships and consistently with the principles stated was not open to attack. The validity of the Orders was challenged on many grounds. Their Lordships have considered not only the points put forward on behalf of the appellants but whether the Orders were susceptible of criticism for reasons not put forward. Their Lordships are satisfied that all possible grounds of criticism were in one form or another included in the grounds on which the appellants relied. For the validity of the Orders it is necessary first that, upon the true construction of the War Measures Act, they fall within the ambit of the powers duly conferred by the Act on the Governor-General in Council, second that, assuming the Orders were within the terms of the War Measures Act, they were not for some reason in law invalid."

I have read, and re-read, the above statements, and similar ones in the other judgments, and must confess they have given me a great deal of difficulty. But leaving aside the debateable ones I think it beyond question that two definite principles are laid down.

The first, and, as has appeared, counsel for the plaintiffs accepts this, is that when considering if the Transitional Act is *intra* or *ultra vires* the Court may hear evidence "that an emergency has not arisen or that the emergency no longer exists" and may if the evidence is "very clear" that the emergency has not arisen or no longer exists, overrule the decision of Parliament that exceptional measures were required or were still required.

The second principle is that for P.C. 1292 to be valid it is necessary, first, that upon the true construction of the Transitional Act it falls within the ambit of the powers conferred by that Act on the Governor-in-Council; second, if P.C. 1292 is wihin the terms of the Act it is not for some reason in law invalid.

It seems settled, therefore, that if the Transitional Act is *intra vires* this Court may determine whether P.C. 1292 can be said to be an exercise of some one or more of the powers given by the Transitional Act. If P.C. 1292 is an exercise of such a power or powers the Court may then go on to decide, to use Lord Wright's language, if the Order "is not for some reason in law invalid".

This in my opinion is a complete answer to the plaintiff's argument that the Governor-in-Council having deemed the provisions contained in P.C. 1292 to be necessary and essential the Court is precluded from any further inquiry.

It is true Lord Wright adds as a corollary to the first part of his quoted statement "that it is not pertinent to the judiciary to consider the wisdom or the propriety of the particular policy which is embodied in the emergency

legislation" but that does not, as I see it, affect the principles so clearly laid down. Nor do his words immediately following, which were so strongly pressed on me;

". . . determination of the policy to be followed is exclusively a matter for the Parliament of the Dominion and those to whom it has delegated its powers". have the significance which the plaintiffs seek to give them or place P.C. 1292 entirely beyond the consideration of the Courts.

And this it seems to me is how the Courts have always proceeded. I observe, for example, that in the Chemicals case the Supreme Court held one paragraph of a Regulation made pursuant to powers conferred by the War Measures Act and the Department of Munitions and Supply Act *ultra vires* because it was in conflict with a section of the War Measures Act. Three judges of the same Court in the Japanese Case held some sub-sections of an order-in-council *ultra vires* for the reasons given, and while the Privy Council came to a different conclusion I do not find any suggestion that the three judges of the Supreme Court had not the "right" to consider the questions with which they dealt.

Furthermore, Lord Wright said in that case: "Their Lordships have considered not only the points put forward on behalf of the appellants but whether the orders were susceptible of criticism for reasons not put forward".

In Re Gray (1918) 57 S.C.R. 150, Duff, J., said that a powerful argument might have been founded on the provisions of the Military Service Act of 1917, one provision of which was in conflict with a provision of the order there in question, if the Military Service Act had not specifically provided that nothing in it contained should be held to limit or effect the powers of the Governor-in-Council under the War Measures Act.

I now address myself to the question: Is the Transitional Act *ultra vires?*

The Parliament of Canada has jurisdiction to pass legislation such as The War Measures Act 1914 (2nd Sess) c. 2, s.1, R.S.C. 1927, c. 206, "in a sufficiently great emergency such as that arising out of war", per Lord Wright in the Japanese Case, using the words of Viscount Haldane in Fort Frances Pulp Co. v. Manitoba Free Press Co. (1923) A.C. 695, L.J.P.C. 102 (and see the latter's reasoning at p. 105). In re Gray, *supra,* and The Chemical Reference, *supra.*

Parliament evidently considered that it had power to pass the Transitional Act only if a national emergency of some kind existed. The preamble and sec. 2(1) show this to be so and I am satisfied that is the law. The Act contains Parliament's declaration of a national emergency. How far is that declaration binding on the Courts?

Lord Wright's statement in the Japanese case already quoted, "But very clear evidence that an emergency has not arisen or that the emergency no longer exists is required to justify the judiciary, even though the question is one of *ultra vires,* in overruling the decision of the Parliament of the Dominion that exceptional measures were required or were still required" satisfies me that the Courts may on proper evidence overrule the decision of Parliament.

As I see it that must be so. Where else can the question of *ultra vires* be settled? Indeed counsel for the plaintiffs concedes that upon proper evidence the Court in dealing with a question of legislative powers, may determine that no emergency exists or has existed. He takes the stand that there has been no evidence placed before me that the national emergency declared by Parliament does not exist. In this he is correct. He has called no evidence on the point relying as I understand it upon the declaration in the Act, as making a *prima facie* case: see 31 Hals. p. 490.

The defendants have called evidence which, if admissible, satisfies me that no emergency exists in Canada with regard to oats and barley and counsel for the plaintiffs does not contend there is. They argue that the Court may take judicial notice of conditions; that it may use "the common knowledge of the man on the street". They quote to me the language of Anglin, J., in In re Price Bros. Co. and the Board of Commerce of Canada (1920) 60 S.C.R. 265, at p. 279:

"The common knowledge possessed by every man on the street, of which courts of justice cannot divest themselves, makes it impossible to believe that the Governor-in-Council on the 29th of January 1920, deemed it 'necessary or advisable for the security, defence, peace, order or welfare of Canada . . . by reason of the existence of real or apprehended war invasion or insurrection' to confer on the Paper Controller such powers as the Board has purported to exercise by its order now in appeal. Advisability or necessity, however great, arising out of post-war conditions is not the same thing as, and should not be confounded with advisability or necessity 'by reason of the existence of real or apprehended war' ".

It should be observed, however, that in the Chemicals Reference (1946) S. C. R. 248, Rinfret, C.J., said at p. 271:

"Whatever may be said as to certain of the remarks made in Re Price Bros. Co. and the Board of Commerce of Canada in view of the later decision in the Fort Frances case ((1923) A.C. 695) it is quite clear from a perusal of all the opinions in the former that not only was there before the Court an opinion by the then Minister of Justice that there was no emergency, but also

there was no definite statement such as we find in the fourth recital in P.C. 7358. In the Price Bros. case Sir Lyman Duff referred to the recitals in the Order in Council of December 20th, 1919, as being 'in themselves sufficient to constrain any Court to the conclusion that the order of 29 January was not preceded or accompanied by any such decision' i.e., a decision 'that the particular measure in question is necessary or advisable for reasons which have some relation to the perils actual or possible of real or apprehended war' ".

When Canada is actually engaged in war it is self-evident that there is a national emergency. A continued course of authority recognizes that a state of emergency arising out of a war may continue for a time. Parliament has declared in the preamble to the Transitional Act that "the national emergency arising out of the war has continued since the unconditional surrender of Germany and Japan and is still continuing". And my common knowledge as of a man on the street does not enable me to say that there was not such an emergency at the time the Act was passed. The problem is much too complicated and I feel I am being invited on speculative grounds alone to overrule the considered decision of Parliament to adapt Lord Wright's language in the Japanese Case (1947) L.J.R. at p. 846. In that case he said:

"The last matter of substance arises on the National Emergency Transitional Powers Act 1945. It was contended by the appellants that at the date of the passing of this Act there did not exist any such emergency as justified the Parliament of Canada in empowering the Governor-in-Council to continue the orders in question. The emergency which had dictated their making — namely active hostilities — had come to an end. A new emergency justifying exceptional measures may indeed have arisen. But it was by no means the case that measures taken to deal with the emergency which led to the proclamation bringing the War Measures Act into force were demanded by the emergency which faced the Parliament of Canada when passing the Transitional Act. The order under the Act continuing the orders in question was therefore prima facie invalid.

"This contention found no favour in the Supreme Court of Canada and their Lordships do not accept it. The preamble to the Transitional Act states clearly the views of the Parliament of the Dominion as to the necessity of imposing the powers which were exercised. The argument under consideration invites their Lordships on speculative grounds alone to overrule either the considered decision of Parliament to confer the powers or the decision of the Governor-in-Council to exercise them. So to do would be contrary to the principles laid down in Fort Frances Pulp and Paper Co. v. Manitoba Free Press Co. and accepted by their Lordships earlier in this opinion."

The problem of how to determine when the emergency has ceased to exist is also a difficult one.

The Act of 1914 by s.4 (R.S.C. 1927, c.206, s.2) dealt with the matter by providing:

"The issue of a proclamation by His Majesty, or under the authority of the Governor-in-Council shall be conclusive evidence that war, invasion, or insurrection, real or apprehended, exists and has existed for any period of time therein stated, and of its continuance, until by the issue of a further proclamation it is declared that the war, invasion or insurrection no longer exists."

10 This method of dealing with the matter was the subject of criticism: see the remarks of Anglin, J. about the continued existence of war "in a fictitious sense" for certain purposes in In re Price Bros. & Co. and The Board of Commerce of Canada (1920) 60 S.C.R. 265 at p. 279.

The War of 1914-18 did not end for the purposes of the War Measures Act until the necessary proclamations had been made. When war broke out in 1939 the necessary proclamation was made to bring the Act into operation.

After the termination of actual hostilities in 1945 Parliament dealt with the matter differently by passing the Transitional Act, which included sec. 5:

"This Act shall come into force on the first day of January one thousand
20 nine hundred and forty-six and on and after that day the war against Germany and Japan, shall for the purposes of the War Measures Act, be deemed no longer to exist."

By section 4 of the Transitional Act:

"Without prejudice to any other power conferred by this Act, the Governor-in-Council may order that the orders and regulations lawfully made under the War Measures Act or pursuant to authority created under the said Act in force immediately before the date this Act comes into force shall, while this Act is in force, continue in full force and effect subject to amendment or revocation under this Act."

30 It might be argued that Parliament expected the emergency would be at an end of the 31st December 1946 when the Transitional Act was to expire if Parliament met during November or December 1946, or on the fifteenth day after Parliament met if it first met in 1947: see sec. 6(1).

But that section also provided for the continuation of the Act for a period not exceeding one year if addresses were presented for its continuation. As has appeared, the Act was continued to May 15, 1947; P.C. 1112 and see 10 Geo. VI (1946) cap. 60, s.1.

I cannot, in this case, say that the emergency has as yet ceased to exist, and must, therefore, hold that the Transitional Act is *intra vires.*

That being so does the Transitional Act authorize the passing of P.C. 1292?

This involves not only further consideration of that Act but also of the War Measures Act and a comparison of the two because most of the decisions to which I have been referred as authorities were decided on The War Measures Act.

By The Interpretation Act, R.S.C. 1927, c.1, s.14, the preamble of every Act shall be deemed a part thereof, intended to assist in explaining the purport and object of the Act. I consider the Preamble of the Transitional Act of real importance.

