BETWEEN:

Ottawa 1967 June 1-2

HER MAJESTY THE QUEEN, on the Information of the Deputy Attorney General of Canada .... PLAINTIFF;

AND

THE SINGER MANUFACTURING COMPANY, SINGER SEWING MACHINE COMPANY and SINGER COMPANY OF CANADA LIMITED DEFENDANTS.

Customs duty—Dumping duty—Company ordering goods from U.S. manufacturer for delivery to Canada—Title to goods passes in U.S.A.—Customs Tariff, R.S.C. 1952, c. 60, s. 6(1), (4)—"Exporter", "Importer"—Not terms of art.

In 1959, in accordance with an arrangement between the Singer Co and Eureka Corp, the latter, on the instructions of the former's New York office, manufactured at its Illinois plant a number of vacuum cleaners which it shipped f.o.b. Bloomington, Ill. to the Singer Co's warehouse in St. Johns, Quebec. Title and risk of loss passed to the Singer Co at Bloomington and payment was later made by the Singer Co's New York office. On the ground that "the export or actual selling price" of the goods "to an importer in Canada" (within the meaning of the quoted words in s. 6(1) of the *Customs Tariff*, R.S.C. 1952, c. 60) was less than their value for duty the Crown claimed dumping duty, *viz* the difference between "the selling price of the goods for export" and their value for duty. The Singer Co, though the customs invoices filed by it with the Customs authorities stated that it had purchased the goods in Canada from

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Eureka Corp in the U.S.A., contended that as it took title to the goods in the U.S.A. and exported them to itself in Canada the provisions of s. 6 of the *Customs Tariff* did not apply. Section 6(4) of the Customs Tariff defines "export price" or "selling price" as "the exporter's price for the goods &c".

Held, s. 6(1) of the *Customs Tariff* applied to require the payment of dumping duty. While the language of s. 6 of the *Customs Tariff* postulates a sales contract between an exporter and an importer the words "exporter" and "importer" are not terms of art but are used in s. 6 in their commercial sense, and in that sense Eureka Corp in Illinois was the exporter and the Singer Co in St. Johns, Quebec was the importer of the vacuum cleaners regardless of whether or not the goods were sent under a contract which placed possession, legal title and risk in the purchaser at some point in the U.S.A.

ACTION by Crown for duties payable.

D. H. Aylen and *L. Leikin* for plaintiff.

K. Eaton for defendants.

JACKETT P. (orally):—This is an action by the Crown for customs duty, sales tax and special or dumping duty.

In the year 1959, certain vacuum cleaners purchased by The Singer Manufacturing Company (hereinafter referred to as "Singer Manufacturing") were shipped from Bloomington, Illinois, U.S.A., to St. Johns, Quebec. Upon the importation of such cleaners into Canada, Singer Manufacturing paid

customs duty	$100,711.20
sales tax	65,756.57.

Following an investigation, in 1960, the Customs and Excise Division of the Department of National Revenue took the position that the values for duty of such goods, as declared and accepted at the time of the importation of such goods, should be increased, and, in due course, the Tariff Board, by a Declaration dated March 23, 1962, fixed values for duties somewhat higher than those that had been so declared and accepted. Based on such higher values for duty, the Crown, by this action, claims judgment for

additional customs duty	$22,079.40
additional sales tax	14,411.10.

During the course of the hearing in this Court, counsel for the defendants conceded that the Crown is entitled to judgment for such amounts.

In addition, however, the Crown, by this action, claims $110,402.30 by virtue of section 6 of the *Customs Tariff*, R.S.C. 1952, chapter 60, which reads, in part, as follows:

> 6. (1) In the case of goods exported to Canada of a class or kind made or produced in Canada, if the export or actual selling price to an importer in Canada is less than the fair market value or the value for duty of the goods as determined under the provisions of the *Customs Act*, there shall, in addition to the duties otherwise established, be levied, collected and paid on such goods, on their importation into Canada, a special or dumping duty, equal to the difference between the said selling price of the goods for export and the said value for duty thereof; and such special or dumping duty shall be levied, collected and paid on such goods although not otherwise dutiable.
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> * * *
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> (4) In this section "export price" or "selling price" means the exporter's price for the goods, exclusive of all charges thereon after their shipment from the place whence exported direct to Canada.

It is conceded that the goods in question are "of a class or kind made or produced in Canada" and that, if duty is payable under section 6, the amount claimed by this action is correctly calculated.

