

~~P.D. 9.6~~

34,1955

No. 23 of 1955.

In the Privy Council.

ON APPEAL FROM THE HIGH COURT OF AUSTRALIA.

UNIVERSITY OF LONDON  
W.C. 1  
25 OCT 1958  
INSTITUTE OF ADVANCED  
LEGAL STUDIES

44834

BETWEEN :

THE AUSTRALIAN WOOLLEN MILLS  
LIMITED (Plaintiff)

*Appellant,*

AND

THE COMMONWEALTH OF AUSTRALIA  
(Defendant)

*Respondent.*

Case for the Respondent.

1. This appeal is brought by special leave granted by Her Majesty by Order in Council dated 30th July, 1954. The appeal is from a judgment dated 4th May, 1954, of the High Court of Australia (Dixon C.J., Williams, Webb, Fullagar and Kitto JJ.) given in its original jurisdiction in favour of the respondent, the defendant in an action brought against it by the appellant as plaintiff. RECORD.  
Vol. I.  
p. 88, ll. 22-40.  
p. 87, ll. 1-9.
2. The action first came on for hearing before Kitto J. who, after taking evidence both oral and documentary, directed pursuant to Section 18 of the Judiciary Act, 1903-1950, that the case be argued Vol. I.  
p. 64, ll. 21-22.  
p. 86, ll. 27-31.  
10 before the Full Court.
3. The appellant is a company which has for many years past and at all material times carried on a large business in Sydney, New South Wales, as a manufacturer of worsted cloth from wool. Vol. I.  
p. 1, ll. 30-32.  
p. 2, ll. 1-3.  
p. 4, l. 38.
4. The matters in dispute between the parties arose from a scheme by which the Government of the Commonwealth of Australia during the years 1946, 1947 and 1948 paid subsidies to Australian manu-

RECORD.  
Vol. I.  
p. 59, ll. 30-39.

facturers of woollen goods for consumption within Australia. This scheme was incidental to the Commonwealth Government's then policy of price control and price stabilisation and was designed to enable the price to the consumers of woollen goods made in Australia to be kept down. Under this scheme the respondent from time to time paid to Australian woollen and worsted manufacturers sums of money, described as a subsidy, in respect of wool purchased between June, 1946 and June, 1948 by those manufacturers for use in the manufacture of goods for consumption within Australia.

Vol. I.  
p. 64, l. 25—  
p. 86, l. 8.

5. The history and circumstances of this scheme, so far as relevant 10 to this case, are set out or referred to in the judgment of the High Court and some aspects thereof are hereinafter referred to.

6. The principal questions which arise in this case are:—

(a) Whether the respondent, the Commonwealth of Australia, bound itself to the appellant by contract to pay subsidies under its said subsidy scheme.

(b) If so, whether, in the events which happened, the appellant became entitled to recover from the respondent the sum of £108,871 4s. 1d. claimed by it as subsidy in respect of wool purchased by it between April and June, 1948. 20

(c) Whether the appellant is entitled to recover from the respondent, as money had and received, the sum of £67,282 4s. 9d. paid by the appellant to the respondent on 9th May, 1949, by way of refund of subsidy.

7. The respondent's first contention was and is that the dealings of the parties in connection with the wool subsidy scheme did not constitute a contract between them as alleged by the appellant.

8. The High Court upheld this first contention, their Honours' view being summarised by the following passage in their judgment:—

Vol. I.  
p. 85, ll. 22-36.

“ On the whole case the conclusion is unavoidable that the 30 Commonwealth authorities never supposed for a moment that they intended to make an offer capable of leading to a contract binding the Crown, and that nobody ever supposed for a moment that they did so intend. A wide discretion in a variety of matters was clearly regarded by the authorities as residing in them, and was, in effect, acknowledged as residing in them. It is not only that substantial indications of the making of a contract or contracts are

lacking. There are substantial indications to the contrary. There was an expectation, and there is nothing really in the case to suggest that every reasonable expectation was not satisfied. In the well-known words of Lord Buckmaster in *Considine v. McInerney* (1921) 2 A.C. 162, at p. 170, 'the expectation, though it might be relied on with full certainty, was nonetheless not a legal right, and no claim for it could be enforced by any legal proceedings'."

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9. The respondent's second contention was and is that, whether 10 or not any contractual obligation was incurred by the respondent in connection with the said subsidy scheme, subsidies were only payable under the scheme in respect of wool which was—

(a) bought before 30th June, 1948; and

(b) used in manufacture before the Christmas closedown of manufacturers' mills in December, 1948.

