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# In the Privy Council

ON APPEAL  
FROM THE HIGH COURT OF AUSTRALIA

UNIVERSITY OF LONDON  
W.C. 1  
25 OCT 1956  
INSTITUTE OF FINANCED  
LEGAL STUDIES

44833

BETWEEN  
THE AUSTRALIAN WOOLLEN MILLS LIMITED *Appellant*  
AND  
THE COMMONWEALTH OF AUSTRALIA . *Respondent*

## Case for the Appellant

RECORD.

10 1. This is an appeal by Special Leave from a Judgment dated the fourth day of May One thousand nine hundred and fifty-four in favour of the Respondent in an action brought by the Appellant in the original jurisdiction of the High Court of Australia for the sum of £176,153 8s. 10d. p. 83.

2. The action was referred by the Judge of first instance, Mr. Justice Kitto, to the Full Court for further hearing after oral evidence and a considerable amount of documentary evidence had been given on the 1st day of May 1952 and on the 6th and 7th days of May 1953. The action was heard by the Full Court (Sir Owen Dixon, Chief Justice, and Justices Williams, Webb, Fullagar and Kitto) on the 31st day of August 1953, and the 1st, 2nd and 4th days of September 1953.

20 3. In the amended Statement of Claim dated the 4th day of November 1952 the Appellant first sued the Respondent for moneys due under contracts whereby the Respondent agreed to pay to the Appellant certain moneys described as subsidies and hereinafter referred to as subsidies, in respect of wool purchased by the Appellant during the wool years 1946/47 and 1947/48, made up as follows :—

	£	s.	d.	
Wool year 1946/47 .. ..	6,364	11	10	p. 2, ll. 23-31.
Wool year 1947/48 .. ..	167,667	16	5	p. 3, ll. 1-9.
	£174,032	8	3	

30 4. The Respondent in its Defence dated the 4th day of March 1953 denied that it had made any such contracts. p. 4, l. 39.  
p. 5, ll. 25-28.

5. The Respondent did admit, however, whilst maintaining this denial, that during the wool years 1946/47 and 1947/48 the Australian p. 4, ll. 40-6.  
p. 5, ll. 16-24.

Wool Realisation Commission (which for present purposes can be identified with the Respondent) invited certain Australian woollen manufacturers including the Appellant to make application for payment of a subsidy which it informed the said manufacturers, including the Appellant, the Respondent intended to pay to Australian manufacturers in respect of wool purchased by them for Australian domestic consumption and stated that the amount of such subsidy would be calculated by the said Commission in accordance with certain principles and would be paid in certain circumstances and upon certain conditions from time to time made known to the Appellant.

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#### PRINCIPAL ISSUE.

6. The main issue between the parties is whether,

(1) As the Appellant alleges, the Respondent contractually bound itself to pay to the Appellant the amounts from time to time payable in accordance with its statements currently communicated to the Appellant, or whether,

(2) As the Respondent alleges, such statements should only be regarded as statements expounding future Governmental policy and incapable of conferring on the Appellant or other manufacturers who acted thereon and in accordance therewith any contractual 20 rights.

7. The High Court decided in favour of the Respondent on this issue. By reason of the matters hereinafter set out it is contended that the High Court was wrong in law in so finding.

#### QUANTUM.

WOOL YEAR 1946/1947.

8. Assuming the Appellant to be correct in contending that the Respondent was contractually bound to pay such sums from time to time by way of subsidy, there is no issue as to quantum in respect of the wool year 1946/47. The Respondent in its Defence admits that 30 £6,364 11s. 10d. has not been paid in respect of subsidy for that year and the Appellant accepts such admission. Accordingly, if the Respondent was contractually obliged to pay subsidy in respect of the wool year 1946/47, the Appellant is, in its submission, entitled to Judgment in respect of that wool year for the sum of £6,364 11s. 10d.

p. 5, ll. 7-14.

WOOL YEAR 1947/1948.

9. In the Defence there is no admission as to the amount due in respect of the wool year 1947/48, but in evidence the Respondent admits the basis on which the Appellant computes the figures of £167,667 16s. 5d. as due for that wool year. Having regard to the pleadings and to the 40 evidence the issue between the parties as to this year, assuming the existence of a contractual relationship, is confined to the question as to

pp. 472-473, ll. 32-8.

whether the sum of £108,871 4s. 2d. is due or whether, as the Appellant claims, the sum of £167,667 16s. 5d. is due. This in turn depends on whether or not the Respondent is entitled to a credit of £58,796 12s. 4d.

The sum of £108,871 4s. 2d. was not at any time paid by the Respondent to the Appellant but the sum of £58,796 12s. 4d. was handed over by the Respondent to the Appellant along with other moneys in respect of subsidy notified by the Respondent as due to the Appellant in respect of this year. However, such sum was refunded by the Appellant to the Respondent in the following circumstances and the question  
10 between the parties is as to the legal effect of such refund.

ISSUES RAISED ON REFUND OF £58,796 12s. 4d.

10. Pursuant to its decision to withdraw certain amounts of subsidy upon its termination of the subsidy scheme the Respondent by a letter of the 25th February 1949 demanded the payment by the Appellant of a total sum of £67,282 4s. 9d., which, for present purposes, should be treated as composed of three distinct sums, namely :— pp. 472-474.

	£	s.	d.
	6,364	11	10
	58,796	12	4
20	2,121	0	7
	<hr/>		
	£67,282	4	9
	<hr/> <hr/>		

11. After intervening correspondence the Appellant forwarded to the Respondent the said total sum of £67,282 4s. 9d. under cover of a letter of 9th May 1949. p. 470.

