

104.1930

**In the Privy Council.**

No. 28 of 1930.

**ON APPEAL FROM THE APPELLATE DIVISION OF THE  
SUPREME COURT OF ONTARIO.**

BETWEEN

FORT FRANCES PULP AND PAPER COMPANY  
LIMITED (Plaintiff) - - - - - *Appellant*

AND

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

RESPONDENTS' CASE.

**CASE FOR THE RESPONDENTS.**

RECORD

1. This is an appeal from the judgment dated the 3rd day of <sup>p. 288.</sup>  
 May 1929 of the Second Appellate Division of the Supreme Court of  
 Ontario unanimously affirming a judgment dated the 31st day of December <sup>p. 271</sup>  
 30 1927 of the High Court Division of the said Supreme Court (Grant, J.,  
 without a jury) in an action in which the Appellant was plaintiff and the  
 Respondents were defendants.

2. In this action which was commenced on the 28th day of <sup>p. 1.</sup>  
 December 1923 the plaintiff claimed—

(A) a declaration that such of the defendants as supplied  
 less than their proper share of newsprint to Canadian publishers

during the period from the 1st January 1918 to the 31st December 1919 are liable to pay to the plaintiff the loss suffered by the plaintiff in supplying more than its proper share of newsprint to Canadian publishers during the said period ;

(B) an accounting between the parties for the said period ;

(C) payment of the amounts found owing to the plaintiff upon such accounting.

**3.** The main questions involved in this appeal are—

(1) whether, as alleged by the Appellant, an agreement existed under which the Appellant was entitled to claim 10 compensation from the Respondents, and

(2) whether a statutory liability to make such compensation was imposed upon the Respondents by virtue of certain statutes of Canada (The War Measures Act (1914), 5 Geo. V, Cap. 2, and An Act to Provide for the Completion after the Declaration of Peace of Work Begun and the Final Determination of Matters Pending before the Commissioner and Controller of Paper and the Paper Control Tribunal, or either of them, at the Date of Such Declaration (1919), 9-10 Geo. V, Cap. 63) and of Orders in Council and Orders of the Paper Controller and of the Paper Control Tribunal thereunder, and, if so, 20

(3) whether the Supreme Court of Ontario has jurisdiction in respect of such statutory liability.

**4.** The Appellant and the Respondents were engaged in the manufacture of newsprint paper in Canada. At all material times the greater portion (over 85 per cent.) of the newsprint manufactured in Canada was exported to the United States. The remainder was sold to the publishers of Canadian newspapers. Some of the Canadian manufacturers of newsprint found a market in the United States for a larger proportion of their product than others, and some sold little or none in Canada. The Appellant had a large market in the United States and also supplied a large number of publishers in Canada west of the Great Lakes. This part of the Canadian market was not available to any of the Respondents, whose mills were situate in the more easterly part of Ontario and in Quebec, at such distances as to involve prohibitive freight rates to the western territory. The Appellant, which had this market to itself, accordingly sold a somewhat larger proportion of its product in Canada than the average proportion of output sold by Canadian manufacturers to Canadian newspapers. 30

**5.** In the beginning of 1917 the demand for newsprint in the United States became so great that the price there rose to \$65 per ton as compared with the prevailing price of \$50 a ton in Canada up to the end of 1916, and it was evident that there would be a substantial increase of the price of newsprint to Canadian purchasers. 40

6. As a result of representations to the Canadian Government made by the Canadian newspaper publishers, who complained of the rising price of newsprint, a meeting of the Canadian manufacturers of newsprint was held at Montreal on 21st February 1917 at which the Appellant and most of the Respondents were represented, and a resolution was passed to the effect that the manufacturers were prepared to meet the wishes of the Government and continue to supply the Canadian publishers with newsprint at a price of \$50 a ton for a period of three months from the 1st of March 1917. A sub-committee, including a representative of the Appellant, was appointed to consider ways and means of meeting the requirements of the Government.

Part Ex. 23,  
p. 290.

