

Y. SATO (ROVIANA) AND COMPANY LIMITED - V- ATTORNEY-GENERAL

Honiara: Brown PJ

Date of Hearing: 30 July 2003
Date of Judgment: 14 August 2003

Contract letters of Minister of Finance evidencing agreement with the State to waive incidents of duty – implied term that importers entitled to rely on letters as benefit available – question whether Minister vested with discretionary power can bind the State thus fettering the exercise of the power (to affect import duties and goods tax incidental rates).

Customs & Excise Ministers acts in granting letters of “revocation and remissions” to individuals and businesses to avoid incidents of duty – letters intended to frustrate objects of the Customs and Excise Act and Goods Tax Act – Minister’s discretion ultra vires purposes of the Acts.

Judicial Review Acts of Minister of Finance in granting letters of “revocations and remissions” to facilitate goods import free of duty and tax – whether susceptible to judicial review – principles when considering whether Minister’s acts ultra vires his discretionary powers under the Acts

Statutes Customs and Excise Act and Goods Tax Act – Minister’s discretion to direct Waiver of duty and order tax remission – whether discretion unfettered – Court power of review – nature of Minister’s powers.

Constitution S.77

Customs and Exercise Act (Cap 121) S.8

Goods Tax Act (Cap 122) S.37

Interpretation & General Provisions Act (Cap 85) S.16

The Plaintiff company had and obtained various “letters of concession” from the Minister of Finance Honourable Snyder Rini to import merchandise (primarily cigarettes) free of duty and goods tax. There was a practice afoot whereby persons with “letters of concession” would sell or otherwise make them available to Importers, who would take advantage of the concessions to land goods free from duty. In 2001 the practice had become so widespread that the government revenue had suffered and the donor community had made plain that the practice had to cease.

The Comptroller of Customs, by Notice and the subsequent Minister of Finance both sought to wind back the practice and stop concessions by use of these letters. The plaintiff had attempted entry of goods on the basis of these letters of concession in December 2001 and January 2002, but the entries had not been processed before the 11 January 2002, a “cut off” date appointed by the Minister.

The plaintiff was aggrieved, for had the Comptroller cleared goods in accordance with his usual practice within 2 days at least, the goods the subject of the case would have entered the country free of duty. In fact, as a consequence of civil disturbances, the goods were taken from bond store without proper clearance in any event. The facts appear from the judgment.

Held 1. The plaintiff has satisfied the onus of showing goods imported pursuant to form C15 in December (and January 2002) were goods within the Deputy Comptrollers Notice of 4 December 2001, as “exemptions”.

2. The authority in the Comptroller to make rules of the type, "exemptions" in his notice is a valid exercise of his executive function but is reviewable on the principle of *Ridge -v Baldwin* and fails for the "exemptions" are expressed to be based on a decision of the High Court where the judge's comments were *obita dicta*. The use of the decision in this fashion is not available to the Comptroller.

Ridge -v Baldwin (1963) 2 All E.R. 66
Constitution S. 77

3. The administrative workings of the customs divisions raised a real expectation that imported goods may be "cleared" within 2 working days subject to satisfaction of any requisitions. No requisitions as to form have been shown to have affected the plaintiff's import form C15.
4. Breaking of bond, by taking imported goods not given customs clearance in the circumstances appertaining, is excusable in proceedings for breach, but does not affect the plaintiff's responsibility for duty, if any, with respect to their import.
5. The value of goods for duty purposes and the proper amount of duty payable cannot be addressed on the evidence. That aspect remains unanswered.
6. The acts of the Minister, Honourable Snyder Rini in granting remissions in that fashion, by *ad hoc* remissions and concessions to all and sundry, and to such extent as to affect the revenue of the State, are *ultra vires* his discretionary powers under both taxing Acts by frustrating the objects of the Acts to provide revenue for the state.
Padfield -v Minister of Agriculture, Fisheries and Food (1968) 1 All E.R.694. applied
7. *A fortiori*, the succeeding Minister's acts in seeking to extend the validity of the earlier "letters of exemption" has no validity beyond that of the original.
8. The plaintiff's contractual claims on the basis of the various letters of the Minister fails, for bodies vested with statutory powers cannot enter into contracts which fetter the exercise of such powers.
The Amphitrite (1921) 3 K.B.500 applied

Wm Cory and Son Ltd -v London Corp. (1951) 2 K.B 476;
Cudgen Rutile (No 2) Pty Ltd -v Chalk (1975) AC 520 applied

Obiter The need for proper issues to be elucidated in matters commenced by way of summons discussed.

Mr. Andrew Radclyffe for the Plaintiff
Mr. Primo Afeau the Attorney General

Summons seeking Declarations

Reasons for decision

The plaintiff is a company carrying on business in the Solomon Islands as an importer of merchandise, which it retails or wholesales. In this case, it was importing some 9 containers of cigarettes and a consignment of Yamaha Outboard motors and generators in about December 2001 and January 2002. The originating summons sought two declarations, for the plaintiff was unable to clear its merchandise through customs. The declarations sought were –

1. *that having lodged with the Customs and Excise Division, various import entry forms together with associated claims for exemption from import duty, the Comptroller of Excise failed to deared the goods in accordance with the Terms of Custom and Excise Public Notice No. 20/2001 dated 4th December 2001 and in accordance with the standard practice of dearing goods within one or two working days, and*
2. *the plaintiff is entitled to import the goods free of import duty and goods tax.*

The Plaintiffs Case

The Public Notice referred to, purported to allow only importers and exporters who had ordered goods and made commitments relying on the Minister of Finance's letters of remission, to clear goods on the strength of such letters.

From the date of the notice, no reliance could henceforth be placed on the Minister's letters of remission, since it appeared, to the Comptroller of Customs, on the authority of an earlier High Court decision (the Golden Star case) that the Minister had no power under the Customs laws to "grant reductions in the rate of custom's duties to individual entities."

The Plaintiff had some 9 containers of merchandise ordered on the strength of the Minister's customs exemptions, and over a period to early January 2002, lodged various Import entry documents claiming the right to import, free of duty, such merchandise but the Comptroller, without good reason, failed to clear such merchandises in accordance with the usual practice. As a result, on the 11th January 2002, a Notice under hand of the then Minister of Finance, would not recognise the earlier letters of remission in any event. The plaintiff was aggrieved, for on the basis of his import entry documents, he had lost the benefit of the duty remissions. It has not been agreed just how much duty, in total, was involved, but it must have amounted to many tens of thousands if not hundreds of thousands of dollars not paid and for which the importer may be liable. The merchandise, by and large, the subject of these proceedings, was landed and placed in bond, but for reasons touched on later, has mostly been taken from bond by the importer, in apparent breach of the practice.