12. So far as quantum in respect of the year of 1947/48 is concerned the only defence raised by the Respondent to the Appellant's claim for unpaid subsidy was a general denial putting the Appellant to proof. The contest between the parties is as to whether, as the Respondent would submit, regard should be had in this connection, only to the initial  
30 payment by the Respondent of the sum of £58,796 12s. 4d. divorced from the circumstances of its subsequent refund, or whether, as your Appellant would submit, the whole of the circumstances, including those attendant upon the refund of this sum, should be regarded in order to determine the amount which had been effectively paid by the Respondent to the Appellant for subsidy in respect of this year. p. 5, ll. 25-28.

The Appellant submits that having regard to all the circumstances it is entitled to treat the Respondent as not having paid the sum of £58,796 12s. 4d. or, alternatively, is entitled to claim credit in the final settlement of accounts for such sum.

40 13. In any case it is submitted that the effect of the Appellant's refund must be determined by the Appellant's intention as communicated to the Respondent. Upon the true construction of the communications between the parties the Appellant submits that the said refund was not made in recognition or satisfaction of all or any of the claims put forward by the Respondent nor with any intent of thereby defining or altering

the contractual relationship of the parties or of finally discharging or affecting any rights, but were mere refunds made for the time being to re-establish the *status quo*, and as an act of good faith pending the final determination of the accounts between the parties, or alternatively that the sums were paid upon a condition which the Respondent in the event did not accept.

APPELLANT'S CLAIM IN RESPECT OF UNPAID SUBSIDY ON ALTERNATIVE BASES.

14. If the Respondent was contractually obliged to pay the amount of subsidy and the Appellant's submissions in paragraphs 12 and 13 hereof as to the effect of refund of the payment and subsequent sum of £58,796 12s. 4d. are accepted the Appellant would, in its submission, be entitled to Judgment for the amount claimed in respect of the wool years 1947-48, i.e., the sum of £167,667 16s. 5d., there being no other issues raised by the pleadings with respect to this claim of the Appellant. 10

15. If, on the other hand, the Respondent was contractually obliged to pay the amounts of subsidy and, contrary to the Appellant's submission, the Respondent is entitled to be credited with all the sums at any time paid by it for subsidy in respect of the wool year 1947-48 notwithstanding any subsequent refund made to the Respondent, the Appellant is nonetheless entitled, in its submission, to Judgment in respect of the wool year 1947-48 for the sum of £108,871 4s. 1d. which sum by the evidence is shown not to have been paid either *pro tempore* or finally in respect of that wool year. 20

16. In the event, however, of the Appellant's said submissions in paragraphs 12 and 13 being rejected, the Appellant's claim for the sum of £58,796 12s. 4d. as money had and received arises.

17. Thus, as an alternative to the Appellant's principal claims for the sum of £174,032 8s. 3d. for unpaid subsidy, being £6,364 11s. in respect of the wool year 1946-47 and £167,667 16s. 5d. in respect of the wool year 1947-48, the Appellant makes a claim for a total sum of £115,235 15s. 11d. for unpaid subsidy, being £6,364 11s. in respect of the 1946-47 wool year, and £108,871 4s. 1d. in respect of the 1947-48 year, but in that event claims the paid sum of £58,796 12s. 5d. as money had and received. 30

APPELLANT'S CLAIM FOR £2,121 0s. 7d.

18. The Appellant in any event claims a further sum of £2,121 0s. 7d. as moneys had and received by the Respondent to the use of the Appellant by reason of the matters set out immediately hereunder. This sum taken in conjunction with the earlier claim of £174,032 8s. 3d. brings the Appellant's total claim to the sum of £176,153 8s. 10d. the amount claimed in the action. 40

19. In the said letter dated the 25th day of February 1949 the sum of £2,121 0s. 7d. was claimed by the Respondent in respect of subsidy repayable by the Appellant to the Respondent in respect of the wool

in the hands of the Appellant which had been acquired by the Appellant prior to the wool year 1946-47 and to the institution of the subsidy scheme. No subsidy had been received by the Appellant in respect of such wool, and no repayment could, therefore, in any view be due in respect of such subsidy. There was no other basis on which such sum could be payable to the Respondent (as to which see paragraphs 24 and 25), and the Appellant claims this sum as money had and received to the use of the Appellant.

20. The Respondent in its Defence to the Appellant's claim for  
10 money had and received pleaded that the sums of £58,796 12s. 4d. and £2,121 0s. 7d. were voluntarily repaid by the Appellant to the Respondent pursuant to certain terms and conditions upon which subsidy had been paid to and received by the Appellant. The Respondent, notwithstanding the admission in paragraph 4 of the Defence that the sum of £6,364 11s. 10d. still remains unpaid in respect of the wool year 1946-47, included in this defence such sum of £6,364 11s. 10d. thereby making a defence to a total sum of £67,282 4s. 9d. in so far as it was claimed as money had and received. pp. 5-6, ll. 44-8.

21. Their Honours were of opinion that the Respondent was correct  
20 in its plea that such payments were voluntarily made. p. 85, ll. 47-52.

Their Honours said: "With regard to the £67,282 4s. 9d. it is possible that, if the Company had refused to pay it, the Commonwealth would have failed in an action to recover that sum. But the Company, on 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 basis."

22. For the reasons set out hereafter the Appellant contends that the High Court were wrong in characterising these payments as contended for in the Defence.

30

#### FACTS OF THE CASE.

23. The uncontested evidence before the Court disclosed the matters set out in this and the succeeding paragraphs. The Appellant is a worsted manufacturer and in the course of its business makes tops predominantly for its own use. Prior to the commencement of the war in 1939 wool was sold in Australia at free auctions and also by private treaty. Consequently the price paid for wool by worsted manufacturers including the Appellant was necessarily world price and the price of its products reflected this fact. p. 1, ll. 30-32.  
p. 26, ll. 28-38.  
  
p. 57, ll. 32-33.  
p. 67, l. 51.

