

13, 1952

In the Privy Council.

No. 32 of 1951.

ON APPEAL
FROM THE SUPREME COURT OF CANADA -9 JUL 1953

UNIVERSITY OF LONDON
W.C.1.
INSTITUTE OF ADVANCED
LEGAL STUDIES

BETWEEN

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

AND

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

Record of Proceedings—Vol. 1
(Nolan Action)

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 ATTORNEY-GENERAL OF CANADA (Added by Order of the Court
made the 15th day of October, 1948),

(*Defendant*) APPELLANT,

AND

JEREMIAH J. NOLAN,

(*Plaintiff*) RESPONDENT,

AND

HALLET AND CAREY LIMITED,

(*Defendant*) RESPONDENT.

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1(5)	The Canadian Wheat Board Instructions to Trade No. 74.	April 7, 1947.	“ “
1(6)	Letter from Jeremiah J. Nolan to Hallet and Cary Limited.	April 14, 1947.	“ “
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1(9)	Letter from The Canadian Wheat Board to Manitoba Pool Elevators.	May 27, 1947.	“ “
1(10)	Letter from Messrs. Fillmore, Riley and Watson, Solicitors for Hallet and Carey Limited, to Henry B. Monk, Solicitor for The Canadian Wheat Board.	May 28, 1947.	“ “
1(11)	Letter from Messrs. Aikins, Loftus, MacAulay and Company, Solicitors for Jeremiah J. Nolan, to H. B. Monk, Solicitor for The Canadian Wheat Board.	September 26, 1947	“ “
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In The King's Bench

THE 22ND DAY OF MAY, A.D. 1947

BETWEEN:

JEREMIAH J. NOLAN,

Plaintiff,

AND

HALLET AND CAREY LIMITED,

Defendant.

J. A. ROBINS,

Deputy Prothonotary.

10

STATEMENT OF CLAIM

1. The Plaintiff is a grain merchant residing in the City of Chicago, in the United States of America, and the Defendant is a body corporate and politic, and carries on the business of grain merchants in the City of Winnipeg, in the Province of Manitoba.

2. The Plaintiff is the owner of and is entitled to the possession of 40,000 bushels of No. 3 C.W. Six-Row Barley. The Defendant is the agent of the Plaintiff and has possession of the said barley and of the warehouse receipts issued and registered under the provisions of The Canada Grain Act and the Lake Shippers' Clearance Association Transfer Certificate, which are the documents of title to the said barley.

3. The Plaintiff has demanded that the Defendant deliver up to the Plaintiff the said barley and the said documents of title thereto, but the Defendant has neglected and refused and still neglects and refuses to deliver up the said barley or any portion thereof, or the said documents of title thereto, and the Defendant unlawfully and wrongfully detains from the Plaintiff the said barley and the said documents of title thereto.

THE PLAINTIFF THEREFORE CLAIMS:

- (a) Possession of the said barley and the said documents of title thereto.
- (b) In the alternative damages.
- (c) The costs of this action.
- (d) Such further and other relief as the nature of the case may require and this Honourable Court may deem meet.

30

ISSUED this 22nd day of May, A.D., 1947, by ATKINS, LOFTUS, MACAULAY, THOMPSON & TRITSCHLER, of the City of Winnipeg, in the Province of Manitoba, Solicitors for the Plaintiff.

In The King's Bench

BETWEEN :

JEREMIAH J. NOLAN,

Plaintiff,

AND

HALLET AND CAREY LIMITED,

Defendant.

STATEMENT OF DEFENCE

1. The defendant admits paragraph 1 of the plaintiff's Statement of Claim.

10 2. In answer to paragraph 2 of the plaintiff's Statement of Claim, the defendant admits that the defendant was the owner of and was entitled to possession of 40,000 bushels of No. 3 C.W. Six-Row Barley, and the defendant admits that the defendant is agent of the plaintiff and admits that the defendant as such agent still has possession of the warehouse receipts which are the documents of title to the said barley. The defendant denies that it has possession of the said barley.

3. The defendant admits that the plaintiff has demanded that the defendant deliver up to the plaintiff the said barley and the documents of title thereto, and admits that the defendant has refused and neglected and still neglects and refuses to deliver up the said barley, or any portion thereof and the documents of title 20 thereto. The defendant denies that the defendant unlawfully and wrongfully detains from the said plaintiff the said barley and the documents of title thereto.

4. In answer to the plaintiff's Statement of Claim, the defendant says that on or about the 17th day of March, 1947, the defendant received from the Canadian Wheat Board instructions and requirements regarding oats and barley, which instructions and requirements were in writing and were in the words and figures following:—

THE CANADIAN WHEAT BOARD INSTRUCTIONS TO TRADE No. 59

TO ALL COMPANIES AND DEALERS IN OATS AND BARLEY :

30 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—90c per bushel basis in store Fort William/Port Arthur (Prices for other grades to be announced later.)
- 10 No. 1 Feed Oats—61½c 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—93c per bushel, basis in store Fort William/Port Arthur or Vancouver.
- Oats—65c per bushel, basis in store Fort William/Port Arthur or Vancouver.

4. *Adjustment Payment on Barley*: An adjustment payment of 10c per bushel 20 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 51½c per bushel for all grades of oats and 64¾c 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 30 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 10c per bushel in the case of oats and 25c 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, 10 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 20 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 others 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.

Reference:

30

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

Yours very truly,

THE CANADIAN WHEAT BOARD

Approved for the Board by

W. C. McNAMARA,

Assistant Chief Commissioner.

MAR. 17, 1947.

and that on or about the 7th day of April, 1947, the defendant received from the Canadian Wheat Board an order and direction in the words and figures following:—

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,
10 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:

20 (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
30 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,

THE CANADIAN WHEAT BOARD

Approved for the Board by

GEO. McIVOR,

Chief Commissioner.

10

APRIL 7th, 1947.

and that on or about the 27th of May, 1947, the defendant received from the Canadian Wheat Board a demand in the words and figures following:—

THE CANADIAN WHEAT BOARD

423 Main Street

WINNIPEG

INSTRUCTIONS TO THE TRADE

20 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 Cana-

dian 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 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	No. 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.

.....
Chief Commissioner.

.....
Member.

10

5. The defendant further says that the said Order-in-Council P.C. 1292 was passed pursuant to and under the powers conferred by the National Emergency Transitional Powers Act, 1945, being Chapter 25, Statutes of Canada, 1945, and the order and direction dated the 7th of April, 1947, hereinbefore set out, and the

demand dated the 27th of May, 1947, hereinbefore set out were made and given pursuant to the powers vested in the Canadian Wheat Board by the said Order-in-Council P.C. 1292.

6. The defendant further says that by reason of the matters hereinbefore set out, the said documents of title and the said barley and the right to possession thereof, have passed to and become vested in the Canadian Wheat Board, and that the said Wheat Board is now the owner of and is entitled to possession of the said warehouse receipts and the said barley.

7. The defendant further says that by reason of the matters hereinbefore set
10 out, the plaintiff is not now the owner of the said barley or of the said warehouse receipts and the defendant cannot legally or lawfully deliver to the plaintiff the said barley or the said warehouse receipts.

8. The defendant submits the plaintiff's claim should be dismissed with costs.

DELIVERED this 4th day of June, A.D. 1947, by Messrs FILLMORE, RILEY & WATSON, 303 National Trust Building, Winnipeg, Manitoba, Solicitors for the above named defendant.

In The King's Bench

BETWEEN :

JEREMIAH J. NOLAN,

Plaintiff,

and

HALLETT AND CAREY
LIMITED,

Defendant.