7. At a subsequent meeting of the said committee a tentative form of a proposed agreement was drawn up with a view to providing for the pooling and distribution of newsprint tonnage to Canadian customers and for payment to or by each manufacturer by reason of it having supplied a greater or less percentage of the Canadian tonnage as calculated by auditors to be appointed and as determined by the differential in price (i.e., a fixed or agreed figure intended to represent the difference between the Canadian and United States prices). The initial differential suggested was \$10 per ton for three months from 1st March 1917.

Part Ex. 23,  
p. 292.

p. 294.

8. The proposed agreement was never made or executed. A number of conferences were held and by April 1917 it became apparent that the matter could not be dealt with by agreement partly because of the Appellant's demand for a differential of \$15 (Appellant's letter, 7th April 1917) and partly because the Appellant had not sent a representative to a conference on the 6th April 1917.

p. 96, l. 17.

Part Ex. 18,  
p. 300.

Part Ex. 25,  
p. 300. l. 2.

9. The Appellant in its Statement of Claim alleged an agreement in writing made on the 21st February 1917 by the Companies represented at the meeting of the Canadian Pulp & Papermakers' Association held on that date, but no document other than the unsigned draft above referred to was produced, and the Trial Judge, with whom the Appellate Division agreed, found that no such agreement had been made.

p. 2, l. 21.  
p. 15, l. 30.

p. 255, ll. 24-  
32.

p. 276, ll. 28-  
33.

10. The special powers which the newspaper publishers had asked the Government to exercise with a view to preventing the anticipated rise in the price of newsprint are contained in the War Measures Act, Statutes of Canada (1914), 5 Geo. V, Cap 2, of which Sections 6 and 7 are as follows:—

“6. The Governor-in-Council shall have power to do and authorise such acts and things and to make from time to time such orders and regulations, as he may by reason of the existence of real or apprehended war, invasion or insurrection deem necessary or advisable for the security, defence, peace, order and welfare of Canada; and for greater certainty, but not so as to

restrict the generality of the foregoing terms, it is hereby declared that the powers of the Governor-in-Council shall extend to all matters coming within the classes of subjects hereinafter enumerated, that is to say :—

“(a) censorship and the control and suppression of publications, 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. ; 10

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

“(e) trading, exportation, importation, production and manufacture ;

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

“(2) All orders and regulations made under this section shall have the force of law, and shall be enforced in such manner and by such Courts, officers and authorities as the Governor-in-Council may prescribe, and may be varied, extended or revoked 20 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.

“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 30 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.”

Part Ex. 1,  
p. 301.

**11.** On the 16th April 1917, the matter not having been arranged by agreement, an Order-in-Council (No. 1059) was passed under the War Measures Act authorising the Minister of Customs to fix the price of news-print furnished or to be furnished by the manufacturers to the publishers in Canada from the 1st of March 1917 to the 1st of June 1917.

Part Ex. 1,  
p. 302.

**12.** On the same date, 16th April 1917, by another Order-in-Council (No. 1060), R. A. Pringle, Esq., K.C., was appointed a Commissioner under The Inquiries Act (Revised Statutes of Canada, 1906, Cap. 104) to conduct 40 an inquiry into and concerning the manufacture, sale, price and supply of

newsprint within the Dominion of Canada and he was also appointed an officer under the provisions of Section 6 of The War Measures Act above referred to, for the enforcement of all orders and regulations made by the Minister of Customs under Order-in-Council No. 1059.

**13.** On the 8th of May 1917, the Minister of Customs made an Order fixing the price of newsprint paper in Canada to Canadian newspapers at \$50 per ton f.o.b. the mills of the various manufacturers for a period of three months from 1st March 1917. The Order contained the following paragraph (hereinafter referred to as "the differential clause") :—

Part Ex. 1,  
p. 304.