24. At the outbreak of the war in 1939 auction sales of wool in  
40 Australia ceased as a result of regulations enacted under the National Security Act No. 15 of 1939. All wool was acquired by the Government of the Commonwealth (the Respondent) and with an exception presently to be mentioned was disposed of to the Government of the United Kingdom under an arrangement made between the two Governments for that

p. 51, ll. 19-24.  
p. 58, l. 40.

purpose. This arrangement continued for the duration of the War and one wool year thereafter (Act No. 49 of 1945 and Clause 9). (The wool year runs approximately from July to the succeeding June.)

p. 58, ll. 13-14.  
p. 18, ll. 19-30.

Wool acquired by the Respondent was appraised according to type and upon a Table of Limits designed to secure that the total appraisal would not exceed but as near as may be equate the total price payable by the United Kingdom Government for the wool disposed of to it.

p. 52, ll. 23-38.

Wool required for the purposes of local manufacture was expressly excluded from this arrangement between the United Kingdom and the Respondent and the local manufacturers acquired wool from the Respondent at prices determined by it. 10

p. 51, ll. 33-48.

The price charged to the local manufacturer was the "appraised" price plus a percentage which varied from time to time. Use of the wool thus purchased in the manufacture of goods for sale in Australia was secured by making part of such added percentage payable only if the wool or the goods into which it was turned was or were exported from Australia; this part was known as the "deferred price."

p. 52, ll. 1-23.

p. 126.

The Respondent under the provisions of the National Security (Wool) Regulations which came into force on the 28th day of September 1939 dealt with wool for local manufacture. 20

Regulation 23 of the said Regulations provided that persons desirous of obtaining wool for the purpose of manufacture within Australia might apply to the Central Wool Committee for authority to purchase wool and that the Central Wool Committee might authorise a purchase of wool subject to such conditions as it might think fit to impose. Wool so authorised to be purchased was sold by the Central Wool Committee at prices fixed by it as aforesaid. The provisions of the Regulations as to price were twice amended. As from the 2nd May 1940 the words "such prices as are from time to time determined by the Central Wool Committee" were substituted for the original words "appraised price," and after the 13th day of November 1942 the price to be paid was the price "fixed by the Central Wool Committee in accordance with any determination notified to it by the Commonwealth Prices Commissioner." The matter was also dealt with by the National Security (Price of Wool for Manufacture for Export) Regulations. 30

25. The Appellant throughout the period of the War and for one year thereafter acquired wool from the Respondent by purchase on the basis of an appraised price, plus a percentage, of which a part was deferred and payable only in the event of export of the wool or of the goods in which it was incorporated. 40

pp. 51-52, ll. 33-22.  
pp. 307-314.  
pp. 127-132.  
pp. 137-140.  
p. 126.

26. In 1945 an agreement was reached between the Government of the United Kingdom and the Respondent amongst others with respect to the disposal of stocks of wool then held under the arrangement referred to in paragraph 24 hereof. At the time this arrangement was made it was expected that because of anticipated war damage to the plants of European purchasers and other factors including current wool supplies the market upon a return to the system of free auctions would need to be nursed and that a considerable number of years would be involved in

p. 19, l. 36-p. 20, l. 21.  
p. 54, ll. 29-37.  
p. 323.

unloading stocks of some 6·89 million bales of wool then held and thereafter to be disposed of on behalf of the Respondent as well as the United Kingdom Governments. A joint disposal plan provided *inter alia* means of maintaining in the interests of both Governments the price of this wool on the resumption of free auctions. This plan is to be found as a Schedule to the Wool Regulations Act 1945 (No. 49 of 1945) and provided *inter alia* for free auctions to commence with the opening of the wool year 1946-47.

27. The disposal of wool during the wool year 1945-46 showed that the expectations upon which the joint disposal plan had been based were erroneous. In that year something like 1·77 million bales in excess of the current clip were sold by the Respondent. pp. 19-20, ll. 36-31.  
pp. 54-55, ll. 29-37.
- 10 28. Thus the Respondent realised before the date when free auctions of wool were to recommence that there would be a strong and rising market for wool, and that the local manufacturer would be unable to purchase wool for manufacture of goods to be sold in Australia at existing controlled selling prices. p. 328.  
p. 62, ll. 25-40.  
p. 142, ll. 38-43.
29. During the war the Respondent had controlled *inter alia* the price at which woollen goods could be sold in Australia and had founded such price upon the appraised price of wool. pp. 30-31, ll. 17-10.  
pp. 57-58, ll. 43-17.
- 20 30. The level of wages payable in the Commonwealth of Australia depends upon a basic wage which at the relevant time was automatically adjusted each quarter to a statisticians index of retail prices of certain commodities, including woollen goods. The retail price of woollen goods was at all relevant times related to and based upon the aforesaid appraised price of wool. pp. 146-149, ll. 23-4.  
p. 153, ll. 10-19.  
p. 324.  
Labour Report 1950.  
p. 59, ll. 30-39.
31. During the closing years of the war, the Respondent in an endeavour to retard an inflationary spiral had formulated a stabilisation plan which involved the control of wages and prices and in point of policy the Respondent was at the relevant times committed to the maintenance of such plan. p. 146, ll. 23-29.  
pp. 148-149, ll. 42-7.  
p. 153, ll. 10-45.
- 30 32. In March 1946 a Conference called by the Respondent took place between its representatives and those of the Associated Woollen and Worsted Textile Manufacturers of Australia, of which the Appellant was a member and which, as is conceded by the Respondent, was the agent of the Appellant for all relevant purposes. p. 89, ll. 21-20.
33. The manufacturers wished woollen goods to be freed from price control maintaining that competitive prices of goods made from wool purchased at free auctions would not so materially increase beyond the controlled price as to affect substantially the Commonwealth Stabilisation Plan. The Respondent insisted that it desired to maintain price control of woollen goods and insisted that in order to make that control possible it would pay what it called a subsidy upon the purchase of wool at auction for manufacture for home consumption. The payment of a subsidy was not at any time sought by the manufacturers. But, both the Respondent and the manufacturers realised that if price control of woollen goods was pp. 144-146, ll. 31-13.  
p. 142, ll. 36-43.  
p. 160, ll. 28-33.
- 40

