

tion would be, to say the least, so involved in doubt that the appellants ought to succeed. But then he inquired into the policy of the Legislature, and finding that its policy was to protect Canadian manufactures, he decided that the doubtful words must be construed in accordance with that intention, and that duty must be paid. On appeal to the Supreme Court the decision of the Exchequer Court was upheld; but there were differences among the learned Judges both in their conclusions and in the reasoning on which identical conclusions were based. The Chief Justice, with whom Mr. Justice King concurred, examined the expressions "railway," "street railway," and "tramway," and he was of opinion that the appellants' road fell under the head of "railway" and not of "tramway" in item 88, and was a "railway" track within item 173. Mr. Justice Gwynne thought that item 173 was not to be construed as exempting from duty some part of the particular things which by item 88 had been subjected to duty, but as providing for a different article altogether—viz., steel rails for use in great arterial commercial lines. He also thought the that word "railways" in item 88 meant railways *ejusdem generis* with tramways, and not the "railway tracks" mentioned in item 173. Mr. Justice Taschereau, with whom Mr. Justice Fournier concurred, referred to various instances of expressions both in common parlance and in enactments, to show that "railways" on the one hand had been distinguished from "tramways" and "street railways" on the other. And holding that the appellants' road was a "street railway" or "tramway," he decided that it fell within item 88 and not within 173. In that conflict of judicial opinion the case came before their Lordships. On two points they expressed themselves as clear during the argument. First, they could not concur in the view that the policy of the Canadian Parliament led to the construction contended for by the Crown. Supposing it to be made out by legitimate evidence that protection for Canadian manufacturers was intended in 1887, protection was given, however the Act be construed, and the only question was how much. Secondly, they could not see any reason for holding that the railways spoken of in item 88 were only those which were *ejusdem generis* with tramways or that item 187 referred only to rails for great arterial lines. The question was what was meant by the "railway tracks" for which rails were