HOUSE OF COMMONS

Second Session—Twenty-second Parliament

1955

STANDING COMMITTEE

ON

RAILWAYS, CANALS AND TELEGRAPH LINES

Chairman—H. B. McCULLOCH, ESQ.

MINUTES OF PROCEEDINGS AND EVIDENCE

No. 1

Bill No. 187, An Act Respecting The New Westminster Harbour Commissioners

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TUESDAY, MARCH 22, 1955

WITNESS:

Mr. K. K. Reid, Chairman, The New Westminster Harbour Commissioners.

EDMOND CLOUTIER, C.M.G., O.A., D.S.P.
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1955.

55661—1

STANDING COMMITTEE
ON
RAILWAYS, CANALS AND TELEGRAPH LINES

Chairman: H. B. McCulloch, *Esq.*,
and
Messrs.

Barnett
Batten
Bell
Bonnier
Boucher *(Restigouche-Madawaska)*
Boucher *(Chateauguay-Huntingdon-Laprairie)*
Buchanan
Byrne
Campbell
Carrick
Carter
Cauchon
Cavers
Clark
Decore
Deschatelets
Dupuis
Ellis
Follwell
Fulton
Gagnon
Garland
Gauthier *(Lac-Saint-Jean)*
Goode
Gourd *(Chapleau)*
Green
Habel
Hahn
Hamilton *(Notre-Dame-de-Grace)*
Hamilton *(York West)*
Harrison
Healy
Herridge
Hodgson
Holowach
Hosking
Howe *(Wellington-Huron)*
James
Johnston *(Bow River)*
Kickham
Lafontaine
Langlois *(Gaspe)*
Lavigne
Leboe
McIvor
Meunier
Montgomery
Murphy *(Lambton West)*
Murphy *(Westmorland)*
Nicholson
Nickle
Purdy
Ross
Small
Stanton
Viau
Villeneuve
Vincent
Weselak

R. J. Gratrix,
Clerk of the Committee.

ORDERS OF REFERENCE

HOUSE OF COMMONS,

FRIDAY, February 4, 1955.

Resolved—That the following Members do compose the Standing Committee on Railways, Canals and Telegraph Lines:

Messrs.

Barnett	Fulton	Lafontaine
Batten	Gagnon	Langlois (*Gaspe*)
Bell	Garland	Lavigne
Bonnier	Gauthier (*Lac-Saint-Jean*)	Leboe
Boucher (*Chateauguay-Huntingdon-Laprairie*)	Goode	Low
Boucher (*Restigouche-Madawaska*)	Gourd (*Chapleau*)	McCulloch
Buchanan	Green	McIvor
Byrne	Habel	Meunier
Campbell	Hahn	Montgomery
Carrick	Hamilton (*Notre-Dame-de-Grace*)	Murphy (*Lambton West*)
Carter	Hamilton (*York West*)	Murphy (*Westmorland*)
Cauchon	Harrison	Nicholson
Cavers	Healy	Nickle
Clark	Herridge	Purdy
Decore	Hodgson	Ross
Deschatelets	Hosking	Small
Dupuis	Howe (*Wellington-Huron*)	Stanton
Ellis	James	Viau
Follwell	Johnston (*Bow River*)	Villeneuve
	Kickham	Vincent
		Weselak

Ordered—That the Standing Committee on Railways, Canals and Telegraph Lines be empowered to examine and inquire into all such matters and things as may be referred to them by the House; and to report from time to time their observations and opinions thereon, with power to send for persons, papers and records.

FRIDAY, March 11, 1955.

Ordered—That the following Bills be referred to the said Committee:

Bill No. 193 (Letter Q-6 of the Senate), intituled: "An Act respecting The London and Port Stanley Railway Company and the Corporation of the City of London".

Bill No. 232 (Letter P-6 of the Senate), intituled: "An Act respecting The Bonaventure and Gaspe Telephone Company, Limited".

MONDAY, March 14, 1955.

Ordered,—That the following Bill be referred to the said Committee:

Bill No. 187, An Act respecting The New Westminster Harbour Commissioners.

55661—2

MONDAY, March 21, 1955.

Ordered,—That the name of Mr. Holowach be substituted for that of Mr. Low on the said Committee.

TUESDAY, March 22, 1955.

Ordered,—That the said Committee be empowered to print such papers and evidence as may be ordered by the Committee and that Standing Order 64 be suspended in relation thereto.

Ordered,—That the quorum of the said Committee be reduced from 20 to 12 members and that Standing Order 63(1) (b) be suspended in relation thereto.

Ordered,—That the said Committee be authorized to sit while the House is sitting.

Attest.

LEON J. RAYMOND,
Clerk of the House.

REPORTS TO THE HOUSE

TUESDAY, March 22, 1955.

The Standing Committee on Railways, Canals and Telegraph Lines begs leave to present the following as its

FIRST REPORT

Your Committee recommends:

1. That it be empowered to print such papers and evidence as may be ordered by the Committee and that Standing Order 64 be suspended in relation thereto.

2. That the quorum be reduced from 20 to 12 members and that Standing Order 63(1) (b) be suspended in relation thereto.

3. That it be authorized to sit while the House is sitting.

All of which is respectfully submitted.

H. B. McCULLOCH,
Chairman.

WEDNESDAY, March 23, 1955.

The Standing Committee on Railways, Canals and Telegraph Lines begs leave to present the following as its

THIRD REPORT

Your Committee has considered the following Bill and has agreed to report the said Bill without amendment:

Bill No. 187, "An Act respecting The New Westminster Harbour Commissioners".

All of which is respectfully submitted.

H. B. McCULLOCH,
Chairman.

(NOTE: *The Second Report dealt with Private Bills in respect of which verbatim evidence was not recorded*)

55661—2½

MINUTES OF PROCEEDINGS

TUESDAY, March 22, 1955.

The Standing Committee on Railways, Canals and Telegraph Lines met at 3.30 o'clock p.m. this day. The Chairman, Mr. H. B. McCulloch, presided.

Members present: Messrs. Batten, Bonnier, Byrne, Carrick, Cauchon, Cavers, Decore, Deschatelets, Garland, Gauthier (*Lake St. John*), Goode, Green, Habel, Hahn, Hamilton (*York West*), Harrison, Hodgson, Hosking, Holowach, Howe (*Wellington-Huron*), James, Johnston (*Bow River*), Lafontaine, Langlois (*Gaspe*), Lavigne, Meunier, Murphy (*Lambton West*), Nicholson, Purdy, Small, Villeneuve and Weselak.

In attendance: Mr. K. K. Reid, Chairman, The New Westminster Harbour Commissioners; Messrs. H. V. Anderson, Director of Marine Services and R. R. Macgillivray, Legal Adviser, both of the Department of Transport.

The Committee commenced consideration of Bill No. 187, An Act respecting The New Westminster Harbour Commissioners.

On motion of Mr. Langlois (*Gaspe*),

Resolved,—That the Committee print 750 copies in English and 200 copies in French of the minutes of proceedings and evidence in relation to Bill No. 187, An Act respecting The New Westminster Harbour Commissioners.

Mr. Langlois (*Gaspe*), Parliamentary Assistant to the Minister of Transport, made a statement in explanation of the said Bill.

Mr. Reid was called, made a statement on the purposes of the said Bill and was questioned thereon.

Clauses 1 to 4 inclusive and the Title were severally considered and adopted.

The Bill was adopted and the Chairman ordered to report it to the House without amendment.

At 4.20 o'clock p.m., the Committee adjourned to meet again at the call of the Chair.

R. J. Gratrix,
Clerk of the Committee.

EVIDENCE

March 22, 1955.
3.30 p.m.

The CHAIRMAN: Order, gentlemen. Bill 187, an Act Respecting the New Westminster Harbour Commissioners.

Mr. LANGLOIS (*Gaspe*): Mr. Chairman, I am in the hands of the members of the committee as to whether or not I should make a statement about the purposes of this bill.

Mr. GREEN: I understand the chairman of the Harbour Commission is here. Perhaps he could explain the purpose of the bill. However, I love listening to the parliamentary assistant.

The CHAIRMAN: I think perhaps we had better hear him first.

Mr. LANGLOIS (*Gaspe*): Mr. Chairman, I shall be as brief as possible, because I made a comprehensive statement in the House when the resolution was introduced. As honourable members who were present in the House on that occasion know, an English syndicate headed by the estate of the Duke of Westminster have acquired Annacis Island in the Harbour of New Westminster, B.C., and propose extensive development of the island for industrial establishments. The Department of Transport has been advised the syndicate contemplates an initial expenditure of approximately $4,000,000 to $6,000,000 (which might go up to $100,000,000 with the years) for erection of factories, construction of roads, draingage, etc., for some 200 industrial establishments.

Over the past several months discussions have taken place between the syndicate, the Department of Transport and Public Works, and the New Westminster Harbour Commissioners respecting a request by the developers that a causeway be erected to provide access to Annacis Island for both rail and highway traffic. The syndicate representatives were informed the Department of Public Works would not approve of a causeway, which would completely close Annacis Channel, because such a structure would increase the danger of flooding, but would be prepared to approve a structure part causeway and part trestle bridge.

It is the expectation of the commissioners that industrial development of Annacis Island will serve to effect a material increase in harbour traffic. Furthermore, the proposed structure would provide access to Robson Island which lies adjacent to Annacis Island and is owned by the commissioners.

In order to permit the commissioners to begin construction of the bridge and causeway, their by-law No. 159 was approved by Order in Council P.C. 1954-1454 dated 22 September 1954. They were thus given authority to draw upon their reserve account up to $200,000 pending the introduction of this loan bill; such moneys to be repaid to the account upon receipt by the commissioners of the moneys raised by the bill.

I wish to add that we have here today Mr. K. K. Reid, chairman of the Harbour Commission of New Westminster. We also have Mr. H. V. Anderson, director of the marine services of the Department of Transport, and a representative of our legal branch. I am sure these gentlemen will be at the disposal of the committee to supply any information which may be felt desirable.

The CHAIRMAN: Will the committee be prepared to hear Mr. Reid now?

Mr. GOODE: Yes, always with the understanding that on questions of policy the parliamentary assistant will be here to speak.

Mr. K. K. Reid, Chairman of New Westminster Harbours Commission, called:

The WITNESS: I am very glad to have this opportunity of being here again before you. I was before you on the other bill and you were very kind to us at that time and we trust nothing further will happen now. I would just like to say in addition to what the parliamentary assistant has said that this island consists of 1,200 acres and is somewhat similar to the development which the Grosvenor estates have near Manchester, England. We have negotiated for some three years in connection with this, and one of the first intimations we had was from the solicitor of the Grosvenor estate, and he said that more than 60,000 were employed on that estate near Manchester. I thought that he was being a little over optimistic, but I found out since that he was not. He was putting it rather mildly because the number employed there is actually greater than that. We felt that the development of the island would create employment and that anything established for that purpose would be worth while looking into. This is not a promotion scheme to sell shares or raise money. These people are bringing money with them to develop the site. They buy the land, develop the property, put in all the services, roads, administration buildings and so on and then they lease them for an extended length of time. So it is not a case of building up and selling something to get something. This will carry on. They are getting on very well with it. The administration building is about finished and many roads are in. Our agreement with them was to spend considerable money before we would entertain this question of getting a causeway to them although it develops 100 acres of our own. We wanted to make sure they intended to go ahead with it, so they entered into an agreement with us that they would spend $4 million before the end of this year. That is the situation and I think they will have that much expended. I think it is the only establishment of this kind in Canada where they come in and develop it, bring in capital and develop a scheme like this. I have heard it asked: "Why do they come here. Why do they not settle in some other part of the continent, eastern Canada or in and around Vancouver?" That is very true, but knowing the geography of the lower mainland you can readily understand that any development in Vancouver towards the harbour frontage is pretty well taken up, consequently development must be eastward and the Fraser River is the logical place for that to happen. The reason we asked the government for permission to use our reserve funds, we have to get this started is because of the men and supplies which they have had to take over to the island which has to be transported by boat or scow. Their manager in British Columbia told me that it was costing them $800 a day and that is why they are anxious to get across by truck or rail. That is why we wanted to assist them and go ahead. When we asked for a Bill last year we were too late to get it, and that is the reason for the request of the Grosvenor estate that we should speed this up and save them money.

The 100 acres which we have there is very good for shipping and we believe we are going to be able to locate a shipping company on our portion of it. As a matter of fact—I am not at liberty to give out the name—I will go so far as to say that the agreement is now in the hands of the solicitor for the shipping company and the Harbour Board solicitor to work out the details. They are very near agreement on all details. I hope it will be soon or in the near future and that they will lease pretty much all the land we have in this sand field, which was formed by dredged material, from annual

dredging. This is in addition to the small island we have, known as Robson Island, both consisting of about 100 acres. There is some 4,200 feet of water-front—room for 10 ships with good water. Very little dredging will be required in that area. The tenants will construct one dock immediately and others as required.

It is a little difficult to visualize just what this means to the area. I had the privilege recently of reading an article put out by Mr. Wilson, assistant professor of Marketing School of Commerce, University of British Columbia, and he headed his article: "I wonder". It refers to Annacis Island and what it will mean to British Columbia. I would recommend that article to members of the committee who wish to get a clear picture of what this project may involve.

I do not know Mr. Chairman, but I presume there will be some questions to ask. I may say that in this Annacis Island development the Public Works who have to approve of all works, under the Navigable Waters Protection Act and who gave permission to build the causeway Trestle with a 50-50 division—that is 50 per cent causeway and 50 per cent trestle—so 50 per cent of the area, which is about 600 feet, will be left open for the water to escape.

Mr. GOODE: Have you got a map?

The WITNESS: I ought to have sufficient maps for all members of the committee at this stage, but due to the short notice I received to attend this meeting I was unable to get them. However I have one map which I trust you will all be able to see.

(Map produced and displayed to members of the committee.)

By Mr. Cavers:

Q. Is the island contiguous to an industrial area or a residential area?—A. There is both industry and residential property in the area west of the causeway-trestle (To the south).

Q. If that is so have you made any agreement with the industrial area as to sewage disposal, disposal of waste, and smoke nuisance?—A. The Grosvenor estates have taken care of all services.

By Mr. Murphy (Lambton West):

Q. How much did they invest in the island itself?—A. I cannot tell you that, I have not been given the figure.

Q. Was that included in the $4 million?—A. No. It was not included. They told me a great portion of this island was purchased in sterling from a syndicate in the old country which had held it for a number of years.

By Mr. Cavers:

Q. Is this to be used as an industrial project or partly as real estate?—A. Wholly industrial. They provide all services, construct buildings and then rent on a long-term lease.

By Mr. Hahn:

Q. Is this island subject to flooding by any chance. Was it flooded in 1948?—A. The island did not flood in 1948, some seepage got through the dykes, but their idea is to build the island up with silt above the dykes. They are doing that now. As a matter of fact, they get all the silt they can during the dredging operations, and then contract with a private dredging company for additional fill, they have permission to dredge 1,400,000 yards out of the bed of the river.

Q. Have they started any building of anything such as roads to show their goodwill?—A. The administration building is about finished, and quite a few roads around the building have been completed.

Q. Has there been an agreement that we are going to be responsible for harbour facilities?—A. The agreement we have with them is that they will not put any shipping companies on the island. We in turn will not put any industry in the 100 acres we have. We will provide shipping facilities and we hope that we shall be able to take care of all the shipping. However, one has to allow dock construction to any firm who require a dock for its own use, but that is the only exception.

Q. During the original debate in the House on this bill I drew attention to the need for deeper dredging. Is that being looked after? What arrangement is being made to see that deep sea shipping can come in to the island?—A. That dredging comes under the Department of Public Works and there has been every cooperation by the department with the Harbour Board so far as carrying on dredging is concerned. Of course, in the river, the difficult time for getting ships in is after the spring freshet. No silt is deposited during the freshet but occurs when the freshet is falling off. The main problem is to get the dredging done as early as possible following the freshet, the Public Works therefore have three dredges at the most difficult areas in order to get it dredged so that a minimum of delay will be caused to shipping. Our ultimate aim is 30 feet to the gulf, as members of the committee may have heard. We have sent out full cargoes of grain, and full cargoes of other commodities. Of course we have to take advantage of the tide. A 12-foot tide at the sand heads provides 5 feet rise at New Westminster. There is seven feet difference.

Q. Is there any indication from the Department of Public Works that they were prepared to give you 30 feet draught to the gulf—A. I would not say 30 feet, but they have not said "no" yet.

By Mr. Hamilton:

Q. What type of development is this—does the development company put up the building itself and then rent them out, or sell them?—A. Construct building to tenants requirement and then enter into a long term lease.

Q. In connection with the building, and this fill of silt you were talking about, does that mean that practically all construction would have to be on piles?—A. No. Only for heavy industry.

By Mr. Goode:

Q. Mr. Chairman, I think the committee should know that Mr. K. K. Reid is one of the most able administrators in this type of work we have ever had in British Columbia, and I think this committee is to be complimented for having a gentleman of his calibre before us today. Mr. Reid, this $200,000, to what total will that add with regard to the indebtedness of the New Westminster Harbour Commission?—A. We have at the present a loan which was originally taken out when the elevator was built. First, it was $700,000 and then $274,000 odd was the second loan to finish the elevator making a total of $974,537. That was refinanced in 1948 when the bonds expired. The elevator was built in 1928-1929. The bonds were payable in United States funds, and when they matured, they were re-financed and payable in Canadian funds.

Q. Has any of this $974,000 been paid back?—A. No.

Q. This $200,000. We can take it then that over a million dollars will be owned to the government, or to someone on behalf of the commission?—A. I would say it would be more than that.

Q. Perhaps so. Where was this money being spent within the city of Westminster?—A. The new docks are in the city of New Westminster.

Q. It can be taken that all this money has been spent in the confines of the city of New Westminster?—A. No.

Q. Outside of the case of the elevator which is in the municipality of Surrey, all other moneys that were secured by the Harbour Commission have been spent within the city of Westminster?—A. Yes.

Q. Not one dollar of these loans has been spent outside the confines of New Westminster except money spent on the elevator in Surrey.—A. That is correct, but I would add that Annacis island and the sand fill are in the municipality of Delta, and the causeway will be half in new Westminster and half in Delta.

Q. One has to understand that though there may be some difference of opinion over policy, I do think the expenditure of this $200,000 is necessary, and I am going to support it because I think the development is going to be to the advantage not only of the immediate area but also of British Columbia as a whole.

By Mr. Cavers:

Q. Do you know how much it will cost to build this causeway trestle?—A. The causeway and trestle. The lowest tender was $224,000.

Mr. JOHNSTON (*Bow River*): How do you propose to get this money back—by charging a toll?

The WITNESS: No, by leases of the waterfront and the development of our own area. We believe that a lease of our own area will provide sufficient revenue to take care of interest and sinking fund on this loan.

Mr. GOODE: If this development is going to run into a sum of millions of dollars for a private industrial operation, why should the federal government be interested in a loan of $200,000? Why should not these people build their own trestle? I know the answer to that question, but I think it should be asked for the benefit of the eastern members of this committee.

The WITNESS: I can answer that, though you know the answer, Mr. Goode, as you say. The reason is simple. This was discussed with the previous Minister of Transport, and the reason was that if the Grosvenor Estates did build it, it would be private property and as we had a development there of our own, we thought that in the interests of the public it should be a public crossing.

Mr. GOODE: I agree.

Mr. HAHN: Will the witness indicate whether the Harbour volume itself was increasing to a degree where these present developments could have been expected?

The WITNESS: Yes, we were increasing. We had 43 more ships last year than the year before, and we have been gradually building up. We had 439 deep sea ships enter our port last year. We are looking to the future as well as we can. We believe this development will take care of the future for some little time.

Mr. HAMILTON (*York West*): Can the witness tell us when there will actually be industrial buildings on the island?

The WITNESS: I am told they have a date for completion of buildings for one firm of September 1st, and expect to have others as time goes on.

By Mr. Nicholson:

Q. Has the province of British Columbia been invited to participate?—A. The only other people invited to assist was the municipality of Delta because it was a connection to develop an area in that municipality, but they told us they did not have any money to assist in this project.

Q. Was the province not interested in this sort of development?—A. The province has nothing to do with our harbour. The harbour is under the federal government.

Mr. GOODE: Federal water, is it not?

Mr. LANGLOIS (*Gaspe*): The committee might be interested in knowing how far this work has progressed up to now.

The WITNESS: Yes. We have all the piling in, the sand filled in on the causeway part and it was just two weeks ago that two of the Grosvenor officials and myself made the first trip across by truck. About 75 per cent of the work is completed.

Mr. HAHN: Has the commission leased any of their frontage as yet?

The WITNESS: Not yet. We are hoping the firm we are negotiating with will lease the entire sand fill. We need the revenue.

By Mr. Goode:

Q. I would like to know something more about the commission. Your commission now consists of three members, does it not?—A. That is correct.

Q. Who are they?—A. Two are appointed by the federal government, Mr. Gifford and myself, and one is appointed by the city of New Westminster.

Q. All three live in New Westminster?—A. Yes.

Q. How long have they been living in New Westminster, those three members?—A. Commissioner Dennis has been there about 10 years, and I would hate to tell you how long Mr. Gifford and I have lived there.

Q. Yes. It is over 25 years?—

By Mr. Weselak:

Q. Can you estimate the total capital assets of the commission?—A. According to our auditor's statement which I have a copy here in pencil, the assets as at December 31, 1954 were $2,177,719.

Q. We cannot hear anything that is going on.—A. All right. I will speak louder.

Q. I am not speaking of the witness, I am speaking of the other questioners.

Mr. HOSKING: You told us there was some danger of flooding in this area.

The WITNESS: No. There might have been a danger of flooding if we had closed the channel.

Mr. HOSKING: There is no danger from flooding now?

The WITNESS: We hope not.

Hon. MEMBER: He answered all this half an hour ago.

Mr. HOSKING: I was not quite satisfied with those answers. I just want to make sure we are not going to be in a position of having to pay damages.

The WITNESS: That is what the Public Works were trying to protect themselves from by leaving half the channel open.

By Mr. Hahn:

Q. You mentioned that silt was being put on the island. Can you give the committee an idea how high the island is being built up?—A. Well, that sand bank is probably five feet above high water at the moment and I presume it will be levelled off well above high water.

Q. What do you mean "well above"?—A. Two or three feet or perhaps four feet. That is all that will be necessary.

Mr. CAVERS: You told one of the members of the committee that you did not propose to charge tolls on this bridge. What revenue do you expect to derive from the bridge itself?

The WITNESS: Nothing. We do not expect a revenue from the bridge itself.

Mr. GOODE: This is a matter of policy—a large industrial corporation is providing employment in the province of British Columbia and we are spending $200,000 to help them to provide that employment.

The WITNESS: That is all we have to spend.

By Mr. Hamilton:

Q. Have we any projection as to how many jobs will be available?—A. This is a long range program to complete. They cannot spend that amount of money overnight. When it is completed the manager told me it would be in the neighbourhood of $100 million.

Q. What does that mean in jobs?—A. I think my earlier mention of the comparable program the corporation had carried out near Manchester, where there are 60,000 employees was made with this in mind.

Mr. MURPHY (*Lambton West*): There would be a good many men employed now I suppose?

The WITNESS: Between 150 and 200.

By Mr. Goode:

Q. I wonder now if I could go into the limit control of the Harbour Board a little because, as Mr. Reid knows, I have very definite views on this matter. What is the extent of the limits under the direct control of your commission?—A. Well, it is from Kanaka Creek up river, then up Pitt river to Pitt lake, both sides of the river and down the river both sides to Tilbury island and down the north arm to the borders of New Westminster city.

Q. You control the foreshore rights from Tilbury island to Kanaka Creek?—A. That is right.

Q. What is your income from these foreshore rights at the moment? Have you got figures for 1954? I have them for 1952, but not for 1954. While that figure is being looked up, may I place these figures on the record because I am going to refer to them later. In 1952 the receipts from foreshore rights in the municipality of Delta amounted to $2,274; from Richmond, $646; from Surrey, $3,710; from Maple Ridge, $5,039; from Pitt meadows, $4,670; from Coquitlam, $1,605; from Fraser Mills, $1,803; from Port Coquitlam, $3,571; and from the city of New Westminster, $6,500. Are those figures correct?—A. No, they are low for the city of New Westminster. The city is nearly $10,000. A good portion of the property within the limits of the city is under crown grant to the city, and on which we do not receive any revenue. You asked the question what was the total waterfront rental for last year. It was $55,794.

Q. How much of that came from the city of New Westminster?—A. Close to $10,000—$9,818.

Q. Am I correct in saying that in 1952 your commission collected something over $25,000 from outside municipalities, and $10,000 from the city of New Westminster. In 1954, according to your figures, you collected $55,000 of which $10,000 came from the city of New Westminster?—A. That is correct.

Q. Four times the amount of money came from the outside municipalities as came from the city of New Westminster?—A. Yes, if you put it that way.

Q. That is the way I would like to put it.

The CHAIRMAN: Gentlemen, shall clause 1 carry? Shall clause 1 "short title" carry?

Carried.

Shall clause 2 "Loans to corporation" carry?

Carried.

Shall clause 3 "Debentures" carry?

Carried.

Shall clause 4 "Repayment of loans" carry?

4. The principal and interest of the sums loaned to the Corporation under this Act shall be repayable by the Corporation out of all its tolls, rates, penalties and other sources of revenue, and shall rank as a first charge thereon, subject to the repayment of debentures issued by the Corporation prior to the commencement of this Act.

Mr. GOODE: Mr. Chairman, I am going to try to develop the fact that my municipality, Richmond, should be represented on this board. I am going to develop it because of the fact that clause 4 says:

> 4. The principal and interest of the sums loaned to the Corporation under this Act shall be repayable by the corporation out of all its tolls, rates, penalties and other sources of revenue . . .

Mr. Reid has given us the figures, and I have put the figures for 1952 on the record, and we have put them in for 1954, I think, showing that, in my parlance, four times the income payable to this board is coming from the outside municipalities.

I must not put this question to Mr. Reid because it is a matter of policy. That is why I asked the parliamentary assistant this afternoon in the House if he would be here. I asked the parliamentary assistant and the Minister of Transport who appointed the seven members of the Winnipeg-St. Boniface harbour commission.

You will remember it was answered that all of those members were appointed by the municipality. Now, on March 14, in the House, I said this:

> Mr. Speaker, although this bill is going to a committee I just wish to go on record as saying that I believe in this instance there should be some addition to the New Westminster Harbour commission; that my riding is much concerned with the expenditure of money by that body; and that during the meetings of the committee, of which I am a member, I shall bring this matter to the attention of the minister.

I did that so that I would not be taking the parliamentary assistant by surprise.

I have told you, Mr. Chairman, and members of the committee, that the municipalities outside the city of New Westminster are paying four times what the city of New Westminster is paying.

I represent the municipality of Richmond which has many miles of foreshore on the main channel of the Fraser; and that main channel up to Tilbury island is controlled by the New Westminster Harbour Commission. With all respect to Mr. Reid, I take it that we in Richmond should be represented on this commission.

I cannot ask Mr. Reid whether he would be against that argument, because it is a matter of policy. But I shall ask the parliamentary assistant whether it is the position of the department that additional representatives representing the municipalities on the main channel of the Fraser may be added to the commission in the foreseeable future.

Will the parliamentary assistant please answer that question now? I am asking the parliamentary assistant whether he will comment on the fact that I have suggested that an additional member for the municipality of Richmond be placed on the commission. What would be the attitude of the department?

Mr. LANGLOIS (*Gaspe*): Mr. Chairman, I have carefully listened to the remarks made by Mr. Goode and I was pleased to do so although his remarks were not quite related to the bill which is before the committee at present.

In the course of his remarks Mr. Goode compared the New Westminster Harbour Commission with the Winnipeg-St. Boniface commission. I wish to carry on with his comparison by pointing out that first: the members of the Winnipeg-St. Boniface Harbour Commission are not being paid, while the commissioners of the New Westminster Harbour Commission are paid. I wish to say for the information of the committee that the chairman of the New Westminster Commission is drawing a salary of $4,800 a year, while the other members are drawing salaries of $1,600 a year. We can hardly compare the two commissions also because, as hon. members no doubt know, the Winnipeg-St. Boniface Harbour Commission is not too active. The purpose of this commission is more or less to regulate the traffic on the two rivers concerned there.

I wish also to state in 1951, I believe it was, the membership of the North Fraser Harbour Commission was increased from three to five, and that four of the members are now being appointed by order-in-council, while one is appointed jointly by the municipalities of Richmond, Burnaby and Vancouver.

If the same principle was adopted with respect to the New Westminster Harbour Commission, it would mean, that the act would have to be amended to make provision for a joint appointtee by the ten municipalities which are within the limits of the harbour commission of New Westminster. The alternative would be to appoint 10 additional members in order to satisfy all the municipalities concerned.

The department has reached no definite policy in this connection. It might favourably consider an additional member for the New Westminster Harbour Commission appointed jointly by the ten municipalities and probably with the additional proviso, that as in the case of the harbour commission of Winnipeg-St. Boniface, this member serve without remuneration and also in an advisory capacity only.

However, as I have said, while no definite policy has been set in this respect, I am sure that the department will gladly go into the matter further and consider the representations made by Mr. Goode. I wish to add that the reason why we have not gone into the matter to a greater extent up to now is because we could not increase the membership of the commission by amending the present bill.

As you know, we cannot add to this bill. A new bill altogether would have to be introduced if we were to increase the membership of the commission.

Mr. CAVERS: There is nothing in this bill providing for that.

Mr. GOODE: Yes there is something in this bill. On December 14, 1951, I had occasion to rise in the House of Commons on another bill, and that was the North Fraser Harbour Commissioners Bill. Some of the members will recall that Mr. Mayhew the then Minister of Fisheries and I took issue with one another on the floor of the House in regard to a similar matter. May I point out that although the parliamentary assistant may make the point that the Winnipeg-St. Boniface Harbour Commissioners are not paid, nevertheless the commissioners on the North Fraser Harbour Commission are paid. I have Mr. Mayhew's remarks in front of me at the moment. He was then Minister of Fisheries and he said this: He said that it was most important, because of the expenditure of money, that the municipalities on any river should be represented on the Harbour Commission.

I was arguing exactly the opposite then to what I am arguing now. I did not want the Harbour Commission to be enlarged and for a good reason. But I must make the point that the Minister of Fisheries knew far better than I what should be done for the good of the country. Therefore, I change my argument now because of his large and advanced policy over mine, and he was perhaps correct when he answered that the commission at that time should be

enlarged. Now I am arguing the same way as the hon. minister did at that time, that I think this one should be enlarged too. I think that the municipality of Richmond should be represented on that board.

Mr. MURPHY (*Lambton West*): Mr. Chairman, I think this discussion has gone beyond the realm of what we are brought here to consider and I ask for a ruling on it. I think we are taking up time. I appreciate Mr. Goode's representations, but I do not think this is the place for them because there is nothing in the bill which would permit us to discuss even the membership of that commission, much less the adding to it.

Mr. GOODE: I must take up the issue because, as I have said before, this is the only opportunity I shall have to represent my people in regard to the New Westminster Harbour Commission at this session.

Mr. NICHOLSON: I think, Mr. Chairman, that you should rule on that point.

Mr. GOODE: Mr. Chairman, I have the right to speak to it before you make a ruling, and I have the right to point out that I am in order because I am very rarely out of order.

Mr. CAVERS: Well, you are out of order now.

Mr. GOODE: Section 4 mentions other sources of revenue which come to the New Westminster Commission. I point out that my municipality will pay a part of that source of revenue and I believe that I am in order in making these representations. It is my job as a member of parliament to represent the people who asked me to do it, namely the Richmond Board of Trade. As Mr. Reid knows, the Council of Richmond have asked me to do it and here I am doing it now.

Mr. NICHOLSON: Mr. Chairman, on a point of order, as I read section 4 it refers to the repayment of loans, and by no stretch of the imagination can I find anything in section 4 that is at all relevant to what we have been hearing from Mr. Goode.

Mr. GOODE: May I say that I have placed my representations on the record. I have done what I wanted to do and I now take my seat.

Mr. MURPHY (*Lambton West*): We are all satisfied.

Mr. HAHN: Mr. Chairman, in view of the representations made by Mr. Goode let me say that I represent the municipalities on the other side of the river as well as the city of New Westminster.

Mr. MURPHY (*Lambton West*): Are you going to be out of order too?

Mr. HAHN: That may be. I have only a point or two to make. Mr. Goode came here with the purpose in mind to see if he could not get additional members for the commission from his municipality. I think I should draw to the attention of the committee that I anticipated something of this. I sent a telegram to the responsible body in the New Westminster riding which had a resolution before the Associated Boards of Trade on this question. The board is made up of the very areas which Mr. Goode mentioned a while ago when he spoke of Maple Ridge, Pitt Meadows, Port Coquitlam, and so on. The resolution called for representations from both sides of the river be added to the harbour commission. Therefore I would like to ask the witness, Mr. Reid, whether or not these people who are on the New Westminster Harbour Commission live on the north side of the river or on the south side?

The WITNESS: They all live on the north side.

Mr. HAHN: The resolution is to be considered tomorrow night by the associated board of trade.

The CHAIRMAN: You are entirely out of order.

Mr. HAHN: I realize this whole debate is out of order. I want the committee to realize that until such time—

The CHAIRMAN: Order, order. Shall clause 4 carry?

Mr. JOHNSTON (*Bow River*): Mr. Chairman, this is not within my territory at all, but the chairman sat here and listened to a presentation from the hon. member for Burnaby-Richmond and there was no objection to his making it. The point was drawn to the attention of the chairman, but he did not rule on it, and Mr. Goode was allowed to make his presentation. Now we have another member who gets up and who is almost immediately called to order. I submit that if we allow one member to make a representation, then in all fairness we should allow the other member to make his representations as well.

The CHAIRMAN: Very well. Go ahead.

Mr. HAHN: The point is that this whole matter of representations is being considered in the associated boards of trade meeting which is being held tomorrow night, at which Richmond has a representative in the person of the reeve of the municipality.

I attended such meeting at which this same question was discussed, and the board itself could not come to a decision. I as an individual am interested in the whole question and I have no objection to an addition from Richmond on the harbour commission, nor have I an objection to Surrey or any other municipality being represented on the commission; but until such time as the whole area can decide what they want, I would not like to see the department recommend that another member be added from Richmond and Surrey or any other part of the area. I think I have put the statement fairly and would ask the minister to wait until recommendations in this respect come from some responsible body.

Mr. LANGLOIS (*Gaspe*): Though our department operates in a very efficient manner, we will not reach a decision that fast in the case.

Mr. GOODE: We will give you two weeks.

The CHAIRMAN: Shall clause 4 carry?
Carried.

Shall the title carry?
Carried.

Shall the bill carry?
Carried.

Shall I report the bill without amendment?
Agreed.

Mr. CAVERS: Before the meeting adjourns I think we should express our thanks to the chairman of the New Westminster Harbour Commission for his kindness in coming here and giving us evidence. It has been most helpful.

The CHAIRMAN: The meeting is now adjourned to the call of the chair.

HOUSE OF COMMONS

Second Session—Twenty-second Parliament

1955

STANDING COMMITTEE

ON

RAILWAYS, CANALS AND TELEGRAPH LINES

Chairman: H. B. McCULLOCH, ESQ.

MINUTES OF PROCEEDINGS AND EVIDENCE

No. 2

BILL 262

An Act to approve an agreement between The Toronto Harbour Commissioners, The Toronto Terminals Railway Company, Canadian National Railway Company and Canadian Pacific Railway Company.

TUESDAY, APRIL 26, 1955

WITNESSES:

Mr. A. D. McDonald, Regional Counsel for Canadian National Railway and Counsel for The Toronto Terminals Railway Company; Mr. E. B. Griffith, General Manager, The Toronto Harbour Commissioners.

EDMOND CLOUTIER, C.M.G., O.A., D.S.P.
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1955.

STANDING COMMITTEE

ON

RAILWAYS, CANALS AND TELEGRAPH LINES

Chairman: H. B. McCulloch, *Esq.*,

and

Messrs.

Barnett
Batten
Bonnier
Boucher (*Chateauguay-Huntingdon-Laprairie*)
Buchanan
Byrne
Campbell
Carrick
Carter
Cauchon
Cavers
Clark
Decore
Deschatelets
Dupuis
Ellis
Follwell
Fulton
Gagnon
Gauthier (*Lac-Saint-Jean*)
Goode
Gourd (*Chapleau*)
Green
Habel
Hahn
Hamilton (*Notre-Dame-de-Grace*)
Hamilton (*York West*)
Harrison
Healy
Herridge
Hodgson
Holowach
Hosking
Howe (*Wellington-Huron*)
James
Johnston (*Bow River*)
Kickham
Lafontaine
Langlois (*Gaspe*)
Lavigne
Leboe
McIvor
Meunier
Montgomery
Murphy (*Lambton West*)
Murphy (*Westmorland*)
Nicholson
Nickle
Nixon
Nowlan
Purdy
Ross
Small
Stanton
Viau
Villeneuve
Vincent
Weselak

R. J. Gratrix,
Clerk of the Committee.

ORDERS OF REFERENCE

WEDNESDAY, March 30, 1955.

Ordered,—That the name of Mr. Nowlan be substituted for that of Mr. Bell on the said Committee.

FRIDAY, April 1, 1955.

Ordered,—That the name of Mr. Nixon be substituted for that of Mr. Garland on the said Committee.

MONDAY, April 18, 1955.

Ordered,—That the following Bill be referred to the said Committee:

Bill No. 262, An Act to approve an agreement between The Toronto Harbour Commissioners, The Toronto Terminals Railway Company, Canadian National Railway Company and Canadian Pacific Railway Company.

TUESDAY, April 19, 1955.

Ordered,—That the following Bill be referred to the said Committee:

Bill No. 307 (Letter F-10 of the Senate), intituled: "An Act respecting The Fredericton & Grand Lake Coal & Railway Company".

Attest.

LEON J. RAYMOND,
Clerk of the House.

55719—1½

REPORTS TO THE HOUSE

MONDAY, April 4, 1955.

The Standing Committee on Railways, Canals and Telegraph Lines begs leave to present the following as its

FIFTH REPORT

On March 23, 1955, your Committee reported Bill No. 187, An Act respecting The New Westminster Harbour Commissioners, without amendment; a printed copy of the Minutes of Proceedings and Evidence adduced in respect of the said Bill is tabled herewith.

All of which is respectfully submitted.

H. B. McCULLOCH,
Chairman.

The Standing Committee on Railways, Canals and Telegraph Lines begs leave to present the following as its

SIXTH REPORT

Your Committee has considered the following Bill and has agreed to report the said Bill without amendment:

Bill No. 262, An Act to approve an agreement between The Toronto Harbour Commissioners, The Toronto Terminals Railway Company, Canadian National Railway company and Canadian Pacific Railway Company.

A copy of the Minutes of Proceedings and Evidence adduced in respect of the said Bill is tabled herewith.

All of which is respectfully submitted.

H. B. McCULLOCH,
Chairman.

(*Note: The Fourth Report dealt with a Private Bill in respect of which verbatim evidence was not recorded*)

MINUTES OF PROCEEDINGS

Room 118,
TUESDAY, April 26, 1955.

The Standing Committee on Railways, Canals and Telegraph Lines met at 10.30 o'clock a.m. this day. Mr. H. B. McCulloch, the Chairman, presided.

Members present: Messrs. Bonnier, Buchanan, Carrick, Carter, Cavers, Decore, Follwell, Gauthier (*Lac-Saint-Jean*), Goode, Gourd (*Chapleau*), Green, Hamilton (*Notre-Dame-de-Grace*), Hamilton (*York West*), Healy, Herridge, Holowach, Hosking, Howe (*Wellington-Huron*), James, Johnston (*Bow River*), Kickham, Lafontaine, Langlois (*Gaspé*), Lavigne, Leboe, McIvor, Nicholson, Nixon, Nowlan, Purdy, Small, Stanton and Villeneuve.

In attendance: Mr. A. D. McDonald, Regional Counsel for Canadian National Railway and Counsel for The Toronto Terminals Railway Company; Mr. J. A. Wright, Solicitor for Canadian Pacific Railway; Mr. E. B. Griffith, General Manager, The Toronto Harbour Commissioners; Mr. W. M. H. Colvin, Solicitor for the Toronto Harbour Commissioners; and Mr. Jacques Fortier, Chief Counsel, Department of Transport.

The Committee commenced consideration of Bill No. 262, An Act to approve an agreement between The Toronto Harbour Commissioners, The Toronto Terminals Railway Company, Canadian National Railway Company and Canadian Pacific Railway Company.

On motion of Mr. Langlois (*Gaspé*)

Ordered,—That the Committee print 750 copies in English and 200 copies in French of its Minutes of Proceedings and Evidence in respect of the said Bill.

Messrs. McDonald and Griffith were called and questioned on the various aspects of the agreement contained in the Schedule to the Bill.

After discussion, the Schedule, Schedule A. Clause 1 and the Title were severally considered and adopted.

The Bill was adopted and the Chairman ordered to report the said Bill to the House forthwith.

At 11.15 o'clock a.m., the Committee proceeded with other matters referred in respect of which verbatim evidence was not recorded.

R. J. GRATRIX,
Clerk of the Committee.

EVIDENCE

TUESDAY, April 26, 1955,
10.30 A.M.

The CHAIRMAN: Gentlemen, we have a quorum.

Mr. LANGLOIS (*Gaspe*): Mr. Chairman, I move, seconded by Mr. Cavers, that the committee print 750 copies in English and 200 copies in French of its minutes of proceedings and evidence in respect of Bill No. 262, an act to approve an agreement between The Toronto Harbour Commissioners, The Toronto Terminals Railway Company, Canadian National Railway Company and Canadian Pacific Railway Company.

The CHAIRMAN: All those in favour?

Carried.

Bill 262. We will hear from Mr. Langlois.

Mr. LANGLOIS (*Gaspe*): Mr. Chairman, I do not think that I should take the time of the committee this morning by repeating what I said in the House when the bill was introduced the other day.

I wish to state again that all we are asked to do this morning is to ratify and confirm an agreement which was entered into last October between The Toronto Harbour Commissioners and The Toronto Terminals Railway Company in connection with the rehabilitation and maintenance of some trackage in the limits in the harbour of Toronto.

We have here this morning as witnesses Mr. A. D. McDonald, Regional Counsel for the Canadian National Railways and solicitor for The Toronto Terminals Railway Company; Mr. J. A. Wright, Solicitor for The Canadian Pacific Railway; Mr. E. B. Griffith, General Manager, Toronto Harbour Commissioners; Mr. W. M. H. Colvin, Solicitor for The Toronto Harbour Commissioners; Mr. Jacques Fortier, Chief Counsel, Law Branch, Department of Transport.

I am sure that these gentlemen are at the disposal of the committee to give any information which you may wish to have.

Mr. GOODE: Mr. Chairman, before we start this, I am not too interested in the Toronto Harbours Board, but I want the gentlemen from the C.N.R. and the C.P.R. to know we are going to try and be more courteous with them than their officials have treated the House of Commons in regard to passes for the members and their wives.

Mr. HAMILTON (*York West*): I wonder if we might have first of all the yellow schedule which sets out pretty well the picture of the trackage involved?

Mr. A. D. MCDONALD (*Regional Counsel for the Canadian National Railways and Solicitor for Toronto Terminals Railways*): Yes. Would you like me to describe it?

Mr. HAMILTON (*York West*): I think it would be satisfactory if we could take a look at it. In the meantime, having had a little further information on this, do I understand that previously these tracks were completely the property of the Harbour Commission and were installed and maintained by the commission and that in fact no toll was charged to the railway companies for the use of the trackage, no toll whatsoever.

Mr. McDONALD: Yes.

Mr. HAMILTON (*York West*): And in effect as a result of this agreement there is now going to be the $1.50 or whatever it is for loading charges which is provided in here?

Mr. McDONALD: Yes. $1.50 per loaded car goes into the maintenance and rehabilitation of the tracks.

Mr. HAMILTON (*York West*): Could someone explain to us simply why, instead of entering into this type of agreement, perhaps the manager of the Harbour Commission might tell us why, the Harbour Commission simply did not go ahead and do whatever was necessary under this agreement and set a toll for it?

Mr. McDONALD: Mr. Griffith is here.

Mr. E. B. GRIFFITH (*General Manager, Toronto Harbour Commissioners*): Mr. Chairman and gentlemen, it was the feeling of the Toronto Harbour Commissioners that the railway company should share some of the cost in connection with the provision of the railway trackage to serve the harbour area. While it is true that the trackage which had been put in by the commissioners and was operated over by the two railway companies had made an important contribution to the development of the harbour area, the commissioners felt particularly in view of the development which had taken place over the last 35 or 40 years and particularly I believe in 1951 there were some 70,000 loaded cars in and out of that area, that the railway company should at least pay for the cost of the maintenance of the tracks.