Further, the respondent contends that it was a condition of the said scheme that the respondent had the right to withhold such part of the subsidy otherwise payable to the appellant, or to have repaid to it such part of the subsidy already paid by it to the appellant, as it 20 might think fit, having regard to the stocks of wool bought by the appellant before 30th June, 1948, which the appellant held at the Christmas closedown, 1948.

On this basis, the moneys claimed by the appellant in this action to be due to it for subsidy, namely, the sum of £108,871 4s. 1d., were not in fact due to it, and the sum of £67,282 4s. 9d. repaid by the appellant to the respondent was properly repaid in accordance with the scheme.

10. As the High Court found there was no contract for the payment of subsidies, it was unnecessary for it to consider what were the 30 terms and conditions of the subsidy scheme. But their Honours said:—

“ If we had been of opinion that a contract was established, we should have had to go on to consider whether it was not an implied term of that contract that subsidised wool should be used in manufacture during the period of price control by the Commonwealth—a period which in fact ended in September, 1948, but is to be taken to have been extended, by way of concession, to the

Vol. I.  
p. 85, ll. 37-46.

RECORD.

‘ Christmas closedown ’. We think that this was undoubtedly the intention of the authorities, and that there is a great deal to be said for the view that such a term must be taken to be implied if any contract is to be found. Being satisfied, however, that no contract was ever made, we prefer to dispose of the case on that ground.’

11. As to the appellant’s claim to recover the sum of £67,282 4s. 9d., the respondent contends that the said sum was repaid voluntarily by the appellant to the respondent in connection with an adjustment of accounts between them upon the termination of the subsidy scheme, 10 the said sum representing a balance which, having regard to the matters referred to in paragraph 9 above, was payable by the appellant to the respondent.

12. The High Court said of the claim for £67,282 :—

Vol. I.  
p. 85, ll. 47-52.

“ With regard to the £67,282, it is possible that, if the Company had refused to repay it, the Commonwealth would have failed in an action to recover that sum. But the Company, on the demand of the Commonwealth, paid it voluntarily and with full knowledge of all the material facts. There is no foundation whatever for a claim for this sum as money had and received or on any other 20 basis.

Vol. I.  
p. 86, ll. 1-6.

“ The payment was accompanied by a ‘ counterclaim ’, but it can hardly have been imagined that the counterclaim was legally tenable. The voluntary making of the payment is, we think, very significant. The most reasonable explanation of it is that the Company had throughout understood very well indeed the basis on which the Commonwealth authorities had entertained and paid claims for subsidies.”

Vol. II.  
pp. 331-483.

13. The respondent relies in support of all its contentions upon the whole course of the dealings between the parties in relation to the 30 wool subsidy scheme and in particular upon the whole of the correspondence between the parties and their agents.

14. Certain matters—none of which is in dispute—are referred to in the following paragraphs to show the circumstances out of which the transactions occurred from which the present dispute arose.

Vol. I.  
p. 58, ll. 33-45.  
p. 59, ll. 1-19.

15. Before the commencement of the war in 1939 it had long been the practice in times of peace for much the greater part of the

Australian wool clip to be sold in Australia. Of the wool sold in Australia, again by far the greater part was sold by auction. The normal method of selling by auction was for wool producers after shearing to send their greasy wool to wool-selling brokers carrying on business in the capital cities of the Australian States and in some other large cities. Auction sales were held in series in one selling centre after another, each series consisting of one auction by each recognised selling broker in that centre. In major centres there was more than one series in a year.

RECORD.

- 10 This system of marketing was, after an interruption during the war years, re-established in 1946 as is explained hereafter. Vol. I.  
p. 57, ll. 32-38.  
p. 89, ll. 4-7.

16. Generally speaking, wool is not scoured before being submitted to auction, but is sold in bales of greasy wool. The price is reckoned at so much per pound weight and depends on the type and quality of the particular wool and on the estimated yield of clean scoured wool to be got from the total weight of greasy wool. Vol. I.  
p. 22, ll. 12-29.

