

be furnished by companies whose business is sufficiently remunerative as to produce the necessary funds to maintain the railway and to meet the ever-increasing demands of transportation. Transportation, if left long enough to the unaided efforts of insolvent or financially embarrassed companies, must, of necessity, break down, to the country's great hurt and injury.

"The question for the board to determine is whether, in the light of the above facts, effect ought to be given to the Manitoba agreement. If effect be given to the Manitoba agreement, practically no rate increases can be made in western territory, where the great bulk of the Canadian Northern's business is carried on. Should the usual practice as between parties to commercial contracts be followed and if it be the board's duty to consider the agreement as a pure matter of law, and having regard only to the contracting parties and not to public convenience and necessity, it well may be that the mere fact that the rate called for by the agreement constitutes an insufficient remuneration for the service rendered and may result in actual insolvency, constitutes of itself no ground for relief. If a builder agrees to do certain work for an inadequate consideration, his loss or its amount is no answer to his contractual liability. Distinctions, however, between the contractor, on the one hand, and railway companies on the other, are readily apparent. The contractor's charges are not subject to government or commission control. The railway company's charges are. The contractor is subject to no duty to the public. The railway company is. Public necessity and service constitute a direct justification for railway construction and railway company incorporation. Moreover, in case the contractor obtains under his agreement an excessive remuneration, that fact of itself is no bar to his enforcing his agreement and collecting the last cent of his consideration. On the other hand, the board is not bound by any contract under which railways may be entitled to an unreasonably large rate, but reduces that rate to whatever it finds just and reasonable. Under any other practice, traffic officers of the companies, could from time to time, in many cases make special contracts with shippers at unfairly high rates, or, on the other hand, give favored shippers unduly low rates. In either instance, the object of the act, which is to secure uniformity just as much as reasonableness in rates, would be defeated. An unduly low rate constitutes an unreasonable rate, just as much as an unduly high one, and the question of whether a rate is unduly low or unduly high can only be established with a knowledge of the cost entitled by the service, which must from time to time vary.

"It has been stated that railway directors are charged with duties and trusts, first, to the public, second, to the company's employees; and third, to the company's shareholders. I would place the duty to the public, involving as it does proper and sufficient transportation, as being the duty of primary importance. The mere fact that an agreement, in the light of changed circumstances, proves improvident and provides rates insufficient to enable the company's property to be properly kept up and to meet the current demands of transportation, also involves loss to the shareholders, is not an answer to the company's primary obligation to properly operate the road. It may well be that an agreement made by the directors elected by the shareholders cannot be set aside on the application of the

shareholders themselves, but, on the other hand, it is clear that no agreement ought to stand in the way of the public as a whole obtaining the full benefit of that measure of transportation, which a properly maintained condition of the company's facilities would permit. Further, an improvident contract made by one company is not merely of injury to itself and that portion of the public using its line—Parliament has so authorized railway construction that the line of one company or another parallels those of others to such an extent that in many instances an unreasonably low rate reserved by contract made by one company must be adopted by the other line. As a result, the other companies are just as much injured as is the company to the contract, and by an act over which they have not the slightest control. It is also apparent that an agreement which reserves an unremunerative rate applicable in the one district, involves a discrimination as against other districts where traffic and operating conditions are similar, and directly infringes on the provisions of the act requiring uniformity in rates. The board does not consider any agreement made by a shipper to pay a given rate any justification for the rate if it be unreasonably high. On the same principle, when rates reserved by contract prove, in the face of changed conditions and increased costs, unreasonably low, the rates must be made reasonable, notwithstanding the contract. In normal times, the contract was entirely free from objection. The discrimination which it caused in one district as against the other, was relieved by the Regina rate and western rate cases. With today's conditions, the contract reserves an unreasonable rate, under which the Canadian Northern is unable to properly maintain its properties; and, with the changed conditions, agreeable to the above principles and practice of the board, higher rates ought to be put in, notwithstanding the provisions of the agreement.