10                   " And whereas under existing conditions the supply of news-  
print paper to Canadian publishers by the manufacturers is not  
proportionately distributed between them, and by reason of the  
fact that the prices fixed are considerably below those the manu-  
facturers are receiving from export business I do order that each  
manufacturer should bear his due proportion of the cost so entailed  
in complying with the above, and that if arrangements are not  
made between the manufacturers for the pooling of such cost and  
for adjustment between themselves in proportion to the per-  
centage of their output supplied to Canadian publishers that an  
20                   accounting be made and the manufacturer or manufacturers who  
have supplied a greater or less percentage of Canadian tonnage  
than properly attributable to them shall be paid by the other  
manufacturers sufficient to place them in the same position as  
the manufacturer or manufacturers who have not supplied their  
proper percentage of paper to the Canadian publishers."

p. 304, l. 20.

**14.** On the 25th May 1917 an Order-in-Council (No. 1442) was passed extending the powers of the Minister of Customs to fix the price of newsprint until the 1st of September 1917, and on the 1st of September 1917 (Order in Council (No. 2431)) the powers of the Minister were extended

Part Ex. 1,  
p. 309.

Part Ex. 1,  
p. 320.

30 to the 1st of December 1917.

**15.** By successive Orders dated 28th May 1917, 30th June 1917, 31st July 1917, 1st September 1917, 1st October 1917, and 2nd November 1917, the Minister of Customs fixed the price of newsprint in Canada at \$50 per ton up to the 20th November 1917. Each of these Orders contained the differential clause.

Parts Ex. 1,  
pp. 312, 317,  
318, 320,  
321, 323.

**16.** On 3rd November 1917, an Order-in-Council (No. 3122) was passed appointing Mr. Pringle a Controller, continuing to have all powers conferred on him by the Order-in-Council of the 16th April 1917, and also power to fix the quantity and price of newsprint paper to be furnished to

Part Ex. 1,  
p. 325.

40 the publishers in Canada by the manufacturers. The prices so fixed were

p. 326, l. 24. to be subject to approval by the Governor-in-Council. The Order-in-Council further provides "that all orders and regulations made by the Controller under this authority shall have the force of law and shall be enforced by such officer or officers as the Controller may appoint" and "that any person who contravenes or fails to observe any regulation or order made under this authority shall be liable to punishment as provided by the War Measures Act."

Parts Ex. 1,  
pp. 327, 332,  
333, 342, 348,  
350, 355.

17. From the 17th November 1917 to September 1918 various Orders fixing the price of paper were issued by the Controller from time to time and were confirmed either as issued or with modifications by Order-in-Council; they all contained the differential clause. On 26th September 1918 in view of the difficulties to which this clause had given rise an Order fixing the price of paper was issued by the Controller omitting it, and thenceforward it was likewise omitted from all subsequent Orders. 10

pp. 363-365.

18. During the earlier part of the period covered by these Orders, the manufacturers of newsprint had repeatedly discussed the propriety of the differential clause. Statements showing the amounts presumably due by the "short" mills (i.e., those who had supplied less than their proportion of Canadian tonnage) to the "long" mills (i.e., those who had supplied more than their proportion of Canadian tonnage) were considered. The representatives of the "short" mills claimed that, as they had not been able to obtain a foothold in the Canadian market under normal conditions, it was unfair that they should be required to bear the heavy differential burden under abnormal conditions brought about by the arbitrary limitation of the price in the Canadian market under the price-fixing Orders and some of the "shorts" took the position that while they were not willing to pay a cash differential, they would be willing to supply the Canadian publishers with their proper proportionate quota. The "longs" on the other hand desired the advantage of keeping their Canadian customers and obtaining the equivalent of United States prices by means of the cash differential. 20 30

p. 208, l. 3.  
p. 232, l. 27.

Ex. 29.  
p. 340.

An agreement was made on the 13th March 1918 between the Respondents and certain "long" mills that the "shorts" should pay to the "longs" 50 per cent. of the differentials claimed from them respectively, as calculated by the auditors appointed by the Controller, in full settlement of all claims under the price-fixing Orders up to 21st January 1918.

p. 187.  
ll. 20-35.

The Appellant refused to enter into this agreement.

Part Ex. 1,  
p. 352.