17. On the outbreak of war in 1939 an arrangement (known as the "Wool Purchase Arrangement") was made between the Government of the United Kingdom and the Government of the Commonwealth of Australia whereby the United Kingdom acquired from the Commonwealth of Australia all wool produced in Australia for the period of the war and one full wool-year thereafter, except wool required for the purpose of woollen manufacture in Australia. The wool was acquired from the Commonwealth of Australia at a "flat rate purchase price" irrespective of type or yield, which price was, from 1939 to 1942, 13.4375 pence (Australian) per pound weight and, for the 1942-1943 and following seasons, 15.45 pence (Australian) per pound weight. Vol. I.  
p. 51, ll. 16-32.

18. To enable the Wool Purchase Arrangement to be carried out the National Security (Wool) Regulations were proclaimed. By these regulations the Central Wool Committee was set up for the purpose of administering all matters arising out of the Wool Purchase Arrangement; and, as a result of the operation of the regulations, the Commonwealth of Australia acquired the whole of the Australian wool clip, both the wool which was to be sold to the United Kingdom under the Arrangement and the wool required for manufacture in Australia which was outside the Arrangement.

## RECORD.

Vol. I.  
p. 58, ll. 4-19.  
p. 59, ll. 20-29.

19. By the regulations all wool had to be submitted for "appraisement"; and sales by auction or private contract ceased. Appraisement was a method of valuation to determine the price for each lot of wool having regard to its type, quality and yield.

Vol. I.  
p. 51, ll. 33-48.  
p. 52, ll. 1-23.  
pp. 93-122.

20. Australian manufacturers authorised by the Central Wool Committee were permitted to acquire wool for manufacture in Australia. The price they were required to pay for such wool was, in the case of wool for making goods to be consumed in Australia, an amount called the "basic price". The basic price was, at all relevant times, the appraised price plus a percentage thereof, which percentage 10 during the wool season 1940-1941 was  $7\frac{1}{2}$  per cent., during the wool season 1941-1942 15 per cent., and thereafter 10 per cent.

Vol. I.  
p. 52, ll. 24-46.  
p. 53, ll. 1-14.

21. The basic price was in fact less than the price paid by the Commonwealth to the producers of the wool. This was because the Commonwealth paid to producers, not only the appraised price, but also a further sum known as the "flat rate adjustment". This latter sum owed its origin to the fact that the United Kingdom Government in the first instance paid to the Central Wool Committee the appraised price of wool as it was acquired by the United Kingdom Government, but thereafter settlements were annually effected between the United 20 Kingdom Government and the Central Wool Committee for the purpose of bringing the payments made by the United Kingdom Government into line with the terms of the Arrangement which provided for the acquisition of wool at a fixed price per pound weight regardless of quality. In fact, this annual settlement always resulted in a balance in favour of the Central Wool Committee. The United Kingdom Government therefore paid to the Central Wool Committee moneys known as the "flat rate adjustment" and the Central Wool Committee in turn distributed this money among producers of wool. The flat rate adjustment moneys were paid to all producers of wool whether their 30 wool had been sold to the United Kingdom or to Australian woollen manufacturers. As the total of the flat rate adjustment and appraised price of each lot of wool always exceeded the basic price of that lot, the result was that the Central Wool Committee in fact paid to the producers a higher price for wool which went to Australian woollen manufacturers than it received from those manufacturers.

22. The payments for wool made by Australian woollen manufacturers were also governed by the National Security (Price of Wool for Manufacture for Export) Regulations. The object of those regulations was to ensure that a proper price was obtained for wool 40

which was used in the manufacture of goods subsequently exported, because the right of Australian manufacturers to get wool at the basic price was granted only in respect of such wool as went into goods for consumption in Australia. Therefore, an addition was made to the basic price which was called the "deferred part of the purchase price". The amount of the deferred part of the purchase price varied from time to time, but was never less than 25 per cent. of the appraised price.

RECORD.

Vol. I.  
p. 51, ll. 43-48.  
p. 52, ll. 1-23.  
p. 98, ll. 14-28.  
p. 101, ll. 15-31.  
p. 105, ll. 3-17.  
p. 109, ll. 3-18.  
p. 113, ll. 14-29.  
p. 117, ll. 15-30.  
p. 121, ll. 16-28.  
p. 126, ll. 12-21.

23. Manufacturers buying wool were required to pay the basic price within 14 days after the purchase of the wool. The deferred part of the price was not payable unless demanded by the Central Wool Committee (or later by its successor the Australian Wool Realization Commission). The Committee (or the Commission) did not demand the purchase price if it was satisfied that the wool was in fact used in the manufacture of goods distributed for consumption within Australia.