It reads:

"WHEREAS the *War Measures Act* provides that the Governor in Council may do and authorize such acts and things, and make from time to time such orders and regulations, as he may by reason of the existence of real or apprehended war deem necessary or advisable for the security, defence, peace, order and welfare of Canada; And whereas during the national emergency arising by reason of the war against Germany and Japan measures have been adopted under the *War Measures Act* for the military requirements and security of Canada and the maintenance of economic stability; And whereas the national emergency arising out of the war has continued since the unconditional surrender of Germany and Japan and is still continuing; And whereas it is essential in the national interest that certain transitional powers continue to be exercisable by the Governor in Council during the continuation of the exceptional conditions brought about by the war and it is preferable that such transitional powers be exercised hereafter under special authority in that behalf conferred by Parliament instead of being exercised under the *War Measures Act;* And whereas in the existing circumstances it may be necessary that certain acts and things done and authorized and certain orders and regulations made under the *War Measures Act* be continued in force and that it is essential that the Governor in Council be authorized to do and authorize such further acts and things and make such further orders and regulations as he may deem necessary or advisable by reason of the emergency and for the purpose of the discontinuance, in an orderly manner as the emergency permits, of measures adopted during and by reason of the emergency: . . ."

There is no definition of "transitional powers" anywhere in the Act but I am satisfied they are intended to be those given by sec. 2(1) to be referred to later.

It is stated by the preamble to be preferable that these "transitional powers" should be exercised "hereafter" under special authority in that behalf conferred by Parliament instead of being exercised under the War Measures Act.

The preamble further recites:

1. ". . . it is essential in the national interest that certain transitional powers continue to be exercisable by the Governor in Council during the continuation of the exceptional conditions . . ."

2. ". . . in the existing circumstances it may be necessary that certain acts and things done and authorized and certain orders and regulations made under the *War Measures Act* be continued in force . . ."

3. ". . . it is essential that the Governor in Council be authorized to do and authorize such further acts and things and make such further orders and regulations as he may deem necessary or advisable

> by reason of the emergency and for the purpose of the discontinuance, in an orderly manner as the emergency permits, of measures adopted during and by reason of the emergency: . . ."

As I read this preamble with its emphasis on continuance and discontinuance there is compelling force in the argument that it was not the intention of Parliament to authorize the imposition of new controls or entirely new measures unless those new measures look to the discontinuance of the controls.

Section 2(1) of the Transitional Act has already been set out. With this should be contrasted sec. 3(1) of the War Measures Act:

"The Governor in Council may do and authorize such acts and things, and make from time to time such orders and regulations, as he may by reason of the existence of real or apprehended war, invasion or insurrection deem necessary or advisable for the security, defence, peace, order and welfare of Canada; and for greater certainty, but not so as to restrict the generality of the foregoing terms, it is hereby declared that the powers of the Governor in Council shall extend to all matters coming within the classes of subjects hereinafter enumerated, that is to say:—

> (a) Censorship and the control and suppression of publications, writings, maps, plans, photographs, communications and means of communication;

(b) Arrest, detention, exclusion and deportation;

(c) Control of the harbours, ports and territorial waters of Canada and the movements of vessels;

(d) Transportation by land, air, or water and the control of the transport of persons and things;

(e) Trading, exportation, importation, production and manufacture;

(f) Appropriation, control, forfeiture and disposition of property and of the use thereof.

"All orders and regulations made under this section shall have the force of law, and shall be enforced in such manner and by such courts, officers and authorities as the Governor in Council may prescribe, and may be varied, extended or revoked by any subsequent order or regulation; but if any order or regulation is varied, extended or revoked, neither the previous operation thereof nor anything duly done thereunder, shall be affected thereby, nor shall any right, privilege, obligation or liability acquired, accrued, accruing or incurred thereunder be affected by such variation, extension or revocation. 1914 (2nd session), c.2 s.6."

It has been held that the enumeration in the subclauses of sec. 3(1) of the War Measures Act of "groups of subjects which it appears to have been thought might possibly be regarded as 'marginal instances' as to which there might conceivably arise some controversy whether or not they fell within the first branch of the section" did not limit the general powers given by the first branch of the section: see per Duff, J. in Re Gray (1918) 57 S.C.R. 150 at p. 169 (the section was then 6(1)).

But sec. 2(1) of the Transitional Act does not contain the words appearing in sec. 3(1) of the War Measures Act and made the basis of the previous decisions. Having in mind the expressed intention of Parliament this would be expected. There is no reference to (1) the existence of real or apprehended war, invasion or insurrection, or (2) the security defence, peace, order and welfare of Canada. The words "And for greater certainty, but not so as to restrict the generality of the foregoing terms" have been dropped.

The only conclusion to which I can come is that the sole powers of the Governor-in-Council to enact P.C. 1292 must be found in clauses (a) to (e) of sec. 2(1), interpreted with the assistance of the preamble which helps to explain the purport and object of these provisions: Interpretation Act, sec. 14, *supra.*

P.C. 1292 recites:

"Where as it is necessary by reason of the continued existence of the national emergency arising out of the war against Germany and Japan, for the purpose of maintaining controlling and regulating supplies and prices to ensure ecomonic stability and an orderly transition to conditions of peace, to make provision for

(a) 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;

(b) the closing out and termination of any open futures contracts relating to oats or barley outstanding in any futures market in Canada; and

(c) the prohibition of the export of oats or barley by persons other than the Canadian Wheat Board until otherwise provided;

and other matters incidental thereto as set forth in the Regulations set out below . . ."

All parties are agreed that I may take judicial notice of all Orders and Regulations made under the War Measures Act, and that no order or regulation has hitherto been made to vest all oats and barley in commercial positions in Canada in the Board. This provision is entirely new.

It is advisable here to see how P.C. 1292 purports to carry out this vesting. "Under the powers conferred by" the Transitional Act the Governor-in-Council "amended" the Western Grain Regulations (P.C. 3222 of July 31, 1946) by "revoking" Part III thereof and by substituting new regulations as Part III thereof.

Section 22 of the new Part III provides:

"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 18th day of March 1947, are hereby vested in the Canadian Wheat Board".

By sec. 21(1) (a) " 'barley' means barley grown in the designated area". Sec. 2(8) of The Western Grain Regulations provides that "designated area" means the area comprised by Manitoba, Saskatchewan and Alberta, the Peace River District and the Creston Wynndel area in British Columbia and such parts of Ontario lying in the Western Division as the Board may from time to time designate. By sec. 21(1) (e) " 'oats and barley in commercial positions'

means oats and barley which are not the property of the producer thereof and are in store in warehouses, elevators or mills whether licensed or unlicensed, or in railway cars or vessels or in other facilities in Canada for the storage or transportation of grain".

P.C. 1292 did not attempt to vest in the Board all the oats and barley in Canada but only oats and barley grown in the designated area and in commercial positions and not bought from the Board or the producer.

By sec. 36(c) of the new Part III of The Western Grain Regulations as enacted by P.C. 1292 the Board may, by order, 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 22 that he has in his custody, possession or control. It was under this provision that the Board assumed to make the orders of April 7, 1947 and May 27, 1947, above set out.

P.C. 1292 (sec. 23(1) and 21(1) (e) (ii)) provided that the Board should pay to persons who, like Nolan, were, on or before March 18, 1947, the owners of barley vested in the Board by sec. 22 the sum of 64¾ cents a bushel subject to certain adjustments.

Nolan's barley was his property; it was property within a province and the effect of P.C. 1292 was to deprive him of his property, something Parliament had no power to do under ordinary circumstances.

It is well settled that a Provincial Legislature may pass laws which deprive a person of his property in the province, with or without compensation, and that if the intention is expressed in clear distinct and unambiguous language the Courts are powerless to interfere. If authority is needed it may be found in Florence Mining Co. v. Cobalt Lake Mining Co. (1909) 18 O.L.R. 275, affirmed (1911) 2 A.C. 412; 43 O.L.R. 474, and the other cases collected in 11 Can. Abr. Cols. 355 et seq.; and see 31 Hals. p. 505.

Parliament admittedly has "the power to enact all provisions which are necessarily incidental to effective legislation upon any subject falling within any of the classes expressly enumerated in sec. 91" of the British North America Act: Dysart, J. (now J.A.) in North West Mortgage and Finance Co. Ltd. v. Commissioner of Excise (1945) 52 M.R. 360, holding that the Excise Act in so far as it provides for the confiscation of the property of innocent citizens of a province (in this case a motor-car) is *ultra vires*.

But unless the matter dealt with falls within one or more of such classes Parliament can legislate, if at all, only under the authority of an act such as the War Measures Act or the Transitional Act: Fort Frances Pulp and Power Co. Ltd. v. Manitoba Free Press Co. Ltd., *supra*.

The Canadian Grain Act (9-10 Geo. V. c.40) (Dom.) provided by sec. 95(7) that:

"In the month of August in each year stock shall be taken of the quantity of each grade of grain in the terminal elevators; if in any year after the crop year ending the thirty-first day of August, 1919, the total surplus of grain is found in excess of one quarter of one per cent of the gross amount of the grain received in the elevator during the crop year, such excess surplus shall be sold annually by the Board of Grain Commissioners and the proceeds thereof paid to the said Board . . .".

In The King v. The Eastern Terminal Elevator Co. (1924) Ex. C.R. 167, the President (Maclean, J.) held this section ultra vires on the ground that it dealt with a subject matter, the right of ownership of the surplus of grain, which fell within one of the enumerated legislative powers assigned to the provincial legislatures, property and civil rights; (p. 178). This decision was affirmed by the Supreme Court of Canada; (1925) S.C.R. 434.

The necessity for clear, distinct, and unequivocal, powers of "appropriation" in cases not coming within the classes mentioned in sec. 91 of the B.N.A. Act was recognized by Parliament when it passed the War Measures Act. Section 3(f) originally sec. 6(f) gave specific powers of "appropriation, control, forfeiture and disposition of property and the use thereof."

This was one of the "marginal" instances referred to by Duff, J. in Re Gray, *supra*, when he said (p. 168), referring to sec. 3:

"There is in the second branch of the section an enumeration (an enumeration let it be said rather of groups of subjects which it appears to have been thought might possibly be regarded as 'marginal instances as to which there might conceivably arise some controversy whether or not they fell within the first branch of the section) of particular subjects and a declaration that the powers thereby given to the Governor-in-Council extended to these subjects so enumerated; but there is also a declaration that this enumeration shall not have the effect of limiting the 'generality' of the first branch of the section . . ."

Besides the provision for "appropriation . . . of property" the War Measures Act contained sec. 7.

"Whenever any property or the use thereof has been appropriated by His Majesty under the provisions of this Act, or any Order in Council, order or regulation made thereunder, and compensation is to be made therefor and has not been agreed upon, the claim shall be referred by the Minister of Justice to the Exchequer Court, or to a superior or county court of the province within which the claim arises, or to a judge of any such court".

When Parliament passed the Transitional Act for the reasons set out in the preamble already quoted, and I refer especially to the declarations that it is essential that *certain* transitional powers continue, and it is preferable that such powers be exercised hereafter under special authority in that behalf conferred by Parliament instead of under the War Measures Act, it did not include in the Transitional Act any provisions resembling secs. 3(1) (f) or 7. It is, perhaps, unnecessary to remark that sec. 3(2) of the Transitional Act is a penalty and enforcement section and entirely different from sec. 7 of the War Measures Act.

In my opinion these omissions were deliberate and show that it was not the intention of Parliament in passing the Transitional Act to confer on the Governor-in-Council the power of "appropriation of property" but to withold it. This, I should think, would put it beyond doubt that section 22 (P.C. 1292) is *ultra vires.*

But, the plaintiffs argue that sec. 2(1) (c) of the Transitional Act gives power to the Governor-in-Council to enact sec. 22, that the power to maintain, control, and regulate, supplies and prices includes a power to "appropriate" oats and barley.