19. On the 6th of August 1918 the Controller made an Order for payment to the Appellant by the several Respondents of certain sums amounting in the aggregate to \$100,797.71, as the whole amount of the differentials up to the 31st December 1917 claimed by it under the several 40

price-fixing Orders. This Order was issued by the Controller without hearing the Respondents and by reason of the protest of the Respondents an Order-in-Council (No. 2270) was issued on the 16th of September 1918 constituting a Paper Control Tribunal to hear appeals from any decision or order made by the Controller, including the Order of the 6th August 1918, notwithstanding it had already been approved by Order-in-Council. The amount payable to the Appellant was subsequently reduced by the Paper Control Tribunal (see paragraph 29, post).

p. 189, ll. 3-19  
p. 191, l. 20  
Part Ex. 1,  
p. 360.

p. 361, l. 10.

Part Ex. 1,  
p. 397.

20 **20.** The Appellant's claim in this action is in respect of the period subsequent to 31st December 1917.

p. 4, l. 32.

**21.** In the meantime the controversies arising out of the attempted application of the differential had become so bitter, and the difficulties of administration had become so great, that it was recognised by the Controller and by all of the manufacturers, other than the Appellant, that the attempted imposition of cash differentials should be abandoned.

p. 193, l. 43.  
p. 194, l. 11.  
p. 188, l. 17.

**22.** The next Order issued by the Controller, dated 26th September 1918, was issued without the differential clause and it was omitted from all subsequent Orders.

Part Ex. 1,  
pp. 363,  
364.

20 **23.** Following the appointment of the Paper Control Tribunal, appeals were taken by the manufacturers and publishers from the Order made by the Controller on 26th September 1918, and the manufacturers who had been ordered to make payment to the Appellant under the Order of 6th August 1918 also appealed from that Order.

**24.** Pending the determination of the said appeal the Controller did not make any new Orders as to price, but by Orders dated 30th November 1918, 31st January 1919, 31st March 1919, 31st May 1919, 31st July 1919, 30th September 1919, 31st October 1919, renewed the said Order of 26th September 1918 for successive periods up till 31st December 1919. None of the said Orders contained the differential clause.

Part Ex. 1,  
pp. 375, 379,  
380, 385,  
395, 401,  
406.

30 **25.** On 23rd January 1919 the Paper Control Tribunal delivered an interim judgment in the appeal from the Order of 26th September 1918 referring the matter back to the Controller for further consideration by him and for the hearing of further evidence.

Part Ex. 1,  
p. 377.

**26.** On the 26th May 1919 the Controller, after hearing further evidence, reported to the Paper Control Tribunal that he saw no reason to make any change in his Order of 26th September 1918.

Part Ex. 1,  
p. 385.

9 & 10  
Geo. V. c.  
63.  
Part Ex. 1,  
p. 388.

**27.** On 7th July 1919 a Statute was enacted (being the Statute of that year mentioned in paragraph 3 (2) hereof) providing for the continuation and completion of the work of the Controller and Paper Control Tribunal begun prior to the declaration of peace.

Part Ex. 1,  
p. 398.

**28.** On the 18th day of August 1919 the Paper Control Tribunal allowed the appeals of the manufacturers and publishers from the Controller's Order of 26th September 1918. The price of newsprint was fixed at \$66 per ton for the period beginning 1st July 1918 and ending 30th November 1918, and the special provision made for the Appellant by the said Order was disallowed.

p. 398, l. 25.

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Part Ex. 1,  
p. 397.

**29.** On the said 18th day of August 1919 the Paper Control Tribunal allowed the appeals of the contributing manufacturers from the Order of 6th August 1918 ordering the payment by the Respondents of certain sums for "differentials" for the period ending 31st December 1917, reducing the amount from \$100,797.71 to \$72,507.12 and directing that any contributing manufacturers who had paid the Appellant any sum in excess of the amount set out in the said judgment should be repaid such excess forthwith by the Appellant.

p. 397, l. 21.

p. 353, l. 42.

**30.** The only provision contained in the Order of 6th August 1918 for its enforcement was a recommendation that in the event of non-compliance by any company affected no licence for the export of paper should be issued to such company, and this part of the Order remained unaffected by the Order made on appeal by the Paper Control Tribunal.