In the Toronto terminal area generally the railways do provide tracks and do pay for the maintenance. In the harbour area the commissioners in order that there could be free inter-switching available to the industry on the waterfront for both the two trans-continental railway companies had installed the tracks and up until that time were maintaining them. Negotiations took place with the railway companies from the point of view of the railway companies undertaking the cost of maintenance and ultimately to provide a reasonable return to the commissioners for their capital investment. As a result of those negotiations this particular method of arriving at the cost of paying for the cost and maintenance was arrived at.

One further thing is that the commissioners were faced with a major rehabilitation program which was indicated as the agreement states to be some $500,000 over a 10 year period. The cost will be spread over that period and the $1.50 per car was arrived at as a reasonable amount to pay for not only the maintenance but also the rehabilitation program.

It is not anticipated, Mr. Chairman, that there is likely to be any large return to the commissioners within that 10 year period, but as stated in the agreement the intention is to cover those two items and eventually a reasonable return for our capital investment. That is, the trackage in the harbour would be from a railway point of view in the same position as that elsewhere but the complete ownership remains with the commission and all the rights and powers that they had prior to the entering into of this agreement remain with them.

Mr. CAVERS: What is the extent of the trackage?

Mr. GRIFFITH: Some 33 miles of trackage.

Mr. HAMILTON: I assume you had in mind that the railways were probably in a better position physically to extend and maintain this trackage?

Mr. GRIFFITH: There was no doubt in our minds that the railway companies were far better qualified from a point of view of experienced labour and equipment to carry out the maintenance and rehabilitation program. In addi-

tion, there was the question of the advantages of mass purchasing through the railway companies which is not available to us. Not only would this agreement relieve the commissioners of this expense but should also keep it to a minimum amount.

From the point of view of the tenants on the waterfront while the maintenance of the sidings will be done at the request of the tenants through us to the railway company the cost to the tenants of construction, maintenance and rehabilitation of their sidings should be less as a result of the railway companies doing the work.

Mr. HAMILTON (*York West*): There will be a second point in that under this agreement the railways provide the capital outlay as well which frees the commission from that?

Mr. GRIFFITH: Only in so far as rehabilitation work is concerned. For new extensions the harbour Commissioners will continue to pay for them as required.

Mr. HAMILTON: There are two other points in connection with the extensions or rehabilitation of trackage. Supposing the commissioners decide that a particular area is going to require trackage and they are going to open it up wishing to foresee the development there, say we want to provide trackage area, who makes the decision? Is the commission enabled to say you will put the tracks down here; or is the railway in a position to say no we will not; or is there some arbitration provision to settle it?

Mr. GRIFFITH: If the commissioners wish to have additional trackage constructed they would request the Toronto Terminals Railway Company to do the work at the Commissioners expense. If the railways wish to have some extension constructed which the commissioners are opposed to—this is a situation which we cannot foresee at this time—then there is a provision for arbitration in order that an arbitrary action cannot be taken on the part of our board to stifle proper railway development in the harbour. Such seems impossible because today we are an ocean port, will be a greater ocean port in the future and are well aware of the fact that we will have to have proper railway facilities for that purpose.

Mr. HAMILTON (*York West*): What would be the position if the commission should determine that the trackage was in very bad state of repair. There may be some criticism about that. What happens then? Are they empowered to demand from the terminal company makes repairs to trackage?

Mr. GRIFFITH: Yes. There is a rehabilitation program which has been worked out between the railway companies and ourselves.

Mr. HAMILTON (*York West*): In connection with that, I notice in one instance the provision for disposing of certain surplus materials would be done by the Terminal Railway Company and in the other instance apparently the commission is to dispose of it. Is there any particular reason why there is a differentiation?

Mr. GRIFFITH: Yes. In connection with the rehabilitation program there will be a major replacement of 80 pound rail by 100 pound rail by the Toronto Railway Terminal Company. At the time of the negotiations—and it still applies today—we were able to obtain a better scrap price in connection with the trackage to be replaced than the price we could have obtained through the railway companies. Therefore, we had put into the agreement the right for us to sell the replaced material on an as is where is basis at the site of the tracks. In connection with the maintenance, once the rehabilitation program has been completed there would be nominal replacement. Perhaps it would be one section of rail in one location one month and a x switch in another location in another month. It was not worth our while to deal with small individual items and the railway companies agreed to dispose of them for us.

Mr. HAMILTON (*York West*): I have just one additional question before we go into the schedule. I think nearly everyone in Toronto now is very cognizant of the problems of traffic. Perhaps this is not in order in this discussion, but the rails laid here of course cross some of our main streets. As the situation exists now, does the commission have some right to regulate switching or times of switching in this area, and the crossing of cars over the main thoroughfares, and if so under the agreement does it still have those rights?

Mr. GRIFFITH: That right rests with the Board of Transport Commissioners. The commissioners consent to an application to the Board of Transport Commissioners for an operating order over their tracks by the two railway companies and the actual conditions of operation will be set by the Board of Transport Commissioners. There is an arrangement which has been reached in connection with the Fleet Street crossing that only perishables will be moved across that crossing during rush hours.

Mr. HAMILTON (*York West*): Only perishables?

Mr. GRIFFITH: Yes.

Mr. HAMILTON (*York West*): In connection with that same problem does your agreement constitute any obstacle or does it provide for any contribution on grade separations if necessary on a thoroughfare such as Fleet Street?

Mr. GRIFFITH: In connection with grade separation, Mr. Chairman, all that the agreement states is that the railway companies will be in no different position as a result of entering into the agreement than they were previously. If there was a liability on the railway companies it still exists. If the Board of Transport Commissioners were to place a liability, it would still apply.

Mr. HAMILTON (*York West*): A practical result of your answer then is that not having owned this trackage before they ordinarily would not be a contributing party to any grade separation as they would be where they own their own trackage?

Mr. GRIFFITH: I would not want to answer that specifically. There might be a slight difference of opinion between the railway companies and ourselves as to the liabilities.

Mr. HAMILTON (*York West*): Does this provide in general the trackage which the commission decided is very essential for the development of the port as a seaway port?

Mr. GRIFFITH: As of the time of the signing of the agreement additional sorting yard accommodation was provided, which both the railway companies and ourselves agreed was essential to give proper service in the harbour area. Since the signing of the agreement, we have had further talks with the railway companies and our engineers are meeting to discuss a possible further expansion as a result of the anticipated effects from the seaway.

Mr. HAMILTON (*York West*): It seems to me that this agreement almost constitutes the railways lessees. Is there any thought given to charging them property taxes?

Mr. GRIFFITH: No sir. The agreement was very carefully drawn, in order to avoid any question of leasing or licensing. The sole purpose of the negotiations between the commissioners and the railway companies was to have the railway companies take over the cost of the maintenance of the tracks which at that particular time the commissioners felt was only just and equitable. It was not to enter into a leasing arrangement. We had no desire to do that. The commissioners wish to maintain full control and ownership of their tracks and wanted to be assured that there would be no inter-switching charge between the two railways in the harbour area.

Mr. HAMILTON (*York West*): Is the fact that the tenant gets this trackage to his doorstep taken into account in the setting of municipal taxes? Do you know if there is any yardstick for measuring that?

Mr. GRIFFITH: It is taken into consideration in connection with the land value upon which the rental is based by The Toronto Harbours Commission. This affects the taxes in so far as the city relates the assessment to the land value referred to in the lease. To what extent this is done, I can not answer.

Mr. CAVERS: From your experience in the past what would you estimate would be the income credited to the commissioner's account on a charge of $1.50 per car load?

Mr. GRIFFITH: If I remember correctly I think it was in 1951, or 1950 when a count was taken of 70,000 loaded cars which would be $105,000. We anticipate perhaps by next year that that might be raised to 80,000 which would be $120,000. When this agreement was entered into we felt there would be increased traffic movement in and out of the harbour area rather than a decrease.

Mr. GOODE: Coming from the west I do not know too much about this. Who are The Toronto Terminals Railway Company? Are they owned by the national railways, and do they just operate on harbour property?

Mr. MCDONALD: No. The Toronto Terminals Railway Company was incorporated by statute of Canada in 1906 to acquire lands and to construct and operate a passenger and freight terminal in the city of Toronto. The stock of the railway is owned 50 per cent by the Canadian Pacific Railway and 50 per cent by the Canadian National Railway. They own Union Station in Toronto and the tracks and lands in that area. They maintain the facilities but they do not operate any motive power.

Mr. SMALL: Will this affect the property east of that? The area east of Cherry Street?

Mr. MCDONALD: No. This agreement extends out as far as Leslie Street.

Mr. SMALL: I would like to ask Mr. Griffith this question. In respect to the siding on the branch lines there on the Fleet Street property there are about 3 sidings which go across, one at Bathurst Street and another down by Cherry Street. There is not so much difficulty there, but when you get east of that and turn around between Cherry Street and along Keating Street, there are about 7 different sidings where difficulty arises and there was one put in last year to take care of the Liquor Control Board warehouse. I do not know if that could be regarded as perishable goods; when it is opened it does not last long. What control has the harbour of the city of Toronto over putting in new extensions out there? That is the most congested point in the whole route.

Mr. GRIFFITH: In answer to the question may I first of all refer to the movement of perishable goods. I was only referring to the crossing of Fleet Street at Bathurst. Industry applies to the commission for a siding to connect with the main lead track which siding has to cross the city street. The commissioners apply to the city of Toronto for permission to cross the street and the city grants their approval under various conditions included in which is the responsibility for the maintenance of the crossing which is passed on to the Lessee. Application is then made by us to the Board of Transport Commissioners for authority to construct. It is later followed by an application from the two railway companies for authority to operate over the tracks. Some 5 or 6 years ago the commissioners prepared a plan which would remove all but 2 crossings on Keating Street; one would be immediately to the east of the Don River Bridge leading into the commissioners' sorting yard and the other at the far end near Leslie Street. The railway tracks would be con-

structed on the north and south side of newly paved Keating Street and thus remove all but two of the crossings. That was approved by the city at an estimated cost of $\frac{3}{4}$ million and put on their list of priority works. This work has not yet been commenced but is part of the eastern section of the waterfront expressway.

Mr. SMALL: Most of the trouble happens in there between the roadway between Carlaw Avenue and the Don where it cuts in by the Consumers Gas Company. It happens not only in rush hours but any time during the day.

Mr. GRIFFITH: Yes. The plan for the improvement of that situation has been approved by city council and is now incorporated in the metro expressway.

Mr. SMALL: They are going to remove them?

Mr. GRIFFITH: Yes, with only the two crossings of Keating Street.

Mr. JOHNSTON (*Bow River*): I would like to ask a question about The Toronto Terminals Railway Company. Is there a similar organization in other large cities such as, for instance, Montreal?

Mr. MCDONALD: No.

Mr. JOHNSTON (*Bow River*): Is there one in Ottawa?

Mr. MCDONALD: We have the Union Station in Ottawa. There is no separate company incorporated for that but we have a joint agreement between the Canadian Pacific Railway and the Canadian National Railway for the operation of the Union Station in Ottawa.

Mr. JOHNSTON (*Bow River*): This Toronto Terminals Railway Company is owned completely by the two major railways?

Mr. MCDONALD: Yes.

Mr. JOHNSTON (*Bow River*): How do they derive their revenue for the operation of this company?

Mr. MCDONALD: In the first place, the two railways put up the capital then they keep account of the number of cars of each company using that terminal each month and the expenses are divided on that basis. It never shows a profit; it just operates at cost, and if the expenses of "X" dollars for the month appear and each company had so many cars it is divided among them and they are billed for it.

Mr. JOHNSTON (*Bow River*): Is that the same type of arrangement for other places where they have this type of terminal railway company?

Mr. MCDONALD: This is the only place where I can think of that we have a joint company. I think there is a joint company operating the hotel in Vancouver.

Mr. CAVERS: Yes.

Mr. JOHNSTON (*Bow River*): Is the purpose of the company just a convenience for the two railways to operate over the same rails?

Mr. MCDONALD: Yes.

Mr. JOHNSTON (*Bow River*): It only exists where they have union stations or duplications on the same tracks?

Mr. MCDONALD: Yes.

Mr. HAMILTON (*York West*): I notice that one point on the blue plan dealing with the Rees Street yards seems interesting. I am not too good on the scales here, but it would appear that the trackage provided for covers the Fleet Street frontage almost from Spadina Avenue to Rees Street.

Mr. GRIFFITH: Yes.

Mr. HAMILTON (*York West*): Is that equitable use of a very valuable frontage there? I am sure that property is regarded very highly by the commission as far as value is concerned. Is there no other place where trackage might be put; no room anywhere else for extension of yard space than along the Fleet Street frontage? It does go right along the south side of Fleet Street?

Mr. GRIFFITH: I cannot answer that question, Mr. Chairman. In this proposed layout the commissioners have agreed to set aside this area. These plans are the proposed layout and they may be materially altered by the time the actual construction takes place.

Mr. HAMILTON (*York West*): As it stands now, and if the plan is pursued, it indicates utilization of practically all the frontage on the south side of Fleet Street from Spadina to Rees?

Mr. GRIFFITH: Yes. I might say though that while the expressway plans have not been finalized in connection with the central section of the city even the plans put forward by the Toronto Harbour Commissioners would be utilizing some of that land at the north side of this sorting yard which would leave a depth of land of very little commercial value for disposal.

Mr. HAMILTON (*York West*): That is a very good explanation. This would, on the plans for highway development in the area, be the area where the descending ramp might come down?

Mr. GRIFFITH: Yes. There is the equivalent of Fleet Street or existing grade and the elevated structure ramping down east of Spadina avenue. In our plans we have attempted to protect as far as possible the central section of the waterfront. This means widening of Fleet Street and utilizing the northerly part of those lands.

Mr. HAMILTON (*York West*): You are going to have to provide almost two roads for the traffic, one continuing on the level and the other going up a ramp.

Mr. GRIFFITH: Yes.

Mr. HAMILTON (*York West*): Then that is the explanation dealing with that frontage. Otherwise I would think that was very valuable frontage. In connection with those plans I understand that there is a freezing order by metropolitan Toronto on sales of property in this particular area because of that highway extension. Does that order also apply to extension of trackage under this agreement? Are you permitted extensions or widening of facilities across any other road?

Mr. GRIFFITH: Mr. Chairman, the metropolitan corporation requested the Toronto Harbour Commissioners' co-operation by withholding from the market lands which could be affected by the expressway in order that they would not have to buy out a new tenants' interest and pay for new buildings which had been constructed. The Commissioners being a creature of the government of Canada and not of the province of Ontario, agreed to co-operate and as a result have withheld certain lands. This in no way affects our development south of Queen's Quay in connection with the new marine terminal we have built for the overseas traffic. As to the Rees Street yard, if the railway companies were to come to us today and state that they wanted additional trackage we would consult with the consulting engineers of metropolitan Toronto to see to what extent they actually required additional lands on the south side of Fleet Street.

Mr. SMALL: Is there a road which goes along south of Fleet Street that services those roads?

Mr. GRIFFITH: Yes, from Spadina Avenue to Front Street at Queen's Quay.

Mr. SMALL: There are two lines of track?

Mr. GRIFFITH: One line.

Mr. SMALL: They still have to service those wharfs?

Mr. GRIFFITH: Yes. We are putting in additional tracks now in connection with the marine terminal.

The CHAIRMAN: Are there any other questions?

Mr. HOSKING: There is one question on clause 18, page 9. It says: "This agreement shall come into force at 12.01 a.m. eastern standard time, on the 1st day of November, 1954." Is 1954 correct or should it be 1955?

Mr. MCDONALD: 1954 is correct.

Mr. HOSKING: Why is it 1954?

Mr. MCDONALD: The agreement is signed and we have been operating since that time.

Mr. HAMILTON: I do not think if we have asked if the $1.50 is a usual or reasonable charge?

Mr. MCDONALD: They took the traffic for 1951 which was over 70,000 cars and that gave them about $105,000 and they expected that to go up and they say that the maintenance will be so much and the rehabilitation so much and that should look after it over a 10 year period. They worked backwards to get the $1.50.

Mr. GREEN: What was the number of cars in 1954?

Mr. MCDONALD: I do not have them for 1954 but they would run somewhat between 70 and 80,000 cars for the 2 railways.

Mr. GREEN: There is not very much of an increase?

Mr. MCDONALD: No. 1954 was the year where the whole traffic was down about 10 per cent. We expect 1955 will be a better year.

The CHAIRMAN: Shall the schedule carry?

Carried.

Shall schedule "A" carry?

Carried.

Shall clause 1 carry?

Carried.

Shall the title carry?

Carried.

Shall the bill carry?

Carried.

Shall I report the bill without amendment?

Carried.

Mr. CAVERS: Mr. Chairman, I am sure that we would like to extend our thanks to the gentlemen of The Toronto Terminals Railway Company, Mr. McDonald and the other officials, and Mr. Griffith and the other officials of the Toronto Harbour Commissioners, and the C.P.R. railway who have been here today and who have given us such a thorough explanation of this bill.

Mr. HAMILTON (*York West*): I think we have been very fortunate in Toronto in having The Toronto Harbour Commissioners taking care of things, looking into the future and studying to provide for facilities which we really feel are going to be required with the tremendous expansion which is taking place. They have given every indication of having that future development in mind with the planning they have carried out. I think they are to be congratulated.

The CHAIRMAN: The meeting will now adjourn.

HOUSE OF COMMONS

Second Session—Twenty-second Parliament

1955

STANDING COMMITTEE

ON

RAILWAYS, CANALS AND TELEGRAPH LINES

Chairman: H. B. McCULLOCH, ESQ.

MINUTES OF PROCEEDINGS AND EVIDENCE

No. 3

BILL 259

An Act to amend the Railway Act

THURSDAY, MAY 5, 1955

TUESDAY, MAY 10, 1955

WITNESSES:

Mr. R. Kerr, General Counsel, Board of Transport Commissioners, Mr. K. D. Spence, Commission Counsel, Canadian Pacific Railway Company; Mr. J. W. G. Macdougall, Commission Counsel, Canadian National Railway Company; Mr. Norman Munnoch, General Counsel, Bell Telephone Company.

EDMOND CLOUTIER, C.M.G., O.A., D.S.P.
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1955.

57382—1

STANDING COMMITTEE

ON

RAILWAYS, CANALS AND TELEGRAPH LINES

Chairman: H. B. McCulloch, Esq.,

and

Messrs.

Barnett
Batten
Bonnier
Boucher (*Chateauguay-Huntingdon-Laprairie*)
Buchanan
Byrne
Campbell
Carrick
Carter
Cauchon
Cavers
Clark
Decore
Deschatelets
Dupuis
Ellis
Follwell
Gagnon
Gauthier (*Lac-Saint-Jean*)
Goode
Gourd (*Chapleau*)
Green
Habel
Hahn
Hamilton (*Notre-Dame-de-Grace*)
Hamilton (*York West*)
Harrison
Healy
Herridge
Hodgson
Holowach
Hosking
Howe (*Wellington-Huron*)
James
Johnston (*Bow River*)
Kickham
Lafontaine
Langlois (*Gaspe*)
Lavigne
Leboe
McIvor
Meunier
Montgomery
Murphy (*Lambton West*)
Murphy (*Westmorland*)
Nesbitt
Nicholson
Nickle
Nixon
Nowlan
Purdy
Ross
Small
Stanton
Viau
Villeneuve
Vincent
Weselak

E. W. Innes,
Clerk of the Committee.

ORDERS OF REFERENCE

MONDAY, April 18, 1955.

Ordered,—That the following Bill be referred to the said Committee:
Bill No. 259, An Act to amend the Railway Act.

MONDAY, May 2, 1955.

Ordered,—That the name of Mr. Nesbitt be substituted for that of Mr. Fulton on the said Committee.

Attest.

Leon J. Raymond,
Clerk of the House.

57382—1½

REPORT TO THE HOUSE

TUESDAY, May 10, 1955.

The Standing Committee on Railways, Canals and Telegraph Lines begs leave to present the following as its

EIGHTH REPORT

Your Committee has considered Bill No. 259, An Act to amend the Railway Act, and has agreed to report it without amendment.

A copy of the evidence adduced in respect of the said bill is appended.

All of which is respectfully submitted.

H. B. McCULLOCH,
Chairman.

NOTE: *The Seventh Report dealt with a Private Bill in respect of which verbatim evidence was not recorded.*

MINUTES OF PROCEEDINGS

THURSDAY, May 5, 1955.

The Standing Committee on Railways, Canals and Telegraph Lines met at 10.30 o'clock a.m. The Chairman, Mr. H. B. McCulloch, presided.

Members present: Messrs. Barnett, Bonnier, Boucher *(Chateauguay-Huntingdon-Laprairie)*, Buchanan, Byrne, Carrick, Carter, Cauchon, Cavers, Decore, Deschatelets, Ellis, Follwell, Gauthier *(Lake St. John)*, Gourd *(Chapleau)*, Green, Hahn, Hamilton *(York West)*, Harrison, Hodgson, Hosking, Howe *(Wellington-Huron)*, James, Johnston *(Bow River)*, Lafontaine, Langlois *(Gaspé)*, Lavigne, McCulloch *(Pictou)*, Murphy *(Lambton West)*, Murphy *(Westmorland)*, Nicholson, Nesbitt, Purdy, Small, Stanton, Villeneuve and Weselak.

In attendance: Honourable George C. Marler, Minister of Transport; Mr. F. T. Collins, Administrative Officer, Department of Transport.

From the Board of Transport Commissioners: Mr. R. Kerr, General Counsel; Mr. Kells Hall, Director and Mr. J. E. Dumontier, Assistant Director, both of the Engineering Branch.

From the Canadian Pacific Railway Company: Mr. K. D. Spence, Commission Counsel, Mr. G. E. Shaw, Engineer of Bridges, and Mr. R. C. Steele, Engineer of Signals.

From the Canadian National Railways Company: Mr. J. W. G. Macdougall, Commission Counsel.

From the Bell Telephone Company: Mr. Norman Munnoch, General Counsel, and Mr. R. Merriam, Counsel.

The Committee proceeded to the consideration of Bill No. 259, An Act to amend the Railway Act.

On motion of Mr. Byrne,

Resolved,—That the Committee print 750 copies in English and 300 copies in French of its Minutes and Proceedings and Evidence in respect of Bill No. 259, An Act to amend the Railway Act.

Clause 1 of the Bill was called and the Minister of Transport made a brief statement.

Mr. Kerr was called, outlined the purpose of the Bill, was questioned thereon and retired.

Mr. Spence outlined the stand of the Canadian Pacific Railway with respect to the proposed changes to the Railway Act. He submitted tables showing:

(1) Estimated cost of Maintenance and Operation of Highway Crossing Protection Devices for 1954 on C.P.R. lines;

(2) Statement of C.P.R. Expenditures for Grade Separation Projects for Five-Year Period, 1950 to 1954 inclusive.

At 1.00 o'clock p.m., the Committee adjourned until 3.30 o'clock p.m. this day.

AFTERNOON SITTING

The Committee resumed at 3.30 o'clock p.m., the Chairman, Mr. H. B. McCulloch, presiding.

Members present: Messrs. Barnett, Batten, Bonnier, Byrne, Campbell, Carrick, Carter, Cavers, Deschatelets, Ellis, Follwell, Gauthier (*Lac-Saint-Jean*), Gourd (*Chapleau*), Green, Hahn, Hamilton (*York West*), Harrison, Hodgson, Hosking, James, Lafontaine, Langlois (*Gaspe*), Lavigne, Leboe, McCulloch (*Pictou*), Nicholson, Nixon, Purdy, Small, Stanton, Villeneuve, and Weselak.

In attendance: Same as at morning sitting.

Mr. Spence was questioned regarding his statement made at the morning sitting, and retired.

Mr. Macdougall explained the position of the Canadian National Railway Company respecting the bill under study; he proposed certain amendments to the Railway Act and, having been questioned thereon, he was retired.

Mr. Munnoch made a statement on behalf of the Bell Telephone Company; he presented a proposed amendment to the Act, and was questioned thereon.

At 6.00 o'clock p.m., the Committee adjourned until 8.00 o'clock p.m. this day.

EVENING SITTING

The Committee resumed at 8.00 o'clock p.m., the Chairman, Mr. H. B. McCulloch, presiding.

Members present: Messrs. Barnett, Batten, Bonnier, Campbell, Carrick, Carter, Cavers, Deschatelets, Gauthier (*Lac-Saint-Jean*), Gourd (*Chapleau*), Green, Hamilton (*York West*), Herridge, Hosking, Howe (*Wellington-Huron*), James, Johnston (*Bow River*), Kickham, Lafontaine, Langlois (*Gaspe*), Lavigne, Leboe, McCulloch (*Pictou*), McIvor, Montgomery, Nicholson, Nixon, Purdy, Ross, Small, Villeneuve, and Weselak.

In attendance: Same as at morning sitting.

Mr. Munnoch completed his presentation; he was questioned and retired.

Mr. Spence was recalled; he spoke briefly and was retired.

Mr. Munnoch made a further brief statement and was retired.

At 9.10 o'clock p.m., the Committee adjourned to the call of the Chair.

TUESDAY, May 10, 1955.

The Standing Committee on Railways, Canals and Telegraph Lines met at 10.30 o'clock a.m. The Chairman, Mr. H. B. McCulloch, presided.

Members present: Messrs. Barnett, Batten, Bonnier, Byrne, Campbell, Carrick, Deschatelets, Gauthier (*Lac-Saint-Jean*), Goode, Gourd (*Chapleau*), Green, Hahn, Harrison, Herridge, Howe (*Wellington-Huron*), Johnston (*Bow River*), Kickham, Lafontaine, Langlois (*Gaspe*), Lavigne, Leboe, McCulloch (*Pictou*), McIvor, Nicholson, Small, Stanton, Viau, Villeneuve, and Weselak.

In attendance: Honourable George C. Marler, Minister of Transport.

From the Board of Transport Commissioners: Mr. R. Kerr, General Counsel; Mr. Kells Hall, Director and Mr. J. E. Dumontier, Assistant Director, both of the Engineering Branch.

From the Bell Telephone Company: Mr. R. Merriam, Counsel.

The Committee resumed consideration of Bill No. 259, An Act to amend the Railway Act.

Clauses 1 to 3 inclusive were adopted.

The following suggested amendment to the Act was considered:

Section 416 of the said Act is amended by adding thereto the following subsection:

"(2) Any person who, in using any highway crossing at rail level for the purpose of passing on foot or in any vehicle along such highway across the railway, disregards signs, signals, or other protective devices erected or otherwise provided by the Company pursuant to Order of the Board, is liable, on summary conviction, to a penalty not exceeding twenty-five dollars."

Agreed: That a communication be sent to each of the Provincial Ministers of Highways, asking him to consider whether existing provincial legislation deters highway vehicles from crossing railways without proper regard for signs, signals and safety devices.

Several other suggestions were also considered.

The Preamble, the Title and the Bill were adopted.

The Chairman was ordered to report the Bill, without amendment, to the House.

At 11.35 o'clock a.m., the Committee adjourned until 10.00 o'clock a.m., Thursday, May 12.

E. W. Innes,
Clerk of the Committee.

EVIDENCE

MAY 5, 1955
10.40 a.m.

The CHAIRMAN: Order, gentlemen. We have a quorum. Bill No. 259, an Act to amend the Railway Act. It is customary to have a certain amount of the evidence printed.

Mr. BYRNE: I move that the committee print 750 copies in english and 200 copies in french of its minutes of proceedings and evidence in respect of Bill No. 259, an Act to amend the Railway Act.

The CHAIRMAN: All those in favour? Against?

Carried.

The CHAIRMAN: Shall clause 1 be carried?

Mr. GREENE: Are there any people here who wish to make representations on this bill?

The CHAIRMAN: I think we shall call on Mr. Kerr of the Board of Transport Commission. Has the Hon. Minister anything to say?

Hon. Mr. MARLER: So far as this piece of legislation is concerned, I thought it would be helpful to the committee if we had two or three experts to answer any questions which members of the committee might wish to ask concerning the legislation itself and concerning the administration of the grade crossing fund in the past, and I therefore have Mr. Kerr who is counsel for the Board of Transport Commissioners; Mr. Hall who is an engineer and a member of the staff of the board and who has had personal and particular familiarity with the operation of the grade crossing fund, and also Mr. George Scott of the Department of Transport who has a good deal to do with the drafting and preparation of the report of the board with which I think members of the committee are already familiar. I am quite sure that if there are any questions which members of the committee would like to ask, Mr. Kerr and Mr. Hall would be glad to answer them, and that if Mr. Scott is required to supplement those answers he will be very glad to do so.

Mr. GOODE: Before any evidence is taken, Mr. Chairman, may I say that I have to leave for the broadcasting committee at five minutes to eleven, and if I do leave the room it is not for disrespect to yourself or to the Hon. Minister but for that reason.

Mr. GREENE: Can we have an explanation of the bill from the Board of Transport Commission?

The CHAIRMAN: I will ask Mr. Kerr to come forward.

Mr. KERR: Mr. Chairman, this bill is to implement certain recommendations made by the Board of Transport Commissioners. As the Hon. Minister has already said, the board was instructed to conduct an enquiry into the railway highway crossing problem in Canada by order in council No. PC 1953/52 dated January 14, 1953, and the board held public hearings all across Canada and heard briefs and evidence from many interested parties including the provincial governments and major cities.

The result was that the board made its report and made certain recommendations which are found at page 72 of its report and this bill is designed to implement those recommendations with the exception of one. Do you wish me to deal with the individual sections?

The first section of the bill makes a slight change in section 262 of the Railway Act. That section had in it the words "subject to the provisions of section 263". Now by section 2 of the bill section 263 is being repealed so consequently those words "subject to the provisions of section 263" are no longer appropriate.

Section two of the bill repeals section 263. That section 263 is the section which provides that:

> "In any case where a railway is constructed after the 19th day of May, 1909, the company shall, at its own cost and expense, unless and except as otherwise provided by agreement approved by the Board ... provide, subject to the order of the Board, all protection, safety and convenience for the public in respect of any crossing of highway by the railway".

There is no similar provision in respect of railways constructed prior to 1909 or highways constructed across a railway prior or subsequent to 1909, and the repeal of section 263 will remove these distinctions and give the board power to apportion the cost of protection at its discretion.

Section three of the bill deals with what is generally called the grade crossing section of the Railway Act—section 265. The principal change in subsection one is to remove the distinctions in the old subsection between crossings constructed before April 1909 and afterwards and to permit the fund to be also applied for reconstruction and improvement of presently existing subways and other grade separations which are inadequate because of their location, design or size, for highway traffic. As you all know a great many old subways and bridges exist which were built in the 1880's, or many years ago, and many of these are inadequate at the present time. Formerly no grant could be made from the grade crossing fund to the improvement or reconstruction of such structures because the section was limited to the improvements and protection of level crossings. This amendment will allow monies to be applied for the reconstruction of these structures. Subsection two increases the amount that can be applied out of the fund. At the present time the amount is limited in respect of a level crossing to 40 per cent of the actual cost of the protection, with a maximum of $150,000.

The new subsection will increase the percentage from 40 to 60 per cent and will increase the maximum from $150,000 to $300,000. And clause B will enable the board to apply a maximum of 30 per cent of the cost of reconstruction of subways, which I referred to, or bridges, with a maximum of $150,000.

Subsection 4 is merely a section which will enable the money in the fund to be used in accordance with the new provisions. Formerly there were certain provisions attached to the granting of the money which was put in the fund. For instance, it was limited to level crossings. But now, since the purposes of the fund are being broadened out, it is necessary to remove those former restrictions and to allow the money in the fund to be used for whatever work is in accordance with the new provisions.

Subsection 5 provides for an increase in the annual appropriation by parliament. The present appropriation is $1 million, and the board's recommendation which is implemented here, is to increase this amount to $5 million until parliament provides otherwise.

It maybe that with experience some different amount will be considered more appropriate than $5 million. But meanwhile the annual appropriation, if this subsection is passed, will be $5 million.

There is also a provision that if the uncommitted amount in the fund at the beginning of any fiscal year is more than $2 million, the amount of the appropriation of that year shall be such amount as, with that balance, will bring the fund up to $7 million.

It is possible that some year the whole amount of $5 million may not be used, and if so, it may not be necessary to have another $5 million the following year.

Mr. SMALL: Is there any reason why that money cannot be left in the fund, and not put a limit on it?

Mr. KERR: The fund is accumulative from year to year; there may be more there in a particular year than is necessary for the forseeable future for a year or so.

Subsection 6 is a new section which limits the amount that may be applied from the fund, to work on crossings which have been in existence for three years. The reason for that subsection is that the present Act, all down the years, has limited the money from the fund to the protection of exising level crossings, and the Board has consistently refused to authorize a new level crossing and immediately the crossing is completed make a grant from the fund, for the board has always felt that to do so would not be in accordance with the spirit of the legislation, because the legislation dealt with existing level crossings, and the board felt that a brand-new crossing was not within the spirit of that legislation. The board's practice is that when a party establishes a new crossing, be it a railway company, a municipality or a province, the cost of the new crossing is put on the party which establishes it and the board has felt—and this subsection carries into effect its feeling in that respect—that when a party establishes a new crossing it should bear the cost of any protection that is necessary at the time the crossing is built and for a reasonable period thereafter and that three years is a reasonable period. At the end of three years the board can apportion the cost of protection as it deems fit, and of course within that three years the board can also order protection, but if protection is ordered within that three years the board feels the cost should be on the party that establishes the crossing.

Subsection 7 is also a new section, and perhaps it is only a clarification of what the board can do anyway. There will be a great many works in progress at the time this bill becomes law. Some of them will have been authorized and not started, others will be partially completed, and others will be fully completed, but the amount of the grant from the fund will not have been paid, and this provision is to give the board express authority to deal with such cases. If the amount has been fully paid in respect to past crossings where the protection was installed two years ago or ten years ago, the intention is that these past transactions will not be re-opened to take advantage of the increased percentages in the fund, but that when works are in progress or the grant from the fund is not completely paid the board can take a look at it and increase the 40 per cent to 60 per cent, or make such grant as it feels is proper within the provisions of the section.

Subsection 8 is also a new subsection, and there was a very great demand for something in the nature of this subsection. At the present time the law is that if a new crossing is constructed across a railway, no grant can be made from the fund unless it closes an existing level crossing, and the board has found in quite a few cases that new highways either shortening present highways, or completely new highways joining up with other highways, take nearly all the traffic from one or two level crossings, and the board has felt and certainly the municipalities and provincial authorities agree, that where that situation exists and nearly all the traffic is taken from an existing highway crossing, or two or three highway crossings, the board should be enabled to make a grant towards the new grade separation. It has sometimes happened that the old crossings must be left open for the convenience of a few people who live in the neighbourhood for otherwise the people who live there could perhaps not get across the railway track. The board has felt and has recommended that the leaving of the crossings open for these

few pecple should not prevent a grant being made towards the new grade separation which will in effect divert practically all the traffic from the old crossing.

Subsection 9 has only a very slight change in that it adds the words "authorized". Sometimes the board's order is in the form of an authorization rather than a direct mandatory order and this amendment is merely to cover a case where the board authorizes a municipal corporation, for instance, to establish a new crossing. It does not order the city or town to establish the crossing but authorizes it and in such cases this section covers that type of order.

The CHAIRMAN: Thank you, Mr. Kerr.

Mr. SMALL: In respect to that the section I was asking about relates to the limitation of $7 million a year. That is a tendency to question the fund limit. Why can it not be left opened and accumulative?

Mr. KERR: The moneys put in the fund, this year, for instance, if they are not spent will stay there and will build up.

Mr. SMALL: You are putting a limitation of $7 million on it. The fund has not been expended in any one year. You are allowed to increase it to $7 million. Why not leave it open to accumulate and some year you can spend more than $7 million if necessary.

Hon. Mr. MARLER: It seems elementary that if you have more than $3 million in the fund after all operations of one year it would follow that the expenditures out of the fund would be probably something less than $3 million otherwise there would not be any surplus. What Mr. Small is suggesting is that although the board could not spend more than $3 million in one year it should expect to spend more than $7 million in the next year and it seems that that is an illogical approach to the problem. Where you say to the board "here is $5 million" and the board is unable to spend more than $3 million, I think it is rather difficult to justify taking out of taxes an additional amount in excess of $7 million when the board has not been able to spend all that was given in the previous year. It may be a matter of opinion, but it seems to me that if the Board can spend up to $7 million in one year that is an added provision and I would be personally unwilling to provide for a larger expenditure until we had an opportunity of reviewing the situation over a period of time.

Mr. NESBITT: Mr. Chairman, could any members of the board tell us exactly how proceedings are initiated to get help from this fund. There seems to be some difference of opinion. Are they always initiated by the municipalities or sometimes by the railways or sometimes by the board themselves?

Mr. KERR: They are initiated in those three ways. Usually they are initiated by the highway authority, for instance, the town and it is not very frequently that the railway initiates them, but they do sometimes where they are rearranging tracks. Sometimes they are initiated as a result of the board's inspection of a crossing. There may have been an accident there involving personal injury. All these accidents are investigated by the board and the board itself may feel some protection is necessary there. In that case the board usually calls a conference of the interested parties, the railway concerned and the highway authority, and draws to their attention that the board feels that some protection is necessary there. But even in those latter cases if the municipality is not prepared to go ahead and expend some money in the protection the board would look very carefully at it before it would order protection over the protests of the municipality. They are initiated in those three ways but normally, and in the great majority of the cases, they are initiated by the highway authorities.

Mr. NESBITT: The provincial highway would be the provincial government?

Mr. KERR: Yes.

Mr. NESBITT: You say that the board itself sometimes might initiate proceedings as a result of their own investigations. Do you have inspectors who go around?

Mr. KERR: Yes, there is a staff of inspectors travelling the railways and inspecting crossing all the time.

Mr. NESBITT: Do you have any other sources of acquiring information as to accidents?

Mr. KERR: The railway makes reports to the board of accidents and if it is a fatal accident the board usually receives a report of the coroner's inquest. The character of the crossing is constantly under study.

Mr. NESBITT: How would that report of the coroner's inquest get to the board?

Mr. KERR: Sometimes it is sent in by the municipalities, sometimes by boards of trade or highway safety organizations.

Mr. NESBITT: Did you say that in all cases you get the reports of these inquests?

Mr. KERR: No, but we get them quite frequently.

Mr. NESBITT: In the event that the board decided there are a certain number of accidents occurring at certain crossings—this is just a rule of thumb —as a matter of actual practice how many accidents and within what period of time would the board consider necessary they take place before action would be authorized or in some cases ordered?

Mr. KERR: I do not believe there is any such rule of thumb. Many accidents are not caused by the dangerous condition of the crossing; sometimes it is carelessness on the part of the motorist, excessive speed on his part or perhaps drunken driving. The fact that there are quite a few accidents does not of itself necessitate protection. The board just looks at each case on its merits.

Hon. Mr. MARLER: Mr. Kerr, would you explain to the committee just what accidents are required by law to be reported to the board.

Mr. KERR: Section 288 of the Railway Act is headed "Accidents" and there is a subheading "Notice to be sent to Board" and there are three subsections. Subsection 1 says:

> Every company shall, as soon as possible and immediately after the head officers of the company have received information of the occurrence upon the railway belonging to such company, of any accident, attended with personal injury to any person using the railway, or to any employee of the company, or whereby any bridge, culvert, viaduct, or tunnel on or of the railway has been broken or so damaged as to be impassable or unfit for immediate use, give notice thereof, with full particulars, to the Board.

Subsection 2 then continues:

> The conductor or other employee in charge of the train, place or structure in connection with which such accident occurred, shall as soon as possible after such accident notify the board of the same by telegraph.

Then subsection 3:

> The Board may by regulation declare the manner and form in which such information and notice shall be given and the class of accidents to which this section shall apply, and may declare any such information so given to be privileged.

Now the board has made an order requiring the railway to report any such accidents attended with personal injury.

Mr. JOHNSTON (*Bow River*): Is it not just for employees or those just riding on a train. What about others who have an accident say travelling on the highway who go across the grade and then are hit?

Mr. KERR: The order of the board really covers all collision accidents between motor vehicles and trains at a crossing attended with personal injury.

Mr. JOHNSTON (*Bow River*): But I understood the section to read that it was just those who were riding on a train or those employed by the company.

Mr. KERR: It says: "Personal injury to any person using the railway". Now, the board has made an order which requires the railways to report any accident attended with personal injury.

Mr. CARTER: I would like to ask, Mr. Chairman, who makes the final decisions as to what type of crossings should be built. Does that rest with the Board of Transport Commissioners or railway or who controls the type; I mean there are different types of crossings.

Mr. KERR: Yes sir. It is the board which determines the type of crossing and the type of protection.

Mr. CARTER: Would it be in order to ask a question about a specific crossing. I am interested in the one being built at Port-aux-Basques across the new terminals.

Mr. KERR: I am not familiar with it.

Mr. SMALL: Following up your statement in respect to your inspectors' report on the level crossings, have you a map or anything compiled. I know you must have because you list 129,316 crossings that are unprotected on the last report that you have. On that there are inspectors reports somewhere as to whether they are classified as dangerous. How many out of that number would there be in the estimation of the board or in the estimation of the inspectors which would be classified as what would be called grade separations?

Mr. J. E. DUMONTIER (*Director of Engineering, Engineering Branch, Board of Transport Commissioners for Canada*): We do not have the complete record of all the crossings in Canada. Of the crossings for which we have a record we think we could estimate about a third of them are in need of protection whether by elimination of the crossings or automatic protection. The number of grade separations I think at the present time is in the order of 5 per cent, that is about 1,500 crossings which are protected by grade separations; and protected by automatic protection or man operated gates. I think it is between 16 and 1,700, that is between 5 and 6 per cent.

Mr. FOLLWELL: Could I ask the witness what factors determine the type of protection we provide for grade crossings?

Mr. DUMONTIER: You mean between grade separation and automatic protection?

Mr. FOLLWELL: What I have in mind, Mr. Chairman, is that in my observation it would appear to me that sometimes you have gates at a crossing that do not have too much traffic, yet at a highway crossing you have only a bell or a light signal. I am wondering what factors determine the type of protection you put on any crossing?

Mr. DUMONTIER: In the cities where there is frequent movement over a crossing and in cities where there is frequent movement of trains over a crossing sometimes it is necessary to protect it by manual protection either by a watchman or a man operating a manually operated gate, but in other cases where we install automatic protection the difference we give between gates

and flashing light signals is whether it is a double track or a single track main line. We put in gates at double track main lines and flashing lights at single track main lines.

Mr. FOLLWELL: That is not always the case.

Mr. DUMONTIER: It has been in recent years the policy which is followed.

Mr. FOLLWELL: I am thinking of several crossings where there are two main line tracks by the C.N.R. and right close by is another main line of the C.P.R. railway and it is a heavily travelled highway and yet there are no gates.

Mr. DUMONTIER: That is right. There are about 350 of these crossings at double track main lines which are only protected by wigwag or light signals and which should be protected by gates. That is one of the problems we have (in mind to correct if we have sufficient funds to do it.

Mr. FOLLWELL: Then I think that the committee can understand you to say when this bill is passed and the money available you will immediately start on the job of putting in better protection?

Mr. DUMONTIER: That is the intention, sir.

Mr. HOSKING: Previously you said that the Board of Transport Commissioners could order the municipalities to supply protection. Is there any limit to what the cost is to a municipality. I understand that the municipality or a corporation if it wants the Board of Transport Commissioners to do a job that the limit if $150,000 for the crossing, or ⅓ or which ever is higher.

Mr. KERR: That is the limit of the grant from the fund for the protection ordered of gates or even a subway which would cost $1 million. All the board can contribute under the Act is the maximum of $150,000.

Mr. HOSKING: If they want the municipality to do this do they still just pay the $150,000 or pay their third, or does the limit of $150,000 then apply to the municipality?

Mr. KERR: If the total cost were $1 million the board can only grant a maximum of $150,000 and the balance the board can order to be paid by the interested parties, which may be divided equally between the railway and the municipality or the board can apportion the remainder after the grant from the fund among the interested parties as the board sees fit.

Mr. HOSKING: The board is separate from the railways. I was thinking that this grant was actually a grant from the railways, but the board is separate and they apportion the responsibilities between the railway and the municipality.

Mr. KERR: Yes. There is a provision in the Railway Act, section 39. I will read it:

> When the board, in the exercise of any power vested in it, in and by any order directs or permits any structure, appliances, equipment, works, renewals or repairs to be provided, constructed, reconstructed, altered, installed, operated, used or maintained, it may, except as otherwise expressly provided, order by what company, municipality or person, interested or affected by such order, as the case may be, and when or within what time and upon what terms and conditions as to the payment of compensation or otherwise, and under what supervision, the same shall be provided, constructed, reconstructed, altered, installed, operated, used and maintained.
>
> (2) The board may, except as otherwise expressly provided, order by whom, in what proportion, and when, the cost and expenses of providing, constructing, reconstructing, altering, installing and executing such structures, equipment, works, renewals, or repairs, or the supervision, if any, or of the continued operation, use or maintenance thereof, or of otherwise complying with such order, shall be paid.

