THE GRAND TRUNK RAILWAY COMPANY OF CANADA..... } APPELLANTS;

AND

THE BRITISH AMERICAN OIL COMPANY..... } RESPONDENTS.

1910
*Feb. 24, 25.
*May 3.

ON APPEAL FROM THE BOARD OF RAILWAY COMMISSIONERS FOR CANADA.

Railways—Construction of statute—R.S.C. 1906, *c.* 37, *ss.* 335, 336—*Through traffic—Joint international tariffs—Filing by foreign company—Assent of domestic company—Tariffs "duly filed"—Jurisdiction of Board of Railway Commissioners.*

Under section 336 of "The Railway Act," R.S.C. 1906, ch. 37, tariffs filed by foreign railway companies for rates on through traffic originating in foreign territory, to be carried by continuous routes owned or operated by two or more companies from foreign points to destinations in Canada, are effective and binding upon all Canadian companies participating in the transportation, although not expressly assented to by the latter, and may be enforced by the Board of Railway Commissioners for Canada against such Canadian companies. Anglin J. contra.

Per Anglin J. (dissenting).—"The Railway Act" requires concurrence by the several companies interested as in other joint tariffs on through traffic mentioned in the Act.

APPEAL from an order of the Board of Railway Commissioners for Canada(1), declaring that the legal rate on crude oil shipments in carloads from Stoy, in the State of Indiana, one of the United States of America, to the City of Toronto, in Canada, is twenty cents per hundred pounds, being the joint tariff fifth-class rate under the "Official Classification" published and filed with the Board by the

*PRESENT:—Sir Charles Fitzpatrick C.J. and Girouard, Davies, Idington, Duff and Anglin JJ.

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Indianapolis Southern Railroad Company; that the said tariff, upon such filing, became effective and binding on Canadian railway companies under the provisions of the "Railway Act" and was still in force, and ordering the appellants to refund to the respondents the difference in the amount of tolls charged in excess of the rate mentioned upon certain shipments specified in the complaint.

The respondents complained of the rate charged them by the appellants for the transportation of crude oil shipped in carloads from Stoy, in Indiana, and carried over the appellants' railway from the international boundary between the United States and Canada to its destination at the City of Toronto, in Ontario; they applied to the Board of Railway Commissioners under sections 317, 321, 323, 333, 334, 336 and 338 of the "Railway Act," R.S.C. 1906, ch. 37, for an order declaring the legal rate of tolls chargeable on such shipments and for a refund of overcharges.

In December, 1906, the Indianapolis Southern Railroad Company (on the line of which Stoy is a station) filed with the Board, under the provisions of section 336 of the "Railway Act," a joint tariff, known as the "Interstate Joint Freight Tariff, No. B-58," making the joint fifth-class rate on such shipments from Stoy to Toronto twenty cents per hundred pounds. Prior to 1st January, 1907, crude oil had no classification, but, on that date, the "official classification" coming into force in the United States placed it in the fifth class and this classification was made use of by the appellants, on certain occasions, although they had, on 30th November, 1906, issued and filed with the Board an "exception" refusing to accept the fifth-class rate tolls on petroleum and its products shipped from

points in the United States for transportation over their line of railway to destinations in Canada, and providing that, on such traffic, from the international boundary or junction points their local or special commodity rates should govern.

The order appealed from was as follows:

"Order No. 7093.

"The Board of Railway Commissioners for Canada.

"Wednesday, the 19th day of May, A.D. 1909.

"IN THE MATTER OF the complaint of *The British American Oil Company of Toronto,* complaining that *The Grand Trunk Railway Company of Canada* unjustly discriminated against crude oil shipments from Stoy, Indiana, in the United States of America, to Toronto, Canada, by refusing to carry it at the published and filed joint tariff fifth-class rate, in accordance with the "Official Classification"' and at the same rate as animal and vegetable oils, in carloads; and that The Grand Trunk Railway Company refused to deliver to the complainants at Toronto cars containing crude oil ex Stoy, Indiana, except upon payment of twelve and one-half (12½) cents per one hundred pounds, which additional rate had been paid under protest and which the company refused to refund.

"UPON hearing the application, the evidence adduced, the argument of counsel for the complainants and The Grand Trunk and Canadian Pacific Railway Companies, and what was alleged —

"IT IS DECLARED that the legal rate chargeable upon the shipments complained of was twenty cents per one hundred pounds, the joint tariff fifth-class rate, under the "Official Classification," published and filed with the Board, which rate is still in force.