To this there are several answers: (1) the deliberate omission from the Transitional Act of clear, distinct and unequivocal powers of appropriation; (2) the absence, already pointed out, from the "first branch" of sec. 2(1) of the Transitional Act of the much more comprehensive words of the first branch of sec. 3 of the War Measures Act; (3) the clear intention that only "certain" transitional powers should be continued; (4) the fact that the Act only provided for the continuance of powers and not for new powers; (5) the fact that the power to make further orders and regulations is limited by the preamable to the purpose of discontinuance of measures adopted during and by reason of the emergency.

All these matters have already been referred to.

I am further of opinion that the words of sec. 2(1) (c) of the Transitional Act just quoted above do not confer a power of appropriation, although counsel for the plaintiffs argues they do. Counsel for the defendants referred me to the dictionary meanings of the words "maintain", "control" and "regulate". I have considered these and the cases where these words have been considered. These words have several meanings in law but, and I adopt the language of Farwell, J., in Fowler (John) & Co. (Leeds) v. Duncan (1941) 1 Ch. 450, at 453, where he was dealing with the words "control" and "controller" in the Defence (General) Regulations: "In my judgment, it does not really assist

me to consider what the position of a controller under other enactments may have been, or what construction the courts have put on the words in other connections and in other enactments. I have to consider what the words in this regulation mean."

Having in mind the considerations I have dealt with at length and "without attempting to define the limits of the" expression maintain, control, and regulate . . . supplies and prices . . . "(a task I think it inadvisable to attempt)" — I am using the words of Lord Mersey in Gillow v. Durham County Council (1913) A.C. 54 at p. 74 — I am of opinion that the expression was never intended to include a power of appropriation.

I hold, therefore, that section 22 of P.C. 1292 is *ultra vires*. Section 22 is really section 22 of Part III of the Western Grain Regulations, but for convenience in the pleadings and in argument it was designated as sec. 22 of P.C. 1292.

If section 22 in *ultra vires* then all the other provisions dependant on it and designed to carry it into effect are *ultra vires* too. These provisions can be separated from the other provisions. I hold, then, that sections 23 to 27, both inclusive, and section 36 are also *ultra vires*. The formal judgment will have to make it clear that P.C. 1292 is *ultra vires* in so far as it enacts sections 22 to 27 and section 36 of Part III of the Western Grain Regulations and that those sections of the Regulations are *ultra vires*.

I point out at this stage that I have come to the foregoing conclusion without considering any of the evidence taken subject to objection and solely upon a consideration of the Transitional Act, P.C. 1292, and the authorities.

But, as arguments were urged before me based upon this evidence, I should make some reference to them and to that evidence in case I am in error in the conclusion at which I have arrived.

The defendants urge that in construing P.C. 1292 I may look at the Instructions to the Trade referred to above, and take into consideration what the Board did from March 17th on.

Instruction No. 59 (Exhibit 2) commences: "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 . . ."

Paragraph 4 of the outline reads:

"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 63¾ cents per bushel for barley and 51½ cents per bushel for oats, all stocks in their possession at midnight to-night, March 17th, Under certain conditions these stocks will be returned to the holder for resale".

It is to be observed that Exhibit 2 does not, in terms, purport to vest all oats and barley in the Board; it speaks in terms of a compulsory sale to the Board at the ceiling price as of midnight March 17, 1947. It is not until P.C. 1292 is passed, 3 April, 1947, that there is a "vesting" in terms.

The price of 64¾ cents per bushel for barley was the "maximum price", the ceiling price of barley on March 17. This "maximum price" was increased to 93 cents, the increase to be effective midnight March 17. (Instruction No. 59, Exhibit 2). On March 18, by Instruction No. 61 (Exhibit 4), the Board announced that it would "support Canadian Western barley basis in store Fort William/Port Arthur" at certain prices: that of No. 3 C.W. 6 Row barley being 91 cents. This meant that the Board would purchase all such barley offered on or after March 18, at 91 cents per bushel. Actually barley at once went to the maximum price of 93 cents, something which would seem to be inevitable when prices for barley at Chicago and Minneapolis were so much higher and there was always the possibility of the export ban being removed at any time in the "transitional period".

If on March 18 Nolan had sold his barley to the Board at the compulsory price of 64¾ cents the Board could have sold it in Canada the same day at 93 cents and in the United States at a much higher price.

On March 20, Instructions No. 64 (Exhibit 7), *supra,* was issued and all of the owners of oats and barley except Nolan either before or after April 3, paid 28½ cents per bushel for barley and 13½ cents per bushel for oats as stated above. The quantities of such grain in commercial positions on March 14 and March 21 have already been given. Exhibit 14 shows that on April 3, 1947, there were 18,602,588 bushels of barley and 28,240,661 bushels of oats in commercial positions, and 32,132,972 bushels of barley and 68,632,307 bushels of oats on prairie farms available for delivery. It also shows that on that date barley of a comparable grade to Nolan's was selling in Minneapolis at $1.86 to $1.89 per bushel and in Chicago at $1.60 to $2.00 per bushel.

It is apparent that the Board was thus in a position, having regard to the large amounts of grain involved, to make very substantial "profits" and P.C. 1292 required these profits to be paid into the Consolidated Revenue Fund: sec. 27(2).

The defendants point out that the Board did not, prior to April 3, require all the owners of oats and barley in Canada to sell to the Board but only the owners of these grains in commercial positions and only if the grains were grown in the designated area. They also point out that P.C. 1292 vested only such grains in the Board.

They say I can find the reason for this in the Outline of Government Policy attached to Instruction No. 59 (Exhibit 2) where it is given as being done "to avoid the fortuitous profits to commercial holders of oats and barley that would otherwise result from the action" taken.

The plaintiffs say first that none of these facts are relevant and that the whole issue must be determined on a consideration of the Transitional Act and P.C. 1292 standing alone. They then say that even if Instruction No. 59 can be looked at the Outline of Government Policy attached cannot. They add that such a statement cannot bind the Crown even if it might bind the Board as a representative. They deny that it binds the Board.

The defendants say that the Board is the agent of the Crown; that the Board took that stand in the interpleader proceedings and cannot now say that it has only been the agent of the Crown since it was declared so by the amendment to the Wheat Board Act already referred to.

I am unable to see that it makes any difference in this case whether or not the Crown is a party to this action. Speeches made in Parliament may not be referred to in the interpretation of a statute, and it would seem the same principle should apply to the interpretation of an Order-in-Council made under a statute. The statement of Government Policy must have been made in the course of a speech in Parliament: the "outline" is at most a synopsis of it. In my opinion the "outline" is not relevant or admissable and must be disregarded. The authorities down to 1939 are collected by Dean Vincent Macdonald in an article in (1939) 17 Can. Bar Review, p. 76, "Constitutional Interpretation and Extrinsic Evidence." I have found this Article most helpful and I refer also to his recent Article in (1948) 26 Can. Bar Review 21, "The Constitution in a Changing World."

If P.C. 1292 is within the powers of the Governor-in-Council and is not for some reason in law invalid the fact that it is confiscatory or that it is discriminatory cannot, in my opinion, be a ground of attack. That is one of the matters in which Parliament must be the sole judge; it is what Duff, C.J. referred to in the Chemicals Reference as "an enactment of the highest political nature."

I cannot see that the fact that P.C. 1292 is confiscatory or discriminatory is a "reason in law" for declaring it invalid if it is otherwise *intra vires.*

Are the Instructions to the Trade relevant and admissible in these actions and may I consider what was done under them? So far as I can see the Board had not the power to do what it purpoted to do between March 17 and April 3. This point was not argued but it was apparently thought necessary to pass P.C. 1292 in an attempt to give the Board the power it was exercising. As has been seen, a vesting in the Board was resorted to instead of a compulsory sale to the Board.

The wording of sec. 22 of P.C. 1292 does not declare the vesting to be "as of March 18", and interesting questions might arise on the interpretation of this section in respect to sales to the Board under Exhibits 2 and 7.

There was much argument whether what was done under Exhibit 7 by all the owners of barley and oats in commercial positions other than Nolan was a sale to the Board and a repurchase. No grain and no grain documents changed hands but that was a mere formality and I take the view that in essence the transactions were sales to the Board by the owners and resales to the owners by the Board, in all of which the Board made a profit.

There was also some argument whether the payment of 64¾ cents per bushel for barley, for example, could be considered "compensation" having in mind the provisions of sec. 7 of the War Measures Act and the arguments in respect of "compensation" already dealt with. The defendants, of course, pointed out that compensation should not be fixed by an interested party but by the Courts; and that it was idle to say that compensation was paid when 64¾ cents was allowed for a commodity then worth 93 cents at least.

If a power of appropriation was duly given it would seem to make no difference whether or not it was a power to appropriate without compensation. If no power of appropriation was duly given, which I have held to be the case, the question does not arise in these actions.

However, the disputed evidence may have a bearing on the last point I have to deal with, so I shall consider its admissibility in connection with the defendants submission that P.C. 1292 cannot stand because it is an attempt to impose a tax or impost and sections 53 and 54 of the British North America Act have not been complied with. This seems not to be a question of *ultra vires* but to be an attack on P.C. 1292 which comes within the second part of Lord Wright's statement in the Japanese case, *supra,* where he says the Court may go on to decide if the order, which may be *intra vires,* is not "for some reason in law invalid".

Sections 53 and 54 of the British North America Act provide:

"53. Bills for appropriating any part of the public revenue, or for imposing any tax or impost shall originate in the House of Commons."

"54. It shall not be lawful for the House of Commons to adopt or pass any vote, resolution, address or bill for the appropriation of any part of the public revenue, or for any tax or impost, to any purpose that has not been first recommended to that House by message of the Governor General in the session in which such vote, resolution, address or bill is proposed."

In his judgment in the Chemicals Reference, *supra,* Duff, C.J. said ((1943) S.C.R. at p. 10):

"It is not necessary for the purposes of the present Reference to consider whether it is within the power of Parliament, even in an emergency, to give authority to the Governor General in Council to exercise legislative powers in relation to such matters, as for example, those within the scope of sections 53 and 54 of the British North America Act. It is in the highest degree unlikely that any such question will arise touching such matters."

This branch of the defendants' argument is based upon the effect of sections 22, 24 and 27 of the new Part III of the Western Grain Regulations enacted by P. C. 1292.

By sec. 27(1) the Board is directed from time to time to sell all oats or barley vested in it under section 22 at such prices as it may consider reasonable and by sec. 27(2) the net profits arising from such sales shall be paid into the Consolidated Revenue Fund.

Section 24 does not apply to Nolan's case but under it the Board might receive certain moneys which also are, by sec. 27(2), to be paid into the Consolidated Revenue Fund.

Sec. 27(3) provides that the Board shall be reimbursed in respect of net losses arising from the operations of the Board in respect of oats and barley vested in it by sec. 22, out of monies provided by Parliament.

This issue so far turns on matters appearing on the face of P.C. 1292 and the facts, of which I may take judicial notice, that P.C. 1292 did not originate in the House of Commons, and that there was no message from the Governor-General recommending this alleged tax or impost.

So far as I have been able to find the point raised is a new one. It will be recalled that in the Chemicals Reference, *supra,* the Supreme Court held that paragraph 4 of the Order-in-Council was *ultra vires* as in conflict with sec. 7 of the War Measures Act. Paragraph 4 provided that the compensation to which a person might be entitled whenever the Controller took possession of any chemicals or equipment or real or personal property should be as prescribed and determined by the Controller with the approval of the Minister. No question of taxation arose and the remarks of Duff, C.J. quoted above in

which he refers to sec. 53 and 54 of the B.N.A. Act were evidently made for the purpose of qualifying his earlier statements and keeping open the question even though he thought it highly unlikely it would ever arise.