The plaintiff's case then, was that the Minister's various letters of "remissions and exemptions" were valid exercises of his discretionary authority, the plaintiff had purchased these letters and was entitled to their benefit, the Comptroller of Customs has shown no proper reason to explain why he failed to clear the merchandise imported and that in the ordinary course of business the importer could expect to clear landed goods within a day or two (within the terms of the Comptroller's notice of 4 December 2001). Consequently when the Comptroller purported to refuse to clear such merchandise on the strength of the Minister's later Notice of determination of concession letters, such refusal was unreasonable, for the Comptroller had failed in his duty to clear these goods in accordance with his standard practice.

The Defendant's case

The defendant's case was pleaded by way of affidavits. It may have been of assistance to the Court were directions given after the commencement of this cause by summons seeking declarations, for

invariably (as it would seem, happened in the Golden Star case) the issues are difficult to define on the face of the plaintiff's bold claim for declarations. It has been the case, here, that the issues have been elicited from the various affidavits filed in the proceedings.

The question whether or not they correspond with the issues anticipated by the plaintiff and defendant at the time of trial, could have been avoided by an earlier direction by the court, (whether of its own volition or on application by a party) for a statement of issues to be agreed before trial, or pleadings be filed by way of statement of claim and defence perhaps.

In the event, the issues which have arisen for decision are those raised in the evidence and addressed by counsel in their submissions. They may be summarised as follows:

The ISSUES

1. Up until the 4 December 2001 the then Minister of Finance, Honourable Snyder Rini had by letter given remission from import duty and goods tax to many people and businesses. The Comptroller of Customs and Excise had accepted such letters up until that date as valid directions (under Customs & Excise Act) and orders (under the Goods Tax Act). This is admitted.
2. In the ordinary course of business, customs clearance of goods landed in country at Honiara should take no more than two days, in the absence of requisitions. This is not in issue
3. On the 4 December 2001, the Deputy Comptroller of Customs by Notice stated that "only importers and exporters who have ordered goods and/or have made commitments for such imports/exports relying on the said duty remissions (of the Minister) are permitted to clear the referred goods". (The plaintiff says it had contracted with Solomon Islands Tobacco before this date for the supply from overseas of 9 containers of cigarettes). The facts of the "ordering" and/or "commitments" is in issue. The authority of the Comptroller to impose such conditions on clearance is in issue.
4. By notice of the 4 December, customs stated that remissions not utilised (lodged to accompany import entry from C-15) are of no effect. This is in issue.
5. The plaintiff relied on remissions given others, but purchased or obtained for the purposes of importing merchandise free of duty. The availability of such remissions to the plaintiff in these circumstances is in issue.
6. The plaintiffs successive import entry forms (C15) with claims for exemption from duty (C44) lodged in the period 4 December 2001 to 11 January 2002 were entitled to be processed in the normal course of business for no requisitions as to form were raised against them. This is in issue.
7. The goods stored pending customs clearance of the forms C.15 above, in the plaintiff's private warehouse/bond store (more particularly 4 container loads of cigarettes) were removed under duress of threats and intimidation before clearance and the plaintiff's departure from the usual practice was both excusable in the circumstances and lawful on interpretation of Rule 132 of the Customs Rules. Both are in issue.

8. The Minister's "order for exemption of goods tax" needs gazettal as a type of "subsidiary legislation" defined by S.16 (1) of the Interpretation and General Provisions Act (Cap.85). This is not in issue.
9. The plaintiff is not the relevant authority for gazettal purposes and is entitled to rely on the face of the Minister's (the relevant authority) letters of exemptions ordering exemption from duty. This is in issue.
10. The amount of the total customs import duty on the goods is alleged to be \$8,531,670 and the Goods Tax is \$1,869,829.55. The total government revenue involved is \$10,401,499.55. This is in issue.
11. On the 11 January 2002, the new Minister of Finance Honourable Michael Maena, by Notice purported to allow the former Ministers remissions effective to the 11 January, provided such remissions were with goods "cleared by customs" prior to that date. This apparent exercise of power to acknowledge the validity of such remissions is in issue. The validity of the earlier letters of remissions is in issue. Also in issue is the question whether the notice means literally "cleared by customs" or "lodged for clearance" and otherwise free of requisitions

The evidence of the plaintiff

The plaintiff's evidence was that of its director Mr. Yoshiyuki Sato whose two affidavits were read and that oral evidence given on the day of hearing by the Honourable Michael Maena. The former Minister of Finance, Mr. Snyder Rini was subpoenaed to attend but apparently failed to appear. I referred that aspect to the Attorney General, for Hon. Snyder Rini is currently a Minister in the present Government. I must say that the Minister's subjective view of his power would not be particularly relevant, to that part of my enquiry. I shall touch on the material parts of the evidence and my findings on the issues in the course of these reasons.

The evidence of the defendant

The Attorney General appears in his representative capacity for the State. It is of interest that the Attorney seeks to strike down the validity of the acts of the various Ministers of Finance, while the plaintiff seeks to uphold their validity.

The Attorney relied on affidavits of the former Comptroller of Customs, Solomon Palusi, the current acting Comptroller Daniel Rofeta and an examination officer of the customs division, Sam Iro. Mr. Iro's factual evidence related to the plaintiff's warehousing in bond of more than 3000 cartons of various brands of cigarettes, transferred from Solomon Islands Tobacco bond store. These cigarettes were the subject of these proceedings.

On the 8 May a physical check showed 10 cartons of Winfield cigarettes and a number of Outboard engines and generators. The fact that such cigarettes had been removed was not in issue. The remaining cigarettes were accounted for. Mr. Rofeta's affidavit answers the plaintiff's director's original affidavit. He identifies an import lodgement no. 21124318 as that of the Honiara Football Association which "retrieved (its) documents from Customs". The plaintiff had lodged the original letter of concession under hand of the Minister with the form C44, so that it may be the plaintiff's C44, so that it may be the plaintiff's rights to possession of these forms, coming as they did from the custody of the plaintiff, was adversely affected by the actions of customs in returning the forms directly to the Honiara Football Association.