Vol. I.  
p. 52, ll. 1-3.  
p. 98, ll. 14-28.  
p. 101, ll. 15-31.  
p. 105, ll. 3-17.  
p. 109, ll. 3-18.  
p. 113, ll. 14-29.  
p. 117, ll. 15-30.  
p. 121, ll. 16-28.  
p. 126, ll. 12-21.

Vol. II.  
p. 349, ll. 27-45.

The High Court said of this matter :—

20 " One would imagine that the intention, or at least the primary intention, behind both the regulations and the authorisations was that the percentage addition to the basic price should be exacted only if wool bought did not actually reach local consumption but was exported either in its raw state or in the form of a manufactured product. It would seem, however, that, legally speaking, the deferred or 'contingent' part of the price was exigible at the discretion of the Central Wool Committee."

Vol. I.  
p. 67, ll. 7-13.

24. From the beginning of the war until September, 1948, the Commonwealth exercised a general control over the prices of commodities sold in Australia, including manufactured woollen goods. In fixing the price of manufactured woollen goods, one of the matters taken into consideration was the basic price of the wool content of those goods.

Vol. I.  
p. 29, ll. 32-35.  
p. 30, ll. 17-41.  
p. 31, ll. 1-15.  
p. 32, ll. 14-15.

25. The sale of wool to manufacturers at the basic price (which was less than the price paid for that wool to the producers) had the effect of keeping down the controlled price of manufactured woollen goods in Australia. The scheme under which the manufacturers paid for the wool used by them was thus an element in the system of price control.

Vol. I.  
p. 53, ll. 5-14.

RECORD.  
 Vol. I.  
 p. 54, ll. 17-39.

26. At the end of the war the United Kingdom Government was the owner of large stocks of wool acquired under the Wool Purchase Arrangement. In order to realise these stocks, the " Disposals Plan " was agreed upon. To carry this plan into effect the Commonwealth Parliament passed the Wool Realization Act, 1945, in the schedule to which the Disposals Plan is set out. The nature of the Disposals Plan was considered by the Privy Council in *Commissioner of Taxation of the Commonwealth of Australia v. Squatting Investment Co. Ltd.*, (1954) A.C. 182. As a result of the adoption of the Disposals Plan the Australian Wool Realization Commission was set up by the Wool 10 Realization Act, 1945. Among its other duties it took over the functions of the Central Wool Committee.

Vol. I.  
 p. 54, ll. 40-45.  
 p. 55, ll. 1-14.  
 p. 57, ll. 29-38.

27. The Disposals Plan provided for the continuation during the wool year 1945-1946 of the system of acquiring wool by appraisalment. After 31st July, 1946, however, the pre-war Australian practice of selling the wool clip by auction was resumed. Although different opinions had been held at various earlier dates, by June, 1946, it was generally expected that the price of wool would rise substantially when auctions were resumed.

Vol. I.  
 p. 29, ll. 32-35.  
 p. 30, ll. 25-26.  
 p. 32, ll. 6-12.  
 p. 89, ll. 35-40.

28. The expected rise in the price of wool was of great importance 20 to the Commonwealth in relation to its price control scheme. The Commonwealth intended to continue its control of prices beyond 31st July, 1946, and desired also to prevent a sharp rise in the price of manufactured woollen goods. Such a rise could not have been avoided if manufacturers had been obliged to pay for their wool the full auction prices. The Commonwealth in fact continued to control prices until 20th September, 1948. Thereafter, price control became the subject of legislation by the several States.

Vol. I.  
 p. 57, ll. 36-44.  
 p. 58, ll. 1-46.  
 p. 59, ll. 1-16.  
 p. 59, ll. 30-39.  
 Vol. II.  
 p. 331, ll. 17-29.  
 p. 332, ll. 5-26.

29. In June, 1946, it was announced that the Commonwealth Government had decided that, on the resumption of the auction system, 30 a subsidy would be paid to Australian manufacturers in respect of wool purchased by them for use in the manufacture of goods for consumption in Australia. The subsidy was to be calculated as the difference between the basic price and the average market price of that type of wool for each auction series and was to be paid upon conditions from time to time to be notified. The Australian Wool Realization Commission was to administer the scheme and determine the amount of subsidy payable in each particular case.