to be maintained the manufacturers could not pay auction prices for wool for domestic consumption and that unless in that event some financial arrangements were made no local manufacture of woollen goods could take place.

p. 141 *et seq.*

34. Following upon the said Conference at which ways and means of quantifying and paying such subsidy were discussed the Respondent by agents whose authority in that behalf it fully admits made and communicated the following statements and the Appellant humbly submits that compliance therewith gave rise to binding obligations. The said statements are included herein in full detail:—

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(A) Press Statement by the Minister for Trade and Customs  
P.40/4235.  
Part 2.

“ The Minister for Trade and Customs (Senator J. M. Fraser) announced today that subsidy would be paid to maintain existing prices of wool to Australian manufacturers for utilisation in goods for domestic consumption, when auction sales recommence after the 30th June 1946. The purpose of the subsidy is to enable Australian manufacturers to compete with overseas buyers in a manner that will avoid interference with normal auction purchases. 20

p. 332.

Senator Fraser stated that subsidies would be paid to manufacturers to reimburse any excess paid in purchasing at prices for domestic consumption but not in excess of the average market level for individual wool types at a series of auction sales. This ensures that manufacturers will not bid extravagantly on the assumption that the Commonwealth Government will meet deficiencies resulting from unlimited bidding.

‘ The aim of the proposal,’ said Senator Fraser, ‘ is to place Australian manufacturers as near as possible in the same bidding position as if they were buying in a competitive market prior to the war. As an inducement to efficient buying manufacturers will obtain benefits from purchases made below average market level. The scheme will be so designed as to ensure rapid payment of subsidy and will be administered by the Australian Wool Realisation Commission on behalf of the Commonwealth Government and the amount of subsidy payable to manufacturers will be as determined by the Commission.’ 30

Canberra. A.C.T. June 1946.”

(A.C.T. means Australian Capital Territory.)

pp. 333-335.

(B) Letter from Australian Wool Realisation Commission to Appellant—dated at Melbourne on the 7th August 1946. 40

“ Dear Sir,

The Commonwealth Government proposes to grant a subsidy on wool purchased at auction by Australian manufacturers in the 1946/47 season, and this Commission has been charged with the calculation and payment of the subsidy.



The Commission realises the necessity for as prompt payment of the subsidy as possible to manufacturers and full details of subsidy procedure will be available to all manufacturers at an early date. However, the following interim information is advised to you in respect of the procedure to operate *for subsidy on wools purchased for Australian manufacturers at auction* :

(a) In general, subsidy on wool purchased at auction will be paid by this Commission in full immediately the amounts have been computed for each series.

10 (b) It is anticipated that payments will be completed within 28 days from the close of each series.

(c) *Payment will be automatically made from the Commission's records of auction results* and no claim will be required from the manufacturer.

(d) With each payment, there will be forwarded a statement showing in respect of each lot purchased—

(i) The basic cost assessed, i.e. at present, appraisement plus 10% for Fleece wools and appraisement plus 5% for Skin wools.

20 (ii) The average greasy market price established.

(iii) The subsidy as calculated by the Commission.

In discussions between the Commission and the Advisory Committee of Woollen and Worsted Manufacturers on 19th and 20th March 1946 manufacturers were advised of the Commission's responsibilities as to ensuring that the reserve prices for Australian grown wool, provided for under the United Kingdom Dominions Wool Disposals Plan, are made effective ; and it was understood at that meeting that members of your Association would be willing to purchase all wool required by your members at auction with the following exceptions :

30 (a) Wool produced by the manufacturer himself and used by him in his own factory.

(b) Wool purchased by a country manufacturer on a normal quantitative basis according to his normal policy from producers in his district.

(c) Wool the product of fell-mongering the skins owned by the manufacturer and used by him in a continuous process of manufacturer.

40 You should note that auction purchases of raw wool will provide the basis of subsidy to manufacturers in so far as such wool is used in the manufacture of goods sold for Australian domestic consumption, and therefore any manufacturer who does not buy his wool at auction will have to submit to the Commission an application for subsidy, and in each case he will need to supply :

(a) The names of the persons from whom he has bought wool.

(b) The quantities purchased from each of these persons, and full details of the description and prices of such purchases.

As stated previously, when a manufacturer purchases wool at auction, it will not be necessary for him to submit an application to the Commission for subsidy because the Commission will have available to it from its records of auction results all the necessary information for calculation of the subsidy and automatic payment to the manufacturer.