Part Ex. 3,  
p. 369.

When the Order was first issued the contributing manufacturers declined to make the payments ordered, and as a result an Order-in-Council was passed dated 19th October 1918 directing the Minister of Customs that in the event of any of the contributing manufacturers refusing to comply with the said Order no licence for export of paper should issue to such manufacturers while such refusal should continue.

Ex. 36, p.  
370.

Ex. 40,  
p. 370.  
Ex. 44,  
p. 371.  
p. 161, l. 9.  
p. 198, l. 1-4.  
p. 230.

p. 110, l. 18.  
Part Ex. 28,  
p. 433, l. 35.

**31.** On 23rd October 1918, John McDougald, Commissioner of Customs, telegraphed to the several contributing mills to the effect that if the payments required by the Order of 6th August 1918 were not made to the Controller within one week the export licences of the delinquents would be suspended, and under pressure of this threat the Respondents had paid the Controller, who in turn paid to the Appellant \$80,000, a sum in excess of the amount ultimately fixed by the Paper Control Tribunal.

p. 199, l.  
10-34.

**32.** Following the appeals from the Orders of 26th September 1918 and 6th August 1918, appeals were taken by both manufacturers and publishers from all Orders made by the Controller. Certain of these appeals were disposed of by the Paper Control Tribunal: some of them have never been dealt with. The notices of appeal in the cases which have not been dealt with are to be found in Exhibit 27.

Ex. 27,  
p. 368, 374,  
377, 379,  
380, 381,  
382, 386,  
387, 396,  
399, 401,  
405, 406,  
407.

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**33.** The administration of the paper control continued in a most unsatisfactory manner until December 1919. Appeals were taken from each order of the Controller as made and in turn the Controller merely renewed his previous Orders until the Paper Control Tribunal should deal with the earlier ones. The only means of enforcing his Orders possessed by the Controller was to suspend the export licence of the contumacious company and as doubts had arisen as to his power to do this an Order in Council (No. 1388) was passed on 7th July 1919, conferring this power on the Minister of Customs.

p. 195, l. 30.  
p. 199, l. 10.

p. 389, l. 40.

**34.** In December 1919 certain negotiations were set on foot between the manufacturers and publishers and in the end a joint meeting was held at Ottawa before Sir Henry Drayton, then Minister of Finance, at which an agreement was reached by the manufacturers other than the Appellant that the price for the first six months of 1920 should be \$80 per ton and that thereafter the price should be the lowest export price quoted by three of the largest agencies. In order to implement this agreement the Controller made an Order dated 17th December 1919 embodying the said agreement. The said Order did not apply to the plaintiff company.

p. 195, l. 30—  
p. 196, l. 30.

Part Ex. 1.  
p. 411.

A postscript was added to the said Order to the effect that nothing in the Order should prejudice the rights of interested parties in the matter of differentials. The postscript was not on the Order when it was drafted, approved by the Respondents and signed, and no explanation was given as to when, or in what circumstances it had been added.

p. 412, l. 22.

p. 196, l. 18-30.

**35.** On 24th December 1919 and 31st December 1919 the Controller made Orders revising the prices payable by purchasers of newsprint to the Appellant from 1st January 1918 to 1st July 1918 and fixing the prices to be paid to the Appellant for the month of January 1920. It will be observed that the Controller dealt with Appellant alone in these Orders, which did not apply to sales by the Respondents.

Parts Ex. 1.  
p. 415, 418.

**36.** On 16th January 1920 the Controller wrote to Sir Henry Drayton, Minister of Finance, asking to be relieved from the distribution of newsprint.

Part Ex. 1.  
p. 420.

**37.** On 22nd January 1920, by Order-in-Council, the resignation of Mr. R. A. Pringle as Controller of newsprint and other paper was accepted and R. W. Breadner, Esq., was appointed as Controller in his place.

Part Ex. 1.  
p. 421, l. 15.  
Part Ex. 1.  
p. 421, l. 30.