So the board has the authority to apportion the cost after making a grant from the fund.

Mr. HOSKING: And if a municipality years ago had given up the right of having an overpass over the railway and the municipality had a road and the railway has run a track across that road and they have a grade crossing and years ago the municipality gave up the right of a grade crossing and the railway put in a tunnel and now the tunnel is too small or the culvert underneath is too small, has the municipality forfeited all rights to have the railway maintain an underpass there that is sufficiently large to handle the traffic? What is the position in a case of that kind?

Mr. KERR: The board can always order the reconstruction of underpass or tunnel if required by the present day traffic conditions and can order a wider pass.

Mr. HOSKING: If the municipality can present a reasonable case.

Mr. KERR: Yes.

Mr. HAMILTON (*York West*): In connection with the last line of questioning and the board's authority to order certain work to be done in a certain way, does that not in effect, or may it not, bypass the formula financing almost completely in a lot of our present day requirements? That is, the board is in a position say to limit the contribution from the fund. There is a maximum as to what it can give but it can order a municipality or a railway to share in a much larger proportion than the ordinary formula set out here.

Hon. Mr. MARLER: But there is no ordinary formula. There is a percentage of contribution and there is a limitation on the contribution from the fund, but the Act does not provide any formula which the board must follow in attributing the remaining costs.

Mr. HAMILTON (*York West*): I may have posed the wrong language for it, but the proportionate contribution which the board may make may go by the board if the project is so large that many thousands of dollars more shall be required from the municipality or the railway. Is that right?

Mr. KERR: If the municipality does not have the money to proceed with a subway it is quite possible it might be delayed until the municipality or the provincial authorities are prepared to bear their share of the cost.

Mr. HAMILTON (*York West*): The board does have the authority to order them to do it?

Mr. KERR: Yes.

Mr. HAMILTON (*York West*): It might happen that they would not have the money.

Mr. KERR: It might be, and I think the board has the authority.

Hon. Mr. MARLER: I have known occasions in that sense.

Mr. HAMILTON (*York West*): I think Mr. Johnston asked the other questions on the accidents. Certainly the interpretation used of reporting accidents is not in keeping with the legislation that we have here. Would it not be advisable that it be amended to provide for reporting of all accidents which cover personal injury or property damage of any kind no matter to whom if we are going to keep up to date with the number of accidents at the level crossings?

Mr. KERR: I would be inclined to think that the railway would report any accidents which the board wants them to report.

Mr. JOHNSTON (*Bow River*): But it is not done by law.

Hon. Mr. MARLER: It is covered by an order.

Mr. KERR: There is an order of the board now requiring the reporting of certain accidents.

Mr. JOHNSTON (*Bow River*): Only by regulation. I agree with Mr. Hamilton that it does seem that there would be no inconveniences added if that was required by law. As I understand the regulations they do that pretty well now and would it not be better to have in the law that all accidents be reported?

Hon. Mr. MARLER: The only thing is that there is no doubt whatever that regulations issued by the board are certainly followed by the railways and the mere fact that we impose the regulation in the statutes would not make it any more or any less binding on the railway. If I might say one further word, when I asked Mr. Kerr a moment ago what accidents were reportable to the board I thought it was desirable to emphasize that under the Railway Act and under the order of the board the only accidents which are now required to be reported are accidents which take place which involve personal injury or death to persons and also the movement of the train. If you have a collision between two automobiles at a level crossing that is not a reportable accident under the Act. I think it is important to bear that in mind because it would be very easy to think, because there were frequent automobile accidents at a given crossing and not caused by trains, that some remedy ought to be undertaken by the railways, where as it seems to me it is something that depends on the highway authorities and not on the railways themselves.

Mr. HAMILTON (*York West*): I know specifically of cases where there have been numerous accidents caused by a so called level crossing where automobiles have met right on it because it may be raised just enough to prevent the proper lookout for the driver. It seems to me it might be just as necessary there for a grade separation as in any other case, if there were personal injuries and death and a continuation of it.

Mr. JAMES: In a section of my riding there is what is called a hole in the wall east of Newcastle. There is a very low arch with hills approaching on both sides and it is very bad. A truck of any height has to hit the centre of that subway in order to get through. If there was an accident at that particular point under the explanation of Mr. Marler there would be no reporting of that accident to the board.

Hon. Mr. MARLER: I think the fundamental purpose of the Railway Grade Crossing Fund is to diminish accidents which are primarily caused by the railway and not by constrictions on the highway itself, surely are not looked upon as a responsibility of the railway grade crossing fund.

Mr. JOHNSTON (*Bow River*): In Mr. James' case, would you assume it was not the responsibility of the railway, but that the highway people should lower the highway in an effort to make a greater clearance?

Hon. Mr. MARLER: Surely that would be a highway problem.

Mr. JAMES: Would this bill supply the funds to remedy that particular problem?

Hon. Mr. MARLER: The bill is so broad that the board can virtually authorize or order any works that the highway interests, the railway, or the board believe would promote public safety.

Mr. JAMES: If a situation arose where the board felt that something was required—and there is no doubt that something is required—would the municipality have to share in the cost of anything of that kind? The township probably could not care less. It is not a particular advantage to the municipality. Can you give us any opinion on that?

Mr. KERR: Is it a provincial highway you are referring to?

Mr. JAMES: Yes; and you have probably gone through there yourself.

Mr. CAVERS: It is like getting through the eye of a needle.

Mr. KERR: I do not know. The board would have to look at the case. The board has a direction to make a grant or not to make a grant, or

decide who should bear the cost of any work. You are speaking of an approach to a crossing? Section 269 of the Railway Act provides as follows:

> 269. (1) The inclination of the ascent or descent, as the case may be, of any approach by which any highway is carried over or under any railway, or across it at rail level, shall not, unless the Board otherwise directs, be greater than one foot of rise or fall for every twenty feet of the horizontal length of such approach.

Mr. JOHNSTON (*Bow River*): Does the board itself have to look at the crossing and determine that there should be protection there, whereupon they can allocate the costs as they desire?

Mr. KERR: I think so, sir.

Mr. JOHNSTON (*Bow River*): I have one in mind at Drumheller, where the province says it is not their responsibility, and the municipality says it is not their responsibility; yet there have been several fatal accidents there. Could the board have a look at that problem and decide that some protection should be there, and decide whose responsibility it is? Does this Act give them that authority now?

Hon. Mr. MARLER: There is no doubt about that, yes.

Mr. CARRICK: Following along the line of questions asked by Mr. Hamilton in which he referred to accidents on the highway in which no train took part at all, would it be practical for the railway to get information about all accidents happening at crossings where no railway was involved?

Mr. KERR: I do not know. I can conceive of a situation where two automobiles collided at a crossing and there would not be a railway employee within a mile of that crossing at the time, and the accident might never come to the attention of the railway.

Mr. CARRICK: It would be an extremely difficult matter if you tried to enact a law requiring these matters to be brought to the attention of the board.

Mr. KERR: It would be difficult to get all accidents reported because some might not get reported, and of course the railway would not know anything about them.

Mr. CARRICK: If an accident of the kind we have been discussing is brought to the attention of the board, would the board investigate it and take whatever action might be necessary?

Mr. KERR: I think so. There is a provision in the Act, section 312 subsection 2, which provides that where an accident takes place at a crossing:

> 312 (2) No train shall pass at a speed greater than twenty-five miles an hour over any highway crossing at rail level if at such crossing subsequent to the 1st day of January, 1905, a person or vehicle using the crossing, or an animal being ridden or driven over the same, has been struck by a moving train, and bodily injury or death thereby caused to such person, or to any other person using the crossing, unless the Board directs that the speed limitation of twenty-five miles an hour shall not be in effect at the crossing or unless the crossing is protected to the satisfaction of the Board.

So that when these accidents are reported to the Board a speed limitation is put into effect by virtue of the statute, and it remains in effect until the board says, "O.K. Go at your normal speed again."

Mr. HAMILTON (*York West*): Returning to my question, if there is an accident involving so many dollars, the person injured is reported to the police of the municipality. Surely the board would have no difficulty in

obtaining information of that kind from those authorities, if an accident in fact took place at a railway crossing. It would not constitute a great barrier to get the information.

Mr. KERR: I think there is no question but that the board could request it and ask the municipal authorities to comply with the request. But they are not compelled to do it.

Mr. CAVERS: Under clause 2 the board is given the power to apportion the cost of the work, and to whom it may be apportioned. We have discussed today apportionment as between various railways or municipalities; but in addition under this subsection it says other corporations or persons. What other corporations or persons might be brought in to assume part of the cost of a railway crossing other than the municipality and the railways themselves?

Mr. KERR: Normally those are the parties. I cannot myself recall any case where other corporations were ordered to pay anything in respect to the cost. However a public utility may have wires or pipes as the case may be underneath the highway.

Mr. MURPHY (*Lambton West*): In the apportionment of the cost, let us take the case of a railway crossing which is on the outskirts of a city. Now then, in your apportionment, would you tell the committee if any other municipality than the city would be involved or could be assessed, so to speak?

Mr. KERR: There have been cases where crossings which were immediately on the boundaries of a city have been protected, and the board has ordered the city as a party interested to bear part of the cost; and those cases have resulted in considerable litigation; in some of them the board's findings that the city was an interested party against whom some of the costs should be levied have been upheld, while in other cases the courts, upon appeal from the board, have held that since the crossing was a certain distance beyond the city limits, the city could not be held within the meaning of the statute to be a party interested against whom the board could make an order.

Mr. MURPHY (*Lambton West*): In this case let us say that the crossing is in a city near the outskirts. Is there any power to assess any part or portion of that cost to the county?

Mr. KERR: Only if the board should find that, within the meaning of the Act, the county is an interested party.

Mr. MURPHY (*Lambton West*): How could you establish that? How do they become an interested party? Is it because of the traffic?

Mr. KERR: Yes; that is one of the factors. I do not know of any case where a county was brought in as an interested party to a crossing within a city; but I do know of one or two cases where a crossing was protected outside of a city, and the majority of the traffic using that crossing originated practically within the city. The crossing was very close to the city boundaries, and the board felt that in view of the circumstances, it was an interested party.

Mr. NESBITT: In view of the remarks made earlier, does the board receive reports from the provincial police, let us say in Ontario and Quebec, or from county police in other provinces regarding accidents at these grade crossings?

Mr. KERR: Not as a rule.

Mr. NESBITT: There is no request made. I gathered from what the minister said that probably there was very wide latitude given to what grade crossings can be assessed under the fund. Does the board consider that the only accidents which concern the board, for the purpose of deciding whether improvements ought to be made to a crossing, are accidents which actually involve a railway train, a sidecar, a handcar, or something of that nature?

Mr. KERR: No, I would not say so, sir.

Mr. NESBITT: In Mr. James' and Mr. Johnston's questions, would the board not consider that because the railway was there, because of the necessity of having a railway track, that it caused a constriction in the highway, and curves and so on, and that in such a case the fund should not assist in altering the crossing if there was any accident, even though it was between automobiles?

Mr. KERR: Well, the fund covers works for the protection, safety, and convenience of the public. Sometimes the accident factor may be small, and the factor of convenience may be much greater.

Mr. NESBITT: I have in mind a grade crossing in my constituency. It is a bad one, just as in Mr. James' case, where there have been at least 77 accidents since 1947. There was one fatal one. The figures were placed in *Hansard* recently; there were twenty-three persons injured and a jury recommendation was given that something should be done about it. A lot of those cases, as the minister mentioned earlier, did not involve a railway train itself, but the majority did. They were caused by the peculiar arrangement of the railway track itself and the highway. In cases such as that, where there have been such an enormous number of accidents, where a large percentage should be apportioned to the highway, no doubt because of the railway track itself being there, as was brought out by another member of the committee, would the board, in a case such as that, not consider that it should investigate the matter and recommend certain things to be done.

Hon. Mr. MARLER: Might I be permitted to say that Mr. Nesbitt raised this question in the House the other day. I was surprised that so many accidents seemed to have occurred at the railway crossing he mentioned without the board being aware of them.

At my instance the board investigated the matter and while they were not able to get the information prior to 1953 with regard to the accidents which had occurred at this crossing, they were however to get the information for 1953-1954, for which they had no report whatever. The figures which they have given me show that the number of accidents were somewhere in the neighbourhood of 30 or 40 which occurred and were reported to the police, at any rate, but which did not involve a train, with the exception of the one which occurred on April 23, 1953; and here again I think there is good reason for the fact that there was no report.

Perhaps the committee may be somewhat amused by the circumstances. Apparently the vehicle was travelling rather rapidly. The report says that the driver lost control of his vehicle as a result of a blow-out. The vehicle hit a guard rail and travelled eastward on the track a distance of approximately 60 feet, where the vehicle was abandoned by its occupants and was subsequently struck by a train.

In that particular case no personal injury was involved. The accident was not reportable and was not in fact reported. So here were two or three accidents out of the 40 accidents which occurred with respect to which no report was received by the board whatsoever. I think that explains why the question was answered as formerly put by Mr. Nesbitt sometime ago, and why the board had to say that they had received no report whatever. It seems to me that this question of the number of accidents at the crossing, whether they involved a train or not, is really a fairly simple one. I do not think there is any doubt whatever that the Railway Act gives the board the power to require such information as it thinks fit. I think it is statistically interested in the matter as to say to what extent train movement is responsible for those accidents.

Whereas, as we know, the provincial authorities, for the most part require information as to automobile accidents, whether they involve personal injury or not, because they are interested in the thing from a highway point of view,

so you have two different bodies, one of which is interested in the railways and in train movement especially, and the provincial authorities who ought to be very much interested in the highway aspect of the question. But I do not think there should be any confusion between the statistics and the need for correction at any particular crossing.

If a province says: "We have had many highway accidents at this crossing none of which involved a train", I think that they would apply to the board and ask for assistance from the crossing fund, and the board might have a report of the accidents and might order the improvements suggested by the province. Where, however, the accident originated because of train movements, I think the Board itself would be inclined to remedy the situation. So I do not think we should relate these to statistics and the attitude of the board with regard to an application for assistance for determination by the board, or an order for assistance in any particular case. There is a link between the two, but nevertheless they are really two different problems and are quite separate.

Mr. CAVERS: Would they have a right of action or not?

Hon. Mr. MARLER: I think that would be a matter for the civil law. We are not talking about actions against the railway. I do not think we are concerned with that.

Mr. NESBITT: I think the minister has taken a very reasonable approach to the matter and a very common sense one. I am inclined to agree with him, but I do take exception to one point. I think there are a great many accidents at one place regardless of whether they are due to highway conditions or to railway conditions; and I still think that a large number of accidents at one crossing indicate that something is wrong; and while the highway commission may be more responsible, nevertheless the railway is to an extent responsible because it is actually there, and probably it should be considered by the board. I think the minister said that the board might very well order that a certain percentage should be paid by the railway from the grade crossing fund for the alteration at any crossing.

Hon. Mr. MARLER: Yes. Does the hon. member remember that this particular crossing at which so many accidents have taken place is a protected crossing?

Mr. NESBITT: Yes, there are lights there.

Hon. Mr. MARLER: According to my information the crossing is at present automatically protected by two wigwags, two bells, and various highway signs which mark the approach to the crossing. So we would need to have someone hold the driver's hand when he comes to cross the railway.

Mr. NESBITT: I believe that every accident which took place at this crossing involved not local people, who have a great respect for it, but unfortunately strangers who were travelling along the main highway.

Hon. Mr. MARLER: That would make it a national problem.

Mr. BYRNE: I would like to ask the minister if the board can authorize payments for a crossing within a municipality which are purely pedestrian crossings?

Mr. KERR: It can authorize improvements at any crossing, any protection at any crossing.

Mr. BYRNE: Any protection, not necessarily on the highway?

Mr. KERR: Not necessarily.

Mr. CAVERS: Might I ask this question: suppose there is a level crossing for school children from an area to a school which might be on the other side of the railway tracks; is there any provision for providing a tunnel, or some way in which the children might go, rather than having to cross the railway tracks?

Mr. KERR: That would still come within the definition of a crossing, whether restricted to pedestrians or vehicles. The board sometimes has ordered pedestrian crossings which are not open to vehicles.

Mr. CAVERS: Even though there is no vehicle crossing there at all.

Mr. MURPHY (*Lambton West*): Let us take the case where it is deemed advisable and necessary that some work be done in respect to such a crossing in a city. Now then, can you bring in the county to bear part of the costs? What would be necessary for them to be a party to the distribution of the costs?

Mr. KERR: There would have to be proof to satisfy the board that the county is an interested party. It is very difficult for me to define it.

Mr. MURPHY (*Lambton West*): Let us say it is one of the main arteries coming into a city from a county. I wonder whether the county would not be properly assessed for part of the costs?

Mr. KERR: I would hesitate to say in a hypothetical case whether a county in that case would be an interested party or not in the view of the board. Furthermore, if the board decided that it was an interested party, there would still be recourse to the courts to see whether or not the board was correct.

Mr. MURPHY (*Lambton West*): Is the volume of traffic coming from the county into the city taken to be a factor?

Mr. KERR: I would not think so. The case that I know of was a case where the crossing was close to the boundary of the city; the city was interested in having it safeguarded, not from the point of view of the volume of traffic, but from the point of view of the traffic from the city, and the city's residents who were using this crossing regularly, which was on the bountary of the city. If you look at it from a point of view of where the traffic originated, or where the volume of traffic originated, you might get into a very wide field. The traffic might originate in another province, and a great deal of it come over that particular crossing.

Mr. HODGSON: Would it be a county or a provincial road in that case?

Mr. KERR: It might be a provincial road in some provinces.

Hon. Mr. MARLER: I take it that the board has complete discretion in distributing the cost of the improvement, and I take it that if they were satisfied that it was the responsibility of a county corporation, they would order the county corporation to contribute.

Mr. KERR: Provided its findings were in accordance with a proper interpretation of a "party interested".

Mr. HAMILTON (*York West*): In looking over the legislation, I see there is a deletion of section 263 by clause 2 of this bill, and the inclusion of sub clause 6 of section 265 under clause 3 of this bill. I was wondering if they were in fact consistent? Now in one case we have said—I assume when the bill was enacted—that if there is no protection, that is, of a 1909 railway, you look after it.

Hon. Mr. MARLER: By the municipality.

Mr. HAMILTON (*York West*): The section we are deleting. That is right. Without any contribution. We come to subsection 6, and now we say the first thre years; in other words, when you delete it, it looks as if we are going to do something about it, but in subsection 6 we say, "Oh yes, but no for the first three years".

Hon. Mr. MARLER: The first three years as an alternative at a particular crossing.

Mr. HAMILTON (*York West*): That is what I mean. Under the new construction which is involved in the deletion of 263, if the board is going to do something about it; why delay for three years?

Mr. KERR: If the crossing was constructed by the railway, let us say, ten years ago, under the present law, the railway must bear the whole cost of protection. There are no similar provisions where the crossing was constructed by the province or the municipality; that is one factor in the board's thinking. The other is that where a new crossing is established, the party which establishes the crossing, whether it be a province, or a city, or a railway, under the board's normal practice, bears the cost of protection, if protection is necessary when the crossing is established.

Mr. HAMILTON (*York West*): Might I ask another question right there. This is what it leads into: how is it possible to determine these days that it was because of the action of any particular group, be it a municipality, a province or a railway. Have we not passed that stage?

Mr. KERR: The person who wants to establish a new crossing must go to the board to get authority to build that crossing. If a city wants to open a new crossing over a railway, the city must apply to the board seeking the permission of the board to create it, and if it looks to the board that it would be dangerous to open a level crossing without at the same time ordering protection, the board would so order it. We would say: "We will allow you to open the crossing provided it is adequately protected." In that case the board would be proceeding in the spirit of the legislation. It would be otherwise if the Board authorizes a crossing and then, one month later, having known that it was going to need protection, would say, "the crossing is actually in existence now, consequently we will make a grant from the fund for its protection.

The board considers that the party, be it the city, the province or the railway, establishing a new crossing should be prepared to bear the cost of such protection as is necessary for the first three years. At the end of that time conditions may have changed, and the board would look at the circumstances, and if protection is involved it might then determine that the party which established the crossing will not have to bear the whole cost of protecting it. But for the first three years, if crossing protection becomes necessary, the party who established the crossing should bear it.

Mr. HAMILTON (*York West*): I could go along with your argument if in fact the municipality wanted the new crossing, because if it could be limited there—because there are 50 houses here, and we are going to collect taxes from them—if that is so. But if the crossing is for the benefit of all the people—I mean, it might be for people from hundreds of miles around, how can we say in fact that the municipality are the people who create the crossing need?

Mr. KERR: You can say that the people who wish to create the crossing are the people who apply to the board.

Mr. HAMILTON (*York West*): It is more a case of who is put in the position of having to make the application?

Mr. KERR: It is not solely because the application is made by a particular party, but normally speaking, when the city asks for the crossing it is because the city itself needs the crossing, perhaps partly because of the traffic coming there from another city.

Mr. MURPHY (*Lambton West*): Where you have a crossing in a township, and it is over a county road, or where it is on a provincial highway, what assessment is made in that case?

Mr. KERR: The board has no power to make an effective order against the province to contribute to the cost of construction. It can make such an order against a county, if the county is the party which has control of the road;

it can also make it against a municipality; but it cannot make such an order against the Crown in the right of the province.

Mr. STANTON: Many of the main roads out of a town or city are known as suburban roads. Is it not a case of attributing the cost to the town, the city, or the county?

Mr. KERR: In some cases the province assists the municipality under provincial legislation; but if your question is whether the board can order a province as such to bear part of the cost of the protection, my answer is that the board does not have the power to make a compulsory order against the province to contribute money. It can order a contribution, but it cannot order a province to pay any part of the contribution. And it might be inequitable to put all the cost of the protection on the railway, if it is a provincial road, and if the province itself is unwilling to contribute.

Mr. STANTON: Suppose it is a suburban road.

Mr. KERR: If it is a suburban road, under the jurisdiction of the province, then the board can order the proper highway authority having jurisdiction over that road to bear its share of the cost, and of course the Board can make a grant from the fund for protection.

Mr. SMALL: I return to the appointment of costs, let us say, for grade separation, which are the ones which involve the greater expenditure. In urban sections, on the average, it is eight hundred thousand. Some go as high as two hundred thousand; while in the rural sections they run somewhere around $100 thousand on the average. Am I assuming too much, or am I correct when I say, for instance, that the cost of an urban project is in the neighbourhood of $800 thousand and the limit to which the board will contribute is $300 thousand? Would I be safe in saying that it is either $300 thousand or 60 per cent?

Mr. KERR: It is 60 per cent, or $300 thousand, whichever is the lesser.

Mr. SMALL: Suppose the project cost $800 thousand?

Mr. KERR: Then the maximum which the board would contribute would be $300 thousand.

Mr. SMALL: The biggest amount which the board can order is $300 thousand; that is the maximum which they can grant out of the fund. Suppose the municipality and the railway become involved in that project to the extent of 25 per cent and 15 per cent, according to your formula?

Hon. Mr. MARLER: I do not think that is right. I think in the example which Mr. Small has just given, if the project cost $800 thousand and the contribution from the fund is $300 thousand, then it follows that the remaining $500 thousand must be shared in some proportion by the municipality and the railway.

Mr. SMALL: That is what I am trying to get at. To establish your fund, is it regarded as 60 per cent?

Hon. Mr. MARLER: The 60 per cent figure is merely a national one. The contribution from the fund is a national contribution in respect to any project, and it must be the lower of two things: either 60 per cent of the cost of the project or $300 thousand, whichever be the smaller amount.

In the example given, if you apply the 60 per cent rule, you will find that it comes to $480,000; but it is being limited to $300 thousand, therefore the fund can only contribute $300 thousand. If, on the other hand, the cost was $400 thousand, then the upward limit would be 60 per cent, which is $240,000. I hope I have made myself clear.

Mr. SMALL: I can follow you on that. I am trying to get at the stipulation for $7 million on the formula, which I did not want to happen. I want to solve the problem by removing the provision whereby it can only be applied by having the project built. According to the figures which the engineer gave us, he said there was about one-fifth of the total of approximately $29,360; so $30,000 would be one-fifth of that; so that one fifth of that would be for 6 thousand grade separations all over the dominion of Canada. What percentage of them would be urban, and what number would be rural? The thing is to get as many of them built in a year as possible, and to spread them over the whole of the country so that this amount of $5 million would be expended. Therefore in large cities where they have $800 thousand up to $1 million, most of that expenditure is $300 thousand for any one project.

Hon. Mr. MARLER: That is right.

Mr. SMALL: Therefore if any other money is put into the fund it must come from the municipalities, the railways, or the provinces?

Hon. Mr. MARLER: That is quite correct.

Mr. SMALL: I cannot conceive of how there is going to be unexpended money if we are going to advance a lot of these projects, with the purpose in view of solving this problem and reducing accidents.

Hon. Mr. MARLER: Do you not think that the question depends also to what extent other bodies which you have mentioned, namely the railways, the municipalities, county corporations and the provinces are willing to provide corresponding funds in any particular year? If, for example, the grade crossing fund is $5 million, and they are perfectly willing to spend the whole of that $5 million, they can only do so if others are willing to make contributions too.

Mr. SMALL: Let us take the Davenport project which runs somewhere over $2 million. According to the old law, on that basis, $150,000 was the limit.

Hon. Mr. MARLER: That is right.

Mr. SMALL: It seems to me that the railways, the municipalities, and the provinces have to supply the rest of it.

Hon. Mr. MARLER: Yes.

Mr. SMALL: There has not been enough money put into the fund to accomplish any amount of protecting which will reduce accidents. You have come up with $5 million, but that is still not enough. The point is, is the board empowered to go ahead on its own initiative where they know there have been hazards and accidents and that this must be proceeded with?

Hon. Mr. MARLER: Mr. Chairman, I should be very much disappointed if particularly any money was left over out of the $5 million. But I do not think anyone would be willing to recommend that the board should proceed so arbitrarily that it was determined to spend each year $5 million regardless of whether the others who have to contribute are willing to do so or not. I am sure that there are very few members of the committee who would wish to recommend whether their city or municipality had or had not the funds that merely because the board felt that the $5 million should be spent that orders should be issued regardless of the feelings of the muncipalities and regardless of their willingness or ability to pay and that we should just bulldoze our way through the country ordering grade separation wherever we thought it should be done.

Mr. SMALL: That brings up a question there. Heretofore the percentage that the municipalities and railways paid under the old section was 40, 30 and

30. It provided that $750,000 could be spent by the municipalities, $750,000 by the railways, and $1 million by the Grade Crossing Fund. Now, on that basis the railways were having difficulty raising the money to comply.

Hon. Mr. MARLER: I think that your figures are incorrect. You were starting off on the assumption that the board followed the distribution of 40, 30 and 30 and that the municipalities limited and the board limited their expenditure to keep that relationship. That is not the fact. As you pointed out a moment ago in connection with the Davenport operation the fund cost was only $150,000 out of a total cost of $2 million so that others necessarily had to provide, let us say, $1,850,000 of the cost not 30 per cent of some limit that applied to the board. They had to put up without limitation and the board said we give you 40 per cent or $150,000 whichever is the lesser. In that case you referred to, they gave $150,000 because they could not give any more.

Mr. SMALL: The railway find difficulty in raising $750,000 to meet their obligations which have been ordered by the board's authority and the same applies to the municipality and now you have reduced it to 25 and 15 and increased it on the railway board fund to 60 per cent and that increases it as far as the railways are concerned to $1,250,000 or in other words, another $500,000 and on the municipalities from $750,000 up to $2,250,000. The burden is still there which we cannot meet and we are never going to lick this problem if it is going to be left to the railways and the municipalities to make the application to have these grade crossings installed.

Hon. Mr. MARLER: Mr. Chairman, I think if Mr. Small will look at the situation which prevailed last year and take an example of a project where the federal contribution out of the fund would have been $150,000 if he will apply the new formula to the same project this year he is going to find that there is a virtual doubling of the contribution from the Grade Crossing Fund and a very substantial reduction in the charge bearing on the railways and a small reduction in the charge bearing on the municipalities in the province.

Mr. HAMILTON (*York West*): In each individual project?

Hon. Mr. MARLER: Yes. When we are thinking about something which cost $10,000 last year the grade Crossing Fund would have provided $4,000, the municipalities $3,000 and the railways $3,000; a small project. But now, I take it, if we follow what the board suggests and if they follow on the distribution, which they seem to contemplate in their report of the $10,000 they would pay $6,000, the municipalities $2,500 and the railways would pay $1,500. In other words, in that particular example the railways contribution has been cut down by 50 per cent and there has a small reduction of the provincial-municipal share. I think there is a lightening of the burden on those you say have not enough money to go along.

Mr. HAMILTON (*York West*): I grant you that. But the increase in a grant of $5 million which is the 4 per cent increase is increasing the amount of the municipalities and the railways are going to have to pay the piper.

Hon. Mr. MARLER: The railway contribution has been reduced. We are talking about a large number of municipalities spread all across the country unless we do it all in Toronto and God forbid.

Mr. HAMILTON (*York West*): That is where it is needed.

Hon. Mr. MARLER: Montreal could also give you some suggestions on the question.

Mr. SMALL: I am not bringing this up in connection with Toronto at all. According to your figures there are 6,000 grade crossings in the Dominion of

Canada and there is ample scope throughout the country. $15 million would be the simple figures I would be interested in to give justice to everyone.

Hon. Mr. MARLER: I do hope that the board is going to be able to spend $5 million and that will not be too much of a burden on any individual municipality or the railways. If we do more it will be more to be paid by the railways, but I can say personally I have not had any very strong representations from the railway companies complaining about this awful burden that was about to be thrown on them.

Mr. MURPHY (*Lambton West*): Take this hypothetical case: you are limited to $5 million now and suppose you have spent your $5 million in the first nine months of the year, can you still undertake projects that might involve 2, 3 or 4 million and not make the payments until the end of that year?

Mr. KERR: I think the projects could be undertaken and a grant made under the following year's fund if the board deemed it possible to do so. Sometimes the railways, if large amounts are involved, like to know before the work is undertaken or ordered just exactly how much they will have to pay and the same applies to the large cities.

Mr. MURPHY (*Lambton West*): It is quite clear that the money having been spent and where you find it necessary and urgent to proceed with additional work that it could be proceeded with and the money paid after the expiration of the year.

Mr. KERR: When it becomes available.

Mr. MURPHY (*Lambton West*): Yes.

Mr. GREEN: What is the situation with respect to the back log of applications for assistance of this kind? We have heard that there are a great many crossings still to be dealt with across Canada, but what is the board's present position with respect to applications that have not been heard? Have you got many pending or are you pretty well up to date?

Mr. KERR: I believe that there are a great many actually ordered or in the course of construction. I think at the present time there is close to $3 million in the fund which has been committed but actually has not been paid out yet because the work is still in progress or not started so far although ordered. But there are projects taking from these funds approximately $3 million, which are in the course of construction or ordered. As to how many others there are on which the board has not made an order, perhaps our engineer can speak with more certainty than I can on the number of projects.

Mr. GREEN: Could we have that information?

Mr. DUMONTIER: We have 64 applications for grade separations before the board which are in the process of being settled and not ready for an order yet, and 67 applications for automatic protection.

Mr. GREEN: How much money would be involved?

Mr. DUMONTIER: We do not have any estimate of the cost of these projects yet. The applications are made and the estimates are prepared by the railways as to the cost of the grade separation. We have to prepare plans in order to make these estimates.

Mr. GREEN: The board must have some idea of really how much money is apt to be involved in meeting these reports.

Mr. DUMONTIER: Well, some of these projects are reconstruction and others are construction of subways. Some of them the board does not contribute to and some the board does contribute to. If there is an elimination of the crossing the board contributes; if it is a new crossing the board does not contribute.

Mr. GREEN: There have been orders considered which involve an expenditure by the board of $3 million?

Mr. DUMONTIER: Yes.

Mr. GREEN: And you have many other applications before you at the moment?

Mr. DUMONTIER: Yes, 64 for grade separations and 67 for automatic protection.

Mr. GREEN: I raise that point, Mr. Chairman, because it does seem to me doubtful if it is wise to put in this restriction that if there is a surplus from one year which exceeds $2 million then the subsequent vote will be cut down by whatever that surplus may be. That is, if there remains $3 million unspent in the fund for this year then next year the vote can only be $4 million as I understand the legislation. I suggest to the committee that it might be wiser for the first 4 or 5 years to let these votes go into the fund and then accumulate there because there is much work to be done and obviously there is not going to be enough in the fund to carry out all the projects which should be completed. With the population of the country expanding as it is and this problem becoming greater all the time, it seems to me it would be worth giving consideration to changing that provision that once you get over that $2 million in any one year then the fund automatically cuts down in the succeeding year.

The CHAIRMAN: In other words, if there is only $1 million spent this year next year it would bring it up to $6 million.

Mr. GREEN: That is the principle I think should be followed. Actually it is more beneficial because it allows it to build up to $7 million. I do not think there should be any ceiling to it for the first 5 years in any event. Let there be $5 million voted each year and let us see what happens to that. I think probably it will be found that will not be nearly enough to meet the needs. I do not quite agree with the proposal that there should be this ceiling put on of $2 million. We have just had the evidence of how many of these projects there are.

Mr. JAMES: Was it not just yesterday that Mr. Fleming wanted the water squeezed out of the estimates.

Mr. SMALL: What was that?

Hon. Mr. MARLER: It was suggested yesterday Mr. Fleming had wanted to squeeze the water out of the estimates and Mr. Green's position is to put the water back in another glass.

Mr. GREEN: I think this problem is of such great magnitude that somebody has got to give a pretty bold lead if it is going to be settled; the impression across the country is that the Grade Crossing Fund is to have $5 million a year and I think it should be left at that. Under this particular section that is not quite the case. It may be that this year, for example, because it is a new departure it may be they will only spend $2½ million and then we will find next year automatically because this legislation reads as it does there can only be a vote of $4½ million. I doubt the wisdom of putting on a restriction of that kind. I would rather have it this way: we will vote $5 million and it is up to the municipalities and the railways to get busy on this grade crossing problem.

Hon. Mr. MARLER: If I might say one word on that I would like to point out to the committee that this recommendation comes from the board itself which board has actually had the experience of living with applications over a long period of time. It was not a restriction of the Board of Transport Commissioners imposed by the government. The government has accepted the

recommendation without change in any particulars so far as this part of the fund is concerned. I myself feel that it is a prudent thing to have at the beginning. I hope we are going to spend $5 million a year and I think my honourable friend will find if he looks at it over a period that it is merely a question of whether we are going to vote $25 million or $33 million and it is not $2 million every year; it is only one $2 million.

Mr. SMALL: A minute ago it was given that there were applications for 64 grade crossings. Could you break that down and give us the figures for urban and rural?

Hon. Mr. MARLER: Perhaps Mr. Dumontier may answer the question later when he has made his calculations.

Mr. CARRICK: I do not know if it has been stated, but can you tell us what the amount is on hand at the present time? You have told us our commitments for $3 million for next year.

Mr. KERR: I believe there has been only an interim vote for this year. This money is only a part of the present appropriation. Of $1 million which has been voted and some part of that would be uncommitted.

Mr. DUMONTIER: There is very little uncommitted. About $20,000. There was $\frac{1}{8}$ of the vote approved and we used that on the installation of automatic protection and I think there is about $20,000 left.

Mr. HAMILTON *(York West)*: Mr. Chairman, I understand that the 60, 25 and 15 was the working of that formula on the $10,000 project which was illustrated to us and when we get to the $1 million project the maximum contribution from the fund is $300,000. How do we divide the rest? Is it still $\frac{5}{8}$ and $\frac{3}{8}$, say the balance of the $70,000 as between the railway and the municipality?

Hon. Mr. MARLER: Might I answer the question. My understanding is that the proportions of 60, 25 and 15 apply to protection but on grade separations there is no such predetermination of proportions. I think the basis is that the fund makes its contribution and then decides how in the circumstances the remainder should be proportioned.

Mr. SMALL: Could I ask the question how many of the 64 grade crossings are urban and rural?

Mr. DUMONTIER: There are about 10 of these projects which are urban.

Mr. SMALL: And the balance of 54 are in rural. You are doing a good job in rural there.

Mr. BARNETT: Mr. Chairman, I would like to make a few comments. I have one or two questions I would like to ask. Much of the questioning has obviously come from people who live in the other portions of Canada, where the counties, municipalities, and so on enter into the picture to a much greater extent that they do in the part of Canada from which I come.

I might offer a comment on the matter of other corporations being involved: in British Columbia the question of private roads constructed by our logging corporations could very easily enter into this picture as one example.

There are two questions which I have in mind and which I would like to have clarified. One of them is in respect to the fact that the ceiling provided for in the bill is being raised. I wonder of we could have put on the record some figures in respect to the order of expenditures involved in major grade separation projects, so that we might assess what, on the average, would be the amount of contribution for those projects. I had in mind where in a major highway a four line highway separation was involved. Could we have some information on the order of expenditure involved in such a project?

When we would be in a position to assess in our own minds the adequacy or otherwise of the ceiling proposed in the bill. And I have one other question as well.

Mr. DUMONTIER: If we look at the projects approved last year we will see that the total estimated cost was $2,430,000, with an average cost of $221,000 for the overhead projects approved last year which totalled eleven. One of them is quite an elaborate project which cost $850,000 which is considered high for projects of this nature.

There were four subways approved last year for which we had an estimated cost of $2,560,000 with an average cost of $640,000 for the four of them.

Mr. BARNETT: That covers the point I had in mind. The other question might be considered more of a constitutional one. I believe the statement was made earlier that the board considered that it had no jurisdiction in respect to an order in regard to the right of expenditure by a province, or by Her Majesty in the right of a province. That aspect of the matter, I suggest, is perhaps of more importance in a province like British Columbia where most of the highway construction, and where most of our roads are provincial highways. I was wondering about that interpretation and where the board found its constitutional authority in respect to a ruling for municipal corporations.

I know there is a phrase very current in British Columbia that the municipalities are the creatures of the province. In that case it seems to me that they are in fact part of Her Majesty in the right of the province, and I was wondering if we could have some explanation as to how, in practical application, the board considers certain portions of expenditures to be divisible, and how it has been worked out in practice. Perhaps some comment might be made as to how it is done in a matter of this kind. The decisions of the board are not considered to be binding upon the province or upon the provincial highway authorities.

Mr. KERR: Quite specifically, the Act gives the board power to apportion cost on the municipality, but it does not mention Her Majesty; it does not mention the Crown. In view of the fact that the Crown is not mentioned in this provision, the board feels that it has no power, in view of the absence of the mention of the Crown, to apportion any part of the cost on the Crown.

There is a sub-section in the grade Crossing section which is not being touched at all in this bill. This subsection 3 provides that the province may contribute to the Grade Crossing Fund and that the board may apportion monies out of that fund subject to any conditions and restrictions made and imposed by the province; but the province has the power, under the present Act, to put money into the fund if it wants to, and to determine the conditions under which the board should use that money.

Mr. BARNETT: Am I to understand that in the event of a provincial highway authority deciding to construct a major highway crossing a mainline railway, that the board has no power to determine the nature of that crossing except with the consent of the province?

Mr. KERR: In that case the province comes to the board and asks for the board's permission to build a certain type of crossing; it comes to the board and it gets the board's permission. I am speaking of the lack of the power to compel a province to contribute any monies, where there is an existing crossing, but the highway part of which is under provincial jurisdiction. Some party, or the board itself, thinks that protection should be put in there, and the province thinks otherwise; the board has no power to say to the province: "You must contribute to the cost of this protection."

Mr. BARNETT: Do I understand that in the event of a new crossing, the provincial authority would have to have its plans approved by the board?

Mr. KERR: That is right.

Mr. BARNETT: But the board has no authority to direct a province to make any change in respect to an existing crossing?

Mr. KERR: It has not the power to order it to pay money towards the cost. When a province comes to us seeking some change in a provincial highway, or some protection, what it gets is called a "consent order", and in that order the board recites the fact that it is made with the consent of the province, and directs that the province pay some part of the cost, the Act gives the board power to order the municipality to pay.

Mr. BARNETT: My other question was with respect to how it was that in view of the fact that the municipalities are creatures of the province, therefore indirectly apparently they have not any direct relationship with the province, but that may be an academic question.

Mr. KERR: As you may know, there is a provision in the Interpretation Act to the general effect that the Crown is not bound by any statute unless it is expressly so declared in the statute. This provision of the Railway Act does not mention the Crown; consequently the board has no power to compel the Crown to contribute. But that does not apply in the case of a municipality. A municipality is not the Crown, so the Act does empower it to provide an order against a municipality.

Mr. HOSKING: Can the board go into a city and tell them they are going to have to spend money to fix crossings there, whether the municipality wants them fixed or not? Is that the position?

Hon. Mr. MARLER: It is a matter of judgment as to whether they should exercise that power or not, but that is the case.

Mr. HOSKING: I do hope they will be very reticent in that respect, because municipalities do not have very many rights, and their responsibilities are extremely heavy with the expansion which is going on.

Hon. Mr. MARLER: In practice it has been the other way around, with municipalities asking for grade separation and protection rather than having them imposed upon them.

Mr. HOWE (*Wellington-Huron*): On item 6, this fund does not apply to any new construction where new highways are being built, when those highways find—they are not helped in the building of any expensive overpasses which are necessary at highway crossings for new highway construction. The crossings have to be there for a period of three years before anything can be done.

Mr. KERR: Well, if it is a new grade separation, subway, or overhead crossing which is ordered there for the protection of a level crossing—in other words, which is going to take the place of a level crossing, then that three year limitation does not apply, because the level crossing has been there for three years and the board can order a subway built at that level crossing. But where you have no level crossing, and a new highway is to be constructed, the board can only make a contribution after the crossing has been in existence for three years, make a contribution for its protection from the fund.

Mr. LAVIGNE: What would be the case with respect to re-location? I have in mind a case where one municipality is going to be affected and it is not willing to accept a re-location. Would they be responsible for the cost of the underpass or overpass, as the case may be?

Mr. KERR: The board has the power to say who will bear the cost, provided it is a party interested, such as a municipality.

Mr. LAVIGNE: Who would have to bear the cost of it, the municipality in which it is located, or the municipality in which it is going to be built?

Mr. KERR: The board would have to deal with that kind of case when it came before it. I do not know what the decision of the board would be; but it has the power to apportion the cost, and the board would determine it.

Mr. LAVIGNE: It is a case of charging somebody else for something that they do not want.

The CHAIRMAN: Does clause 1 carry?

1. Section 262 of the *Railway Act*, chapter 234 of the Revised Statutes of Canada, 1952, is repealed and the following substituted therefor:

"262. Notwithstanding anything in this Act or any other Act, the Board may order what portion, if any, of the cost to be borne respectively by the company, municipal or other corporation or person in respect of any order made by the Board under section 259, 260 or 261, and such order is binding on and enforceable against any railway company, municipal or other corporation or person named in such order."

I shall now call upon Mr. Spence.

Mr. SPENCE (*Counsel for the Canadian Pacific Railway*): Mr. Chairman, my name is Spence and I represent the Canadian Pacific Railway today. I have with me Mr. G. E. Shaw, our engineer of bridges, and Mr. R. C. Steele our engineer of signals. We are here to place ourselves at the disposal of the committee and to answer, if we can, any questions which the members of the committee might wish to ask us. However, there are a few comments I would like to make of my own accord, which I hope will help the committee with respect to grade crossings.

To begin with, we are not opposing anything contained in bill 259; but there is one subsection near the end of the bill which gives us a little misgivings. However, apart from that, all the provisions of the bill have our warmest support.

I think the Board of Transport Commissioners is to be congratulated upon its report, and for the very wise recommendations which it made for amendment to the legislation. I want to speak particularly not about what is in the bill, but about two small provisions which might be added to make the bill even more useful and perhaps more workable and fairer pieces of legislation than it is in its present form.

My first suggestion has to do with the matter which was under discussion just a few minutes ago, with relation to subsection 1 of the bill which deals with section 262 of the Act. That section empowers the board in dealing with the protection of highway crossings, to apportion the cost between the railway company and a municipal or other corporation involved. That section is perfectly fair, and the board, over the years, has in our estimation administered it very fairly to all parties concerned.

