

SESSION II.  
1921.  
NEW ZEALAND.

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PRODUCTION, DISTRIBUTION, IMPORTATION, AND  
PRICE OF CEMENT

(REPORT OF THE COMMISSION APPOINTED TO INQUIRE INTO THE).

*Presented to both Houses of the General Assembly by Command of His Excellency.*

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COMMISSION

TO INQUIRE INTO THE PRODUCTION, DISTRIBUTION, IMPORTATION, AND PRICE  
OF CEMENT.

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JELlicoe, Governor-General.

To all to whom these presents shall come, and to the Honourable WILLIAM  
ALEXANDER SIM, Acting Chief Justice of the Dominion of New Zealand:  
Greeting.

WHEREAS during the period from 1st January, 1920, to 31st March, 1921, the price and distribution of cement of New Zealand manufacture were controlled by the Government through the Board of Trade: And whereas it is deemed expedient to appoint a Commission to inquire into and report upon certain matters relating to the production, distribution, importation, and price of cement during the period of such control:

Now, therefore, I, John Rushworth, Viscount Jellicoe, the Governor-General of the Dominion of New Zealand, in exercise of the powers conferred by the Commissions of Inquiry Act, 1908, and of all other powers and authorities enabling me in this behalf, and acting by and with the advice and consent of the Executive Council of the said Dominion, do hereby constitute and appoint you, the said

WILLIAM ALEXANDER SIM,

to be a Commission to inquire into and report upon the following matters:—

- (1.) Whether the Board of Trade, in December, 1920, in sanctioning a maximum retail price of cement of New Zealand manufacture of £9 13s. 6d. per ton ex store Wellington, was guilty of any impropriety or of a grievous error of judgment.
- (2.) Whether the companies manufacturing cement in New Zealand during the period of acute shortage of cement, from 1st January, 1920, and thereafter, took advantage of the excess of demand over supply to extort unreasonably high prices from the public.
- (3.) Whether the agreement dated 5th May, 1921, set out in the schedule hereto, constituted an offence against the Commercial Trusts Act, 1910, or any other Act, or was in any way criminal or illegal.

- (4.) Whether the price for cement of New Zealand manufacture was directly or indirectly determined, controlled, or influenced by the parties to the agreement in such manner as to make the price unreasonably high.
- (5.) Whether the said agreement has in any manner operated detrimentally to the public interest.
- (6.) Whether the Board of Trade, being aware of such agreement, was lacking in any duty in taking no action with respect to such agreement.

And you are hereby authorized to conduct any inquiries under these presents at such times and places as you deem expedient, with power to adjourn from time to time and place to place as you think fit, and to call before you and examine on oath or otherwise such persons as you think capable of affording you information as to the matters aforesaid, and to call for and examine all such documents as you deem likely to afford you information on any such matters.

And, using all diligence, you are required to report to me under your hand and seal not later than the eleventh day of November, one thousand nine hundred and twenty-one, your opinion as to the aforesaid matters.

And you are hereby strictly charged and directed that you shall not at any time publish or otherwise disclose, save to me in pursuance of these presents or by my direction, the contents or purport of any report so made or to be made by you.

And it is hereby declared that these presents shall continue in full force and virtue although the inquiry is not regularly continued from time to time or from place to place by adjournment.

And, lastly, it is hereby further declared that these presents are issued under and subject to the provisions of the Commissions of Inquiry Act, 1908.

Given under the hand of His Excellency the Right Honourable John Rushworth, Viscount Jellicoe, Admiral of the Fleet, Knight Grand Cross of the Most Honourable Order of the Bath, Member of the Order of Merit, Knight Grand Cross of the Royal Victorian Order, Governor-General and Commander-in-Chief in and over His Majesty's Dominion of New Zealand and its Dependencies; and issued under the Seal of the said Dominion at the Government House at Wellington this fourteenth day of October, in the year of our Lord one thousand nine hundred and twenty-one.

[SEAL OF THE  
DOMINION OF NEW  
ZEALAND.]

W. F. MASSEY,  
Prime Minister.

Issued in Executive Council.  
F. D. THOMSON,  
Clerk of the Executive Council.

