

shippers in the select territory "in favour of persons or industries located elsewhere." The exhibit then continues:

This will be a question of fact and while it does not mean that every maritime rate must be kept 30 per cent below some other rate elsewhere in Canada, it does mean that the railways will have to be sure that their rate-making policies will not destroy the rate advantages referred to in section 7. In any case it will be open to shippers in the select territory to complain to the board and obtain redress if their advantage is destroyed or prejudicially affected. This will ensure that maritime shippers continue to enjoy rate preferences.

4. It is the submission of the Maritimes Transportation Commission that in fact the relative advantage intended to be given to shippers from the select territory by section 7 has in practice and in the competitive environment which has developed since 1927 proved to be illusory in the light of the judgments in *Province of Nova Scotia et al—Maritime Freight Rates Act—Tariffs (1936) 44 Canadian Railway Cases 289* and on appeal to the Supreme Court of Canada (1937) *46 Canadian Railway Cases 161*.

This case usually and popularly is referred to as the potato case.

5. The facts of that case are, briefly, that in order to meet truck competition the railways reduced freight rates on potato shipments in certain areas in Ontario and also in certain areas in Quebec outside the select territory as defined in the Maritime Freight Rates Act. The Transportation Commission of the maritime board of trade—as this body was then called—and the Governments of the maritime provinces applied to the board for a reduction in rail rates on potatoes from select territory to Ontario and Quebec to correspond with the reductions within Ontario and Quebec, effective under such competitive tariff.

In other words, what was asked for was preservation of the relative advantage which the maritimes considered they had been given under the Maritime Freight Rates Act.

6. It was made clear that the question of the rates on potatoes were only in the nature of a test case and that the real claim of the applicants was that they were entitled to reductions upon all shipments from the maritime provinces to points in Canada where motor truck competitive rail tariffs were in force and more specifically in respect of all produce of the maritime provinces.

7. The real claim of the applicants failed despite the fact that Chief Commissioner Guthrie held that the purpose and object of the Maritime Freight Rates Act does apply to competitive tariffs established by railway companies between points outside the "select territory". In effect the real claim failed because the board held that:

- (1) the only power of the board was to disallow such competitive tariffs;
- (2) the board had no power to order reductions in rates on maritime products moving from the select territory in circumstances where competitive tariffs were established outside select territory by the railways to meet truck competition.

8. Chief Commissioner Guthrie then proceeded to deal with the specific claim for reduction in rates on potatoes shipped from select territory as a question of fact and found that in fact there had been no prejudice or disadvantage under section 7 suffered by potato shippers because of the establishment of the competitive tariffs in question. His conclusion in this respect is stated at page 306:

In my opinion the applicants have failed to establish the competitive tariffs on potatoes, which form the subject of this application, have