But in recent years, a very peculiar situation has arisen which was mentioned a few minutes ago. The section was first framed back in the time when most roads were under the control of a municipality or a county; there were no networks of provincial highways such as we know them today. When, however, in more recent years the board began to deal with grade crossings which came under provincial jurisdiction, some provinces looked at this section and pointed out that as it did not name the Crown specifically, therefore the board did not have the power to order a province to contribute towards grade crossing protection. The board has acceded to this argument, and the strange result is that at crossings where the board finds protection is necessary, it can order the road authority to contribute, if that authority happens to be a municipality or a county, but it cannot do so if the road authority is the

provincial department of highways. Its powers over the municipality and the county are clear, even though these are creatures of the province, but when the board deals with a provincial department itself, it cannot do more than accept such an amount by way of contribution as the department of highways offers to contribute.

The result is that every once in a while, perhaps not very often, but occasionally, we encounter a case of a provincial highway crossing which the board considers should be protected by an automatic signal, or a grade separation, in the interest of safety, but due to some disagreement the province either refuses altogether to contribute or refuses to consider the contribution which the board thinks would be fair, and as in justice to the railways the board will not order the railways to pay the whole of the cost of the protection, the crossing may remain there without protection, even though the board thinks that protection is necessary.

I suggest that this whole difficulty could be overcome merely by the insertion of the words "the Crown" in the third line, and in the sixth line of this section 262, so that the board would be empowered to order what proportion, if any, of the cost is to be borne by the Crown, municipality, or other corporation.

I want to make it clear that I made this proposal to the Board of Transport Commissioners during the hearings that led up to this report and the board declined to consider it seriously for two reasons. First, that it feared a possible controversy in provincial-dominion relations; and secondly the board did not want to reach out for the additional jurisdiction which it did not have. I am no one to judge the gravity of a political situation, but it does seem to me that the board's fears may have been exaggerated, particularly when the board is already empowered under the section to make orders for contribution against provincial emanations such as counties and municipalities. As to the question of jurisdiction I should think parliament would want the board to have the most complete jurisdiction possible in matters of public safety where railways are concerned.

Mr. CARRICK: Has any question ever arisen as to the constitutional validity of this legislation you are suggesting?

Mr. SPENCE: It has been discussed with the board at times. It was discussed very briefly before the board at the hearings which led up to this matter but of course the board was not anxious to go into the details at that time and we did not have a full debate on the subject.

Mr. CARRICK: Have you satisfied yourself that the dominion could enact such legislation?

Mr. SPENCE: Yes. I think that is so. There might be a controversy as I say but I do think in matters of railway legislation that the dominion should have powers of this kind and those powers have been assumed already in section 262 when it gives parliament power to make assessments against counties and municipalities which are provincial emaninations.

Hon. Mr. MARLER: There are many other emaninations of the Crown in the right of the province now quite clearly by such provisions of the Act. Because they are emaninations of the Crown in the right of the province does not give them special status. We know that the telephone companies can be created in the same way and commercial corporations and no one would suggest that merely because they are created by the provincial legislature they were not subject to the provisions of this Act. I think the general thinking has been because the Crown in the right of the province was not mentioned there could be no jurisdiction in the Board of Transport Commissioners to affect the rights of the province.

Mr. SPENCE: Now, of course, from the beginning to the end of the board's investigation the board was confronted with the fact that some means should be found for allotting to the provinces their fair share of the cost of highway crossing protection. Highway crossings were at one time pretty well local problems involving mainly the local traffic of the municipalities or counties surrounding them. Nowadays with traffic moving hundreds of miles far and wide the problem is going to be more and more a provincial question and even a national question. Some provinces are recognizing this fact and as the board travelled across Canada there were some offers of extremely generous co-operation from some of the provinces in this problem of grade crossing protection. I do not suggest anything should be done to discourage that co-operation but I do suggest that the best way to have an impartial apportionment of the burden of grade crossing projects with complete uniformity throughout Canada is to fix full discretion and authority for that enforcement in the hands of the board, and one way I suggest that might be done is by an addition of this kind to section 262 of the Act.

Now, the second way in which I suggest, with respect, that this bill might be made even better is by the addition of a change implementing the board's recommendation number 4. That recommendation reads as follows; and is on page 72 of the board's report:

> Contributions should be permitted towards the annual cost of maintenance and operation of automatic signals installed at crossings after the amendment comes into force, the contribution in respect of any one crossing not to exceed for any year the actual cost for that year nor exceed $200.

We in the railways were somewhat disappointed to find that the bill did not contain this provision. I will try to explain why it is very important to us. When the board decides that a crossing needs additional protection and makes an order requiring the installation of automatic flashing lights or some other form of automatic protection, it almost invariably orders the cost of installation to be shared between the Grade Crossing Fund, the municipality and the railway. That is the initial expense, and with the cost of equipment as high as it is, the assistance received from the Grade Crossing Fund is very welcome to the municipality and the railway. However, this initial expense is soon paid once and for all whereas the maintenance of the device thereafter becomes a permanent burden. Maintenance cannot be assisted from the Grade Crossing Fund under the Act as it is at present and will not be able to be assisted under this bill as it stands. The necessity will be, therefore, that the municipality and the railway will have to pay it. Now, the average maintenance cost of a set of automatic flashing lights is about $550 a year. A small municipality paying on only one or two of these is not too badly off. A railway company on the other hand has them all over its system and as the numbers increase the burden becomes heavier year by year and never decreases. I have been speaking only of maintenance, but the same thing applies to the cost of operation of this equipment, for example, the wages of gatemen and other employees who operate manual and electrical gates. Last year the C.P.R.'s total cost of maintenance of this kind of equipment was estimated at $179,000 and cost of operation was $272,800, making a total of $452,000. I have a statement of that, Mr. Chairman, prepared and I might have this passed around for the information of the members.

Then, I have also another statement which shows the way in which the cost of grade separation projects is increasing year by year. This statement shows all actual expenditures on grade separation projects for the last several years. I will pass that around also. Now, we are not complaining of the expenditures that we have on these projects. We are not complaining about

the maintenance of this automatic protection. We can carry that amount of expense. What I want to draw the committee's attention to is this, that the Grade Crossing Fund is now proposed to be increased from $1 million to $5 million a year and that means that there is going to be a very greatly expanded program of grade crossing protection both in subways and automatic signals. Now, that will cause this permanent and irreducible burden on us to grow and grow each year. As it becomes heavier it means only naturally that railways and municipalities will look with less enthusiasm on the proposal for grade crossing protection. It is the cumulative effect of these costs which causes us concern. I suppose it is the same cumulative effect that the board's proposal would have upon the Grade Crossing Fund that caused the suggestion to be dropped in a preparation of the bill. However, I submit with respect that if there is good reason for the national treasury to assist in the cost of installation of grade crossing protection there is equally good reason for a contribution to maintenance and operation.

During the debates upon this measure in the House I noticed that many of the honourable members expressed the view that the fund might be increased to more than $5 million a year and some views of that kind were expressed here this morning. I do not entirely share that opinion. In fact, I think the amount I suggested to the board during the proceedings was $4 million a year for an experimental period. But if we are going to give to the board $5 million it seems to me that the time to do it is later when the fund, contributing to maintenance, is beginning to feel the cumulative effect which I have mentioned.

We in the railways want to do what we can to help in this level crossing problem even though it has been caused entirely by our competitors, the bus, the truck and the private automobile. However, as you all know we can hardly be said to be rolling in wealth these days and all I ask is that you be as gentle as you can in loading us with extra expenses. These subways, bridges, and signals go to facilitate the traffic of those who are taking business away from us and there are limits beyond which we cannot go.

Finally I want to speak on the provision of the bill on which I said I had some misgivings. That is subsection 8 of section 265 which you will find on page 3 of the bill. It provides that:

> "(8) Where a highway project involves the construction of a grade separation crossing and the closing of an existing crossing at rail level or the diversion therefrom of substantially all highway traffic using it, the grade separation shall, if the Board so directs, be deemed to be a work for the protection, safety and convenience of the public in respect of that existing crossing.

At the present time the board cannot authorize a contribution from the fund to a grade separation unless the new structure results in the closing of an old level crossing. This subsection would allow a contribution to be made even though the original crossing were to remain open provided that substantially that all of the highway traffic using the old crossing would be diverted to the new crossing. Two things trouble me. The first is that it is going to be almost impossible for the board to make a firm ruling as to what constitutes "substantially all" of the highway traffic. I am afraid that may lead to many disputes and perhaps some discontent on the part of the highway authorities and I think there is bound to be a gradual relaxation in the application of the section as it goes on. Secondly, if substantially all of the highway traffic is to be diverted from the level crossing, there seems to be very little reason why the crossing should not be closed, and from the standpoint of safety that would be the most desirable thing. We have found occasions in which this question has arisen under the Act as it stands at present and we have got around the problem in

this way: if the crossing left open is only for the purpose of obtaining access of a few residents to their property we make the crossing private and it is closed to the public. The public crossing by grade separations is still able to get the contribution which is obtained from the Grade Crossing Fund. I think in the cases where it is essential to leave the crossing open for a few users, I think that might be done in the future. If a crossing is allowed to remain open as a public crossing the hazard would still be there, perhaps to a greatly reduced extent, but there will still be some hazard which may grow again as time goes on. Although at the time of the board's order traffic may be reduced, as the character of the neighbourhood changes the crossing may be used more and more and may become just as much of a danger as it was before. The final result will be that money has been expended from the Grade Crossing Fund without effect.

We are here at the disposal of the committee and I thank you very much.

The CHAIRMAN: It being one o'clock I think we will adjourn until 3.30 this afternoon.

AFTERNOON SITTING

THURSDAY, May 5, 1955.

3:30 p.m.

The CHAIRMAN: Order, gentlemen. We would now like to hear from Mr. J. W. G. MacDougall, Commission Counsel for the Canadian National Railways.

Mr. GREEN: Mr. Chairman, before we hear from Mr. MacDougall I would like to ask Mr. Spence a question.

The CHAIRMAN: Very well.

Mr. GREEN: Mr. Spence, you tabled two statements this morning. One of them shows the estimated cost to your company of maintenance and operation of highway crossing protection devices for one year, 1954.

Mr. SPENCE: Yes sir.

Mr. GREEN: Amounting to $452,033; that would be the estimated amount spent by the Canadian Pacific Railway.

Mr. SPENCE: Yes sir. There was $179,000 under the heading of maintenance, which was an estimate. But the next figure, $272,805 under the heading of operation was the amount actually expended as shown on the books of the Canadian Pacific Railway; the total figure is $452,000 just for the Canadian Pacific Railway Company.

Mr. GREEN: Would those figures be approximately the same for the preceding four years?

Mr. SPENCE: Mr. Steele, our engineer of signals, perhaps might answer your question.

Mr. STEELE (*Engineer of Signals, Canadian Pacific Railway Company*): I can give you the actual figures of operation for the two preceding years.

Mr. GREEN: You also filed a statement which sows your expenditure for grade separation projects for the five year period, 1950-1954 inclusive, which amounts to $1,124,275. As I understand it, that was money actually spent on grade separation projects?

Mr. SPENCE: Yes sir.

Mr. GREEN: Your figure for maintenance and operation of projects already installed in the year 1954 is almost half of the total amount spent for the five years in putting in these projects; and if you multiply that $452,033 by five, that is, if you add it up for a five year period, which is the length of time

covered by the statistics for the cost of installations of the projects, you reach the result that it cost you twice as much to maintain and operate the signals already in existence as it did to put in new projects. Is that the case or not? That is why I asked about the figures for maintenance of operation for the preceding four years.

Mr. SPENCE: Perhaps I might explain that the statement on maintenance and operation has to do with automatic signals such as flashing lights, automatic gates, manually operated gates, and so on; whereas the other statement has to do with grade separation projects. Now, these have grown very substantially between 1950 and 1954; and as you will see in 1950 our expenditure was $75,000; in 1951 it was $57,000; in 1952, it was $156,000; in 1953 it was $394,000; and in 1954, it was $440,000.

That shows a very substantial growth in these projects. There are more of them coming forward and there have been in the last two or three years. The demands for grade crossing protection perhaps has not grown in the same proportion, and I think it would not show the same indication of growth there as it would in respect of the former.

Mr. GREEN: Let us take the year 1954. You spent for separation projects in that year $440,280, and for maintenance and operation of highway crossing protection devices the cost amounted to $452,033.

Mr. SPENCE: Yes sir.

Mr. GREEN: Is that an accurate picture of what has been going on? In other words, has it cost you more to maintain and operate existing warning signals than it cost you to put in new separation projects?

Mr. SPENCE: Yes.

Mr. STEELE: It was $452,000 in 1954, for the cost of operation and maintenance of signal protection at crossings; the other figure is for grade separation which is not tied in at all with this. It is entirely separate.

Mr. GREEN: I realize that they are not connected.

Mr. SPENCE: I think it is correct to say that that is what these figures indicate; that at any rate in 1954 it cost us more for maintenance and operation of signal protection than it cost us for grade separation; and the point I was trying to make on the first exhibit was that $452,000 for signals is something that we are fixed with for all time, and which keeps accumulating and getting larger and larger each year. It may be that in some years we will not have an expenditure of anything like that amount for subways and overhead projects. But once automatic protection is put in at a crossing we have to meet the requirements each year for that crossing. It might well be that in time we would have to spend a very considerably greater amount for maintenance of automatic protection, particularly if most of this $5 million is applied in that way, than we would for initial expenditures.

Mr. GREEN: So your submission will be that you thought that the Grade Crossing Fund should be able to contribute to the cost of maintenance and operation of these highway crossing protection devices; is that correct?

Mr. SPENCE: Yes. We feel that when the fund goes up and the program is being accelerated, the maintenance cost is going to go up too and we would be charged with all of that, and that the fund should help us on the one side as well as on the other.

Mr. GREEN: You are basing that suggestion on the recommendations made by the board in their report contained in paragraph 4 on page 2 which reads as follows:

> (4) Contributions should be permitted towards the annual cost of maintenance and operation of automatic signals installed at crossings

after the amount comes into force, the contribution in respect of any one crossing not to exceed for any year the actual cost for that year, nor exceed $200.

Mr. SPENCE: Exactly!

Mr. GREEN: You are asking that this recommendation be put in the bill and so written into the Railway Act?

Mr. SPENCE: We are.

Mr. HOSKING: I would like to ask a question. I am most sympathetic to the railways in their problems, but as a Canadian citizen, do you think that the Dominion government ought to dictate to a province in regard to whether the railways should put in these underpasses and grade separations of which you speak?

Do you think that we ought to step into a province and say to the provincial government: "Now, you do this because we think it is good for you".

We have done that in the case of the municipalities, but I do not know whether I can agree with it. Certainly, when I was in a city council I did not agree to it. I thought that the municipality had rights by virtue of being part of the province and those rights should be respected; and I would just like to know from you—not in your official capacity as a representative of the Canadian Pacific Railway, but as a Canadian citizen—if you think that the Dominion government should go to the provinces and say: "You do this because it is good for you".

Mr. SPENCE: Well, speaking in the way you put it, I think that the board is always very well aware of the viewpoint of the municipalities as well as of the provinces, and I do not know of any case in which the board had ridden roughshod over any expressed desire of any of the parties to an application. There are times when there is perhaps a slight disagreement as to how much should be apportioned between the parties, and when that happens the board hears all sides of the question and comes up with a judicial judgment on the case. But I do not think there is any fear that if the power is given to the board to say that whatever the highway authority is it should abide by the board's decision as to what is fair. I do not think that there is any fear that the board would abuse that power, and I would think that it is the only way in which we can get uniformity and fair application of the fund to all types of crossings.

Mr. HOSKING: I cannot agree with you when you say that when you give people power they do not use it. They do!

But is there any chance, if they do not have this power, that there will be a certain province which will object to its being done, and eventually that the grade crossings in that province will be bad, and that the people in that province will say: "Why don't we do here what they do in the other provinces, and correct that?" Without this coercion which you would have to put on to make them accept it, could it not be worked out?

Mr. SPENCE: I think that perhaps there will be an occasional crossing where, since it is a provincial crossing, the amount contributed by the highway authority will not be on the same basis as if it were a municipal council crossing, that is, that the board will not be able to apportion what it thinks to be a fair amount to the highway authorities simply because it is a provincial authority which it cannot compel.

Mr. HOSKING: Under those conditions, would the Canadian Pacific Railway not say: "We won't touch it". And let it stand there?

Mr. SPENCE: We cannot do that. Once we get an order from the board we have to do something about it.

Mr. HOSKING: Is the board unreasonable then in those provinces where you do not get co-operation? Is the board unreasonable in asking for this to be done? Should the board not use more discretion and say: "We will just wait until we get a government in that province which will assume the cost".

Mr. SPENCER: I do not think that the board has been unreasonable in that connection in the past at all.

Mr. HOSKING: The present arrangement is not too bad, then?

Mr. SPENCE: No; there is just the occasional case when the plan is thrown out because the province does not see fit to accept the board's point of view on what would be a fair apportionment.

Mr. CARRICK: I would like to ask one question in connection with the statement of the cost of maintenance and operation of the highway crossing protection devices; I see there are 586 installations mentioned. Were a number of those installations put in when there was contribution by the board as well as by the province and the municipality and the railway?

Mr. SPENCE: Oh yes, I would think that in nearly all, if not all of them, there was.

Mr. STEELE: Yes, that percentage of Canadian Pacific Railway participation is shown in the second column to the right.

Mr. CARRICK: Do you suggest that the board can assume anything beyond $200 a year? Do you suggest that the provinces and municipalities should make a contribution to the cost of maintenance?

Mr. SPENCE: Yes; I think it should be apportioned between the municipalities and the railways; and I think that this $200 contribution from the Grade Crossing Fund will be of assistance.

Mr. CARRICK: In addition you think that the municipality and the province ought to pay a proportional amount?

Mr. SPENCE: Oh yes, yes.

Mr. HAHN: You suggest that the word Crown be added in the first part of this?

Mr. SPENCE: Yes.

Mr. HAHN: And it says in the subclause at the top of page 3 of the bill:

> (6) No amount shall be applied by the Board out of The Railway Grade Crossing Fund towards the cost of work actually done in respect of any crossing unless that crossing has been in existence at least three years prior to the making of the order by the Board to apply the amount for that purpose.

I wonder whether or not you took that into consideration when you made the proposal, by reason of the fact that if the board suggests that the Crown should assist in the building of these grade crossings, it would depend entirely on a contribution from the government to this assistance at a later date by reason of the fact that the crossing had to be in effect for three years before a contribution is forthcoming. Did you consider that when you made your proposal earlier?

Mr. SPENCE: Well, sir, I am not sure that I get the import of your question; but I think that subsection 6 of section 265 would apply in either case, that is, whether the province was building a new crossing or whether the railway was, or a municipality; and that neither the province nor the municipality should be entitled to draw from the fund for the purpose of helping to create a new crossing; and if after three years the conditions have changed, or if a serious reason for crossing protection has arisen which did not exist when the crossing was built, I think it would be fair for the fund to contribute.

Mr. HAHN: Earlier today we learned that the provincial highways in British Columbia, or most of the highways there are provincial highways. When they are building these roads it sometimes means that the best time to put in an underpass or an overpass is when the road is being built.

Mr. SPENCE: That is right.

Mr. HAHN: Years later when you go to the federal authority and ask for a federal contribution to the underpass or overpass, your chances of collection would be pretty slim, whether it be British Columbia or any other province, because the works have been in existence for some time. I know that part of it is new, and therefore possibly—what would the earlier reading be, Mr. Minister?

Hon. Mr. MARLER: My understanding is that a new crossing would not have any right to participation at all, necessarily.

Mr. HAHN: It might be much easier to build a level crossing, but they considered it was better to build an overpass or an underpass immediately and thereby save many thousands of dollars of renovation at a later date. It has to be in existence for three years before they can collect, or before they can even ask for a contribution, that would have a material effect on the building of a highway, I would say, at that time.

Mr. SPENCER: Well, of course the whole theory of this section of the Act is that there is danger at level crossings and it is desirable not to increase that danger by building new level crossings if they can be avoided. Now, if the municipality or the province is sufficiently anxious to build a new crossing, then the theory is that it should pay the expenses of protecting the crossing at that time and if a grade separation is needed, then the authorities causing the danger should be prepared to do it. Now, if a grade separation is not necessary, and a highway is built, a level crossing is put in; but later on traffic may increase, because times change, and perhaps the population grows up in the vicinity of the crossing, and then it is desirable that all parties should come in including the Grade Crossing Fund, to take care of a situation which has later arisen. But I think that it would be contrary to the intention of the Act to make it possible for contributions to be made from the Grade Crossing Fund at the time the crossing was built; it would tend to increase the number of such crossings, and it would be easier to build them.

Mr. HAHN: I could possibly agree with you except that I think we should have a grade separation whenever and wherever it is possible; but I can still see where these things are concerned that it is much simpler and easier to run a level crossing than it might be to go to a province and say: "We will let this go in there on a level basis for the next three years and then it will have established its need, and we will get 60 per cent contribution from the federal authorities." In the meantime that crossing is a continual hazard. I would say that from the point of view I have that wherever such action is undertaken when we have a new highway being constructed they make use of the very fact that they are in the form of construction and we should try to get these grade separations immediately and if the contribution can be forthcoming normally at a later date, at that point it should be forthcoming at that time. I can see from your statement of the cost of operation of these mechanical devices it would save you money to begin with in that way and also help to save lives.

Mr. SPENCE: Yes. Of course the board examines these things very carefully. When any authority comes forward and asks for a new crossing from the board, the board is very conscientious about examining all the dangers and possibilities of that crossing. It knows reasonably well how much traffic is

going to be used over that crossing and it might very well be in the case you suggest that the board would say we do not approve of and will not grant you leave for a level crossing here because it is dangerous, or that it is going to be evident almost immediately that grade separation is necessary. I think the board would exercise its discretion in that way to see there is no money spent unnecessarily.

Mr. HAHN: I wonder if the minister thinks that.

Hon. Mr. MARLER: I do think so, yes.

Mr. BARNETT: Mr. Chairman, turning to the questions in relation to this proposal from the C.P.R. with respect to the cost of operation and maintenance of the protection devices and relating it somewhat as Mr. Green did earlier to the other expenses in respect to grade separation projects, the representative of the C.P.R. has told the committee they anticipate an increase in the maintenance cost as a result of expanded projects of extending protection devices. I take it that it is more or less self evident that where a grade separation project is carried out that that eliminates the matter of any maintenance on an automatic signal device of that kind.

Mr. SPENCE: There will be some maintenance of the subway. Usually these things are put in in concrete these days and maintenance is not high in any one year. I think that the maintenance is a minor feature after a subway has been built, for a certain period of years. It may become important after the subway gets old but that perhaps is not a large amount every year. It may be that we will have to do some concrete work one year and nothing more for five years. I think Mr. Shaw should be speaking on this.

Mr. BARNETT: Before Mr. Shaw starts I would like to ask you one further question. The further question I would like to ask is of the projects listed in your second table how many of them as a result of the grade separation projects eliminate the former level crossing in which some sort of protection signalling device was maintained.

Mr. SPENCE: I think Mr. Shaw might answer that.

Mr. G. E. SHAW *(Engineer of Bridges, Canadian Pacific Railways)*: We have some figures for track structure and some figures which perhaps represent a typical subway. A typical subway with concrete retaining walls would cost in the neighbourhood of $468,000. The annual cost in the sinking fund and maintenance of this structure would be in the neighbourhood of $37,000 a year. The sinking fund, maintenance and damage would be in the neighbourhood of $37,000, a year. That represents practically 7·4 per cent of the capital cost.

Mr. BARNETT: I take it the figures you quote in respect to the initial cost would include the sum contributed by all parties.

Mr. SHAW: Yes.

Mr. BARNETT: You are not quoting figures as the annual cost to the railway?

Mr. SHAW: No. Regardless of who pays that is what the total cost would be.

Mr. BARNETT: Are you suggesting that the annual cost of a crossing if it has been changed to one in which there is a grade separation exceeds the cost of the maintenance of a level crossing with some type of protective device?

Mr. SHAW: There is no doubt about that. Grade separation costs you many times more than a mechanical device to maintain. Here is a place where your annual cost is $370,000.

Mr. SPENCE: That is of course including the cost of the money invested. That $37,000 is the annual cost of the sinking fund, interest, and maintenance and is based on 6½ per cent of interest on your money.

Mr. BARNETT: Have you figured out the railroad's share of the money?

Mr. SPENCE: That is only a typical example of a subway cost.

Mr. BARNETT: What I am trying to get clear in my mind, Mr. Chairman, is the relationship of the proposal advanced by the representatives of the C.P.R. that the maintenance cost of these protective devices should come in part at least from the Grade Crossing Fund and on the other hand some remarks which were made by the representative of the C.P.R. in answer to another question expressing their views as to the desirability of the establishment of grade separations. The question that I would like to have clarified is their opinion as to the relative value and importance of utilizing the funds in the direction of eliminating level crossing and as it appears to me thereby in effect reducing the maintenance cost to the railway of these devices as compared to the proposal you previously advanced?

Mr. SPENCE: There was a great deal of discussion of the relative advantages of protective devices and grade separation before the hearings of the board and I do not think that any definite conclusion was ever reached, although the board in its report is inclined to take the view that when a certain amount of money is to be spent it is better to apply that money to a great number of small expenditures at a great number of crossings than concentrate the expenditure in big lumps for grade separation. As far as the railway company is concerned, we are perhaps inclined to the view that from our own point of view of interest and economic position perhaps grade separations are more desirable because then we are rid of the problem forever except for a certain amount of maintenance and carrying charges. But a good deal depends of course on how much is charged in each case. As far as grade separations are concerned there is no uniformity. The Board applies the benefit theory. That is, it sizes up each individual situation and says that the municipality is going to receive a certain proportion of the benefit here because this is a very heavily travelled road which is going to be relieved of a great deal of congestion. In another case it may find that the railroad company has a great many trains running across the crossing and its operations may be hampered by the fact that there is a level crossing there and the railway company gets more benefit in one case than another. I do not think we can lay down any formula and the board has not attempted to lay down any formula for contributions in grade separations. It says it considers that that is a matter which it has to consider in each individual case. As far as the automatic protection is concerned the 15 and 25 per cent proportion is the one which it considers fair and that is where the formula can be applied.

Mr. ELLIS: How many years did you say after the construction of the subway the maintenance costs come into being?

Mr. SPENCE: Generally we consider 75 years.

Mr. SHAW: The figure I was thinking about was 75 years. Sometimes it is more and sometimes less; sometimes it is obsolete before that.

Mr. ELLIS: The figures you gave us a moment ago were based on 75 years.

Mr. SHAW: Yes.

Mr. CARRICK: Has the federal government ever made any grants to the C.P.R. for any purpose? I have an idea they have, but I am not sure what they were for.

Mr. SPENCE: Going back to the beginning of our history there was a contract.

Mr. CARRICK: No, in recent years.

Mr. SPENCE: You mean in respect of grade separations?

Mr. CARRICK: No. With respect to the funds under this Act. Apparently I am wrong if you cannot recollect. I had the idea that the government had made an outright grant to the C.P.R. and I was trying to recollect what it was for.

Mr. SPENCE: No, I am sorry I do not believe there was.

Mr. GREEN: During the depression grants were made to help keep up the tracks.

Hon. Mr. MARLER: I think that may be true.

Mr. SPENCE: During the depression there were some loans but they lasted only a short time.

Mr. J. W. G. MacDOUGALL (*Commission Counsel for the Canadian National Railways*): Mr. Chairman, my name is Macdougall and I represent the Canadian National Railways. My remarks will be relatively brief. The purpose my company has in appearing before this committee today is firstly to tell the committee that the Canadian National Railways fully support the report made by the board and bill 259 which is designed to implement that report. We feel that it is a milestone in this problem of the railway grade crossing and will improve the safety and convenience of the public in respect of railway highway grade crossings.

I agree with the remarks made by Mr. Spence that the board should be complimented upon the amount of work which it has put into the report and upon the excellence of that work.

However, I wish also while I am here to draw the attention of the committee to two points upon which my company feels that the Act as it exists today could be improved with respect to matters of safety and convenience of the public. They are not matters which deal particularly with money but rather items which deal entirely I think with safety.

I might say also at this time that we appreciate, as Mr. Green has pointed out, that the changes in the Act as now proposed raise the amount of the fund to $5 million which will mean a large increase in the number of projects that will be undertaken and as a result will mean to the railway companies an increase in the amount of money they will spend on these projects each year. Our company's policy has been that as long as our proposition is on a fair basis we are quite prepared to assume our obligations even though they may increase because we feel that it is time that we made a real and substantial effort to attack this problem. I do not know that I can be of any great help in answering any questions the committee may have but I will be delighted to do my best.

With respect to the two points upon which we consider the Act can be improved, I have, Mr. Chairman, prepared a suggested way in which the Act can be amended to bring about these two conditions and I have copies which may be distributed, with your permission Mr. Chairman, to the members so that they will see what I am speaking about. I may say that the two points which I referred to were discussed before the board during its enquiry, not in any great detail, but were among a number which were dealt with and discussed there which the board did not make any recommendations upon in its report. We feel however in reviewing the whole problem in the light of the board's report that we should not let this moment pass without acquainting members of the committee with our views concerning two important phases of the problem and by which the public would benefit greatly.

The first one refers to section 260 of the Railway Act which section is quoted on a sheet of paper before you. The suggested wording is practically the same as it exists in the Act today with the addition of the words underlined

at the bottom of the paragraph "or that the crossing, if any, be temporarily or permanently closed". Section 260 of the Act is the one which is designed to give the board power to protect crossings and to aportion the cost of those works and to determine just what is required by way of protection. It can install automatic signals under this section or direct subways to be installed or that the railway or the roadway be diverted. The purpose of this section is to provide the means whereby the board can protect the public at a dangerous crossing.

Now, in addition to this section, the Railway Act gives the board the power to open highway grade crossings as we have heard discussed here earlier. It has the power to direct that protective devices be installed and, as I say, to divert a crossing and it is charged with the general responsibility for the safety of the public at highway crossings. There is no provision in the Act which will allow the board to control either temporarily or permanently the closing of crossings even if it is considered to be in the public interest to do so. The type of situation which arises is that a municipality may have three level crossings in 1914, and through the evolution of time perhaps, and through the construction of an overhead, or grade separation at one of these crossings, or because there has been some movement of population, three crossings are no longer necessary and the board has no power whatsoever to cut down on their number. We have the situation therefore where the board has the power to open up new crossings, and they are being opened up every day, but seldom are grade crossings eliminated, and we suggest that the board should have the power to eliminate crossings where considered necessary either permanently or temporarily. We feel that is a loophole in the board's power respecting safety at highway crossings, and the amendment is designed to give the board discretionary power with respect to the closing of crossings where they consider it is necessary in the public interest or in cases where it is the only real way in which the safety of the public can be achieved.

Now, the second amendment is the short one which is a new subsection to section 416, and the wording of that section is as follows:

> 416: "Any person who uses any highway crossing at rail level for the purpose of passing on foot along such highway across the railway, except during the time when such highway crossing is used for the passage of carriages, carts, horses or cattle along the said highway, is liable on summary conviction to a penalty not exceeding ten dollars, if
>
> (*a*) the company has erected and completed, pursuant to order of the board, over its railway, at or near or in lieu of such highway crossing, a foot bridge or foot bridges for the purpose of enabling persons passing on foot along such highway to cross the railway by means of such bridge or bridges, and
>
> (*b*) such foot bridge is maintained or such foot bridges are maintained by the company in good and sufficient repair."

We suggest that a serious condition exists today in that there is no provision in the Railway Act which will allow for the prosecution of persons who ignore railway highway crossing warning devices. I am sure we are all familiar with the laws and regulations with respect to street intersections and traffic lights and we know that a violation of a red light at a traffic intersection whether or not there is traffic on the highway will mean that a fine will be imposed if a peace officer reports on the situation. There is nothing in the Act to provide for prosecution of a person who ignores the existing activated crossing protection signal devices or the crossing watchmen's signal. We feel that the time has come when the public should be educated in respect to highway railway crossing signals in the same manner as they respect traffic signals.

As you probably know we have many cases where accidents happen involving persons on the highway who get on the railway crossing even when the signals are activated simply because someone ignores them and takes a chance, but in many cases they are ignored and no accidents happen. We think it would be a distinct benefit to the public generally if a safety campaign were inaugurated which would make people respect the signals more, and we feel before that can be done some penalty should be put in the Act which would publicize this fact. I think, Mr. Chairman, that is about all I have to say.

The CHAIRMAN: Thank you. Any questions?

Mr. STANTON: Mr. Chairman, in reference to that amendment to the Act which would enable the board to arbitrarily close a road, I do not think that is necessary at all. As a matter of fact, municipal townships are not in the habit of keeping roads open that are not in line with the needs of the people in that particular community. They generally look after the point of closing roads that are not used.

Mr. MACDOUGALL: I appreciate your remarks, and if the board did exercise that power arbitrarily it would be a bad thing. We have made the board responsible and we respect their discretion with respect to the protection and the safety of the public, but for some reason we are not prepared to rely on their discretion with respect to the closing of crossings if they consider that is the only way the safety of the public can be achieved, and that is the point we feel is desirable.

Mr. CARRICK: As the section exists now does the board ever feel it does not possess the power to enforce what you are trying to achieve by this amendment?

Mr. MACDOUGALL: Yes. I know the board has declined to act on that section and close a crossing where a highway exists at the time the railway was built.

Mr. CARRICK: It seems to me it would come under two expressions here: "They may make such order as to the protection, safety and convenience of the public as it deems expedient" or in the latter part of the section, "Or measures taken as under the circumstances appear to the board best adapted to remove or diminish the danger or obstruction in the opinion of the board arising or likely to arise in respect of such portion or crossing, if any, or any other crossing directly or indirectly affected."

Mr. MACDOUGALL: To my knowledge the board has always taken the position if they issued an order at one time to open a crossing they have the power to cancel the order, but there were many roads which were opened a long time before railways were built possibly and railway crossings of them still exist and are dangerous. Due to the building of other roads or lateral roads they could be eliminated; but there always seems to be a strong unwillingness to close some of these crossings even although they are not used very much, and at these crossings where the right of way is owned by the highway authorities the board has felt they do not have the right under the discretionary powers of the Act to close the crossing.

Mr. ELLIS: I would like to ask whether Mr. Macdougall feels that putting this power of closing crossing in the hands of the board might work a hardship on farmers and others who use roads which might not be used too much by the general public? In other words, I am speaking of the rural areas where it is true that a new highway might have been built which carries most of the traffic, but nevertheless there are farmers living along the rural roads who perhaps own land on both sides of the road who do use the crossing in the normal course of their operations. I would be rather hesitant to see the

board possessed of the power to close a crossing which might create a hardship and great inconvenience for even a small group of people who use that crossing in their normal working operations.

Mr. HAMILTON (*York West*): Did we not hear some of these referred to as private crossings?

Mr. MACDOUGALL: Throughout the length and breadth of the land we have many crossings which are farm or private crossings which are used by one or two farmers but not the general public, and I think there would be no question but that the railway would be prepared to provide an alternative facility. The type of thing we are thinking of is not where the closing of a crossing will work a hardship on the local citizens, but will eliminate a multiplicity of crossings where they could get by with three in places where they might have five within a mile or something of that kind which would create just that much less danger in the area.

Mr. HOSKING: How many of these would you have in the dominion now?

Mr. MACDOUGALL: Crossings?

Mr. HOSKING: Yes.

Mr. MACDOUGALL: I have no idea how many we would want closed—perhaps not many. I can think of one right now near Dorval, Quebec, where a crossing was opened up a few years ago at Pine beach, and efforts are being made to get lateral roads on both sides of the track at that point which will connect up with "subways at Dorval, and other places, but there is a level crossing in the middle, and if the municipality for any reason decides it does not want it closed there would be no power in the board to close it. There is a situation where the public might be inconvenienced, but greater safety would be created by using a subway in a high speed area.

Mr. HOSKING: How difficult would it be to give the committee a reasonably accurate idea of the number of crossings you want closed?

Mr. MACDOUGALL: Well, I would think it would be a little difficult. We would have to survey the whole country.

Mr. ELLIS: Would you not say that the municipalities would be in a better position to assess the situation in regard to the crossings to a greater degree than the board?

Mr. MACDOUGALL: It would be hard to say whether or not they would. I might say that the municipalities in many cases do close the crossings themselves, but in the aggregate it is not a great number.

Mr. JAMES: If there was a controversy the board could have a local hearing to hear both sides of the argument?

Mr. MACDOUGALL: Yes, if the people effected in the area wish to have a hearing it could be done, of course.

Mr. HOSKING: Have you anyone from the Board of Transport Commissioners who would express their views on this suggestion?

Hon. Mr. MARLER: To what suggestion are you referring?

Mr. HOSKING: The suggestion about closing the crossing?

Hon. Mr. MARLER: I suppose, Mr. Chairman, the question is really one for the committee itself to decide. My understanding is that at present if there is a proposal made that a crossing should be closed it is apparently the practice for the board to inform the municipality concerned and I am told that the practice up to the present is not to order the closing except where there is a concurrence of the municipality, and I must admit that while I rather share some of the views expressed by Mr. Macdougall, I would be hesitant personally to recommend that we should give the board power despite the opposition

of the municipality to order the closing because I think I must say I have a good deal of confidence in the views of the municipal administrations for the local problems that they have to deal with. Therefore, frankly, I do not want my rejection of the idea to be for all time, but I certainly would want to study it very carefully before enlarging the Act to give the board the power to order the closing regardless of the views of the municipalities and regardless of whether or not alternative facilities were being provided.

Mr. HAMILTON (*York West*): It is a pretty serious violation of property and civil rights.

Hon. Mr. MARLER: Yes. I am not invoking the constitutional aspects, but I am looking at it as a common sense question. I think the municipal authorities are best qualified to know what are local needs and how they should be dealt with. I do not mean to say that I think the municipal councils are always right. I was a member of a municipal council and I do not think that we were always right, but I think perhaps we were in a better position to assess local needs.

Mr. WESELAK: Am I correct in assuming that there is no legal provision at the moment for closing a crossing?

Hon. Mr. MARLER: I think the answer to that is that you can close with a concurrence of the municipality or you can order the closing where you have provided another facility instead. If you look at that subparagraph you will see it seems to imply the closing of a facility which has been replaced but it enables the board to keep it open if it sees fit. I think the implication is quite clear that it could likewise order the closing of it where it has provided a new facility.

Mr. WESELAK: Only?

Hon. Mr. MARLER: Yes.

Mr. JAMES: Have you any comment to make on the question of the penalty, Mr. Marler?

Hon. Mr. MARLER: I would like to tell the committee—and I am quite sure Mr. Macdougall remembers—somewhat similar suggestions were made before the board of commissioners that penalties should be enforced for highway traffic, but I know from the report of the board that it thought this was a matter which should form part of the provincial highway legislation, and it left to the province both the power and the responsibility of dealing with something that is essentially a highway problem. I do not disagree with the objectives Mr. Macdougall has in mind, because I must say I think people run unnecessary risks at highway crossings and cut through red lights on the highways when they certainly would not do it on the streets, and despite the fact the danger is much greater in one case than the other. At the same time, however, I would be a little hesitant in view of the board's failure to recommend the addition of penalties to the Act without a great deal of reflection to add this to the bill we are now considering.

Mr. ELLIS: Provisions of this kind already exist in some parts of the country. I know that in Regina a citizen was fined just last week for cutting across a crossing at a time when the automatic flashing light was on.

Mr. CAVERS: That was a municipal by-law—

Mr. MACDOUGALL: In some cities it is true but it is not so in general application. In putting forward this suggestion it should be noted that section 416 as it exists today provides for a penalty of $10 for a person who uses a highway crossing where there is an existing overpass built for his protection. It is not different to provide a $25 fine for a person ignoring the warning signal.

Hon. Mr. MARLER: I was not suggesting, Mr. Macdougall, that your recommendation was not a perfectly common sense one and that it should not be made a part of the Act, but I was merely saying to the committee that the suggestion had been made to the Board which had given rather mature consideration to it, and they considered it was a point that should be dealt with as part of the highway legislation rather than as an amendment to the Railway Act.

Mr. BARNETT: I wonder if I might return for a moment to the other proposal which you submitted. The minister in his comment upon the matter of the closing of crossings referred entirely to the situation lying within the municipal boundaries and made no reference to what the situation is in respect to the closing of crossings in unorganized territory.

Hon. Mr. MARLER: Quite frankly I was not endeavouring to draw a distinction between what you might look at as crossings within municipalities and other crossings. I do not think there is any distinction between the two in the Act, and there was certainly none in my mind when I made those remarks.

Mr. BARNETT: You did suggest the initiative could properly lie with the municipal authorities. Now, in the absence of a municipality, where would the initiative lie?

Hon. Mr. MARLER: I was not suggesting that the initiative should lie with the municipality. I thought that the concurrence of the municipality should still remain a condition; in other words, if the application were made by a railway asking that some crossing be closed, that the board would notify the municipality concerned or the county corporation concerned, or the province concerned, and say that this proposal had been made. As I understand the Act at present, unless the concurrence of the municipality, the county corporation, or the province is obtained, it is not now possible to order the closing.

Mr. SMALL: Who is suggested to lay the information?

Mr. MACDOUGALL: It could be laid by anyone in the ordinary manner.

Mr. SMALL: I am in accord that there should be some kind of interprovincial arrangement to have all signals adapted to uniform standards to bring about proper enforcement.

Mr. ELLIS: Has the railroad company approached the provincial highway outhorities and municipal governments to sell them on the idea of enacting by-laws to cover such offences?

Mr. MACDOUGALL: I think I can say no. It is our feeling that a provision of this kind dealing with public highway crossings would well lie within the Railway Act, and if it should be found that it does not, perhaps other means could be taken to meet the objective. But we felt that was the proper place to put it. That is why we came forward with it at this time.

Mr. HOSKING: What is the position when an accident does take place, and when someone ignores the warning sign? Suppose someone ignores a flashing light and goes across, and his car gets smashed and he is killed. What is the responsibility when the judgment is given? How do they come out?

Mr. MACDOUGALL: It is rather difficult to answer the question as you have framed it. It depends entirely on the facts of each individual accident who is civilly liable, where the civil liability would lie, or where the damages would lie. They may lie with the person using the highway or with the railway company. We have statutory obligations such as blowing the whistle and things of that kind. It may well be found by the court that that was the cause of the accident. It depends on each individual case.

Mr. HOSKING: Does the railway generally suffer if a person, in the face of a wigwag goes on the track and is killed? Would the railway be sued for damages?

Mr. MACDOUGALL: We are sued many times for damages and we often have considerable damage occurring to our equipment which is not recoverable from anybody using the highway. That damage may run into many thousands of dollars when cars get on the railway; and when an automobile gets under a locomotive, there are not too many of us who are insured or who have financial resources to stand a claim of that kind.

Mr. HOSKING: My point was that I do not think there is anything more damaging to our country than putting laws on the statute books which are enforced only 50 per cent of the time. I think that is the worst thing you can do, to let the public feel that it is all right to break a law as long as you can get away with it. If the railway is suffering unjustly because of the accidents which happen when people disregard warning signs, they do not get the protection they should get, and I would be inclined to go along with you; otherwise, unless you are going to stop every single person and fine him, if he does not observe the law, then I do not think you should put the law in, because you are training people—we have done it not only here but everywhere—to disregard the laws of the country unless they are caught. That is the only crime, and I think it is a very bad thing. If you had anybody to police it, you might put it on the statute book and go ahead with it, but unless five or six per cent of the people are caught, they would have an utter disregard of it.

Mr. MACDOUGALL: We appreciate very much that there is a problem of enforcement but we do not feel that because it is difficult we should throw up our hands and do nothing about it. We have many cases, where, if this law was on the statute books we could take effective prosecution against the parties who ignored the signals. This has nothing to do, I might say, with the recovery of damages on a claim. That is purely a civil matter depending on the negligence of the parties. This is entirely directed toward penalizing offenders, the people who ignore crossing signals; and in the event that publicity is given to it, it would teach people that they must abide by those signals as they do ordinary traffic signals, and not ignore them. We have that realistic approach to it, and we think that with clear legislation and enforcement by our own police as well as by provincial and municipal police and others interested, we could achieve a considerable amount of success.

Mr. HOSKING: The reason I mentioned it was to find out how much money you could afford to spend to police it. If your damages are heavy in those accidents, you might say that we will spend $100 thousand to punish every person who goes across these crossings who should not go across them. It would be cheaper than paying for the damages to our equipment. I was trying to get some connection between the two. It is just useless to put in any law unless you are going to enforce it.