#### SCHEDULE.

AN AGREEMENT made between the Golden Bay Cement Company (Limited) of the one part, Wilson's (New Zealand) Cement Company (Limited) of the second part, and the Milburn Lime and Cement Company (Limited) of the third part: Whereas the contracting parties are of opinion that the demand for cement in New Zealand is likely for some months to be considerably less than the supplies which are at present being manufactured by the contracting parties: And whereas the contracting parties desire to enter into an arrangement whereby the said parties may derive the most satisfactory results possible, and for this purpose have agreed to enter into this agreement: Now, this agreement witnesseth as follows:—

1. The Golden Bay Company shall close down the manufacture of its cement on the fourteenth day of May, one thousand nine hundred and twenty-one, or as near thereto as is possible, in order to clear out its present stock of clinker.

2. The Golden Bay Company shall have a period of one month from the above date to sell the stock of cement which may be at its works or in the hands of its agents.

3. From and after the fourteenth day of June, one thousand nine hundred and twenty-one, the Golden Bay Company shall not manufacture cement for a period of twelve months unless the other companies give notice of their intention to terminate this agreement under the power hereinafter contained.

4. The Milburn Company and Wilson's (New Zealand) Cement Company agree that during the said period of twelve months from the fourteenth day of June, one thousand nine hundred and twenty-one, they will pay the sum of 4s. per ton on all cement sold by the said companies respectively up to a combined output of sixty thousand (60,000) tons per annum, and if the output of the said companies for the year is over sixty thousand (60,000) tons the said companies will pay to the Golden Bay Company the sum of two shillings (2s.) per ton on the amount by which the output exceeds sixty thousand (60,000) tons per annum.

5. The Milburn Company and Wilson's (New Zealand) Company shall be entitled after this agreement has been in operation for three months to terminate the said agreement by giving to the Golden Bay Company three months' notice in writing of its intention so to do.

6. While this agreement shall be in force the Golden Bay Company shall take no steps towards reorganizing its capital or improving or reconstructing its works or machinery.

7. Accounts shall be adjusted monthly, and if the agreement is terminated during the said period of twelve months under the power contained in clause 5 the computation of the amount payable to the Golden Bay Cement Company shall be adjusted on the basis of sales by the Milburn Company and the Wilson's (New Zealand) Company during each period of three months—*i.e.*, 4s. per ton on the sales of the combined companies up to fifteen thousand (15,000) tons for a period of three months, and 2s. per ton on any amount over the said amount of fifteen thousand during such three-monthly period.

8. As between the Milburn Company and Wilson's Company the selling percentage to which the said companies shall be entitled during the currency of this agreement shall be 22 per cent. for the Milburn Company and 78 per cent. for Wilson's Company, all other provisions of the existing agreement to remain in force.

9. Wilson's Company shall take over the stock of bags at present held by the Golden Bay Company at the c.i.f. price main port New Zealand current at this date. Dated this fifth day of May, one thousand nine hundred and twenty-one.

For the Milburn Lime and Cement Company (Limited) :

C. G. WHITE, Chairman of Directors.

For the Wilson's (N.Z.) Cement Company (Limited) :

GEORGE ELLIOT, Chairman of Directors.

E. S. LUTTRELL, Managing Director, Golden Bay Cement Company.

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EXTENDING TIME OF CEMENT COMMISSION.

JELlicoe, Governor-General.

To all to whom these presents shall come, and to the Honourable WILLIAM ALEXANDER SIM, Acting Chief Justice of the Dominion of New Zealand :  
Greeting.

WHEREAS by Warrant dated the fourteenth day of October, one thousand nine hundred and twenty-one, you, the said

WILLIAM ALEXANDER SIM,

were appointed to be a Commission under the Commissions of Inquiry Act, 1908, for the purposes set out in the said Warrant : And whereas by the said Warrant you were required to report to me under your hand and seal your opinion as to the aforesaid matters not later than the eleventh day of November, one thousand

nine hundred and twenty-one: And whereas it is expedient that the said period should be extended as hereinafter provided:

Now, therefore, I, John Rushworth, Viscount Jellicoe, the Governor-General of the Dominion of New Zealand, in pursuance of the powers vested in me by the said Act, and acting by and with the advice and consent of the Executive Council of the said Dominion, do hereby extend the period within which you shall report to me as by the said Commission provided to the twenty-first day of November, one thousand nine hundred and twenty-one.

And in further pursuance of the powers vested in me by the said Act, and with the like advice and consent, I do hereby confirm the said Commission except as altered by these presents.