It should also be noted that a manufacturer purchasing wool other than at auction will not receive subsidy up to average market level when the price paid by him for such wool is below average auction market level. The subsidy, in this case, will be the difference between basic cost and the actual price paid by the manufacturer for the wool in question whereas in the case of wool purchased through auction, the subsidy will be the difference between the basic price and the average auction market level, irrespective of the auction price paid for the wool. 10

The attention of manufacturers is also drawn particularly to Section 17 of the Wool (Contributory Charge) Assessment Act 1945, which reads : 20

*'Except in pursuance of an arrangement with the commissioner, a person shall not subject any wool, other than wool purchased by him, to any process or treatment of manufacture, or export any wool, unless—*

(a) The wool has been first submitted at an appraisement place or, with the approval of the Commission, at any other place, for appraisement by or on behalf of the Commission, and has been so appraised ; or

(b) He is in possession of a certificate issued in respect of the wool under Section Fifteen of this Act. Penalty : Two hundred pounds.' 30

In submitting wool purchased by a manufacturer, otherwise than at auction, for appraisement for purposes of the Contributory Charge Assessment Act, the prescribed form must be completed and forwarded to the Commission.

To enable the wool to be properly examined and appraised it will be necessary for such wool to be displayed in accordance with instructions from the Commission and on premises approved by the Commission as suitable for the appraisement of wool. If the premises of the manufacturer are unsuitable for this purpose the Commission may order the wool elsewhere for appraisement. 40

The Commission is endeavouring to communicate with all woollen and worsted textile manufacturers understood not to be members of the Association, and to advise them of the above arrangement which, of course, must apply on the same basis to all manufacturers of goods made from wool.

The Commission is charged by the Government with the responsibility of doing all things necessary to ensure that the United Kingdom-Dominion Wool Disposals Plan is successful, particularly in regard to making effective the reserve prices provided for under the Plan and the Commission feels sure that you will co-operate in every way possible.

Yours faithfully,

(signed) H. B. LEIGH,

Secretary.”

10 35. No question does or should arise as to the authority of the persons who communicated with the Appellant and others to bind the Respondent by a contract to pay a subsidy on the terms communicated, nor as to the need for any Statutory authority to make such a contract nor as to the need for any parliamentary appropriation of funds to meet the obligation of such a payment nor as to the power of the Respondent to make such a contract. All these matters were covered by an appropriate express admission made by the Respondent during the course of the present proceedings.

p. 89, ll. 17-34.  
p. 91, ll. 13-32.

20 36. The Appellant does not concede that without such admissions the authority and power are not otherwise made out, but the admission clearly indicates that the Respondent disclaimed any intention to rely upon or profit by any such defences.

30 37. Upon receipt of such communications the Appellant acting upon the said communications did buy wool for manufacture for domestic consumption at prices which would not have permitted it to have sold its manufactured goods at the prices which the Respondent continued to maintain and enforce in accordance with its Price Stabilisation Plan and the Appellant sold its manufactured goods in Australia at such prices. The Appellant continued this course of conduct throughout the whole of the relevant period.

p. 5, ll. 7-14.  
pp. 275-280.

p. 32, ll. 5-12.  
p. 89, ll. 35-40.

38. Thereafter and during the whole of the relevant period the Respondent duly computed in accordance with the appropriate terms of its communicated statements the amount of the subsidy payable to the Appellant including the amount claimed in this action for unpaid subsidy and from time to time throughout the relevant period duly communicated to the Appellant the amount so payable to it including the said amount claimed by the Appellant in this action.

p. 7, ll. 13-44.  
pp. 40-42, ll. 8-28.  
pp. 275-280 (Ex. D).  
pp. 281-292 (Ex. E).

40 39. During the said period the only part of the sums so communicated to the Appellant as payable to it which was not at any time handed over to the Appellant by the Respondent was the sum of £108,871 4s. 1d. The circumstances surrounding the handing over and subsequent refund of the sums of £6,364 11s. 10d. and £58,796 12s. 4d. which are claimed in addition to the above sum of £108,871 4s. 1d. are set out in paragraphs 12 and 13.

p. 9, ll. 1-10.  
pp. 472-474.

pp. 316-326.

40. Appropriation Acts of Parliament duly made provision for the payment of subsidies payable in accordance with the said communicated statements.

pp. 347, 353, 373, 379,  
387, 393, 396, 405, 408.

41. From time to time variations were made in the said communicated terms chiefly in relation to the machinery for the recovery of subsidy and were communicated to the Appellant by statements made by authorised agents of the Respondent.

p. 423.  
p. 245.  
pp. 425-436.

42. On the 18th day of June 1948 the Respondent announced that it would terminate the said subsidy scheme on the 31st day of July 1948, that is to say, that it would not pay subsidy in respect of any purchases of wool made after the 31st day of July 1948. Thereafter an attempt was made by the Respondent to limit the amount of subsidy which it could be called upon to pay in respect of wool purchases which had been or would be made up to the 31st day of July 1948 and it attempted to do so apparently on the assumption that the subsidy was and had been payable only as of grace. After an abortive attempt to reach agreement with the woollen and worsted manufacturers as to the amount of wool purchased under the scheme and on hand unprocessed at its termination which would remain "eligible" for payment of subsidy, the Respondent on the 30th day of August 1948 announced that it would pay subsidy on so much of the wool which by that time had been purchased as was sufficient to meet 5½ months' (as from the 30th June 1948) consumption of wool in the several plants of the manufacturers.

pp. 459-467.  
p. 301.

pp. 25-26, ll. 37-13.

p. 299.

p. 458, ll. 29-31.

43. On stocktaking as at the middle of December 1948 it appeared that the Appellant still had on hand a quantity of wool which it had acquired, some during the appraisalment period and some during the period of the subsidy scheme. Due to the exigencies of its business associated with the availability of types of wool and the need for blending, the Appellant had used, prior to the time of the stocktaking, a substantial quantity of new season's wool purchased in the open market at world prices thus leaving a substantial amount of the said stock on hand but the Appellant had obtained no financial benefit thereby.

p. 472.