I do not propose to consider this aspect further, except to say that the plaintiff's forms C15 have been nullified by the actions of the officers in apparently losing control of them. The plaintiff is not liable for duty in respect of any goods covered by the particular C15 forms.

Having heard Mr. Sato give evidence of his daily attendances on customs, and the failure of the officers to explain why, if procedural deficiencies were apparent, no requisitions had been given him, I am satisfied that, in the normal course, the plaintiff's C15 forms would have been processed at least within 2 days, and consequently the divisions failure to process the documents, related to the issues raised by the Notice of the 4 December 2001, and that subsequent Minister's notice of the 11 January 2002.

Mr. Rofeta went on to recount his recollection of conversations that he had had with Mr. Sato. His subjective view was that they were threats by Mr. Sato to customs to clear the imports without further delay. Others who stood to benefit from the duty free imports also had threatened him. Because of the threats and the "general state of things at that point in time some goods may need be released from Customs and Ports area without going through the proper procedure".

I am satisfied Mr. Rofeta had a reasonable apprehension of violence, but am not prepared to find that Mr. Sato's behaviour was of such a nature that he posed such threats. In cross-examination, Mr. Rofeta retreated somewhat from the serious import of this earlier recollection. But it is clear they were difficult times for custom's officers.

Mr. Solomon Palusi recounted the divisions practice and stated that, on the face of the C15 forms, the total revenue involved for the goods sought to be imported, duty free, was some \$8,523,270.00. It is not clear whether this amount included goods tax, or if that sum related to the dutiable value of the goods. Since the value aspect has not been argued, this issue may be revisited if it should be found necessary.

The Comptroller did not address the apparent refusal by his officers to process the C15 entries in the normal way and I am satisfied the Comptroller was delaying these entries on purpose for by implication, he was aware of the Cabinet determination which was reflected in the Minister's Notice of 11 January, and clearly intended to stand on his Deputy's Notice of the 4 December which gave no time of grace. There can be no other procedural explanation for the divisions delay in dealing with the plaintiff's entries.

The use to which the Deputy put, and his reliance upon, the courts decision in *Golden Star*, is just not available to him, as a matter of law.

The Evidence in some detail

The plaintiff's director, Yoshiyuki Sato gave evidence about the usual practice for clearing imported goods through customs, and after hearing the evidence of the three officers (including the Comptroller of Customs, at the time, one Solomon Palusi) of the division, I am satisfied that, in the normal course importers could expect to clear goods within two working days, where there are no "requisitions" in relation to form. But in this case, there appeared to be hold-ups in clearing goods, as a consequence the plaintiff says he lost the benefit of import duty remission available to it, and was liable for duty at the prescribed rate. If the court finds in the affirmative for the plaintiff, then the particular goods covered by various duty remissions will be entitled to be freed to the plaintiff, clear of duty.

Mr Sato gave evidence of separate import entries (form C15) the first lodged on the 20 December 2001- (Evidence of the customs officers showed that once the form has a warrant number in the top, right box, and the signature of the officer in the box, and the signature of the officer authorised in the space provided at the foot, then goods were free for collection from bond store by the importer).

- The C15 numbered 21124091 and apparently dated 21/12 by a receiving officer was not given a warrant No. and consequently the goods were not cleared through customs.
- On the reverse, the form had hand written notations in the space provided for (1) queries "Remissions now not accepted" and lowers down "sorry! No more remissions as per P. Notice of 11/01/02". The Comptroller, Solomon Palusi, signed the latter. The first C15 related to some 2650.2 kg of Winfield cigarettes valued for duty at \$217,334.74.
- The second C151 no. 21124260 was dated 28/2, again included cigarettes valued for duty at \$619,441.07 and that, too was treated in the same fashion as the first.
- The third C15 no. 21124320 was dated 2/01, included Yamaha generators and outboard motors, and that suffered the same fate. The goods were valued at \$101,738.00.
- The fourth C15, no. 22014467 dated the 04/1 related to Winfield cigarettes valued at \$405,052.78 and that, too suffered the same fate.
- The fifth C15 was lodged on as about the 31 December 2000, with respect to 3 containers of cigarettes, (no. 21124318) but the entry and associated documents had been lost by the division, the plaintiff says.

Lodged with these forms were (form C44) claims for exemption from import duty, which claims relied upon various letters of the Honourable Snyder Rini, then Minister for Finance. Cigarettes were dutiable at the rate of 20% on their value for duty purposes. I set out one of the number of letters, copies of which had been annexed to Mr Sato's affidavit, to show the basis for this claim in his various C44 forms.



MINISTER OF FINANCE

P.O. Box 26
HONIARA
SOLOMON ISLANDS
12th November, 2001

ref: FR466/2/1

Michael Ramo
C/- George Nori
Ministry of Police, Justice, Defence, & National Security
PO Box G3
Honiara

Dear Sir

Re: Application for Import Duty Remission and Goods Tax Exemption on Cigarettes

I refer to your letter of 2nd May, 2001 on the above. After considering your application, I hereby grant 100% import duty remission and goods tax exemption on one (1) container of cigarettes.

I hope the remission and exemption granted will be of great assistance to you and your community.

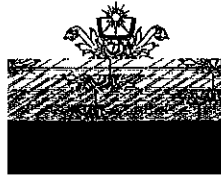
Yours sincerely,

Hon. Snyder Rini
Minister of Finance

cc: Comptroller of Customs
cc: Commissioner of Inland Revenue

No issue has been taken by the Attorney-General over whether the various "remissions and exemptions" covered the goods sought to be imported as shown by the forms C15, and I do not propose to go behind the form C15, as it were, to check the importers calculations in respect of each and every "remission and exemption" for the documents, on their face, have not been challenged by customs.