[SEAL OF THE  
DOMINION OF  
NEW ZEALAND.]

Given under the hand of His Excellency the Right Honourable John Rushworth, Viscount Jellicoe, Admiral of the Fleet, Knight Grand Cross of the Most Honourable Order of the Bath, Member of the Order of Merit, Knight Grand Cross of the Royal Victorian Order, Governor-General and Commander-in-Chief in and over His Majesty's Dominion of New Zealand and its Dependencies; and issued under the Seal of the said Dominion, at the Government House at Wellington, this eighth day of November, in the year of our Lord, one thousand nine hundred and twenty-one.

W. F. MASSEY,  
Prime Minister.

Issued in Executive Council.  
F. D. THOMSON,  
Clerk of the Executive Council.

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## REPORT.

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To His Excellency the Right Honourable John Rushworth, Viscount Jellicoe, Admiral of the Fleet, Knight Grand Cross of the Most Honourable Order of the Bath, Member of the Order of Merit, Knight Grand Cross of the Royal Victorian Order, Governor-General and Commander-in-Chief in and over His Majesty's Dominion of New Zealand and its Dependencies.

MAY IT PLEASE YOUR EXCELLENCY,—

I, the Commissioner appointed by Your Excellency on the 14th October, 1921, for the purpose of inquiring into certain matters relating to the production, distribution, importation, and price of cement during the period from 1st January, 1920, to 31st March, 1921, have the honour to submit the following report for Your Excellency's consideration :—

I entered upon the duties imposed upon me by the Commission at as early a date as was practicable after its issue.

*Sittings held.*—Sittings were held in Wellington on the 18th day of October, and on the 1st, 2nd, 3rd, 4th, 7th, and 8th days of November, 1921.

*Notification of Sittings.*—As a preliminary to the sittings I caused advertisements to be inserted in the local daily newspapers announcing the Commission, and inviting all persons interested to attend and give evidence.

*Course of Sittings.*—At the sittings the following parties were represented: The Solicitor-General, Mr. W. C. MacGregor, K.C., appeared for the Board of Trade; Mr. Perry for Mr. Robert Masters, M.P.; Mr. Myers for Wilson's (N.Z.) Portland Cement Company (Limited); Mr. Myers and Mr. C. A. Loughnan for the Golden Bay Cement Company (Limited); Mr. C. G. White, the chairman of directors of the Milburn Lime and Cement Company (Limited), represented that company.

The following witnesses were examined on oath: Gerald Fitzgerald, Robert Edmond Herron, Arthur Richard Masters, Edward Marriott Boulton, Robert Masters, Donald Gordon Johnston, William George McDonald, Charles Gilbert White, Berkely Lionel Dallard, George Elliot, Edward Sydney Luttrell.

### PRICE OF CEMENT.

The first two questions submitted for investigation deal with the price of cement. The first question refers to the increase of £1 16s. per ton ex store Wellington which was sanctioned by the Board of Trade in December, 1920. Before dealing with this question it is necessary to state shortly what had been done by the Board before that date in connection with fixing the price of cement. That goes back to July, 1918, when, in consequence of public complaints as to the price being charged for cement, the Board investigated the subject. The price ruling in July, 1914, for cement in Wellington was £3 15s. per ton. This price had been determined by free competition between the several companies manufacturing in New Zealand and the importers of cement. When the Board began its investigation the price had been increased to £4 16s. per ton Wellington. The result of the investigation was to satisfy the Board that the price of £3 15s. ruling in July, 1914, was fair and reasonable, and did not yield the manufacturers an unreasonable margin of profit. The investigation established also that there had been an increase of £1 3s. per ton in costs between July, 1914, and September, 1918. In these circumstances the increase in price of £1 1s. per ton appeared to be reasonable. The Board reported, accordingly, that the price was a reasonable one, and made an agreement with the companies that nothing should be done in the meantime in the way of fixing prices by Order in Council, the companies undertaking to sell at not more than £4 16s. per ton, and not to increase the price without the sanction of the Board. At the time when this agreement was made the price in Australia for cement manufactured there was £4 19s. per ton, and the Board was acting, I think, in the interests of the public in making this agreement with the companies. The price of £4 16s. per ton was maintained in New Zealand until July, 1919, when the companies asked for authority to increase the price by 9s. per ton. The evidence satisfied the Board that the

increase in costs since September, 1918, was approximately 13s. 6d. per ton, and the increase asked for was sanctioned accordingly. In December, 1919, a further increase of 9s. per ton was sanctioned on similar evidence. During the year 1920, up to December, four further increases were sanctioned, with the result that in that month the price in Wellington was £7 17s. 6d. per ton. Before sanctioning these several increases the Board was satisfied that there had been further increases in costs which justified these increases in price, and it was clear from the financial position of the companies that the prices obtained were not yielding an excessive margin of profit to the companies.