REPLY

1. In filing this Reply the plaintiff does not waive but claims the benefit of Rule
10 96 of the King's Bench Rules.

2. In reply to paragraph 4 of the Statement of Defence, the Plaintiff admits that on or about the 17th day of March, 1947, the Defendant received from the Canadian Wheat Board instructions and requirements regarding oats and barley, which instructions and requirements were in writing and were in the words and figures set forth in paragraph 4 of the Statement of Defence and described as Instructions to Trade No. 59 but the Plaintiff says that such Instructions to Trade No. 59 were issued without statutory or other legal authority; that the announcement in Parliament on March 17, 1949, of the "new Government policy" regarding oats and barley referred to therein did not provide authority for the issue of Instructions to
20 Trade No. 59 or the action therein directed; that on March 17, 1947, The Canadian Wheat Board had no right, power or legal authority to instruct all Companies and Dealers in oats and barley that all Western oats and barley in commercial channels in Canada as at Midnight, March 17, 1947 must be sold to The Canadian Wheat Board; that neither the Plaintiff nor the Defendant are, or ever have been bound by the said instructions to Trade No. 59 and that said Instructions to the Trade No. 59 were and are a nullity.

3. In further reply to paragraph 4 of the Statement of Defence the Plaintiff admits that on or about the 7th day of April, 1947, the Defendant received from The Canadian Wheat Board an order and direction in the words and figures set fourth in
30 said paragraph 4 and described as Instructions to the Trade No. 74 and that on or about the 27th day of May, 1947, the Defendant received from The Canadian Wheat Board a demand addressed to the Defendant as set forth in said paragraph 4 but the Plaintiff says that such Instructions to Trade No. 74 and such demand were invalid

and of no force and effect and that neither the Plaintiff nor the Defendant are or ever have been bound thereby and neither the said instructions to the Trade No. 74 nor the said demand are an answer to the Plaintiff's claim.

4. In reply to paragraph 5 of the Statement of Defence, the Plaintiff denies that Order in Council P.C. 1292 was passed pursuant to or under the powers conferred by the National Emergency Transitional Powers Act, 1945, being Chap. 25 Statutes of Canada, 1945, and the Plaintiff denies that the order and direction dated April 7, 1947, or the demand dated the 27th day of May, 1947, referred to in said paragraph 5, were made or given pursuant to the powers vested in The Canadian Wheat Board by the said Order in Council P.C. 1292.

10 5. In reply to paragraph 6 of the Statement of Defence, the Plaintiff denies that by reason of the matters thereinbefore set out the documents of title or the barley in question or the right to possession thereof, have passed to or become vested in The Canadian Wheat Board, and the Plaintiff denies that the said Wheat Board is now the owner of or is entitled to possession of the said warehouse receipts or the said barley.

6. In reply to paragraph 7 of the Statement of Defence the Plaintiff denies that by reason of any of the matters alleged in the Statement of Defence or at all he is not now the owner of the barley or the warehouse receipts in question and denies that the Defendant cannot legally or lawfully deliver to the Plaintiff the barley and the
20 warehouse receipts in question.

7. In reply generally to the Statement of Defence the Plaintiff pleads the matter set forth in the following paragraphs of this Reply.

8. The National Emergency Transitional Powers Act, 1945, being Chap. 25 of the Statutes of Canada, 1945 (hereafter referred to as the "said Act") is wholly ultra vires the Parliament of Canada and is unconstitutional, inoperative and of no force and effect whatsoever.

9. In the alternative if the said Act is not wholly ultra vires the Parliament of Canada Sub-sections (b), (c) and (e) of Sub-section 1 of Section 2 of the said Act are wholly ultra vires the Parliament of Canada and unconstitutional, inoperative and
30 of no force and effect whatsoever.

10. Order in Council P.C. 1292 of April 3, 1947 (hereinafter referred to as the "said Order in Council") is wholly ultra vires of the Governor in Council and is unconstitutional, inoperative and of no force and effect whatsoever.

11. In the alternative the Plaintiff says that if the said Order in Council is not wholly ultra vires the Governor in Council Sections 22, 24, 25, 26 and 36 thereof

(hereinafter referred to as the "said Sections") are wholly ultra vires the Governor in Council and are unconstitutional, inoperative and of no force and effect whatsoever.

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

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

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

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

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

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

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

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

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

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

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

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

23. By reason of the matter alleged in paragraphs 7 to 22, both inclusive, hereof the said Act and the said Order in Council are wholly ultra vires the Parliament of Canada and Governor in Council respectively and therefore unconstitutional,
20 inoperative and of no force and effect whatsoever and the said Instructions to the Trade No. 74 and the said demand referred to in paragraph 3 hereof are invalid.

24. In the alternative by reason of the matters alleged in paragraphs 7 to 22 both inclusive hereof Section 2 of the said Act and the said Sections of the said Order in Council are wholly ultra vires the Parliament of Canada and Governor in Council respectively and are unconstitutional, inoperative and of no force and effect whatsoever.

FILED this 8th day of July, A.D. 1947, by AIKINS, LOFTUS, MACAULAY, THOMPSON AND TRITSCHLER, in the City of Winnipeg, in the Province of Manitoba, Solicitors for the Plaintiff.

In The King's Bench

BETWEEN :

JEREMIAH J. NOLAN,

Plaintiff,

AND

HALLET AND CAREY LIMITED,

Defendant.

NOTICE is hereby given pursuant to Section 72 of The King's Bench Act R.S.M. 1940, c. 44 as amended that Notice of Trial of this action has been given for 10 Monday, the 13th day of October, 1947, at the Court House in the City of Winnipeg in the Province of Manitoba.

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

Dated the 7th day of October, 1947.

AIKINS, LOFTUS, MACAULAY & CO.
Solicitors for the Plaintiff.

20 To: THE ATTORNEY-GENERAL OF CANADA
and To: THE ATTORNEY-GENERAL OF MANITOBA.

No. 138/47

In The King's Bench

BETWEEN :

JEREMIAH J. NOLAN,

Plaintiff,

AND

HALLETT AND CAREY LIMITED,

Defendant.

NOTICE OF MOTION

10 Take notice that the Court will be moved on behalf of the Attorney-General of Canada at the Court House in the City of Winnipeg on Wednesday, the 27th day of September, 1948, at half past ten (10:30) o'clock in the forenoon, or so soon thereafter as counsel can be heard, for an order adding the Attorney-General of Canada as a party defendant to this action.

Dated at the City of Winipeg in the Province of Manitoba the 24th day of September, 1948.

HENRY B. MONK, K.C.,
Solicitor to the Attorney-General of Canada.

To:

20 JEREMIAH J. NOLAN,
the above named Plaintiff, and
HALLET AND CAREY LIMITED,
the above named Defendant.

In The King's Bench

IN COURT

THE HONOURABLE CHIEF JUSTICE WILLIAMS

FRIDAY, THE 15TH
DAY OF OCTOBER
A.D. 1948.

IN THE MATTER OF:—

JEREMIAH J. NOLAN,

Plaintiff,

AND

HALLET & CAREY LTD.,

Defendants.

10

ORDER

UPON the Application of the Attorney-General of Canada to be added as a party Defendant to this action, and upon hearing Counsel for the Attorney-General of Canada, as well as Counsel for both Plaintiff and Defendant, and upon the condition that the Attorney-General of Canada on or before the 10th day of December 1948 undertakes:—

(a) To pay to Hallet & Carey Ltd., forthwith after taxation thereof, the amount of the costs which they have been ordered to pay to the Plaintiff, Nolan, in this action such costs to be taxed on a party and party basis without regard to the limit
20 imposed by Rule 630, and

(b) To agree with the Plaintiff and the Defendant and any other necessary parties for the sale of the barley referred to in the Statement of Claim, and that the proceeds, without deduction of storage charges, be paid into the Court of King's Bench to the credit of this action and to the credit of a certain action known as No. 269/47 in the records of this Court in which The Canadian Wheat Board is Plaintiff, and Manitoba Pool Elevators, Canadian Consolidated Grain Company Limited, United Grain Growers Terminals Limited, Fort William Elevator Company Limited, Halley & Carey Ltd., and Jeremiah J. Nolan, are Defendants, to be disposed of by the Court on the final termination of the said action and this action,
30 prejudice to the rights of any of the parties to each action or of the Attorney-General of Canada as they now exist.