44. After the fact that the Appellant had such stocks on hand became known to the Respondent, it refused to pay to the Appellant the sum of £108,871 4s. 1d. which it had already notified the Appellant as payable to it for subsidy, the Appellant having purchased the wool to which such sum related in conformity with the terms of the communicated statements and prior to 31st July 1948.

p. 476, ll. 20-26.

pp. 478-479.

45. The Respondent also demanded under threat of action the repayment by the Appellant of the sum of £67,282 4s. 9d. being the total of three sums namely £6,364 11s. 10d., £58,796 12s. 5d. and £2,121 0s. 7d. The Appellants under this pressure paid the total sum of £67,282 4s. 9d. and, in its submission, the evidence shows that it did so for the time being so as to re-establish the *status quo* and as an act of good faith pending final determination of the respective rights of the parties, and not in recognition or satisfaction of any of the claims put forward by the Respondent nor with any intention thereby of defining or altering the contractual relationship of the parties or of finally discharging or affecting any rights.

46. As to the said sum of £6,364 11s. 10d., the Respondent by its pleading adopts the view submitted by the Appellant in paragraphs 12 and 13 hereof as to the effect of the refund of this sum and in the Appellant's submission no further question arises with respect to it. p. 5, ll. 7-14.

47. As to the said sum of £58,796 12s. 4d. the Appellant in addition to making the submissions in paragraphs 12 and 13 submits that the evidence shows that this sum, demanded by the Respondent as a repayment of subsidy paid in respect of the wool year 1947/48 was computed, not upon the actual subsidy paid to the Appellant, but upon an average subsidy paid during the whole wool season to all manufacturers, this basis yielding a substantially larger sum than had in fact been paid to the Appellant in respect of the wool to which the Respondent's demands purported to relate. The evidence also shows in the Appellant's submission other inaccuracies in the computation of this sum by the Respondent. p. 446, ll. 15-19.  
p. 449, ll. 37-39.

48. As to the said sum of £2,121 0s. 7d., although this payment was demanded as a return of subsidy paid by the Respondent, in fact such sum had never been paid by the Respondent to the Appellant at all. The wool to which the Respondent's demand related had been acquired by the Appellant prior to the recommencement of free auctions and had been fully paid for by the Appellant, under contracts with the Respondent, except for the deferred price (see paragraphs 24 and 25 hereof) which, as the Appellant submits, was only payable in the event of the export of the wool or of goods containing it—an event which did not happen. Furthermore, no demand for payment of the deferred price in respect of the wool has ever been made. p. 302.

49. The Respondent pleaded that the sums of £58,796 12s. 4d. and £2,121 0s. 7d. and, notwithstanding the admission in paragraph 4 of the Defence, also the sum of £6,364 11s. 10d. making in all the total sum of £67,282 4s. 9d., were paid by the Appellant voluntarily pursuant to certain terms and conditions upon which the said subsidy had been received by the Appellant. p. 302.

50. Thus, whilst denying that any contract arose between the parties out of the Respondent's communicated statements and the Appellant's action thereon, the Respondent appears to justify the retention of the said sums, at least in part, by reference to the terms and conditions of those communicated statements. The Respondent does not, however, set up any counter-claim for such moneys in the event of the acceptance of the Appellant's submission in paragraph 11.

#### SUBMISSIONS AS TO PRINCIPAL ISSUE.

51. The Appellant submitted with respect to the principal question in this Appeal and still submits that in the circumstances in which the statements set out in paragraph 34 hereof were made they were promissory and susceptible of giving rise to binding obligations and amounted to the offer of a promise for an act, namely, the purchase from time to time in the open market of wool for manufacture for local consumption. pp. 5-6, ll. 44-8.

52. It is the Appellant's humble submission that the language of the announcements and statements which were made in connection with business transactions and to business people were not only promissory in form in their natural significance but were necessarily understood so to be, both by the manufacturers who conducted their business transactions upon the faith of them and, if it be material, by the Respondent which authorised the said announcements and statements and their communication to the manufacturers, including the Appellant.

53. The High Court rejected the Appellant's submission not because the language used was incapable of giving rise to a contract or because taken in its natural significance it was not promissory, or because the Appellant was not intended to act upon it, or because the Appellant had not acted upon it to its financial detriment according to the intent of its language, but because— 10

(A) being statements of policy such communications should not be held to give rise to a contract ;

(B) because it was impossible to infer from the communicated statements and the circumstances in which they were made a request to the Appellant to purchase wool at auction prices for manufacture into woollen goods for domestic consumption ; 20

(C) nothing in the nature of a *quid pro quo* was received or receivable by the Government.

pp. 81-82, ll. 27-13.

54. As to the first of these reasons their Honours said : " It is to be observed, in the first place, that these announcements come not from a party having a commercial interest in the subject matter but from instrumentalities of a Government, which has been dealing for years, and is still dealing, with a problem created by a great war. That problem is the maintenance of a price structure, and in particular its maintenance in relation to manufactured woollen goods. That is no new problem. It has been dealt with in the past by what was in substance and effect payment of a subsidy. For, as has been seen, the Commonwealth during the appraisal period had paid to growers more than it charged to manufacturers for wool sold to them. The price to the manufacturers was after November 1942 fixed by the Prices Commissioner and the difference between what the Commonwealth paid and what it received was the equivalent of a subsidy paid by the Commonwealth. It could make no practical difference to the manufacturer whether the Commonwealth's money was paid to him or was paid to the grower. In either case he benefited—in the one case by a reduction in the price he had to pay and in the other by a reimbursement of part of the price he paid. It is impossible to suggest that the Government ever contracted with the manufacturers to sell them appraisal wool at less than cost. The Government simply acquired wool and sold it to manufacturers at a price lower than it paid for it. The problem has not changed in character in June 1946. The object to be attained is still to keep down the price of woollen goods to the consumer. And it is to be solved in the same way—that is to say, by a subvention. The only difference is that, because the Government will no longer be 30 40