Mr. MACDOUGALL: We would make a strong effort ourselves and also try and interest others to police it. If it was enacted and enforced over the years, it would create an awareness of those signals which would cut down not only our expense, but death and injury to people at highway crossings, because not only is the person in the vehicle subject to death and injury, but many times the people in the railway train itself are subject to death and possible injury such as when the engineer of the railway train applies his brakes to try and avoid an accident. In such cases people are often thrown out of their seats and injured. When a train is derailed serious consequences can occur to the

passengers. So it is our feeling that in the long run not only would our costs be cut down, which is a small part of it, but the larger object would be achieved namely, reducing the number of injuries and deaths at crossings. That is the purpose of it.

Mr. NICHOLSON: I believe that in Saskatchewan on the main line of the Canadian Pacific and the Canadian National where a highway crosses the railway, we have special stop signs which require cars to stop. As I understand it there is a $50 fine for anyone who drives through; and I believe that in other places in the province where people have been killed at railroad crossings there is a stop sign put up afterwards. There seems to me to be a great deal of merit in having it in the legislation proposed so that in all the provinces there would be a penalty if people and traffic failed to recognize and to stop at those signs. I think there should be some value; $25 seems to be a very reasonable amount; but it seems to me that if we had a few people paying these fines, eventually we would learn to recognize the stop signs; and with the "Canadian" and the "Supercontinental" going across our country at more than a mile a minute, I think it is very important that these stop signs should be recognized before people proceed to go across. I wish we could include that 259 as a proposed amendment in section 416.

Mr. CAVERS: Wouldn't that create an overlapping of legislation? In Saskatchewan they have a provincial statute governing it now.

Mr. NICHOLSON: I think that the province would be well able to repeal their Act if there was dominion wide legislation. I think it is desirable that people travelling in cars should observe the same rules in Manitoba that they do in Saskatchewan or Alberta. Certainly with this increased speed on the main lines of the Canadian Pacific and the Canadian National there is going to be a stepping up of danger to people proceeding to cross them.

Mr. GREEN: May I ask Mr. Macdougall what special statute there is in provincial legislation dealing with this at the present time?

Mr. MACDOUGALL: To my knowledge the provincial legislation only deals with careless or reckless driving.

Mr. GREEN: Do you know of any provincial legislation which deals with this proposed offence?

Mr. MACDOUGALL: Not to my knowledge.

Mr. GREEN: You are only saying that it applies in cases where the board has actually issued an order that there be a protective device installed?

Mr. MACDOUGALL: That is right.

Mr. GREEN: Then there will be money spent by the railway and perhaps by the provinces or the municipalities, to protect the public.

Mr. MACDOUGALL: Yes; these would be warning devices erected under order of the board and to which contribution would be made by the railways and the municipalities.

Mr. GREEN: You are saying that it should be made an offence where a person disregards signs, signals, or other protective devices which are ordered to be installed by the board?

Mr. MACDOUGALL: That is right.

Mr. GREEN: I think that a suggestion such as this might be given some further thought by the minister. After all the whole purpose of this Grade Crossing Fund is to save life and to prevent these accidents. Apparently there is no provincial statute which actually deals with this particular offence. It is because of travellers disregarding signs which have been ordered, or disregarding warning devices which have been ordered to be erected by the board, that

the railway has had to go to the expense of erecting these devices, and the municipalities have had to pay some of the costs. Surely there is nothing wrong in making it an offence for a person to disregard those signs. It seems to me there should be a further look taken at this recommendation before the bill goes through the House. It would not have to be added here in the committee, but it looks to me like a very reasonable suggestion made by a thoroughly responsible organization.

Mr. HOSKING: If this is going to be enforced—

Mr. GREEN: The responsibility to enforce it would rest not only on the railway but on the authorities across the country. The point which Mr. Nicholson brought out was that we now have these very fast trains running across the country. Therefore, accidents at crossings are going to increase. It just does not add up in any other way. This would seem to be a very appropriate time to give the public warning that they must pay attention to them.

Mr. LEBOE: In connection with municipal legislation, would there be any admission of financial liability which would cause them not to enter into this field at this moment or at this particular time? Would there be an admission of financial responsibility by any act of the provincial government which it might make in respect to this?

Mr. MACDOUGALL: I do not see how that could arise.

Mr. LEBOE: Then why have they dodged the issue so long, if it was necessary?

Mr. MACDOUGALL: I do not know.

Mr. HODGSON: As far as the highways are concerned, should not the railway companies or the Board of Transport Commissioners pay for the putting up of the signs themselves?

Mr. MACDOUGALL: Those are signs and signal devices ordered by the board, such as flashing lights and so on.

Mr. NICHOLSON: Would a stop sign be considered one of the signs? Some of the highways just have ordinary crosses on them. But suppose there is a stop sign? In Saskatchewan at any place where a stop sign has been erected, when you come to it you must stop otherwise you are liable to a fine imposed by provincial legislation.

Mr. MACDOUGALL: That is right.

Mr. NICHOLSON: Would that sort of sign be considered as one dealt with in the Act?

Mr. MACDOUGALL: If it was ordered put up, it would be the same type of sign.

Mr. CARRICK: I was thinking of the Ontario Highway Traffic Act and the section dealing with careless driving. Do you not think that if a person drove on a railway track in disregard of the signs, and had an accident he could be convicted of careless driving?

Mr. MACDOUGALL: Oh yes; but the practical application is that hardly anybody is ever charged and convicted under it. Those who are charged are not convicted. Our experience has been that it does not work. That is why we make this proposal.

Mr. WESELAK: Do you not think that in view of the fact that most motor vehicle operators make a very good study of the Highway Traffic Act, that a provincial Act would be far more effective than to place this material in the Railway Act?

Mr. MACDOUGALL: I do not know. I think it would be obvious that if publicity were given to the offenders that people would pay attention to them. I do not think it would take long for people to find it out.

Mr. JAMES: Has your company any plan to undertake—should this section be included—to publicize it right across Canada so that people would be well acquainted with it before it was put into effect?

Mr. MACDOUGALL: I do not think we have any existing plans, but we could be in favour of it being widely publicized when it is enacted, and we would be only too happy to join in that publicizing.

Mr. HOSKING: I would be very sympathetic to this if there could only be some assurance given that it was going to be enforced. But when our government passes a law such as this and it is left up to municipalities and provinces to be enforced, I can see a very haphazard arrangement in doing so. The reason I am interested in it is that I happened to be on a train a little over a month ago going west from Toronto to Stratford when there was a fatality. I was riding in the first coach behind the baggage car. The wigwag was going. The fellow drove right past another truck in order to get on the track against that wigwag. I saw the engineer as soon as the train had stopped. The position of the engineer and the fireman on that train was intolerable. They could see this chap was going to get right in front of their train and they knew there was going to be a very serious accident. I do not think it is fair to subject employees to that kind of treatment. There was nothing he could do. He was stopping before the accident happened because he had the emergency brakes on before the train hit the car. He realized it was going to happen. I would be very sympathetic to it if I could see some way of enforcing it, but if you cannot persuade the province to do it now, how are you going to persuade them to enforce it?

Mr. MACDOUGALL: We made no effort to persuade the province to enact the legislation because we felt that this problem should be dealt with under the Railway Act. We felt that since this problem was not being dealt with satisfactorily by existing legislation, and because it could fit into the general framework of the Railway Act, our first efforts should be to put it where it ought to be in: in the Railway Act, as part of section 416 which deals with penalties for those who cross on the level where a foot bridge has been build for them. We have made efforts in the past and in every case our efforts have been fruitless. We have not sat back and done nothing about it, but it has not been possible to achieve very much under provincial legislation. However, if this legislation were enacted, our company would be most active to make sure that it was publicized and made as effective, as it possibly could be because I think we have a good piece of legislation which will work.

Mr. ELLIS: The companies have certainly given this consideration. If this amendment were accepted would there be any difficulty as between the powers now possessed by the provinces and the municipalities? In other words, I am looking at it from the constitutional angle. Would this legislation be challenged on the grounds that it is an infringement on the rights of the provinces and municipalities?

Mr. MACDOUGALL: I can only give you my view and my view is that it is perfectly within the competence of the government to enact. I think they had power to enact 416 which exists and this is the same thing.

Mr. ELLIS: You are a representative of the C.N.R. Have you talked to any people of the C.P.R. in reference to this?

Mr. MACDOUGALL: Not in any great detail, although generally the C.P.R. give their support to this proposal.

Mr. SPENCE: Very definitely.

Mr. CARRICK: I think you will agree with me that this is properly a matter of property and civil rights, a matter of highway legislation with which we have been dealing.

Mr. MACDOUGALL: No sir. I think it is a matter of safety of the public at a highway grade crossing, the same as the present section 416.

Hon. M. MARLER: Is there really not a marked difference between legislation which deals with what an individual may do at a railway crossing and something an individual may do when he is in a motor vehicle which has pretty well been looked on as a provincial matter. I am not saying it is a provincial matter to regulate the amount of alcohol a person may consume when driving a car, but my inclination is, and I think it must be that which persuaded the Board of Transport Commissioners to make no recommendation for the adoption of the penalty you suggest, that I think that they regard this as a matter of highway legislation rather than as a matter of the conduct of individuals which is what section 416 does at the present time.

Mr. MACDOUGALL: Yes, I think that must have been the thinking of the board.

Hon. Mr. MARLER: Also I think, Mr. Chairman, we are probably all of us somewhat attracted by the idea of having a piece of legislation which is universal for ten provinces of Canada, but I do not know that we should, merely because it is attractive, say it is not a matter for the provincial legislatures. I think if we allowed ourselves to be persuaded by the fact of convenience into setting up the legislation we would adopt lots of legislation which is strictly of a provincial character.

Mr. MACDOUGALL: It is the view of our legal officers that this legislation is within the competence of the parliament. We feel the jurisdiction is there and otherwise we would not have proposed it.

Mr. CAVERS: Do you not think that the Railway Act confines itself pretty well to conduct of people on railway trains and terminals and rights of way of railways and that this is entirely different in that here someone is using a highway to cross a railway right of way. It comes under the jurisdiction of the Highway Traffic Act rather than railway legislation.

Mr. MACDOUGALL: I think it fits in probably into railway legislation because it deals with safety of traffic at the railway crossing which is the basic responsibility of the board. If the board has power to install gates and has the power to regulate the traffic on the highway it seems an anomaly that there is no power on their part to say they can enforce the public to abide by these rules. When they are looking after the safety of the people on the trains, and highway, on foot or in vehicles, and have the power to put up these protective devices and control traffic on the highway, it seems an anomaly they have no power to say you must abide by these things.

Mr. LEBOE: If we put this through parliament who is going to enforce the Act?

Mr. MACDOUGALL: The same people who enforce the present section 416, or any other penalty provision in the Act.

Mr. ELLIS: Mr. Macdougall, I have also seen people duck under gates to get across three or four tracks and nobody there has authority unless the provincial police lay a charge. Could your man operating the gates have the authority?

Mr. CARRICK: I think it could be done in Ontario. It is competent for the legislature to legislate to cover this situation as they have done under the careless driving section. That is constitutional legislation. That may be and that being so if legislation were enacted by the dominion dealing as you suggest here that would prevail and now if a charge were brought under the Highway Traffic Act of Ontario for careless driving based on these facts it would be held that would be unconstitutional legislation because it would be superseded by the dominion legislation. What would you think of creating

a situation in which you carve a piece out of what was otherwise provincial jurisdiction? Would it not be better to approach it in such a way as to allow the province to handle it and have it done without creating the difficulty I described?

Mr. MACDOUGALL: You appreciate the difficulty in getting every province to enact the same legislation. If we felt that the matter lay rightly within the provincial jurisdiction we would not be proposing it be put in this Act. We feel the circumstances are such that we think this is a proper function of the federal authorities and that when circumstances occur at highway grade crossings that there is a difference there between an accident which occurs on a highway. You read a lot about highway accidents occurring on the highways themselves as apart from accidents which occur at an actual grade crossing. When they occur at a railyway grade crossing we think that the complete authority should be in the Board to deal with the whole question of safety and enforcement.

Mr. CARRICK: I am wondering why you do not get convictions now under the careless driving section and why you would be sanguine about getting it under this section?

Mr. MACDOUGALL: I know from the surveys we made of the provinces that we are not getting convictions now. They have tried and had no success.

Mr. HOSKING: Mr. Chairman, could I ask a question of the legal representative of the Board of Transport Commissioners. Why have you not asked for this type of legislation or power when you see the interest of all the members of the committee?

Mr. KERR: I have no instructions from the board to express any views in that respect, but I would draw your attention to the top of page 69 of the board's report—the bottom of page 68 and the top of page 69. I will read one sentence:

> Other suggestions, more closely allied to motor vehicle operation, including those of an educational nature respecting public observance of grade crossing signs and protective devices, compulsory speed reduction and compulsory stopping of vehicles under certain conditions, and the strict enforcement of prescribed highway safety regulations were placed before us.

I assume that the conditions which Mr. Macdougall has referred to may be embraced in that phrase and the strict enforcement of prescribed safety regulations were placed before us. The board says:

> These are matters not within the jurisdiction of the board but, nevertheless, they are of interest to the board and might usefully meet with the attention of the provincial committees herein elsewhere suggested, as they constitute a part of the overall problem of highway accidents concerning which there is a rapidly mounting national awareness.

Beyond that, I have no instructions from the board.

Mr. HOSKING: I can understand when you control speeds then they are beyond the limits of the railway, but when you come right on to the railway right of way which is not part of the highway—the highway may cross it but it is the railway right of way—you have a flashing light there which says "Stop". Do you not feel that you can legally make a case that you can say, when that stop sign is there and the red light flashing, it says "stop" and that is the railway right of way and that means that you should not be on it?

Mr. KERR: I do not know. As a lawyer I have never given consideration to that particular problem.

Mr. HOSKING: Have the railways never approached the Board of Transport Commissioners about this?

Mr. KERR: Certainly I have not been consulted about it.

Mr. HARRISON: May I ask a question. I am not sure about the proposed amendment to 416. It has occurred to me that the proposed amendment here might have the effect of giving priority to railway traffic over any highway traffic it might come in contact with and having regard to the situation in my own riding where there are none of these automatic signals in the riding whatsoever, I do not think there is even a stop sign as my honourable friend mentioned. They might be put up of course at all crossings. Would this not have the effect if there was an accident at of these crossings that the road traffic would be automatically in breach of the law and subject to a $25 fine possibly on top of being killed as well?

Mr. MACDOUGALL: From the point of view of the question of right of way a train has the right of way. This section is designed to educate the people to regard the signal. I think you will appreciate that a locomotive engineer at night driving a locomotive seeing a car approaching with lights coming up to the crossing at a very great rate of speed not knowing whether that motorist has been the train and is going to stop, has his heart in his mouth every time he sees it and it creates a very undesirable set of circumstances. We feel that will create a circumstance where people will learn to obey signals as they do traffic lights. I know we approach traffic signal lights today pretty well with impunity.

Mr. HARRISON: That leads me to another question which may not be relevant. As I mentioned before it would be possible to put up these signs at all crossings and some of these may not be quite realistic because I have one line in my own riding where the train only operates once every four weeks and would not be very good to have traffic stop for that line every time traffic came along.

Mr. MACDOUGALL: I think the section specifies that the penalty will be imposed where a person crossing a road disregards the signs or signals and in the circumstances which you suggest I doubt if the board would exercise its authority and put up the stop signs. They would only do so in cases where they felt it was a most effective way to protect the public.

Mr. HARRISON: Otherwise if the board so authorized at that crossing if there was an accident there highway traffic would be automatically in the wrong and would not be in the position it is now of going before a court and having the case decided on its merits.

Mr. MACDOUGALL: If the sign was there they would be automatically wrong if they did not stop.

Mr. NICHOLSON: I was wrong when I stated there was a $50 penalty in Saskatchewan. I see:

> The minister may by order declare any level crossing of a public highway over a railway, outside a city or town, to be a dangerous railway crossing, and he shall, in such case, if the crossing is on a provincial highway, cause suitable signs indicating danger, or stop signs, to be erected or placed on the approaches thereto.

But apparently there are not any penalties attached if you drive through. It would appear to me that the request being made now that there be a $25 penalty would be desirable. I do not know why Saskatchewan did not include a penalty.

Mr. ELLIS: I feel that the case merits support but it brings me back to the question I raised earlier when I asked if the railway company had approached the various provincial governments to encourage them to pass legislation covering this point. There is no question about the province having the right to pass legislation of this type because in my own province, as the member for McKenzie pointed out, the government may direct that a stop sign be placed on a particular highway. My understanding is that trucks must stop while cars may go across a crossing on which a stop sign is erected; it is an offence for trucks because I know a truck driver who has been fined. There is no doubt that the province has the right to enact legislation of this kind. There has been some doubt raised here and I asked the question whether there would be any conflict or difficulty in enforcing the legislation if this was included. Mr. Macdougall assured me in his opinion the Railway Act is the proper place, but there have been other opinions expressed this afternoon. Therefore, while I am very desirous of seeing this type of provision included in the legislation I am wondering whether the best way would not be for the railway company to approach each of the provinces and state their case as they have this afternoon and try to get the various provincial governments to place in their law provisions to cover the very objections which are raised here.

Mr. MACDOUGALL: If we felt that the proper way to put forward this suggestion was to approach the provincial government we would of course take that action. I wonder if it is within the competence of a provincial government to provide penalties for failure to obey the orders of the Board of Transport Commissioners. These signs are put in by the Board of Transport Commissioners and we would be asking the provincial government to obey signals erected under the competence of the Board of Transport Commissioners. They certainly have jurisdiction, as it is suggested, to provide a fine with respect to ignoring a crossing sign put up in accordance with provincial law, but I do not know if we could ask them to obey regulations of the Board of Transport Commissioners. That is why we are here. The Board of Transport Commissioners should also have the power to enforce the legislation.

Mr. ELLIS: Apparently the city of Regina has the right to enforce a by-law of this type because as I mentioned earlier, a citizen of Regina was fined in a police court last week for the specific offence of proceeding across a street crossing at a time when the automatic flashing light was on, and that was the specific offence with which he was charged and for which he was fined.

Mr. MACDOUGALL: Was that under the provisions of the Highway Traffic Act?

Mr. ELLIS: I could not say.

Mr. SPENCE: I wonder if I could refer to a question asked a few minutes ago by Mr. Carrick as to how this section would be enforced if we had not been able to enforce a charge of reckless driving. I would just like to point out that there is considerable difference in the kind of proof involved. When a man drives against a flashing light and is charged with careless driving, the magistrate may say, "Well, the train was some distance away, that is not careless driving. Obviously he got across and was safe, so I will not convict him." However if the charge is that he did at such and such a time on such and such a day proceed across the crossing against an operating railway signal, contrary to the provisions of section 416, it is just a matter of fact whether or not he did, and if he is found to have done that he would be automatically convicted. There is that superior ease of proving the case under the legislation that is proposed.

The CHAIRMAN: Mr. Munnoch of the Bell Telephone Company.

Mr. MUNNOCH (*General Counsel, Bell Telephone Company*): My name is Norman Munnoch, and I represent the Bell Telephone Company of Canada—

Mr. GREEN: May I ask one question of Mr. Macdougall before Mr. Munnoch proceeds?

The CHAIRMAN: Yes.

Mr. GREEN: You have heard the suggestion made by Mr. Spence with regard to recommendation number 4 to the effect that contributions should be permitted towards the annual cost of maintenance and operation of automatic signals installed at crossings after the amendment comes into force, the contribution in respect of any one crossing not to exceed for any year the actual cost for that year nor to exceed $200. What is the position of the Canadian National with regard to that?

Mr. MACDOUGALL: The position of the Canadian National is that at the hearing of the board dealing with the problem we also proposed to the board that there should be some easing of the provision with respect to the annual maintenance of protective devices. We stated before the board that some contribution should be made towards the cost from the Railway Grade Crossing Fund. I have no specific instructions to deal with that today, but that was our position at that time.

Mr. MUNNOCH: As I mentioned, my name is Norman Munnoch, and I represent the Bell Telephone Company of Canada. I would like to thank you, Mr. Chairman, and honourable members of this committee, for the privilege of appearing before you and I would like to take advantage of that privilege in order to place before you the grievance of The Bell Telephone Company of Canada, and I think I might say, of the public utilities companies generally, against what they feel to be the unfair and unjust treatment they receive under the Railway Act and its application to the utility companies in the matter of the apportionment of costs of works at highway railway crossings for the safety, protection and convenience of the public.

I shall also endeavour to demonstrate how this bill that is now before you will greatly worsen the position of the utility companies and the grievance that they feel they suffer, unless it is guarded against by the addition of a provision which I will take the liberty of submitting to you for consideration after I have explained my point.

Now, many years ago—I think it was about 1914—the then Board of Railway Commissioners for Canada, now the Board of Transport Commissioners for Canada, in dealing with one of these apportionment of cost matters, decided that the utility companies must move their facilities at their own cost, and bear 100 per cent of that cost. That decision was made and has been followed through a long line of decisions notwithstanding the fact that the board in many cases—and in fact in all cases that I know of—has found that the utility companies neither cause nor contribute to the danger at the crossing which is sought to be eliminated by the works, nor do they receive any benefit or advantage from the construction of those protection works.

No other party involved in the cost of grade separation works is accorded such unfair treatment as is meted out to the utility companies. I think it is evident from the board's report—and I do not want to overstate this point—that the board found that the railways in part cause or contribute to the danger. They also found that the traffic on the highway caused or contributed to the danger. That means the responsibility of the municipality having jurisdiction over the road or highway is involved. In the distribution or apportionment of the cost the railways and the municipalities—that is, the parties who are responsible for the condition to be remedied and who derive full benefit from

having the situation remedied—are relieved of a substantial part of the costs of adjusting their properties or works in order to bring about the protection that has to be provided at the crossing. The utilities however are always ordered to pay 100 per cent of their costs. You find that situation appearing in many of the judgments of the board. By the same judgment which relieves the railway or the municipality—sometimes in whole and sometimes in part—of the burden of their cost, the utility companies are ordered to bear the whole of their costs.

In the earlier cases when the rule was established and applied the amounts with which the utility companies were concerned were small. Most of the cases involved aerial lines, and it did not cost a great deal to move them. In each case in which the utility companies were involved, they opposed the application of this rule of the board. We find in schedule 5 of the board's report that the railways have paid on an average 35·37 per cent of these costs, and in schedule 7 covering the period from 1941 to 1953 the railways paid about 23·2 per cent of the cost. I do not wish to mislead anyone. These are the costs of the whole project, exclusive of what it cost the utilities, but I think that the major costs—and my friends representing the Railways here will be able to correct me—in these construction works, particularly where you have a grade separation it is the cost of adjusting the railway track and lines, the building of the steel bridge and the abutment and that sort of thing that involves the greater part of the total cost. Therefore, I think I can fairly say that the railways with the contribution they received from the Grade Crossing Fund and the contribution from the municipalities very often find that they do not have to pay an amount equivalent to the cost of removing or adjusting their own facilities to provide for the protection.

In recent years this matter, as far as the public utilities are concerned, has become vastly more important. More and more of the utility companies' facilities have been placed underground, and the costs that the utility companies have to pay at these crossings has been vastly increased. In a recent case at Dufferin street in Toronto, the Bell Telephone Company's costs amounted to $84,800 for this one crossing.

When the matter was being considered by the Board of Transport Commissioners for Canada preparatory to making its report, the Bell Telephone Company made a survey of the crossings at which it had facilities. We could not foresee, of course, what sort of protection would be ordered, but we found that we had lines across some 3,780 crossings in Ontario and Quebec—that is, level crossings. Our engineers using what judgment they could and assuming that there would be a grade separation ordered at each, estimated that if all those crossings were protected by grade separation, it might easily cost the Bell Telephone Company in the future an aggregate amount of some $12,400,000.

In 1932, when there was a considerable amount of grade separation work being ordered, a number of the utility companies strenuously opposed, before the board, the application of this rule that it had laid down for fixing the utility companies with their full costs of moving or adjusting their facilities. The board being faced with a number of cases in which this issue was raised, decided to hold a special hearing to deal solely with the question of whether or not the utility companies were being fairly treated under the board's practice. In its judgment of that case the full board as then constituted in a very strongly worded judgment decided that under the general principles of law the utility companies ought to be compensated for the removal and adjustment of their facilities, but the board then went on to say this—and if I may take the liberty of doing so, I will read the last paragraph of their judgment. They said:

> If the matter were res integra I would have no hesitation in holding that the companies should be compensated. The fact is, however, that the Board has held in numerous cases during the past twenty

> years that the companies should move their utilities at their own expense. I have no doubt that many of the subways recently completed, or now in the course of construction, have been started relying to some extent on the board's adherence to this ruling. The matter after all is not one of law but of a reasonable exercise of discretion and under the circumstances I feel that I should follow the practice so long established.

In other words, the board said that if you considered this question from the point of view of the general law, the utilities should be compensated—but they refused them compensation. Now, the board misguided itself in this particular judgment, and in the passage which I read. They said—"If the matter were res integra"—but all matters before the board are necessarily "res integra" particularly where it is a matter of fact as these questions are. These cases involve questions of fact and the Supreme Court has so held. Section 52 of the Railway Act says that the board may re-hear and re-examine any case that comes before it.

Therefore, although, the board by its own judgment in the 1932 case found that its rule was unjustifiable in law. In every subsequent case in which the utility companies have been involved where the railway crossing protection was ordered or permitted by the board for the safety, protection and convenience of the public, the board has adhered to its rule and has ordered the utility companies to bear the full cost of removing and relocating their facilities. However, the railway company which in part caused and contributed to the danger was let off with paying only a portion of the cost of moving and adjusting its facilities.

Now, the Supreme Court of Canada has held that the removal and relocation of the facilities of the utility companies is just as much a part of the work as, for example, is the removal of the earth out of the subway in order to make an underpass, yet the board has never in any case allowed the utilities any assistance from the Grade Crossing Fund. As I understand it, all of that money went to the relief of the railways and the municipalities.

The rule which the board has adopted and to which it adheres and applies in all these cases, in our submission, discriminates against the utility companies. It applies that rule to the utility companies alone. I can cite to you decisions of the board where others than utility companies—and I exclude the railways for this purpose—have had works at the site of some of these crossings, but because they were not a utility company they were relieved of paying the cost of moving their own facilities or of any other contribution.

As I have mentioned, the railways who are to a major degree responsible for the situation at the crossings and who cause the danger and benefit from its removal and from the works there, are not required to pay all the cost of moving their facilities. You will find in the very same judgments that the railways and municipalities are treated on one basis and under one set of principles which are of perhaps of reasonable fairness, but the utility companies in the very same judgments before the same court and at the same time, receive a different treatment which is very adverse and which is, in our submission, unjust.

If all the parties, that is the railways, the municipalities and the utility companies were ordered to move their own facilities or adjust them to make way for the new protection works that have to be put there at their own cost, it might not be too unfair for all would be treated equally. But that is not the situation.

The railways and the municipalities derive the benefit of the moneys from the works, and the utility companies who have to incur costs for the very same reasons—that is, the safety, protection and convenience of the

public—are left to bear their own burden. In our view and submission that is an injustice and it springs from the practice of the Board in adhering to this rule which it has laid down for its own guidance—that the utility companies who neither cause nor contribute to the danger, and who do not benefit in any way from the work, have to pay their own expenses whereas the railways and the municipalities who bring about this danger through using the highway crossing get off with only a portion of their costs.

Now let me point this out: what happens, as it sometimes does, where the province contributes to these works? The utility companies under the board's ruling contribute four times. They pay taxes to the federal government, some of which must find its way into the vote of parliament to the Grade Crossing Fund. They pay taxes to the province, and if the province makes a contribution, then some of those taxes must find their way into the provincial contribution. They pay taxes to the municipality, and if the municipality makes a contribution, then some of those taxes must find their way into the municipality's contribution; and in addition the utility companies are asked under the board's practice to make a further contribution running in thousands of dollars. Of course the amount of the utility companies costs depends on the equipment that is there. It may be 30, 40, and recently 80 thousand for one crossing.

The utility companies have sought relief by appeal to the Judicial Committee of the Privy Council and to the Supreme Court of Canada. But these courts, and I particularly refer to the judgments of the Supreme Court of Canada, have held that the board was the final arbiter of the order making an apportionment of costs; and its judgment goes on to point out that there is nothing in the Railway Act to direct the board how it should exercise its discretion in apportioning the costs; that the Board is not bound by the ordinary principles of law which would govern a court in dealing with the same subject matter. So in this field, under the Railway Act, as it now stands and under the authority of the judgment of the Supreme Court of Canada, the board has an absolute discretion not controlled by the general principles of law which govern the administration of justice in Canada.

In cases where the cost of moving utility plant and facilities have come before the civil courts, which are bound by the principles of law, these courts have awarded to the utility companies their costs. This usually was in a contest between the utility and the municipality.

This is a very complicated subject, and it involves a multitude of judgments and many sections of the Railway Act. I have endeavored briefly to outline the adverse position under which the utility companies have been placed under the Railway Act as it now is, and under the board's application of that Act in cases in which utility companies are concerned. This, in our respectful submission, is unjust and unfair.

As I have said, we contribute through taxes; and the Bell Telephone Company pays some pretty heavy taxes; moreover, we contribute through federal, provincial, and municipal government contributions, and our submission is that the utility companies which neither cause nor contribute to the danger sought to be eliminated by these crossings, and who, as utility companies, derive no benefits from these works, should not have to pay any more than any other ordinary citizen should pay, and that is what they contribute indirectly through taxes which they pay to governmental authorities.

Now, this bill which is before you, sirs, Bill 259, will greatly magnify the increased burden which is thrown on the utility companies if the Board of Transport Commissioners adheres to its practice of the past.

Under this bill the board becomes empowered to make contributions out of the Grade Crossing Fund in cases where it cannot do so under the present Act. An example of that is crossings constructed after May, 1909. I suggest in view of the terms of section 263 of the Act, that if this bill should pass, and if crossings constructed after 1909 require any further protection in the public interest, then that is now the responsibility of the railways. This bill will relieve the railways of that responsibility and pass part of the burden of discharging it over the utility companies.

I cannot find in the board's report any information about how many miles of railway were constructed since May, 1909. However, the Canada Year Books for 1941 and 1954 show that there were 24,104 single track miles of railway in operation in Canada at June 30, 1909, and 42,953 single track miles of railway in operation in Canada as at December 31, 1952,—an increase of 18,849 miles, or 78 per cent.

From these figures it will be apparent that a great number of crossings must have been constructed since 1909. But now that these can be assisted out of the Grade Crossing Fund, and dealt with as works for the protection, safety and convenience of the public, the utility companies will suffer an increased burden of costs for the protection of these crossings.

The second additional circumstance under which contributions can be made out of the Grade Crossing Fund under this Bill is for the reconstruction and improvement of grade separation now in existence but which are not adequate.

The third is for highway projects which involve the construction of grade separations.

So that the utilities will be burdened with the cost of these additional classes of cases which will be advanced because of the contribution which may be made to the costs of these works out of the Grade Crossing Fund. Of course, the bill increases the grant from $1 million to $5 million and the contribution for any one crossing from 40 per cent or $150,000 to 60 per cent or $300,000. So perhaps it is not unfair to expect that the Grade crossing work will increase approximately five times and no doubt that is what this bill intends.

But the honourable members here will note that under this bill the Board of Transport Commissioners for Canada can only grant moneys out of the fund where the works are for the public protection and convenience of the public and section 265 (*a*) as set out in the bill provides that the highway projects which it describes shall, if the board so directs be deemed to be a work for the protection, safety and convenience of the public. Therefore, all these works which come within the scope of this bill must be works for the safety, protection and convenience of the public and so they come within the board's rule which I have referred to whereby the utility companies receive the adverse and discriminatory treatment of which I have spoken.

Now, speaking for the Bell Telephone Company—and I am sure the other utilities are in the same position—we are not here to seek any special treatment. What we seek is fair treatment under the law of Canada which speaking broadly provides that no one can be compelled to give up his property except for a public utility and in consideration of a just indemnity previously paid, and that those whose property is injuriously affected by public works are entitled to indemnity and compensation.

Now, I appreciate that bill 529 has been approved in principle by the House of Commons. I do not attack the principle of that bill but I respectfully submit that the situation I have described can be remedied without altering or affecting the principle of this bill. I have taken the liberty of drafting an amendment and I have a few copies which may perhaps be circulated. My suggestion is that an additional section 4 be added to the bill which would read as follows:

> Section 39 of said Act is amended by adding the following subsection thereto:
>
> (3) In exercising its powers under subsection 2 of this section 39 and under section 262, the board shall be governed by the same established principles of law and equity as govern the exercise of discretionary powers by the courts, and shall not follow any precedents established by it in respect of the exercise of such powers prior to the enactment of this subsection.

This amendment, will dispose of the board's rule or practice which the board feels itself obliged to follow. In any event I have endeavoured on a multitude of occasions to get the board to depart from it and have not succeeded. The board constantly follows that rule. The amendment will require that the apportionment of the cost be dealt with by the board on its merits and according to the principles of law of equity which govern the courts of Canada in the administration of justice where they have discretionary powers. We object to an arbitrary rule. We find, and I think counsel for the railways here today has told you, sirs, that the board in dealing with grade separation cases tries to deal with the apportionment of the cost on the benefit principle. The benefit principle takes into consideration the railways and the municipalities, but the board in every case has found that the utilities get no benefit. Why not apply the benefit rule or an equitable rule equally and fairly to all parties?

I appreciate the opportunity, sirs, of being here and I am at your service.

Mr. CAVERS: Mr. Chairman, might I ask this question. Mr. Munnoch, the presentation you have made today would apply not only to your own company but to the other type of utilities such as pipelines and gaslines and so on?

Mr. MUNNOCH: Yes, sir.

Mr. CAVERS: Have you any idea how many different utilities would be affected by legislation of this kind?

Mr. MUNNOCH: I am sorry, sir, I do not have that information. There are utility companies no doubt stretching from Newfoundland on the east to British Columbia on the west.

Mr. CAVERS: Then you told us that there was a difference in costs between the aerial lines that are constructed by the Bell Telephone Company and the underground lines. Can you tell us the approximate difference between the cost of changing an aerial line and an underground line?

Mr. MUNNOCH: It is very difficult to say for this reason. You may have the aerial line carrying a heavy load of long distance cable or you may have an aerial line that carries a couple of wires. The underground is different. You have to have the cables in conduits. You cannot take the conduits up once they are put down under the earth and move them to another place. They have to be destroyed. The cables lying in conduits after a period of years tend to flatten out so that they cannot be pulled out and placed somewhere else. With the aerial lines sometimes you can dig a hole beside the pole and take it out and move it to the other hole. Sometimes it has to be taken down. The board's order as to what protection is to be provided determines how the wires or lines shall be adjusted.

Mr. NICHOLSON: Mr. Chairman, may I inquire if the construction job at Dufferin street in Toronto was undertaken at the request of the Board of Transport Commissioners? Did I understand you to say that the Bell Telephone Company did not benefit as a result of this?

Mr. MUNNOCH: No sir, out equipment was under ground.

Mr. NICHOLSON: And you were required—

Mr. MUNNOCH: We were ordered by the board to move our facilities out of the way to make way for the construction of the subway. It was ordered to be done at our own expense and involved a cost of $84,800.

Mr. JAMES: Mr. Chairman, I wonder if we might hear something from Mr. Kerr on this subject?

Mr. KERR: Mr. Chairman, that subject was dealt with by the board, and its conclusions are found at pages 65 and 66 of its report. I do not know whether Mr. Munnoch read in full the statement of the board's principle, although I am sure he stated the substance of it. The principle stated in the board's judgment given in 1937 may indicate quite fully the thinking of the board, and I quote from a judgment given by the board in that year:

> The general principle upon which the board has acted for many years may be briefly stated as follows: when an application is made for grade separation by a railway company, or by a municipality, either for the greater convenience or facility of the applicant in the movement of traffic or for the re-arrangement of streets and which may ultimately result in affording greater protection and safety to the public who use the crossing, the board deems that the matter of greater conveniences or improved facility to the applicant constitute the main purpose of the application, and that improved crossing protection is merely incidental to the main purpose. In such cases where the removal of the plant and equipment of utility companies is ordered, the cost of such removal is placed upon the applicant, that is, the municipality or the railroad. Upon the other hand, where the paramount reason for grade separation appears to be the protection, safety and convenience of the public in the use of the crossing, and where the removal of the plant and equipment of utility companies becomes necessary, the Board has decided in many cases that under such circumstances the cost of removal and erection of equipment should be borne by the utility companies. While it is true that utility companies neither create nor aggravate the danger at grade crossings, nor do they benefit from grade separation, the Board has always considered that where the project is in reality pro bono publico,—that is, for the public good—utility companies should bear the expense of moving their plant and equipment for the free use of streets enjoyed by them.

That is the end of the quotation. Then the board went on to summarize the submission which was made during the grade crossing inquiry by the Bell Telephone Company. Then the board said that the principle which I have read was considered by the Supreme Court of Canada in 1939, and the Supreme Court stated—and I will read only two sentences from that: "The board itself has adopted a principle fully explained in the passages quoted from the judgment of the chief commissioner which it has followed in making orders as to costs where works ordered by the board in connection with highway crossings have involved in their execution the removal of the plants of what are commonly known as public utility companies. It is entirely within the competence of the board to lay down and follow such a rule of practice which, no doubt, it has found to be a just and reasonable rule." That is the end of the quotation from the Supreme Court.

The Bell Telephone also carried an appeal from the board's order to the Supreme Court of Canada which required it to move its plant at its own expense and one of the questions put to the Supreme Court was this: "Had the board jurisdiction to order the utility companies affected to move their facilities at their own expense and without compensation in the circumstances in this case?" The Supreme Court dismissed the appeal of the Bell Telephone Company in that case. The board then said in respect of the Bell Telephone Company's submission: "As the objection is not to the legislation under which the board acts, but to the principle which the board follows, which it may change if it sees fit, the board does not recommend any change in the Railway Act in this connection."

I might say also that in cases such as Mr. Munnoch has mentioned where for instance you have the Bell Telephone Company at a crossing, you also have two other interested parties and probably more, but certainly these two, the railway company and the municipality, or the highway authority. Therefore, if you take the cost which the utility presently bears, you have to place it on one or both of the other parties. I am only indicating what the board's principle has been, and I do not presume to speak for all of the many municipalities which would be affected by a change in this principle. The case was argued, as Mr. Munnoch said, before the board at great length in 1932. Recently I had occasion to glance at the transcript of the evidence and arguments heard at that time and it consisted of 170 pages—there was a lot to be said. I cannot presume to repeat the arguments that were made in the 170 pages. They were very extensive and I can merely indicate what the board found and what the Supreme Court decided—that it was in the board's power to adopt that principle and follow it. The Supreme Court also commented that no doubt the board found it a just and reasonable rule.

The CHAIRMAN: Gentlemen, it is now six o'clock, and I think we can adjourn until 8 o'clock this evening.

Mr. GREEN: We have been getting along very nicely in this committee. It is a standing committee of the House, and I do not think there is any reason why we should be expected to sit three times a day. There is no reason why we cannot continue with this consideration tomorrow. I do agree that in the case of the committee dealing with Canadian National Affairs, for example, there is some excuse for calling three meetings a day, but I think we have dealt with this subject long enough for one day.

The CHAIRMAN: Unfortunately the minister cannot be here tomorrow.

Hon. Mr. MARLER: I am not insisting by any means that the committee sit this evening, but I am sorry to say I have a cabinet meeting in the morning and another engagement in the afternoon which would prevent my attendance.

Mr. GREEN: The bill cannot come up in the House until next week at any rate.

Mr. HOSKING: How inconvenient will it be for the witnesses to come here next week? They are here now, and no doubt they are anxious to get it over with.

Mr. GREEN: Are there any more witnesses?

Mr. HOSKING: Is this all? There is nothing else to do but this?

The CHAIRMAN: Just this.

Mr. HOSKING: It should not take very long.

Mr. GREEN: Perhaps we could sit long enough to deal with this one question and then leave the consideration of the report, or consideration of the bill section by section, until a later date.

Mr. CAVERS: Are there many more questions to be put in connection with this matter? I was going to say if we could facilitate matters by staying for 10 minutes, I will move this amendment that has been made, a vote could be taken on it and we could perhaps dispose of it now if that is all that is holding matters up.

Mr. GREEN: There are very few members here anyway. Would it be agreeable just to finish with this witness and not go on with the consideration of what the committee is going to recommend? If so perhaps it would be all right to continue sitting under those circumstances.

Mr. HOSKING: Is it all right to question the witness now and postpone the next meeting until next week?

Mr. CAVERS: Is it proper that this should be disposed of?

The CHAIRMAN: Whatever you wish gentlemen.

Mr. CAVERS: Shall we deal with it now or later?

Mr. GREEN: Are you finished with the witness?

Mr. SPENCE: Mr. Macdougall and I would like to make a few remarks before we are dismissed. I will not be longer than five minutes.

The CHAIRMAN: Is it the wish of the committee that we sit at 8:00 o'clock tonight. Very well, we are now adjourned until 8:00 o'clock tonight.

EVENING SITTING

THURSDAY, May 5, 1955.

8:00 p.m.

The CHAIRMAN: Gentlemen, I think we have a quorum. Mr. Munnoch would like to make a statement.

Mr. MUNNOCH: Mr. Chairman, I would like the privilege of making a few remarks in reply to what Mr. Kerr the counsel for the Board of Transport Commissioners said just before adjournment. Mr. Kerr was good enough to read from the board's report, which is page 103 of the mimeographed copy which I have. I do not know what page it is at in the printed copy. Mr. Spence was kind enough to let me look at his copy, and it is page 65. Here the board has set forth its own statement of the rule relating to the apportionment of costs where utility companies are concerned.

That rule divides itself into two parts. The first part is where the grade separation or other work is for the greater convenience or facility of the applicant. That would be either a railway or a municipality in the movement of traffic or for the rearrangement of streets which ultimately relates to the protection. The board awards utility companies their costs.

The second part of the rule is that where a work is ordered for the paramount consideration of safety, protection and convenience to the public. Here the utilities are ordered by the board to bear the whole of the cost of moving their facilities.

Now, that seems to me to be a peculiar rule in that in one of the classes of cases, the board recognizes the true legal principle that the utilities should be paid; but in the other class of cases, where the utility will be compelled to pay through federal taxes, municipal taxes, and if the province contributes through provincial taxes, the board by its rule suggests that the utility should pay a third or fourth time. That does not, in my submission, seem reasonable.

Hon. Mr. MARLER: Does not that argument apply also to the railway companies?

Mr. MUNNOCH: True, but the railway gets some of it back through the subsidy.

Hon. Mr. MARLER: What subsidy?

Mr. MUNNOCH: The grant from the Grade Crossing Fund, or the contribution from the municipality; so that this rule fixes the utilities with an extra contribution where they also have to pay through taxes.

Now then, there is another difficulty. Perhaps I might say that there should be an embarrassment to the board arising out of this rule, and it is this: the board is confronted with a grade separation application. If it decides that the work is not for the safety, protection, and convenience of the public, then it has to deprive the railway and the municipalities of whatever contribution it can give them out of the Grade Crossing Fund.

Now, that puts the board in a very difficult position in my submission. It might, on the evidence have some leaning in some cases in favour of the utility, but is it going to deprive the railways and the municipalities of some $300 thousand contribution just because the telephone company may be fined with $40 thousand or $50 thousand? That is the problem which faces the board out of its own rule.

An example of that—I think it is an example—was the Eighteenth Street Crossing Case at New Toronto. That was heard some years ago, in 1937.

In that case the municipality of New Toronto applied to the Board for a grade separation at Eighteenth Street. The matter went before the board for a hearing without any of the utility companies having been notified. The board considered the matter. There was no money in the Grade Crossing Fund, but parliament was making certain grants for unemployment relief which could be used for grade crossing purposes.

The board, without bringing the utilities before it, made an order apportioning the whole of the cost of these works between the railways and certain municipalities. But then, when the railways began to proceed with the work, they discovered that there was a water main belonging to a brick plant at the Ontario Reformatory, and that there were Bell Telephone lines and hydro electric installations at the site of the crossing.

Counsel for the Canadian National Railways applied to the board and asked for an order directing the utilities to move at their own expense. Counsel for the Canadian National Railway's letter to the board said this: "I assume that in accordance with the usual practice, the work of relocation of these utility facilities will be carried out by and at the expense of the owners; and I shall be obliged if the board will issue an order covering this feature accordingly."

The board had made a grant out of government funds for unemployment relief; but the order in council said that those funds must only be used for the safety, protection, and convenience of the public. So here was the situation: an order had been made apportioning the whole of the cost, which, under the Supreme Court judgment includes utilities cost. The railways go to the board and ask that they reconsider the matter with regard to the utilities. There was nothing in the evidence or transcript that I could find to show that safety, protection, and convenience of the public was a paramount consideration.