1. IT IS HEREBY ORDERED:—

(a) THAT the Attorney-General of Canada be added as a party Defendant in this action.

(b) THAT the Plaintiff may amend his Statement of Claim herein as he may be advised and such amended Statement of Claim shall be served upon the Solicitor for the Attorney-General of Canada within five days thereafter.

(c) THAT the Attorney-General of Canada shall file and serve a Statement of Defence within three days after service of the amended Statement of Claim aforesaid.

10 (d) THAT the Defendants, Hallet & Carey Ltd., will have leave to amend their Statement of Defence as they may be advised.

(e) That the Attorney-General of Canada shall be deemed to have been a Defendant as from the date of the issue of the Statement of Claim herein, and all amendments which may be made pursuant to this Order shall be deemed to have been made as of the date of the filing of the original pleading amended.

2. IT IS FURTHER ORDERED that the rights of any of the parties to each action or of the Attorney-General of Canada, as they now exist, are not to be prejudiced by the sale of the said barley pursuant to any Agreement made as aforesaid, or by the making of this Order.

20 3. IT IS FURTHER ORDERED:—

(a) THAT until the provisions of this Order have been complied with Judgment in this action be not settled or entered without leave of this Court.

(b) THAT when upon compliance with the conditions imposed by this Order, the Minutes of Judgment herein be settled by the Chief Justice of this Court.

4. IT IS FURTHER ORDERED that the Attorney-General of Canada shall pay to the Plaintiff and to the Defendant, Hallet & Carey Ltd., their respective costs of an incidental to this application after taxation thereof.

30 SIGNED this 24th day of November, A.D. 1948.

A. J. CHRISTIE,
Prothonotary.

In The King's Bench

NOLAN v. HALLET & CAREY LTD.

Counsel:

D. H. LAIRD, K.C., and H. B. MONK, K.C., for Attorney-General of Canada.

W. P. FILLMORE, K.C., for Hallet & Carey Ltd.

G. E. TRITSCHLER, K.C., and D. C. McGavin for Nolan.

WILLIAMS, C.J.K.B.

The Attorney-General of Canada applies to be added as a party defendant in this action so that he will have a status to appeal from my judgment herein holding
 10 certain sections of Dominion Order-in-Council P.C. 1292 of 1947 to be *ultra vires*; see (1948) 1 W.W.R. 945. Unless he is made a party he will have no status to appeal: Attorney-General (Alta.) v. Kazakewich (1937) S.C.R. 427.

In this action Nolan sued to obtain possession of certain grain and the documents of title to that grain. These documents were warehouse receipts—the grain was not special binned—and were in the possession of the defendants (whom I shall refer to as Hallets). Hallets, who were Nolan's agents, had been forbidden by the Canadian Wheat Board to deliver the grain or the documents to Nolan, as the Board claimed both under the provisions of P.C. 1292.

In a separate action the Board sued Hallets and the warehousemen to obtain
 20 the grain and the documents of title.

The two actions were not consolidated but by agreement of counsel were tried together as a matter of convenience and the same evidence applied to each action. At the trial Nolan was, by consent of all parties and on the application of counsel for some of the warehousemen, added as a party defendant in the Board's action.

The Attorney-General of Canada, having been duly notified, intervened at the trial and was represented by Mr. Monk, K.C., who also represented the Board.

Judgment has not yet been entered in either case. This application is vigorously opposed by Nolan and Hallets.

The real issues in each case were (1) whether The National Emergency Transi-
 30 tional Powers Act, 1945, was *ultra vires* in whole or part, and (2) whether P.C. 1292 was *ultra vires*, or, alternatively, were certain sections of it *ultra vires*. I held the Act to be *intra vires* and certain sections of P.C. 1292 to be *ultra vires*. In the result Nolan has a judgment against Hallets for the delivery of the grain and documents, and the Board's action stands dismissed.

The Board intends to appeal from the judgment in its action. It fears Hallets will not appeal from the judgment in Nolan's action. If the Board's appeal succeeds, it will be entitled to the grain and the documents. If Hallets do not appeal there will be a judgment on record to the contrary effect. The situation is peculiar. On the argument all counsel seem to envisage a possible series of appeals in the Board's action, which would mean that months and even years might elapse before that action was finally decided. Nolan and Hallets are both defendants in the Board's action and an ultimate judgment in favour of the Board, which would finally be a judgment of this Court, would be binding on them.

10 In the meantime Hallets may not appeal the judgment in Nolan's case and may comply with that judgment, which is valid and binding on them. What then would be the position of Nolan and Hallets if in the Board's action the final result was to the contrary? That is probably a matter that they have considered.

The disputes dealt with in these two actions, which began in March 1947, have been before the Court since April 1947, when Hallets unsuccessfully attempted to obtain relief by way of interpleader; an attempt which the Board successfully resisted on the ground that it was a servant or agent of the Crown, and it would not consent to be interpleaded: see (1948) 1 W.W.R. 945 at p. 966. At that time it was stated by counsel, my brother Major strongly urged the Board to consent.
20 and this has been confirmed to me by that learned Judge.

The position of the Board is fully dealt with in my previous judgment (1948) 1 W.W.R. at p. 966, and I am of opinion that it represented the Crown and I can see no difference between the position of the Board and the Attorney-General of Canada. The Crown has in my opinion been represented at all stages of this litigation.

All this time the grain has been in the warehouses, storage charges are mounting up monthly, and the Crown, I am told, has so far refused to allow it to be sold. If this litigation continues, as it seems likely to do, the charges will amount to more than the value of the grain.

30 It was not argued that I had no jurisdiction to entertain this application: *Munroe v. Heubach* (1909) 18 M.R. 547, referred to by Mr. Laird, and *Lynes v. Snaith* (1899) 1 Q.B. 486, seem to put the matter beyond doubt.

Counsel for the applicant relied upon Rule 51 (2), which reads:

"The court may, at any stage of the proceedings, order that the name of a plaintiff or defendant improperly joined be struck out, and that any person who should have been joined, or whose presence is necessary in order to enable the court effectually and completely to adjudicate on the questions involved in the action, be added; or, where an action has through a *bona fide* mistake been

commenced in the name of the wrong person as plaintiff, or where it is doubtful whether it has been commenced in the name of the right plaintiff, the court may order any person to be substituted or added as plaintiff."

This Rule is identical in substance with Ontario Rule 134 (1). English O.16 r 11. is to the same effect. It was intended to do away with the plea in abatement: *Robinson v. Geisel* (1894) 2 Q.B. 685.

The fundamental rule as to joinder and adding of parties is found in sec. 62 (6) of The King's Bench Act, which is similar to sec. 15 (*h*) of the Ontario Judicature Act and ss. 24 (7) of The English Judicature Act 1873, now sec. 43 of the Act of 10 1925: *Ottawa Separate School Trustees v. Quebec Bank* (1917) 39 O.L.R. 118 at pp. 123 sq.

Section 62 (6) reads:

"The court in the exercise of the jurisdiction vested in it by this Act, in every cause or matter pending before it, shall have power to grant and shall grant, either absolutely or on such terms and conditions as it deems just, all such remedies as any of the parties may appear to be entitled to in respect of any legal or equitable claim properly brought forward by them in the cause or matter, so that as far as possible all matters in controversy between the parties may be completely and finally determined, and all multiplicity of legal
20 proceedings concerning any of those matters avoided."

While it has been said the criterion to be applied is contained in Rules 49 and 50 relating to the joinder of parties and causes of action (see per *Middleton J.* in *Boston Law Book Co. v. Canada Law Book Co.* (1918) 43 O.L.R. 13 at 15), it seems clear that the Court has a discretion to add parties where in its opinion the presence of such parties before the Court may be necessary to enable the Court completely to adjudicate and settle all the questions involved in the action.

