

Cartage Allowance Declared Illegal.*(Continued from page 393.)*

throughout which the party complaining was charged more under the like circumstances." As to the position at common law, see also *Oxlade v. N.E.R. Co.*, 1 C.B. (N.S.) 454, and *Baxendale v. E.C.R. Co.*, 4 C.B. (N.S.) 63.

The proviso at the end of sec. 90 of the R.C.C. Act, 1845, was: "Provided that all such tolls be at all times charged equally to all persons, and after the same rate, whether per ton, per mile, or otherwise, in respect of all passengers, and of all goods or carriages of the same description, and conveyed or propelled by a like carriage or engine, passing only over the same portion of the line of railway under the same circumstances; and no reduction or advance in any such tolls shall be made either directly or indirectly in favor of or against any particular company or person travelling upon or using the railway." In England it has been decided that the words "under the same circumstances" in this proviso refer to the conveyance or passing of the goods, etc., over the line. See *G.W.R. Co. v. Sutton*, L.R. 4 H.L. 226; *Evershed v. L. & N.W.R. Co.*, 28 Q.B.D. 254, 3 Q.B.D. 134, 3 A.C. 1029; *Denaby Main Colliery Co. v. M.S. & L.R. Co.*, 14 Q.B.D. 209, 11 A.C. 97; *Phipps v. L. & N.W.R. Co.*, (1892) 2 Q.B.D. 229.

By act of the 49th Congress of the U.S.A., 2nd Sess., Chap. 104, intitled "An Act to regulate commerce," usually known as the "Interstate Commerce Act," sec. 2, it is provided: "That if any common carrier subject to the provisions of this act shall, directly or indirectly, by any special rate, rebate, drawback, or other device, charge, demand, collect or receive from any person or persons a greater or less compensation for any service rendered, or to be rendered, in the transportation of passengers or property, subject to the provisions of this act, than it charges, demands, collects, or receives from any other person or persons for doing for him or them a like kind of traffic under substantially similar circumstances and conditions, such common carriers shall be deemed guilty of unjust discrimination, which is hereby prohibited and declared to be unlawful." Under that act a wider view seems to have been taken in the Courts of the U.S. than was taken in England under the Act of 1845, respecting the circumstances and conditions which are to be taken into consideration. See *Cincinnati, New Orleans and Texas Pacific Ry. Co. v. Interstate Commerce Commission*, 162 U.S. p. 184, 56 Fed. Rep. 925; *Interstate Commerce Commission v. Alabama Midland Ry. Co.*, 3 Am. & Eng. R. Cas. N.S. 638; *Texas & Pacific Ry. Co. v. Interstate Commerce Commission*, 162 U.S. p. 197, 5 Am. & Eng. R. Cas. N.S. 86; *Detroit, etc., R. Co. v. Interstate Commerce Commission*, 74 Fed. Rep. 803; *Interstate Commerce Commission v. Cincinnati P. & V.R. Co.*, 32 Am. & Eng. R. Cas. N.S. 581; *Laurel Cotton Mills v. Gulf & S.I.R. Co.*, 37 So. Rep. 134, 35 Am. & Eng. R. Cas. N.S. 471.

By the Canadian Railway Act, sec. 251, sub-sec. 4, "no tolls shall be charged by the company until a by-law authorizing the preparation and issue of tariffs of such tolls has been approved by the Board, nor shall the company charge, levy or collect any money for any service as a common carrier, except under the provisions of this act."

Sec. 252, sub-sec. 1. "Such tolls may be either for the whole or for any particular portions of the railway; but all such tolls shall always, under substantially similar circumstances and conditions be charged equally to all persons, and at the same rate, whether by weight, mileage or otherwise, in respect of all traffic of the same description and carried

in or upon a like kind of cars, passing over the same portion of the line of railway; and 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." Sub-sec. 3. "No tolls shall be charged which unjustly discriminate between different localities."

By sec. 253, sub-sec. 1. "And no company shall make or give any undue or unreasonable preference or advantage to, or in favor of, any particular person, or company, or any particular description of traffic, in any respect whatsoever." Sub-sec. 2. "The Board may determine, as questions of fact, whether or not traffic is or has been carried under substantially similar circumstances and conditions, and whether there has, in any case, been unjust discrimination, or undue or unreasonable preference or advantage, or prejudice or disadvantage, within the meaning of this Act, or whether in any case the company has, or has not, complied with the provisions of this and the last preceding section; and may by regulation declare what shall constitute substantially similar circumstances and conditions, or unjust or unreasonable preferences, advantages, prejudices, or disadvantages within the meaning of this Act, or what shall constitute compliance or non-compliance with the provisions of this and the last preceding section."