**38.** On 23rd January 1920, after the acceptance of his resignation, Mr. R. A. Pringle signed what purported to be an Order directing Mr. G. T. Clarkson to prepare a statement of the amount of differentials due to various "longs" from 1st March 1917 to 1st January 1920. This

Part Ex. 1.  
p. 422.

Order was ignored by the Respondents and subsequently Mr. Pringle stated in a letter to Mr. W. N. Tilley that the said Order never became effective.

Part Ex. 28,  
p. 433.

**39.** At the trial the Appellant adduced evidence to the effect that Mr. Pringle (who died before the trial) had shown Mr. Philips, the General Counsel for the Appellant, at some time in July 1919 a draft of an interim differential Order and at the same time informed Mr. Philips that he intended to make an Order in the said form. While the trial was in progress a copy of this proposed Order signed by Mr. Pringle and dated the 17th July 1919 was found among his papers. It is evident that in fact this proposed Order had not been issued, and the Trial Judge and the Appellate Division have so found. At a hearing before him on 17th September 1919, Mr. Pringle stated that he had made an Order as to differentials, but had not issued it, and he did not then issue it, though pressed to do so. In a letter to Mr. Tilley dated 9th November 1921, Mr. Pringle stated that no Order re differentials other than the Order of 6th August 1918 had ever been issued by him.

pp. 35-37.

Ex. 4,  
p. 393.

Ex. 4A,  
p. 393.

Ex. 31,  
p. 400, l. 4.

Part Ex. 28,  
p. 433, l. 41.

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**40.** No further Orders as to prices or differentials were made. The "long" mills never attempted to secure any further contributions from the "short" mills until some years later when the Appellant alone commenced this action.

p. 195, l. 45.

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**41.** Grant, J.A. (the Trial Judge), was of opinion that the Appellant had failed to establish the making of any such binding or enforceable agreement as was pleaded and said "it was abundantly clear to my mind by the evidence of other witnesses, that no such definite or valid and enforceable agreement had been entered into."

p. 255, l. 30.

p. 255, l. 6.

He thought it open to very serious question whether the language of the Order-in-Council of the 3rd November 1917 appointing the Controller authorised him to order one manufacturer to pay money to another in respect of the so-called "differentials."

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He reviewed in detail the provisions of the War Measures Act, the Orders-in-Council, the Orders of the Controller and the Paper Control Tribunal, and the evidence relating to the whole course of the matter, and was of opinion that no effective or valid Order regarding differentials was made on the 17th July 1919, and that Mr. Pringle was not Controller on the 23rd January 1920 and had no authority, statutory or otherwise, to make the alleged Order of that date. He was further of opinion that the only remedy was that provided by the Statute.

p. 264, l. 3.

p. 267, l. 30.

He pointed out that the authority given to the Controller under the Order-in-Council was to make Orders for the distribution and delivery of paper "by the manufacturers to the publishers," and that no mention

p. 269, l. 2.

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is made of ordering the payment of money. He was of opinion that assuming that the Paper Controller had power to order the payment of money, no claim could arise unless and until an Order had been made by the Controller. p. 269, l. 17.

He was of opinion that the Controller was invested with a discretion of a judicial or semi-judicial character which he alone (and the Tribunal over him) could exercise, and that he had not done so (i.e., with reference to the period in question in this action). p. 269, l. 36.

10 **42.** In the Appellate Division (Latchford, C.J., Riddell, Orde and Fisher, J.J.A.) the leading judgment was delivered by Orde, J.A. He was of opinion that the document of the 17th July 1919 was never in fact an effective or valid Order; he was further of opinion that the learned Trial Judge was right in holding that the document or Order of the 23rd January 1920 never became an effective Order of the Paper Controller. p. 288, l. 35.  
pp. 276-287.  
p. 281, l. 20.  
p. 282, l. 29.

20 He was of opinion that the general direction with regard to the payment of differentials in the Orders issued down to the Order dated the 30th August 1918 (effective until the 1st October 1918) did not affect the principles on which the Appellant's claim for relief is to be determined. He referred to some of the considerations involved and was of opinion that it was impossible to predicate what the ultimate conclusion of the Controller and the Paper Control Tribunal upon the question of differentials for the years 1918 and 1919 would have been. p. 282, l. 47.