The words "who should have been joined" mean "should in order to do complete justice have been joined" and, as a general rule, "all parties against whom remedy or relief is sought, should if possible, be joined in the same action": see per *Archibald*
30 *J.* in *Edwards v. Lowther* (1876) 45 L.J.C.P. 419 (the English and Ontario rules use "ought" instead of "should"—the meaning is the same).

I must first ask, should the Attorney-General of Canada have been joined as a defendant in Nolan's action? This is not to ask was it advisable to add him, but was it necessary?

I cannot see that, so far as the parties in Nolan's action are concerned, the Attorney-General was a necessary party, even though the validity of a statute or an Order in Council was being attacked. All that is required by sec. 72 (1) of the

King's Bench Act is that no judgment of invalidity may be pronounced unless the Attorney-General is notified. In many cases the Attorney-General does not intervene.

In a case such as this, with the Board's action pending in which the Crown was really a party, it might have been advisable to add the Attorney-General, asking only for a declaration that the statute and Order in Council were *ultra vires*. Although the Crown refused to be interpleaded, I am of the opinion that the Attorney-General could have been joined in an action so framed and could not have resisted an application to add him under such circumstances: *Tuxedo Holding Co. Ltd. v. University of Manitoba and Attorney-General for Manitoba* (1930) 10 1 W.W.R. 464; 38 M.R. 506.

The Attorney-General, then, was not a necessary, but would have been a proper party, and having in mind the other action and the issues there involved, it would seem to have been advisable to add him. I do not think that Rule 51 (2) is applicable to this particular case. In *Attorney-General (Ont.) v. Caldwell Sand & Gravel Co. Ltd.* (1916) 36 O.L.R. 585, Middleton J. seems to have taken a wider view of the meaning of the corresponding Ontario Rule 134, but the circumstances were quite different and the Dominion's property rights were involved. Middleton J. invokes the "spirit" of the rule as well as the letter.

In such a case as this, should I exercise the wider discretion given by sec. 62 (6) 20 of The King's Bench Act?

"Even in cases not falling within this Rule (Rule 134; our Rule 51 (2)) the Court can, when the interests of justice so demand, compel the plaintiff against his will to add a defendant so as to enable justice to be done"; per Middleton J. in *Ottawa Separate School Trustees v. Quebec Bank*, *supra*, at p. 126 citing *Montgomery v. Foy Morgan & Co.* (1895) 2 Q.B. 321, and referring to sec. 15 (h) of the Ontario Judicature Act (sec. 62 (6) of our King's Bench Act).

Rule 51 (2) is not confined to the adding of parties by the Court of its own motion or on the application of an already existing party, but persons not already parties may apply to be joined: *Re Fowler* (1917), 1942 L.T. 94. I can see no 30 reason why, even if this application cannot be supported on the wording of Rule 52 (1), this same principle should not apply to an application which can be justified under sec. 62 (6) of The King's Bench Act.

There are no authorities to assist me on this point. In *Atlas Lumber Co. Ltd. v. Winstanley* (1940) 1 W.W.R. 35 (Ewing J.); (1940) 2 W.W.R. 437 (C.A.); (1941) S.C.R. 87, the Attorney-General, who had intervened, was made a party defendant after the trial and appealed, but the reports do not disclose by whom the application was made or whether the order was consented to or opposed. In

Attorney-General (Sask.) and Costley v. Allen (1942) 2 W.W.R. 239, the Attorney-General, who had intervened, was made a party after trial, but this order was by consent. The report in Shannon v. Lower Mainland Dairy Products Board and Attorney-General (B.C.) (1938) 2 W.W.R. 604, does not disclose if the Attorney-General was made a party. The Board had evidently perfected its appeal although it was not represented by counsel on the argument before the Privy Council. So long as the appeal was perfected the Attorney-General would have a right to be heard as intervenant: see per Duff C.J. in Attorney-General (Alberta) v. Kazakewich, *supra*, at p. 429. In each of these last mentioned cases the question in issue
 10 was the validity of certain legislation. In Attorney-General (Ont.) v. Caldwell, *supra*, the Attorney-General of Canada was added as a party defendant before trial on the application of the defendant made at the request of the Minister of Justice. I am satisfied however that I may entertain the application by the Attorney-General.

Counsel opposing this application say that it is premature having regard to the present standing of this action, and argue it should be dismissed or postponed until it is seen whether Hallets appeal. If Hallets appeal the Attorney-General may intervene. Counsel for Hallets took the stand that he could not undertake that Hallets will appeal, but says that if they do the Attorney-General will be able to
 20 intervene. But suppose Hallets do appeal to the Court of Appeal and the Board's action is appealed again and Hallets stop short. In such a case the whole question would arise again. I think it wiser to dispose of the matter now.

Then counsel say—and I do not think their position really contradicts their other position—that the Attorney-General should have applied long ago to be added as a party defendant; that it should have been obvious that the situation which has arisen might very well arise, and they comment vigorously on the refusal of the Crown to interplead when all matters to be dealt with could have been disposed of in one issue. I do not think these arguments are fatal to this application.

Subsections (4) and (5) of Rule 51 provide:

30 “(4) Unless the Court otherwise orders, a party added or substituted as a defendant shall be served with the amended statement of claim.

“(5) The proceedings as against a party added or substituted as a defendant shall be deemed to have been commenced only at the time when he was so added or substituted.”

Mr. Laird for the applicant stated that all he desired was that the Attorney-General should be added, that he did not wish to delay the proceedings, and, as I understand him, he would waive the benefit of these rules. He did not wish a new trial or that further evidence be taken.

If I were proceeding under Rule 51 I could, I think, impose these or any other terms as a condition of making the order. I can impose terms on any order I make under sec. 62(6).

Counsel for Nolan and Hallets protest that these parties should not be put to the expense of helping to decide a point of constitutional law. But they are both parties to the Board's action and, while they might not be represented on the appeal which is to be taken, I consider it highly unlikely they will take that attitude. They seem to be in this litigation to the end.

As the matter stands at present Nolan will have a judgment for costs in this
 10 action against Hallets. They are his agents and he is loath under the circumstances to collect costs from them. In the Board's action Hallets and Nolan will each have judgments for costs against the Board. Nolan however will only be able to tax costs from the date he was added as a defendant in the Board's action: i.e., from the first day of the trial.

This motion was argued Saturday morning. The same day I settled the minutes of judgment in the Board's action. Counsel for Nolan and Hallets asked me to provide in that judgment that the costs to be paid by Hallets to Nolan in this action should be added to the costs to be recovered by Hallets from the Board in the second action. I declined to do so as I am of opinion I had no jurisdiction to make
 20 such an order. I might have had if the actions had been consolidated, but they were not. This however does not affect my discretion to impose terms on any order I may make in this application.

It is unfortunate that Mr. Nolan, seeking to protect property which he believes he owns in this country, should become involved in expensive and long drawn-out litigation, but situations such as this do arise. I think however the Court should be astute in the interests of justice to protect litigants in the position of Nolan and Hallets to as great an extent possible. Giving all the circumstances of this rather unusual case my best consideration, I am of opinion I should exercise my discretion and allow the application, but upon terms.

20 The application of the Attorney-General is granted subject to the terms hereinafter set out. The Attorney-General will be added as a party defendant; the plaintiff may amend his statement of claim as he may be advised and will serve the amended statement of claim on Mr. Laird or Mr. Monk or some member of their respective firms within 5 days. The statement of defence of the Attorney-General shall be filed and served within 3 days thereafter. Hallets will have leave to amend their statement of defence as they may be advised. The added defendant shall be deemed to have been a defendant as from the date of the issue of the statement of claim, and the amendments shall all be deemed to have been made

as of the date of the filing of the original pleading which they amend. The judgment in this action will not be settled or entered until the provisions of this order have been complied with. It will be settled by me before it is entered. The applicant will pay to Nolan and Hallets their respective costs of and incidental to this application.