What the Comptroller has relied on in his various refusals to pass the import entries, is a Public Notice dated 11 January 12 2002



FINANCE

P.O. Box 26
HONIARA
SOLOMON ISLANDS

MINISTRY OF FINANCE
PUBLIC NOTICE

Date: 11th January 2002

BE IT KNOWN TO ALL, THE CABINET OF THE SOLOMON ISLANDS MET ON 21ST DECEMBER 2001 AND DIRECTED:

1. REVOCATION OF ALL DUTY AND TAX REMISSIONS GRANTED BY THE MINISTER OF FINANCE THAT HAVE NOT BEEN UTILIZED. A DUTY AND/OR TAX REMISSION SHALL BE DEEMED TO HAVE NOT BEEN UTILIZED. A DUTY AND/OR TAX REMISSION SHALL BE DEEMED TO HAVE NOT BEEN UTILIZED UNLESS THE RELEVANT GOODS HAVE BEEN CLEARED WITH CUSTOMS AND EXCISE PRIOR TO 11TH JANUARY 2002.
2. THE CESSATION OF GRANTING OF DUTY AND TAX REMISSIONS BY THE MINISTER OF FINANCE WITH IMMEDIATE EFFECT.
3. THE CABINET OF THE SOLOMON ISLANDS AUTHORIZED THE MINISTRY OF FINANCE TO FORMULATE NEW POLICY FOR DUTY AND TAX REMISSIONS AND TO REVIEW THE CUSTOMS ACT AND GOODS TAX ACT WITH A VIEW TO REMOVING THE DISCRETIONARY POWERS OF THE MINISTER OF FINANCE TO GRANT DUTY AND GOODS TAX REMISSIONS.

IN ACCORDANCE WITH THE ABOVE CABINET DIRECTIVE THE MINISTER OF FINANCE HEREBY NOTIFIES THE PUBLIC THAT:

- (a) *The Minister or the Comptroller will grant no further Customs duty and/or Goods Tax remissions.*
- (b) *All Customs duty and/or Goods Tax remissions referred to above which have not been utilised in accordance with Para 1. are hereby cancelled accordingly.*

Hon. Michael Mairua
MINISTER OF FINANCE

Now the plaintiff has argued very strenuously, that had the Comptroller and his officers been doing their job in the normal course, these various imports would have long cleared customs and predated the date of expiration of the various "revocations and remissions" granted by the Minister on the 11 January 2002. In other words, the plaintiff's goods would have had the benefit of the exemptions claimed.

As evidence of the workings of the divisions "proper procedures" the plaintiff showed an earlier form C15 which Mr Sato lodged on the 4 December 2001, which was processed and cleared on the same day, given warrant no. 012659 and signed for the Comptroller of Customs. That entry was for cigarettes valued at \$220, 423.90, which were duty exempt.

The plaintiff says the officers of the Department neglected their duty to properly process these various entries before the 11 January 2002. Mr Radclyffe, in his cross-examination of the two officers from the Customs Division, satisfied me that there were no valid procedural reasons why these imports could not be processed in the normal course, unassociated with this particular Public Notice. In other words, the Comptroller effectively delayed the processing of the entry forms until he could point to the expiration of time allowed in the notice, as justifications for this refusal to allow the entries, duty-free.

The History of the Public Notice of 11 January 2002

On the 4 December 2001, the Deputy Comptroller published Public Notice no. 20/2001 (Notice of the 4 December 2001).

CUSTOMS AND EXCISE DIVISION DEPARTMENT OF FINANCE

Following the decision of the High Court of Solomon Islands in civil case, GOLDEN STAR TRADING CORPORATION LTD - V. ATTORNEY GENERAL - cc. 193/97 dated 15th November 2001, the public is hereby notified of the following-

1. *The Minister of Finance does not have the power under the Customs laws to grant reductions in the rate of custom duties to individual entities. The duty remissions purportedly granted are therefore of no effect.*
2. *All duty remissions granted by the Minister prior to and after 15th November 2001 and have not been utilised are therefore of no effect.*
3. *Only importers and exporters who have ordered goods and/or have made commitments for such imports/exports relying on the said duty remissions are permitted to clear the referred goods.*

.....
 DANIEL ROFETA
 Deputy Comptroller
 Customs & Excise Division

As a result, there was considerable consternation in the community, for many persons and businesses had hold of these “remissions and exemptions”, many importers had contracted to bring into country much merchandise with the expectation of receiving the benefits of such “remissions and exemptions”, and there developed a culture of threat and intimidation to seek to ensure the benefits were maintained. There is no sufficient evidence to show that Mr. Sato was guilty of any such threats.

The Comptroller of Customs was satisfied, on the strength of the decision my brother judge Kabui had given in *Golden Star Trading Corporation Ltd -v Attorney General* – unreported (CC 193/1997) (the Golden Star) that the various “remissions and exemptions” of the Minister of Finance were beyond power and “null and void”.

The issue of the Minister’s power (in paragraph 1 of the Notice of the 4 December 2001) was addressed by Mr Primo Afeau, the Attorney General, who concurred with Kabui PJ’s reasoning in the Golden Star case.

I should say that, although the Comptroller of Customs took comfort from the judgment of Kabui PJ in Golden Star, my brother judge was careful to point out that “the basis for the claim for damages was not stated in the Originating Summons” so that his reasons, as Mr. Radclyffe says, were *obita dicta*. The originating summons in that case sought two declarations and “an order that the plaintiff be entitled to damages to be assessed.”

The Chief Justice was faced with, it would seem, (from a perusal of the reasons of Kabui PJ,) a claim that the Minister’s decision to subsequently revoke his earlier remission of duty, was contrary to the principles of natural justice. The Chief Justice found that to be so with the necessary (unstated perhaps) implication that the Minister’s original act in granting the remission of duty was *intra vires* his powers under S.8.

Kabui PJ saw a need to couch the plaintiff’s claim within the context of the monetary value of the remission lost by the revocation, and revisited, as it were the Minister’s powers to direct remissions, in the first place. Such reasons, whilst *obiter* have thrown light on the issues, which I have attempted to address, in the context of this plaintiff’s claim.

It must be remembered that the Chief Justices findings did not deal with the issue of the Ministers discretionary powers, in the first place, rather the reasonableness or otherwise of his subsequent revocation. This case then is the first where this important issue has been clearly raised for determination.

The best of times, the worst of times

Now these were not the best of times. One would have to ignore realities to say that the country was not in difficulties. Its treasury was bare, “militants” seemed to rule Honiara, the Provinces were bereft of support from the Central Government and the situation was not helped by a police force, which was apparently responsible to particular individuals both inside and outside the organization. In truth, the nation was beginning to attract foreign epithets, a “corrupt state”, a “bankrupt state”.

Minister Maena said he had been receiving physical threats of violence once the decision to revoke the previous Minister's letters of remission was publicly known. The plaintiff's director also was subject to threats. In relation to 4 containers in bond, (awaiting these clearance) Mr. Sato stated that he had been threatened and as a result had to clear 4 containers with other dealers at once. He had no time to discuss this clearance (which I take to mean remove from the bond storage) and the merchandise was sold in circumstances where he "had to get rid of the stuff" because I take it, of these threats of physical violence. He also stated that Customs officers were threatened, a fact confirmed in their evidence.

