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*Oct. 4, 5.
*Dec. 16.

THE CANADIAN NATIONAL RAILWAY COMPANY ..... } APPELLANT;

AND

THE PROVINCE OF NOVA SCOTIA AND OTHERS ..... } RESPONDENTS.

ON APPEAL FROM THE BOARD OF RAILWAY COMMISSIONERS FOR CANADA

Railway—Shipping—Freight rates—Board of Railway Commissioners—Validity of orders—Maritime Freight Rates Act—St. John and Ste. Rosalie "gateways"—"Eastern lines"—"Select territory"—"Preferred movements"—Leave to appeal granted by Board—Question of jurisdiction within the Railway Act.

The lines of the Canadian National Railways run from Sydney, Halifax and other places in Nova Scotia through Nova Scotia, New Brunswick and eastern Quebec by way of Moncton, Levis, Diamond Junction and Ste. Rosalie to stations in central and western Canada; the Canadian National Railway Co. also owns and operates a line of railway between Moncton and Saint John. The Canadian Pacific Railway Co. owns and operates a railway line which extends from Saint John to Montreal, with a branch running to Ste. Rosalie. Both of these railway systems directly or indirectly connect the Maritime Provinces with all the commercially important sections of Canada west of these provinces. For some years prior to 1925, shipments originating on the lines of the Canadian National Railways, in the Maritime prov-

*PRESENT:—Anglin C.J.C. and Duff, Mignault, Newcombe, Rinfret, Lamont and Smith JJ.

inces, could be routed, first, over the Canadian National Railways as far as Saint John or Ste. Rosalie, and thence over the Canadian Pacific Railway to their destination; and, as regards goods shipped to destinations reached by both railways, there existed parity of rates for three classes of routes; first, over the Canadian National Railways direct; second, over the Canadian National Railways to Saint John and thence by the Canadian Pacific Railway and third over the Canadian National Railways to Ste. Rosalie and thence over the Canadian Pacific Railway. In 1925, the Canadian National Railway Co. published supplementary tariffs which purported, as to classes of traffic affected by them, "to eliminate the alternative routings by way of Saint John and Ste. Rosalie," and the Board of Railway Commissioners, October 19, 1926, disallowed the "provisions" of these supplements "in so far as they proposed to eliminate routings via Saint John and Ste. Rosalie," thus restoring "the parity of rates" mentioned above. Such was the situation when the *Maritime Freight Rates Act* of 1927 was passed. Section 2 of the Act gives the meaning of the phrase "eastern lines," as "the lines of railway now operated as a part of the Canadian National Railways and situated within the provinces of New Brunswick, Nova Scotia and Prince Edward Island, and the lines of railway, similarly operated, in the provinces of Quebec extending from the southern provincial boundary near Matapedia and near Courchesne to Diamond Junction and Levis." Section 8 defines the phrase "select territory," as including Nova Scotia, New Brunswick and Prince Edward Island in addition to the localities on "the lines in the province of Quebec mentioned in section 2." Section 3, requires the cancellation of tolls in force at its date (normal tolls), in respect of the "movements of freight traffic" described as "preferred movements," and the substitution therefor of tariffs of reduced tolls (statutory tolls). The "preferred movements" comprise three classes, first, of local traffic between points on the "Eastern lines," second, of export traffic destined overseas between points on the "Eastern lines" and ocean ports on the "Eastern lines," and third, of westbound traffic originating on the "Eastern lines," and extending westward beyond those lines. As respects the first and second of these classes of "preferred movements," the statutory tolls are ascertained by making a deduction from the normal tolls of approximately twenty per cent. As respects the third class of such movements, the statutory rate is ascertained by making a deduction, also of twenty per cent, but, in this case, the deduction takes effect only upon that part of the "through rate," which the statute in section 4 describes as the "Eastern lines proportion of" that rate. Section 9 provides for the non-compulsory reduction of rates by companies, other than those concerned with the "Eastern lines," which own or operate railways "in or extending into the select territory." Such companies are permitted, in order to "meet" the compulsory statutory rates, to file tariffs of reduced rates "respecting freight movements similar to the preferred movements." Those non-compulsory reductions, sanctioned by section 9, are not ultimately borne by the companies whose tolls are affected by them, as by that section provision is made for the transfer of that burden to the Dominion Government, the Minister of Railways and Canals being required, at the end of each year, to pay to the companies availing themselves of the privileges of the section the difference, as certified by the Board of Railway Commissioners, be-

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tween the amount which would have been payable in normal tolls but for the tariffs filed under it, and the sums actually "received under those tariffs." The question, whether the compulsory reductions under sections 3 and 4 applied (as shippers in the "select territory" contended) to joint tolls in respect of "movements" over joint routes through Saint John or Ste. Rosalie, or whether (as contended by the Canadian National Railway) they affected only "movements" of traffic routed over the Canadian National Railways from point of origin to point of destination, was submitted to the Board of Railway Commissioners for determination, and the adjudication by the Board in the sense adverse to the contention of the railway company is formally embodied in the two orders now under appeal. The appeal raises the question whether the orders are within the jurisdiction of the Board.

