

BOARD'S JURISDICTION OVER EXPRESS SERVICE

Controls Tolls, Contracts and Amount of Liability—New Railway Act Also Gives it Power to State What Goods are to be Carried by Express

RATES charged by express companies in Canada are subject to the control of the Board of Railway Commissioners for Canada, but outside of this the jurisdiction of the Board over express matters is more limited than is its control over the railways. This is emphasized in an informal ruling of the board, dated March 24. Referring to the new Railway Act, the ruling says:—

"The powers of the board in regard to express business are set out in sections 360-366, inclusive. The jurisdiction is concerned with tolls. The group of sections 360-363 is concerned with the formalities as to preparation, filing, etc., of tariffs. Section 365 requires that contracts, conditions, etc., limiting the liability of the express companies are to be approved by the board. Sub-section 2 (b) of the same section provides that the board may prescribe the terms and conditions under which 'goods may be collected, received, cared for or handled.' This is a power in regard to the liability, not in regard to requiring the establishment of facilities. See in this connection 'Canadian and Dominion Express Cos. vs. Commercial Acetylene Co.,' 9 Can. Ry. Cas., 172, at p. 174. The only other section in the group referred to, section 366, is concerned with returns by companies charging express tolls.

"Section 364 gives the board power to define carriage by express. This was formerly section 352 of the Railway Act, and it was decided in 'Canadian and Dominion Express Cos. vs. Commercial Acetylene Co.' (May 20, 1909), 9 Can. Ry. Cas., 172, that express companies were at liberty to exercise their own discretion in refusing to carry by express any particular commodity.

Company May Not Discriminate

"Section 364 of the present act differs from section 352 of the former act by the addition of the words 'and may order that all such goods as the board may think proper shall be carried by express.' The effect of this is to remove the discretion which the express companies formerly had. The express company may not discriminate between goods as to carriage, but this does not give power to direct the installation of facilities at stations. It may further be noted that in the group of sections already referred to there is no section which gives the board power to direct that facilities shall be afforded.

"Subject to the change in section 364 as above referred to, the group of sections covering express business are, with minor exceptions as to amendments, the same as in the first express judgment given. In that judgment, the following position was laid down:—

"No applications have ever been made to the board to require railway companies in Canada to furnish either an express service or any facilities connected with such a service. All applications have been made against the express companies. It is apparent that as the act now stands, orders for improved facilities for handling the express traffic can only be made against the railway company. By improved facilities is meant car service, shelters and the like; and if express companies do not provide for these matters with the railway companies over whose lines they operate, and remove all proper causes of complaint, then it will be the duty of the board to deal directly with the railway companies as to these matters, and complaints from the public must be made against them."

Cannot Control Service Direct

"At a later date, the board had before it an application of the village of Cumberland, Ont., for the reinstatement of the express service which had for some time been rendered by the Canadian Northern and then taken out. In reply the board stated on July 14, 1911 (Board's file 4214.175):—

"Dear Sir,—Referring to the above matter, I am directed to inform you that the jurisdiction of the board in the matter of express service is much more limited than it is in the matter of freight and passenger rates; that under the act the board has no jurisdiction to compel the Canadian Northern Express Co. to reinstall the express service which the board has been advised is withdrawn between Hawkesbury and Ottawa. I am further directed to state that if the freight department of the railway refuses to give proper facilities for the handling of traffic, complaint as to this should be put in form and submitted to the board, when the matter will be taken up with the railway company."

"In dealing with an application of the town of Sudbury for a direction that the Dominion Express Co. should establish an up-town office to receive and deliver express parcels (Board's file 4214.141), it was pointed out that a direction, if any, as to the installation of an up-town express office must be a direction to the railway, not to the express company.

Tolls, Contracts and Limiting Liability

"In summary form, the board's jurisdiction is as to tolls and contracts, etc., limiting liability, with the additional power, conferred by section 364 amended as already noted, of saying what may be carried by express. The board is given no power to direct an express company *qua* express company to install facilities or to arrange that specific services shall be given at specific stations. It follows from this that so far as jurisdiction is concerned, the board has no power to direct an express company to reinstate at a station or stations express facilities which it has removed, nor has the board power, as a matter of jurisdiction, in the first instance to direct the installation of facilities at a station or stations.

"Its jurisdiction over telegraph, telephone and express companies is essentially a rate jurisdiction, and much more limited than in the case of railways."

A CASE ON EMPLOYERS' LIABILITY

A case before the Superior Court of Quebec province a few days ago called for a ruling which may uphold a distinction between a policy of insurance "against liability" and one "against loss from liability." L. Omer Fredette met with an accident in which he suffered injuries whilst in the employ of the John MacDougall Caledonian Ironworks, now in liquidation, and judgment was rendered in his favor for \$5,000. The money was not paid, and Fredette issued an attachment after judgment in the hands of the Employers' Liability Assurance Corporation, Limited, with the object of obtaining payment of the \$5,000 under a policy insuring the John MacDougall Caledonian Ironworks against loss from liability for accidents to its workmen.

The insurance corporation, as garnishee, whilst admitting that at the time of Fredette's injury he was one of the workmen included in the schedule and cover of the policy, declared it owed nothing, and based this contention on the terms of condition (f) of its policy, which specified that: "No action shall lie against the corporation to recover for any loss under this policy unless it shall be brought by the assured for loss actually sustained and paid in money by the assured in satisfaction of the judgment after trial of the issue."

At the time of the seizure by garnishment, the John MacDougall Caledonian Ironworks, it was said, had paid nothing, and the policy or bond of indemnity being the law between the parties—making payment "in money" by the ironworks company a condition precedent to any right of recovery against the insurance corporation—therefore nothing could be held to be owing to the ironworks company by the insurance corporation. The question as submitted to the court is one purely of law: Where the insurance is one against loss from liability, can a third party obtain the benefit of the policy by garnishment proceedings, or otherwise?