acquiring and selling wool, the old method is impracticable, and the subvention is to be paid direct to the manufacturer. No reason is suggested why the Government, which has not hitherto entered into any contract, should now propose to bind itself by contract. Again, the position is not that of a person proposing to expend moneys of his own. It is public moneys that are involved. Questions of general constitutional law have, as have been mentioned, been excluded from consideration but, if there was an intention on the part of the Government to assume a legal obligation, one would certainly have expected statutory authority to be sought ;  
 10 the case, as has been pointed out, is entirely unlike *Bardolph's* case. And one would not have expected the vital announcement to be made by persons, who, in the ordinary course of things, could have no power to commit the Crown to the expenditure of a single penny."

55. With respect to these observations, the Appellant would submit :

(A) As joint owners of approximately 5.12 million bales of Australian wool at the date of the commencement of free Auctions all of which had been acquired by the Respondent during the appraisalment period, at prices varying from approximately 13.5d. to 15.6d. per lb. average greasy, the Respondent stood to gain or lose according to the rise or fall in the auction market. In fact during the three ensuing seasons the Respondent reduced its paid stocks of 5.12 million bales to 1.25 million bales and during such period the average Australian price for greasy wool was as follows :  
 1946-1947, 24.49d., 1947-1948, 39.5d., and 1948-1949, 48.07d. pp. 325-328.

(B) That if the difference between what the Respondent paid to the grower upon the acquisitions of the wool and the price at which it sold the wool to local manufacturers was "the equivalent of a subsidy," it is significant that the Respondent was bound in point of law to pay a price to the grower and bound itself by contract with local manufacturers to sell and deliver wool at an agreed price. Thus if there was an element of subsidy in the agreed price, the manufacturers became entitled to that "subsidy" as of right under the contract of purchase. p. 81, ll. 39-40.

(C) That with respect it is inaccurate to say "that the Government . . . has not hitherto entered into any contract." The relationship of the Respondent to the growers and to the local manufacturers had been completely covered either by regulations or by contract, except that being the owner of all the wool, the Respondent had been free to determine for itself the selling price of wool sold for domestic consumption. Once the Respondent ceased to be the only seller of wool and no longer determined the price at which the wool should be sold, some new arrangement, either statutory or consensual, was necessary to achieve its purpose "to keep down the price of woollen goods to the consumer." So far from there being "No reason . . . why the Government . . . should propose to bind itself by contract," every reason and practical consideration existed for doing so unless and until statutory provisions were made. p. 82, l. 2.

(D) That the circumstances—

p. 81, ll. 30-31. (i) that the problem was one which had been dealt with by a Government as a “problem which had been created by a great war” and

p. 82, l. 5. (ii) that “public moneys were involved,”

are not, in the other circumstances of this case, and particularly having regard to the nature and terms of the communicated statements and their subject matter, of any significant weight.

p. 82, ll. 10-13. (E) That the statement that “one would not have expected the vital announcement to be made by persons who, in the ordinary course of things, could have no power to commit the Crown to the expenditure of a single penny” overlooks the fact that the announcements were made by a Minister of the Crown, presumably with Cabinet authority after discussions between the representatives appointed by the Government and the Textile Trade and by the Australian Wool Realisation Commission which was the responsible body by whose hands the wool scheme generally, including the receipt and disbursement of money, was administered. 10 30

56. The Appellant humbly submits that the circumstances disclosed by the evidence and briefly recited herein demonstrate that the question of the payment of subsidy had passed beyond a mere announcement of proposed action in point of Government policy and that it had become important both for the protection of the Government’s proprietary interest in the unsold stock of wool and essential to the Government’s continued ability to maintain the price structure which it desired to maintain, that it should induce the manufacturers of woollen goods to buy and manufacture wool for sale for local consumption at prices fixed by the Respondent and necessarily uneconomic in the absence of a subsidy. The assumption of an obligation to pay the difference between the auction price and the basic figure used by the Respondent in its price-fixing structure was the obvious and indeed from a commercial point an indispensable means to induce this result. 20 30 40

p. 83, ll. 39-43. 57. Their Honours supported their reasons by considering the subsequent conduct of the parties. Firstly, Their Honours called attention to the attitude of the officials concerned who, from time to time, acted as though the subsidy was payable only as of grace. This the Appellants would submit was an irrelevant fact in the circumstance, or at least one of no particular significance.

p. 84, ll. 16-19. Secondly, they called attention to an incident and certain correspondence connected therewith where the officials acting on behalf of the Respondent claimed that the Appellant had breached the terms of the scheme by buying beyond its requirements at certain auctions. In this connection Their Honours say: “In response to this letter, being a letter from the Government Agency implementing the scheme, no suggestion was made by the Company that it has any legal right. It denies the Commission’s allegations, protests against what it apparently regards as harsh treatment, and withdraws its claim for subsidy.” This conclusion 40



the Appellant would challenge in point of fact as inconsistent with certain undisputed evidence which shows firstly, that, in connection with the matter in question the Appellant had claimed to be entitled to do what it had done; secondly, that what it had done had been perfectly correct; thirdly, that upon a threat by the Respondent to withhold subsidy in respect of the challenged purchases, the Appellant had stated that it would return the wool in question to the market and would close down its mill, and fourthly, that so far from the Appellant withdrawing its claim to subsidy, the Respondent paid the amount of subsidy in question.

p. 407.  
pp. 411-413.  
pp. 417-419.  
pp. 277-278.