Held that, when the question at issue is examined by the light of the preamble, of the declarations in the body of the statute and of the railway situation of the Maritime provinces, "movements of freight traffic" originating on the "Eastern lines" and passing over joint routes by way of Ste. Rosalie, established at the date of the passing of the Act, are "preferred movements" within the meaning of sections 3 and 4; if such movements fall within the definition of "preferred movements," then the tariffs of tolls in force respecting them became subject to cancellation and reduction on the passing of the Act, and all persons and companies concerned in the preparation and publication of such tariffs were obliged by section 3 to concur in such cancellation, and in the substitution therefor of tariffs of statutory tolls; and the Board was acting within the limits of its jurisdiction in pronouncing the orders under consideration; but as regards the joint routes by way of Saint John, the orders of the Board are not within the ambit of its powers.

Held, also, that the question stated in the order giving leave to appeal is one of jurisdiction within the meaning of the *Railway Act*. The first of the above mentioned orders of the Board, in explicit terms, applies the compulsory reduction provided for by ss. 3 and 4 tariffs for the through routes in question and the second does the same thing in effect. Therefore, if such tariffs do not fall within ss. 3 and 4, then, by force of s. 7, the Board of Railway Commissioners is debarred from applying to them the principles of those sections. Where by statute the Board is given authority to make orders of a certain class in a defined type of case, and is disabled from making such orders in other cases, the question whether, in given circumstances, a case has arisen in which an order of that class can lawfully be made by the Board under the statute, is a question of competence—that is to say, a question of jurisdiction within the meaning of the *Railway Act*.

APPEAL from two orders of the Board of Railway Commissioners for Canada on a question of the jurisdiction of the Board.

The question to be considered is defined in the order granting leave to appeal and is stated at the beginning of the judgment now reported.

E. Lafleur K.C. and *A. Fraser K.C.* for the appellant.

C. B. Smith K.C. for the respondents: The province of Nova Scotia, the Halifax Board of Trade and the Saint John Board of Trade.

F. R. Taylor K.C. for the respondent: The province of New Brunswick.

W. N. Tilley K.C. and *E. P. Flintoft* for the respondent: The Canadian Pacific Railway Company.

The judgment of the court was delivered by

DUFF J.—The question to be considered is defined in the order granting leave to appeal in these terms:

Had the Board of Railway Commissioners for Canada power or jurisdiction under the *Maritime Freight Rates Act*, 1927, or under the *Railway Act*, 1919, or under both the said Acts, to make

(1) (*a*) as to St. John.
(*b*) as to Ste. Rosalie.
Order of the Board of Railway Commissioners for Canada numbered 39348?

(2) (*a*) as to St. John.
(*b*) as to Ste. Rosalie.
Order of the Board of Railway Commissioners for Canada numbered 39349?

The orders mentioned are dated the 14th of July, 1927, and are as follows:—

(The first, no. 39348.)

The Board orders that the Canadian National Railway Co. will forthwith publish tariffs of through rates by Saint John and Ste. Rosalie, from points in the Maritime Provinces through stations in Canada beyond eastern lines. Said through rates to be the rates in existence between such points on June 30, 1927, less approximately 20 per cent as provided in section 3 of c. 44, 17 Geo. V.

(The second no. 39349.)

The Board orders that the Canadian Pacific Railway Co. and the Canadian National Railways be, and they are hereby directed to publish forthwith joint tariffs naming through rates from points in the Maritime provinces to stations west thereof, in Canada, via Saint John and Ste. Rosalie Junction which will be the same as published between the same points via the Canadian National Railways direct: such tariff to cover all traffic and the same territorial application as existed June 30, 1927.

The Canadian Pacific Railway Co. assents to and supports these orders. The Canadian National Railway Co. seeks to rescind them.

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For many years facilities have existed for interchange of freight traffic between the two systems of railway at St. John and Ste. Rosalie (a station near Montreal), which came to be designated in common speech as the Saint John and Ste. Rosalie "gateways."