"AND IT IS FURTHER ORDERED that The Grand

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Trunk Railway Company be, and it is hereby authorized to refund to the complainants the difference between the said rate of twenty cents per one hundred pounds and the rate of thirty-two and one-half (32½) cents per one hundred pounds charged and collected by it on the said shipments.

"D'ARCY SCOTT,
"Assistant Chief Commissioner,
"Board of Railway Commissioners for Canada."

Chrysler K.C. for the appellants.
Strachan Johnston for the respondents.

THE CHIEF JUSTICE.—I would dismiss this appeal with costs for the reasons given by Sir Louis Davies.

GIROUARD J. agreed with Davies J.

DAVIES J.—It might have been possible to dispose of this appeal from the Board of Railway Commissioners on the ground that the Board had found as a fact that the joint tariff for the continuous route in question from Stoy to Toronto filed December 19, 1906, by the Indianapolis Southern Railroad Company, to take effect January 20th, 1907, was an agreed joint-tariff as between the foreign company filing it and the Grand Trunk Railway Co., and so binding until superseded or disallowed by the Board.

If there had been such a finding on the evidence before us I would not have been disposed to interfere and would have been glad to avoid the very delicate and difficult questions which arise upon the construction of the clauses of the "Railway Act" relating to joint international traffic.

After several careful readings of the reasons of the Chief Commissioner for the making of the order of the Board I am not, however, able to say that any such finding of fact was reached and certainly none has been expressed.

We are, therefore, obliged to dispose of the appeal on its legal merits.

The order complained of was one declaring that the legal rate chargeable upon shipments of crude oil from Stoy to Toronto was 20c. per 100 lbs. and directing a refund of certain overcharges beyond that rate.

The validity of the order depends upon the construction placed upon section 336 of the "Railway Act" and specially upon the words or phrase "joint tariff" as used in that section.

The section deals (*inter alia*) with traffic carried from a foreign country into Canada by any continuous route owned or operated by any two or more companies whether Canadian or foreign, and provides that "a joint tariff for such continuous route shall be duly filed with the Board."

The section does not say expressly by whom it shall be filed, but a consideration of the previous sections dealing with traffic originating in Canada and carried into a foreign country, over any continuous route operated by two or more companies, and the sections dealing with "traffic passing over any continuous route within Canada operated by two or more companies," called by the Chairman "domestic traffic," satisfy me that the construction placed upon section 336 by the Board is the only reasonable and fair construction of its language and the only one which will enable the obvious intention of Parliament as expressed in the Act to be carried out.

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The construction contended for by the appellants that the term "joint tariff" as used in the section 336 means necessarily only a joint *agreed upon* tariff and does not mean a joint tariff for the continuous route filed by the foreign company initiating the traffic would have the result of paralyzing the control of the Board over such international traffic into Canada. The Board could not interfere with any rates charged on such international traffic whether they were just or unjust, reasonable or unreasonable, unless and until a jointly agreed upon tariff had first been filed. Now, when it is remembered that the foreign company initiating this traffic is not subject to the jurisdiction of the Board unless it submits in some way to that jurisdiction the object of Parliament in passing the section as it did will be apparent. Unless the foreign company submitted to their jurisdiction the Board was powerless. Once it submitted to the Board's jurisdiction then so far as the Act gave them power of control over the rates for this traffic the Board had authority to act. It was not necessary to have the agreement of the Canadian line to give the Board jurisdiction over it. The Board already had that jurisdiction by virtue of the railway being within Canadian territory. Parliament did not intend to make the consent of the Canadian railway a necessary condition of the Board obtaining jurisdiction over this special through traffic originating in a foreign country.

Let us compare the language of the sections regulating domestic continuous traffic and also international traffic *originating in Canada.*

The regulation of the former, that is domestic traffic, is to be found in section 333, which provides that the several companies may agree upon a joint

tariff and the initial company shall file it and the other companies promptly notify the Board of their assent. Then section 334 goes on to provide for cases where there is a *failure to agree* and vests in the Board the amplest powers of control. Read in conjunction with section 333 the Board has therefore the amplest powers to deal with domestic tariffs and rates and secure them to be just and reasonable. But the section 333 properly leaves it to the companies interested to agree in the first instance to a tariff and file it with the Board. If unjust the Board can at once take steps to remedy the injustice and the statute specially provides them with power to act effectively.