When P.C. 1292 appropriates an individual's property by vesting it in the Board which is to pay for it an arbitrary fixed price and then directs the Board to sell that property and pay the profits from such sale into the Consolidated Revenue Fund is it imposing taxation?

In the King v. Eastern Terminal Elevator Co., already referred to, Duff, J. said of the provision of the Canadian Grain Act set out above:

"The particular provision, if it stood alone, might perhaps be sustained as a tax, but it cannot be separated from its context; it is only one part of a scheme for the regulation of elevators." (p. 447).

In the Court below Maclean, P. said: (p. 181).

"If the legislation was primarily designed as a taxation scheme, more specific and appropriate language would I think have been employed to express that intention. The legislation was in reality designed to limit the profits of terminal elevators. It was the result of a public inquiry into the profits of terminal elevators. Subsection 7 of section 95 seems to anticipate a surplus of grain as being a probable event at the end of a years operations of terminal elevators, and enacts that any surplus over one quarter of one per cent shall be sold by the board. It is with the surplus grain the statute deals with (sic), and that seems altogether the purpose of the legislation, and not taxation, and the evidence supports that view. Private elevators, that is elevaors which buy and sell grain, as well as store grain, and country elevators, are not subject to this legislation. If the legislation was intended to be merely a taxing statute, it is improbable these classes of elevators would be relieved of the tax and only terminal elevators made subject thereto. Taxing laws should not only be for a public purpose, but should ensure uniformity in assessment and contribution, and should operate with the same effect in all localities in respect of the same class of property. I am of the opinion it was not intended as taxing legislation, and that its validity cannot be upheld as an exercise of the powers of Parliament in respect of the matter of taxation."

The surplus grain remaining in the terminal in that case was grain that would remain after the holders of all warehouse receipts and other documents of title to grain had had their claims satisfied. It was argued that this grain did not belong to Eastern Terminal Elevator Company and in fact that it belonged to no one. The company claimed that it must have resulted from cleaning operations. The Court did not find it necessary to determine this point and held the section in question *ultra vires* for the reasons already set out above.

In the Eastern Terminals case counsel for the Crown unsuccessfully sought to uphold the section on the ground that it was valid taxation. In this case counsel for the defendants attack P.C. 1292 on the ground that it imposes a tax. On the best consideration I have been able to give the matter I am of opinion that P.C. 1292 is not, and was not intended to be, taxing legislation, and that it cannot be successfully attacked on that ground.

Having come to this conclusion it is not necessary to decide on the relevancy or admissability of the disputed evidence, a question which otherwise would have given me a great deal of difficulty.

I should mention a point which was not argued but which arises on reading the Eastern Terminals case. Duff, J. said in that case ((1925) S.C.R. at p. 447): "There is one way in which the Dominion may acquire authority to regulate a local work such as an elevator; and that is by a declaration properly framed under section 92(10) of the B.N.A. Act". This is the section empowering Parliament to declare works to be for the general advantage of Canada or for the advantage of two or more of the Provinces.

By 15-16 Geo. V. (1925) c.33, s.234, such a declaration was made in the Canada Grain Act and has since been a part of the Act. In 1947 when the Wheat Board Act was so extensively amended (see *supra*) a similar declaration was made: 11 Geo. VI, cap. 15, s.39.

Previously the Wheat Board Act had only the following definition of elevator:

> " 'evelator' means a grain elevator or warehouse declared by . . . The Canada Grain Act . . . to be a work for the general advantage of Canada."

It might be that by virtue of this legislation the Dominion Government would have the right to take possession of grain in a terminal if no one owned that grain, but I express no opinion on that question. I feel certain it would not enable that Government to confiscate the grain of an individual stored there.

During the trial some question was raised of the power of Parliament and of the Governor-in-Council to delegate powers but I stated that in my opinion the course of authorities from Re Gray, *supra,* to the Japanese case, *supra,* put the power to delegate beyond doubt and the question was not argued.

In the result the action of the Board is dismissed and as the defendants have succeeded on the main issue, the others being collateral, they will have their costs. The case is one of special importance and difficulty and the costs will be taxed without regard to the limitation imposed by Rule 630.

The plaintiff Nolan is entitled to succeed in his action against Hallet and to have possession in Canada of his barley and the documents of title thereto. As matters stood at the date of the trial the barley might not be exported. This

situation may change at any time and may have changed already. That is something with which I have nothing to do. In the circumstances Nolan and Hallet can probably arrange things between themselves. If they cannot the matter may be spoken to.

Many of the authorities mentioned in these reasons were discussed in the argument and the following cases, all of which I have considered, were also referred to by counsel:

Atty.-Gen. (Ontario) v. Canada Temperance Federation, (1946) A.C. 193; (1946) 2 D.L.R. 1; (1946) 2 W.W.R. 1.

Campbell Motors Ltd. v. Gordon, (1946) 3 W.W.R. 177.

Rex v. Comptroller of Patents, (1941) 2 K.B. 306.

Atty.-Gen. (Alberta) v. Atty.-Gen. (Canada) (1938) A.C. 117; (1938) 2 D.L.R. 81.

Russell v. Regina (1882) 7 A.C. 829.

Board of Commerce Case (1922) 1 A.C. 191.

Atty.-Gen. (British Columbia) v. Atty.-Gen. (Canada) Re section 498 A. Criminal Code; (1937) 1 W.W.R. 317.

Atty.-Gen. (British Columbia) v. Atty.-Gen. (Canada) Re Farmers Creditors Arrangement Act, (1937) 1 W.W.R. 320.

Atty.-Gen. (British Columbia) v. Atty.-Gen. (Canada) Re Natural Products Marketing Act, 1934, (1937) 1 W.W.R. 328.

Atty.-Gen. (Ontario) v. Atty.-Gen. (Canada) Re Dominion Trade and Industry Commission Act, 1935, (1937) 1. W.W.R. 333.

Atty.-Gen. (Canada) v. Atty.-Gen. (Ontario) Re Employment and Social Insurance Act, (1937) 1 W.W.R. 312.

The King v. National Fish Co. (1931) Ex. 75.

Attorney General v. Wilts United Dairy, (1921) 37 T.L.R. 884,

Brockelbank v. The King, (1925) 1 K.B. 52.

Rex v. Halliday, (1917) A.C. 260.

Lower Mainland Dairy Products Board etc. v. Turner's Dairy Ltd. (1941) S.C.R. 573.

Lovibond v. G.T.R. (1936) 3 D.L.R. 449.

Atty.-Gen. (Alberta) v. Atty.-Gen. (Canada) Re Alberta Bill of Rights Act, (1947) 2 W.W.R. 401; (1947) 4 D.L.R. 1.

Lipton v. Ford, (1917) 2 K.B. 647.

Rex v. Irwin, (1926) Ex. 127.

Powell v. Apollo Candle Co. Ltd. (1885) 10 A.C. 282.

DELIVERED this 19th day of 1948. " E. K. WILLIAMS." C.J.K.B.

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,
Judges of Appeal

} Thursday, the 10th day of March, A.D. 1949.

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 March 22nd, 1948),
(Defendant) RESPONDENT.

(SEAL)

This Appeal coming on for hearing on the 25th, 26th, 27th, 28th and 31st days of January, 1949, and the 1st day of February, 1949, before this Court, in the presence of Counsel for all the parties, on hearing what was alleged by Counsel aforesaid and upon reading the pleadings and proceedings;

And it appearing that pursuant to the orders of this Court and the Court of King's Bench made December 7, 1948, the barley, the subject matter of this action, was sold and the monies arising from the sale thereof namely, $48,175.00 were paid into Court to the credit of this action and the credit of a certain action referred to as No. 138/47 in the records of the said Court of King's Bench;

And it further appearing that upon the application of the Respondents, Manitoba Pool Elevators, Canadian Consolidated Grain Company Limited, United Grain Growers Terminals Limited and Fort William Elevator Company Limited, on the 1st day of February, 1949, during the hearing of the said appeal, and upon all parties to this action having agreed and consented before this Court, that the said applicants should be paid their storage charges amounting to the sum of $9,720.30 immediately out of the said monies in Court, and should then cease to be parties to the action, with the matter of costs reserved but such costs to be dealt with and paid in such manner as this Court might determine, this Court with the consent of all parties to this action, did order:

"(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 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.

(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."

And it further appearing that the said storage charges in respect of the said barley amounting to the total sum of $9720.30 were paid to the Respondents, Manitoba Pool Elevators, Canadian Consolidated Grain Company

Limited, United Grain Growers Terminals Limited and Fort William Elevator Company Limited, out of the said monies in Court and the balance of the said monies remains in Court;

This Court having directed this Appeal to stand over for judgment and the same coming on this day for judgment:

THIS COURT DID ORDER AND ADJUDGE:

1. That the Appellant appeal be and the same is hereby dismissed.

2. That the Respondent, Jeremiah J. Nolan, is entitled to the money which now remains in the Court of King's Bench to the credit of this action and to the credit of a certain action referred to as No. 138/47 in the records of the said Court of King's Bench, namely the sum of $38,454.70 and accrued interest.

3. That the Respondents, Hallet and Carey Limited and Jeremiah J. Nolan, do each recover against the Appellant their costs of this Appeal and of the Action in the Court below to be taxed without regard to the limit fixed by Section 31 of the Court of Appeal Act or King's Bench Rule 630.

4. That the Respondents, Manitoba Pool Elevators, Canadian Consolidated Grain Company Limited, United Grain Growers Terminals Limited and Fort William Elevator Company Limited, do each recover against the Appellant, the Canadian Wheat Board, their costs of this action and of this Appeal, to be taxed without regard to the limit fixed by Section 31 of the Court of Appeal Act or King's Bench Rule 630.

CERTIFIED this 15th day of June, 1949.

"S. HARDYMENT"
Deputy Registrar.

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

Entered June 21st, 1949
Judgment and Order
Book *72*
"E. J. MOIST," E.C.

In the Court of Appeal

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,
HALLET AND CAREY LIMITED,

DEFENDANTS,

AND

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

DEFENDANT.

McPHERSON, C.J.M.

I have had the opportunity of reading the judgment of my brother Adamson herein and concur with same. There is a further point which I think deserves some special consideration.

Under the National Emergency Transitional Powers Act 1945, ch. 25, certain powers under the War Measures Act R.S.C. 1927, ch. 206, were continued. The reasons for same are set forth in the preamble in the last clause of same as follows:

> "And whereas in the existing circumstances it may be necessary that certain acts and things *done and authorized and certain orders and regulations made under the War Measures Act* be continued in force and that it is essential that the Governor in Council be authorized to do and authorize such further acts and things and make *such further orders and*

regulations as he may deem necessary or advisable by reason of the emergency and for the purpose of the discontinuance, in an orderly manner as the emergency permits, of measures adopted during and by reason of the emergency."

Under section 2(1):

"The Governor in Council may do and authorize such acts and things, and make from time to time such orders and regulations, as he may, *by reason of the continued existence of the national emergency arising out of the war against Germany and Japan,* deem *necessary* or advisable for the purpose of

(c) *maintaining, controlling and regulating suplies* and services, prices, transportation, use and occupation of property, rentals, employment, salaries and wages *to ensure economic stability and an orderly transition to conditions of peace;*

(e) *continuing or discontinuing in an orderly manner, as the emergency permits, measures adopted during* and by reason of the war."

It will be noted that in the preamble, acts and things done and authorized under the War Measures Act were to be continued in force but such further orders and regulations were to be for the purpose of the discontinuance in an orderly manner as the emergency permits of measures adopted during and by reason of the emergency.