So the fact of revocation of these "concessions" had caused those likely to suffer detriment and their associates, to act in violent and aggressive ways in an endeavour to ensure the benefit which the previous Minister had given them, despite the change in government policy since the elections in 2001. The "worst of times" eventually gave rise to the government's request for "intervention" which has now occurred.

But it must be said, in 2002, there was unlikely to be a realisation amongst the general population that the manner in which government was carrying out its mandate to govern the country, could not continue.

Perhaps government could be likened to the times of medieval barons, whose powers waxed and waned, according to their allegiances and obligations to their king and kind, and so it was here, where Ministers power was commensurate with their support base, both inside and outside cabinet.

All this is extraneous to my reasons, but it should be realised, when one come to look at the reasonableness or otherwise, of the actions of Mr. Sato, for instance, the officers and the Comptroller of Customs, and of those affected by the Minister's letters of concession, that these people were attempting to live through difficult times, where certainty of business, methods and government practice had ceased to reflect that which had gone before, and where future practices were being attempted in the fickle winds of change. But with "intervention" perhaps reason calls for a return to a consideration of practices which rely on statutes, rules and procedures which govern these imports.

By recognising the threats, the difficulties of the times, the unlikelihood of a return to previous *mores* of governance, (whilst not condoning the apparent breakdown in acceptable practices in bond clearance) it does not avail the court to pursue causation, but rather, on the facts, apply the relevant law, whether statutory or case law.

I do not consider it necessary, for instance, to attribute reasons for the comptroller's obvious delay in customs clearance of the plaintiff's imports, (although the implications are clear enough) for my decision rests on more basic issues.

Mr Sato touched on these "*mores* of governance", for he was at pains to point out that he sought a "level playing field" in the terms of his business, for the Act does not discriminate amongst classes or individuals, in its effect of the First Schedule rates, yet the Minister was purporting to benefit particular persons at the expense of others. Mr Sato felt obliged, (in maintaining his business interest,) to adopt the *Realpolitik* then practised, and sought and obtained such "remissions and exemptions" as he was able.

There were no gazettals, of the purported "remissions and exemptions" of the Honourable Minister, Mr Snyder Rini.

The evidence of the Minister

On the appointment of a new Minister for Finance, Honourable Michael Maena towards the end of 2001, Mr Maena was obliged to tackle this question of duty remissions for the government had not been collecting revenue.

He was called by the plaintiff and stated that the government elected in 2001 had to address the issue for the donor community had insisted remissions must stop and that the State seek to collect revenue on importation of goods. As a consequence, he said Cabinet considered the problem and the notice of the 11 January was approved. He said it was approved with the Deputy Comptroller of Customs notice of the 4 December in mind.

The Attorney-General, in cross-examination, referred the Minister to a letter of appeal written by Mr Sato on the 14 January 2002 complaining of the failure of the Customs Division to deal with his various form's C15. He asked the Minister whether the Notice of the 11 January was intended to override the earlier notice of the Deputy Comptroller of Customs. The Minister answered and said "The appeal was based on goods and their entry already with customs. They should have been dealt with. They were not subjected to my notice, (of 11 January). I had discussions (with Customs) please look at entries which have gone through process. They should not be subject to cabinet notice".

Clearly the Minister was very sympathetic towards Mr Sato's right, and his subjective view was that the plaintiff's imports should have been cleared before the 11th January 2002, free of duty. Just as clearly the Notice of the 11 January 2002 presumes a power in Cabinet to *ex post facto* validate, as it were, acts of the previous Minister, which had been impugned in the case of Golden Star.

The Minister may have power to grant dispensations under the provisions of the Customs and Excise Act. Cabinet may deliberate but the Minister has the power, and it needs be exercised within the ambit of the Act.

Can Cabinet presume a power in these circumstances?

Put another way, can Cabinet unilaterally seek to alter the effect of the operation of the Customs and Excise Act (and its First Schedule) by this Notice by the Minister? Here the Minister purports to find his power in the earlier Cabinet decision of the 21 December 2001 (see notice earlier).

The Constitution (S.35 – The Cabinet) speaks of the "functions of the cabinet" which deal with collective responsibility to Parliament for advice given the Governor-General and "for all things done by or under the authority of any Minister in the exercise of this office".

The Constitution deals with "collective responsibility", it cannot be said to be a source of power to unilaterally determine duties payable by individuals importing merchandise from overseas. For that is the effect of the Notice, since it seeks to further grant such "remissions and exemptions".

On the face of S.35, there is no power in Cabinet to override, as it were, statutory enactments or regulations. Functions of Cabinet in the English system (which find echoes in our Constitution) were:

"The Cabinet system, or system of Cabinet government, was generally agreed to prevail between the wars. The main functions of the Cabinet at the end of the first war were summarised in the following way:

"(a) the final determination of the policy to be submitted to Parliament; (b) the supreme control of the national executive in accordance with the policy prescribed by Parliament; and (c) the continuous co-ordination and delimitation in the interests of the several Departments of State." The Cabinet, giving collective "advice" to the Sovereign through the Prime Minister, was said to exercise under Parliament supreme control over all departments of state, and to be the body which co-ordinate the work on the one hand of the executive and the legislature, and on the other hand of the organs of the executive among themselves.

(O. Hood Phillips, *Constitutional and Administrative Law* 7th Edit. Sweet and Maxwell)

Clearly such roles cannot be said to include a power to, in effect, legislate by fiat.

In the face of the Act, which gives power to the Minister under S.8 to grant remissions and by orders, to determine the rate of such duties on imported goods, the Notice of the 11 January 2002 may be seen to be the act of the Minister, reciting the cabinet decision.

The recital does not cloth the Minister with powers beyond those given him by the Act, and this Notice relying on Cabinet (to further the use of the "remissions and exemptions" touched on by this court's earlier decision in *Golden Star*) has no more basis for that reason. There has been no gazettal, and no tabling, if necessary, of matters arising out of the Minister's order, before Parliament to validate, as it were, changes to the Schedule to the Act.

That notice of the 11 January, then, while on its face of comfort to those holding "remissions and exemptions", had no weight beyond the Minister's power, which was already the subject of some doubt in these circumstances.