In consequence of these facilities, for some years prior to 1925, shipments originating on the lines of the Canadian National Railways, in the Maritime Provinces, could be routed, first, over the Canadian National Railways as far as Saint John or Ste. Rosalie, and thence over the Canadian Pacific Railway to their destination; and, as regards goods shipped to destinations reached by both railways there existed, as the Chairman of the Board of Railway Commissioners observes, parity of rates for three classes of routes; first, over the Canadian National Railways direct, second, over the Canadian National Railways to Saint John and thence by the Canadian Pacific Railway, and third over the Canadian National Railways to Ste. Rosalie and thence over the Canadian Pacific Railway.

In 1925 the Canadian National Railway Co. published supplementary tariffs, which, to quote the chairman of the Board, purported, as to classes of traffic affected by them "to eliminate the alternate routings by way of Saint John and Ste. Rosalie," and the Board by its order of October 19, 1926 (no. 38275), disallowed the "provisions" of these supplements "in so far as they proposed to eliminate routings via Saint John and Ste. Rosalie." The learned Chairman says that the effect of this order "was to restore the parity of rates" mentioned above.

This was the situation when the *Maritime Freight Rates Act* of 1927 was passed. In explaining the provisions of the Act, the phrase "Eastern lines" will frequently be used, and it is convenient at this place to quote textually section 2 of the Act which gives the meaning of that expression.

> For the purposes of this Act the lines of railway now operated as a part of the Canadian National Railways and situated within the provinces of New Brunswick, Nova Scotia and Prince Edward Island, and the lines of railway, similarly operated, in the province of Quebec extending from the southern provincial boundary near Matapedia and near Courchesne to Diamond Junction and Levis are collectively designated as the "Eastern lines."

For a similar reason, section 8 should also be mentioned, which defines the phrase "select territory," as including Nova Scotia, New Brunswick and Prince Edward Island in addition to the localities on "the lines in the province of Quebec mentioned in section 2."

The Act, by section 3, requires the cancellation of tolls in force at its date (which we shall speak of as normal tolls), in respect of the "movements of freight traffic" described as "preferred movements," and the substitution therefor of tariffs of reduced tolls (which we shall refer to as the statutory tolls). The "preferred movements" comprise three classes, first, of local traffic between points on the "Eastern lines," second, of export traffic destined overseas between points on the "Eastern lines" and ocean ports on the "Eastern lines," and third, of westbound traffic originating on the "Eastern lines," and extending westward beyond those lines.

As respects the first and second of these classes of "preferred movements," the statutory tolls are ascertained by making a deduction from the normal tolls of approximately twenty per cent. As respects the third class of such movements, the statutory rate is ascertained by making a deduction, also of twenty per cent, but, in this case, the deduction takes effect only upon that part of the "through rate," which the statute in section 4 describes as the "Eastern lines proportion of" that rate. The statute also provides for the non-compulsory reduction of rates by companies, other than those concerned with the "Eastern lines," which own or operate railways "in or extending into the select territory." Such companies, by section 9, are permit-

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ted, in order to "meet" the compulsory statutory rates, to file tariffs of reduced rates "respecting freight movements similar to the preferred movements."

It is part of the scheme of the Act that these non-compulsory reductions, sanctioned by section 9, shall not be ultimately borne by the companies whose tolls are affected by them; and by that section provision is made for the transfer of that burden to the Dominion Government, the Minister of Railways and Canals being required, at the end of each year, to pay to the companies availing themselves of the privileges of the section the difference, as certified by the Board of Railway Commissioners, between the amount which would have been payable in normal tolls, but for the tariffs filed under it, and the sums actually "received under those tariffs."

After the Act came into force, a controversy arose on the question whether the compulsory reductions under sections 3 and 4 applied (as shippers in the "select territory" contended) to joint tolls in respect of "movements" over joint routes through Saint John or Ste. Rosalie, or whether (as contended by the Canadian National Railways) they affected only "movements" of traffic routed over the Canadian National Railways from point of origin to point of destination. This dispute came before the Board of Railway Commissioners for determination, and the adjudication by the Board in the sense adverse to this contention of the Railway Company is formally embodied in the two orders now under appeal.

The appeal raises the question whether the orders are within the jurisdiction of the Board. In passing upon that question none of the operative sections of the Act can be ignored; but it appears to us that the critical question (which must of course be examined by the light of the preamble, of the declarations in the body of the statute, and of the railway situation of the Maritime Provinces as summarily sketched above), is whether or not "movements of freight traffic" originating on the "Eastern lines" and passing over joint routes by way of Saint John, or joint routes by way of Ste. Rosalie, established at the date of the passing of the Act are "preferred movements" within the meaning of sections 3 and 4. If such movements fall within the definition of "preferred movements,"

then the tariffs of tolls in force respecting them became subject to cancellation and reduction on the passing of the Act, and all persons and companies concerned in the preparation and publication of such tariffs were obliged by section 3 to concur in such cancellation, and in the substitution therefor of tariffs of statutory tolls; and the Board was acting within the limits of its jurisdiction in pronouncing the orders under consideration.

