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Cartage Allowance Declared Illegal.

The Chief Railway Commissioner, A. C. Killam, K.C., gave the following judgment July 13, in the case of the Brant Milling Co. vs. the G.T.R. Co.:—This is an application to the Board for a order "allowing and instructing the G.T.R. Co. to continue" an allowance heretofore made by it to the milling company for the cost of cartage on flour and feed shipped from the company's mill to Portland, Me., and to Montreal and other eastern points in Canada.

The Brant Milling Co. is the business designation under which a milling business is carried on by A. J. Wood, at St. George, near Brantford, Ont. About 27 years ago his father, W. B. Wood, bought a small mill on the site of the present mills of the Brant Milling Co. It was a small grist mill for local business, from which no shipping was done. The nearest railway station was Harrisburg, some miles distant. Subsequently a station was established, by the name of St. George, about a mile from the mill. Shortly after the establishment of this station, W. B. Wood decided to endeavor to open up a shipping business for his products, and, learning that railway companies sometimes made allowances from their tariff rates of freight for the cost of carting the products from distant places of production, applied to the G.T.R. for such an allowance, and the company agreed to make him an allowance of 2c. per 100 lbs. on all flour and feed shipped from his mill by its line to Montreal and points east of Montreal in Canada, and to Portland for export. The business was successful, and from time to time the mill and the plant were increased and extended. At one time the railway withdrew the allowance for a few months, but subsequently, by letter dated Oct. 6, 1894, one of its officials wrote W. B. Wood that the question of allowance for cartage on the company's outward shipments of flour had been again fully considered, and that for the present and until further advised, the company would allow 2c. per 100 lbs. in lieu of cartage, on outward shipments from St. George to points on the G.T.R., Toronto and east; also to Lower Province points, and on flour for export, via Montreal or Portland in connection with the railway company's steamship lines, but refusing the allowance on certain other routes. About six years ago, W. B. Wood took his son, A. J. Wood, into partnership, and about two years ago W. B. Wood withdrew from the firm, when A. J. Wood became and still remains the sole owner of the business.

On Oct. 19, 1904, the Freight Traffic Manager of the G.T.R. wrote to the Brant Milling Co. that, in view of a recent decision of the Board of Railway Commissioners, it would not be practicable to continue the cartage allowance. The present application was the result of this letter. The decision referred to is said to have been that reported in 3 Can. Ry. Cases, under the name of no. 124—The Manufacturers' Coal Rates Case—refusing an application of the G.T.R. to be allowed to continue, in favor of manufacturers, a difference in the rate of freight on bituminous coal, of 10c. a ton, between certain points on its line, as compared with that charged to dealers or consumers. Such a course was held by the Railway Commission to be contrary to sec. 252 of the Railway Act, 1903, requiring that railway "tolls shall always, under substantially similar conditions and circumstances, be charged equally to all persons, and at the same rate," and that "no reduction or advance in any such tolls shall be made, either directly or indirectly, in favor of or against any particular person or company travelling upon or using the railway."

M. J. BUTLER, LL.B., C.E.,
Deputy Minister and Chief Engineer of Railways and Canals.

On behalf of the Brant Milling Co., it is claimed that this allowance is absolutely necessary to the continuance of its business and that the withdrawal of this concession renders the business of the company unprofitable and involves the practical destruction of the business and the loss of buildings and machinery too extensive and expensive for a merely local business. It is also claimed by the milling company that the allowance made does not nearly cover the expense to which the company is put for cartage from the railway station to the mill of grain to be ground for export, and of the product to the railway station. Evidence was given in support of these claims, but full inquiry into the question of the actual cost of the cartage, as compared with the allowance, was deferred until it should be determined whether this was material to the application.

As stated by Blackburn, J., in G.W.R. Co. v. Sutton, L.R. 4 H.L., at pg. 237, "At common law a person holding himself out as a common carrier of goods was not under any obligation to treat all customers equally. The obligation which the common law imposed upon him was to accept and carry all goods delivered to him for carriage according to his profession (unless he had some reasonable excuse for not doing so) on being paid a reasonable compensation for so doing; and if the carrier refused to accept such goods, an action lay against him for so refusing; and if the customer, in order to induce the carrier to perform his duty, paid, under protest, a larger sum than was reasonable, he might recover back the surplus beyond what the carrier was entitled to receive in an action for money had and received as being money extorted from him. But the fact that the carrier charged others less, though it was evidence to show that the charge was unreasonable, was no more than evidence tending that way. There was nothing in the common law to hinder a carrier from carrying for favored individuals at at unreasonably low rate, or even gratis. All that the law required was that he should not charge any more than was reasonable." Pg. 238. "I think it appears from the preamble of the 90th sec. of the Railways' Clauses Consolidation Act, 1845, that the legislature was of opinion that the changed state of things arising from the general use of railways made it expedient to impose an obligation on railway companies acting as carriers beyond what is imposed on a carrier at common law." Pg. 239. "The mode of establishing that the demand is extortionate differs in two cases. Where it is sought to prove that the charge is unreasonable, and therefore extortionate, the fact that another was charged less is only material as evidence for the jury tending to prove that the reasonable charge was the lower one. When it is sought to show that the charge is extortionate as being contrary to statutable obligation to charge equally, it is immaterial whether the charge is reasonable or not, it is enough to show that the company carried for some other person or class of persons at a lower charge during the period

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