In subsection (c) above quoted, regulations were for the purpose of maintaining, controlling and regulating supplies, and under subsection (e), for continuing or discontinuing in an orderly manner. In no portion of the Act was there any power given to extend the controls. But the purpose of the Act was to allow a continuance of certain controls then in existence and to give power to modify same in order to return to normal conditions. As a further indication that this was the only purpose for passing the Act, section 4 provided that all orders and regulations which had previously been made under the War Measures Act should remain in full force and effect *subject to amendment or revocation under this Act.*

Under Order-in-Council 1292, it was sought to extend the control over barley by vesting the title to certain barley located in a certain designated area and in the hands—not of the producers in that area—but only in the hands of dealers situated in that area. The order was not effective against the balance of the barley in Canada outside of the designated area although it consisted of the major portion of the total quantity in Canada at that time, nor did it

effect such portion thereof even if it was in the hands of dealers. No attempt was made to show that there was an emergency in reference to barley, nor as to how the vesting of a portion thereof *assisted in the discontinuance* of the control of same in an orderly manner. Even during the war and under the War Measures Act barley had not been taken over by the Government but was subject only to control as to price and export. I am of the opinion that the Act relied upon did not give any power to extend, by Order-in-Council, any new control over barley which did not exist at the time of the passing of the Act.

10 "E. A. McPHERSON," C.J.M.

DELIVERED this 10th day of March 1949.

In the Court of Appeal

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,
HALLET AND CAREY LIMITED,

DEFENDANTS,

AND

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

DEFENDANT.

DYSART, J.A.

The Canadian Wheat Board, in the spring of 1947, collected from owners of barley several millions of dollars, for which it gave absolutely nothing in return. It performed that astonishing feat by means of "Instructions" in the nature of Orders, by which it commanded those owners to sell all their barley to the Board at a stated price, with the privilege of re-purchasing the grain at a higher price; or, alternatively, allowed them to retain their barley upon paying the Board the difference between those two prices, namely, 28¼¢ a bushel.

All owners, apparently with one exception, meekly obeyed the Board's command, and, electing to take the alternative, kept their barley and sent in their cheques. That one exception was Jeremiah J. Nolan of Chicago, U.S.A., who refused to obey, on the ground that the Board had no legal authority to

make the demand or to enforce obedience. Mr. Nolan at all material times was the owner of 40,000 bushels of barley, which was held in storage in elevators in Canada, and the warehouse receipts for which were held for him by his agents, Hallet & Carey, Ltd., grain merchants of Winnipeg.

Litigation followed that refusal, and developed into two actions—one by Nolan against Hallet & Carey, Ltd., for possession of his barley; the other by the Canadian Wheat Board (herein referred to as the Board) for delivery to it of the grain and documents of title. The actions were tried together by Williams, C.J., K.B., and resulted in judgment in favour of Nolan in the one suit, and against the Board in the other. The Attorney-General for Canada was, at his request, subsequently added as a party defendant in the Nolan suit for the purpose of appealing that judgment. He appeals. The Board also appeals. Thus the whole set of issues raised by the two suits has necessarily been brought before this Court. The barley has now been sold and the proceeds thereof await their lawful owner. Hallet and Carey Limited, and the five elevator companies, have all withdrawn from the case, and only the real parties remain—the Board as plaintiff (appellant), and Nolan as defendant (respondent).

The first of the "Instructions" with which we are concerned is No. 59, issued on March 17, 1947. It, *inter alia,* raised the maximum price of barley from 64¾¢ a bushel to 93¢ a bushel, effective at midnight on that date. That action of price-raising was within the powers of the Board in its capacity as agent for the Wartime Prices and Trade Board. One effect of the raise was that the price of all barley in Canada immediately rose to the level of the new maximum. As might be expected, Mr. Nolan has no objection to that.

Instruction No. 59 went further. It ordered that "all western . . . barley in commercial channels in Canada as at midnight March 17, 1947, must be sold to the . . . Board" at the former maximum price; and it announced that "barley taken over by the Board at former ceiling prices (64¾¢) will be sold back to the same handlers for domestic consumption at the new support price" (93¢). Three days later, by "Instruction" No. 64, the Board actively offered to sell the barley back, and added: "Holders desirous of taking advantage of the above offer should . . . forward details in writing accompanied by a marked cheque for 28¼¢ per bushel for the quantity involved . . . " The result of those instructions was that no actual sales or re-purchases were made. The grain remained in the hands of its owners for domestic use, and the Board got the money.

All the said Instructions prior to April 3, 1947, were an attempt to carry out the "Outline of Government policy on . . . barley as announced in Parliament Mar. 17, 1947" (a copy of which formed part of Instructions No. 59); those after April 3 were issued by the Board "pursuant to the powers vested in it by Order-in-Council P.C. 1292", and were designed to carry out that Order. The earlier Instructions, so far as they dealt with the sale and repurchase of barley, are now admitted to have been issued without any legal authority or warrant; those subsequent to that date are valid only if said P.C. 1292 is valid. In fact, P.C. 1292 was designed, at least in part, to confirm and validate the actions of the Board under those prior Instructions.

P.C. 1292 was passed by the Governor-General in Council on April 3, 1947, under the National Emergency Transitional Powers Act, 1945, ch. 25, (hereinafter referred to as the Transitional Act). That Act became effective January 1, 1946, and was in force throughout the transactions involved in this appeal. The challenge of validity goes to that Act, as well as to P.C. 1292, on the ground that each is *ultra vires*.

The Transitional Act was, according to its preamble, passed to succeed the War Measures Act, 1914, and to deal particularly with "the national emergency arising out of the war", which emergency " has continued" and "is still continuing". Section 2(1) of the Act—so far as relevant—reads: "The Governor-General in Council may . . . make from time to time such orders and regulations, as he may, by reason of the continued existence of the national emergency arising out of the war against Germany and Japan, deem necessary or advisable for the purpose of . . . (c) maintaining, controlling and regulating supplies and . . . prices . . . to ensure economic stability and an orderly transition to conditions of peace". None of the other specified "purposes" are relevant here. Sec. 2(2) provides that "All orders and regulations made under this Act or pursuant to authority created under this Act have the force of law while this Act is in force . . ." Sec. 2(3) provides for the possible subsequent nullification by Parliament of such regulations.

That Act clearly invades the field of "property and civil rights" which, by the B.N.A. Act, s. 92(13), are committed to the Provincial Legislatures. "But the Parliament of the Dominion in a sufficiently great emergency, such as that arising out of war, has power to deal adequately with that emergency for the safety of the Dominion as a whole. The interests of the Dominion are to be protected, and it rests with the Parliament of the Dominion to protect them. What those interests are the Parliament of the Dominion must be left with considerable freedom to judge" per Lord Wright, in Co-operative Committee

on Japanese Canadians v. Attorney-General for Canada, (1947) A.C. 87 at 101, L.J.R. 836, affirming the Supreme Court of Canada, [1946] S.C.R. 248 Lord Wright continues: (p. 101) ". . . If it be clear that an emergency has not arisen, or no longer exists, there can be no justification for the exercise or continued exercise of the exceptional powers. The rule of law as to the distribution of powers between the Parliaments of the Dominion and the Parliaments of the Provinces comes into play." Many well-known cases are relied upon to support those general principles. From all these, it is clear that the Transitional Act is *ultra vires* unless there was at the time it was passed and sought to be enforced, some existing or continuing national emergency of sufficient magnitude to justify the Dominion Parliament in invading the Provincial field of property and civil rights.

Parliament has declared that the emergency is still continuing. That declaration is peculiarly within the rights of Parliament to make. And although the judiciary has the right, in a proper case, to review Parliament's decision, and has a duty, upon sufficient evidence, to reverse that decision, still the Courts ought not to venture upon such a review or reversal unless the need of doing so is clear. The Courts have always exercised that right "with reluctance": per Lord Haldane in In re the Board of Commerce Act, 1919, and the Combines and Fair Prices Act, 1919, A.-G for Can. v. A.-G for Alta. [1922], 1 A.C. 191 at 200; 11L.J.P.C. 40.

In the case at bar, the immediate issue has to do with the Order-in-Council P.C. 1292. If that Order is within the powers purporting to be conferred by the Transitional Act, then the validity or invalidity of that Act becomes so important that this Court must determine whether or not there was an emergency justifying the Act. But if the Order-in-Council is, in its challenged provisions, outside the powers so conferred by that Act, the Order is *ultra vires* and invalid, whether the Act is invalid or not. And there is then no need to inquire into the validity of the Act.

In my view, P.C. 1292 goes beyond the Act, and to the extent of that excess is invalid. That view renders it unnecessary—and I think inadvisable—for me to deal with the validity or invalidity of the Transitional Act.

P.C. 1292, which was passed nineteen months after the war was terminated, and fifteen months after the Transitional Act became operative, recites that: "WHEREAS it is necessary, by reason of the continued existence of the national emergency arising out of the war against Germany and Japan, for

the purpose of maintaining, controlling and regulating supplies and prices to ensure economic stability and an orderly transition to conditions of peace, to make provision for—

"(a) the vesting in the Canadian Wheat Board of all . . . barley in commercial positions in Canada . . .;

"(b) the closing out and termination of any open futures contracts relating to . . . barley . . .;

"(c) the prohibition of the export of . . . barley by persons other than the Board;

"and other matters incidental thereto as set forth in the Regulations set out below:".

It then enacts that ". . . the Governor General in Council, . . . under the powers conferred by the National Emergency Transitional Powers Act, 1945, is pleased for the reasons aforesaid, to order that" certain earlier Regulations be amended by revoking some of them, and as at March 18, 1947, "by substituting the following Regulations . . ." Then follow Regulations numbers 21 to 36, both inclusive, all designed to give effect to the preamble.

The principle which should be applied in the construction of the Transitional Act and those Regulations, is stated by Lord Wright in Liversidge v. Anderson, [1942] A.C. 206 at 260 and 261, 110 L.J.K.B. 724, thus: "If an Act of Parliament, or a statutory regulation . . . which has admittedly the force of a statute . . . is alleged to limit or curtail the liberty of the subject or vest in the executive extraordinary powers of detaining the subject, the only question is what is the precise extent of the power given. The answer to that question is only to be found by scrutinizing the language of the enactment in the light of the circumstances and the general policy and object of the measure".

Those regulations should therefore be carefully scrutinized if we are to determine how far they are brought into this case, and how far they fail to comply with the authority conferred by the Transitional Act. Regulation No. 21 supplies definitions. By it, "barley" means "barley grown in the designated area". For the meaning of "designated area" we have to look to the Western Grain Regulations (P.C. 3222 of July 30, 1946), where that term is defined to mean all of the Provinces of Manitoba, Saskatchewan and Alberta, and part of the north-west portion of British Columbia. That area is referred to in some of the Regulations as "Western Canada". The same Regulation (No. 21) defines "barley in commercial positions" as meaning barley which is "not the

property of the producer thereof" and which is "in store in warehouses, elevators or mills . . . or in railway cars or vessels . . . in Canada . . ." Regulation No. 22 declares that "all . . . barley in commercial positions in Canada" (with some irrelevant exceptions) is "hereby vested in the . . . Board". Regulations Nos. 23 and 24 declare that the Board will pay for the vested grain the previous maximum price (64¾¢ a bushel). No. 27 states that the Board shall sell the vested barley at reasonable prices. And No. 36 authorizes the Board to terminate or vary contracts "for the sale, purchase, handling, shipment or storage" of barley. The remaining Regulations are in part supplemental or incidental to those herein specifically mentioned, but are not sharply in issue here.