We have come to the conclusion that in relation to the joint routes through Ste. Rosalie, the Board had jurisdiction to pronounce the orders under appeal; but as regards the joint routes by way of Saint John, our conclusion is that the orders of the Board are not within the ambit of its powers. The reading of the statute which governed the Board, in applying these orders to joint routes by way of St. John, is open, in our opinion to insurmountable objections; objections which do not proceed upon niceties of interpretation, but upon the unmistakeable effect of the substantive enactments of the Act.

Before entering upon an analysis of the operative sections some pertinent considerations drawn from the general features of the statute should be emphasized.

As appears from recitals and declarations in the preamble and in the body of the Act, the statutory rates, whether compulsory under section 3 and 4, or non-compulsory under section 9, are envisaged by the statute not as providing a fair return for railway services, but as arbitrary rates, established with the design of affording special "statutory advantages to persons and industries" in the "select territory"; it was therefore considered just to transfer from the railway companies to the Dominion Treasury the burden of reductions authorized by section 9, which in the legal sense are non-compulsory, but, which it was recognized, might be exacted from the companies concerned, by the force of competition. It should also be observed, that the only enactment of the Act which confers a right of compensation upon railway companies (other than those concerned in the operation of the "Eastern lines") in respect of reductions sanctioned by the Act is the provision in section 9 already mentioned and that provision relates only to non-compulsory reductions authorized by the section. Indemnity to companies in respect of

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loss of revenue arising from a compulsory reduction is not provided for and not contemplated by the Act.

Sufficient perhaps has been said to make it evident that a decision supporting the validity of the orders of the Board would necessarily rest upon the view that the obligatory provisions of sections 3 and 4 are, in relation to the tariffs in question, binding upon the Canadian Pacific Railway Co. with the same force and to the same extent as they affect the persons and companies concerned in the preparation and publication of tariffs of rates for the "Eastern lines." But the point is of cardinal importance and it is perhaps desirable to develop it a little further. If movements over these routes are "preferred movements," then all persons and companies concerned in the joint rates applicable to them are required by section 3 to concur in, first, the cancellation of the existing tariffs, and second, the substitution of statutory tariffs therefor. There is nothing in the section which lends colour to the suggestion that the cancellation of existing tariffs within the purview of that section, that is to say the cancellation of tariffs of rates for "preferred movements," can, in any instance, be optional with one or more of the parties concerned. If a given movement is a "preferred movement" then the duty of all parties interested in the appropriate tariff, both as to cancellation and as to reduction, is by the unequivocal words of the section, an absolute duty. If a given movement is not within the class of "preferred movements," then the section has no application to rates chargeable in respect of it; and by virtue of section 7, the Board is disabled from either requiring, or sanctioning, for such a movement, a rate determined according to the arbitrary standard of the statute. If, therefore, the joint routes in question by way of Saint John and St. Rosalie are preferential routes, within the operation of sections 3 and 4, it was as much the duty of the Canadian Pacific Railway Company as of the officials of the "Eastern lines" to concur in the cancellation of the existing tariffs and the substitution of statutory tariffs; and, if not, the Board had no jurisdiction either to require or to authorize either substitution or cancellation.

The necessary effect, therefore, as observed already, of the view of the Board, that such movements are "pre-

ferred movements," is that the Canadian Pacific Railway Co's. share in the joint toll is subject, as well as the share of the "Eastern lines," to the statutory reduction, a reduction in respect of which no compensation is provided under the Act. This would be incompatible with the policy which dictated section 9, because it seems impossible to reconcile the policy of compensating for losses of revenue arising from non-compulsory reductions, due to economic pressure, with the policy of withholding compensation for losses arising from reductions imposed by express statutory compulsion. It is not less difficult to reconcile such a policy with the declarations above referred to, touching the inadequacy of the statutory rates as remuneration for the services to which they apply.

Coming now to the verbal structure of sections 3 and 4. The controversy turns largely upon the effect of section 4, as will now be apparent from what has been said, and particularly upon the meaning to be ascribed to sub-paragraph 4, 1 (*b*), which is in these words:—

> Traffic moving outward, westbound, all rail—From points on the Eastern lines westbound to points in Canada beyond the limit to the Eastern lines at Diamond Junction or Levis; for example, Moncton to Montreal,—the twenty per cent reduction shall be based upon the Eastern lines proportion of the through rate or in this example upon the rate applicable from Moncton west as far as Diamond Junction or Levis.