In fact, counsel for the town of New Toronto opened his case by saying at the outset: "I would like to point out that we are not in a position to establish our case on the basis of a traffic count, because we know that a traffic count at the present time would not justify the expense." And he asked that the matter be considered as a work for relief of unemployment in the municipalities of Etobicoke and New Toronto.

The board brought the utilities before it and after a hearing decided that the work was for the safety, protection, and convenience of the public, and it ordered the utilities to move their facilities at their own expense.

Now then, the board's rule, as Mr. Kerr was good enough to give it, ends up by saying that the Board has always considered that where a project is in reality *pro bono publico,* the utility companies should bear the expense and move their plant and equipment for their free use of the streets and at their own expense because it was pro bono publico. That seems to indicate some relationship in the Board's mind between public utilities, and the public good. Therefore, if it is for the public good, the utility pays for the public good.

Now, that same reason is just as good when applied to the railways. If applied to them it should result in their paying 100 per cent of their costs. If it is a reason to make anyone pay their full costs pro bono publico, then that reason is just as applicable to a railway company as it is to a telephone company.

They talk about the free use of the streets. Of course we have the free use of the streets. But so has the railway the free use of the streets for its crossings; and the board is only concerned with crossings. But again, if parliament has given a telephone company the free use of the streets, what reason or justification is there for the board saying that it does not agree with parliament giving utilities the free use of the streets and will make them pay for it.

Now, the next thing I want to point out is that every reason that the board has given in any judgment that I can find—and I think I have canvassed them all—as to why utility companies should pay, is equally applicable to any railway and would be equal justification to compel any railway to pay the whole of its costs. Let me run through the reasons briefly. First, because the works are ordered for the public good, the utility companies will have to bear their costs for the public good. That is just as applicable to a railway.

Second, because it is not unreasonable to expect the utility companies to bear the cost of any change in their wires made necessary by the change in the street. Why should not a railway also pay for any change made in the streets?

Third, because there was no guarantee that the grade of the street would not, at some future time, be changed, in the public interest.

Fourth, because the principal works were ordered for the safety, protection, and convenience of the public. The same thing applies to the railways.

Fifth, because the utilities do not pay a licence fee for the use of the streets. I have already discussed this reason.

Sixth, because the utilities are there and their removal involves some cost. Well, that applies equally to a railway. Its works cause most of the costs; and lastly, because the board has followed that principle in the past.

Now, Mr. Kerr also quoted from the following page of the board's report and referred to a judgment of the Supreme Court of Canada in which it was said that the board had jurisdiction to lay down that rule. The quotation is accurate, but let me just demonstrate this: that was one case where the Supreme Court said that the board had jurisdiction to lay down the rule; but there is another judgment of the Supreme Court of Canada which says that the board has no jurisdiction to lay down such a rule; and that is the case of the St. Eugene versus Canadian Pacific Railway, which was a railway crossing case in which the junior and senior rule which the board has, at times, used to apportion costs between railways and municipalities, was before the Court.

The judgment of the court delivered by the late Sir Lyman Duff said that "It seems very clear that this court has no power by laying down a rule, nor has the Board itself power by establishing a practice to limit the discretion with which the board is invested."

Now, here you have two conflicting decisions of the Supreme Court; but that was not the basis of the Supreme Court of Canada's judgment which was referred to in the board's report. The questions which were put before the Supreme Court—and Mr. Kerr was good enough to refer to one of them—were these: and these questions were stated by the board itself in one of its orders: first, is the board, when exercising its powers to apportion or award compensation under sections 39 and 259 of the Railway Act bound, as a matter of law, to exercise such powers in a judicial manner and in accordance and in conformity with the established principles of law and equity applicable to the facts and circumstances of the case before it, or has it an absolute discretion over all interested or affected parties?

The other questions had to do with whether or not, if the Board were so bound was the board's judgment in conformity with the established principles of law and equity and did the board have jurisdiction to order utilities to move at their own expense; and whether there was evidence in law to support the Board's judgment and so on; but the first question is the principal one.

What did the Supreme Court say? It said that the questions were essentially questions of fact, and that the board was the final arbiter of all questions of fact. Because the questions did not involve a question of law or jurisdiction the Supreme Court of Canada held that it had no power to intervene. They also said in another judgment where the same question of the board's exercise of its discretion was involved, that if its discretion was wrongly exercised, that would be a matter for parliament. Now that judgment is a long judgment, and it clearly shows that the board, being a court created by statute, finds its powers, and the limitation of those powers, in the statute creating it, which is the Railway Act.

The Supreme Court of Canada said that we will look at this question and see if there is any rule of law in the Railway Act which limits the Board in the exercise of its discretion; and it said there was no such rule of law. Why? Because there was nothing in the Railway Act to take anything away from the absolute and unlimited discretion which was vested in the board.

The Act itself says that on a question of fact the board's decision is final and conclusive. Now, it is this unlimited discretion that in my submission should be curtailed, but only to the extent that the courts of this land are curtailed in the exercise of discretion.

Mr. CARRICK: May I ask a question. Would you tell me again what the decision was when they held that special hearing in 1932?

Mr. MUNNOCH: I would be very glad to do so, sir, and perhaps with the permission of the committee I might read a few of the pertinent excerpts from it.

Mr. CARRICK: Did they recommend that compensation be allowed?

Mr. MUNNOCH: They said that if the matter were before them for the first time and they were not limited by previous decisions they would find no reason for not awarding the utilities their costs.

Mr. CAMPBELL: Well, obviously this has been a contentious matter for 23 years now. Do you think it would be proper for this committee to try to make a finding on what might be considered an ex parte consideration? Although I know you have been very fair, it is an ex parte matter which you have presented in the sense that none of the opposite parties are represented.

Mr. MUNNOCH: The only opposite party could be the board.

Mr. CARRICK: There are the municipalities. They would be the ones who would be fixed with the costs—and the provinces.

Mr. MUNNOCH: They often originate these works. The provinces, as we have heard, cannot be compelled to contribute, but the utilities, may I remind you sir, contribute through federal taxes, provincial taxes and municipal taxes and then the board comes along and makes a fourth levy.

Mr. CAMPBELL: Do you pay taxes on your lines?

Mr. MUNNOCH: Yes.

Mr. JAMES: When you lay your lines, what kind of arrangement have you as compared with the pipelines which would be classified as being a utility? Do you have to purchase your right of way, or how do you work that out?

Mr. MUNNOCH: We have the free right to use the streets under our special Act of parliament, and also under the Railway Act. Where we go on private land we must negotiate for the right of way.

Mr. JAMES: But the pipelines, for instance, would not even have the free right of way of the streets and they would have to negotiate for them?

Mr. MUNNOCH: I am not certain as to their powers. They have very broad powers in the Act creating them and under the Pipelines Act. I am not altogether familiar with that, but I do believe they would have to use the streets and in certain cases run down the streets just as the telephone company has to do.

Mr. JAMES: What I cannot understand is why the Bell Telephone Company is the only utility here today if this is such a great offence against the justice of the case?

Mr. MUNNOCH: They are more vigilant.

Mr. HAMILTON (*York West*): They got their money from the people, and it does not bother them.

Mr. MUNNOCH: May I suggest a possible answer to that? In the report of the board, schedule 5, it shows the money expended on grade crossing works by provinces. You will notice that a total of $51 million is shown. $32 million of this was spent in Ontario and $7 million in Quebec. The only other province that topped $1 million was Alberta with $2 million. The Bell Telephone Company operates in Ontario and Quebec and in those provinces only where most of this work is done, and we are getting the burden of that.

Mr. CARRICK: Does it have any bearing in your mind that when you go before the Board of Transport Commissioners to fix your rate, I presume you show this expense as an ordinary expense, and it is written off ordinarily—

Mr. MUNNOCH: No, those are capital expenses.

Mr. CARRICK: Are those taken into consideration when the Board of Transport Commissioners fixes the rates which are designed to allow a fair return to the shareholders of the Bell Telephone Company?

Mr. MUNNOCH: No, they do not go on that basis, but on a revenue requirement basis that is, how much revenue do you need over and above your expenses to run your business and pay a reasonable dividend.

Hon. Mr. MARLER: Are these costs which you must incur in part expenditures that the board takes into account in determining your rates?

Mr. MUNNOCH: Only through the depreciation account, but not as a capital expense as these are. They are not taken into account except in so far as they get into depreciation.

Hon. Mr. MARLER: If they figure in the depreciation that means that ultimately you get your money back?

Mr. MUNNOCH: Ultimately and after a long period of time, but we have to provide the new capital in the meantime and we get no return on it.

Mr. JAMES: Would you not agree that in the long run, the people who are taking your Bell Telephone service, for instance your customers,—they would also be municipal taxpayers and provincial taxpayers and federal taxpayers,—and they would also be paying a share. Of course, they would not be paying a great deal of the share of the tax or money you spend in changing your lines?

Mr. MUNNOCH: Of course, all these costs ultimately come back to the consumer, but in the case of the telephone company, may I just mention that the taxes it has to pay are considerable.

Hon. Mr. MARLER: But surely your argument that the taxes are considerable, Mr. Munnoch, is one that applies to all corporations and to all individuals?

Mr. MUNNOCH: Quite. From a tax point of view we are dealt with no worse than any other.

Hon. Mr. MARLER: Therefore surely it is not an argument that applies to railway crossings?

Mr. MUNNOCH: We are only complaining that we have to contribute more than any other taxpayer. We do not question having to contribute through taxes but we do question having to make after taxes an additional capital investment from which we derive no revenue, get no benefit, which adds nothing to our service, and gives us nothing we did not have before.

Hon. Mr. MARLER: The only thing which occurs to me in connection with your argument is that as I understand it when it comes to laying your lines across the right of way which belongs to the railway company—

Mr. MUNNOCH: I beg your pardon, sir. The right of way does not always belong to the railway. In some cases it does, but in others it does not—

Hon. Mr. MARLER: But in the majority of cases—I am quite ready to admit it is not invariable—but whether it is city property or railway property you do not have a permanent right to maintain your facilities through that particular piece which serves either as a street or a right of way. You have what seems to me to be a temporary right which may be terminated when certain conditions happen. I take it, for example, that if the municipality wished to close a street that they could say, "Take your wires and remove your facilities," and you could not say no.

Mr. MUNNOCH: I respectfully beg to differ with you on that.

Hon. Mr. MARLER: You mean you have a perpetual right?

Mr. MUNNOCH: Once we place our line in a precise location we have the right to stay there—

Hon. Mr. MARLER: Indefinitely and regardless—

Mr. MUNNOCH: As long as we need it for giving our service.

Hon. Mr. MARLER: That is certainly not my impression, Mr. Munnoch. My impression is that you have the right to place your wires by virtue of an order of the board—

Mr. MUNNOCH: No, by virtue of our statute in some cases with the consent of the municipality and in other cases where we cannot get the consent of the municipality by order of the board to enable us to use our powers without the municipality's consent—

Hon. Mr. MARLER: But certainly in the case of 377 of the Railway Act you certainly—I am not saying that implies invariably and that every time you lay a wire you have to have the approval of the board—but I do suggest that under 337 you may get permission to install your lines by an order which I understand is revokable and can be altered by the board if it wishes.

Mr. MUNNOCH: We have two rights to go on the highway, one under our special Act by which we do it if we can with the legal consent of the municipality and the other is under the section you refer to where we cannot get the consent of the municipality and we can go to the board and get leave of the board to exercise our power without the municipality's consent—

Hon. Mr. MARLER: The case I was referring to was the case of the railways—it is 378 which deals with the highways—

Mr. MUNNOCH: That is the railway crossings—

Hon. Mr. MARLER: Yes.

Mr. MUNNOCH: We have to get the consent of the railways, of course, only in order to see that we conform to the safety construction rules laid down by the board and when we construct across a railway we have to conform at our own expense with the safety construction rules that the Board of Transport Commissioners have laid down for that kind of crossing—

Hon. Mr. MARLER: But are you suggesting that having obtained leave to put your lines in a particular place that you have the right to maintain them there indefinitely?

Mr. MUNNOCH: I suggest we have, or that we be compensated—

Hon. Mr. MARLER: —but compensated for what?

Mr. MUNNOCH: For the cost of moving them or for the destruction of them, or whatever happens to them.

Hon. Mr. MARLER: I must admit I find that a novel idea. You have what seems to me to be a right which is revokable by the Board of Transport Commissioners—at least, that is my understanding of it—but yet you say, "I have such a right there and if I am told I must remove my wires, I am entitled to compensation." I find that difficult to accept—

Mr. MUNNOCH: Let us, for the sake of argument, assume that the board has power in respect of a railway—

Hon. Mr. MARLER: But we are talking about the Bell Telephone at the moment?

Mr. MUNNOCH: I thought we were talking about the treatment of the railways on the one hand and of the Bell Telephone company on the other hand—

Hon. Mr. MARLER: But I take it you are more interested in the treatment of the Bell Telephone Company at the moment?

Mr. MUNNOCH: Yes.

Mr. HAMILTON (*York West*): May I ask counsel a question? What takes place in an operation like the removal of all the services required to build the Toronto subway? Is there a compensation to Bell for moving its equipment?

Mr. MUNNOCH: Yes, the Toronto Transportation Commission paid the costs.

Mr. HAMILTON (*York West*): To move those lines?

Mr. MUNNOCH: Yes.

Mr. HAMILTON (*York West*): To go back to the question Mr. James asked about the taxpayers paying, I gather the distinction there is that there are a great many more people who get the benefit of a new grade separation than who are just shareholders in the Bell Telephone Company—many more?

Mr. MUNNOCH: Of course every citizen who passes along that particular highway gets the benefit.

Mr. HAMILTON (*York West*): Whether he has a telephone in his home or not?

Mr. MUNNOCH: Yes.

Mr. HAMILTON (*York West*): And if there was an assessment against this fund tax-wise if it were on an equitable basis all those who make use of the subway regardless of their telephone installation would pay their share?

Mr. MUNNOCH: Yes, and may I point out that in cases of subway construction where it has come before the board—where bus transportation companies and bus tramway companies have operated their routes through the subway the board will not order them to pay.

Mr. BARNETT: May I ask one more question. In what manner does the treatment which your public utility company receive under the Board of Transport Commissioners differ from the treatment received where a provincial highway authority is widening a highway and you have to move your line?

Mr. MUNNOCH: The provincial highway authorities pay us a portion of our expenses in practically every case. In a few cases we think we ought to move them anyway.

Mr. CAMPBELL: That does not always apply?

Mr. MUNNOCH: No, there are different rules in different provinces and a lot depends on the circumstances. We often take the point of view, "Here is a line we think ought to be moved anyway, so we will move it."

Mr. CAMPBELL: In one province any utility getting permission to build a power line along the highway must sign a contract which states that they are to be responsible for moving their line over any time the municipality decides to widen the road or the provincial government?

Mr. MUNNOCH: Fortunately, we have not been faced with any such condition as that.

Mr. HOSKING: You mean if you are running a telephone line along the side of a township road and the township decided to widen that road, that they have to pay—

Mr. MUNNOCH: They pay a certain percentage of the cost. Now, in Ontario they have what they call the Public Works on Highways Act which provides that in the absence of an agreement the municipality pays 50 per cent of the cost.

Mr. HOSKING: And yet they give the Bell Telephone Company without charge the right to put those lines there and leave them there.

Mr. MUNNOCH: Parliament has given us the right to put them there without charge because the telephone rates would be a great deal higher if we had to pay for every street we go on. We could not serve the public otherwise.

Mr. JAMES: In respect to township roads, I am thinking of one particular line which I saw them laying underground along the boulevard along the side of the road outside of my own town, do you pay for the right to go along there?

Mr. MUNNOCH: No.

Mr. JAMES: You are there more or less under the Act.

Mr. HOSKING: Do the townships have the right to tell you to keep back along the fence?

Mr. MUNNOCH: We have to consult with the municipal engineer as regards location. We cannot open up a street without consulting with the municipal authorities for locations. Our Act says we must go along the sides of the highway. We naturally endeavour to keep off the highway if possible.

Mr. CAVERS: If buildings are moved within a municipal corporation and it is necessary to cut wires you do that at your own expense?

Mr. MUNNOCH: That depends whether we are under our own Act or under the section of the Railway Act which the minister referred to. If it is under the Railway Act the Act says we must raise the wires at our own expense. If

we are under our own special Act and have the consent of the municipality we do not have to. It usually means that we just have to lift them and they get through.

Mr. HERRIDGE: In British Columbia, the British Columbia Telephone Company had to move 20 miles of line at their expense in moving a pioneer line. And quite recently a power utility built a new line for several miles in my district and within one year several curves were straightened out on the road and they had to move those poles that were placed there the year before because of the straightening of the road, and they had to move them at their own expense.

Mr. MUNNOCH: That might involve circumstances and conditions of which I am not aware.

Mr. HOSKING: It would seem to me as a city councillor that we should refuse in all city councils to give you any right to put your lines on the street and then the Board of Transport Commissioners would force the municipalities into giving you the right, and from then on if you had to move your lines you could be made to move them at your own expense.

Mr. MUNNOCH: If we had to go through all those delays when people wanted to get telephone service we could not get the service through and the municipal councillors would very soon have the electors on their neck.

Mr. HAMILTON (*York West*): Is the British Columbia Telephone Company a public company?

Mr. HERRIDGE: No.

Mr. SPENCE: Mr. Chairman and gentlemen, I am afraid we have to say we are very strongly opposed to the proposals put before you by my learned friend Mr. Munnoch. In the first place I would like to refer again to section 378 of the Railway Act which says in part:

> Subject to the provisions of this section, any company empowered by special Act or other authority of the parliament of Canada to construct, operate and maintain telegraph or telephone lines, may, for the purpose of exercising the said powers, enter upon, and, as often as the company thinks proper, break up and open any highway, square or other public place.

Then there are a number of items and we come to item (f):

> If for the purpose of removing buildings, or in the exercise of the public right of travel, it is necessary that the said wires or poles be temporarily removed by cutting or otherwise, such company shall, at its own expense, upon reasonable notice in writing from any person requiring it, remove such wires and poles; and in default of such company so doing such person may remove such wires and poles at the expense of such company.

Now, in that section of the Railway Act it is clear that the telephone companies which are on the highways free, with no charge to themselves, are to be moved or have their facilities readjusted at their own expense when the highway requires it. In other words, I suggest that if the highway is diverted from one point to another—straightened as one of the honorable members said —the telephone company which has the right under its charter to occupy the highway and would have the right under its charter to occupy the highway at its new location would surely lose its right to occupy the old location and would have to change over at its own expense.

This is a matter which has been carefully considered on many occasions by the Board of Transport Commissioners since 1912 and the board has come up with the same answer every time. The board has the power under the Act

to change, vary or alter or rescind any order that it makes under section 52 of the Railway Act, and at any time if the board had thought it was a fair thing to do it could have changed its old precedent and adopted a new one.

Section 52 says:

> The board may review, rescind, change, alter or vary any order or decision made by it, or may rehear any application before deciding it.

The board has always thought it fair to place these expenses upon the utility company and the board's principle has been described by Mr. Kerr who read from the judgment of the chief commissioner in 1937. I do not need to refer to that again. That was supported by the Supreme Court and I suggest it is a very fair attitude for the board to take. It says, in other words, if for example the railway company wants for its own purposes to build a structure across a highway that will interfere with the telephone installations the railway will have to pay the full cost of moving any telephone facilities. But, if on the other hand the highway is being diverted or a subway installed for purposes of public safety the telephone company must pay its own costs because it has free rights to occupy the highway and must go at its own expense where the highway goes.

My learned friend, Mr. Munnoch, put a good deal of stress on the fact that the Bell Telephone Company did not benefit by the changes made. The Bell Telephone Company's benefit has been received ever since it obtained the right to occupy the highways free of charge. The railway company has to pay for its right of way and pay taxes for its right of way whereas the telephone company does not. The telephone company is being very fairly dealt with as it can occupy the highway wherever it goes, and if the highway is raised or depressed, the telephone company must follow along without having its costs charged to someone else. What the telephone company is attempting to do here is appeal that decision of the board. The board already has powers to order the telephone company to be compensated if it thinks it should do so. It has those rights under section 33 (5):

> The decision of the board as to whether any company, municipality or person is or is not a party interested within the meaning of this section is binding and conclusive upon all companies, municipalities and persons.

The board has full power to apportion the cost of any work it orders so it could apportion part of the cost of moving the Bell Telephone facilities to the railway or the municipality if it so desired, but it has thought it fair not to do so. Under section 262 the board has a similar power to apportion the cost of protection on a highway crossing. Since the board has always found that was not a fair thing to do, that is to have part of this charged against the municipality or the railway, what my learned friend wants now is to have parliament remove that discretion of the board and compel the board to order some of the cost to be assessed against the other parties. This whole subject was argued at great length even so recently as the hearings of the board which led up to this report. In fact, all of this transcript (indicating) with the exception of a very few pages consists of the argument before the board on the subject. Nevertheless, the board did not see fit after all that consideration to recommend the amendment of the Act and I suggest that this committee should follow the board's advice and leave the board's discretion unhampered. The telephone company bases its case in part on the basis that it should be given the benefit of contribution from the fund. At least part of it would come out of the pockets of the railway companies and municipalities and in some cases all of it none coming out of the Grade Crossing Fund at all. Suppose a subway costing $500,000 has to be constructed. 60 per cent of it or $300,000

would be borne by the Grade Crossing Fund and the balance would be shared by the municipality and the railway. If the Bell Telephone Company is to receive payment out of the Grade Crossing Fund for the removing of the facilities it has placed upon the highways that will mean there will be less of the Grade Crossing Fund available for the work on the subway and the amount to be borne by the railway and the municipality would be that much greater and the fund would not pay any more because its contribution is at the maximum of $300,000. The whole of the extra amount would have to come from the municipality and the railway. I submit that that result would be very unfair and that it is a departure from what we are trying to accomplish by this bill in the way of relief to the municipalities and the railways of these very onerous expenses.

Thank you very much.

Mr. CARRICK: I suggest, whatever the merits of this question, that there has been enough said to indicate that we do not know enough at this time to make any decision on this question and I would suggest that the minister might consider referring it back for a special hearing of the board or for some other consideration. This committee would be acting very superficially if it tried to come to a conclusion on it.

Mr. HOSKING: Should it not be brought in as a private bill and submitted to this committee at some later date. Is it not beclouding the bill altogether to try to deal with it now. We are off the main object of this bill on a sideline. It would seem that the proper thing would be for this to be submitted either as a government or as a private bill and dealt with just on this particular point. It is only a spur of this bill.

Hon. Mr. MARLER: Mr. Chairman, I was going to say this in connection with the amendment Mr. Munnoch has proposed. The first fact which impresses itself on my mind is that this whole subject was thoroughly discussed and ventilated before the Board of Transport Commissioners; its hearings were public. The railways were present and put forward their views and the municipalities had the opportunity of expressing their views in the matter and after hearing all who wished to make representations the board now says as they do, I think on page 66 of their report in the printed version:

> As the objection is not to the legislation under which the Board acts but to the principle which the Board follows which it may change if it sees fit the Board does not recommend any change in the Railway Act in this connection.

So that we have here those who not only heard the submissions but who had the actual experience of administering the fund say they do not in effect recommend any change in the Act at the present time. There is no doubt in my mind and I am sure Mr. Munnoch would agree with this that the amendment which is proposed would in effect add something new to the bill. The bill does not in itself change the powers and discretion of the board. It enables the board to use more money from the Grade Crossing Fund and I admit it may increase the burden which will be cast on the Bell Telephone Company and similar public utilities.

But with the exception of changes as to their powers to use more money out of the fund it does not change the powers and discretion of the board itself. What Mr. Munnoch is suggesting is that the powers of the board and their discretion should be governed by a new principle, that is, they should be governed by the same established principles of law and equity as govern the discretionary powers of the courts. I think the long experience with the Railway Act as it now stands is that it was intended that board should have

an absolute discretion, whereas Mr. Munnoch is asking that it should have a discretion which is to be modified by the principles of law and equity as in the case of discretionary powers by the courts.

The quotation which he gave rather suggests I think that in determining the apportionment of costs the board is not acting in a judicial capacity but is acting in carrying out what seems to me to be an administrative function and as well as I can recall it from the case which Mr. Munnoch cited his reference does support that view that it is not a judicial function, this apportionment of costs, but an administrative function.

Mr. HAMILTON (*York West*): The suggestion in itself is not an improper one, that some of these decisions might be subject to judicial review on a judicial basis.

Hon. Mr. MARLER: I think that would be a rather revolutionary step as far as the Railway Act is concerned.

Mr. HAMILTON (*York West*): It might be a "throw-back" but it need not necessarily be an unwise course to follow.

Hon. Mr. MARLER: I am not denying the right of the Hon. Member to hold that view. All I say is that I do not subscribe to it. I think really that having regard to the purpose of this bill which is to enlarge the powers of the board with regard to the use of the grade crossing fund I personally would have to oppose an amendment which was intended to make the occasion of the presentation of this bill the opportunity of reviewing the powers of the board with regard to its discretion under the Act.

I would like to add this, that under sections 36 and 38 of the Act the Minister of Transport in the first case and the Governor in Council in the second case can refer matters to the Board of Transport Commissioners for their consideration and if it was the view of the committee that the question ought to be given further consideration by the Board of Transport Commissioners I would be glad, if the committee did come to such a decision, to consider whether I should make such a recommendation or whether I should consider representing to the Governor in Council that he should make a representation in that sense to the Board of Transport Commissioners. I do not say that I undertake formally to do that unless the committee believes that that would be a useful step.

The point that perhaps might disappoint Mr. Munnoch is that the very people to whom the question would be referred are those who have already considered it, and some of them considered it in a sense diverse to his interest. But I think that is perhaps the best and only hope I can afford him, and that would be if the committee wish me to do so, in which case I would either consider making a reference to the board myself or asking the Governor in Council to do so under section 38.

Mr. BARNETT: Undoubtedly the amendment which has been proposed by the representative from the Bell Telephone Company to us is beyond the scope of the bill as we have it so far and I am wondering whether the Hon. Minister feels it necessary that this committee should reach some immediate decision on making a suggestion to him along these lines he has been discussing or whether perhaps after due consideration when the matter comes back into the committee of the whole House that we might then be free to raise and discuss this matter with the minister after, as members of the committee, we have had time to give the matter some further consideration.

Hon. Mr. MARLER: I would have no objection to that Mr. Chairman.

Mr. MUNNOCH: May I make one remark in relation to the last part of the board's report in which they said they could alter this rule. We have been trying to get the board to vary this rule for twenty odd years and the latest

example of the fact that they will not depart from this rule is to be found in the Davenport Road crossing case at Toronto which was decided in November after the board had made its report. Those who are familiar with the board's report will recall that the railways stressed very strongly that the board should apply the benefit rule in apportioning cost and I think the counsel for the railways at these proceedings have referred to the Davenport case. The Davenport Road case came on after the board had had the benefit of the discussion of this benefit rule and it had made its report. It commenced its judgment by saying that the board had decided to proceed to allocate the costs of this work according to the benefit rule.

They decided that the railways benefited and they ordered them to pay a contribution toward the costs measured according to the board's judgment of their benefit. They found that the city of Toronto would benefit and they ordered the city to pay a portion according to the measure of the benefit they found. The Toronto Transportation Commission was found to benefit by the construction of this subway because they would save their present contribution of $6,000 a year to the annual maintenance cost of the existing protection. So they ordered the transportation commission to move their facilities at their own expense, that being the equivalent of benefit they received. But when it came to the Toronto Hydro Electric System the board did not find any benefit accruing to them or that they contributed anything to the danger. They simply followed this rule and said: "you, Toronto Hydro because you are a public utility and because of this rule will move your facilities at your own expense."

It is suggested that perhaps this amendment goes a little beyond the scope of the bill. Might I respectfully submit that the Supreme Court has said that when it is a question of how the board is going to exercise its discretion it is a matter for parliament. Parliament apparently intends to entrust to the board the vast sum of $5 million a year towards these works. The railways appear—they want to get all of that they can. My friend Mr. Spence stands up and opposes the telephone company getting any contributions. Now if the benefit of the rule is going to apply to the railways and to the municipalities why should it not apply to the telephone company? That, gentlemen, is just fair justice.

Mr. HERRIDGE: Mr. Chairman I have been thinking this thing over and I have listened to witnesses telling the committee that this is chargeable to operations for the year...

Mr. MUNNOCH: Capital costs.

Mr. HERRIDGE: I can see that, Mr. Munnoch. I suggest that the witness is making his representations to the wrong committee. I think it would be quite reasonable to allow the Bell Telephone Company which has to incur this expense—which relates rather to maintenance than to an extension of their facilities—to receive some consideration so far as income taxation is concerned.

Mr. MUNNOCH: Sir, may I correct you? It is not an extension of our facilities we are talking about. What we have to do is to take the facilities we have got out of the way and put them back some place else. We do not want maintenance costs. We can look after our maintenance needs ourselves. We are not like the railways who come asking for a contribution to the cost of maintenance. We are ready to do it ourselves.

Mr. HOSKING: What effect would this rule have on the power of the transport commissioners having a right to say to a municipality: "you must allow these people to put this line on the street whether you want it or not"? Does the municipality if this is passed have the right to sue the Board of Transport Commissioners for exceeding the law? It seems to me that it curbs their power quite a bit once you say that they have to obey the laws of this

country. I am not a lawyer, but I was wondering what effect that would have on the Board of Transport Commissioners, saying to the municipality: "you must allow them to go there." Would this curb it? And if it did, would the telephone people want that done?

Hon. Mr. MARLER: I can understand that if they are given free lance, it later becomes rather heavy perhaps for those in the business of giving a future consent, and they might be a little more difficult to persuade.

Mr. HAMILTON (*York West*): Is anybody prepared to move this amendment, or are we in order in discussing it unless somebody moves it?

Mr. GREEN: Mr. Chairman, I understood when the committee rose at 6.00 o'clock that we were merely to finish hearing the witness, and that next week the committee would go about making its report. There are different points to discuss while we are dealing with the report.

The CHAIRMAN: No. That was not understood.

Mr. GREEN: I suggest if there are no more witnesses to be heard, that the committee should now adjourn and proceed next week.

The CHAIRMAN: Why not carry on tonight until 10.00 o'clock and get as far as we can?

Mr. GREEN: We have other obligations; and that was the understanding at 6.00 o'clock.

The CHAIRMAN: No, it was not the understanding.

Mr. GREEN: I pointed out at that time that I did not think it was fair to try to rush through the final dealings with this question.

The CHAIRMAN: I asked the committee if we should not meet at 8.00 o'clock tonight.

Mr. NICHOLSON: Mr. Chairman, my understanding was that we would finish in about ten minutes. We have been here since 10.30 this morning, and to accommodate the minister who could not be here tomorrow morning or tomorrow afternoon I understood clearly that we would finish it in about ten or fifteen minutes tonight. I think we should do justice to these several proposals which are before us, and I think it would be most improper to try to rush through this matter.

The CHAIRMAN: We are not rushing through it. We have had three sittings on it.

Mr. NICHOLSON: If we are finished with the witness, I move that the committee now adjourn.

Mr. CAVERS: If it is the wish of the committee to deal with the motion, I shall move the motion in order to have it dealt with.

Mr. LANGLOIS (*Gaspe*): There is a motion for adjournment.

Mr. CARRICK: I would like to have some expression of opinion by the chairman on the matter.

The CHAIRMAN: My opinion is that we should sit until 10:00 o'clock. We would be sitting in the House until 10:00 o'clock anyway, and if we do some work tonight or until 10:00 o'clock I think it would help us out in finishing the bill at a later date.

Mr. CARRICK: Would the minister be sure that he would be available next week?

Mr. GREEN: This bill brings up some very far reaching questions and we have had important evidence given today which should be considered. Part of it was given when there were comparatively few members here. There has also been a suggestion made with regard to the penalty clause which I hope the minister himself will consider over the weekend because there was a very strong

argument made by both railways in favour of this penalty clause being written into the Act. Therefore I would suggest that if the committee is to do proper work we should not be asked to sit three times a day and rush this thing through in one day. We started at 10:30 o'clock this morning and we sat from 10:30 until 1:00 o'clock, and again from 3:30 until 6:00 o'clock; and now I suggest it is making it a little thick when we are expected to sit again from 8 until 10:00 o'clock and to reach a final conclusion on these matters under those conditions, especially when I was given to understand yesterday or the day before that the committee would only sit this morning, and then we would sit again tomorrow morning.

The CHAIRMAN: Let us adjourn then until the call of the chair.

May 10, 1955.
10.30 a.m.

The CHAIRMAN: Gentlemen we have a quorum. We are on Bill No. 259 an Act to amend the Railway Act. Are there any questions which members of the committee would like to ask the Hon. Minister or the officers?

If not we will go on to clause 1.

Mr. GREEN: Now that we have finished with the evidence, I have just one suggestion to make with regard to the bill. I may say I was very much impressed by a request which was made by the two railways for an amendment to the Railway Act which would provide a penalty against people who disregard signs, signals or other protective devices which have been erected pursuant to order of the Board Transport Commission. They were united in their request for this amendment and it did seem to me that such an amendment would be right in line with the purposes of the grade crossing fund itself, which is to prevent accidents. Those railway officers are the ones who know from practical experience what could be done to cut down the number of accidents—not only fatal accidents but accidents in which people are injured and also accidents which result in property damage.

I do not believe they would have made those recommendations without having given the matter very serious consideration and it does seem to me that this is a sensible suggestion. They say that at the present time it is very difficult to obtain a conviction under the different provincial highway laws in cases where a person disregards these railway signals. There was some suggestion that the provinces should amend their own laws to meet this situation, but as practical men we all know that by the time ten provinces have passed measures to deal with this situation we shall all be dead. You would have ten different laws and you would completely lose the effect of having one uniform law from coast to coast providing that if a person disregards a signal—and not a signal which the railway companies put up themselves, but a signal authorized by the Board of Transport Commissioners—then a penalty will be imposed, and I can see no objection to having a provision of that kind written into the Act.

The railways are asking that it should be in the form of an additional subsection to section 416 of the Railway Act and that section as I read it provides for a penalty where a person walks across a railway crossing when there is a nearby footbridge over the track. That is a penalty already provided under the Railway Act, and I suppose that there are only a limited number of cases where such circumstances would arise. But the amendment they now propose would meet conditions which are far more widely encountered. I therefore hope that the committee will recommend that an amendment of this type should be written into our law. The railways would then be in a position to announce that there was such a measure on the statute book and to prosecute

anybody who broke it. Members will notice that the amendment covers vehicles and foot passengers. Certainly at the present time there is no regulation under which a person who climbs over a gate and walks onto a railway track can be punished. The proposed clause would meet such a situation, as well as the failure of a driver to pay attention to a signal.

I do not think that there is any need for me to go further in discussing this matter. Members have had the problem very thoroughly explained and I think that everybody is in a position to have formed his own opinion as to whether this request by the railways is sound. For my part I would just like to go on record as indicating that I think it is a very reasonable suggestion, and I hope the amendment can be written into the Act.

Mr. LEBOE: There are, I think, some problems which we must look into in connection with this question. One of them concerns the case where a railway station has a crossing within a very short distance—possibly half a mile or one third of a mile away. Occasionally you will find that when a switch engine is operating there may be a block signal within that area although there is no intention on the part of the driver of that locomotive to go across that crossing for a considerable time, possibly not for half an hour. The signal, however, would be operating at all times while the switch engine was working in the area. If you cut down the distance between the signal and the contact, however, you may very well be doing so at the cost of endangering the lives of passengers in fast trains which may be going through at sixty miles an hour. I do not know how a railway company can take care of both of these circumstances unless their signals are manually operated.

Yesterday, for example, as I drove up to a crossing there was a switch engine operating at a small station nearby, and the signals kept going back and forth; the warning light was flashing on and off but people were driving over the crossing in both directions because there was no locomotive within half a mile of that crossing, despite the fact that the signals were working. No train would be passing over the crossing for, maybe, ten or fifteen minutes, and if a regulation to make stopping compulsory were rigidly enforced, you would have a file of traffic held up for no reason. I think the whole matter would be left in the air unless we heard something more specific about this suggestion than we have today.

Hon. Mr. MARLER: So far as I am concerned I entirely share the views which Mr. Green holds about the desirability of cutting down highway accidents, and I am perfectly sure that if the committee were being asked to vote for or against highway accidents we would be unanimous in saying that we thought anything ought to be done to reduce the possibility of accidents so far as this is possible. However, the point which I would like to emphasize is that the subject matter of what we are discussing—and I take it that we are considering, although it does not seem to be before the committee the amendment proposed to provide a penalty for disregarding any signs, signals or other protective devices installed at a railway crossing—I cannot help remembering the fact that this whole subject was discussed before the Board of Transport Commissioners, and they said in their report at page 69 in the printed version:

> Other suggestions more closely allied to motor vehicle operation, including those of an educational nature respecting public observance of grade crossing signs and protective devices, compulsory speed reduction and compulsory stopping of vehicles under certain conditions, and the strict enforcement of prescribed highway safety regulations were placed before us.
>
> These are matters not within the jurisdiction of the board but nevertheless they are of interest to the board and might usefully meet

with the attention of the provincial committees herein elsewhere suggested, as they constitute a part of the overall problem of highway accidents concerning which there is a rapidly mounting national awareness.

In other words, the Board of Transport Commissioners thought that this was a subject properly for highway legislation and not for an amendment to the Railway Act. I think the fact that they did not recommend a specific amendment to the Railway Act is a very conclusive indication that the Board which administers the Grade Crossing Fund and has to do with these grade crossings generally did not believe that it was appropriate to put this in the Railway Act.

Since the committee met the other day I asked my department to look into the matter of provincial legislation. I shall now give you two examples.

First of all, I shall cite the Nova Scotia legislation which is section 117 of the Motor Vehicles Act, c. 184, R.S.N.S., 1954 and which reads as follows:

> 117. Whenever a person driving a vehicle approaches a highway and railway grade crossing and a clearly visible or positive signal gives warning of the immediate approach of a railway engine, train or car, it shall be an offence for the driver of the vehicle to fail to stop the vehicle before traversing such grade crossing.

Mr. NICHOLSON: Is there a penalty attached to such a violation?

Hon. Mr. MARLER: I have not read all the Nova Scotia legislation, but I have yet to see a motor vehicle act which did not contain a clause which said that whoever violated the provisions of the section—or violated the provisions —and it enumerates a number of them—is liable to a penalty of so many dollars, or in default of payment, to imprisonment.

Mr. JOHNSTON (*Bow River*): Upon conviction.

Hon. Mr. MARLER: I suppose it is only upon conviction that they would be liable to the fine or penalty. So, in generally all motor vehicle legislation there are teeth in the Act, and it is not just the expression of pious hopes that somebody will stop at a certain crossing or place, and if he does not so stop, there will be penalty. I take it that all legislation of that kind contains teeth of some kind, and I do not think it is necessary to go further into the Nova Scotia legislation, other than to say that such legislation probably does provide a penalty for this offence. I think we can take it that there are none of these offences spelled out for which there is no penalty.

When we come to the British Columbia legislation, we find that it is section 60 paragraph (2) of the Motor Vehicles Act, Chapter 227, R.S.B.C., 1948 and it reads as follows:

> (2) Every person driving or operating a motor-vehicle upon any highway approaching a grade crossing of an intersecting railway at which is erected an automatic electric bell and warning device of the wig-wag or flashing light type shall, if the bell is ringing or the warning device is in operation, stop the motor-vehicle and shall not enter upon or cross the railway while the bell is ringing or the warning device is in operation.

So there is another example, making two provinces which have legislated specifically on this subject.

According to my information Manitoba and Saskatchewan have provisions somewhat similar to British Columbia. Quebec has a limit of twenty miles an hour at level crossings. I can well remember the time when the statute required all motor vehicles to stop at railroad crossings. I can well remember the first year. People stopped. But the next year, fewer people stopped; and

in many places now no one stops. But I have not given these examples to show the wisdom of the legislation. I merely give them to show that here is a field which is properly a provincial one and that it is occupied by a number of provinces.

I would be most hesitant, speaking for the government, to accept an amendment by which we were going to incorporate what is in effect highway legislation into the Railway Act. I hope the committee will not consider adopting this amendment which, as I have said earlier, has already been the subject of discussion before the Board of Transport Commissioners. In making the suggestion that the committee do not adopt it, I do not want to disagree with what Mr. Green said earlier, or what must be in the minds of everybody here, namely that we all want to see railway grade crossing accidents cut down. But I think we should all recognize that this is a matter of highway legislation, and that if we want to carry our convictions further we should ask the other provincial legislatures whether they do not hold the view that they should adopt the type of legislation which is suggested by this amendment. As I said the other day, it would seem to be rather seductive to say: "let us have one statute which seems to apply throughout," because it is easy to adopt it, but I feel that if parliament did so, it would be dealing with what seems to be pretty clearly a matter of provincial jurisdiction.

Mr. JOHNSTON (*Bow River*): Would it not raise a constitutional question as well?

Hon. Mr. MARLER: I would not try to persuade the committee about the constitutional aspects of it. I suppose that unless you adopt it, you would find some difficulty in getting the constitutionality of it cleared up.

Mr. CAMPBELL: We are dealing with protective devices. There are many thousands of railway crossings all over the country which have no protective devices at all. I was caught myself on some of those highways which are not used too much, and found myself on a railway crossing before I realized it was there. I am thinking of two different things which could be done: one is, could not the railways put a large red reflector at each crossing? It would not cost very much, and it would be a protection—because the only protection which the public now has are these big crosses at the railway crossings marked on the back, a certain number of feet away from the railway crossing; and at night especially it is very hard to see them. Sometimes you get by before you see them.

Another suggestion—and probably this would come under provincial jurisdiction—is that the highway be widened at each side of the crossing, and that little islands be put in there with red reflectors and stop signs. Those are just two suggestions to which I draw the attention of the committee, and which I think are worthy of consideration.

Mr. JOHNSTON (*Bow River*): I agree with what the minister said a moment ago about our being concerned with the number of accidents at railway crossing. When a question of this nature arises my mind goes back to a few years ago when a man named Murphy, I think it was, came forward with a device for the protection of railway crossings. He showed it to us here in the House, and I think we arranged for a demonstration unit to be set up in Westboro, and some of the members of the House inspected it, as well as some of the representatives of the railways. I do not know if any of the Board of Transport Commissioners inspected it or not; but it was a device which had not only flashing lights on it, but it ran a barrier across the road.

That was a device that had not only a flashing light, but a device that ran a barrier across the road and that barrier was in the form of coil cables that hung down across the road. I thought that was a rather ingenious affair. I do not know what the cost would be and I did not hear the railways nor

the government give any suggestion about it, but I have often wondered what became of it. It seems to me something like that would be a great improvement for railway crossings. On many occasions when people travel across railway tracks they do not hear the sound of the bell and they do not see the light due to poor visibility or a heavy wind, and accidents occur. If we had some sort of device where in addition to the bell and the light there was a barrier that ran across the road, it would be a great assistance. I am not going to argue the price at the moment because I think that is a matter that can be decided on later; after all, $1,000 or $2,000 should not be compared at all with a human life. I wonder if there is anyone on the committee, in the railway department, or the government who can tell us what happened to the device that was exhibited here in Ottawa several years ago

Mr. HAHN: Mr. Chairman, it was not my intention to speak too much about this, but Mr. Johnston has raised the question of a barrier to stop cars from crossing these particular railway crossings. I should like to draw his attention to the fact that barriers are not going to stop people or automobiles necessarily. I have known cases—and I am satisfied that those of you who have lived in cities for any length of time know cases—where cars have driven right through the barriers. That is not the answer to it. As far as I am concerned, I would concur wholeheartedly with what the minister has said. I think the responsibility rests with the warning devices. They should be far enough from the railway track to let people know that they are approaching a railway crossing and that they must slow down. Despite these approach signs people will still be killed; they are not careful enough, and it is a matter of education from the provincial point of view. We must learn to take the responsibility in that way.

I would very much like to see underpasses and overpasses. That would be the final answer to the question and it will possibly come in time. At the present time, however, I can see no possibility of stopping all of these accidents; no matter how many barriers, lights or bells we install, we will still have accidents.

It might be an encouragement to the Board of Railway Commissioners if we proposed to send representations in the form of a letter to the various provinces drawing to their attention the need for more adequate signals showing the approach to railway crossings, and asking them if it would be possible to have the roads run parallel to the crossing rather than to have so many level horizontal crossings.

Mr. JOHNSTON (*Bow River*): It is not a case of education. If anyone knew a train was coming, and did not stop, I think he would be pretty doggone stupid. It is not a case of education—people do not want to be killed—it is a case of putting up a device they can recognize. If my memory serves me correctly, I believe a cabinet minister of this government was nearly killed in that way recently. I know that I have crossed railway crossings in storms and I could not hear the bell nor see any light. It is not a case of education. What I am concerned with is what happened to the device which was on exhibition in Ottawa, and I would like to know something about the construction and the price of it.