The "orders and regulations" which are authorized by the Transitional Act are, so far as relevant to the case at bar, confined to such as the Governor in Council "may, by reason of the continued . . . emergency, deem necessary or advisable *for the purpose of . . . maintaining controlling* and *regulating supplies*" of barley. The threefold "purpose" sets the outside limit of the power to make regulations. In this respect the Transitional Act differs fundamentally from the War Measures Act, 1914, where the general purposes are expressly declared to be unrestricted by the particular purposes. Judicial decisions interpreting this latter Act are, therefore, of little assistance in the interpretation of the Transitional Act. The *power* inferred by this Act is the measure by which the Regulations must be tested for validity. That power authorizes regulations (a) for "maintaining . . . supplies",—that is, for keeping those supplies in being, for preserving them unimpaired; (b) for "controlling . . . supplies",—that is, for exercising restraint and protection over the actions of other persons respecting those supplies; and (c) for "regulating . . . supplies",—that is, for governing, guiding and directing them by some rule.

Those limited purposes clearly do not authorize the *vesting* regulation (No. 22). The power to vest is not expressed, and it cannot be implied. Least of all is there power to vest retroactively to March 17, 1947. Nor is there any power expressly given to compel sales of barley to the Board. Compulsory sales are not impliedly contained in "maintaining, controlling and regulating supplies",—certainly not at the pre-existing low-scale prices.

Moreover, the "supplies" of barley which the Transitional Act sought to maintain and control were surely those of the whole of Canada; the Act does not suggest that only a small and selected portion of those supplies are to be affected. Yet P.C. 1292 confines the vesting or compulsory sales to only

a *part* of the *western supplies*. Barley which was the property of the producer thereof, whether it remained on the farms or was in commercial positions, as well as barley which had been grown in Eastern Canada, wherever stored, was not sought by Regulation No. 22 to be vested in the Board. The quantity of barley to be affected by that regulation included only about 40 per cent of that grown in Western Canada, and none of that grown in Eastern Canada; and although the quantity of eastern barley is not furnished us, we may fairly estimate that the vesting order applied only to about one-fourth, or at the most one-third, of the total supplies of barley in Canada at that time. If vesting was a necessary measure for maintaining or controlling supplies of barley for the needs of Canada, then all barley in Canada should have been vested. The limitation on the amount of barley intended by that Regulation to be thus controlled, indicates that the real purpose of the order was not the carrying out of any of the designated purposes under the Transitional Act.

Moreover, the real purpose of P.C. 1292 was not actually to vest the barley in the Board, but to collect the difference between the previous maximum price and the later maximum price. This is shown by the instructions to the trade, which not only allowed owners and handlers of the barley to re-purchase the grain at 93¢ a bushel immediately after they had sold it to the Board at 64¾¢ a bushel, but actually invited owners and handlers to take a short-cut by sending to the Board their cheques for the difference between the lower and the higher price, namely 28¼¢ a bushel, and retaining their grain for disposal unrestricted by the Board. That course was adopted by all owners except Mr. Nolan. One effect of the short-cut was that the barley never came under the control of the Board, and the designated purposes of maintaining, controlling and regulating supplies of the grain were never realized nor attempted to be realized.

The real purpose of P.C. 1292 was not to maintain, control and regulate supplies of barley, but rather to confiscate the profits which a certain class of owners of barley would inevitably have made. This is not inference. It is declared in the "Outline of Government Policy" of March 17, 1947, a copy of which was sent by the Board to members of the Grain Trade, as part of Instruction No. 59. That Outline declares that the purpose "is to avoid the fortuitous profits to commercial holders of . . . barley, that would otherwise result from the "raising of the maximum price from 64¾¢ to 93¢ a bushel. That purpose is not one of those mentioned in the Transitional Act; it cannot possibly be implied from any of the purposes designated in that Act. Sheer confiscation was attempted. No compensation was given or was intended to

be given to the owners for that money. This proceeding emanating from the pretended authority of the Dominion Parliament is without precedent.

For the foregoing reasons, I am of the opinion that P.C. 1292 exceeds the powers conferred by the Transitional Act in respect of the matters which I have detailed, and, to the extent of that excess, is *ultra vires and invalid.*

Both appeals should be dismissed. I agree with my brother Adamson as to the awarding of costs.

"A. K. DYSART," J.A.

DELIVERED this 10th day of March 1949.

In the Court of Appeal

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,
HALLET AND CAREY LIMITED,

DEFENDANTS,

AND

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

DEFENDANT.

ADAMSON, J.A.

"Property and Civil Rights" is one of the subjects allocated to the provincial governments by section 92(13) of the British North America Act. Therefore, the appropriation of private property by the Dominion Government is *prima facie* an invasion of the provincial legislative field. There are two occasions on which such invasion is justified. They are—

Firstly, where such invasion of the provincial legislative field by the Dominion is necessarily incidental to, or ancillary to, some subject specifically allocated to the Dominion Government by section 92 of the British North America Act, such as Dominion works under sections 91(9) and 92(10).

Secondly, when such invasion becomes necessary for the Dominion in carrying out its responsibilities "to make laws for the peace, order and good government of Canada" under sec. 91 of the British North America Act, as in a time of great peril or national crisis, such as war or famine.

It is under the latter of these exceptions to the general rule that it is sought to justify the legislation under which property was appropriated in this case. Under what circumstances this may be done has been discussed by the Courts in a number of cases. In In re Price Bros. & Co. v. The Board of Commerce of Canada, (1920) 60 S.C.R. 265 [1920] 2 W.W.R. 721, Duff, J. (as he then was) is reported as follows at p. 272:

> "In this connection the sole point requiring examination is that which arises out of Mr. Biggar's contention in his admirable argument that orders-in-council made by the Governor-General in Council professedly under the authority of section 6 of that Act (War Measures Act, 1914, ch. 21) are not judicially revisable. I think such orders are reviewable, in the sense that when in a proper proceeding the validity of them is called into question, *it is the duty of a court of Justice to consider and decide whether the conditions of jurisdiction are fulfilled* and if they are not being fulfilled, to pronounce the sentence of the law upon the illegal order.
>
> "One of the conditions of jurisdiction is, in my judgment, that the Governor-in-Council shall decide that the particular measure in question *is necessary* or advisable for reasons which have *some relation to* the perils actual or possible of real or apprehended war—(I leave the case of insurrection out of view as having no relevancy) or as having some relation to the prosecution of the war or the objects of it."

This case was followed by In re The Board of Commerce Act, 1919, and the Combines and Fair Prices Act, 1919, (1922) 1 A.C. 191 91 L.J.P.C. 40, [1922] 1 WWR 20, where Lord Haldane, at p. 200, said:

> "It has already been observed that circumstances are conceivable, such as those of *war or famine,* when the peace, order and good government of the Dominion might be *imperilled under conditions so exceptional* that they require legislation of a character in reality beyond anything provided for by the enumerated heads in either s. 92 or s. 91 itself. Such a case, if it were to arise would have to be considered closely before the conclusion could properly be reached that it was one which could not be treated as falling under any of the heads enumerated. Still, it is a conceivable case, and although great caution is required in referring to it, even in general terms, it ought not, in the view their Lordships take

of the British North America Act, read as a whole, to be excluded from what is possible. For throughout the provisions of that Act there is apparent the recognition that subjects which would normally belong exclusively to a specially assigned class of subject may, under different circumstances and in another aspect, assume a further significance. Such an aspect may conceivably become of *paramount importance, and of dimensions that* give rise to other aspects. *This* is a *principle* which, although recognized in earlier decisions, such as that of Russell v. The Queen (1882) 7 App. Cas. 829, both here and in the Courts in Canada, has *always* been *applied with reluctance, and its recognition as relevant can be justified only after scrutiny sufficient to render it clear that the circumstances are abnormal.* In the case before them, however important it may seem to the Parliament of Canada that some such policy as that adopted in the two Acts in question should be made general throughout Canada, their Lordships do not find any evidence that the standard of necessity referred to has been reached, or that the attainment of the end sought is practicable, in view of the distribution of legislative powers enacted by the Constitution Act, without the co-operation of the Provincial Legislatures."

It is to be noted that these two cases and their facts are related to the first war in much the same way, in time and purpose, as this case is related to the recent war.

In Co-operative Committee on Japanese Canadians et al and Attorney-General for Canada et al, [1947] A.C. 87 [1947] L.J.R. 836, Lord Wright is reported to have said, at p. 101-2:

"Under the British North America Act property and civil rights in the several Provinces are committed to the Provincial legislatures, but the Parliament of the Dominion in a *sufficiently great emergency* such as that arising out of war, has power to deal adequately with that emergency for the safety of the Dominion as a whole. The interests of the Dominion are to be protected and it rests with the Parliament of the Dominion to protect them. What those interests are, the Parliament of the Dominion must be left with considerable freedom to judge. Again, *if it be clear that an emergency has not arisen, or no longer exists,* there can be no justification for the exercise or continued exercise of the exceptional powers. The rule of law as to the distribution of powers between the Parliament of the Dominion and the Parliaments of the Provinces comes into play. *But very clear evidence that an emergency has*

not arisen, or that *the emergency no longer exists, is required to justify the* judiciary, even though the question is one of *ultra vires,* in overruling the decision of the Parliament of the Dominion that exceptional measures were required or were still required."

These three pronouncements agree that "it is the duty of a court of justice to consider and decide whether the conditions of jurisdiction are fulfilled". The conditions laid down are (1) that the subject-matter dealt with has assumed such paramount importance to Canada as a whole that only parliament can adequately deal with it,—such as an emergency in time of war or famine; and (2) that the measures taken must be necessary in dealing with the emergency and have some relation to the perils apprehended. On the further question of onus, and evidence of the conditions having been fulfilled, there is conflict. Lord Haldane, in the Board of Commerce case, *supra,* appears to me to express the sound view when he said: "This principle . . . has always been applied with reluctance, and its recognition as relevant can be justified only after scrutiny sufficient to render it clear that the circumstances are abnormal". Later, in Fort Frances Pulp and Power Co. v. Manitoba Free Press Company, [1923] A.C. 695 93 L.J.P.C. 101, he appears to depart from that view when he says:

> "But very clear evidence that the crisis had wholly passed away would be required to justify the judiciary . . . in overruling the decision of the Government . . ." In Co-operative Committee on Japanese Canadians v. Attorney-General for Canada, *supra,* Lord Wright adopts the latter statement of Lord Haldane when he says: "But very clear evidence that an emergency has not arisen or that the emergency no longer exists, is required to justify the judiciary . . . in overruling the decision of Parliament."

Which of these views is the correct one? It makes a great deal of difference what the point of view is and where the onus is placed. It should be remembered that what is involved is an invasion of provincial rights. It is going a long way to say or suggest that the Federal Parliament can invade the provincial field without any onus on it to justify such action. The justification must be some matter which has assumed paramount national importance, such as a national emergency of such proportions as to imperil the nation. To say that those who impugn such legislation must bring "clear evidence" of the non-existence of such emergency is to put a great national constitutional matter on the level of private dispute over a contract. A "national emergency", or a matter which has become of paramount importance to the Dominion as a whole, which requires "clear evidence" of its existence, is inconceivable. An emergency

of the kind required for the Dominion to invade the provincial field must of its nature be self-evident, generally known and accepted, and be something of which the Courts must take judicial notice. Anything less than this would be a mere pretext contrary to the principle of the "pith and substance" cases. The view taken in the Co-operative Committee on Japanese Canadians v. Atty-Gen. for Canada, *supra,* is in conflict with this view, in that it adopts the idea that "clear evidence" is required of something which should be obvious. For this reason my opinion is that the statement by Lord Haldane in the Board of Commerce Act case, *supra,* as to "reluctance" to recognize, and "evidence", is correct.