The description of the through westbound routes

> from points on eastern lines westbound to points in Canada beyond the limit of the "Eastern lines" at Diamond Junction or Levis.

is perhaps not quite free from ambiguity. When, however, the sub-paragraph is read as a whole, there is little room for dispute that the only routes contemplated by it are routes passing through Diamond Junction or Levis. In the concrete example given, the reduction is calculated by reference to "the rate applicable from Moncton west as far as Diamond Junction or Levis." As designating part of a route from Moncton to Montreal which touches neither Diamond Junction nor Levis, this does not seem a very appropriate phrase. The only routes from points on the "Eastern lines" which carry westbound traffic through Diamond Junction or Levis, are over the Canadian National lines. But it is more important to observe that the

> rate applicable from Moncton West as far as Diamond Junction or Levis

is given as the equivalent of the Eastern lines proportion

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of the through rate for the route from Moncton to Montreal, or, to follow the natural reading of the words, "the proportion" of the through rate earned by the transport service on the "Eastern lines."

It is impossible to suppose that the words in this paragraph were selected with a view to describing a route which deviates from the "Eastern lines" at any point east of Diamond Junction or Levis.

But the matter does not rest here. By section 6 it is declared that

> the reductions herein authorized * * * shall be borne by the Eastern lines.

It is true that the sentence in which this declaration occurs is dealing with a matter of accounting as between the "Eastern lines" and the Canadian National Railways generally. But the decisive point is that the reductions (they can be none other than the reductions authorized by section 3), are treated by the section as a charge upon the revenues of the Canadian National Railways, to be met, in case of deficit, by a special parliamentary apropriation. In view of the fact that this is the sole provision dealing with the ultimate incidence of the reductions authorized by section 3, it seems impossible to doubt that all such reductions were envisaged by the legislature as reductions affecting tolls or parts of tolls belonging to the Canadian National Railways as earned by a transport service on the "Eastern lines."

On behalf of the respondent, the Canadian Pacific Railway Co., a point is made which must be noticed. Movements of freight traffic, by way of joint routes through Saint John, if not "preferred movements" within sections 3 and 4, are, it is argued, "movements similar to preferred movements," within the meaning of section 9. While this may be unobjectionable as an application of this particular phrase, found in section 9, when taken by itself it does not advance the argument of the respondents. Section 9 applies only to tariffs filed by some company other than the companies concerned with the "Eastern lines" or the Canadian National Railways, and the frame of that section clearly shows that it does not contemplate a tariff of tolls which are subject to apportionment between connecting companies. The difference between normal tolls and tolls under tariffs filed under that section is payable to the

company in its entirety; there is no provision for apportionment. The company filing the tariff is treated as the only company concerned. This right, under section 9, evidently could have no possible operation or, indeed, meaning, as applied to tolls in respect of joint routes by way of Saint John. The substance of the contention is that, by the joint application of ss. 3, 4 and 9, joint rates, which are not within the operation of ss. 3 and 4 alone, or within the operation of section 9, alone, can be subjected to a reduction (bringing them into conformity with the statutory rates in respect of corresponding movements over the Canadian National Railways) which, as affecting the share of the Eastern lines in the joint rate, is compulsory, but, as affecting that of the Canadian Pacific Railway Company, is voluntary. The learned Chairman of the Board appears to have been influenced by this argument in arriving at the view expressed by him, that the assent of the Canadian Pacific Railway Co. to the orders impeached satisfactorily meets the objection that the Board has no jurisdiction under the Act to exact from the Canadian Pacific Railway Co., any compulsory reduction of any rate in which it is interested.

The conclusive answer to these contentions is manifest from what has already been said. The obligation imposed by section 3 has no relation to any tariffs except tariffs of tolls chargeable in respect of "preferred movements." Upon tolls in respect of other movements, the statutory reduction under that section cannot take effect; and as regards such tolls, no reduction is required, nor is any authorized, save only those sanctioned by section 9. Movements over joint routes by way of Saint John not being "preferred movements," the Board, let it be said again, is without jurisdiction either to direct or to sanction the establishment of rates in respect of them which are ascertained according to the special rule laid down in the statute.