The terms upon which this order is made are:

- (1) the Attorney-General of Canada shall forthwith pay to Hallets the amount of the costs they will have to pay Nolan in this action, taxed on a party and party basis without regard to the limit imposed by Rule 630;
- 10 (2) the Crown, whether represented by the Attorney-General or the Wheat Board, will undertake to agree with Nolan, Hallets, and the warehousemen, that the grain in question be sold and the proceeds, *after payment of all storage and other charges*, be paid into Court to the credit of the two actions, to be disposed of by the Court on the final termination of these actions. If the parties cannot agree on the terms of this arrangement the matter may be spoken to. The rights of all parties as they now exist are not to be prejudiced by this arrangement.

(Amended
by Order of
Court Oct.
29, 1948.)

I should like to have had more time to consider this matter, but the parties are desirous of bringing the appeals on at the November sittings of the Court of Appeal
20 and wish to have my decision as soon as possible.

“E. K. WILLIAMS”

C.J.K.B.

DELIVERED this 15th day of October, 1948.

In the Court of Appeal

BETWEEN :

JEREMIAH J. NOLAN,
(Plaintiff) RESPONDENT,

and

HALLET AND CAREY LIMITED,
(Defendant) RESPONDENT,

and

THE ATTORNEY-GENERAL OF CANADA,
(Intervener) APPELLANT.

10

NOTICE OF APPEAL

TAKE NOTICE that an application will be made to the Court of Appeal by or on behalf of the Attorney-General of Canada at the present or next ensuing sitting thereof by way of appeal from the order, decision and judgment of the Honourable Chief Justice Williams on the motion in this action by the Attorney-General of Canada to be added as a party defendant thereto, made in The Court of King's Bench for Manitoba, and entered on the 24th of November, 1948, whereby the said learned Chief Justice did add the Attorney-General of Canada as a party defendant in this action upon certain conditions therein set forth, for an order that

20 the said order, decision and judgment be varied and amended as follows, namely: that the part of the said order commencing at the word "and" in the fourth line thereof to the end of the paragraph ending "as they now exist" be struck out, and further that clause (e) of paragraph Number 1 of the said order, paragraph 2, and paragraph 3, including clauses (a) and (b) thereof, be struck out, and for an order that the Attorney-General of Canada be added as a party defendant to the said action without imposition of the said or any conditions.

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

1. That the judgment is against law, evidence and the weight of evidence.
- 30 2. That the learned trial Judge erred in imposing the said conditions on the Attorney-General of Canada precedent to his being joined as a party defendant to this action.

3. That the learned trial Judge erred in imposing conditions that are unreasonable, unjust and prejudicial to the due determination of the matters at issue in this action.

4. That the learned trial Judge erred in making the said order upon the condition that the Attorney-General of Canada pay costs of the action incurred before the Attorney-General was a party to the action and prior to the application to be joined as a party, and that the condition concerning the payment of costs is unreasonable and unjust.

5. That the learned trial Judge erred in imposing the condition that the costs 10 be payable forthwith, they thereby being lost in any event of the action.

6. That the learned trial Judge erred in imposing the condition that the Attorney-General of Canada undertake to agree with the plaintiff and the defendant and any other necessary parties for the sale of the barley referred to in the Statement of Claim.

7. That the learned trial Judge erred in imposing the condition concerning the sale of the said barley, such condition being unreasonable and impossible of fulfilment, and beyond the jurisdiction of the Court to impose. The said condition required the Attorney-General to agree with persons or corporations some of whom are not parties to this action, and over whom the Court has no jurisdiction, as to 20 the sale of barley which is the subject of the dispute in the said litigation between said parties.

8. That the learned trial Judge did not by the said order protect parties claiming to be interested in the said barley.

9. That the learned trial Judge erred in holding that the proceeds of a sale of the said barley could be paid into the Court of King's Bench to the credit of this action and to the credit of a certain action known as No. 269/47 in the records of the Court of King's Bench in which The Canadian Wheat Board is plaintiff and Manitoba Pool Elevators, Canadian Consolidated Grain Company Limited, United Grain Growers Terminals Limited, Fort William Elevator Company Limited, Hallet 30 and Carey Limited and Jeremiah J. Nolan are Defendants without prejudice to the rights of any of the parties to each action or of the Attorney-General of Canada as they now exist.

10. That the said action No. 269/47 was not then within the jurisdiction of the Court of King's Bench, an appeal from the judgment therein to this Honourable Court having been filed on the 28th of October, 1948, and the said learned Judge had no power, jurisdiction or authority to impose such condition.

11. That the learned trial Judge erred in failing to hold that the Attorney-General of Canada had as intervenant, and in the public interest, the right to be joined as a defendant to the action without the imposition of said or any conditions, especially as His Majesty in the right of Canada was interested in the said barley and warehouse receipts.

12. That the learned trial Judge considered matters which were irrelevant to the adding of the Attorney-General of Canada as a defendant.

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

10

DATED at Winnipeg, Manitoba, this 3rd day of December, 1948.

HENRY B. MONK,
Solicitor to The Attorney-General of Canada.

To:

THE REGISTRAR OF THE COURT OF APPEAL

And to:

JEREMIAH J. NOLAN AND HIS SOLICITORS,

MESSRS. AIKINS, LOFTUS & COMPANY.

HALLET AND CAREY LIMITED AND THEIR SOLICITORS,

MESSRS. FILLMORE, RILEY & WATSON.

In the Court of Appeal

BETWEEN :

JEREMIAH J. NOLAN,
(Plaintiff) RESPONDENT,

AND

HALLET AND CAREY LIMITED,
(Defendant) RESPONDENT,

AND

THE ATTORNEY-GENERAL OF CANADA,
(Intervener) APPELLANT.

10

NOTICE OF DISCONTINUANCE OF APPEAL

TAKE NOTICE that the Attorney-General of Canada the above named inter-
vener appellant doth hereby discontinue the appeal herein launched by the Attorney
General of Canada from the order, decision and judgment of the Honourable Chief
Justice Williams on the motion in this action by the Attorney General of Canada
to be added as a party defendant thereto made in the Court of King's Bench and
entered on the 24th of November, 1948.

DATED at Winnipeg this 13th day of December, 1948.

HENRY B. MONK,
Solicitor to the Attorney-General of Canada.

20

To:

THE REGISTRAR OF THE COURT OF APPEAL

And to:

JEREMIAH J. NOLAN AND HIS SOLICITORS,
MESSRS. AIKINS, LOFTUS & COMPANY.
HALLET AND CAREY LIMITED, AND THEIR SOLICITORS,
MESSRS. FILLMORE, RILEY & WATSON.

In the Court of Appeal

THE CHIEF JUSTICE OF MANITOBA
The Honourable S. E. RICHARDS
The Honourable J. B. COYNE
The Honourable A. K. DYSART
The Honourable J. E. ADAMSON

TUESDAY THE 7TH DAY OF DECEMBER,
1948.

BETWEEN :

THE CANADIAN WHEAT BOARD,
(Plaintiff) APPELLANT,

10

AND

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

AND

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

20

AND

In the Court of King's Bench

IN COURT
THE CHIEF JUSTICE OF MANITOBA
(ad hoc)

TUESDAY THE 7TH DAY OF DECEMBER, 1948.

BETWEEN :

JEREMIAH J. NOLAN,
Plaintiff,

30

AND

HALLET & CAREY LTD.
Defendants.

Upon the application of the Plaintiff Appellant that the barley, the property the subject matter of this action, be sold and the proceeds paid into court in lieu thereof, and upon reading the Notice of Motion and the Affidavit of John M. Hunt

filed, and upon the application coming before Mr. Justice Coyne on the 16th day of November, A.D. 1948, and being then adjourned sine die, and subsequently referred to this Court, and upon the application coming this day before this Court and after reading the said Affidavit and the Notice of Motion herein, and after hearing counsel for all parties,

IT IS ORDERED:

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

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

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

CERTIFIED

A. J. CHRISTIE,
Registrar.

30 SIGNED this 5th day of December, 1948.

A. J. CHRISTIE,
Prothonotary.

"Let this order go
E. A. Macpherson
C.J.
ex officio a Judge
of the King's Bench"

In The King's Bench

IN COURT THE HONOURABLE CHIEF JUSTICE WILLIAMS	}	Monday, the 13th day of December, 1948.
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IN THE MATTER OF:

JEREMIAH J. NOLAN,

Plaintiff,

AND

HALLET AND CAREY LIMITED,

Defendant.