So in dealing with the international traffic *originating in Canada,* section 335 expressly provides that the "several companies" foreign as well as Canadian, "shall file with the Board a joint tariff for such continuous route." Agreement is here again made expressly necessary and the reason is apparent. The Board could not exercise jurisdiction over the foreign corporation except where it submitted to their jurisdiction. With respect, therefore, to international traffic originating in Canada the willingness of the Canadian company initiating the traffic was not considered sufficient. The foreign company not subject to the Board's jurisdiction must file its agreement with such joint tariff. That being done the Board then would have jurisdiction to allow it. The ground upon which Parliament apparently legislated with respect to this special international traffic originating in Canada was in order to give the Board full control over it; the tariff filed must be so filed not only with the consent of the Canadian company originating the traffic, but with the foreign company intended to be bound by it.

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But in dealing with traffic *originating in a foreign country* (section 336) the language is entirely changed. All words indicating the necessity of specific agreement by all interested roads before filing such a tariff are omitted and the simple fact required to give the Board jurisdiction over an international traffic obviously not within their jurisdiction was the due "filing of a joint tariff for such continuous route." Such joint tariff was not necessarily to be one agreed to beforehand by the Canadian company to be effected by it because, I assume, of the fact that such company was already within the jurisdiction of the Board. But whatever the reason was the several agreements were not required as they were in the two previous cases. What was essential to get was control over the initiating foreign company and that was obtained, as I construe the section, by providing that they should file the joint tariff. It was obviously the company initiating the traffic that should in the first instance file the proposed tariff and that being done and jurisdiction so gained then the Board could at any time at the instance of the Canadian company or any one else interested either allow or disallow the tariff proposed or, possibly, supersede it. On the latter point of superseding it and imposing another of its own I offer no opinion as the question does not arise here.

If the phrase "joint tariff" was used in reference to a matter over which Parliament had jurisdiction I would suppose it to refer to a joint agreed tariff, but reading it with reference to the subject-matter dealt with in section 336 and in connection with the two previous sections relating to domestic traffic and international traffic *originating in Canada* in both of which Parliament expressly enacted that the agreement of

the interested companies should be required, and finding all words requiring agreement on the part of the several roads interested omitted when dealing with traffic originating out of Canada, I conclude that such agreement was not deemed necessary for the purpose in view and that it was sufficient when the joint tariff required was filed by the foreign originating company.

This being in my opinion the proper construction of the section, I think that the order appealed from was within the powers of the Board and that the appeal should be dismissed with costs.

IDINGTON J.—This appeal raises questions as to the power of the Board to declare that a joint tariff, formulated by a freight traffic association representing roads in both countries, and providing for through rates from points in the United States to points in Canada, over specified roads in each country, when filed with the Board, is obligatory, or whether it can by the order of the Board be made so, upon the Canadian company or companies respectively named therein.

Much confusion arises from founding arguments herein upon the sections or parts of sections clearly applicable only to roads entirely within the jurisdiction of Parliament, and hence irrelevant as regards those beyond.

There is a pretty clear line (though possibly it might have been made clearer), of demarcation throughout the Act between the latter provisions and those bearing upon international traffic.

Obviously Parliament cannot, in the widest sense, command the foreign company, and accompany its commands with sanctions, such as it can impose in

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regard to the obligations which it may define relative to the dealings of home companies with each other, and their dealings with those they were created to serve.

It has not attempted any such thing.

It is, however, quite competent for Parliament to legislate in respect of contracts and business relations of an international character, and well known and recognized methods of forming such contracts and relations; to facilitate the same and the execution of their purposes, promoting thereby trade and all implied therein; and to define the terms and conditions under which such contracts and relations as well as the methods thereof may and shall become obligatory upon those absolutely subject to the power of Parliament.

Acting within these lines Parliament has, to my mind, in sections 336 and others and parts of others of the "Railway Act," provided for many emergencies likely to arise in the course of such international traffic.

Powerless to command a foreign company to do in its own country anything but what it will, or to enforce its doing in this country what it cannot within its corporate power legally do, Parliament has not attempted such things.

It has, however, recognized the long existing practice of companies contracting to carry freight beyond their own roads, and the auxiliary practice of their framing either by mutual contracts, or mutual understandings not taking contractual form, or customary observances of sharing in the burthens and benefits of such contracts as made by the contracting company first accepting the freight thus to be carried, and in the result evolving what is in effect the joint tariff.