Sec. 254, sub-sec. 1. "Whenever it is shown that any company charges one person, company or class of persons, or the persons in any district, lower tolls for the same or similar services, than they charge to other persons, companies, or class of persons, or to the persons in another district, or makes any difference in treatment in respect of such companies or persons, the burden of proving that such lower tolls or difference in treatment does not amount to an undue preference or an unjust discrimination shall lie on the company."

Sub-sec. 2. "In deciding whether a lower toll, or difference in treatment, does or does not amount to any undue preference or an unjust discrimination, the Board may consider whether such lower toll, or difference in treatment, is necessary for the purpose of securing in the interests of the public, the traffic in respect of which it is made, and whether such object cannot be attained without unduly reducing the higher tolls."

By sec. 257, sub-sec. 1, "The Board may disallow any tariff or any portion thereof which it considers to be unjust or unreasonable, or contrary to any of the provisions of this act, and may require the company, within a prescribed time, to substitute a tariff satisfactory to the Board in lieu thereof, or may prescribe other tolls in lieu of the tolls so disallowed."

By sec. 259 the tariff of tolls which the company is authorized to issue under the act is divided into three classes, namely:—"The maximum mileage tariff, herein referred to as the standard freight tariff; the reduced class or commodity tariffs, herein referred to as the special freight tariffs; and competitive tariffs."

By sec. 261, sub-sec. 1, "Every standard freight tariff shall be filed with the Board, and shall be subject to the approval of the Board." Sub-sec. 4. "When the provisions of this section have been complied with, and except in the cases of special freight and competitive tariffs, the tolls as specified in the standard freight tariff or tariffs, as the case may be, shall be the only tolls which the company is authorized to charge for the carriage of goods."

By sec. 262, sub-sec. 3, "Upon any such special tariff being so filed, the company shall, until such tariff is superseded or is disallowed by the Board, charge the toll or tolls as specified therein."

The language of sec. 252 is that "all such tolls shall always, under substantially similar circumstances and conditions be charged equally to all persons." Here, the words "under substantially similar circumstances and conditions" are connected with and qualify the words "be charged," while in the English act, as we have seen, the words "under the same circumstances" directly refer to and qualify the words "passing only over the same portion of the line of railway"; and, in the U.S. act, the words "under substantially similar circumstances and conditions" are directly connected with and appear to refer specifically to the words "transportation of a like kind of traffic."

Our act then leaves it open to consider, in reference to the making of charges, all circumstances and conditions that appear applicable, whether directly relating to the carriage or the service given by the railway company or not. Further, the direction that these tolls shall always, under substantially similar circumstances and conditions, be charged equally to all persons appears to be absolute. Preferences may be allowed if they are not unjust or unreasonable, but only when the circumstances or conditions differ substantially. The whole frame of the Act points to equality as requisite and to discrimination as forbidden, and the equality is to be preserved and the discrimination avoided, not only as between individuals, persons or companies, but also as between localities. And the company is also forbidden not merely to charge higher than the authorized tolls, but equally to charge lower ones.

So far then as the applicant company asks that the railway company be authorized or directed to make in its favor the reduction previously made upon the regular tolls laid down in its authorized tariff, the application must clearly fail. If there are circumstances or conditions warranting the charging of less or higher tolls in particular classes of cases, these must be provided for in the railway company's tariffs. In so far as the applicant company can be considered as asking the Board to make a change, in its favor alone, in the tariff of tolls to be charged for transportation of its class of products, the application again must fail. Such an act would involve a discrimination without reason as against those shipping similar goods at the same railway station and providing at their own expense for their cartage, whether for a greater or less distance, however short that distance might be, as well as against other localities.

In *Stone v. Detroit, G.H. & M.R. Co.*, 3 Inters. Com. Rep. 60, where a railway company had a tariff schedule grouping eastern points at Ionia and Grand Rapids in Michigan, Ionia being the shorter distance, and furnished free cartage at Grand Rapids and not at Ionia, it was held by the Interstate Commerce Commission of the U.S. that the free cartage at Grand Rapids was in effect a rebate and unlawful. Cooley, chairman, said: "The effect of the respondent doing the cartage at its own cost of 2c. per 100 lbs. is precisely the same that it would be if all its rates to Grand Rapids were 2c. per 100 lbs. less and the consignees were left to pay the cost of cartage. But if that were done the Ionia rates would clearly be illegal, because they would be 2c. per 100 lbs. more than the Grand Rapids rates. So if the rates to the two towns were made the same, but the Grand Rapids consignees were allowed a rebate of 2c. per 100 lbs. because of their greater distance from the railroad warehouse, the illegality would seem to be equally obvious." Morrison and Shoonmaker, Commissioners, said: "Nominally receiving a full rate with one hand and paying part of it back with the other, either in money or its equivalent in service, is plainly, whether so intended or not, a device that works an