Thereafter much correspondence passed between the Australian Wool Realization Commission and manufacturers, including the appellant, concerning the terms and conditions on which subsidy would be paid. In response to a request from the respondent's solicitor the appellant, by letter dated 14th April, 1953, furnished certain particulars of its claim in this action and alleged that the promise on which it sued was made by the respondent in writing and was contained in the said correspondence and in other documents referred to in the said letter of 14th April, 1953.

RECORD.  
Vol. II.  
pp. 485-493.

- 10 30. The Australian Wool Realisation Commission from time to time calculated amounts of subsidy in respect of purchases by manufacturers, including the appellant, and from time to time made payments of subsidy which were considered by it to be payable in accordance with the scheme. Payments to the appellant of large sums by way of subsidy were made on various dates, the total payments in respect of the wool year 1947-1948 amounting to £371,941 18s. 10d.

Vol. I.  
p. 8, ll. 24-46.  
p. 9, ll. 1-10.  
p. 38, ll. 34-37.  
  
Vol. I.  
p. 275.

All payments were made by cheques each accompanied by a statement containing the following words :—

- 20 “ The amount shown herein as a subsidy payment has been calculated in accordance with the procedure approved by the Commonwealth Government and is payable on the condition that all wool included in the invoice is to be used for the manufacture of goods for consumption within the Commonwealth. Payment of this amount is made to you by the Australian Wool Realisation Commission as agent for the Government of the Commonwealth of Australia in accordance with the principles of the Price Stabilisation Plan and the Government retains the right to review, and if necessary vary, the amount of subsidy so paid. It is an essential condition of payment of subsidy that the wool on which
- 30 subsidy has been paid should be used by the purchaser for the purposes of manufacture and that no such wool should be resold without prior notification being given to the Australian Wool Realisation Commission.”

Vol. I.  
pp. 236, 238,  
240, 286, 287.  
Vol. II.  
p. 360, ll. 32-45.  
p. 376, ll. 14-26.  
p. 386, ll. 16-29.

31. On 20th February, 1948, the Australian Wool Realisation Commission sent to manufacturers, including the appellant, a letter which contained the following among other statements :—

Vol. II.  
p. 409, ll. 34-44.

“ The Commission has been directed by the Commonwealth Prices Commissioner to inform manufacturers that the Government proposes to review the operation of the subsidy scheme and

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consider the revision of existing basic costs at the 30th June, 1948, or before.

*“ It is important to note that there is no guarantee that stocks held at the 30th June, 1948, will remain subsidised to the present basis. All or portion of the subsidy on stocks held at that date may be adjusted by the Commonwealth Government if it deems such action necessary. This should be borne in mind in the formulation of purchasing programmes as well as the fact that subsidy may be withheld forthwith on purchases which are deemed excessive or inappropriate to a mill’s functions.”*

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Vol. I.  
pp. 275-280.  
Vol. II.  
p. 423, ll. 13-17.

32. Between 14th April and 30th June, 1948, the appellant bought the wool in respect of which it claims in this action to be entitled to subsidy. Early in June, 1948, an announcement was made by the respondent that the wool subsidy scheme would be discontinued as from 30th June, 1948. Arising from this decision, the Australian Wool Realization Commission, by various letters, in particular by letters dated 30th August, 1948 and 15th December, 1948, informed manufacturers, including the appellant, of the terms on which the scheme was to be wound up, including the circumstances in which amounts claimed but not paid as subsidy would be withheld and amounts already paid in 20 respect of subsidy would become repayable to the respondent. The withholding or repayment of subsidy was to be determined by reference to the stocks of wool purchased before 30th June, 1948, which manufacturers held at the Christmas closedown, 1948.

Vol. II.  
pp. 434-6.  
pp. 444-8.

Vol. I.  
pp. 297, 301.  
Vol. II.  
pp. 444-8.  
pp. 458-467.

33. Pursuant to the directions given in the letter of 15th December, 1948, the appellant furnished to the respondent returns of wool purchased before 30th June, 1948, and held by it in stock at the Christmas closedown, 1948. The returns, in substance, showed that the appellant held the following wool either purchased ex appraisalment, or on which subsidy had been claimed, or on which subsidy had been paid :—

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- 201 bales purchased ex appraisalment between 1942 and 1946,
- 571 bales purchased during the 1946-47 season on which subsidy had been paid,
- 2,580 bales purchased during the 1947-48 season on which subsidy had been paid or claimed,
- 193,983 lbs. weight of wool broached from the original bales.