In dealing with domestic companies it enjoins concurrence and in default thereof gives the entire power to the Board to make and enforce a joint tariff.

In regard to international joint tariffs, though concurrence is recognized as expedient and a thing the Act encourages and provides for, it does not make the existence of such joint tariff depend upon the concurrence or will of any company entirely within the power of Parliament. Legislation entirely dependent for its maintenance on the will of those subject to the power of Parliament would be useless and hence absurd.

It has been provided by section 336 as follows:

> 336. As respects all traffic which shall be carried from any point in a foreign country into Canada, or from a foreign country through Canada into a foreign country by any continuous route owned or operated by any two or more companies, whether Canadian or foreign, a joint tariff for such continuous route shall be duly filed with the Board. 3 Edw. VII. ch. 58, sec. 269.

We must give some effect to this legislation.

The Act does not contain a single word as to how the tariff has to come about or who is to file it. In the next preceding section dealing with the converse case of the starting points being in Canada "the several companies" are to file the joint tariff with the Board.

In the latter case the whole contract is formed in Canada and the legality or illegality of it may depend upon what Parliament enacts.

In the former, the converse case, the legality or illegality of it may depend upon the law of the foreign State.

Whether some such consideration moved to the making of this marked difference or not need not be examined here.

All I wish to point out here is the difference and a

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probable reason therefor, which indicates what the basis of legislative action might be in order that it be effective.

It certainly is quite competent for Parliament to declare that one or more foreign railway companies may frame a joint tariff applicable to their roads and any other road or roads in Canada and upon the filing of same with the Board that it shall be obligatory upon the roads in Canada covered thereby.

Is this what section 336 says or implies?

If it is there is an end of the question raised for the foreign companies have so adopted and filed a joint tariff covering the very ground in question.

It is not so clear as might be that the case I put as within the power of Parliament of adopting a joint tariff to be proposed by one or more foreign companies, and when filed to become obligatory upon the Canadian road, is exactly what Parliament had in view. The language may bear such interpretation.

I rather think, however, when we learn that tariffs and especially joint tariffs have been the product of the associated labours of those engaged in the management of the business in question Parliament intended to legislate in relation rather to the condition of things thus created and known to exist than in or with the view of executing what I have indicated as quite competent for it to do.

Then coming to this condition of things legislated upon or about we have a joint tariff framed in this case in the usual way and filed. The appellant, a member of the body so framing it, after it was formulated, dissented from this item now in question. Just at what stage and by what method it did so or was entitled to do so, and all relative thereto, including the powers

of this foreign association to bind the appellant and the means that the latter has (within the constitution of such association) of release from such *primâ facie* binding of it, are questions of fact with which we have nothing to do. We are bound by the facts as the Board has found them.

It has found as fact a joint tariff so arrived at to have been filed with it under section 336.

It ignores the appellant's dissent. It may or may not be the only or any sound reason for doing so that the "Railway Act" makes no express provision for such dissent. It may well be by the terms of the constitution of the association which framed this joint tariff that its authority was limited and conditional upon unanimity. I cannot infer so as a clear and undisputed fact. Indeed, I repeat I have no authority as to the facts to guide me but what the Board has accepted and found as such.

It clearly implies in its finding that this exception taken to the classification has to be passed upon by some foreign body before becoming effective.

Meantime there is found to be in fact a joint tariff.

The argument of the appellant treats what has been done, by Parliament or by the Board, in the construction it puts upon the Act, as if an invasion of the foreign jurisdiction and hence void in law.

The matter seems to me entirely the other way round. This whole business of the making in a foreign state of an international tariff; the limits of authority in those binding each other or trying to do so; the questions of the binding nature of such attempts, whether within or violating the law of the country where made, must of necessity (in the absence of a clear and definite contract *primâ facie* enforceable

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everywhere that the comity of nations will carry it), be each and all matters of fact.

And until the appellant produces an entirely different finding, by the Board, upon the fact, in relation to which we are to aid in determining the law to be passed upon, than that we have, I cannot see how we can entertain as arguable any other.

But divested of all needless complications including the maze of classification and rates, and their relation to each other and this foreign law, and the custom or usage of these foreign bodies, and their manifold relations, and the assemblage of legal results derivable therefrom, what is involved herein is simply the power of the Board to fix a rate from Windsor to Toronto.