The Comptroller of Customs had not been slow to act for the Deputy's Notice was dated the 4 December, and referred to that court decision. Mr. Primo Afeau, the Attorney General pointed to the effect of the Minister's "remissions and exemptions" on the plaintiff's business, for, as evidenced by annexure DR1 to the Acting Comptroller of Customs affidavit, in the period August to September 2001, the plaintiff company had benefited in an amount in excess of \$2,000,000 for waived Government revenue represented by customs duty and goods tax foregone.

On the evidence of the plaintiff (for the company had been acquiring others "remissions and exemptions" letters) and from the evidence of Mr. Maena, the then current Minister for Finance, at the time of his appointment, as Finance Minister, the question of remissions was a "hot topic" for the previous Minister had made a practise of granting remissions to individuals, companies and businesses, to the extent that there were "large numbers granted for cigarettes and beer".

He further stated that that "the issue was one (for the 2001) election because the Government was not collecting revenue as a result of these remissions. The aid donors providing funds made it a point that Solomon Islands should be funded through revenue collection, from duties, goods and services, tax and other revenue sources. Prior to the General Election, the donors had (made plain) duty remissions to cease. As a newly elected Government, it was a top priority, we had to stop, legally, the remissions, taking into account the fact that Treasury had no funds".

In the plaintiff's affidavit read in the cause, Mr. Yoshiyuki Sato, a director said that in about October 2001, he was approached by several individuals or companies who had been granted Import Duty and Goods Tax remissions by the then Minister of Finance, the Honourable Snyder

Rini. "They required the plaintiff's assistance in obtaining goods from overseas and wanted, in effect, to sell their duty and tax remissions to the plaintiff."

From perusing the various claims for exemption (form C.44) these persons or businesses had made their concessions available to the plaintiff.

Honourable Charles Ferania, Member of Parliament for Lau/Mbaelelea, Willie Fo'ofunua, Tony and sons, Honiara; Harry Noda C/- Talakali Village, Langa Langa Lagoon, Honourable Wilfred Atomea, Provincial Minister for Lands and Urban Centre Development (Malaita); Mr. John Coleridge, PO Box 479, Honiara; The Director, MD Enterprises, PO Box 1720, Honiara; Kelvin Ijini and Eddie Nehemiah C/- Soltai Fishing and Processing Limited (2 Yamaha Outboard Motors) Paul Waleurifo, Project Manager, Kara Community Boat Building, Aoke, Langa Langa (3 outboard motors, 1 generator); Newton Misi, PO Box 821, Honiara (1 container noodles, 1 container of mattress, 2 vehicles, 2 outboard motors) Michael Ramo C/- George Nori, Minister of Police, Justice Defence and National Security PO Box G3, Honiara, Francis Ete, Church Secretary Adalina Village, West Kwana'ae, Honourable Charles Ferania, Member of Parliament for Lau.

Apart from those where items are mentioned, remissions relate to cigarettes. In Mr. Sato's affidavit he deposes to the fact that, about the 31 December 2001, he lodged form C.15 with respect to 3 full containers of cigarettes, a lodgement no. 21124318 was allocated, but all his paper work appears to have been lost in Customs possession.

The lodgement recorded by Customs relates, it would seem from the evidence of Mr. Rofeta, the now Acting Comptroller of Customs and Excise, to entries made in relation to Honiara Football Association, (which seems to have been able to have its remissions retrieved from Customs and "opted to take up the case separately"). (Mr. Rafeta did not say whether the Football Association was successful with its application to import cigarettes, free of duty, but it does illustrate the wide variety of individuals and groups, which had become very interested in importing merchandise).

Mr. Sato gave evidence of seeking some 9 containers covered by the plaintiffs various form C.15. If the 3 containers relating to the Honiara Football Association are discounted, the plaintiff was responsible for importing six containers of goods, for which he held various "remissions and exemptions", some on his own account and the balance from those personages and parties listed above.

The Minister's letters for concession would take this form.

"I refer to your letter of 7th August 2001 on the above. After considering your request, and also considering the severe cash flow currently facing the government, I hereby grant 100% import duty remission and goods tax exemption on half (1/2) container (280 cartons) of cigarette. I hope the remission and exemption granted will greatly assist you for payment of school fees etc in your constituency.

Yours sincerely

*Hon. Snyder Rini
Minister of Finance"*

Finding on the reasons for the Minister's concession letters

The reasons given by the Minister varied and in some instances, no reason was included in the concession. I am satisfied however, and find that the letters of concession were given *ad hoc* (for the purpose of the concession) and cannot be said to relate to any other purpose, except the

purpose of duty remission and exemptions. A reason (expressed in the Minister's letter) cannot be equated with "purpose" in this context. (The Minister was not the person or body responsible "for payment of school fees" for instance). In another instance, the concession was expressed to "greatly assist you and your community" and again, "will be of great assistance to your company".

The plaintiff's argument about the nature of the Minister's discretion under the Acts

Mr. Radclyffe, for the plaintiff, argued that the Minister's power under S.8 of the Act was unfettered, that such concessions may not make sense economically, but the Minister was not acting illegally. Mr. Radclyffe pointed out that the Minister's discretion was not fettered on a reading of S.8, while the Comptroller of Customs was restricted to allow only remission or refund not exceeding \$20.00.

That may be so, but Mr. Radclyffe has not addressed the *ad hoc* nature of the Minister's acts in giving these concession letters or the corresponding "purpose", to avoid the payment of duty.

The underlying "purpose" of the two Acts.

The Revised Laws of Solomon Islands, Vol. VI Title XXII (dealing with Public Revenue) provides, at Chapter 121:

"

Customs and Excise

An Act to provide for the Imposition, Collection and Management of Customs and Excise Duties, the Licensing and Control of Warehouses and of Premises for the manufacture of certain goods, the Regulation and Control and Prohibition of Imports and Exports and for matters incidental thereto and connected therewith.

(1 April 1960)"

And, at Chapter 122

Goods Tax

An Act to impose a tax on the wholesale value of goods manufactured in Solomon Islands and on goods imported from overseas and sold to retailers, for the collection and enforcement of such duty, and for matters incidental thereto or connected therewith.

(1 March 1993)"

From the tenor of the evidence, it is clear that the Minister's concessions were not just related to those personages and businesses that the plaintiff had dealings with, and whom I have named above, but a vast number of others for it had become an issue of such importance, that on the election of the Government in 2001, a new Minister for Finance was appointed, to wind back, as it were, such concessions. In fact, from the time of the earlier decision of **Golden Star**, it is obvious other importers were also bound up in this practice of Ministerial largess.