I proceed now to deal with the increase of £1 16s. per ton ex store Wellington which was sanctioned in December, 1920, to take effect as from the 1st January, 1921. During the year 1920 there was an acute shortage of cement in New Zealand. So acute was it that, according to the reports obtained by the Board in December, there were orders for about 73,000 tons of cement which could not be supplied. This total included orders for over 6,000 tons taken by three out of the five largest distributors of cement in the Taranaki District. The companies were doing their best to supply the demand, but the shortage of coal made it impossible for any of the works to produce to their full capacity. The subject of a further increase was brought before Mr. McDonald, the Chairman of the Board, in November, 1920, by Mr. Luttrell, the managing director of the Golden Bay Cement Company. Mr. McDonald visited the company's works with Mr. Luttrell to satisfy himself as to the necessity for considerable expenditure in the way of repairs. His inspection of the works satisfied Mr. McDonald that a special allowance for repairs ought to be made. On the 1st December, 1920, the Golden Bay Cement Company made a formal application for an increase of £1 16s. per ton, and this was sanctioned on the 4th December, subject to the cement-production costs then in hand justifying the increase, and subject to a further conference with Wilson's Portland Cement Company. On the 8th December, 1920, Wilson's Portland Cement Company applied for an increase of 18s. per ton in the Auckland Province and £1 16s. per ton in all other parts of the Dominion. This was sanctioned provisionally on the 10th December, and with an intimation that the price would be reviewed after the Board's advisory accountant had an opportunity of going into costs with the company's officials. Before dealing with the Golden Bay Company's application, Mr. McDonald had the books and accounts of the company examined by Mr. Dallard, the Board's advisory accountant. In dealing with previous applications for increases the Board had considered only any increase which had taken place in the cost of production. Mr. McDonald thought in December that the time had arrived when other matters should also be considered. Included in these were anticipated increases in cost, the world's market price, and the necessity for inducing the companies to increase their output, and for enabling them all, if possible, to pay dividends to their shareholders. On this basis Mr. McDonald made an approximate estimate of cost in connection with the Golden Bay Company. According to this estimate the cost of a ton of cement f.o.b. at Tarakohe was £7 7s. 4d. The increase of £1 16s. at Wellington was equivalent to £7 10s. f.o.b. at Tarakohe, and it was estimated that the increase would yield to the company an average of £7 14s. 9d. per ton f.o.b. at Tarakohe. Mr. McDonald had a conference with the representatives of the two companies on the 10th December, and these representatives were then informed that the increases asked for were sanctioned to take effect as from the 1st January, 1921.

In view of the acute shortage of cement it was of the utmost importance in December, 1920, that all the works should be kept going. Of the companies concerned the Golden Bay Company was the weakest financially, and it was desirable to sanction any reasonable increase which would enable that company to carry on. Mr. Dallard's report sets forth on page 11 a summary of that company's actual trading for the year ending 30th June, 1920, reduced to a per-ton-of-cement basis. According to that summary the average cost of a ton of cement was £4 11s. 11d., while the average return per ton was £4 12s. 8d., leaving a profit of only 9d. per ton, and this was the net result without proper provision having been made for depreciation and reserves.