This net result is what the respondent seeks. It is admitted that the net result, reached satisfactorily to it, could have been reached directly by the Board putting in figures a fixed rate to cover the appellant's share of the service performed.

All this has been fixed as definitely by the process adopted and the order as if it had been put in words and figures.

The railway men clearly understand exactly how much each company is to get. The appellant is under no trouble in that regard as to other places than Toronto. Counsel at first professed to put forward the theory that his client did not know how much it was to get, or how long it was to continue. Yet he later frankly admitted the power of the Board to fix the rates within Canada. Manifestly, from their acting upon the new tariff the officers of his client knew how much its rate gave appellant.

If the power exists to produce that result and the result is what the Board could by any proper method

reach, does it matter three straws here whether or not we would have proceeded by an entirely different process of thought in attacking the problem?

Again, the Board has found as a fact a joint tariff which it thinks the appellant, clearly subject to its powers, ought to have obeyed in duty to the law and the policy thereof in regard to facilities and equality of treatment relative to rates, and has ordered it accordingly to obey.

The whole purview of the Act in relation to carriage of freight is of such a nature as to indicate that what the appellant has been doing was in violation of the law governing it and defining its duties in the premises.

The order is but a declaration in effect that the rate appellant chooses to give for equal or greater service elsewhere shall be the rate.

If through the association it has agreed to act upon the lower rate between other points and to refuse the like to those concerned herein it contravenes section 317, sub-sction 7 of the Act.

The determination of the subject has been confided to the Board to adjudicate upon and see this equality of treatment executed, and when the Board on the facts it finds has declared that the charge made, though under the guise of a local rate, is illegal as infringing the policy of the law, its colour of right ceases to exist.

Let us brush away the cobwebs, get to the substance of the matter and see if there is aught else in the order complained of than an establishment or a restoration of that equality of treatment which it has become the legal duty of appellant to observe and which

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was one of the chief purposes of Parliament in creating the Commission to bring about.

If the rate given effect to or proposed to be given effect to by the filing of a joint tariff without the concurrence of the Canadian company affected does not allow it a proper share of the tolls or provide a stable and continuous purpose and policy, or for any other reason is unjust, the Board can relieve the Canadian company if and when shewn to suffer thereby.

I think the appeal should be dismissed with costs.

DUFF J. agreed with Davies J.

ANGLIN J. (dissenting).—The order in appeal directs a refund of freight rates, which in the opinion of the Board were illegally charged, and declares a certain tariff filed by the Indianapolis Southern Railroad Company to have been a joint tariff binding on the appellants, the Grand Trunk Railway Company, and to be "still in force."

The reasons given by the learned Chief Commissioner make it manifest that the adjudication was wholly based on the assumption that the tariff filed by the foreign railway company bound the appellants because, having been filed by one participating company, though without the concurrence of the other, in the opinion of the Board it became in due course binding on the latter by reason of its failure to apply for disallowance under section 338. This is apparent in the following excerpts from the reasons:

> First, as to the joint tariff. If a foreign road, without the approval of the Canadian, files a joint tariff which the latter does not desire to participate in, its course is to apply to the Board, under section 338, to have it disallowed, and if this course is not taken, the tolls provided in such joint tariff become, by virtue of section 338, the only tolls that can be charged.
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> * * * * * *

Section 336 of the "Railway Act," which gives rise to the trouble here, is silent as to concurrence, but of course it is not to be assumed that any foreign railway company would file a joint tariff naming participating carriers, without, before filing, having obtained their concurrence, and if such were done, inadvertently or otherwise, under our Act it seems the only course open to the objecting carrier would be to apply for its disallowance.

There is a finding that the Grand Trunk Railway Company did not concur either in the making or in the filing of this tariff. That he was of opinion that they did not concur at any other stage seems to be the proper inference from the judgment of the learned Chief Commissioner. It is true that reference is made to the acceptance by the appellants of payment for some freight at the rate specified in the so-called joint tariff in question. But the facts, as stated by the Chief Commissioner, would not suffice to found an estoppel, and he does not rest his judgment on that ground. Moreover, in a memorandum, which has been made part of the appeal case, it is stated that a question of law for our decision is whether or not, without its concurrence, the Grand Trunk Railway Co. is bound by the tariff filed by the Indianapolis Southern Railroad Co. If the Grand Trunk Railway Co. should be held bound either by concurrence in fact or by estoppel, the legal question of the necessity of its concurrence would be purely academic. We should not so regard a question submitted by the Board unless its order and judgment compel us to do so; and in my opinion they do not.