These considerations (leading to the conclusion that the Board's orders, in so far as they affect tolls chargeable for joint routes by way of Saint John, cannot be supported) have for the most part no application to joint routes by way of Ste. Rosalie. Ste. Rosalie is a station near Montreal, a considerable distance west of "select territory," and

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is reached by the Canadian Pacific Railway Co's. line running from Saint John to Montreal direct, as well as by the Canadian National Railways lines running from Moncton to Montreal by way of Diamond Junction and Levis. Movements of traffic originating at points on the "Eastern lines," and routed over the Canadian National Railways by way of Diamond Junction or Levis to Ste. Rosalie, and thence by the Canadian Pacific Railway, are within the scope of the definition of westbound "preferred movements" contained in section 4 (1) b. We encounter in this case, none of the difficulties which meet us, as noted above, when endeavouring to apply this definition to movements over joint routes by way of Saint John. As movements by way of Ste. Rosalie over the Canadian National Railways pass through Diamond Junction or Levis, the "Eastern lines proportion" of the through rate is that attributable to the haul as far as Diamond Junction or Levis. Every element of the definition is satisfied. Such movements are, therefore, "preferred movements" within the meaning of section 3, unless by reason of something in that section or elsewhere in the Act it appears that they are not such within the true intendment of the legislation. Section 3, as applied to such movements, would impose upon the Canadian Pacific Railway Co., as well as upon the persons and companies concerned with the preparation of tariffs for the "Eastern lines," the duty of concurring in the cancellation of the joint tariffs applicable, and in the substitution of the statutory tariffs, ascertained by appying the statutory reduction calculated according to the rule laid down by sub-paragraph (*b*) of section 4. As we have seen, such a calculation would present no difficulty. Movements over joint routes by way of Ste. Rosalie appear, therefore, to be "preferred movements" within the meaning of ss. 3 and 4, when those sections are read and construed according to the ordinary and natural meaning of the words employed, nor is such a result out of harmony with the other provisions of the Act, or with any feature of the parliamentary scheme as disclosed by the statute. The compulsion directed against the Canadian Pacific Railway Co. does not affect the share of that company in the joint rate, because the whole of the statutory reduction falls upon the part of the rate belonging to the

Canadian National Railways. No difficulty arises therefore as to compensation, and the ultimate incidence of the reductions is provided for by section 6. Moreover, the effect of this view is to maintain unimpaired and in full operation the transfer facilities at Ste. Rosalie; and this construction is in perfect consonance with the spirit of the provisions of the *Railway Act*.

It remains to discuss some arguments, founded upon general considerations, advanced in support of the contentions of the respondents, and, in the main, accepted by the Board of Railway Commissioners.

We are urged to reject the appellant company's contentions in relation to both the Saint John and the Ste. Rosalie "gateway" on the ground that acceptance of them would have the effect of defeating the purpose of the statute, which, it is contended, is disclosed either explicitly or inferentially by the preamble coupled with section 8—to provide some relief for the industries of the Maritime Provinces from the oppressive costs of transport which were incident to the marketing of their products in central or western Canada. Then it was pressed upon us with great emphasis that it could not have been the intention of Parliament to deprive those industries of the advantages due to the existence of competitive and alternative routes by way of Saint John and Ste. Rosalie before the passing of the Act, which again, it is said, would be the practical result of adopting the appellant company's construction of the Act. We need not now concern ourselves with these considerations in so far as they relate exclusively to Ste. Rosalie, but in so far as they relate to the Saint John "gateway," they must be considered.

At the date of the passing of the Act, as we have seen, joint tariffs were in force applicable to joint routes through both "gateways." Shippers in the select territory, as in other parts of Canada, are, it must be conceded, entitled to enjoy the benefit of the provisions of the *Railway Act* as to joint tariffs and joint routes. For the Maritime Provinces, it is insisted, these provisions, as applied in the orders of the Board of Railway Commissioners in relation to both "gateways" had, prior to the passing of the statute, a special value as securing the benefits of competition in

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railway service and as securing an alternative route in the event of transport over one route being interrupted or unduly impeded.

Owing to the manner of distribution of railway lines in the Maritime Provinces, the right of routing traffic through both these groups of joint routes is, it is argued, for these industries, an almost invaluable privilege; and the loss of that privilege would, it is further argued, in substance, result from the construction advocated by the appellant company. And thus to take away this privilege, it is said, would have the effect of investing the Canadian National Railways with a virtual monopoly of westbound traffic. The value attributed to these joint routes, by the people of the Maritime Provinces was, it is said, notorious, and it is impossible to suppose, it is argued, that Parliament, while bestowing with one hand the benefit of reduced rates for traffic over the Canadian National Railways exclusively, or over the Canadian Pacific Railway exclusively, was, with the other, withdrawing from the Maritime Provinces the right to enjoy at the same time the advantages which they believed to flow from the maintaining of these joint routes.