Both the National Emergency Transitional Powers Act, 1945, and Order-in-Council 1292 recite and rely for their justification and legality upon the "continued existence" of the national emergency arising out of the war against Germany and Japan. Order-in-Council 1292 is directed to a supposed economic emergency. The first question, therefore, is to enquire whether there was or was not an economic emergency when Order-in-Council 1292 was passed.

In the light of these views, what then is the nature of the "danger", the "peril", or the "emergency" necessary to give jurisdiction to enact such legislation? And what evidence of it is there? An emergency may be public or private. A public emergency may be local or provincial. What is necessary to justify such legislation is *a national economic emergency of such dimensions as to imperil the nation,* and one which would be judicially recognized in the same way as a state of war is judicially recognized. Granting, for the sake of argument, that an economic emergency—except during an actual war—can ever justify an invasion of the provincial legislative field by the Dominion: What are the facts and what is the evidence in this case?

In the record there is no evidence whatever of an economic emergency. What the emergency was, was not suggested. Indeed, the appellants agreed that, in respect of barley, no emergency did or ever had existed. The facts are that our enemies had surrendered—Germany on 8th May 1945 and Japan on 2nd September 1945. The National Emergency Transitional Powers Act, 1945, was assented to on 18th December 1945, and Order-in-Council No. 1292 was passed on 3rd April 1947. Considering the great strain of the war—financial and otherwise—the repercussions in Canada were exceedingly light. There were certainly dislocations in changing from a wartime economy to conditions of peace. Due no doubt to foresight and the wise precautions which had been taken, the change was accomplished with singular and astonishing

ease. In 1947, (1) the national income was at or near an all-time high; (2) trade was at or near an all-time high; (3) employment was at or near an all-time high; (4) Canadian industry was at its peak; (5) agricultural production was very great and the income of agriculturists was at or near an all-time high; (6) Canadians *per capita* consumed more meat, milk, butter, sugar, beer, liquor and tobacco than ever before; (7) there were more new motor-cars sold and more motor-cars operated in Canada, and more was spent on gasoline, than in any previous year; (8) there was no distress, want or privation among any class or in any section of the country.

Never in our history had we been as prosperous as we were in 1947. Indeed, it is doubtful if any people at any time were as well off and enjoyed as high a standard of living as did Canadians in 1947. Moreover, we were less likely in Canada to be subject to economic distress than any country in the world.

Of course there were anxieties about the future; but to say that there was an emergency at the date of the Order-in-Council such as that described by Lord Haldane, and such as to justify an invasion of the provincial legislative field, seems to me to be without foundation and entirely unjustified.

These statements regarding the financial, economic and living conditions of the country are well known to all Canadians. Their verification may be found in many official and semi-official publications, such as Canadian Budget statements; the various reports of the Canadian Bureau of Statistics; the reports of the Bank of Canada; and the returns of the Chartered Banks of Canada published in the Canada Gazette, and their reports at annual meetings. According to Anglin J., to use such knowledge is not only justified but required. In In re Price Bros. & Co. v. the Board of Commerce of Canada, *supra,* he is reported (p. 279) as follows:

> "The common knowledge possessed by every man on the street, of which courts of justice cannot divest themselves, makes it impossible to believe that the Governor-in-Council on the 29th of January, 1920, deemed it
>
> > necessary or advisable for the security, defence, peace, order, or welfare of Canada . . . by reason of the existence of real or apprehended war, invasion or insurrection
>
> to confer on the Paper Controller such powers as the Board has purported to exercise by its order now in appeal. *Advisability or necessity, however great, arising out of post-war conditions is not the same thing as, and should not be confounded with advisability or necessity*
>
> *by reason of the existence* of real or apprehended war."

See also Lord Maugham in Reference re Alberta Bills: Attorney-General of Alberta v. Attorney-General of Canada, [1939] A.C. 117, 108 L.J.P.C.1, [1938] 3 W.W.R. 337, 404 [1938] 4 D.L.R. 433 quoted by Taschereau J., in Turner's Dairy Ltd. et al v. Lower Mainland Dairy Products Board et al; [1941] S.C.R. 573 at p. 583.

Accepting the statement in Co-operative Committee on Japanese Canadians v. Attorney-General for Canada, *supra,* that "very clear evidence that the crisis had wholly passed away would be required to justify the judiciary . . . in overruling the decision of the Government", my opinion is that in this case there is "very clear evidence" that there was no economic crisis or emergency at the date of the Order-in-Council.

The second point (assuming that there was an economic emergency) is: were the measures taken under the Order-in-Council necessary and relevant in dealing with the supposed emergency? Parliament cannot make an emergency in one sphere an excuse or pretext to invade the provincial legislative field in another sphere. To hold otherwise would be to hold that all Parliament required to legally trench upon the provincial field was a colourable excuse; and of course this is contrary not only to common sense, but to the principle underlying the "pith and substance" cases: Atty.-Gen. for Alberta v. Atty.-Gen. for Canada, *supra.* I reject the contention of the Attorney-General, that when the Governor-in-Council "deems" something, such "deeming" makes it an incontrovertible fact. I suggest that there must be substance and reality and truth behind what he deems (see statement of Duff J. *supra).* It is to be noted that Order-in-Council 1292, unlike other Orders-in-Council (for example, those in the Co-operative Committee on Japanese Canadians case, *supra)* does not recite that it is "deemed to be necessary". It simply recites that "it is necessary by reason of the continued existence of the national emergency", etc.

The Order-in-Council does not deal with general policy, nor was it necessary to implement any general policy. It was an isolated assessment upon particular individuals and not essential to any policy. What does the Order-in-Council purport to do? Prior to 18th March 1947 the ceiling price of barley was fixed by the Wartime Prices and Trade Board at 64¾¢ per bushel. On 18th March 1947 the Canadian Wheat Board, with the approval of the Wartime Prices and Trade Board, raised the ceiling price of barley to 93¢ per bushel. In the same order in which this raise in the ceiling price was announced, the Canadian Wheat Board purported to vest in itself all existing stocks of barley in commercial positions, grown in a certain area, at the old price. For such appropriation it had no legal right or authority. Attached to the order, and made part of it, was a document called "Outline of Government

Policy on Oats and Barley as Announced in Parliament March 17th, 1947". This latter document was objected to as being a statement in Parliament and for that reason inadmissible as evidence. The fact that it was a statement made in Parliament does not make it inadmissible. It was part of the order of the Canadian Wheat Board and, as such, is evidence against the Board and against others who seek to rely on the order of the Board, of which it was a part. This "Outline of Government Policy", etc., stated in part: *"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"* (raising the ceiling price), *"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."* This astonishing action was illegal. The price of barley rose immediately to 93¢ per bushel and has remained at or above that price ever since. An order of the Canadian Wheat Board dated 19th March 1947 states: "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." The Canadian Wheat Board was never in possession of the grain or title to it. This means, in simple terms, that the Board did not want possession of the grain; that it was to remain in the same commercial channels, and that the sole purpose was to prevent so-called "fortuitous profits". It was, and was meant to be, an assessment of 13½¢ and 28¼¢ per bushel on certain selected owners of oats and barley respectively. The stocks of barley affected were above 20-million bushels. Stocks grown in the same area, not affected, were approximately 34-million bushels. In addition, the stocks grown outside the designated area, namely, in Ontario, Quebec, the Maritimes, and a large section of British Columbia were not affected.

The Order-in-Council was not passed until the 3rd April 1947 and, for what it was worth, ratified this astonishing procedure.

How such an arbitrary assessment upon a small group could contribute "to ensure economic stability and an orderly transition to the conditions of peace" is unexplained. Indeed, the only result of such a confiscation was to create confusion and uncertainty. It had nothing to do with "controlling and regulating supplies and prices". It had nothing to do with any of the purposes of the National Emergency Transitional Powers Act, 1945. I therefore find as a fact that the Order-in-Council was not necessary, nor related to, any of the purposes of the Act. That essential condition was lacking.

To make this finding is not to impute bad faith to the Governor-in-Council, but merely to hold that a mistake was made. The Canada Gazette shows that in 1947 more than 5000 Orders-in-Council were enacted. Many of such Orders-in-Council were technical, complicated and involved. It is safe to say that frequently the Governor-in-Council was dependent for the correctness of the recitals in Orders-in-Council, and for the facts required to decide the necessity of the measures taken under such Order-in-Council, upon an official or controller in some department. Indeed, the sequence of events indicates that the Canadian Wheat Board had acted, and that this Order-in-Council was an attempt to legalize what had already been done.

If there was a national economic emergency, these measures were neither necessary nor relevant to dealing with it.

There is the third question, namely: Is the Order-in-Council technically within the powers conferred by the Act?

Expropriation of private property by the State, without provision for an adjudicated or arbitrated compensation, is so alien to Canadians that it almost raises a presumption that neither Parliament nor the Governor-in-Council intended what is attempted by this Order-in-Council. Counsel for the Attorney-General was unable to cite any other instance in which such a thing was done by any Canadian Government. The War Measures Act, 1914, which specifically provided for the appropriation of property, also provided that the compensation for such property was to be settled by a reference to the Courts. In Reference as to the Validity of Regulations in Relation to Chemicals, etc., [1943] S.C.R. 1, it was held that an Order-in-Council settling the value of appropriated property otherwise than in the Act provided, was *ultra vires*. The War Measures Act, 1914, appears to have been thought by Parliament to be too far-reaching and drastic for peace-time and the War Emergency Transitional Powers Act was substituted for it. That Act was recognition by the Government that on 3rd April 1945 the emergency was greatly reduced and that the Governor-in-Council did not require such unusual powers as were conferred by the War Measures Act, 1914. The Act refers to the War Measures Act, 1914, and indicates that it is a modification of that Act. This view was expressed by Estey J. in the Reference as to the Validity of Orders-in-Council, etc., in Relation to Persons of the Japanese Race, [1946] S.C.R. 248 at p. 313. He said:

> "Parliament did recognize that the intensity and magnitude of the emergency had changed and diminished, and under the provisions of this Act curtailed the extensive powers exercised by the Governor-in-Council under The War Measures Act."

Yet this Order-in-Council attempts to do something much more drastic than anything which could be done under the War Measures Act of 1914.

One is aware of course that the Act and the Order-in-Council must stand or fall on their own interpretation. The interpretation, however, must be strict. Parliament is not to be understood as having intended to levy a special tax or assessment upon a small class, or to have taken any man's property without just compensation, except upon the clearest and most unequivocal language. Such an act would be in the nature of a penalty. I do not think that, upon any interpretation, the vesting attempt by the Order-in-Council comes within the purview of the Act. To so hold would not be to interpret the Act strictly, but to give it the widest and most unrestricted meaning: Atty-Gen. v. Wilts United Dairy Ltd. 37 T.L.R. 884 affirmed 91 L.J.K.B. 897, 38 T.L.R. 781; Beal's Cardinal Rules of Legal Interpretation, 3rd ed., pp. 491 to 501, and cases there cited.

I therefore hold as a fact that Mr. Justice Duff's "conditions of jurisdiction": (1) the existence of a real emergency, and (2) the necessity of and the relevancy of the measures taken to deal with such supposed emergency, have not been fulfilled. I hold, too, that upon a proper interpretation, the Order-in-Council does not come within the fair meaning of the Act. On the whole I think that In re Price Bros. & Co. v. The Board of Commerce of Canada, *supra,* and The Board of Commerce Act (1919) case, *supra,* are applicable and should be followed.