It is, I think, clear that the Board did not intend to, and did not in fact, exercise any power (which it may have) to prescribe rates for the traffic in question as upon a refusal or neglect by the companies, or one of them, to concur in or file a joint tariff. It intended

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to, and did in fact determine that the tariff filed by the Indianapolis Southern Railroad Co., although not concurred in by the Grand Trunk Railway Co., became binding on the latter company merely because it did not move for its disallowance under section 338. I regard the entire order as based on this adjudication and I shall deal with it accordingly.

But before doing so I desire to state explicitly that I express no view upon the existence or the scope of the powers of the Board in regard to rates to be charged by foreign companies in respect of international traffic or as to the application to such traffic, either directly or by analogy, of the provisions of sections 323 *et seq.* of the "Railway Act," including section 334. I pass no opinion upon the existence or the extent of the jurisdiction of the Board in any particular over foreign railway companies handling international through traffic. Interesting as these matters undoubtedly are, it is desirable that they should be dealt with judicially only when necessary.

I merely remark in passing that if, as appears to be the view of the Railway Commissioners, Parliament intended that sections 323, 328, 332 and 334 should apply to the traffic and tariffs dealt with by sections 335 and 336, that intention might very easily have been more clearly expressed. Whether it is desirable that the application of these sections to such traffic should be made unmistakable by declaratory or substantive legislation is a matter for the consideration of Parliament.

As the "Railway Act" now stands it leaves open many awkward and troublesome questions. No distinction is made between foreign railway companies which operate exclusively in foreign territory and

those which operate partly in Canada. Both classes of foreign companies are subject to the control of a foreign legislature and of a foreign tribunal and any attempt to enforce the orders of the Canadian Railway Board against them in regard to the carriage of traffic in foreign teritory might lead to a serious conflict of jurisdiction. With the orders of which of the tribunals, if they are not in accord, should the foreign company comply?

But while, in the case of a foreign company operating a part of its system within Canada, under sections 398, 404, 430 and 431 sanctions and methods of enforcement which would secure obedience to the orders of the Board may be provided, it is difficult to perceive how, under the existing legislation, such orders could be enforced or disobedience to them punished in the case of a railway operating wholly in foreign territory. Without committing myself to this view, it may not be amiss to say that, as at present advised, concurrent action by the Canadian and United States tribunals, authorized by concurrent legislation of both countries, or action by an international tribunal to be established under such concurrent legislation would appear to me to be the only practical and effective means of dealing with many of the difficulties incident to the regulation of international through traffic.

Whether on a careful consideration of the "Railway Act" (sections 314 to 339 inclusive) the provisions as to the consequences of disallowance in the case of domestic tariffs, including those which confer power on the Board to prescribe rates in lieu of tolls disallowed, may or may not be held applicable to the traffic dealt with by sections 335 and 336, I express no opinion. If this power exists it has not been exercised in the present case.

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Section 336 requires the filing of a "joint tariff." The very name implies a tariff which is the product of joint or concurrent action by the companies interested. That this is the meaning of the term "joint tariff" is made clear in the case of domestic joint tariffs by section 333: agreement of Canadian companies must precede the filing of the tariff. It is only after such agreement, not necessarily evidenced in any particular form, that the "initial company" is to file the tariff; it is only a tariff so agreed upon and filed which is binding apart from an order of the Board itself prescribing rates.

It is natural to expect to find in the first of the group of sections dealing with joint tariffs an exposition of the idea which Parliament intended the term "joint tariff" to convey. That idea is distinctly expressed in section 333, and it is most improbable that, while the "joint tariff" provided for in sections 333 and 334 must be the result of agreement, that dealt with in sections 335 and 336 may be something wholly and essentially different.