It is open to find, then that this *ad hoc* practise was widespread and of such an extent that it had seriously affected the revenue collection of the State. Certainly to the extent that the "donor community", on the Honourable Mr. Maena's evidence, had sought a change. One can only presume that the "donor community" was nonplussed by the Ministers acts which effectively reduced the collection of revenue, (when in the Hon. Snyder Rini's own words, "the Government faced severe cash flow") yet where the "donor community" was called upon to provide essential services.

The principle question

Is the Minister able, in these circumstances of *ad hoc* concession, widespread grant to all and sundry and major adverse impact on revenue collection, to rely, as Mr. Radclyffe says, on the wide discretion in S.8 as affording him the power to grant such remissions or refunds?

On the face of the preamble to both Acts, they deal with Public Revenue.

This flagrant use of ministerial discretion in this way possibly does not come before a Court, often, for it appears to be of such a nature, which defied correction, and ends to government by fiat.

Section 8:

"The Minister may in any case direct, and the Comptroller may in any case grant, the remission or refund in whole or in part of any duty payable or paid on any goods imported or exported, or manufactured in Solomon Islands, or of any rent, charges, or fees payable or paid to the Comptroller and in directing such remission or refund the Minister or the Comptroller, as the case may be, may impose such conditions as he may think fit; provided that in no single case shall the Comptroller grant a remission or refund exceeding twenty dollars".

Mr. Radclyffe pointed to the (apparently) absolute power of the Minister to direct remissions up to any amount and to any person. With that I agree (for the executive responsibility lies with the Comptroller, for he has the power to grant a remission) But the sections wording does not preclude the Minister directing the executive to remit or refund "in whole or in part... any duty payable..."

The powers are independent, the section affords the Comptroller, (as Chief Executive officer as it were) the power to grant (limited to \$20.00) and the Minister the power to direct the executive officer to remit "in whole or in part any duty payable." The Minister's power cannot be circumscribed by the proviso to the section, which only treats *the executive power*, in the Comptroller, to grant, to this monetary restriction.

The wording of the section is unambiguous, for to hold that the Minister is fettered by a monetary ceiling, tying him, as it were to the Comptroller's ceiling would ignore the plain language of the section.

Findings on the facts

Be that as it may, it over simplifies the right in the Minister to act as he has, in giving these concessions, to say he is subject to no inhibitions when he directs remissions in his undoubted discretion. I cannot envisage anything more inimical to Public Revenue collection than these acts of the Minister. His widespread use of these letters of concession had to an obvious extent, frustrated the policy of the Public Revenue collection under both Acts.

The decision of the House of Lords in Padfield's case (*Padfield -v Minister of Agriculture, Fisheries and Food* (1968) 1 All E.R. 694) insists on parameters for the exercise of a Minister's discretion.

The House of Lords held "that such discretion was not unfettered and that the reasons given by the Minister in that case, showed he had acted *ultra vires* by taking into account factors which were legally irrelevant and by using his power in a way calculated to frustrate the policy of the Act. "(see commentary - De Smith, *Judicial Review of Administrative Action* - 4th Edit, Stevens & Sons, London 1980 at 294.

Lord Reid (Lord Pearce agreeing) at 702, after citing earlier decisions, said:

"So there is simple authority for going behind the words which confer the power to the general scope and objects of the Act in order to find what was intended. In Julius' case (5) no question was raised whether there could be a discretion but a discretion so limited that it must not be used to frustrate the object of the Act which conferred it; and I have found no authority to support the unreasonable proposition that it must be all or nothing – either no discretion at all or an unfettered discretion. Here the words "if the Minister in any case so directs" are sufficient to show that he has some discretion, but they give no guide as to his nature or extent. That must be inferred from a construction of the Act of 1958 read as a whole, and for the reasons, which I have given, I would infer that the discretion is not unlimited, and that it has been used by the Minister in a manner which is not in accord with the intention of the statute which conferred it. As the Minister's discretion has never been properly exercised according to law, I would allow this appeal."

The Lords remitted the matter to the Queens Bench Division with a direction to require the Minister to consider the appellants complaint according to law. In this jurisdiction, the High Court has unlimited original jurisdiction to hear and determine any civil or criminal proceedings under any law. (Constitution; S. 77). Had these issues come before the Court in another way, there is no doubt this court may also direct the appropriate Minister to act "according to law"

In this case, it is open to the court to find that the Minister has not acted, in the exercise of his discretion "according to law" and consequently has acted, by his practice of issuing letters of "remissions and exemptions," ultra vires his powers. I so find, for as I have taken pains to show, the Minister of Finance has frustrated the objects of both statutes by his practice.

The Plaintiffs contractual claim

But that basis, the Ministers order, is not the only basis of the plaintiffs claim. In its summons it says "and having ordered goods from overseas and/or having made commitments for such imports relying on Import Duty and Goods Tax remissions..." so that the plaintiff is also arguing that it had the benefit of an agreement with the State, given under hand of the Minister of Finance, for Import duty and Goods Tax remissions. It has been argued that an implied term of the contract was the reliance which may be placed by importers to receive the benefit of the contract for remission, once goods have been ordered from overseas and the importers was committed to their purchase.

That term may clearly be seen to be implied for it is addressed by the Ministers notice of the 11 January 2002 where there is a presumption that goods ordered on the strength of the various "remissions" would need to be cleared by the 11 January and more importantly, by the Deputy Comptrollers notice of the 4 December 2001 which stated, "only importers and exporters who have ordered goods and/or have made commitments for such imports/exports relying on the said duty remissions are permitted to clear the referred goods". Both treat or seem to treat the letters of the former Minister of Finance as evidence of his contractual act, but seek to limit their validity, firstly by nominating a cut off date and secondly by referring to the commitment to import as the factor which would determine the Comptrollers exercise of discretion to allow the remission. These two notices, then, give credence to the plaintiffs claim under contract, for both expressly support the existence of such an implied term, *ipso facto* there is a contract. While I agree these facts do lead to such a conclusion, the plaintiff must show that such a contract was legally binding.

Leaving, (for I do not see the need to address the issue) for the moment whether consideration has flowed from the named receiptants of the ministers letters, and if so, whether the plaintiff can

stand in the place of the original beneficiaries of the letters, I wish to turn to whether the ministers letters (accepting that consideration in some form or other had passed) could legally bind the state.