34. The Australian Wool Realisation Commission, in accordance with decisions notified in its said letter dated 15th December, 1948, calculated the sums payable by the appellant in respect of the wool referred to in the last preceding paragraph as follows:—

In respect of the said 201 bales	...	...	£2,121	0	7
In respect of the said 571 bales	...	...	£6,364	11	10
In respect of the said 2,580 bales	...	...	£133,225	0	1
In respect of the said 193,983 lbs. weight	...	...	£34,442	16	4
			<hr/>		
			£176,153	8	10
			<hr/>		

RECORD.

Vol. I.  
p. 46, ll. 38-41.  
p. 47, ll. 13-45.  
p. 48, ll. 1-47.  
p. 49, ll. 1-48.  
p. 50, ll. 1-23.  
Vol. II.  
p. 472, ll. 20-31.

10 The appellant did not dispute the correctness of the various figures and calculations; but it argued before the High Court that there could be no justification for claiming a repayment of £2,121 0s. 7d. in respect of appraisalment wool on which no subsidy had been paid: and it also complained that (as was the fact) the sums of £133,225 and £34,442 16s. 4d. did not exactly correspond with the amounts of subsidy claimed or paid but were calculated in accordance with formulae that took into account certain averaged figures. The respondent contends that whether or not it had any contractual obligation under the scheme, it was, under the terms of the scheme, entitled to prescribe such principles as it saw fit for the purpose of calculating the amount of subsidy which was to be repaid by or withheld from the appellant.

Vol. I.  
pp. 302-306.

Vol. I.  
p. 63, ll. 14-21.

In particular it contends that it was justified, for the purpose of such calculation, in treating wool purchased ex appraisalment at the special price allowed to Australian manufacturers and still in stock in December, 1948, as if it had been subsidised under the subsidy scheme. Further, if it were relevant, the respondent would contend that the principles which it prescribed were just and reasonable and were accepted by the appellant.

30 35. As the final result of the calculations referred to in the preceding paragraph the respondent withheld from the appellant the sum of £108,871 4s. 1d. (being the amount of subsidy calculated by the respondent in respect of wool bought by the appellant between April and June, 1948, and still unpaid) and the appellant repaid to the respondent the sum of £67,282 4s. 9d. (being the difference between the sum of £176,153 8s. 10d. above-mentioned and the said sum of £108,871 4s. 1d.).

Vol. II.  
pp. 472-7.  
p. 478, ll. 22-25.

RECORD.

Vol. I.  
p. 41, ll. 4-12.  
Vol. II.  
p. 477, ll. 10-13.  
pp. 478-9.

The sum of £67,282 4s. 9d. was paid by the appellant to the respondent without protest. At the time of making this payment the appellant contended that it was entitled by way of counterclaim to subsidy amounting to £92,002 10s. 0d. This counterclaim was made on a basis different from the basis of the appellant's claims in the present action. It was not put forward by the appellant on the trial of the present action. The High Court judgment dealt with the payment of the sum of £67,282 4s. 9d. in the passage quoted in paragraph 12 above.

36. The respondent submits that this appeal should be dismissed 10 with costs for the following amongst other

#### REASONS

- (a) The decision of the High Court of Australia was correct.
- (b) There was no legally enforceable obligation on the part of the respondent to pay subsidies.
- (c) The appellant did not establish that under the terms and conditions of the wool subsidy scheme any moneys were due and payable to it.
- (d) By the terms and conditions of the subsidy scheme the appellant did not become entitled to receive the sum of £108,871 4s. 1d. 20 now claimed by it, because of the stocks of " subsidised wool " it held at the Christmas closedown, 1948.
- (e) The amount of £67,282 4s. 9d. was paid by the appellant voluntarily, without protest and without mistake and because it accepted the terms and conditions of the subsidy scheme.

W. J. V. WINDEYER.

G. H. LUSH.

**In the Privy Council.**

**ON APPEAL FROM THE HIGH COURT  
OF AUSTRALIA.**

THE AUSTRALIAN WOOLLEN  
MILLS LIMITED (Plaintiff) *Appellant,*

AND

THE COMMONWEALTH OF  
AUSTRALIA (Defendant) *Respondent.*

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**Case for the Respondent.**

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COWARD, CHANCE & CO.,  
ST. SWITHIN'S HOUSE,  
WALBROOK, E.C.4.  
*Solicitors for the Respondent.*