The position taken on behalf of the defendants is that section 6 is not applicable to the importation in question because

(a) there was "no exporter's selling price" for the goods, and the section cannot apply in the absence of such a price,

(b) there was no "selling price to an importer in Canada" and the section cannot apply in the absence of such a price, and

(c) there was no "selling price of the goods for export", and the section cannot apply in the absence of such a price.

The case was tried on an agreed Statement of Facts, signed by counsel for the parties, to which the relevant documents were attached. This agreement with the attached documents constitutes all the evidence put before the Court on the trial of the action.

The facts upon which the decision of the question as to special or dumping duty depends may be summarized as follows:

1. Early in 1956, Singer Manufacturing, through its head office in New York, entered into an arrangement

with Eureka-Williams Corporation (hereinafter called "Eureka") of Bloomington, Illinois, under which Eureka was to manufacture and sell electric vacuum cleaners to Singer Manufacturing. Under this arrangement the New York office of Singer Manufacturing from time to time placed advance orders with Eureka for quantities of vacuum cleaners to be manufactured and then shipped by Eureka in accordance with shipping instructions subsequently issued by the New York office of Singer Manufacturing. The selling prices in respect of particular orders were negotiated from time to time. The cleaners were sold f.o.b. common carrier at Bloomington, and title and risk of loss passed to Singer Manufacturing on delivery to the common carrier at that point. Separate customer invoices were sent by Eureka to the New York office of Singer Manufacturing as the basis for payment by that office to Eureka. In 1956 and 1957, all cleaners so sold by Eureka to Singer Manufacturing were shipped by Eureka to regional warehouses of Singer Manufacturing at various locations in the United States.

2. In the latter part of 1958, it was decided to introduce to the Canadian market some of the cleaners manufactured by Eureka under that arrangement; and it was agreed by the two companies that some of the cleaners would be shipped from the Eureka plant at Bloomington to Singer Manufacturing's warehouse at St. Johns, Quebec, pursuant to instructions similar to those previously given for shipment to warehouses in the United States.

3. The goods in question in this case were manufactured by Eureka, and shipped from Eureka's plant at Bloomington, under Bills of Lading naming Singer Manufacturing as consignee, to the latter company's warehouse in St. Johns, Quebec, pursuant to orders and shipping instructions originating in Singer Manufacturing's New York office, and were paid for by cheques sent from that office pursuant to customer's invoices sent by Eureka to that office, all in accordance with the above arrangement.

Without concerning myself too much about the details of the various documents that passed between the parties, I am satisfied that the above is a fair appraisal of the transactions in question.

On the above facts, as I understand it, the contention for the defendants is, in effect, that Singer Manufacturing acquired the cleaners by purchases made in the United States, took delivery of them and got title to them in the United States, and then exported them from the United States to itself in Canada. It is on that view of the facts that it is contended that there was *no* exporter's selling price, *no* selling price to an importer in Canada, and *no* selling price for export.

As indicated, I am of the view that the transactions may fairly be appraised as I have outlined them and that I am not inclined to place too much importance on the manner in which particular documents have been prepared. One class of document, however, which might be considered to have special significance in appraising the facts for customs purposes is the Customs Invoice (form M-A), the filing of which with the customs authorities is an essential part of passing goods through customs. The Customs Invoices used in respect of the importations under consideration, if they are to be taken as conclusive of the facts are represented by them, are almost completely destructive of the case for the defence as I understand it. Such Customs Invoices purport to be invoices of electric vacuum cleaners purchased by "Singer Manufacturing of St. Johns, Quebec, Canada" from "Eureka Williams Corp. of Bloomington, Illinois" to be shipped from Bloomington by rail freight, and purport to set out the "Selling price to the Purchaser in Canada". Furthermore, there are also deposited with the customs authorities declarations of an agent for Singer Manufacturing certifying as to the accuracy of such invoices. However inconsistent the statements in the Customs Invoices are with the position now taken on behalf of the defence, inasmuch as what is involved is really a question as to what is a correct appraisal of the facts from the point of view of the customs legislation rather than a representation or a misrepresentation as to basic facts, I should not be inclined to regard the Customs Invoices as being of conclusive significance. I propose, therefore, to consider the effect of section 6 of the *Customs Tariff* in relation to the facts as I have summarized them, paying no attention to the Customs Invoices.

Before discussing the facts, some consideration must be given to the meaning of section 6. In considering the mean-

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ing of section 6, I accept the submission of counsel for the defendants that, having regard to its penal character, it must be read restrictively and must not be taken to extend to anything not literally covered by the words employed. I cannot, on the other hand, find in the section any indication of a legislative purpose that would warrant reading into the section limitations on the literal meaning of the words used.