Mr. NICHOLSON: In spite of what the minister said, I still feel there is a great deal of merit in having this amendment made law. While the provinces might have the jurisdiction, apparently some of them are not too sure of it. When we discussed this matter, I had the Saskatchewan Act, and where it is set out in the Act, that the provincial authorities have the right to put up signs there was no penalty which I could find for anyone who disregarded the signs.

I think it is a matter of concern indeed. If people run into railway trains, not only the people in the car might lose their lives, but frequently members of the train crew lose their lives as a result of these train-automobile crashes. I think if the car driver could come to a stop before running into a train, that the loss of live would not be as great. I think for a few years we should try having this $25 penalty levied against anyone who disregards a red light or a stop sign.

In our province of Saskatchewan, as I mentioned the other day, stop signs are erected at crossings where people have been killed. I was under the impression that anyone who disregarded the stop signs was liable to a penalty, but I cannot find any reference to a penalty in the Act. On the main line of both the C.N.R. and the C.P.R. in the province of Saskatchewan, I understand there are stop signs and people in trucks or buses or cars are supposed to come to a stop, but as far as I can find out, there is no penalty in Saskatchewan for driving through and ignoring these signs. I think there would be a value in enforcing a penalty for a few years.

Mr. HAHN: Possibly Mr. Nicholson could answer this question. Does he know whether or not there is legislation in Saskatchewan requiring trucks and buses to stop at crossings?

Mr. NICHOLSON: Yes, for trucks and buses.

Mr. HAHN: Is there any penalty attached for that?

Mr. NICHOLSON: Yes, but not for cars.

Mr. HAHN: Why not recommend that they include cars and attach a penalty as well rather than our legislating for the dominion in this one respect which we have no right to do constitutionally, I would say.

Mr. CARRICK: Mr. Chairman, I do not think we should let this recommendation die in this committee. The problem has been given a lot of consideration by the railways and the Board of Transport Commissioners, and this committee. I do not think the benefit of this should be lost. If this committee decided it would be inappropriate to enact a recommendation by federal legislation, what would be the proper channel through which to pass on this recommendation to the proper departments of the provinces which do not have specific legislation on this subject? Perhaps the minister could tell us what would be the proper channel of communication.

Hon. Mr. MARLER: I suppose one would be inclined to write to the provincial ministers of highways and draw their attention to any general recommendation which this committee had formulated.

Mr. WESELAK: We could send them a copy of the record along with it.

Mr. CARRICK: I was thinking there is a delicate balance between the dominion and the provinces, because there is no doubt that this is a matter under the exclusive jurisdiction of the provinces as long as the dominion has not legislated upon it. I was wondering if the appropriate channel would be the Department of Justice? We could let that department decide what would be the best course to follow.

The CHAIRMAN: It looks to me as if the federal government had nothing to do with this. Railway crossings are a provincial concern.

Mr. CARRICK: I think, sir, with respect, if the dominion government did legislate on it, it would be proper and valid legislation which would supersede any provincial legislation, but I think the main question is the desirability of not doing that if it can be avoided. That is why I was suggesting that perhaps the proper thing to do would be to pass on this recommendation to the appropriate department of the provinces with the benefit, as far as possible, of the consideration that has been given to it.

The CHAIRMAN: I think probably a copy of this evidence could be sent to the ministers of the department of highways in the different provinces.

Mr. WESELAK: I think any federal legislation that might have the tendency to override provincial legislation, if it is not necessary, is bad law; because you can get into a situation where a charge is laid under a provincial law, and you get a ultra vires, and the case is thrown out of court. I think it complicates the situation.

Mr. JOHNSTON (*Bow River*): I would like to hear from the minister on this subject.

Hon. Mr. MARLER: The subject of these protective devices was actually considered in the hearings before the Board of Transport Commissioners, and a number of suggestions were made to them. But I do not really think that it is within the scope of the bill to discuss various kinds of protection devices which could be used. Quite frankly, there is no change in the Grade Crossing Fund purpose. It is merely a question of the application of the money, and I do not really think that questions concerning the character of the devices themselves are part of the legislation with which we are dealing.

Mr. JOHNSTON (*Bow River*): Are there any officials of the government or of the Board of Transport Commissioners present who investigated the device to which I referred?

Mr. KELLS HALL (Special Engineer, Board of Transport Commissioners): I was Director of Engineering at the time when Murphy's device or invention came before the Board. It was my duty to go out and inspect it along with our Signals Engineer who at that time was one of the best signal men in the country. The thing was investigated by our engineering department very, very fully, and after all the features were considered, the Board was of the opinion that it did not compare either in price or merit with the signal apparatus which we were installing regularly at that time. At that time we were using the bell and the wigwag with gates. But since then automatic gates have become more common and they are conceded to be the very last thing in protection, particularly at mainline double crossings.

Mr. JOHNSTON (*Bow River*): And they are using them more and more?

Mr. HALL: Yes.

Mr. JOHNSTON (*Bow River*): If you investigated it and found that to be true, then that is that!

Mr. HALL: Yes. We investigated it very thoroughly. The railway signal men investigated it too, and the final result was that there was no merit in it. Over the last twenty years we have had hundreds of applications for things of this type, none of which had the merit of those which are now installed—or at least, we did not think that they had.

The CHAIRMAN: Shall clause 1 carry?

Carried.

Shall clause 2 carry?

Mr. BARNETT: I am interested in learning what disposition was made of the suggestion to take some concrete steps in respect to the amendment which has been proposed, or in respect to some legislation covering the sort of thing which is covered in this amendment?

The CHAIRMAN: That would be dealt with in the matters which will come up at the end of the bill.

Shall clause 2 carry?

Carried.

Shall clause 3 carry?

Carried.

Mr. HAHN: Mr. Chairman, I would like to recommend that this committee, if possible, submit its findings or recommendations to the various provincial governments for their consideration of this problem of making it an offence for individuals who do not stop at proper signals on the railway.

The CHAIRMAN: Will that be satisfactory?

Hon. Mr. MARLER: I think that would be most satisfactory. Perhaps the chairman might draft some form of recommendation. I have it in mind that it might be desirable to ask the Minister of Highways of each province to consider how far the existing provincial legislation would attain the objective which the committee has in mind, which is that highway vehicles should not cross railways disregarding signs, signals or other protective devices which have been provided for the protection of the public.

Mr. GREEN: Perhaps it would be more practical to send this proposed amendment to the provinces and ask them for their opinions on it. They may have no objection.

Mr. CARRICK: Would it be satisfactory to leave it with the minister?

Mr. HERRIDGE: I think the suggestion of the minister should be put into effect.

The CHAIRMAN: Is it agreed that the following amendment be sent out to the Ministers of Highways of the different provinces:—

Section 416 of the said Act is amended by adding thereto the following subsection:

> (2) Any person who, in using any highway crossing at rail level for the purpose of passing on foot or in any vehicle along such highway across the railway, disregards signs, signals, or other protective devices erected or otherwise provided by the Company pursuant to Order of the Board, is liable, on summary conviction, to a penalty not exceeding twenty-five dollars.

Mr. JOHNSTON (*Bow River*): With an explanatory letter.

The CHAIRMAN: Is it agreed?

Carried.

The CLERK OF THE COMMITTEE: There is another proposed amendment which was submitted at our last meeting. I believe most of you have copies of it. It is rather extensive and it reads as follows:

PROPOSED AMENDMENT TO BILL 259

Subsection (1) of Section 260 of the said Act is repealed and the following substituted therefor:

> (1) Where a railway is already constructed upon, along or across any highway, the Board may, of its own motion, or upon complaint or application, by or on behalf of the Crown, or any municipal or other corporation, or any person aggrieved, order the company to submit to the Board, within a specified time, a plan and profile of such portion of the railway, and may cause inspection of such portion, and may inquire into and determine all matters and things in respect of such portion, and the crossing, if any, and may make such order as to the protection, safety and convenience of the public as it deems expedient,

or may order that the railway be carried over, under or along the highway, or that the highway be carried over, under or along the railway, or that the railway or highway be temporarily or permanently diverted, *or that the crossing, if any, be temporarily or permanently closed,* and that such other work be executed, watchmen or other persons employed, or measures taken as under the circumstances appear to the Board best adapted to remove or diminish the danger or obstruction in the opinion of the Board arising or likely to arise in respect of such portion or crossing, if any, or any other crossing directly or indirectly affected.

Mr. WESELAK: Is the effect of this amendment only that the Board could close crossings without obtaining permission of the local municipality?

Hon. Mr. MARLER: I think that is the significance of the proposed amendment, and I would like to say to the committee that my understanding is that the Board already has quite extensive power with regard to the closing of existing crossings. Its practice has been not to close existing crossings without obtaining the concurrence of the municipality concerned, or without providing for a grade separation. This amendment would seem to put in the hands of the Board such power and authority, regardless of the views of the municipality—and for my part I must say I would be hesitant to subscribe to what might seem to be a rather arbitrary power to be given to the Board.

Mr. WESELAK: The municipality has the responsibility of allowing people on their roadways and right-of-ways.

Hon. Mr. MARLER: Yes.

Mr. WESELAK: I think they are closer to the thing than would be provided for in an amendment like this, and that such an amendment should be seriously considered before their powers are encroached upon.

Mr. JOHNSTON (*Bow River*): Whose amendment is this?

The CHAIRMAN: It was offered by Mr. Spence of the Canadian Pacific Railway.

Mr. GREEN: No, both of those amendments are from the Canadian National Railways.

Mr. HAHN: I think as the minister does in this matter. I would not like to see the power of the municipalities taken from them. This is just another means of refusing them the right to indicate whether or not a rail crossing should be eliminated. If there is existing legislation which does empower the Board of Transport Commissioners in consultation with a municipal body to close a present crossing, if they deem it desirable, then I see no reason that the municipality should be deprived of the privilege of making such representations to the Board. This would make it mandatory at the Board's suggestion to close a crossing merely at their particular say so, and I could not concur with the amendment.

Mr. CARRICK: May I ask a question of Mr. Kerr. I was a little confused by the evidence on this point. My understanding was that at the present time if the municipality concurs, the Board will make an order that crossings of the kind dealt with her, be closed. Is that correct?

Mr. R. KERR, Q.C. (*Law Branch, Board of Transport Commissioners*): That's right. There is a great measure of cooperation between the Board and the municipalities to achieve not only protection at crossings, but to have regard to the wishes of the municipality as to the closing.

Mr. CARRICK: That would seem to indicate that while they consider that they now have the power to make such an order without the concurrence of

the municipality, they would not make it. Therefore it is hard to see just what would be gained by including this submission.

Mr. KERR: If the municipality wants to close a road, it may close that road right up to the railway right-of-way. That comes within its own jurisdiction. It can stop traffic from going over the railway if it wishes to do so. But what Mr. Macdougall had in mind was a case of several crossings which were close to each other. He probably felt that one crossing would do instead of two or three, and that notwithstanding that the municipality might want to have the three crossings left open, the Board should be able to say: "We shall close two of these crossings, and we leave you with the third."

Mr. CARRICK: They seem to be able to do that now, although they may not desire to exercise such jurisdiction.

Mr. KERR: The powers of the Board are found in section 260 in that respect. Generally the Board is called upon to exercise its power in the case of protection. It is not called upon to exercise its power solely in the case of a closing. There has to be protection at some existing crossing; and if the Board exercises its power under that section, it either puts in protection at that crossing, if it feels that it is necessary, or it authorizes a grade separation. It can substitute some other crossing for the one in question.

Hon. Mr. MARLER: Perhaps a grade separation may be a substitute for a crossing.

Mr. KERR: That is right.

Mr. LAVIGNE: I do not think we should take any power away from the municipalities. Otherwise in the near future we will have the railways dictating to the municipalities; and we will find them saying to municipalities which are close to the railway: "We will have only one railway crossing and you will have to go twenty miles in order to cross another one."

I do not believe that is right. I believe that the municipality should retain its power to say: "We are going to close this road." If you have development on both sides of the railways and if the railway says: "We are going to cut off this area," then those people will have to travel for miles in order to cross the railway track. I do not believe that would be adequate. I do not believe that the power should be granted to the railways to do such a thing.

Mr. BARNETT: I have one question. I would like to have clarified the procedure which is set forth at present. Do I understand that at the present time if a railway approaches the Board with a request that a certain crossing be closed because it is no longer useful or necessary, and that it adds a certain hazard, that on the request of the railway concerned the Board would take the initiative and instigate the closing of that crossing; and if no serious objection were lodged to it, that the Board would then order that the crossing be closed. Is that the normal procedure today?

Mr. KERR: Well, sir, if nothing is involved except the closing of the crossing, it is not a question of protecting that crossing; and if it is desired that the crossing be closed, the railways usually take up the matter with the municipality and try to arrange for the municipality and the railways to act jointly to close the crossing; and if it goes before the Board, the Board's powers—as the Board has interpreted the section—can only be exercised by the Board to close the crossing where some alternative crossing is provided.

Mr. BARNETT: In the case which you have mentioned, in which the railway might be concerned over the number of crossings which are close together, does the Board interpret that part of the present section which says that the highway shall be carried over, under, or along the railway to mean that they could in fact say that the road must go along the railway to a certain main crossing, so that you would not have one at every block in an urban area?

Mr. KERR: I do not know if the Board has interpreted those words you have used particularly; but looking at the section as a whole it has held that the Board cannot close a crossing without providing alternative protection, if the municipality objects to the closing. Where the municipality is willing to close, then no question arises. The railway shuts off the traffic within the limits of its own right-of-way, and the highway authority exercises its own jurisdiction.

Mr. BARNETT: Have there been many occasions in recent years when any serious differences of opinion have arisen as between the railways and the municipalities over this question of closing or not closing a crossing?

Mr. KERR: I have only been with the Board for a very few years and I have no knowledge of them in any time. Perhaps Mr. Hall could say a word on the subject as to what it was like before I came with the Board.

Mr. HALL: No. I think generally there has been agreement. The Board does not ask for the closing of a crossing unless it is satisfied that it is in the public interest to do so. In no case have we had—that I can recall—any great difficulty. Of course, the Board always holds, in cases of protection, the power of saying: "We have the money to do it and we are prepared to support this thing if certain things are done." And as a rule, with the power which we have through the Grade Crossing Fund, everybody is ready to cooperate with us. I do not mean to say that the Board uses the big stick; but we can say, if the municipality does not want the crossing closed, "if we do not close the crossing, we might assist you in other things which you want to do."

Mr. BARNETT: The Board uses the Grade Crossing Fund as a carrot?

Mr. HALL: It certainly does, with good judgment and common sense.

The CHAIRMAN: Gentlemen, there is another amendment before the committee which I shall now ask the clerk of the committee to read.

The CLERK OF THE COMMITTEE:

Section 39 of said Act is amended by adding the following subsection thereto:

> (3) In exercising its powers under subsection 2 of this section 39 and under section 262, the Board shall be governed by the same established principles of law and equity as govern the exercise of discretionary powers by the Courts, and shall not follow any precedents established by it in respect of the exercise of such powers prior to the enactment of this subsection.

Mr. JOHNSTON (*Bow River*): Who submitted this one?

The CHAIRMAN: It was submitted by Mr. Munnoch. Are there any questions?

Mr. HERRIDGE: Might we have an explanation of what the amendment means?

The CHAIRMAN: That was gone into quite fully the other day when Mr. Munnoch was here.

Mr. HERRIDGE: That may be, but some of us could not be here the other day. We were on other committees.

The CHAIRMAN: The Bell Telephone Company want to be compensated for the work which they do in regard to level crossings.

Mr. CARRICK: I think the witness explained that where there is work done which is deemed to be for the benefit of the railways and for the public safety, then the Board of Transport Commissioners will allow an amount to cover the expenses of the Bell Telephone Company in moving its equipment to be apportioned, as it does between the railways and the municipalities; but where

an application is made to do work which is *pro bono publico* or in the interests of public safety, then the Board of Transport Commissioners has taken the position that it will not order any payment in favour of the Bell Telephone Company; and this amendment is designed to avoid the precedent which has been set by the Board of Transport Commissioners to enable it, in that latter case, to impose a portion of those charges or the whole of the charges upon the municipality and the railway, and to authorize a payment out of the Grade Crossing Fund.

Mr. WESELAK: The telephone company would share in the gross amount available?

Mr. CARRICK: Yes, and it would be applicable to all public utility companies.

Hon. Mr. MARLER: Mr. Chairman, I must say that I have a certain sympathy with the position of the Bell Telephone Company as represented to me. It seems to be a fact that in no case that Mr. Munnoch could think of, has the Bell Telephone Company received any compensation when it was required to move its facilities from an existing site to a new one. That may be of course because the cases in which the issue has presented itself have been cases in which the commissioners felt that the whole cost should be borne by the telephone company. I can see that it might be possible that the Bell Telephone Company or some other public utility company should receive compensation and I fully believe that the Railway Act as it is now drafted gives the commissioners the full power to determine how those costs should be paid. I think perhaps what Mr. Munnoch covered is that in no case have the commissioners found circumstances in which they thought the telephone company should be compensated for the cost of moving.

Mr. JOHNSTON (*Bow River*): This would not alter it, would it?

Hon. Mr. MARLER: With regard to the amendment, I think that in an effort to alter the present state of affairs, Mr. Munnoch has gone much further than is necessary for him to go in order to obtain what he considers would be justice for his company.

In fact, under the amendment which he proposed the discretion of the Board would be severely limited; whereas up to the present, it has been an absolute discretion. I think the Board needs absolute discretion to deal with what I consider to be an administrative matter rather than a legal question or a juridical matter. Consequently I would be opposed to the amendment which Mr. Munnoch suggested.

However, I would like to say to the committee that I have thought further about the question since the committee met last week and I am quite prepared to accept the responsibility of asking the Board to re-examine in the light of present day conditions the principles which should apply to the removal of the facilities of public utilities in connection with grade separation projects. As Mr. Munnoch said the other day, the question was considered by the Board in 1932. But I think we are all agreed that a lot has happened since 1932 and perhaps our thinking in regard to the matter has evolved since that time.

I do feel that the committee would be doing justice to the Bell Telephone Company and other similarily placed utility companies if I, as Minister of Transport, were to ask the Board to reconsider the whole matter in the light of circumstances now prevailing rather than to be guided by a decision rendered in 1932.

It may be that the Board, after examining the matter, may reach exactly the same conclusion as it did in 1932, but I would feel, at least, that all concerned had had an opportunity of presenting their sides of the case to the Board, and the whole question would be thoroughly canvassed, and everybody

would have his day in court and the opportunity of presenting the argument which he thought would justify a change in the established practice of the Board.

I would be hesitant to accept the amendment also because I feel, without further hearings before the Board, there might very easily be a company, or municipality which was not represented before this committee, and it might do them a serious injustice. I do not think that anything that has been said about the bill in the House or elsewhere would have led the municipalities to believe that their position would be seriously altered by something done in this bill. But I would like to have the Board of Transport Commissioners hold a hearing on the subject at which all interested parties, the railways, the municipalities, and the public utility companies could put forth their views, and the Board could decide whether a principle should be followed, or whether each case should be dealt with on its own merits.

Mr. WESELAK: The Board has absolute discretion now, and it is not bound by its previous decisions.

Hon. Mr. MARLER: That is my understanding.

Mr. WESELAK: Then this would be surplus legislation.

Hon. Mr. MARLER: It converts an absolute discretion into one which is no longer absolute; and I think because it has the function of apportioning costs, it is essentially an administrative function, and I do not see how you can say that the principles of law and equity are to govern. That is my personal opinion.

The CHAIRMAN: Shall this be referred to the Minister of Transport?

Mr. GREEN: I dit not understand the minister to ask for a recommendation in this committee. He said that he would, in the course of administering his department, ask the Board of Transport Commissioners to review the situation. That I think is a very good idea but to go one step further and say that this committee recommends such a thing I think is unnecessary. As the minister has pointed out hundreds of municipalities would be affected if there is a change in this law and they would be paying part of the shot which the Bell Telephone Company is now paying and I do not think this committee should go on record as having any doubt about the law as it stands at the present time. Why not simply let the minister carry on as he suggests and have it reviewed by the board rather than this committee making any recommendations.

The CHAIRMAN: Is that agreed?

Agreed.

Mr. CARRICK: I am wondering whether before I got here the suggestion made by Mr. Spence had been dealt with. He made a suggestion that part of the cost of maintenance of signals be paid out of the crossing fund. I wonder whether that has been dealt with or whether you, sir, intend to deal with it? Mr. Spence submitted two statements to us and he suggested that the C.P.R. should be compensated for the cost of maintenance and operation of the highway crossing protection devices that were established under order of the board.

Hon. Mr. MARLER: Mr. Chairman, perhaps as the members of the committee will remember when I introduced the resolution which preceded this bill I said that the question had been considered by the government and that we had decided that we would not recommend a change by which annual costs of maintenance would be paid out of the Grade Crossing Fund. I think I indicated that was not a decision for all time but was a decision for the present. I think, and I do not doubt that honourable members would somewhat share this view, that the fund should be used primarily to overcome the problem of protection and not the problem of maintaining the protection. I

think that we might change our minds on the subject afterwards, but for the moment at least I would feel happier if we were going to devote all the moneys in the fund to the work of protection, grade separation and the capital or initial cost rather than maintenance costs which are I admit, not inconsiderable, but which do not affect any municipality very heavily. The railways are already receiving considerable relief because the contributions from the Grade Crossing Fund are being increased and their own contributions are being decreased. I think they should not complain too much and I think perhaps we might review the question of annual maintenance charges at some future time.

Mr. HERRIDGE: I think the minister is quite correct in that.

The CHAIRMAN: Shall the preamble carry?

Carried.

Shall the title carry?

Carried.

Shall the bill carry?

Carried.

Shall I report the bill without amendment?

Carried.

Hon. Mr. MARLER: May I thank the committee for the courtesy they have shown me in allowing me to talk so much before this committee in connection with this bill. I hope on future occasions here I will be more of a listener.

The CHAIRMAN: I think it has been a great pleasure to listen to you, sir.

Our next meeting will be at 10.00 o'clock on Thursday, May 12, to consider bill 283, an Act to incorporate Westspur Pipe Line Company.

The committee adjourned.

HOUSE OF COMMONS

Second Session—Twenty-second Parliament

1955

STANDING COMMITTEE

ON

RAILWAYS, CANALS AND TELEGRAPH LINES

Chairman: H. B. McCULLOCH, ESQ.

MINUTES OF PROCEEDINGS AND EVIDENCE

No. 4

Bill No. 283 (Letter N-9 of the Senate),
An Act to incorporate Westspur Pipe Line Company

THURSDAY, MAY 12, 1955

WITNESSES:

Mr. J. F. Barrett and Mr. G. W. Robinette, Barristers-at-Law, and Mr. B. H. Mackenzie, Executive, all of Toronto, Ontario.

EDMOND CLOUTIER, C.M.G., O.A., D.S.P.
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1955.

58097—1

STANDING COMMITTEE

ON

RAILWAYS, CANALS AND TELEGRAPH LINES

Chairman: H. B. McCulloch, Esq.,

and

Messrs.

Barnett
Batten
Bonnier
Boucher (*Chateauguay-Huntingdon-Laprairie*)
Buchanan
Byrne
Campbell
Carrick
Carter
Cauchon
Cavers
Clark
Decore
Deschatelets
Dupuis
Ellis
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Gagnon
Gauthier (*Lac-Saint Jean*)
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Green
Habel
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Healy
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Hodgson
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Howe (*Wellington-Huron*)
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Johnston (*Bow River*)
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Lafontaine
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Leboe
McIvor
Meunier
Montgomery
Murphy (*Lambton West*)
Murphy (*Westmorland*)
Nesbitt
Nicholson
Nickle
Nixon
Nowlan
Purdy
Ross
Small
Stanton
Viau
Villeneuve
Vincent
Weselak

E. W. Innes,
Clerk of the Committee.

ORDER OF REFERENCE

TUESDAY, March 29, 1955.

Ordered,—That the following Bill be referred to the said Committee:

Bill No. 283 (Letter N-9 of the Senate), intituled: "An Act to incorporate Westspur Pipe Line Company".

Attest.

LEON J. RAYMOND,
Clerk of the House.

NOTE: The Report to the House on Bill No. 283 will appear in the next issue (No. 5) of the printed Proceedings.

58097—1½

MINUTES OF PROCEEDINGS

THURSDAY, May 12, 1955.

The Standing Committee on Railways, Canals and Telegraph Lines met at 10.20 o'clock a.m. The Chairman, Mr. H. B. McCulloch, presided.

Members present: Messrs. Barnett, Batten, Byrne, Campbell, Carrick, Deschatelets, Gauthier (*Lac-Saint-Jean*), Gourd (*Chapleau*), Green, Hahn, Hamilton (*Notre-Dame-de-Grace*), Hamilton (*York West*), Harrison, Healy, Herridge, Hosking, James, Johnston (*Bow River*), Kickham, Lafontaine, Lavigne, Leboe, McCulloch (*Pictou*), McIvor, Meunier, Nicholson, Small, Stanton, Villeneuve, Vincent, and Weselak.

In attendance: Mr. George J. McIlraith, M.P.; Mr. J. F. Barrett, and Mr. G. W. Robinette, Barristers-at-Law, and Mr. B. H. Mackenzie, Executive, all of Toronto, Ontario.

The Committee proceeded to the consideration of Bill No. 283 (Letter N-9 of the Senate), intituled: "An Act to incorporate Westspur Pipe Line Company."

Agreed: That the Committee print 750 copies in English and 200 copies in French of its Minutes of Proceedings and Evidence in respect of Bill No. 283.

The Preamble was called and Mr. Barrett outlined the purpose of the Bill.

Mr. McIlraith, sponsor of the bill, outlined and explained the differences in other pipe line legislation, as compared with the Bill under consideration.

Clauses 1 and 2 were adopted.

On Clause 3: On motion of Mr. Byrne,

Resolved,—That for the purpose of levying a charge on the capital stock, which will have no nominal or par value, the Committee recommend that each share be deemed to have a value of $10.00

Clauses 3 to 5, inclusive, were adopted.

On Clause 6: Mr. Green moved, seconded by Mr. Small,—

That Clause 6 (*a*) be amended by inserting after the words "gaseous hydrocarbons" in line 29 the following:

> "provided that the main pipe line or lines for the transmission or transportation of gaseous hydrocarbons shall be located entirely within Canada".

The amendment was resolved in the negative on a division of Yeas: 10, Nays: 15.

Clauses 6 to 10 inclusive, the Title and the Bill were adopted.

The Chairman was ordered to report the Bill, without amendment, to the House.

At 12.30 o'clock p.m. the Committee adjourned to the call of the Chair.

E. W. Innes,
Clerk of the Committee.

EVIDENCE

THURSDAY, May 12, 1955.
10.00 A.M.

The CHAIRMAN: Gentlemen, we have a quorum.

The bill before us this morning is bill No. 283, No. N-9 of the Senate, entitled an Act to incorporate Westspur Pipe Line Company.

Is it agreed that the Committee print 750 copies in English and 200 copies in French of its Proceedings in respect of this Bill—Agreed.

Shall the preamble carry?

We will hear from Mr. Barrett.

Mr. GREEN: Could we have a statement?

The CHAIRMAN: Yes, Mr. Barrett is going to give us a statement.

Mr. Joseph Flavelle Barrett, called:

The WITNESS: Mr. Chairman and gentlemen, the bill to incorporate Westspur Pipe Line Company is inspired by the wish to have a vehicle which we can use to construct and subsequently operate a small, or more than one small, branch or gathering pipe line in Western Canada, specifically the Northwest Territories, British Columbia, Alberta, Saskatchewan and Manitoba. In recent years there have been a number of discoveries very close to or on the provincial or international boundaries in western Canada. Until pipe lines are built connecting the oil well to a refining centre such as Regina, Calgary or Edmonton, or until a pipe line is built leading from the well or field to a main interprovincial pipe line such as Interprovincial or Trans Mountain, it is necessary in order to get the oil to market to get it there by truck or if available by a railway tank car; that is an expensive procedure. Therefore, as soon as it is economically feasible the producers in the area plan a pipe line.

Now, you will realize that pipe line means everything from a great 30 inch pipe line such as you have in part on the interprovincial route down to a small 4 or 6 inch pipe line which you would use if your production is small from a given area.

With that background I would like to point out that in December, 1953, the Pipe Lines Act was amended by the addition of section 10A; and section 10A is a prohibitive section in that it states that "No person, other than a person having authority under a Special Act to construct or operate pipe lines for the transportation of oil or gas, shall construct or operate an extra-provincial pipe line." It goes on to say "nothing in this act shall be construed to prohibit or prevent any person from operating or improving an extra-provincial pipe line constructed before the 1st day of October, 1953." That does not apply to people coming along with a new pipe line so in effect the Act says no person shall construct or operate a pipe line unless he has an authority to do so under a special Act. We are petitioning for the incorporation of the Westspur Pipe Line Company by a special Act in order that we can use it for the purpose of constructing and operating an extra provincial pipe line. Extra-provincial pipe line is defined as meaning "a pipe line for the transportation of oil and gas connecting a province with any other or others of the provinces, or extending beyond the limits of a province."

Now, specifically the territory we are interested in is the Saskatchewan-Manitoba area, the southern part of those two provinces. Our company and others—and by our company I represent Imperial Oil—have made some small discoveries down in that area, in particular Alida and Nottingham and Frobisher. As it is at the moment there are two, three, up to a dozen producing or prospecting producing wells in that area and those three places are in the extreme southeast corner of Saskatchewan. The interprovincial pipe line runs across the provinces north of that. It is our hope that further drilling for oil in that general area, the southeast part of Saskatchewan, will prove up sufficient reserves so that it will be feasible to construct a small gathering system in those fields, a pipe line approximately 35 miles long, which will go across the Saskatchewan-Manitoba border and connect up with Interprovincial Pipe Lines at Cromer which is a delivery point on the Interprovincial pipe line in Manitoba.

I believe that already oil is going into Cromer coming down from the Dalles-Roselea fields. That pipe line would consist of a gathering line and approrimately 35 miles of line going across the provincial boundary to connect at Cromer where the oil could be pumped through interprovincial down through to Sarnia in Ontario. At the moment the oil from those fields is being taken by truck or railway tank cars which is an expensive process. If the pipe line could go in it would result in the oil being transported much more cheaply. It is pointed out to me that when I mentioned 35 miles as the distance that is from Alida to Cromer. If the extension were from Frobisher we would be talking about a total distance of about 70 miles.

I have maps here drawn to indicate these production areas and the route of the Interprovincial Pipe Line which I can circulate if anyone is interested in seeing the localities I am talking about.

I think the only other thing I would like to point out is some of these wells are located very close to the international border and it is logical to anticipate that some of these fields may stretch across the international border into the United States. We have one well which is indicated on this map being circulated known as Lulu Lake and it is only three miles from the international border so that well might indicate a field which might go right down across the border.

I think that is all I have as a general introduction to the bill. Shall I leave it at this point, Mr. Chairman, for questions?

The CHAIRMAN: Yes.

Mr. BYRNE: Will these lines that may be possibly built on an international boundary or crossing an international border be for the purpose of bringing the oil into Canada or going the other way into the United States?

The WITNESS: It would probably be bringing the oil into Canada and you realize it then would go into the International Pipe Line which goes back into the United States. I suppose it would depend on the best route from the American wells to the American refinery. At the moment in this present area the Canadian route would be the easy one.

By Mr. Green:

Q. Mr. Barrett, in your bill you are asking power to build pipe lines outside of Canada?—A. Yes, sir.

Q. In so doing you have in mind these small branch lines from small fields. Is that what you have in mind?—A. Yes, sir.

Q. Your main purpose is to construct gathering systems in Canada?—A. Yes, sir.

Q. And crossing the border of Alberta, British Columbia and possibly Saskatchewan and Manitoba.—A. Yes, sir.

Q. If you did build a line into the United States would it be done by this company or by some American subsidiary?—A. I suppose on the basis of precedent it will probably be done by an American subsidiary. I really cannot answer that categorically. I have not thought that out. That would be step number 2 if we got our Canadian company first. I know it is the usual practice to use an American company for the purpose of owning and operating in the American section of an international line. I would think we would use an American corporation.

Q. Then you are asking power in this bill to build gas pipe lines as well as oil?—A. That is right, sir. I have a particular reason for including gas as we have emphasized crude oil.

Q. What is the reason for including gaz?—A. The reason is that a gathering system in the field, as opposed to a pipe line such as Interprovincial, might very well have to gather oil from the well and that oil would have in it dissolved gas. Now, before the oil can be put into the main pipe line that gas might have to be taken out of the oil, separated, and therefore for a part of the route the pipe line might be gathering both oil and gas. We call it an oil pipe line and it is only oil we are interested in, but you get gas mixed with oil in the early step of pipe line transmission.

Q. But your bill is in such terms it would enable you to make the transportation of gas your main purpose?—A. It is, I admit, that.

Q. I would ask whether you have any objection to writing in a provision to the effect that the main pipe line for the transmission or transportation of oil, gas, etc., shall be within Canada? I point out that the Trans Mountain Pipe Line Company, to which you referred, has this provision in section 6 of its charter:

> Provided that the main pipe line or lines for the transmission or transportation of oil shall be located entirely within Canada.

Also that the Trans Canada Pipe Lines, which as you know is a company now proposing to build a line right across Canada, have a similar provision reading as follows:

> Provided that the main pipe line or lines either for the transmission or transportation of gas or oil shall be located entirely within Canada.

The same proviso has been a standard proviso written into all these charters I think since 1951. In fact the West Coast Transmission Company Limited, which is the company proposing to export gas from the Peace river district down to the northwestern states, came before parliament in 1950 and asked that their incorporating Act be amended to take out the power to build a pipe line outside Canada. They got under the wire in 1949 before we knew very much about the pipe line question and so did the Interprovincial Company; just before the House broke up for the election. West Coast Transmission Company Limited came back in 1950 and voluntarily had that proviso deleted. Now, would you be willing to have a similar proviso written into the bill in section 6 so that you would not be placed in a more advantageous position than Trans Mountain or Trans Canada or different other pipe line companies which have this provision in their charter?—A. Mr. Green I agree with what you say in your summary of the provisions of other pipe line company charters. I point out that we patterned ours after Interprovincial chiefly because I and others had something to do with getting that company incorporated. The earlier companies such as Interprovincial, Trans Northern, Western Alberta Natural Gas and Prairie Transmission, do not have any such provision in their charter. The later companies, the ones you quoted and some others, Canadian Montana Champion Pipe Line, Independent Pipe Line, Trans Canada, Trans Mountain, today have these provisos. Our feeling is that a proviso to the effect

that the main pipe line or lines be located entirely in Canada has little if any application in view of the purpose which we have in mind for this company. We do not propose to build any main pipe lines. We are going to build branch lines, connecting lines. I am not trying to play with words, but I presume you would agree that Trans Canada is building a main pipe line or trunk line, and Interprovincial and Trans Mountain built main pipe lines. What we are interested in are small gathering lines in the field and small branch lines which lead up to the main pipe lines and I do not believe we are going to build any main lines at all. It is for that reason we have put the provision out.

Q. While that is the intention of Imperial Oil at the present time, this charter is so worded that you have power to build main lines. Your charter does not confine you to branch lines at all?—A. That is right.

Q. It is your charter that counts, not your intention, at the present time. That intention may change and we may find that the Imperial Oil Company is out to build a main gas line. Now, do you think it would be fair for them to have wider powers than are possessed by Trans Canada Pipe Line or, in the case of oil, by Trans Mountain? I do not see any reason why you should object to this proviso being written in especially as you say you have no intention of building a main line. Furthermore, you see there are half a dozen other pipe line bills to come before this committee and if you are able to get a wide open charter such as I admit 4 or 5 companies got under those pressing conditions in 1949 before we knew what it was all about, then these other applicants are entitled to get the same treatment. It seems that does put Trans Canada and Trans Mountain and Mid Continent and these other lines in a very unfair position.

By Mr. Herridge:

Q. Mr. Chairman, I want to support Mr. Green's point of view. The committee has more or less established a principle to that effect. While it is not the intention of the sponsors at the present time to establish more than feeder lines it leaves them the right; and I agree with Mr. Green that the same principle should be written into this bill as has been written into all previous bills passed by this committee.—A. Of course the position that I was taking on this was that we cannot build any pipe line without the approval of the Board of Transport Commissioners. We have to go to them for leave to construct and then for leave to operate. If they do not grant us the leave, we do not construct or operate. On this type of venture, not expecting to have any main pipe line, I felt that that type of proviso was meaningless, and worse, it might lead to difficulty. Let us assume we are building a system of gathering branch lines crossing the international boundary. I do not know what is a main pipe line and what is not a main pipe line. We might have 40 miles of pipe line in the United States and 35 miles in Canada. Are we then transgressing this proviso? The whole point of this pipe line application—and I suppose others —is to build a pipe line that will most economically get the oil to market. The international boundary did not seem to be of any importance to us in that regard.

By Mr. Green:

Q. I am not questioning the fact that you put in your section 6 the power to build a line outside of Canada. Some of these companies did not even get that power. I am not questioning that you should have that right because as you say you may want to build a small branch line over the boundary; but the difficulty is your powers are not confined to building branch lines. There is not a word in this charter saying you are only going to build branch lines. It means you could build main pipe lines without the restriction that applies to the other companies and that I think is unfair.

Mr. CARRICK: Would there be any difficulty in determining what is a main line and what is a branch line if that were written into it?

Mr. HAMILTON (*York West*): I would think that there would be difficulty in determining it. It probably could be a very good legal point at some stage. I think the objection here is this to a great extent is a matter of government policy, the question of the flowing of these materials in and out of the country. Had Mr. Barrett come today with a specific plan showing the area which was being used or the area that was being covered by the gathering system, setting out the particular area, we probably could have decided it here, but once it goes to the Board of Transport Commissioners I would think it was outside our power and we are asking for reservation in respect to that policy.

Mr. MCIVOR: Mr. Chairman, I am a bit muddled. I do not see why this line should go to Gretna leaving out the Lakehead. If this line supplies Winnipeg and the other line is supposed to supply Winnipeg, I don't see how I can support it because I have been enthusiastic for the all Canadian pipe line serving Canada first. Why should it go to the Gretna market? They want to send it into the United States and I am a bit muddled.

The WITNESS: May I explain that the pipe line shown there is the Interprovincial Pipe Line already built. We have not shown a route for our proposed pipe line because it is too early to locate it. What we have that map for is to illustrate the various fields which we would like to connect to the interprovincial pipe line. For instance, we think one possibility is to have a pipe line from our wells to Cromer which is on the Interprovincial Pipe Line in Manitoba quite close to the boundary; that is entirely within Canada. The pipe line itself already exists and does go through the United States in order to reach Superior and Sarnia, Ontario.

By Mr. Green:

Q. Then why not change your charter to provide you have power only to build branch lines? Why seek this general power to build pipe lines of any kind? If you have a provision in that the main line must be within Canada, it does seem to me that does not injure you as long as you are building small branch lines and nobody can possibly construe such a line as being a main line. If you are not willing to have a proviso written in such as in other charters, why not change your charter and merely ask for the power to construct branch lines?—A. I had anticipated this, Mr. Green, and considered various limitations. I am just naturally reluctant with oil being discovered all over the place in western Canada. I was reluctant to limit at this time the powers of this company so that we could go in any direction we wanted that looked feasible in the interest of oil production. A proviso such as you suggest limits us to branch lines; or another proviso, limiting the location of our main line, is to me just anticipating what our needs would be and we did not feel we could. That is solely the reason for the present wording.

Q. Is there any reason why Imperial Oil should have further rights than these other companies?—A. No.

Q. They were satisfied to have that proviso written into their charter and I do not see why Imperial Oil should not be satisfied with the same proviso. If the intention of the company is to try to break down this provision calling for building these main lines in Canada then, of course, that raises very far reaching implications which may force this whole issue into a fight again when we thought it had been settled.

By Mr. Hosking:

Q. Mr. Chairman, is this a new situation which has arisen in the last year or two which is causing this problem? What has cropped up?—A. Well, I

suppose the answer is that it is new, yes, because the Pipe Line Act was amended slightly more than a year ago.

Q. What did the amendment do?—A. The amendment said that only a company which was authorized by a special act of parliament could construct or operate an extra-provincial pipe line, meaning a pipe line crossing political boundaries.

Q. That would mean that if you were drilling in an oil field which was partly in Manitoba and partly in Saskatchewan you could not run a pipe line across to bind those two wells together.—A. That is correct, unless the pipe line was constructed by a company which had obtained its charter from parliament.

Q. Why did they change the law so that you could not do that? What happened to stop you from doing it?—A. Why did they amend the Act? I am guessing, but I suppose the government wanted to have control over pipe line construction and operation, and therefore they amended the Act.

Q. If you should obtain such permission now, you would still have to abide by the decision of the Board of Transport Commissioners.—A. That is correct.

Q. With regard to the operation.—A. The construction and then the operation; there are two separate sections, or two separate licences required; in the first case you go to the Board before you have done anything and file your plans and ask for permission to construct your pipeline along an indicated route for an indicated purpose; and after that the Board has power to see if you have followed your licence and complied with their requirements; and you ask for and obtain a second licence permitting you to operate the pipeline.

Q. You represent only Imperial Oil?—A. Yes.

Q. Are we going to receive a request from BA and from every other oil company to do the same thing that you want to do?—A. It could be!

Mr. McILRAITH: BA have got one. There are also a number of bills of this nature being processed at the moment.

By Mr. Hosking:

Q. So it would seem to me that you could get one, and that there will be other oil fields on the other side of the boundary, and they would be in the same position.—A. Yes sir.

Q. And they all come under the Board of Transport Commissioners.—A. If it is a pipe line crossing a boundary, yes; but if it is wholly within a province, then it comes under provincial jurisdiction.

Q. And until upwards of a year ago you had the right to do this.—A. Yes, any letters patent company could build it.

Mr. WESELAK: Mr. Green is concerned with the possible export of gas and oil to the United States.

Mr. GREEN: I think I made it clear throughout all the pipe line controversies that the main pipe line should be built on Canadian soil. Mr. Barrett has given his thinking that the oil companies should get to the biggest market by the shortest route, and that the international boundary does not mean anything. He said this morning that in their thinking the International boundary does not exist. But in my thinking, and in the thinking of the Rt. Hon. Mr. Howe on the Trans Canada Company question, the international boundary does exist. It is a very serious factor in considering government policy. These main pipe lines—certainly for gas—must be built across Canada and not through the United States; and yet this charter, if granted in its present form, would give these applicants—who are Imperial Oil—the power to construct a main line throught the United States.

They say that they only want to build branch lines; but I cannot for the life of me see why they ask for special treatment, and why they want a charter which does not contain a provision that the main line must be in Canada. As Mr. Hosking said, if they should get that right, then the other oil companies will come here and demand the same right. I cannot see why they should not be satisfied with a charter such as all the other companies have.

By Mr. Hosking:

Q. You cannot export oil cross the international boundary without a permit from the Board of Transport Commissioners.—A. I am sorry, I think the permit must be issued by the Minister of Trade and Commerce.

Q. Yes. As I understand this thing, you have an oil well on the boundary between Canada and the United States, the same as you might have one on the boundary between the provinces of Manitoba and Saskatchewan, and you want to assemble an oil field into one main line body and one outlet.—A. Yes sir.

Q. And with permission of the Minister of Trade and Commerce, you could ship from that oil field to the States, or to the rest of Canada?—A. Yes.

Q. But you would have to have the consent or permit of the Minister of Trade and Commerce to do so?—A. That is right.

Q. So actually this is not a trans-Canada pipe line at all, it is an assembly line, actually, operating an oil field and you may be shipping oil one way or the other; but you first have to apply to the Board of Transport Commissioners for a permit, and if you go across the international boundary line, then you have to get a permit from the Minister of Trade and Commerce.—A. That is correct.

Mr. GREEN: That is true of all of them.

Mr. HOSKING: It sounds to me as though they cannot operate an oil company.

Mr. GREEN: That is true with regard to all these other companies which got charters; they are all subject to the control of their export by the Minister of Trade and Commerce; but these other companies in their charters have agreed that their main lines will be in Canada. Now this company, these applicants, are not willing to do that apparently; and I do not see why they should get special treatment. After all, they are a subsidiary of Standard Oil of New Jersey, a subsidiary of an American company. True it is the strongest oil company in Canada, but that is the fact. Why they should come here and be unwilling to have this proviso written into their charter I cannot understand.

By Mr. Hosking:

Q. As I understand it, their charter now asks for just four provinces.—A. Four provinces, the Northwest Territories, and outside Canada.