The question had arisen in *Rederiaktiebolaget Amphitrite -v The King* ((1921) 3 KB 500) (*the Amphitrite*) where the rule was stated that bodies vested with statutory powers cannot enter into contract to fetter the exercise of those powers. In *the Amphitrite*, undertaking had been given to the owners of a foreign ship that if certain conditions were met, a clearance would be issued to enable the ship to leave port.

According to Bowlatt J., no action lay for breach of this undertaking because "it was not competent for the Government to fetter its future executive action," here, its discretion to grant or refuse a clearance".

That rule was applied in *William Cory and Son Ltd v London Corporation* [1951] 2 KB 476, where "it was contended that it was an implied term of a contract with the London Corporation for the disposal of Port refuse that the Corporation would not, by exercise of its statutory powers, render the performance of the contract by the company more onerous. After entering into the contract the Corporation had made by-laws affecting the disposal of port refuse. These by-laws imposed duties more onerous than those assumed by the company under the contract. The Court of Appeal held that it was incompetent for the Corporation to assume a binding legal obligation concerning the exercise of its legislative powers" (see *Enid Campbell - Agreements about the exercise of Statutory Powers - (1971) 45 A.L.J. 338*).

In the case before me, the Minister has purported to contract out of the terms of duty set out in the First Schedule to the Act.

The Minister cannot presume to contract on the states behalf, favourable terms for particular individuals or groups, which effectively rendered nugatory the statutory schedule of duties in respect of certain goods, especially cigarettes. This is a clear breach of the rule in *the Amphitrite* and I am bound to follow it. The Minister has by his concessions, sought to bind the state to contracts which fetter the government's right to vary or alter the rate of duty or goods tax. This fetter is clearly apparent from reading the Minister's subsequent notice of the 11 January 2002, where Cabinet impliedly acknowledges the fact, and tries to unwind it. The rule was more recently applied by the Judicial Committee of the Privy Council in *Cudgen Rutle (No 2) Pty Ltd v Chalk* (1975) AC 520.

The plaintiff's claim for relief on the contractual basis must also fail.

The Goods Tax Act

These reasons have addressed principally the issues raised by the Customs and Excise Act S.8 (Minister's powers to direct remissions) but the reasoning applies equally to the underlying purpose of the Goods Tax Act. The power of the Minister to order exemptions in S.37 has the need to comply with "subsidiary legislation" rules ie. gazettal.

If the Minister was within power, yet failed to gazette, then there may well be an arguable case, on *Ridge -v Balkein* principles. I find that the Minister has *de facto*, used his powers to frustrate the policy of the Goods Tax Act (not withstanding the failure to gazette). Those acts are *ultra vires* the proper exercise of his discretion.

Findings on the Issues

1 & 2 not in issue.

3. I am satisfied that Comptroller of Customs held up the plaintiff's various entries for the reasons stated in the Notice of the 4 December 2001. The Comptroller's endorsements on the various C15 of the plaintiff on or after the 11 January, is supportive of this conclusion, for that latter Notice also seeks to "cut off" as it were, the continual use of these Minister's remission letters. The plaintiff relied on a letter from Solomon Islands Tobacco written in November 2001, as supporting its claim that "ordering" and "commitment" for the goods had been carried out prior to the 4 December. The defendant has not argued against the presumption raised by the letter, and I am satisfied, on the civil onus, that the various goods, the subject of these C15 entries, fall within the "exemptions" allowed by the Comptroller.

The second issue, the authority of the Comptroller to impose such conditions, is more difficult. The Comptroller (or Deputy) has relied on a false premise (the effect of the decision in *Golden Star*) that case, because of its inherent pleading deficiencies gave rise to *obita* comments of Kabui PJ. The Comptroller, in his executive capacity, however, may impose "conditions on clearance" as he has sought to do.

The question which arises, then, is whether they are "reasonable" in the *Wednesbury* sense. In this case, however, the "reasonableness" or otherwise of his executive acts does not come for review since he has purported to base his "conditions" on a false premise.

Had he, of his own volition, decided to ignore the Minister's implied directions in the various letters of remission, and set out the "conditions" for the phasing out of such supposed remissions, then the two issues, the lawfulness of the Minister's acts in writing the letters of remission and secondly, the "reasonableness" of his conditions to phase out (if it were shown that the Minister had acted lawfully) would come, presumably, to court for determination, as has happened in this case. While my findings, in fact, deal with the unlawfulness of the Minister's acts, it cannot avail the Comptroller, now, for his decision to base his findings on a false premise was much earlier in time.

4. This issue falls within the reasoning of 3 above and the defendant fails.
5. Whether the plaintiff can rely on the remission given others, to benefit need not be decided for the Minister's acts have been found to be *ultra vires*, and the question need not be addressed.
6. The administrative actions of the division entitle an importer to prompt clearance of goods, subject to requisition. In this case the Comptroller has raised no requisitions on the form C15. What has delayed the process was the Comptroller's reliance on his earlier Notice of the 4 December, an executive act which was founded on a false premise.
7. These issues are relatively easily disposed of, having found threats to be real, the breaking of the bond stores, as it were, is excusable in any proceedings instituted against the plaintiff on that basis. Again, interpretation of Rule 132 cannot countenance breaking bond pending clearance; otherwise it would make nonsense of the idea of a bond store. So from the duty perspective, the fact of the absence of goods in bond cannot be used *ipso facto* as reason for clearance.

8. Not in issue.
9. The plaintiff's argument that he is entitled to rely on the face of the remissions, is somewhat trite. It does relate to the manner in which business had been conducted and is explainable on that basis. It does not exculpate the plaintiff from the lawful effect of the Minister's breaches.
10. The value of the goods for duty purposes and the amount of the duty foregone has not been cogently addressed. I am not in a position to decide the amount of duty and goods tax avoided.
11. I am satisfied the purported acts of the earlier Minister, Honourable Snyder Rini in granting remissions in this fashion, were *ultra vires* his discretion under both Acts of Parliament, for the reasons given. I am also satisfied that the Honourable Michael Maena cannot validate these earlier *ultra vires* acts of his predecessor, in the manner of the Notice of the 11 January, rather it would need fresh remissions by the Minister on lawful grounds.

I appreciate that the plaintiff had sought to follow the practice then in vogue, by taking advantage of the Ministers attempted largess, and no criticism should be directed at the company for that reason. The times were trying. But the practice has been shown to be without lawful basis.

I refuse to make the declarations sought. The summons is dismissed. The plaintiff shall pay the defendants costs.

J.R. Brown
Puisne Judge