In the circumstances the Board was justified, I think, in sanctioning the increase in question. In arriving at that conclusion I am greatly influenced by the fact

that the price of £9 13s. 6d. per ton ex store Wellington was considerably less than the price at which imported cement could be obtained in New Zealand. This is made clear by the figures given by Mr. McDonald in his statement. The following were the f.o.b. prices per ton London or Liverpool paid for cement of British manufacture imported into New Zealand at the specified dates : July, 1920, £16 11s. 6d. ; August, 1920, £15 ; October, 1920, £10 1s. 2d. ; November, 1920, £10 7s. 11d. ; December, 1920, £10 11s. 9d. To these prices has to be added a sum of about £3 3s. 4d. per ton to cover freight and other charges. When, therefore, the Board in December, 1920, sanctioned the price of £9 13s. 6d. per ton for New Zealand cement the cost of imported British cement was at that date between £13 and £14 per ton. Mr. McDonald has estimated that, if for the period from January, 1920, to April, 1921, the price of cement had not been controlled by the Board, and the companies had been left free to get the best price obtainable for their cement, the consumers would have paid a sum of £347,000 more than they did for the cement supplied by the companies. That, of course, is only an estimate and may be excessive, but it is certain that the Board, by its control of prices, secured for the consumer a large saving at the expense of the companies. So far, therefore, from the companies being helped by the Board to fleece the public, they were prevented by the Board from obtaining what they might fairly claim to be the legitimate reward of their enterprise. If the companies had been left free during that period, they might have been tempted to take advantage of the acute shortage of cement to demand high prices from the public. But they were not left free, and it is certain that the prices they were allowed to charge were not unreasonably high, and were not such as to yield even a fair return to the shareholders in Wilson's Portland Cement Company and the Golden Bay Company. The first-named company paid a dividend of 5 per cent. for the year ending the 31st March, 1921. This was the only dividend it paid during the thirty-four months it had been in operation, and the net profit it made during the whole of that period gives a return of only £1 16s. 7-20d. per centum per annum on its capital of £600,000, which had not been watered in any way. That is, of course, an inadequate return, for it was agreed generally that 10 per cent. on the gross investment was a fair return in such a business. That was the return which the Milburn Company was making to its shareholders. The Golden Bay Company paid a dividend of 5 per cent. for the year ending 30th June, 1919, but, as Mr. Dallard has pointed out, that dividend was really a return of capital, because quite inadequate provision had been made for depreciation. The profit and loss account of that company for the following year shows that it made a loss of £444. It is clear, therefore, that neither company had obtained anything like a fair remuneration for the capital employed in the business ; and in this connection I refer to the observations of Lord Parker of Waddington, in delivering the opinion of the Privy Council in the case of the *Attorney-General of the Commonwealth of Australia v. Adelaide Steamship Company* [(1913) Appeal Cases, at page 801], where he said that in considering the interests of consumers it is impossible to disregard the interests of those who are engaged in the production and distribution of articles of consumption. "It can never be," said His Lordship, "in the interests of the consumers that any articles of consumption should cease to be produced and distributed, as it certainly would be unless those engaged in its production or distribution obtained a fair remuneration for the capital employed and the labour expended."

These facts to which I have just referred support the view that the Board was justified in sanctioning the increases in December, 1920. It is true that at the end of March, 1921, the cement-market suddenly collapsed. This collapse was due mainly, it is said, to the financial crisis. Within a week the necessity for rationing—which had been in operation since January, 1920—had disappeared, the building regulations were suspended, and there was a supply of cement on the market more than sufficient to meet the immediate demand. It is true also that as a result of this collapse the two companies who had obtained the increases reduced the price of cement in April to the former rate. The action of the Board in December, 1920, must be judged, however, on the facts as they then existed, and not by what a learned Judge described as "the easy but fallacious standard of subsequent events." Judged on the facts which were then before the Board, the increases sanctioned in December, 1920, were, I think, quite justified.

I now proceed to state my findings with regard to the first two questions submitted:—

1. The Board of Trade in sanctioning in December, 1920, the increase of £1 16s. per ton ex store Wellington was not guilty of any impropriety or error of judgment.

2. The increase was quite justified in the then state of the cement-market.

3. The importation of cement into New Zealand was not in any way brought about by that increase, but was rendered necessary by the shortage of cement in the Dominion.

4. The Board of Trade did not assist or permit the cement companies or any of them to fleece the public. On the contrary, the Board benefited the public, at the expense of the shareholders in the companies, by keeping the price of cement in New Zealand below its price in the world's markets, and by controlling the distribution of the cement.

5. The companies did not obtain unreasonably high prices from the public at any time, and, if they had desired to take any unfair advantage of the acute shortage of cement, the action of the Board made it impossible for them to do so.