Section 6(1) provides, *inter alia,* that, in the case of goods exported to Canada of a class or kind made or produced in Canada, if

(*a*) "the export or actual selling price to an importer in Canada"

is less than

(*b*) "the value for duty of the goods...",
there shall be paid on such on their importation a special or dumping duty equal to the difference between

(*c*) "the said selling price of the goods for export",

and

(*d*) "the said value for duty thereof".

On this reading of the words of subsection (1), it seems clear that the words that I have shown as (*c*), "the said selling price of the goods for export", are a reference back to the words that I have shown as (*a*), "the export or actual selling price to an importer in Canada", and mean the same as those words whatever those words may mean.

By reference to subsection (4) we find that, in this section, "export price" or "selling price" means "the exporter's price for the goods . . .". Applying this provision, as well as I can (and I realize that I have not found it possible to give any special significance to the word "actual" in subsection (1)), I have reached the conclusion that, by virtue of subsection (4), one can substitute for the words "the export or actual selling price to an importer in Canada", in subsection (1), the words "the exporter's price for the goods to an importer in Canada".

Having reached this conclusion as to the meaning of subsection (1), as I understand the case as put to me by the parties, if I conclude that there was, on the facts here,

an "exporter's price for the goods to an importer in Canada", it follows that duty is payable under section 6 in the amount claimed, and, if I conclude that there was no "exporter's price for the goods to an importer in Canada", it follows that no duty is payable under section 6.

No matter how I might, in the absence of subsection (4), have interpreted subsection (1), and particularly the words "export or *actual selling price to an importer in Canada*", counsel for the Crown agrees that subsection (4) makes it essential to the application of subsection (1) that there be an "exporter's price for the goods". It follows, I think, that duty can never be payable under section 6 where the person sending goods to Canada is also the person to whom the goods are sent, for, if the exporter and the importer are the same person there can be no sale contract between the exporter and importer and there can, therefore, be no "exporter's price for the goods to an importer in Canada".

The case for the defence here is based on that view of the effect of section 6. Its case is, in effect, that Singer Manufacturing got the goods in the United States and shipped them to itself in Canada. If I could satisfy myself that that were a correct appraisal of what happened, I would conclude that no duty was payable under section 6.

The words "exporter" and "importer" are not words of art in the law; they are words that gain the meaning that they have when used in a context such as that found here from the business or commercial world. It follows, therefore, in my view, that the matter must be approached from a business or commercial point of view. Regardless of whether it can be said, from a legal point of view, that Singer Manufacturing received possession of the goods when they were placed on board the railway at Bloomington, there is no question in my mind that, in the sense in which the words are used by business or commercial men, if a person carrying on business in Canada orders goods from a United States manufacturer to be sent to him at his place of business in Canada, the United States manufacturer is the exporter and the Canadian business man is the importer, regardless of whether or not the goods are sent under a contract of carriage which places possession, legal title and risk in the purchaser at some point in the United

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States. Not only do I think that that is the ordinary use of such terms when the person carrying on business in Canada is a Canadian who never leaves Canada and makes all the arrangements by mail; but I think a person carrying on business in Canada is none the less an importer into Canada (and his supplier is an exporter) even though he makes all arrangements in respect of the despatch of the goods by a United States manufacturer to his Canadian establishment through an office of his own in the United States. The essential feature in my view is that the exporter must be the person in the foreign country who sends the goods into Canada and the importer must be the person to whom they are sent in Canada. If the exporter sells the goods for a price to the importer, that price is the "exporter's price for the goods" to "an importer in Canada".

On this view of the matter, there is no doubt in my mind that the cleaners in question were exported to Canada by Eureka and imported into Canada by Singer Manufacturing.

I am of opinion, therefore, that each of the prices at which Eureka sold to Singer Manufacturing was therefore "the exporter's price for the goods" to "an importer in Canada", and that duty is payable on the importation of the goods in question under section 6 of the *Customs Tariff*.

While there are three defendants, having regard to paragraph 2 of the "Agreed Statement of Facts", which reads in part as follows,

> 2. In 1963 Singer Manufacturing and Singer Sewing both transferred substantially all of their Canadian assets and liabilities to Singer Company of Canada Limited, which was incorporated in 1962 under the laws of Quebec. . . .

it was agreed by counsel that any judgment for or against the defendants should be rendered for or against "Singer Company of Canada Limited" to the exclusion of the other defendants.

Subject to considering any submissions that counsel may now make, I propose to pronounce judgment in favour of the Crown against Singer Company of Canada Limited for the sum of $146,892.80, and costs.