Both appeals should therefore be dismissed.

The Attorney-General should pay the costs of all parties in the one action here and below, without the limitation imposed by sec. 31 of The Court of Appeal Act or K. B. Rule No. 630; such costs to include costs ordered to be paid by Hallet & Carey Ltd. to J. J. Nolan, and the costs of the application of the Attorney-General to be made a party and the appeal therefrom. The Canadian Wheat Board should pay the costs of all the parties in the other action here and below, also without said limitations.

"J. E. ADAMSON", J.A.

DELIVERED this 10th day of March, 1949.

In the Court of Appeal

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,
HALLET AND CAREY LIMITED,

DEFENDANTS,

AND

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

DEFENDANT.

COYNE, J.A.

These are appeals from judgments of Williams, C.J.K.B., in his reasons for which he sets out very fully the facts and quotes numerous documents. It is, therefore not necessary for me to deal with the facts or documents at length.

The case turns upon the assumed power acted upon in the Order-in-Council, to take from Nolan his property in the barley and vest it in the Canadian Wheat Board. The conclusion of the learned judge was that such power did not exist and that Nolan is entitled to the barley.

The Order-in-Council was made on the basis of authority assumed to be conferred by the National Emergency Transitional Powers Act, 1945, herein called the Transitional Act. Nolan denied the constitutional power of Parlia-

ment to enact the statute at least so far as concerns the matters involved herein, and, even if the Act was wholly *intra vires,* he denied that the Act authorized the provisions of the Order-in-Council relied on by the Attorney-General of Canada and the Canadian Wheat Board.

Parliament having power to enact the War Measures Act and to provide for all things necessary to make it effective and incidental thereto, had also power to make enactments necessary or incidental to the discontinuance of measures taken under the Act in such degree and manner as would enable gradual return to peace-time conditions and stability with a minimum of disturbance.

In considering whether a matter falls within the competence of the Federal or Provincial authority, evidence is admissible, in addition to the many facts of which judicial notice may or should be taken. That is admittedly so in respect of questions of jurisdiction under the Canadian constitution, as it is in respect of the similar questions under the Constitutions of the United States and of Australia. Questions of onus and of the extent and quality of proof may arise in other cases but not in respect of the statute and Order-in-Council involved in this case, for, assuming the jurisdiction of Parliament to enact the provisions of the Transitional Act which are relied on by the Attorney-General and the Canadian Wheat Board, it is perfectly plain that the Order-in-Council on which the appellants rely is not authorized by the statute, even if only the undoubtedly admissible material is considered.

In my opinion, the law applicable and the bald facts for its application are so clear that I deem it unnecessary to elaborate them or do more than briefly state them.

The Transitional Act which came into force on January 1st 1946, terminates on that day the application of the War Measures Act to the emergency of the outbreak and waging of the late war and puts an end to the powers conferred under the latter Act as necessary and as incidental to meet war conditions and requirements, and to ease Canada back into peace time conditions. Instead of the power for the last mentioned purpose, powers under the Transitional Act are substituted. That statute recites that during the national emergency, measures were taken under the War Measures Act for the military requirements and security of Canada and the maintenance of economic stability; that the national emergency arising out of the war has continued since the fall of Germany and Japan; that it is essential in the national interest that certain transitional powers continue in the Governor-in-Council during the continuance of the exceptional conditions brought about by

the war; that it is preferable that these be exercised under special authority in that behalf conferred by Parliament rather than under the War Measures Act; that in the existing circumstances it may be necessary that certain acts done and authorized, and orders and regulations made under the latter Act be continued in force and that it is essential that the Governor-in-Council be authorized to do and authorize such further acts and things and make such further orders and regulations as he may deem necessary or advisable by reason of the emergency *and for the purpose* of the discontinuance, in an orderly manner, as the emergency permits, of measures adopted during and by reason of the emergency.

The operative section of the Act argued as being pertinent here is 2(1):

"The Governor-in-Council may do and authorize such acts and things and make from time to time such orders and regulations, as he may, *by reason* of the *continued existence* of the *national emergency arising out of the war* . . . deem necessary or advisable *for the purpose of* . . .

"(b) facilitating the readjustment of industry and commerce to the requirements of the community in time of peace.

"(c) maintaining controlling and regulating supplies and services, prices, transportation, use and occupation of property, rentals, employment, salaries and wages to ensure economic stability and an orderly transition to conditions of peace, . . . or

"(e) continuing or discontinuing in an orderly manner, as the emergency permits, *measurers adopted during and by reason* of the war.

"5. This Act shall come into force on Jan. 1st 1946 and on and after that date the war . . . shall, for the purposes of the War Measures Act, be deemed no longer to exist."

The provisions of the Order-in-Council 1292/47 in question here, certainly do not come within the preamble. They are new provisions which had no predecessors in respect of barley. They are not a continuance or discontinuance of anything under the War Measures Act. They are powers exercised for the first time and they are based wholly on the Transitional Act. Further, they do not come within sec. 2(1) of the Act. They do not facilitate readjustment under (b) or relief of suffering under (d). Subsection (c) has for its object "to ensure economic stability and an orderly transition to conditions of peace" and is limited to that.

The scope of the delegated authority is restricted by the words in italics and by the purposes specified in the lettered items, in s.2.

The purported seizure of Nolan's barley is neither a continuance or discontinuance of anything authorized or done under the War Measures Act.

It was a new and subsequent act to be committed, not incidental to, but wholly unconnected with any antecedent act or Regulation under the latter statute. This has been more fully discussed by the Chief Justice of this Court in his judgment.

Nolan had the legal right to the barley and the constitutional right to enjoyment of that legal right unless the competent legislature clearly and unambiguously deprived him of those rights or authorized deprivation. Even if Parliament was competent, no such intention is to be found in the Transitional Act.

Again, and subject to the same condition, unless Parliament clearly and unambiguously confers it, there is no authority to make discrimination between citizens in respect of their individual exercise of the same rights. The Order-in-Council in its purported seizure of barley discriminates between owners of barley in commercial positions on the one hand and producer-owners on the other hand. Between those in the former class, it further discriminates between holders of Western barley and holders of Eastern barley. Clearly the statute does not authorize this.

Emergency measures must be such only as are required to meet the emergency. They cannot extend beyond that. The seizure of Nolan's barley cannot possibly be brought within this category.

The purported seizure and vesting in the Canadian Wheat Board, and instrumentality and agent of the Crown, if it be judged by the actions immediately following, was not real object of the proceedings taken under the order. The action so taken and perhaps the real intention was to exact an impost of 28¼¢ per bushel from holders of Western Canadian barley in commercial positions. No such authority is conferred by the Transitional Act.

Further, there was clearly no "emergency" of any kind affecting barley, or any emergency or condition which could warrant the seizure of Nolan's barley or the exaction from him of 28¼¢ per bushel under or by virtue of the Transitional Act.

I agree that the appeals should be dismissed and the judgment below affirmed, with all costs here and below, without limitation of the amount by any statute or rule, to be paid in respect of the one action by the Attorney-General of Canada to Nolan and to Hallet & Carey, and by the Canadian Wheat Board to Nolan in respect of the other action. I understand that the questions between the Terminal Companies and the other parties have been disposed of by agreement.

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

DELIVERED this 10th day of March, 1949.

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 March 22nd, 1948).
(Defendant) RESPONDENT.

AGREEMENT AS TO CONTENTS OF CASE

1. The parties hereto by the undersigned their solicitors hereby consent that the case on appeal to the Supreme Court of Canada shall consist of the following:

PART I

1. Amended Statement of Claim
2. Amended Statement of Defence of Manitoba Pool Elevators
3. Amended Statement of Defence of Canadian Consolidated Grain Company Limited

4. Amended Statement of Defence of United Grain Growers Terminals Limited
5. Amended Statement of Defence of Fort William Elevator Company Limited
6. Statement of Defence of Hallet and Carey Limited
7. Statement of Defence of Jeremiah J. Nolan
8. Amended Reply.
9. Notice to Attorney-General of Manitoba
10. Order of Court adding Jeremiah J. Nolan
11. Notice of Appeal to Court of Appeal
12. Notice of Motion to sell grain
13. Order of Court of Appeal and Court of King's Bench to sell grain
14. Order of Court of Appeal dismissing warehousemen from action
15. Order of Court of Appeal enlarging time for Appeal
16. Certificate of Accountant
17. Order of Court of Appeal allowing to Supreme Court of Canada
18. Notice of Appeal to Supreme Court of Canada

PART II

19. Evidence

PART III

20. Exhibits (including Agreed Statement of Facts, the exhibits referred to therein and all other exhibits filed.)

PART IV

21. Judgment of Court of King's Bench
22. Reasons for Judgment of Williams, C.J.K.B.
23. Judgment of Court of Appeal
24. Reasons for Judgment by MacPherson C.J.M.
25. Reasons for Judgment by Coyne J.A.
26. Reasons for Judgment by Dysart J.A.
27. Reasons for Judgment by Adamson J.A.

2. The parties hereto further agree that the case herein or such parts thereof as may be printed be consolidated with the case of the Appeal to the Supreme Court of Canada in Jeremiah J. Nolan vs. Hallet and Carey Limited and The Attorney General of Canada.

DATED at Winnipeg this day of A.D. 1949.

Solicitor for the Plaintiff The Canadian Wheat Board

Without Prejudice to our clients' contention that the Supreme Court of Canada has no jurisdiction to hear the appeal as against them and their right to move to have the appeal quashed

Messrs. Scarth and Honeyman
per: A. St. Clair Scarth

Solicitors for the Defendants Manitoba Pool Elevators and Fort William Elevator Company Limited

Without prejudice to our clients' contention that the Supreme Court of Canada has no jurisdiction to hear the appeal as against them and their right to move to have the appeal quashed

Messrs. Swift, McLeod and Deacon
per: Ivan M. Deacon

Solicitors for the Defendants United Grain Growers Terminals Limited and Canadian Consolidated Grain Company Limited

Messrs. Fillmore, Riley and Watson
per: W. P. Fillmore

Solicitors for the Defendant Hallet and Carey Limited.

Messrs. Aikins, Loftus and Company
per: D. C. McGavin.

Solicitors for the Defendant Jeremiah J. Nolan.

In the Supreme Court of Canada

On Appeal from the Court of Appeal for Manitoba

Thursday, the 5th day of January, 1950. Before the Registrar in Chambers.

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.

Upon application made on behalf of The Canadian Wheat Board and upon hearing what was alleged by counsel for The Canadian Wheat Board and upon reading the consent filed on behalf of the parties hereto.

It is Ordered that printing in the appeal case of Exhibit 20 be dispensed with upon terms that the Appelant furnish to the Court ten copies thereof and three copies thereof to the Respondents.

"PAUL LEDUC"
Registrar.

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.

I, the undersigned, Registrar of the Court of Appeal for Manitoba, do hereby certify that the foregoing printed documents from page 1 to , inclusive, is the Case stated by the parties, pursuant to section 68 of the Supreme Court Act, and the Rules of the Supreme Court of Canada, in an appeal to the Supreme Court of Canada wherein The Canadian Wheat Board is Appellant and Hallet and Carey Limited et al are Respondents.

In testimony whereof, I have hereunder subscribed my name and affixed the seal of the said Court of Appeal for Manitoba this day of A.D. 1950.

Registrar.
Court of Appeal for Manitoba.

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.

I, certify that I have personally compared the annexed print of the case in appeal to the Supreme Court with the originals and that the same is a true and correct reproduction of such originals.

Dated at Winnipeg, this day of A.D. 1950.

A Solicitor for the Appellant.