"The effect of increased costs on railway revenues is not peculiar to the Canadian Northern. With its larger field and greater diversity of operations, the Canadian Pacific returns would not as quickly show the effect of different cost advances as those of the Canadian Northern. The C.P.R. returns, however, for September show an increase of \$30,935 in gross on eastern lines, and on western lines of \$64,803. The expenses, however, have greatly increased, the increase in eastern lines amounting to \$732,049, and on western lines to \$839,145. As a result, with a total gross revenue of \$11,476,695, as against \$11,380,939, Sept., 1917, as compared with Sept. 1916, produces a net revenue of but \$3,727,173 as against \$5,202,611. In other words, the drop in net earnings on the system for the month amounts to a reduction of 28.3%.

"Taking the Grand Trunk Railway as the characteristic line in the east—the actual results are very nearly the same as those of the Canadian Northern. The increased traffic which the contestants to the application urged was inevitable to take place has materialized, but the increased gross has entirely failed to make up the losses brought about by increased expenses. The G.T.R.'s total transportation revenue from Jan. 1 to Oct. 31, 1917, was \$43,366,844, against \$39,100,498 for the same period of 1916. The resultant increase was practically 11%. For this same period in 1917, however, the working expenses were \$33,659,532.48, against \$27,479,538.79 for 1916. The increase in expenses is, therefore, 22.59%. The fact that expenses are unfortunately increas-

ing and that transportation in the later months of the year is subject to greater burdens than during the earlier months is emphasized by taking the figures for October out of this 10 months period and contrasting the results obtained in October with the results obtained for the full 10 months. Transportation receipts for Oct. 1917 were \$4,703,643 against \$4,618,000 for 1916. The increase is still present, although to a much smaller percentage, the whole increase amounting to 1.85%. The expenses for Oct. 1917, however, were \$3,876,019.95 against \$3,111,193.36 for Oct. 1916. The resultant increase is 24.58%. The result on the transportation net is that it only amounts to \$708,930.05 for Oct. 1917 against \$1,390,537.64, for Oct., 1916. Therefore, it decreased no less than 49%. The effect of the cost of railway operation over the whole country is beyond question. This loss in net of 49% may well be compared to the October figures of the Canadian Northern, where the net decrease was 51.55%. There can be no question, in view of the actual results, that the railways require greater revenues and must have them if proper efficiency is to be maintained and the demand of the country for transportation at all adequately met. I have already dealt with the difficulty in dealing with the emergency in the west and resulting from the agreements and statutes referred to. Difficulties also exist in the east and are specially attributable to the operation of the Grand Trunk under different tariffs. The rate situation in the east has been largely controlled by water competition and the competition of United States lines.

"Speaking generally, there is no doubt that it is the right of a company to ignore competition should it desire to do so; and there is also no doubt that the advances in water rates have lessened the competition from that source materially. The Grand Trunk situation, however, is aggravated by the fact that it is to quite a large extent a U. S. system. It derives a large portion of its tonnage from U.S. points through its ownership of the Chicago and Grand Trunk Ry. and other subsidiary U.S. systems. Again, speaking generally, these subsidiary U.S. systems (which are not only owned by Grand Trunk shareholders, but are operated by Grand Trunk officials, the whole being operated as one system) are operated under rates upon a lower basis than that obtaining in Eastern Canada. Not only does the Grand Trunk carry through Canadian territory goods of U.S. origin billed through to a U.S. point, but it also carries goods of U.S. origin into Canada which come into direct competition with Canadian producers, wholesalers, and jobbers. The discrimination was in the past greater than it now is. An application was made to the board in 1907, with a view of removing the rate discrepancy, and the disability of the Canadian producer was relieved by the order issued in the international rate case, which reduced rates in Canadian territory to as near the rates in U.S. territory as it was then felt that it was practicable to go. While undoubtedly the Grand Trunk proper has benefited by the traffic produced by its U. S. subsidiaries, unfortunately earnings in U.S. territory, based as they were upon lower rate schedules, resulted in unprofitable operation of these subsidiary lines, with the result that the Grand Trunk from time to time has had to make good, deficits occurring on the U.S. portions of the system, amounting to large sums. This, again, has been the subject of complaint by Canadian shippers, who have urged that the surplus that the company