10 58. The Appellant humbly submits that if these matters be relevant (which the Appellant does not concede), they tend much more strongly to suggest that the Appellant regarded itself as entitled to payment of subsidy as of right than Their Honours were prepared to concede.

59. As to the second of the above-mentioned reasons (see paragraph 53 (B)) Their Honours said: "When it comes to the documents, it is not in our opinion possible to construe them as containing a standing offer, a standing offer capable of acceptance by the purchase of wool. It is impossible to find anywhere anything in the nature of a request or invitation to purchase wool, or anything which suggests that the payment  
20 of subsidy was put forward in order to induce any manufacturer to purchase wool, or which suggests that the payment of subsidy and the purchase of wool were regarded as related in such a way that the one was a consideration for the other."

p. 82, ll. 19-26.

60. The Appellant humbly submits that no reason beyond the Court's assertion is given for so finding. The Appellant further submits that when it is considered that the manufacturers would have been economically unable to buy wool at auction and manufacture it into goods for sale in Australia at controlled prices, it is apparent that if goods  
30 were to be manufactured for consumption in Australia at such prices some inducement to buy wool at auction prices must be offered. The extent of the possible losses to manufacturers had they purchased at auction and sold at controlled prices without subsidy may be gauged by the amount of subsidy in fact paid, namely, in the wool year 1946-1947 of £3,416,876 and 1947-1948 £9,226,596.

p. 319, l. 22.

p. 322, l. 21.

The Appellant humbly submits that it is incontestable that the statements in paragraph 19, admittedly authorised, were communicated by way of inducement to purchase wool at auction. The Appellant humbly submits that a refusal to find a request present in the circumstances is to deny all reality to the terms of the announcement and to the  
40 fact of its communication in the circumstances. In this respect the Appellant humbly emphasises again the commercial nature of the transactions to which the announcements related, and to the business activities concerned and the financial consequences which acting upon the announcements must have had for the manufacturers.

61. As to the third matter above mentioned Their Honours said: "In cases of this class it is necessary, in order that a contract may be established, that it should be made to appear that the statement or announcement which is relied on as a promise was really offered as

pp. 78-79, ll. 49-6.

consideration for the doing of an act, and that the act was really done in consideration of a potential promise inherent in the statement or announcement. Between the statement or announcement, which is put forward as an offer capable of acceptance by the doing of an act and the act which is put forward as the executed consideration for the alleged promise, there must subsist, so to speak, the relation of a *quid pro quo*."

62. The Appellant submits that in these statements Their Honours were in error. The Appellant humbly submits that it is not necessary that the consideration for a promise should move to the promisor if it moves away from the promisee at the promisor's request. 10

63. The Appellant further humbly submits that in any case, if it be material, the Respondent obtained a significant advantage by the purchase of wool at auction by the local manufacturers, both in connection with its proprietary interest in its stocks of wool, and in its continued ability to maintain its stabilisation plan both in respect of having woollen goods manufactured for domestic consumption at all and in having them sold at its fixed price.

64. The Appellant humbly submits that the Judgment of the High Court of Australia should be set aside and that Judgment should be entered for the Appellant for £176,153 8s. 10d. for the following, among 20 other,

## REASONS

- (1) BECAUSE the Judgment of the High Court of Australia was wrong and ought to be reversed.
- (2) BECAUSE in the circumstances the communications by the Respondent to the Appellant were offers susceptible of acceptance and from time to time were accepted by the Appellant as and when purchases of wool were made by the Appellant for domestic consumption during the wool year 1946/47 and 1947/1948 terminating at 30 the 31st July 1948.
- (3) BECAUSE the communications to the manufacturers dealing with their business transactions were in their ordinary significance promissory in character and were none the less so because made with the authority of a Government with the intention that they should be acted upon.
- (4) BECAUSE the purchase of wool in conformity with the communications furnished, in the circumstances, adequate consideration for the promise to pay the 40 amounts of subsidy.
- (5) BECAUSE the Appellant having complied with the terms of the Respondent's communications and the Respondent having calculated and communicated to

the Appellant the amounts payable by it to the Appellant including the sum of £174,032 8s. 3d. is entitled to payment of that sum.

- 10 (6) BECAUSE, assuming the existence of a contractual relationship, the Respondent admits that the sum of £6,364 11s. 10d is unpaid for subsidy in respect of the wool year 1946/1947.
- (7) BECAUSE, assuming the existence of a contractual relationship, the Respondent upon the evidence admits that the sum of £108,871 4s. 1d. at least is unpaid for subsidy in respect of the wool year 1947/1948.
- (8) BECAUSE, having regard to the circumstances in which the sum of £58,769 12s. 4d., being part of a sum of £67,282 4s. 9d. was refunded by the Appellant to the Respondent, the Appellant is entitled to claim this further sum as moneys still unpaid and due to it by way of subsidy for the wool year 1947/1948.
- 20 (9) BECAUSE, having regard to the circumstances in which the sum of £2,121 0s. 4d. being a further part of the sum of £67,282 4s. 9d. was paid by the Appellant to the Respondent, the Appellant is entitled to judgment for this sum as money had and received.
- (10) BECAUSE, having regard to the circumstances in which the sum of £67,282 4s. 9d. was paid by the Appellant to the Respondent, the Appellant is entitled either to be credited with that sum in the settlement of the subsidy account, or to be paid such sum as money had and received.

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G. W. BARWICK.

J. LEAVER.

IAN BAILLIEU.

ON APPEAL  
*from the High Court of Australia*

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BETWEEN  
THE AUSTRALIAN WOOLLEN  
MILLS LIMITED . . . . *Appellant*  
  
AND  
  
THE COMMONWEALTH OF  
AUSTRALIA . . . . *Respondent*

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Case for the Appellant

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