10

ORDER

Upon the application of the Attorney-General of Canada and upon Counsel for all parties and the Attorney-General of Canada consenting thereto and stating to the Court:

(a) That an appeal had been taken by the Attorney-General of Canada against the Order made herein on the 15th of October, 1948, and signed the 24th day of November, 1948, and

(b) That pursuant to an Order made in the Court of Appeal in action No. 269/47 and an Order made in this action on the 7th day of December, 1948, the 20 barley in question in both actions has been sold and the proceeds paid into the Court of King's Bench to the credit of both actions, and

(c) That the parties to this action are agreed that subsequent to the adding of the Attorney-General as a Defendant to this action, further pleadings be dispensed with, and

(d) Counsel for the Attorney-General of Canada undertaking to appeal to the Court of Appeal from the Judgment dismissing this action upon the making of this Order:

IT IS ORDERED that the said Order of the 15th of October, 1948, be and the same is hereby amended by striking out that part thereof following the word "defendant", commencing at the word "and" in the fourth line in page 1 thereof down to the word "exist" in line 10 on page 2 including conditions (a) and (b) and clauses 1 (b), (c) and (d) and 2 and 3 thereof.

IT IS FURTHER ORDERED that the question of the imposition of the condition upon the Attorney-General of Canada as a condition precedent to his becoming a party to this action, namely, that the Attorney-General of Canada be required to undertake "to pay to Hallet and Carey Limited forthwith after
10 taxation thereof, the amount of the costs which they have been ordered to pay to the Plaintiff, Nolan, in this action, such costs to be taxed on a party and party basis without regard to the limit imposed by Rule 630" be reserved for determination by the Court of Appeal.

AND IT IS FURTHER ORDERED that the pleadings herein be amended by the addition to the style of cause hereof of the Attorney-General of Canada as a party defendant in this action and that the delivery and filing of pleadings by or on behalf of the Attorney-General of Canada herein be and the same are hereby dispensed with.

SIGNED this 13th day of December, 1948.

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J. A. ROBINS,
Prothonotary.

Consented to
Aikins Loftus MacAulay & Co.
Solicitors for Plaintiff

W. P. Fillmore
Solicitor for Defendant
Hallet and Carey Limited

Henry B. Monk
Solicitor for Attorney
General of Canada

In the Court of Appeal

BETWEEN:

JEREMIAH J. NOLAN,
(Plaintiff) RESPONDENT,

and

HALLET AND CAREY LIMITED,
(Defendant) RESPONDENT,

and

THE ATTORNEY-GENERAL OF CANADA,

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

(Defendant) APPELLANT.

NOTICE OF APPEAL

TAKE NOTICE that an application will be made to the Court of Appeal by or on behalf of the defendant appellant, the Attorney-General of Canada, at the next ensuing sitting thereof by way of appeal from the order, decision and judgment of the Honourable Chief Justice Williams in the trial of this action in the Court of King's Bench for Manitoba on the 22nd, 23rd, and 24th days of March, A.D. 1948, and rendered and pronounced herein on or about the 19th day of April, A.D. 1948, 20 whereby the said learned Chief Justice did give judgment for the Plaintiff Respondent and entered with amendments on the 22nd day of December, A.D. 1948.

1. For an order that the judgment aforesaid may be set aside and reversed and that the plaintiff's action be dismissed with costs, and

2. For an order and judgment that the money paid into the Court of King's Bench as recited in the said judgment of the 22nd day of December, 1948, with interest thereon from the date it was paid until it is paid out, be paid to The Canadian Wheat Board, the plaintiff in an action No. 269/47 recited in the said judgment, and

3. For a declaration that the order of the Governor General in Council of the 30 3rd of April, 1947 (P.C. 1292) in so far as it purports to enact sections 22 to 27 both inclusive thereof, and section 36 of Part 3 of the Western Grain Regulations of 30th of July, 1946 (P.C. 3222) is valid, and

4. For an order and judgment that the Attorney-General of Canada should not be required to undertake to pay or to pay to Hallet and Carey Limited the plaintiff's costs in this action.

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

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

inclusive, and in failing to hold that the Governor in Council, having deemed it necessary to make the aforesaid Order by reason of the continued existence of the said emergency for the purpose set out in paragraph (c) of the said subsection, had power to make and did duly make the aforesaid Order.

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

- (a) that The National Emergency Transitional Powers Act, 1945, conferred on the Governor in Council the power to make such orders as the Governor in Council might deem necessary or advisable as aforesaid for the purposes set forth in section 2, subsection (1), paragraphs (a) to (e), both inclusive, of the said Act, and that the said Act empowered the Governor in Council to make the said Order in Council P.C. 1292 and sections 22 to 27, both
 20 inclusive, and section 36 thereof.
- (b) that when an Order in Council has been passed by the Governor in Council which the Governor in Council has professed to consider necessary or advisable, as aforesaid, for the said purposes, it is not competent to any court to canvass the considerations which have or may have led the Governor in Council to deem such Order necessary or advisable for the purposes aforesaid.
- (c) that it is not pertinent to the judiciary to consider the wisdom or the propriety of the particular policy which is embodied in an Order in Council passed under the authority of the said Act, and in particular the said
 30 Order in Council and the said sections thereof.
- (d) that the determination of the policy to be followed is exclusively a subject for the Parliament of Canada and those to whom it has granted its powers and is not subject to review by the Court.

7. That the learned trial judge erred in admitting and considering evidence which was irrelevant and immaterial and in admitting as evidence and considering orders of The Canadian Wheat Board and viva voce evidence which was not relevant and was not material to matters in issue in the action, and, without limiting the generality of the foregoing, in admitting the following documents issued by The Canadian Wheat Board:

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

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

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

10. That the said Order in Council P.C. 1292 being valid, the plaintiff is not entitled to said money paid into Court or to any of it, and that the said money
10 should be paid to The Canadian Wheat Board under and pursuant to the terms of the said Order in Council, the said money having been substituted for the said barley.

11. That the imposition of a condition of the Attorney-General of Canada being required to undertake to pay to Hallet and Carey Limited the amount of the costs ordered to be paid by them to the Plaintiff Nolan in this action without regard to the limit imposed by Rule 630 of the Court of King's Bench was unreasonable and unjust, and prejudicial to the determination of the matter at issue in the action, and would be improper. A condition that such costs be payable forthwith would mean that they would be lost to the Attorney-General in any event of the action, and that such a condition would be unreasonable, and without authority.

20 12. That the learned Judge erred in failing to hold that the Attorney-General of Canada had as intervenant and in the public interest the right to be added as a defendant to the action without the imposition of the payment of any costs, more especially as His Majesty in the right of Canada was interested in the said barley and warehouse receipts referring to same, and matters irrelevant to the question of adding the Attorney-General of Canada were considered by the learned Judge.

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

DATED at Winnipeg in Manitoba this 3rd day of January, A.D. 1949.

HENRY B. MONK,

Solicitor to the Attorney-General of Canada.

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To:

THE REGISTRAR OF THE COURT OF APPEAL

And to:

JEREMIAH J. NOLAN, AND HIS SOLICITORS,

MESSRS. AIKINS, LOFTUS & COMPANY.

HALLET AND CAREY LIMITED, AND THEIR SOLICITORS,

MESSRS. FILLMORE, RILEY & WATSON.

No. 1/49

In the Court of Appeal

IN CHAMBERS

The Honourable

Mr. Justice J. B. Coyne

} MONDAY the 2nd day of May A.D. 1949.