An analysis of sections 335 and 336, I think, confirms this view. In the case of a continuous route in Canada operated by two or more companies, the Act prescribes filing only by the initial company. But, in the case of a joint tariff for international through traffic originating in Canada, section 335 directs that the tariff shall be filed by "the several companies"—probably in order that the concurrence of all may be evidenced by their participation in the act of filing which takes place with the Board itself. Filing by "the several companies" clearly does not mean filing merely by any one of them. It can only mean either the filing of the tariff by all as a joint act, or the filing

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of the same tariff by each of the participating companies severally. When we come to section 336, which deals with joint tariffs in respect of international through traffic originating in foreign territory, we find that the statute directs that the tariff "shall be duly filed with the Board." The word "duly" must have some meaning in this section; it is an important word; it should neither be entirely rejected nor given no effect. *Doe d. Lloyd* v. *Ingleby*(1). The recurrence of this word in section 338 indicates that it is not used inadvertently. Read without it section 336 does not in terms prescribe that the filing shall be by the participating companies or by either or any of them. But, if the word "shall" indicates the imposition of a duty, *primâ facie* that duty is imposed upon the "two or more companies" owning or operating the continuous route. If filing by one of the participating companies would suffice, on the assumption that section 333 is not to be looked to for guidance as to the nature or the incidents of tariffs for international traffic, the filing under section 336 may be by either or any of the participating companies, not necessarily by the initial company. If the filing be by a Canadian company, the foreign company or companies interested will have done nothing to indicate submission to the jurisdiction of the Board. While the Canadian company, which alone files the tariff, may be bound thereby (and the jurisdiction of the Board over this company does not depend upon the filing) what possible basis could there be for the exercise by the Board of jurisdiction over the foreign company or companies if not operating at all in Canada?

But the word "duly," I think, obviously refers to

(1) 15 M. & W. 465.

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some manner or method of filing already prescribed by the statute. *Hobbs* v. *Cathie* (1). Applying the ordinary rule — *ad proximum antecedens fiat relatio* — and looking as well to the most cognate section for the prescribed method, we find that in section 335, which likewise deals with joint tariffs for international through traffic, the requirement as to filing is that it shall be by "the several companies." This, I take it, is the method of filing to which the word "duly" has reference. I can discover no reason why in respect of the traffic dealt with in section 335 the several companies interested should be required to concur in the filing of a joint tariff which does not apply equally to the tariffs dealt with in section 336. If Parliament meant to prescribe filing only by the foreign company or companies interested it could easily have so stated. It has not done so. In the case of international through traffic originating in Canada it has prescribed filing by the several companies participating; in the case of international through traffic originating in foreign territory it has prescribed that joint tariffs shall be not merely filed, but that they shall be duly filed. I find nothing in section 336 which warrants the construction that filing by the foreign participating company or companies suffices to make the tariff binding on all the companies interested — nothing to justify the view that a due filing under section 336 differs from a due filing in compliance with section 335.

The provisions of section 339 tend to confirm the conclusion that in regard to both classes of international joint tariffs concurrence by the Canadian companies interested, as well as by the foreign companies, is requisite. Referring clearly to a Canadian company,

(1) 6 Times L.R. 292.

the section speaks of these international joint tariffs as "*its* tariffs." Clause (*f*) certainly pre-supposes possession by the participating Canadian companies of copies of all international joint tariffs by which they are affected, since they are thereby required to keep a copy of every such tariff on file and open for inspection "at each freight station or office in Canada to which such tariffs extend." Yet, if neither its co-operation in the making, nor its concurrence in the filing of it is requisite, the statute does not provide that the Canadian company shall receive any notice of this joint tariff by which it is to be bound, and of which it is directed to keep copies on file.

It seems to me to be reasonably clear that, in order to secure, if possible, for international through traffic, whether originating in Canada or in foreign territory, tariffs which all the participating companies should be bound to respect — the foreign companies as well as the domestic companies — Parliament intended to prescribe that these tariffs should be filed by all the participants, *i.e.*, by "the several companies."

A comparison of the several sections which deal with joint tariffs, I think, puts it beyond doubt that, so far as such a tariff is intended to be the result of action by the participating companies, in order that it shall be binding either all the participating companies must agree to it before it is filed, as is required in the case of through traffic over a continuous route wholly within Canada operated by two or more companies, or they must all concur in a joint act of filing the tariff or must each severally file it on its own behalf.

I am respectfully of opinion that the Board erred in treating the tariff here in question as binding on the Grand Trunk Railway Company without its concur-

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rence merely because it had been filed by the Indianapolis Southern Railroad Company and the Grand Trunk Railway Company had not moved for its disallowance.

For this reason and on this ground alone I would allow this appeal with costs.

Appeal dismissed with costs.

Solicitor for the appellants: *W. H. Biggar.*

Solcitors for the respondents: *Thomson, Tilley & Johnston.*