#### AGREEMENT OF THE 5TH MAY, 1921.

I proceed now to deal with the other four questions, which all relate to the agreement of the 5th May, 1921, between the three cement companies. The evidence as to the circumstances in which the agreement was made, establish, I think, that there was nothing sinister about it, and nothing to justify the description of it as an agreement made to prevent people from getting cement, to stifle competition, or to increase the price of cement. The idea of making such an agreement originated with Mr. Luttrell, the managing director of the Golden Bay Company. He met Mr. Elliot, the chairman of directors of Wilson's Company, in Wellington about the beginning of April. Mr. Elliot told Mr. Luttrell that Wilson's Company intended to reduce the price of cement. Mr. Luttrell said that if the price was reduced it meant the closing of Golden Bay. At a subsequent meeting he suggested to Mr. Elliot that if the Golden Bay works were closed temporarily the other two companies might take over the Golden Bay trade and pay a royalty of 5s. per ton on their sales. Mr. Elliot undertook to place the matter before the directors of his company. Mr. Luttrell brought the matter before the Golden Bay directors at a meeting held on the 29th April. The following is what took place as recorded in the minutes:—

“Mr. Luttrell explained that he had convened this special meeting in order to consider the position that had suddenly developed through the shortage in the demand for cement. Correspondence was read from the company's agents showing that they were quite unable to take any further cement. It was also shown that the company's stores would be absolutely full of cement by the end of the following week, and that the works would by then have to be closed down.

“Mr. Luttrell further explained that in view of the position he had already personally opened negotiations with the Wilson's Company and Milburn Company with a view to arranging that the Golden Bay should close down and the other two companies should pay a subsidy of 5s. per ton on their sales during the closed down period.

“Suggested that a three-months notice would be required to terminate such an agreement.

“The meeting fully discussed the position, and, in view of the certainty of having to close down at the end of the following week, *Resolved*, That Mr. Luttrell be empowered to continue his negotiations with a view to completing an agreement subject to the approval of the Board.”

Negotiations were continued accordingly. In these negotiations the Milburn Company was represented by Mr. White, chairman of directors, Mr. Hazlett, a director, and Mr. Stewart, the general manager. The agreement was made and signed on the 5th May, and in reporting to his board of directors Mr. White thus states what took place:—

“I have to report that Mr. Hazlett, the general manager (Mr. Stewart), and myself went to Wellington on Wednesday last to discuss the offer submitted by



Mr. E. C. Luttrell, managing director of the above company, with regard to closing down its works. We first met the representatives of Wilson's (N.Z.) Cement Company, Messrs. Elliot, Rhodes, and Reid, and found that they were anxious to fall in with Mr. Luttrell's proposition because the outlook of the cement-market was distinctly unpromising, and it was almost certain that they would have to close down within the next two months unless they were able to sell more cement. Indeed, they were prepared to accept Mr. Luttrell's offer themselves provided they took over Golden Bay's percentage under the present agreement—*i.e.*, that they would have 82 per cent. and Milburn 18 per cent. of sales. We objected to this, and, seeing that they had decided to accept the offer if possible, we insisted that the amount to be paid to Golden Bay should be cut down, and it was then decided to meet Mr. Luttrell and to ascertain from him what he was prepared to accept."

The report then set out a statement of the anticipated outlay of the Golden Bay for the next twelve months, amounting to £11,450, and continued as follows:—

"Mr. Luttrell was prepared to accept a payment which would return approximately the above amount, and it was ultimately decided to pay the Golden Bay 4s. per ton on all cement sold up to 60,000 tons per annum, and 2s. per ton on all cement sold above 60,000 tons.

"We discussed the anticipated requirements of the Dominion for the next twelve months with Wilson's people, and they were of opinion that they would fall as low as 60,000 tons.

"We finally decided to sign the agreement (although the writer was reluctant to see the Golden Bay works close down) on the following grounds:—

"(1.) We thought it extremely desirable to keep in touch with the business and not let Wilson's handle it alone.

"(2.) We have a clause enabling us to determine the agreement at the end of three months by giving three months' notice, thus making it practically a six-months agreement, if necessary.

"(3.) Our own stores of cement and clinker are accumulating so fast that it is only a matter of weeks when we ourselves will be forced to close down. The extra trade available owing to the Golden Bay closing down should, with careful management, enable us to keep our rotary regularly running.