He considered that there was not any liability to pay, statutory or otherwise, upon which a Court could proceed to ascertain the amount due. p. 285, l. 30.

He agreed with the Trial Judge that the only remedy was that provided by the Statute, and he added :— p. 286, l. 2.

30 “ But the feature of the Act which, in my judgment, establishes beyond question that relief for things suffered in consequence of the exercise of the powers thereby given to the Governor in Council, must be such as are given by the Act itself is the positive provision embodied in sub-section 2 of section 6 quoted above, that ‘ all orders and regulations made under this section shall have the force of law, and shall be enforced in such manner and by such Courts, officers and authorities as the Governor in Council may prescribe.’ The only Courts or officers ever prescribed under this provision were the Paper Controller and the Paper Control Tribunal.” p. 286, l. 9-18.

43. The Respondents submit that the appeal of the Appellant should be dismissed for the following, among other,

### REASONS.

- (1) BECAUSE the finding of the Trial Judge, unanimously confirmed by the Appellate Division, that no such agreement as was alleged in the Appellant's pleading had in fact been entered into, is right and should not be disturbed.
- (2) BECAUSE the War Measures Act 1914, 5 Geo. V., Chapter 2, Section 6, did not confer power upon the Governor-General in Council to order payment by the Respondents or any of them to the Appellant or to delegate such power to any officer appointed by the Governor-General in Council and if it purported to do so it was *ultra vires* the Dominion Legislature. 10
- (3) BECAUSE the Governor-General in Council did not purport by any Order-in-Council to exercise any such power or to delegate any such power to the Controller of Newsprint or to the Paper Control Tribunal.
- (4) (A) BECAUSE the Controller of Newsprint did not in fact order payment by the Respondents to the Appellant in respect of newsprint during any times material to this Appeal, i.e., subsequent to the 31st December 1917, and the findings of the Trial Judge confirmed by the Appellate Division are right. 20
- (B) BECAUSE the findings of the Trial Judge, confirmed by the Appellate Division, that the alleged Order of the Controller of Newsprint dated 17th July 1919, purporting to order certain payments to be made by some of the Respondents to or for the benefit of the Appellant was never issued, and that no such Order was in fact made, were right and should not be disturbed. 30
- (C) BECAUSE the findings of the Trial Judge, confirmed by the Appellate Division, that the so-called Order dated 23rd January 1920, made by Mr. R. A. Pringle after the acceptance of his resignation as Controller, and after the appointment of his successor, was not effective, and that Mr. Pringle had no authority, statutory or otherwise, to make such Order, were right and should not be disturbed. 40

- (5) BECAUSE the War Measures Act, Section 6, Sub-section 2, provides that all Orders and Regulations made under this Section shall be enforced in such manner and by such Courts, officers and authorities as the Governor-General in Council may prescribe, and the only method of enforcement is that provided by the Statute and the Orders in Council made thereunder.
- (6) BECAUSE the only method of enforcement prescribed was the withholding of export licences.
- 10 (7) BECAUSE if a claim to payment of differentials is enforceable by action at all it can only be so enforced after the amount due thereunder is assessed by the Controller of Newsprint subject to a right of appeal to the Paper Control Tribunal, and the Supreme Court of Ontario has no jurisdiction to assess such amount or to order such payment or to take any account.
- (8) BECAUSE the judgments of the Trial Judge and the Appellate Division are right for the reasons contained therein and ought to be affirmed.

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WILFRID GREENE.

GLYN OSLER.

RONALD SMITH.

**In the Privy Council.**

No. 28 of 1930.

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*On Appeal from the Appellate Division of  
the Supreme Court of Ontario.*

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BETWEEN

FORT FRANCES PULP AND PAPER COM-  
PANY LIMITED (Plaintiff) - - *Appellant*

AND

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

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CASE FOR THE RESPONDENTS.

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BLAKE & REDDEN,

17 Victoria Street, S.W.1.