These considerations, as presented in argument, seemed in themselves to lack neither versimilitude nor weight; and although they are less weighty, as applied to the Saint John "gateway" alone, still, given operative sections fairly capable, when the Act is read as a whole, of the construction adopted by the Board, it is undeniable that they might provide forcible arguments in support of the respondents' contentions. Indeed, if, as is suggested, the policy giving birth to the legislation was broadly conceived with the view of redressing commercial disadvantages affecting the select territory by reason of its geographical situation, by granting, in the phrase of section 8, "statutory advantages in rates to persons and industries" in that territory, it would not be difficult to understand a legislative scheme permitting shippers in that territory to enjoy at one and the same time the benefits of the statutory standard together with the option of routing their shipments by either of the two "gateways."

The appeal to these general considerations, however, rather assumes the possession by this court of an authority which is not vested in it as a court of law. The function

of this court is to give effect to the intention of the legislature, as disclosed by the language selected for the expression of that intention. Whatever views may have inspired the policy of a statute, it is no part of the function of a court of law to enlarge, by reference to such views, even if they could be known with certainty, the scope of the operative parts of the enactment in which the legislature has set forth the particular means by which its policy is to be carried into effect. If the language employed is fairly open to a given construction, then the policy of the Act, as disclosed by the statute itself, read in light of the known circumstances, in which it was passed, may legitimately be called in aid. But as already observed, the language of the operative sections of the Act before us, when fairly read, does not lend itself to the construction advocated by the respondents in so far as it affects the Saint John "gateway." And, indeed, if the meaning of the language employed by the legislature to express its intention (in those sections) were less unambiguous than it is, one can find little that could, even then, be adduced in support of the respondents' position, in the recitals and declarations in the preamble and the body of the Act, on which they also rely, when the effect of these is clearly apprehended.

The preamble professes to be for the most part a summary of the relevant portions of the report of a Royal Commission of September, 1926, through which, as it recites, Parliament has been advised that the Intercolonial Railway was designed, *inter alia,* to afford to Maritime merchants, traders and manufacturers the larger market of the whole Canadian people; but that in "determining" the construction of the railway, commercial considerations were subordinated to considerations of a national, Imperial, and strategic character, which dictated a longer route than would otherwise have been necessary, and that, to this extent,

the cost of the railway should be borne by the Dominion and not by the traffic which might pass over the line.

The preamble proceeds:—

And whereas the Commission has, in such report, made certain recommendations respecting transportation and freight rates, for the purpose of removing a burden imposed upon the trade and commerce of such provinces since 1912, which, the Commission finds, in view of the pronouncements and obligations undertaken at Confederation, it was never intended such commerce should bear; and whereas it is expedient that

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effect should be given to such recommendations, in so far as it is reasonably possible so to do without disturbing unduly the general rate structure in Canada.

To the recitals in the preamble there should be added the declaration contained in s. 8:—

> The purpose of this Act is to give certain statutory advantages in rates to persons and industries in the Maritime provinces.

It will be observed that the recitals in so far as they are pertinent, may be summed up in the proposition that, by reason of the circumstances attending the institution of the Intercolonial Railway system, "the cost of the Railway" should be borne by the Dominion, and not by the traffic on the line, in so far as that cost is due to national, Imperial and strategic considerations, as contradistinguished from commercial considerations, and that certain recommendations founded upon this view in the report of the Royal Commission ought to receive effect.

The report of the Royal Commission was not referred to in argument; although strictly, in view of the preamble, it would not be improper to consult it. It seems to contain nothing which gives additional strength to the respondents' argument. The recommendations relate only to reductions of tolls chargeable by the Canadian National Railways. The reference to other railways is limited to a single sentence, in which it is suggested that the legitimate interests of the Canadian Pacific Railway Co. cannot be ignored. It will be observed also that the language of s. 8 is very guarded. The purpose of the Act is declared to be to give "certain statutory advantages in rates."

There is nothing here pointing to an application of the principle of compulsory reduction of rates broader than that prescribed according to the fair reading of ss. 3 and 4. There is no hint of an all-round reduction of rates in respect of all westbound through routes. It was assumed, no doubt, that the Canadian Pacific Railway Co. would be compelled, by pressure of competition, to take advantage of the privilege given by s. 9, but nothing in the preamble, or in s. 8, supplies a juridical ground for deducing an intention to apply the principle of that section to the joint routes by way of St. John.