BETWEEN :

JEREMIAH J. NOLAN,

(Plaintiff) RESPONDENT,

AND

HALLET AND CAREY LIMITED,

(Defendant) RESPONDENT,

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AND

THE ATTORNEY-GENERAL OF CANADA,

(Added by Order of the Court made

the 15th day of October, 1948),

(Defendant) APPELLANT.

ORDER

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

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

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

SIGNED this 2nd day of May, 1949.

“J. B. COYNE”

J. A.

In The King's Bench

THE CANADIAN WHEAT BOARD

vs.

MANITOBA POOL ELEVATORS ET AL

AND

J. J. NOLAN

vs.

HALLET & CAREY LTD. AND
THE ATTORNEY-GENERAL OF CANADA

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

DATED the twenty-first day of June, 1949.

\$ 38,576.49 Principal

\$ Interest

\$ 38,576.49 Total

“J. A. ROBINS”
Accountant.

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

In the Court of Appeal for Manitoba

Twenty-eighth day of June, 1949.

IN CHAMBERS the Honourable Mr. Justice Coyne

BETWEEN:

JEREMIAH J. NOLAN,
(Plaintiff) RESPONDENT,

AND

HALLET AND CAREY LIMITED,
(Defendant) RESPONDENT,

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AND

THE ATTORNEY-GENERAL OF CANADA

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

(Defendant) APPELLANT.

Upon the application of the Attorney-General of Canada, the above-named (Defendant) Appellant, for an order allowing this appeal to the Supreme Court of Canada from the judgment, order and decision of the Court of Appeal of the Province of Manitoba rendered and pronounced herein on Thursday, the 10th day of March, 1949, and upon reading the affidavit of John MacLean Hunt filed and upon hearing counsel for the Attorney-General of Canada and it appearing that
20 the amount or value of the matter in controversy in the appeal exceeds the sum of Two Thousand Dollars and that this appeal is launched and prosecuted by the Attorney-General of Canada on behalf of the Crown in the right of the Dominion of Canada, it is ordered that the said appeal be and the same is hereby allowed without security, and that execution in this action be stayed until the final determination of the appeal.

Signed the 28th day of June, 1949.

J. B. COYNE, J.A.

In the Court of Appeal for Manitoba

BETWEEN :

JEREMIAH J. NOLAN,
(*Plaintiff*) RESPONDENT,

AND

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

AND

THE ATTORNEY-GENERAL OF CANADA,
10 (added by Order of the Court made the 15th day of October, 1948),
(*Defendant*) APPELLANT.

TAKE NOTICE that the Attorney-General of Canada, the above-named (Defendant) Appellant, hereby appeals to the Supreme Court of Canada from the judgment, order or decision of the Court of Appeal for the Province of Manitoba, rendered and pronounced in this cause on the 10th day of March, 1949, whereby the said Court of Appeal dismissed with costs the appeal of the Attorney-General of Canada, the above-named (Defendant) Appellant from the decision and judgment of the Honourable Chief Justice Williams in the trial of this action rendered and pronounced in this cause in the Court of King's Bench for Manitoba on or
20 about the 19th day of April, 1948 and entered with amendments on the 22nd day of December, 1948; and whereby the said Court of Appeal did affirm the said decision and judgment of the Honourable Chief Justice Williams allowing the claim of the (Plaintiff) Respondent with costs as set forth in the judgment entered in the Court of King's Bench aforesaid.

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

Henry B. Monk, K.C.
Solicitor for The Attorney General of Canada.
the above-named (Defendant) Appellant.

to

30 · Jeremiah J. Nolan and to
Aikins, Loftus and Company his solicitors;

and to

Hallet and Carey Limited and to
Fillmore, Riley & Watson, its solicitors.

In the King's Bench

THE HONOURABLE
THE CHIEF JUSTICE } Wednesday, the 22nd day of December, 1948.

BETWEEN:

JEREMIAH J. NOLAN,

Plaintiff,

AND

HALLET AND CAREY LIMITED,

Defendant,

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AND

ATTORNEY GENERAL OF CANADA,

(added by Order of the Court made the 15th day of October, 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 both 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 having come on on the 19th day of April, 1948, for judgment:

THIS COURT DID ORDER AND ADJUDGE that the Plaintiff recover
20 possession in Canada of the 40,000 bushels of No. 3 C. W. Six Row Barley in the
Statement of Claim herein mentioned and the documents of title to the said
barley being:

	<i>Warehouse Receipt Number</i>	<i>Number of Bushels of Barley</i>	<i>Storage Date</i>
<i>Defendant</i>			
Manitoba Pool Elevators	12677	612-14	Dec. 2/46
Manitoba Pool Elevators	12676	1,000-00	Dec. 2/46
Manitoba Pool Elevators	12534	1,757-34	Dec. 7/46
Manitoba Pool Elevators	12573	1,836-32	Dec. 9/46
30 Manitoba Pool Elevators	12634	1,971-42	Dec. 10/46
Manitoba Pool Elevators	12788	2,015-10	Dec. 12/46
Manitoba Pool Elevators	12914	1,806-22	Dec. 16/46

<i>Defendant</i>	<i>Warehouse Receipt Number</i>	<i>Number of Bushels of Barley</i>	<i>Storage Date</i>
Manitoba Pool Elevators	12980	1,958-16	Dec. 18/46
Canadian Consolidated Grain Company Limited	1661	1,930-10	Dec. 20/46
Fort William Elevator Company Limited	3102	111-12	Dec. 28/46
Manitoba Pool Elevators	13974	2,028-26	Dec. 30/46
10 Manitoba Pool Elevators	13512	1,867-14	Jan. 3/47
Manitoba Pool Elevators	13632	1,840-30	Jan. 8/47
United Grain Growers Limited	26540	1,833-06	Jan. 10/47
Manitoba Pool Elevators	13802	2,207-14	Jan. 13/47
Manitoba Pool Elevators	13931	1,773-46	Jan. 16/47
Manitoba Pool Elevators	14078	9,479-08	Jan. 21/47
Lake Shippers Clearance Association Transfer Certificate	3747	3,970-00	Nov. 30/46

AND THIS COURT DID FURTHER ORDER AND ADJUDGE THAT, subject to the payment of charges and costs for storage, the Defendant Hallet and
20 Carey Limited deliver possession of the said barley and the said documents of title thereto to the Plaintiff.

AND IT APPEARING that since the delivery of the judgment herein on the said 19th day of April, 1948, an order of the Court of Appeal in a certain action numbered 269/47 in which the Canadian Wheat Board is (Plaintiff) Appellant, and Manitoba Pool Elevators, Canadian Consolidated Grain Company Limited, United Grain Growers Terminals Limited, Fort William Elevator Company Limited, Hallet & Carey Limited and Jeremiah J. Nolan are (Defendants) Respondents, and an Order of this Court was made on the 7th day of December, 1948, whereby it was
30 subject matter of these actions be sold for cash forthwith at the current market price and the proceeds thereof without deduction of storage or any charges by any party excepting broker's commission on the sale of the said barley, be paid into the Court of King's Bench to the joint credit of these actions, to be held until the final determination of these actions and thereafter subject to the order of the Court of Appeal and of the Chief Justice of the Court of Appeal as an ex officio judge of the Court of King's Bench and to be disposed of in lieu of the said barley on the final determination of the said actions; and the said order further providing that the proceeds of the said sale be paid into Court as aforesaid without prejudice to

and preserving the rights of all parties in each of the said actions and that the rights of all parties to each of the said actions and of the Attorney-General of rights of all parties to each of the said actions and of the Attorney General of said or the payment of the money into court as aforesaid;

AND IT APPEARING that the said barley has been sold and the proceeds paid into this court pursuant to the said order;

AND IT FURTHER APPEARING that by Order of this Court made on October 15, 1948, the Attorney General of Canada was added as a party defendant in this action upon the terms and conditions therein set forth and that by further
10 Order of this Court made on December 13, 1948, the said terms and conditions were varied and the question of the imposition of costs upon the Attorney General of Canada as a condition precedent to his becoming a party defendant as aforesaid was reserved for determination by the Court of Appeal;

NOW, THEREFORE, THIS COURT DOTH ORDER AND ADJUDGE:

1. That the Plaintiff is entitled to the money which has been paid into this court to the credit of this action and of action No. 269/47 pursuant to the order of December 7, 1948 being the proceeds of the sale of the barley in the Statement of Claim herein mentioned, subject to payment of charges and costs for storage.
2. That the order of the Governor General in Council of the 3rd day of April,
20 1947, (P.C. 1292) is ultra vires 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. That the Plaintiff recover against the Defendant, Hallet & Carey Limited, his costs of this action to be taxed without regard to the limit fixed by Rule 630.
4. That the question of the imposition of the condition upon the Attorney-General of Canada as a condition precedent to his becoming a party to this action, namely, that the Attorney General of Canada be required to undertake "to pay to
30 Hallet & Carey Limited forthwith after taxation thereof, the amount of the costs which they have been ordered to pay to the Plaintiff, Nolan, in this action, such costs to be taxed on a party and party basis without regard to the limit fixed by Rule 630" be reserved for determination by the Court of Appeal.

