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CANADIAN CAR & FOUNDRY CO. (LTD.)

DECEMBER 16 (calendar day, DECEMBER 19), 1924.—Ordered to be printed

Mr. ERNST, from the Committee on Finance, submitted the following

REPORT

[To accompany S. 3505]

The Committee on Finance, to whom was referred the bill (H. R. 7522) for the relief of the Canadian Car & Foundry Co. (Ltd.), having considered the same, reports thereon favorably without amendment and recommends it do pass.

The claim covered by this bill has been twice reported favorably from the Committee on Finance of the Senate—January 20, 1919, by Senator Thomas and October 3 of the same year by Senator Watson—and has twice passed the Senate, but said matter was not passed upon by the Committee on Claims of the House to which it had been referred until June 7, 1924, when a bill therefor was reported favorably from said Committee on Claims. A favorable report on this claim has been made by the Secretary of the Treasury, as shown by his letter embodied in this report.

The following from the House report succinctly states the character and merits of the claim:

The bill authorizes and directs the Secretary of the Treasury to refund to the agency of the Canadian Car & Foundry Co. (Ltd.) the sum of \$192,278.82 as a refund of import duties paid on certain materials to be manufactured in the United States for shipment abroad, but which were destroyed by fire before such shipment.

The bill was referred to the Secretary of the Treasury for report. From that report and other evidence submitted the following facts appear:

The Canadian Car & Foundry Co. (Ltd.) is a foreign corporation, whose principal place of business is Montreal, Canada, where it has been engaged in the manufacture of railway equipment for many years.

Shortly after war broke out in Europe this company entered into a contract with the Government of Russia to furnish that Government with certain war materials consisting mainly of shells, shrapnel, bombs, etc. The company was not equipped to do all the work on the contract in Canada, partly on account of scarcity of labor in Canada, which at that time was engaged in war with Germany, and, therefore, arrangements were made through its agency in the United States to add materials thereto and further manufacture said materials in this country.

In 1915 the company constructed a large plant at Kingsland, N. J., for loading this ammunition and assembling it for export shipment. Under the circumstances the normal course was to have this plant recognized by the Treasury Department as a bonded warehouse, and if this had been done it would not have been necessary to have paid the duty on the materials imported. It appears that the company discussed this matter of a bonded warehouse with the deputy collector in charge in the city of New York, who informed the company that in his opinion, inasmuch as a bonded warehouse would be under inspection by the United States Government, using such warehouse for the manufacture and exportation of war munitions would be a breach of neutrality, and he advised the company to pay the duty upon such goods as they were imported, to be refunded when the same goods were exported. This advice was accepted by the company and the duties were paid. The Treasury Department made the necessary authorization, and under this authority a quantity of material was imported, manufactured, and exported and the drawback allowed. But before the entire contract was completed and the exportation of the finished articles accomplished, a large proportion thereof was destroyed by fire at the company's plant at Kingsland, N. J., on January 11, 1917, a short time before the United States entered the war. This fire was apparently of incendiary origin.

The original claim was for \$208,075.05. But, as shown by the records on file in this case, a careful investigation was made by a special agent of the Treasury Department, and while the said amount of \$208,075.05 was found to be approximately correct, the Treasury Department claimed that there should be a deduction for salvage amounting to \$13,854.02, leaving a total of \$194,221.03, and that 99 per cent of this, or \$192,278.82, would have been refunded had the same merchandise been exported. While from the records in the case the company does not agree with the Government as to the amount to be deducted as salvage, they have waived that and the bill is for just what the Government admits in equity should be refunded.

But under the law and regulations of the Treasury Department the amount that would have been refunded to the Canadian company on exportation could not be thus refunded because the material was not exported. Neither could the regulations permitting the refund of duties on notice of abandonment be invoked because such rules require the surrender of the property. As this property was scattered in fragments over a large area by the explosion it was impossible to collect the fragments. The only recourse, therefore, is legislation authorizing the Treasury Department to make the refund.

By our laws we invite foreign persons and concerns to bring either raw material or partly finished products into the United States for manufacturing or finishing the same for the purpose of giving employment to American labor and profits to American manufacturers and material men. The purpose of the law in requiring the exportation of these goods is to prevent such goods entering into the commerce of this country without paying the duty. The duty, which is prepaid under the law, is, in effect, a deposit to insure the United States against any of these goods being sold within this country.

American material at American prices, American labor at American wages, and American profits enhanced by conditions of war, were expended and received in the manufacture of these goods in the United States. The spirit of the law has been fulfilled. No part of the product has entered into American commerce. We have had no injury to any of our industries. The Canadian company is not only the loser of the materials destroyed but also of the duty paid, which duty it had every reason to expect would be returned.

In the opinion of your committee it would seem that in all equity and fairness the money so paid as duties should be refunded.