It was argued by the respondents that the question stated in the order giving leave to appeal is not a question of jurisdiction within the meaning of the *Railway Act*. The first of the above-mentioned orders, in explicit terms,

applies the compulsory reduction provided for by ss. 3 and 4 to tariffs for the through routes in question. The second does the same thing in effect. It follows, from what has already been said, that if such tariffs do not fall within ss. 3 and 4, then, by force of s. 7, the Board of Railway Commissioners is debarred from applying to them the principles of those sections. It seems to be sufficient to say that where by statute the Board is given authority to make orders of a certain class in a defined type of case, and is disabled from making such orders in other cases, the question whether, in given circumstances, a case has arisen in which an order of that class can lawfully be made by the Board under the statute, is a question of competence —that is to say, a question of jurisdiction within the meaning of the *Railway Act*.

The orders of the Board are set aside in so far as they relate to tariffs for joint rates by way of Saint John; in other respects the appeal is dismissed. As success is divided, there will be no costs of the appeal.

The questions stated in the order giving leave to appeal are answered as follows:—

Question 1 (*a*) as to Saint John,—No.
Question 1 (*b*) as to Ste. Rosalie,—Yes.
Question 2 (*a*) as to Saint John,—No.
Question 2 (*b*) as to Ste. Rosalie,—Yes.

Maritime Freight Rates Act

3. (1) All persons or companies controlling, or concerned in the preparation and issue of tariffs of tolls to be charged in respect of the movements of freight traffic, whether on behalf of His Majesty or otherwise, upon or over the Eastern lines specified in section four of this Act, and hereinafter called "preferred movements," are hereby authorized and directed upon and after the first day of July, 1927, to—

(*a*) Cancel all existing freight tariffs in respect of such preferred movements

(*b*) Substitute other tariffs for the tariffs so cancelled showing a reduction in such tariffs of approximately twenty per cent;

4. (1) (*b*) Traffic moving outward, westbound, all rail—From points on the Eastern lines westbound to points in Canada beyond the limit of the Eastern lines at Diamond Junction or Levis; for example, Moncton to Montreal—the twenty per cent reduction shall be based upon the Eastern lines proportion of the through rate or in this example upon the rate applicable from Moncton west as far as Diamond Junction or Levis.

6. For accounting purposes, but without affecting the management and operation of any of the Eastern lines, the revenues and expenses of the Eastern lines (includes the reductions herein authorized which shall be borne by the Eastern lines) shall be kept separately from all other accounts

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respecting the construction, operation or management of the Canadian National Railways. In the event of any deficit occurring in any Railway fiscal year in respect of the Eastern lines the amount of such deficit shall be included in a separate item in the estimates submitted to Parliament for or on behalf of the Canadian National Railways at the first session of Parliament following the close of such fiscal year.

7. The rates specified in the tariffs of tolls, in this Act provided for, in respect of preferred movements, shall be deemed to be statutory rates, not based on any principle of fair return to the railway for services rendered in the carriage of traffic. No argument shall accordingly be made, nor considered in respect of the reasonableness of such rates with regard to other rates, nor of other rates having regard to the rates authorized by this Act.

8. The purpose of this Act is to give certain statutory advantages in rates to persons and industries in the three provinces of New Brunswick, Nova Scotia and Prince Edward Island, and in addition upon the lines in the province of Quebec mentioned in section two (together hereinafter called "select territory"), accordingly the Board shall not approve nor allow any tariffs which may destroy or prejudicially affect such advantages in favour of persons or industries located elsewhere than in such select territory.

9. (1) Other companies owning or operating lines of railway in or extending into the select territory may file with the Board tariffs of tolls respecting freight movements similar to the preferred movements, meeting the statutory rates referred to in section seven of this Act. The Board, subject to all the provisions of the Railway Act, respecting tariff of tolls, not inconsistent with this Act, shall approve the tariffs of tolls filed under this section.

(2) The provisions of subsection two of section three and of sections seven and eight of this Act shall apply to the tariffs of tolls filed under this section.

(3) The Board on approving any tariff under this section shall certify the normal tolls which but for this Act would have been effective and shall, in the case of each company, at the end of each calendar year promptly ascertain and certify to the Minister of Railways and Canals the amount of the difference between the tariff tolls and the normal tolls above referred to on all traffic moved by the company during such year under the tariff so approved. The Company shall be entitled to payment of the amount of the difference so certified, and the Minister of Railways and Canals shall submit such amount to Parliament if then in session (or if not, then at the first session following the end of such calendar year) as an item of the estimates of the Department of Railways and Canals.

Solicitor for the appellant: *George F. Macdonnell.*

Solicitor for the respondents: The province of Nova Scotia, the Halifax Board of Trade, and the Saint John Board of Trade: *C. B. Smith.*

Solicitor for the respondent: The province of New Brunswick: *J. B. M. Baxter.*

Solicitor for the respondent: The Canadian Pacific Railway Company: *E. P. Flintoft.*