SIGNED the 22nd day of December, 1948.

J. A. ROBINS,
Deputy Prothonotary.

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 :

JEREMIAH J. NOLAN,
(Plaintiff) RESPONDENT

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AND

HALLET AND CAREY LIMITED,
(Defendant) RESPONDENT

AND

THE ATTORNEY-GENERAL OF CANADA
(Added by Order of the Court made the 15th day of October, 1948)
(Defendant) APPELLANT.

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 20 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 the 7th day of December, 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. 269/47 in the records of the said Court of King's Bench;

AND it appearing further that the storage charges in respect of the said barley amounting to the sum of \$9,720.30 were paid to the Respondents in the said action No. 269/47, Manitoba Pool Elevators, Canadian Consolidated Grain Company Limited, United Grain Growers Terminals Limited and Fort William Elevator 30 Company Limited, out of the said monies, and the balance of the said monies remains in court;

THIS COURT was pleased to direct 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's 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. 269/47 in the records of the said Court of King's Bench, namely, the sum of \$38,454.70 and accrued interest.
3. That the Respondent Jeremiah J. Nolan do recover against the Respondent
10 Hallet and Carey Limited his costs of the action in the court below and that the said costs be taxed without regard to the limit fixed by Section 31 of The Court of Appeal Act or by King's Bench Rule No. 630.
4. That the Respondent Jeremiah J. Nolan do recover against the Appellant The Attorney-General of Canada his costs of this appeal and his costs of the application of the Appellant to be made a party to this action and the appeal therefrom, and that all the said costs be taxed without regard to the limit fixed by Section 31 of The Court of Appeal Act or by King's Bench Rule No. 630.
5. That the Respondent Hallet and Carey Limited do recover against the Appellant The Attorney-General of Canada all costs which the Respondent Hallet
20 and Carey Limited has been ordered to pay to the Respondent Jeremiah J. Nolan pursuant to paragraph 3 hereof, and do also recover against the Appellant its costs of this appeal and of the action in the court below, such costs to include the costs of the application of the Appellant to be made a party to this action and the appeal therefrom, and that all of the said costs be taxed without regard to the limit fixed by Section 31 of The Court of Appeal Act or by King's Bench Rule No. 630.
6. That this judgment be not entered until after judgment has been entered in a certain action referred to as No. 269/47 in the records of the Court of King's Bench.

CERTIFIED this 21st day of June, 1949.

S. HARDYMENT,

Deputy Registrar.

In the Supreme Court of Canada

ON APPEAL FROM THE COURT OF APPEAL FOR MANITOBA

BETWEEN:

JEREMIAH J. NOLAN,
(Plaintiff) RESPONDENT,

AND

HALLET AND CAREY LIMITED,
(Defendant) RESPONDENT,

AND

10 THE ATTORNEY GENERAL OF CANADA,
(added by Order of the Court made the 15th day of October, 1948).
(Defendant) APPELLANT.

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. Statement of Claim
2. Statement of Defence
3. Reply
- 20 4. Notice to Attorney General of Canada and to Attorney-General of Manitoba
5. Notice of Motion by Attorney-General of Canada
6. Reasons for Order
7. Order on Motion by Attorney-General of Canada
8. Notice of Appeal by the Attorney General of Canada from the Order of Chief Justice Williams, which was entered on November 24, 1948.
9. Notice of Discontinuance of said Appeal by the Attorney General of Canada
10. Order of Court of Appeal and Court of King's Bench to sell grain
- 30 11. Order amending Order on Motion by Attorney-General of Canada
12. Notice of Appeal to Court of Appeal
13. Order of Court of Appeal enlarging time for Appeal
14. Certificate of Accountant
15. Order of Court of Appeal allowing Appeal to Supreme Court of Canada
16. Notice of Appeal to Supreme Court of Canada

Part II

17. Evidence

Part III

18. Exhibits (including Agreed Statement of Facts, the exhibits referred to therein and all other exhibits filed)

Part IV

19. Judgment of Court of King's Bench

20. Reasons for Judgment by Williams, C.J.K.B.

21. Judgment of Court of Appeal

10 22. Reasons for Judgment by MacPherson, C.J.M.

23. Reasons for Judgment by Coyne, J.A.

24. Reasons for Judgment by Dysart, J.A.

25. 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 The Canadian Wheat Board vs. Manitoba Pool Elevators, Canadian Consolidated Grain Company Limited, United Grain Growers Terminals Limited, Fort William Elevators Company Limited, Hallet and Carey Limited and Jeremiah J. Nolan.

20 DATED at Winnipeg, this day of A.D. 1949.

MESSRS. AIKINS, LOFTUS AND COMPANY,
per D. C. MCGAVIN,
Solicitors for the Plaintiff,
Jeremiah J. Nolan.

MESSRS. FILLMORE, RILEY AND WATSON,
per M. GREENE,
Solicitors for the Defendant,
Hallet and Carey Limited
H. B. MONK,
For the Attorney-General of Canada.

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 ATTORNEY-GENERAL OF CANADA,
(Added by Order of the Court made the 15th day of October, 1948),
(*Defendant*) APPELLANT,

AND

10 JEREMIAH J. NOLAN,
(*Plaintiff*) RESPONDENT,

AND

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

Upon application made on behalf of the Attorney-General of Canada and upon hearing what was alleged by counsel for the Attorney-General of Canada and upon reading the consent filed on behalf of the parties hereto.

It is Ordered that printing in the appeal case of the following documents and evidence, which are included in the case herein, be dispensed with:

- 20
1. Evidence
 2. Exhibits (including Agreed Statement of Facts, the exhibits referred to therein and all other exhibits filed)
 3. Reasons for Judgment by Williams, C. J. K. B.
 4. Reasons for Judgment by MacPherson, C. J. M.
 5. Reasons for Judgment by Coyne, J. A.
 6. Reasons for Judgment by Dysart, J. A.
 7. Reasons for Judgment by Adamson, J. A.

PAUL LEDUC,
Registrar.

In the Supreme Court of Canada

ON APPEAL FROM THE COURT OF APPEAL FOR MANITOBA

BETWEEN:

THE ATTORNEY-GENERAL OF CANADA,
(Added by Order of the Court made the 15th day of October, 1948),
(*Defendant*) APPELLANT.

AND

JEREMIAH J. NOLAN,
(*Plaintiff*) RESPONDENT,

10

AND

HALLET AND CAREY LIMITED,
(*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 49 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 Attorney-General of Canada is Appellant and Jeremiah J. Nolan and Hallet and Carey Limited are Respondents.

In testimony whereof, I have hereunder subscribed my name and affixed the
20 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 ATTORNEY-GENERAL OF CANADA,
(Added by Order of the Court made the 15th day of October, 1948),
(Defendant) APPELLANT.

AND

JEREMIAH J. NOLAN,
(Plaintiff) RESPONDENT,

10

AND

HALLET AND CAREY LIMITED,
(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.