The following letter from the Secretary of the Treasury admits the claim to be meritorious and in harmony with the financial program of the President:

LETTER OF THE SECRETARY OF THE TREASURY

TREASURY DEPARTMENT,
Washington, May 1, 1924.

The CHAIRMAN COMMITTEE ON CLAIMS,
House of Representatives.

MY DEAR MR. CHAIRMAN: I have to refer to your communication of the 26th ultimo, transmitting a copy of bill H. R. 8879, providing for the refund to the agency of the Canadian Car & Foundry Co. of duties paid on certain imported materials which were destroyed by fire, and requesting that all papers,

or copies of the same, on file in the department relating to the claim be forwarded to your committee, together with an opinion as to the merits of the bill.

In reply there are inclosed herewith copies of the following documents in the department's files:

Report from the collector of customs at New York, N. Y., dated February 9, 1917.

Report, with appendix, from the special agent at New York, N. Y., dated February 26, 1918.

Report from the collector of customs at New York, N. Y., dated May 28, 1918.

Affidavit of Frederick S. Freed, deputy collector of customs at Newark, N. J., dated May 28, 1918.

Affidavit of Francis T. Leahy, deputy collector of customs at New York, N. Y., dated May 28, 1918.

Excerpts from the regulations governing the establishment of bonded manufacturing warehouses.

Manufacturing warehouse bond.

My report to the chairman Committee on Finance, United States Senate, dated April 17, 1922, on a similar bill (S. 1176) introduced in the Sixty-seventh Congress.

Inasmuch as these documents contain a complete statement of the facts in the case, the remainder of the department's file, which consists principally of departmental memoranda and letters of transmittal containing no additional information, will not be forwarded unless your committee specifically requests the same.

As will be seen from an examination of these reports, the department authorized the payment of drawback on partly manufactured shrapnel and high-explosive projectiles imported by the Canadian Car & Foundry Co., to be completed and ultimately to be exported to Russia. Under this authority a quantity of material was imported, but before the manufacturing operations were completed and the exportation of the finished articles accomplished a large portion thereof was destroyed by fire at the company's plant at Kingsland, N. J., on January 11, 1917.

No drawback could be allowed on the material destroyed for the reason that the drawback law requires exportation of the manufactured articles as a condition precedent to the payment of drawback. It is claimed that an application was made prior to the importation of any of the material for the privilege of manufacturing the ammunition in bond, which application was denied by the customs officers. It appears, however, from the evidence submitted that while the question of bonding the plant was briefly discussed verbally with certain subordinate customs officers, no formal application to bond the factory was ever made.

There appears to be merit in the claim of the Canadian Car & Foundry Co. (Ltd.), and I wish to further advise that the matter has been submitted to the President, who states that it is not in conflict with his financial program.

Respectfully,

A. W. MELLON,
Secretary of the Treasury.

For the further information of Congress, your committee would advise that this case was taken to the Customs Court of Appeals, and, in a decision of the United States Customs Court of Appeals in the case of "Agency Canadian Car & Foundry Co. v. The United States," rendered November 23, 1920, the court found the facts to be as set forth in this report and declared that the appellant had been the victim of a great misfortune and that it should not be made to suffer the loss of both goods and duties paid. After a recital of all the facts, the court concluded with this statement:

"The appellant has been the victim of a great misfortune and the appeal is strong that it should not suffer the loss of its goods and the very large amount of duties paid thereon as well. Nevertheless, as the law has made no provision for the return of duties in such cases as this, the court is powerless to grant relief."

PRECEDENTS

The most common cases of reimbursement by special law are those where stamps, either postage or internal revenue, have been destroyed.

Other cases are where liquors have been destroyed before removal and after tax has been levied.

A few of the like cases where refund has been made are as follows:

An importation of walnuts, duty paid, not for the purpose of reexportation but for sale in the United States: Nuts were found to be unmerchantable under pure food law and duty refunded.

Distillery product was destroyed by fire after the same had been gauged by the Government. The amount paid was refunded by special bill.

Boilers were purchased in Canada for boats being built in Minnesota. It was found that under our law boats for American registry could not use imported parts. Boilers were returned and the amount was refunded.

SUPERIOR EQUITY IN THIS CASE

There is a far greater equity in this case than in any of the others cited. In all these cases the Government merely received money for which the claimant received no value. In this case not only did the Government receive the money for which the claimant received no value but in addition to the receipt of claimant's money the people of this Government, American labor, received the very highest wages and American capital received the very highest profits, both enhanced by war conditions. These wages and these profits, both of which were paid by the claimant, were very much in excess of the money paid as duty, and as the claimant received no benefit from either the deposit or the great profits paid both American labor and American capital, the least the Government can do is to return the money deposited as a guaranty that the goods would not enter the American markets.

The committee, therefore, recommend that the bill pass without amendment.