"From the point of view of extra profits to the company the figures show that the arrangement will mean very little, but Mr. Stewart informs me that our cost of manufacture is lessened accordingly as our output is increased. For the above reasons we think that the agreement should be confirmed by the Board."

The agreement was confirmed by the Milburn board of directors, and also by the directors of the other two companies.

The agreement operates, it is true, in restraint of trade, but every restraint is not necessarily invalid. Such a restraint is valid if it is reasonable in the interests of the contracting parties, and if it is reasonable also in the interests of the public. The agreement was made primarily in the interests of the Golden Bay Company, and the restraint imposed thereby was suggested by Mr. Luttrell himself, and approved of by his co-directors. The directors owned most of the shares in the company, and were really the company. They were the best judges of what was in their own interests, and it cannot be said that the agreement, from their point of view, was unreasonable. It secured for the company a sum sufficient to pay its outgoings for the year, and this was a clear gain if, as Mr. Luttrell thought, the company must close its works on the price being reduced, as proposed by Wilson's Company. The agreement was in the interests also of the other companies, because it probably would enable them to avoid any suspension of work during the year, and would enable them also to produce cement at less cost than if all three companies had been manufacturing. The agreement would not operate to the prejudice of the public so long as consumers could get all the cement they wanted at a reasonable price. It was not in the interests of the public that the companies should be forced to engage in a cut-throat competition, and the agreement was designed to prevent that. There does not appear to be any ground for suggesting that the parties to the agreement had any idea or intention of increasing the price of cement, or of taking advantage in any other way of the public by reason of the closing of the Golden Bay works.

It was unfortunate that the workers who had been employed at the Golden Bay works were thrown out of work, but a certain amount of unemployment appeared to be inevitable, and the only question was who were to be the sufferers. Unfortunately for them, the Golden Bay workers had to be the sufferers. It was not in the interests of the companies or of the public, after the slump in April, 1921, that all the companies should continue manufacturing, with the result of work being intermittent at the works of all the companies, and all their workers suffering more or less from unemployment. The closing of the Golden Bay works inflicted some hardship on the agents for the sale of the company's cement, because after their stocks were exhausted they had to obtain supplies for their customers from other agents. In this way they suffered a loss of commission, and the evidence shows that the agents were doing much better out of the cement business than were the Golden Bay shareholders.

I proceed now to state my findings with regard to the agreement:—

1. The agreement does not constitute an offence under the Commercial Trusts Act, 1910, or under any other Act.

2. It is not in any way criminal or illegal.

3. It is in restraint of trade, but the restraint is reasonable having regard to the interests of the contracting parties and to the interests of the public, and is, therefore, not invalid.

4. It was not made to prevent people from getting cement, or to stifle competition, or to increase the price of cement, and was not intended by the parties to operate to the detriment of the public in any way.

5. It has not operated detrimentally to the interests of the public in general. The closing of the Golden Bay works has inflicted some hardship in individual cases in the way already specified, but the works probably would have been closed whether the agreement had been made or not.

6. The stipulation in clause 6 of the agreement that the Golden Bay Company should take no steps while the agreement was in force towards reorganizing its capital or improving or reconstructing its works or machinery was in the circumstances a reasonable and proper provision.

7. The stipulation in clause 9 of the agreement that Wilson's Company should take over the Golden Bay Company's stock of bags was inserted in the interests of the Golden Bay Company and without any sinister intention, and the sale of these bags will not prevent or delay the resumption of business by the Golden Bay Company when the agreement expires.

8. The price of cement has not been unreasonably high at any time during the period in question, having regard to the price of cement in the world's markets.

9. There was no action which the Board of Trade could properly have taken in connection with the agreement, and the Board was not lacking in its duty in the matter.

#### COSTS.

It was suggested that an order should be made under section 11 of the Commissions of Inquiry Act, 1908, directing Mr. Masters to pay the costs of the inquiry. I am not satisfied, however, that the case is one in which the jurisdiction conferred by that section should be exercised in the way suggested.

#### EVIDENCE.

I have the honour to forward the shorthand report of the evidence taken, and also the several exhibits produced by the witnesses.

In witness whereof I have hereunto set my hand and seal, this 17th day of November, 1921.

W. A. SIM,  
Acting Chief Justice.

*Approximate Cost of Paper.*—Preparation not given; printing (800 copies), £14.