Q. What does "outside Canada" mean?—A. The United States.

Q. Is your bill going to give you permission to ship our oil down into a main pipe line in the United States over which the Minister of Trade and Commerce has no control?—A. Well, he would, sir, because our pipe line cannot be built across, or cannot operate across, and it cannot ship oil across the international boundary without government permission, which can be withdrawn at any time; and in answer to your question, I would say yes; this company, or any of these other pipe line companies could presumably gather oil on the international border and then ship it north into Canada or south into the United States. I suppose it would depend on where the market is, because as you know we cannot produce all the crude oil we would like to because the market is inadequate. I suppose the decision would be made on the basis of markets.

Q. The Minister of Trade and Commerce took that attitude at the time of the all Canadian pipe line, and if we can keep the Minister of Trade and Commerce there, we would be assured of a very safe situation in Canada.

By Mr. Hahn:

Q. Is there not a further safeguard that should permission be granted to build a pipe line into the United States, the Minister of Trade and Commerce can at any time stop the export of that oil into the United States? This would merely give you the right to build the pipe line as such.—A. Build and operate, yes.

Q. Yes, but the operation can be stopped at any time.—A. That is correct.

Mr. CARRICK: Mr. Green stated that certain company charters now contain a prohibition to the effect that any main line must be within Canada. At the time the charters were granted to such companies the same power existed in the Minister of Trade and Commerce which exists now, to regulate the sale of oil outside Canada.

Mr. GREEN: Oh yes, that power has existed throughout, and so has the power of the Board of Transport Commissioners, but it was felt that parliament should take a stand on it, and that should be the policy with regard to these pipe lines. Primarily that was the reason that this proviso was written into these various charters and passed by the House and accepted by the companies. They are all now operating under these provisos, and if Imperial Oil is now attempting to break down that legislation which has been passed by more than one parliament —the legislation was passed at more than one session—then I suggest that it raises a very serious question. That is not only a policy which the opposition has fought, but one which is also contrary to the policy adopted by the Minister of Trade and Commerce in his statement about the gas pipe lines across Canada as to which, as he said in the House, Canadian interests must be served first.

Mr. CARRICK: If such a clause was not inserted in this charter, would this be the first case since 1950 that it has not been inserted?

Mr. GREEN: Yes, I think so. I am not sure when the Alberta Natural Gas Bill went through. It was filibustered for one whole session, but I think eventually it went through.

By Mr. Carrick:

Q. Mr. Barrett, if you carried out the immediate plans you have outlined to us for gathering oil and delivering it to Cromer, and the northern area of the United States, and if the main line must be built in Canada, would there be any difficulty, in your opinion, in interpreting the words "main line"? You would have no difficulty? Most lines which would cross to the United States would only be branch lines.—A. I think there would be some difficulty about that; but to carry it a step further, let us presume that we do build this line to Cromer; and let us presume that there is a fine market for oil opened up in the United States near Minneapolis. I do not know whether that is a good example or not; but Minneapolis is quite a big place, so let us say that it could support a new 40 thousand barrel a day refinery. Why should we not build it, if we are lucky enough? Why should we not build a pipe line taking some of our Saskatchewan and Manitoba oil down to that refinery?

You appreciate that at the moment our wells across Canada are not producing as much oil as they could produce, and under engineering standards the reason is that there is no market for it. Suppose we build a 35 mile branch line and call it a pipe line to Cromer; and later on we find a fine market opened up down in Minneapolis for more of this oil; so we build a 200 mile pipe line down to Minneapolis and that results in more Canadian oil being consumed, which is what we are after, if we haxe extensive western Canada crude. Which is the

main line and which is the branch line? Why should we not build that line, and why should we have any proviso in our charter which might cause lawyers later on to tell us that we cannot do it. That is my comment.

By Mr. Byrne:

Q. I have never shared the apprehension of Mr. Green that lines should not traverse the international boundary. On the basis of pure economics I always felt that oil should be transported in the most economical way. I have not any great fear that this bill is going in any way to injure the position of Canada with respect to marketing its natural resources. I wonder when this bill was presented, if the Department of Trade and Commerce officials had full opportunity to peruse it and determine whether its effect would be to transgress the policy of the government with respect to pipe lines?—A. Mr. Chairman, I was told that the Department of Transport was the proper department to consult about this and I did consult the Department of Transport. They had no objection. They just do not give approval to one application like ours and not give approval to another. They do not endorse; but I did give them every opportunity to comment and criticize, and I got nothing from them.

Mr. McILRAITH: They had no objection. That is on the record before the Senate Committee.

By Mr. Byrne:

Q. I can see the difference between a pipe line company which has been authorized expressly for transporting gas and oil from one province to another, or the Trans Canada, for instance, having less difficulty in administering their affairs when they are transporting over a distance; but when we are chartering a company which will be gathering across international or interprovincial boundaries, I think there should be some flexibility, that is, they may have to bring it into Canada or take it to the other country where the market is located at the time.

In the House only recently we have heard consternation expressed over the fact that the Americans were contemplating an embargo on our oil. That seemed to be met with very great objection by all parties in the House; so that there is a very great need for markets at the present time. I think we could very well charter this company on the basis that they are presently asking.

The witness has said that the market is not available. I wonder if the witness could tell me, under the normal law of supply and demand, why it is that at the well head in British Columbia gasoline costs 50 cents a gallon, while here in Ottawa you can purchase it for 43 cents? That question has always vexed me and I wonder if we could have some logical explanation for it at this time, if supply is greater than demand now in western Canada.—A. I am afraid that I am over my depth on that one. Might the provincial gasoline tax not account for the difference?

Q. No. I think the gasoline tax is higher here than it is in Manitoba, or there is one cent difference either way.—A. Frankly I do not know.

By Mr. Hamilton (York West):

Q. This may have come up before when other bills were considered, when they were talking about provisions outside of Canada, because apparently it is a restriction we have heard about. But from a practical standpoint can you see this company here actually constructing work in the United States, within United States territory, and have a gathering system and actually owning the land in the United States or leasing the land to complete the physical property? I am sure that accounting-wise you would try to avoid

that, being in business in Canada, from being in business in the United States. Is it not much more likely that you would want to incorporate a subsidiary company in the United States to carry out your objectives, and if so, why would you need the power to do business outside of Canada?—A. That is a very good point, Mr. Hamilton. Don't you think though that the power of a company to invest its funds in other companies and to incorporate subsidiaries is limited to companies having similar objectives? Now, if this company is specifically limited to Canada, would it have the power to incorporate a subsidiary in the United States, so that its subsidiary would be doing something which is to all intents and purposes prohibited by its charter? You see my difficulty.

The Companies Act, in its powers, does say that every company has the power to incorporate companies or invest its money in companies having similar objectives. Suppose you put a limit on our objects of the type you describe? I query it. I do not know the answer to it. I query whether we have technically the power to incorporate a subsidiary in the United States to build, or to own an American part of the pipe line.

By Mr. Green:

Q. Surely the answer is that a subsidiary would not be incorporated by Westspur Pipe Line Company; the subsidiary would be incorporated by Imperial Oil.—A. I do not agree. The usual scheme is to have a company like Westspur. It has happened in Alberta in the last month or so. That is the usual procedure in the field.

You will agree with me that we want to cut the transportation charges. If there is a transportation charge of 90 cents per barrel, and they say that they can cut it to 30 cents a barrel, at that stage would they not hog the whole thing and build this line, which would earn 5 or 6 per cent? We would have to go to each producer and say to him: "Would you be interested in participating with us in a pipe line venture?" And from our experience I believe every producer would always say: "Yes." So it would be a case of the shareholders owning the line and the oil in the field, and that same group, I presume, would own and operate the American pipe line, if there is not one owned by a subsidiary which would restrict us at that stage. In that case we would have to do the whole job over again in the United States. I think that summarizes it.

Mr. HAHN: There seems to be considerable confusion about the original bill. I understand we have the sponsor of the original bill with us. Perhaps we could hear from him, when we would get a more thorough explanation and be more thoroughly conversant with what is intended.

Mr. BYRNE: You should get to the meeting on time.

Mr. MCILRAITH: I do not know if the committee wants to hear me, but if so I would be happy to give an explanation if I can, and if the committee wishes to hear me. It is entirely up to the committee.

There does seem to be a little confusion. I think it was indicated that the bills or Acts about which Mr. Green was speaking were bills seeking incorporation to transport gas in great schemes.

What we now have is rather a local problem limited to the producing area; it is an area problem.

The big fight on the gas bills was on the one hand to take gas from the producing areas to the west coast, and on the other hand to take gas from the producing areas to the central part of the country. This bill, I think, is the first one to come before the committee with a geographic limitation in it. It is limited to the four producing provinces and the Northwest Territories.

Mr. NICHOLSON: And the United States.

Mr. McILRAITH: I am coming to that. The limitation in the section in Canada is from the producer to the refinery or main pipe line and it is quite distinguishable from the Acts which Mr. Green was talking about where the proposition was to transport gas from the producing area to the consuming area.

This problem arises out of the 1953 amendment which in effect prohibited the construction or operation of a pipe line across a provincial boundary. There are some quite extraordinary results from that prohibition. I think Mr. Barrett was very modest in illustrating the results.

If you look at any good oil map and look at the area in southeastern Saskatchewan, you will find an extraordinary thing, that the pumping station serving the South East Saskatchewan area is eight miles inside the Manitoba boundary. It is another twenty miles down to the oil field; and you will see running down about fifty or sixty miles that you have Alida, Frobisher, Nottingham, Lampman, Steelman and Midale in through there. And you have that extraordinary situation. But if you take the cost of trucking that oil out and getting it into the interprovincial pipe line and compare it with the cost of a branch pipe line, you will see why a pipe line is necessary.

If you turn them back to provincial jurisdiction, you will find that the pipe line would have to go backwards against the flow of the interprovincial pipe line, so you have a double charge on your oil. Somebody spoke about the price of gasoline a few minutes ago. If you begin piling up transportation charges, it is a real cost factor.

If you examine the fields more closely you will find similar situations and I think that the Lloydminster area is a good example of where the wells are literally right on the boundary; and you will find there the need for branch lines. I think there was one indicated to me where the wells are one mile apart, with one in each province, and the same thing happens up in British Columbia, as well as in the part along southeast Saskatchewan and Manitoba. If I am correctly informed there is a real problem in that area; and some of the wells are literally as close as two miles to the United States boundary. What is to be done with that oil if it cannot go down into the main pipe line to Superior, and to Sarnia? Where is it to go? What is to be done with it? I do not know what the answer is. I am not sure but are any of the wells close to the U.S. border in Manitoba in production?

The WITNESS: Yes.

Mr. McILRAITH: Whose are they?

The WITNESS: In Manitoba it is Standard of California, and we have a few.

Mr. McILRAITH: There is a group of bills before the Senate now. One was dealt with just half an hour ago. Whitehorse has the same problem and there is one in southeastern Saskatchewan. There is another current one on the Skagway-Whitehorse railway, where the U.S. Army is supplying the Yukon with fuel and disesel oil through a pipe line, and the United States army has been good enough to make arrangements to let the civilian supply be taken off that pipe line. The United States army has built a new pipe line running through Alaskan territory up into Alaska from near Skagway, and we have a situation where people in Whitehorse and the Yukon are very much concerned about the supply of fuel oil. You have the same problem there. So if this bill is not put through quickly with the "outside Canada" clause there will be no way of getting fuel oil across a small strip of Alaska.

Some of the British Columbia members could tell me the width of it. I think it is fifteen or twenty miles to the Skagway boundary; and there would be an impossible situation there. That is perhaps an extreme example but it indicates the problem. Incidentally, in the comparative costs of hauling fuel oil the charge from Vancouver to Whitehorse is $2 and something by one method, and if you do not have a pipe line across the interprovincial

boundary and outside Canada there is a cost of $14 or $15 a barrel for transport by the truck method. This thing here is designed to meet the situation for the producing wells to the refinery. When you come into controls I think perhaps if the committee would bear with me for a moment I might help to clarify matters. Incorporation does nothing but create the corporate capacity. They then have to make an application to the Board of Transport Commissioners outlining the projected pipe line, proving financial worth and quite lengthy and detailed requirements. Then they get a certificate at that point for leave to construct the line and then they have to come back before operating the line with a report of everything that has been done, with the further check on the requirements before operating it. When they get by the Board of Transport Commissioners twice then there is the question of export permits. Now, you see that the effective control under the Pipe Lines Act lies not in the parliament in its incorporating bill but rightly or wrongly was put in the Board of Transport Commissioners and the Minister of Trade and Commerce under the Fluid Exportation Act; that is where the effective control lies, so that once you deal with the worthiness and that sort of thing of the incorporaters, the effective control is placed elsewhere. Whether that was right or wrong is a question on which I suppose everyone can have his opinion; but that is what has been done.

Mr. HAHN: Would you go so far as to say in effect even though a permit were given to build pipe lines they may never even carry any oil if the export licence was not granted?

Mr. MCILRAITH: That would be quite right.

Mr. NICHOLSON: Mr. Chairman, I think Mr. Barrett interjected a note which we should pay attention to. In so far as granting permission to branch lines there would be no problem, but if this Frobisher field should develop to the Leduc area it would be obvious that the Minneapolis market would be the most attractive market. Having lived in the west for a number of years I have been annoyed by the international boundary. We have to pay a very high penalty for living north of it, but on balance I think we prefer to have this boundary and I think that if permission was granted to build these branch lines and lines in the United States the Board of Transport Commissioners does have to observe the Acts of parliament and if we give this company authority to build a 200-mile line down to Minneapolis, I do not see that the Board of Transport Commissioners would have any authority to refuse that permission; then the Department of Trade and Commerce I think would be in a position where it might be difficult to refuse the permission to export the oil to the best market. I think that until the parliament of Canada has decided that we are going to disregard the international boundary and sell our oil in the best market I think we should not give a blanket permission to construct a line down to the United States. I would think we should consider the position of protecting our own Canadian people. I hope that sometime we will be able to find oil in large quantities in Saskatchewan and that this oil will be supplied first of all to our own Canadian market before we are placed in the position of exporting down to the United States. I wish Mr. Barrett could agree to a change in the wording that would limit the operations of this organization to interprovincial and also to the international operations as suggested to him in case there are fields right near the boundary. I think at this stage we should not leave the door open to constructing lines down from Manitoba, Saskatchewan and Alberta to more profitable markets in the United States immediately south.

Mr. CARRICK: May I ask Mr. McIlraith if Mr. Nicholson is right in saying if the power exists to export to the United States that the Board of Transport Commissioners would be obliged to grant the licence?

Mr. McILRAITH: No, he was mixing the words "capacity" and "permission". The word he should have used was capacity.

Mr. CARRICK: Is he right that if the Board of Transport Commissioners does grant permission the Minister of Trade and Commerce would have to grant an export licence?

Mr. NICHOLSON: In view of this committee recommending that a blanket action be passed that gave Imperial Oil the right to do this I think any Canadian minister would be guilty of a breach of promise in not complying.

Mr. McILRAITH: I think that any Canadian minister would in such instance be very certain to refuse it because if any company went along and built a pipe line to the border without dealing with its application for an export permit, certainly I would think any Canadian minister would react to such application very firmly and probably unfavourably.

Mr. NICHOLSON: The time to take action is before we pass the Act in parliament.

Mr. McILRAITH: No. The time to take action is at the point at which the permit for construction is being granted; that is the time to take action for the permit. To marshall the actual work for the construction of a pipe line, with the engineering requirements and the financial arrangements required, is not a thing that can be done before incorporation. It cannot be done that way. It is pretty difficult to guess at as to the time required, but it is a proposition of several months after incorporation. Prior to that they have no corporate authority. The transport board requirements are quite strict.

Mr. GREEN: There are one or two points Mr. McIlraith raised. For example, he said no other company had been restricted in the area in Canada in which it could operate. That is not correct. The Canadian-Montana Pipe Line Company was restricted to the province of Alberta and outside of Canada; and the West Coast Transmission was restricted to Alberta and British Columbia. The whole point here is that this charter is not a charter asking power to construct branch and feeder lines. If that were the case there would be very little objection to it. But, while they say that is all they are going to do, this charter is a wide open charter just the same as all these other charters which have been granted by parliament. Let the Imperial Oil restrict their charter to branch and feeder lines and then we can deal with it on that basis. That is all they say it is. While they say that is all it is they are asking a charter from parliament which is not restricted at all but is wide open. Once this is over they walk out with a charter which enables them to compete with Trans Canada Pipe Lines Limited or Trans Mountain without the restrictions which those companies were willing to have written into their charters. What I cannot see is why these people should get preferential treatment. If they only want to build branch lines let them reword their charter to say that is all they want. Nobody is quarreling with their right to pipe the oil from a well on the boundary into the United States to the main line there. But that is not what this committee is dealing with; this committee is dealing wih an application for a wide open charter.

Mr. CARRICK: This seems to boil down on this point to whether Canadian interests would be protected if a clause were not incorporated, limiting the main line to Canada. I would like to ask Mr. Green if he could tell me why it was considered that the permission of the Minister of Trade and Commerce would not be a sufficient protection for Canadian interests that they could not export the oil without his permission. I am wondering why it was not considered that would be sufficient protection of Canadian interests?

Mr. GREEN: Because this issue is of far reaching importance. There is a question of the whole national policy involved in this. It was because

of that line of thinking that we had the pipe line filibuster which eventually ended in parliament writing into these charters this provision that the main lines must be in Canada thereby showing that the parliament of Canada felt that is the type of policy which should be followed rather than leaving it to the Board of Transport Commissioners or to the minister. The Board of Transport Commissioners now have the advantage of knowing this is the type of policy which the Canadian parliament think should be adopted. It would give the minister the same information and give the minister that much more power when he has to do an unpleasant job such as refusing to issue an export permit. This was in effect broad national policy which was set out in these previous charters. The Imperial Oil is now—whether intentionally or not—trying to break down that provision. I think it is extremely far reaching. It strikes at our whole national gas policy and it is done that way in order that they can build branch lines. Let them ask for power to build branch lines if that is all they want. Why should they demand these additional rights.

Mr. JOHNSTON (*Bow River*): It does seem to me that we are going to run into a little difficulty as far as an overall gas policy for Canada is concerned. I have always taken the view that particularly those in the southwest should transport their gas or sell their gas to the most profitable and convenient market and that those of us in the west should be permitted to export our gas to the south, that being the most close and logical market, and that down here in the east they should be permitted to import gas in eastern Canada. The government has seen fit to establish a policy contrary to that and they have said there shall be no gas exported until eastern Canada is supplied. That seems to be a very impractical policy but whether it is or not does not make any difference because the government has made that as a policy statement. Then if we pass this bill it seems to me under the terms of this bill these people are going to be allowed very wide powers as the member for Vancouver-Quadra just stated to operate and construct feeder lines and branch services to gather gas into a point and also are going to be permitted to export gas outside of Canada. Just what position does that put us in? It says "transportation of crude oil and other liquid and gaseous hydro-carbons." That can mean almost anything. It could mean gas. Our experience has proven in the House that some of these terms are with the gravest intention; I am not accusing the proponents of this bill of trying to put anything across. Now, what position is the Trans Canada Pipe Line Company going to be in if this bill is passed and this company is given permission to export gas from Winnipeg say to Minneapolis when Trans Canada has taken the view that they cannot possibly build a gas line to eastern Canada unless they have the permission and privilege of building a line from Winnipeg out to Minneapolis. I would think it would then be in the impossible position that it would never be able to build that Trans Canada line with the result that we in western Canada are being deprived of millions of dollars because this government has set out a policy that the line must be built to eastern Canada, whether it is practical or not practical, whether it is economical or uneconomical, and then they come in and pass another bill like this which practically cuts our throat.

I am not against this company getting a licence to export gas. As I said before we should have that privilege out in the west. I do not think we should hold up the development of our natural resources until Toronto or somebody else gets their gas. They never did anything for us in the west. I certainly want to see the natural resources of all of Canada developed. I want to see the interests of Canada come before any other place; but I do not want to see an imposition put on one part of the country that is not provided to another.

I am wondering just how this is going to affect the construction of the Trans Canada Pipe Line and affect the policy as laid down by the federal government that Ontario and Quebec should be supplied before any export is permitted.

Mr. McILRAITH: Mr. Chairman, perhaps I should answer this. I think it is clear to all members that I am not the parliamentary assistant. There are two points perhaps which should be clear. The question of main pipe lines and branch or feeder lines is a very difficult one to determine because if you are transporting oil from a well across a provincial boundary to a refinery presumably that is the main pipe line. I do not know where you draw the distinction or how you get over the difficulty of service within an area where there is no existing so-called main pipe line. Therefore, I think that point is somewhat confusing and a little difficult of solution.

There is another point than that raised by Mr. Johnson. This bill quite clearly includes oil or gas. I take it there may have been some confusion in our discussion this morning and perhaps part of it is my fault in not being sufficiently clear in drawing a distinction between oil and the gas. The oil is a commodity that is shipped in any kind of container in any way. Quite different principles apply to gas and they are not even analogous in my view. The consequence of restricting the company from exporting outside of Canada for the transportation of oil would be quite serious in these applications. That is not exactly the same with respect to gas. If the committee wants to discuss a restriction or prohibition against the applicants having authority outside of Canada I suggest with all deference to the committee—and I hope the members will take it in good faith—that they draw a distinction between oil and gas.

Mr. GREEN: But the bill covers both.

Mr. McILRAITH: What the committee really is discussing, as I listen to it, is the desirability or not of a prohibition against the company having authority to build a gas line outside of Canada and I would suggest if the committee is considering a prohibition in the bill that it be limited to gas only and not to oil. The honourable members saw the consternation in the House the other day when there was the question of the possible embargo against the export of oil from western Canada. I think there is unanimity on the proposition that it is necessary to export it.

Mr. JOHNSTON (*Bow River*): There is oil being shipped out by way of Winnipeg to Superior; that is a main oil line. Does the government policy exclude further export of oil as well as gas?

Mr. McILRAITH: I cannot give the government's policy, but as I understand it it does not in any way limit the export of oil. Actually, if you took Mr. Green's amendment you would prevent the shipping of oil from western Canada by pipe line to Sarnia. We are confusing two wholly different commodities. Oil is a commodity which you can buy anywhere wherever it is cheaper.

Mr. JOHNSTON (*Bow River*): How would this affect the further construction of the Trans-Canada Pipe Lines when this construction depends upon the export of gas to Winnipeg and Minneapolis? That seems to my mind to be a very serious thing and one which we should consider before we proceed with this bill and somebody should be here to inform us in that.

Mr. McILRAITH: I think that the committee are not too much concerned with respect to the outside of Canada as far as it pertains to oil. I think the concern of any committee members is to the gas policy and I do not know what the applicants have to say about gas but it seems to me if we could discuss the two commodities separately then we would get to the question. I would suggest we limit it to gas.

The WITNESS: Perhaps I could make the initial comment, sir, that there are at the present time a number of companies in Canada who have the capacity to export gas out of Canada. But, the federal government is not going to let them. In other words incorporating our company with the wide powers we have asked for I do not think changes the situation as far as Trans-Canada is concerned.

Now, secondly, I would like to endorse what Mr. McIlraith has said that oil is one thing and that gas is most certainly another. What I mean by that is we are trying to find markets for oil and as far as we know the government is encouraging us to do so. When it comes to gas it is a matter of government policy.

Mr. LEBOE: It is my understanding that the production of oil is held back in some areas in Alberta, for instance, because of the gas conservation policy which is in effect. In other words, they want to save the gas because there is a great restriction on the gas in the United States. As far as Canada is concerned they cannot pump the oil out wasting the gas and therefore the oil production is curtailed because of a lack of markets for gas.

Mr. B. H. MACKENZIE (*Executive Westspur Pipe Lines*): I believe the position is that the Gas Conservation Board has required that the gas not be flared or wasted. I believe there are plans under way to install a gas conservation plant which necessitates the gathering of this surplus gas from the wells and distributing it to this gas conservation plant and therefore the gathering people have to build a gas line for that purpose and it is somewhat ancillary to the gathering of the oil. In other words, in order to gather the oil they also have to pick up the gas and distribute it and conserve it. The gas lines to that extent are required as part of the gathering of oil.

Mr. LEBOE: Then the restriction placed in connection with our national gas policy has been an obstacle in the production of oil in the province of Alberta?

Mr. MACKENZIE: I think you may be correct.

Mr. BYRNE: I would not think that is quite so. The government has authorized the export of natural gas in the west to the northwest pacific market and it is because the Federal Power Commission in the United States have not granted the import permit that this pipe line has not been built. Mr. Green has said it is the national policy to restrict the pipe lines to entirely in Canada. I can recall sitting here in 1949 and chartering gas pipe lines and the West Coast Transmission had been granted a charter in the spring of 1949 but still we have no gas carrying pipelines built. So, whether parliamentary policy was wise or provident is still I think a matter for conjecture. I think we should still be a little bit flexible in this regard and let us see some gas lines being built. I do not think it is government policy entirely that is restricting the export of the gas anymore than it is American policy which is restricting our gas production. I wonder would the witness not consider it somewhat inconsistent if the main gathering lines were restricted to Canadian soil while the line that they were seeking dipped immediately into the American soil. I think it is just a little bit—if you will excuse the word—silly to insist that this Canadian company must build their main lines entirely in Canada while the line that is carrying the bulk of the gas is going almost directly into the United States. I think we should differentiate between gas and oil and I am wondering in order that we might have some unanimity in this committee if the applicants' are prepared to write into the bill something which is being proclaimed the national policy on gas simply on natural gas as separated from the oil.

Mr. WESELAK: Would not the basis for the main line requirement in Canada be to have control of our resources for national security?

The WITNESS: The answer is yes. Frankly gas is of so little interest.

By Mr. Byrne:

Q. Could we not settle the matter by having an amendment to the bill?—A. When it comes to oil I think you are wrong to put on a limit.

Q. I think you are perfectly correct.—A. When it comes to gas we would only transport gas for the short distance necessary to get it a plant which will separate it from the oil, and then we do not want to have anything more to do with the gas. We are interested in transporting oil, and as far as gas is concerned, we have no objection to any reasonably limitation on our capacity.

By Mr. Hahn:

Q. With all due respect to what the witness has said, I am satisfied that this firm is ready to delete gas and gaseous substances from the bill in this instance; but we have found in British Columbia, that if we had built a gas line at the same time that we built the oil line to the Pacific coast, we could have built it considerably cheaper. And I can see a time when we will be transporting this gas into the United States with a development of the oil field, and we will always have the gas coming, but it will mean that we will just be adding to the cost of the product when it is eventually sold. Possibly that was what was in the minds of those who originally drafted the bill. If the oil company is willing to delete the clause, I shall not object to it particularly; but I am not at all satisfied that we have the complete market for our gas in eastern Canada which seems to be the bug bear at the moment.

On the west coast we know that if we had had permission to transmit gas to the United States from the Federal Power Commission, as Mr. Byrne has said, we would probably have had that line built some years ago; but because that permission was not granted we did not follow through and build the gas line at the time we built the oil line. I would not be too happy about seeing gas taken from the bill, but if it is the wish of the company to do so, I will not object.

The WITNESS: It is not our wish.

By Mr. Harrison:

Q. I gathered that the point is whether we should have a new gas and oil policy written into this bill, or whether it should remain as previously with the Minister of Trade and Commerce and the Board of Transport Commissioners. We have had a lot of discussion with pros and cons on both submissions. I for one am satisfied that, with the safeguards provided by the present Minister of Trade and Commerce and the Board of Transport Commissioners —because they in the final analysis are going to have the say as to whether oil or gas is exported or imported, or any other features which might be required by this or any other company—I am prepared to go along with the government: in other words, I am prepared that the government should be responsible for our oil policy and think that the sooner we come to a division on this particular point, the sooner we can report progress.

Mr. GREEN: I would like to read to Mr. Barrett the type of amendment which has been used, and to fit it into this bill; I think it should come after the words "hydrocarbons" on line twenty-nine of page 2; that would be in clause 6 of the bill, and I would like Mr. Barrett to say just how his company would be affected if words of this kind were written in:

> Provided that the main pipe line or lines, of this company either for the transmission or transportation of oil or other liquids and gaseous hydrocarbons shall be located entirely within Canada.

Then, as he said earlier, there would be the line as indicated, and it would obviously be only a branch line; it could not be construed as a main line and therefore it would not be effected by that proviso. But the proviso would have the effect of limiting the construction of what was really a main line, and it

would also keep the terminology the same in all the charters except those which were granted in the spring of 1949, so that no company would have a preference over another company. Does Mr. Barrett think that his company would be really hurt by an amendment of that kind being written into the bill? —A. You have made that amendment referring to oil as well as gas. I cannot understand why. From any standpoint there should be no limitations on an oil pipe line. I can understand your concern over a gas pipe line, but I return to the proposition stated some time ago: if we want to build a line down into the United States in order to get a new market for Canadian oil, why should we not do so?

Q. How could it be worded to apply only to gas?—A. My suggestion would have been: "provided that the main pipe line or lines for the transmission or transportation of gas shall be located entirely within Canada."

Mr. CARRICK: Gaseous hydrocarbons?

The WITNESS: Gaseous hydrocarbons would follow.

Mr. GREEN: My objection has to do with gas; I do not know whether using just the word gas covers the whole field of gas or not.

Mr. CARRICK: Use it the same as in the bill now, gaseous hydrocarbon.

By Mr. Green:

Q. Would there be gaseous hydrocarbons? Is that the proper termonology? —A. I think that is a long-winded way of saying gas.

By Mr. Hahn:

Q. It is possible to do that without too much additional cost. Does the gas not come out of the well with the oil?—A. Yes.

Q. If you are going to transmit your gas in one direction and your oil in another direction, are you going to build a separation station at each well-head?

Mr. MCILRAITH: I think you should point out to the committee that what they are doing here is providing that the oil coming out of the well, because it contains gaseous hydrocarbons, cannot be put through a line outside Canada. In other words we are back at the old problem of these border wells in southern Manitoba and southeast Saskatchewan; and if they want to use a separation plant south of the border they cannot do so because their oil well contains gaseous hydrocarbons, and you get into that problem. I think the committee may not be aware of how it works out. In other words, you are limiting the company to oil which has gone through a separation plant after having come from the well. When you put that limitation on it, it becomes a matter of some consequence and I imagine the committee members would want to consider it.

The WITNESS: Yes.

Mr. GREEN: Mr. Barrett suggested that it would be satisfactory if a limitation were written in in respect of gaseous hydrocarbons.

Mr. CARRICK: Is that so?

The WITNESS: I believe that restriction would hinder us, but I am quite sure that we could live under it; it is not our wish to have a restriction in the bill, but if the committee feels it should be in the bill, and it is limited to gas, we could live under it.

Mr. MCILRAITH: If you take a map south of Cromer and look at the fields marked on the Manitoba-North Dakota border, you are in effect legislating that the oil from those wells cannot be gathered with other wells immediately adjacent thereto, but must be brought back northwesterly into Canada and put through a separation plant, and then put into the interprovincial line. That is

the implication of the proposed amendment, and I am quite sure that is not what the committee intends. I am quite sure that the committee would hold—

Mr. HERRIDGE: The witness said that they could live under that amendment.

Mr. HAMILTON (*York West*): Yes. Mr. Barrett understands that the amendment is on the main line basis, and I do not think it will restrict the operations with which Imperial is concerned in gathering it.

Mr. MCILRAITH: When you talk about the main line—it may be that Mr. Barrett has a definition but I have not found anyone in the business who can successfully define a main and a branch line. They can define a branch line in relation to a main line. For instance, if you take a line from an oil field to a refinery in Edmonton, is that a branch line or a main line?

Mr. WESELAK: Would not the Board of Transport Commissioners have to decide?

Mr. MCILRAITH: It is not gathering; that is the difficulty; but is it a main or a branch line? I do not know. That is the kind of difficulty you get into.

Mr. WESELAK: Would not the Board of Transport Commissioners have to determine which is the branch and which is the main line?

Mr. MCILRAITH: A branch can only be a branch to something; it is quite simple; you talk about a branch line when you have a main interprovincial line in that area; but it is not simple when you come into areas where the existing interprovincial line does not run. That is the difficulty.

Mr. BARNETT: Would the point not be clarified if terminology was used which would make it clear that it was a line transporting gas to a consuming market; would that not overcome the difficulty which has been outlined?

Mr. GREEN: I suggest that the proviso which was written into these other charters is perfectly clear, certainly in the mind of a person picking up the statute and reading it, when it says: "provided that the main pipe line or pipe lines of this company, either for transmission or transportation of gas or oil shall be located entirely within Canada." Certainly to the average person reading it there would be no misunderstanding of the effect of those words. Moreover Mr. Barrett has said that he does not want that restriction applied to oil. I can see some reason for his objection to it being that wide. At the same time he said that he was willing to have it apply to gas, although he said he would sooner not have it. Of course! Naturally he would sooner not have it. He wants his charter as presented; but he is willing to work under the charter which we have proposed.

I point out that other companies have restrictions in their charters which would be wider than the restriction on Mr. Barrett's new company. Therefore, I think we would be well advised to settle the matter on this basis. Nobody is going to be hurt if we do that, and we will retain the formula and we will not put other companies in an adverse position. Moreover we would have a lot of time in this committee and in the House and I hope that the committee will agree to let this amendment be put into effect.

Mr. HOSKING: I think this is a purely engineering problem. An oil line is of much different size than a gas line; and the government policy at the moment—although it may change some time—is that they are not going to export gas. That can only be done by Mr. Howe's permit, or a permit from the Minister of Trade and Commerce, and he will not permit the export of gas.

Mr. GREEN: That is not correct.

Mr. HOSKING: That is quite right. He does not agree to export gas into the United States.

Mr. GREEN: That is not the government policy. The government policy is to export all surplus gas, and that the main gas line to the east must be on Canadian soil.

Mr. HOSKING: That is correct. But let us say that they want to export it. This is the problem: and this company builds a line to pump oil. There is a different problem in pumping oil and gas in the same line. One is much larger than the other; but in oil there is gas, and they cannot separate it. I can see nothing wrong with this bill as it is. They have got to drill wells and they get gas and oil coming out together, and until they pump it to a separation point, it will be pumped in one line.

I was intrigued with the suggestion that this company which is applying for a charter may eventually ask some other oil company to be a partner in its line, which company would have a perfect right to take it back and forth across the border until they get it to a separation point; but as long as the Board of Transport Commissioners say that we will not give you permission to do it, or to operate that line, and so long as the Minister of Trade and Commerce can say: we won't give you a permit to export this gas, I cannot see why we should tie them up with a formula and rules and regulations so that they cannot build a line to transport gas and oil, when it comes from the well-head to a separation point, whether it be in the United States or Canada, whichever economics is sound.

Mr. GREEN: Do you realize that with this charter the company can buy gas and compete with the Trans Canada pipe line?

Mr. HOSKING: The Board of Transport Commissioners would not allow it.

Mr. GREEN: The charter is that wide that they can go out and buy gas in western Canada and compete with Trans Canada.

The WITNESS: We cannot compete with the Trans Canada gas pipe line because, in the system that we have asked for, we have got no power to own any hydrocarbons. An oil pipe line does not own the oil which is put through the system. The shipper owns it, just as in the case of railway transportation. However, gas pipe lines own the gas in the line. They buy it at one end and sell it at the other. That is what Trans Canada has been doing. But we have no authority to own the gas or sell it. So under those conditions I do not see how we could be any threat to any gas pipe line company, because I do not see how you can operate a gas pipe line unless you are willing to own the gas in that line.

Mr. JOHNSTON (*Bow River*): I am not against granting the company a charter to export and sell gas outside of Canada. The thing I am concerned about is government policy. It has been stated in no unmistakable terms that there shall be no surplus gas sold outside Canada, or no gas sold until the eastern market has been satisfied. Only then shall surplus gas be sold. I think that is the policy at the moment and we have to accept it. But now the sponsors of this bill, as Mr. McIlraith has said—you cannot even export oil without having a certain amount of gas in it. When this oil is exported, even to Superior, when this oil is exported by a purely so-called oil pipe line—

Mr. MCILRAITH: That oil has been through the separation plant; the oil in that pipe line to Superior is oil after separation.

Mr. JOHNSTON (*Bow River*): That brings up another point; if you are asking for permission, you have this term liquid-gaseous hydrocarbons which you say means gas included in this bill, because you point out that you cannot transport oil without first having it go through a separation plant. You do not want, under this bill, to put this through a separation plant in Canada. Is that so?

The WITNESS: No, that is not right.

Mr. JOHNSTON (*Bow River*): It is the same principle as the one in Superior, is it?

Mr. MCILRAITH: No.

Mr. HOSKING: Here is the border down in Manitoba; you will see four wells south of the border, and three or four north of the border; and they want to gather it into one pipe line and separate it at one place.

Mr. JOHNSTON (*Bow River*): On which side of the border?

Mr. HOSKING: That is not decided; but they cannot get a permit to export gas at the present time.

Mr. MCILRAITH: They have no power to own gas. They cannot go into the gas exporting business.

Mr. HOSKING: What they want to do is take it across the line until they can get it separated.

Mr. JOHNSTON (*Bow River*): Suppose the separation point is on the other side of the line; they just could not do it, not under the policy of this government.

Mr. HOSKING: If there was any quantity of gas they could not do it.

Mr. JOHNSTON (*Bow River*): The government's policy is that no gas—

Mr. HOSKING: Just a very small quantity.

Mr. JOHNSTON (*Bow River*): It does not make any difference. The whole policy is "screwy", and it should be changed; it is an utter impossibility; and these people have pointed it out clearly that government policy does not state that no degree of gas shall be exported, but it says no gas. Perhaps the House will change that policy. If the government is going to change this policy I would be tickled to death. I think we should have same restatement of policy in connection with this thing. I am against the company getting an export permit for gas or oil. I want to make sure that it does not hinder us in Alberta or Saskatchewan in disposing of our gas to eastern Canada or other points.

Mr. HOSKING: I move that the bill be taken as it is.

Mr. CARRICK: It is quite obvious from what Mr. Barrett says that it is oil in which you are primarily interested, and that the gas is only incidental, and the suggestion is that they put in a clause in paragraph 6 after the word hydrocarbons which will read:

> "Provided that the main pipe line or lines for the transmission or transport of gaseous hydrocarbons shall be located entirely within Canada."

Mr. Barrett has said that it is something they could live with, by which I take it to mean that he would be satisfied with it, although it is not entirely what he would like. However, if you find, Mr. Barrett, that it causes you any real difficulty you can always come back for an amendment could you not? It is a little trouble, presumably, but you could come back with a request for an amendment. Can I get a reply from the witness.

The WITNESS: I agree with what you say. You will realize that we are a bit nervous. We can only come to parliament once a year, and oil wells can be discovered in the middle of a year, and the type of transportation system we are talking about, namely oil, might be urgently required in the course of the year; it could be built in two months; and it was for that reason, and that reason alone I was trying to get a bill with wide powers, feeling sure that I could not anticipate what demand for this transportation service there might be.

Mr. CARRICK: You would be content to get the bill with the suggestion that has been made?

Mr. HOSKING: That was my motion, that we accept the bill as it is.

Mr. HERRIDGE: You cannot make a motion like that.

The WITNESS: I would accept the amendment, but I would prefer not to have it.

Mr. JOHNSTON (*Bow River*): What is the amendment?

Mr. CARRICK: It was suggested by Mr. Green that in section 6 after the word hydrocarbons in line 29.

The CHAIRMAN: We can take it up when we come to section 6.

Mr. HAMILTON (*York West*): Perhaps you might read the amendment.

The CHAIRMAN: We will take it up when we come to section 6.

By Mr. Hamilton (York West):

Q. Is there any particular reason why you have a clause put in dealing with aircraft and airdromes? Isn't that an ancillary power which you have and which you might or might not use?—A. The answer to that is; this is not an ancillary object which we might or might not use. It is one which we may want to use and I would rather not leave it to the ancillary powers which we might have. So we took it out in order to draw it to your attention to make sure that we could carry on with that part of the business.

Q. This is subject to any regulations there may be of the Department of Transport, is it not?—A. Absolutely.

Q. Does the company intend to make use of its own aircraft, or is it likely to hire aircraft from other people?

Mr. B. H. MACKENZIE (*Executive, Westspur Line Company*): It could be either way. We could use our own aircraft, if the economics justified it. That is really what it amounts to. Normally if the economics were not favourable, we would hire commercial aircraft which were properly licensed.

Mr. HAMILTON (*York West*): Would they be aircraft which were specifically purchased by Westspur Pipe Line Company, or would the Imperial Oil Company supply them for your use?

Mr. B. H. MACKENZIE: They would be aircraft purchased by Westspur, if such were required.

Mr. HAMILTON (*York West*): There is no central group of aircraft doled out by Imperial Oil to its various subsidiary companies, or anything like that?

Mr. B. H. MACKENZIE: No.

The CHAIRMAN: Shall the preamble carry?

Carried.

Shall clause 1 carry?

Carried.

Shall clause 2 carry?

Carried.

Shall clause 3 carry?

3. The capital stock of the Company shall consist of two million shares without nominal or par value.

The CLERK OF THE COMMITTEE: There is a motion with respect to the charges on this bill.

Mr. BYRNE: I move this motion.

The CLERK OF THE COMMITTEE: It is being moved so that the House can assess the proper charges against the bill. The motion is:

> That for the purpose of levying a charge on the capital stock, which will have no nominal or par value, the Committee recommend that each share be demmed to have a value of $10.

The witness has a statement to make in that regard.

The WITNESS: I am not sure of the technicalities of this, but we have prepared a declaration under oath to the effect that the share capital will be 2 million of no par value shares, issued in consideration, not to exceed in the aggregate $20 million, which is $10 per share.

Mr. BYRNE: I move this motion.

The CHAIRMAN: It is moved by Mr. Byrne and seconded by Mr. Lafontaine that the no par value shares be valued at $10 for the purpose of levying charges on the Bill. All those in favour of the motion will so signify? Contrary? I declare the motion carried. Shall clause 3 carry?

Carried.

Shall clause 4 carry?

Carried.

Shall clause 5 carry?

Carried.

Shall clause 6 carry?

6. The Company, subject to the provisions of any general legislation which is enacted by Parliament relating to pipe lines for the transmission and transportation of crude oil and other liquid and gaseous hydrocarbons, may

(*a*) within Canada in the Northwest Territories and the provinces of British Columbia, Alberta, Saskatchewan and Manitoba and outside Canada, construct, purchase, lease, or otherwise acquire and hold, develop, operate, maintain, control, lease, mortgage, create liens upon, sell, convey or otherwise dispose of and turn to account any and all interprovincial and extra-provincial pipe lines connecting a province with any other or others of the provinces or extending beyond the limits of a province and all works and appurtenances relative thereto for gathering, processing, transmitting, transporting, storing and delivering crude oil and other liquid and gaseous hydrocarbons; and own, lease, sell, operate and maintain aircraft and aerodromes for the purpose of its undertaking, together with the facilities required for the operation of such aircraft and aerodromes; and own, lease, operate and maintain interstation telephone, teletype and telegraph communication systems, and subject to the *Radio Act*, and any other statute relating to radio, own, lease, operate and maintain, interstation radio communication facilities;

(*b*) purchase, hold, lease, sell, improve, exchange or otherwise deal in real property or any interest and rights therein legal or equitable or otherwise howsoever and deal with any portion of the lands and property so acquired, and may subdivide the same into building lots and generally lay the same out into lots, streets and building sites for residential purposes or otherwise and may construct streets thereon and necessary sewerage and drainage systems and build upon the same for residential purposes or otherwise and supply any

buildings so erected, or other buildings erected upon such lands, with electric light, heat, gas, water or other requisites, and lease or sell the same, upon such terms and subject to such conditions as appear requisite, either to its employees or to others; and

(c) exercise as ancillary and incidental to the purposes or objects set forth in this Act, the powers following, unless such powers or any of them are expressly excluded by this Act, namely, the powers set forth in paragraphs (*a*) to (*bb*) inclusive of subsection (1) of section 14 of the *Companies Act*.

There will be an amendment.

Mr. GREEN: I move the amendment which Mr. Carrick read a few minutes ago. I think Mr. Carrick still has it.

Mr. CARRICK: I took it from what you read.

The WITNESS: Shall I read it? The amendment would be that after the word "hydrocarbons" in line 29 of clause 6 on page 2, these words would follow:

> provided that the main pipe line or lines for the transmission or transportation of gaseous hydrocarbons shall be located entirely within Canada.

Mr. JOHNSTON (*Bow River*): We had a discussion a while ago about main lines and branch lines.

The WITNESS: That is the difficulty.

Mr. JOHNSTON (*Bow River*): It seems to be a difficult thing. They have the words "main pipe line" and "lines" and I think it should be properly defined. I do not want to vote on something which Mr. McIlraith has already indicated may lead to confusion. That only adds to the confusion.

Mr. GREEN: That will bring the section into conformity with the proviso which is in these other charters with the exception that this company has the advantage of having oil taken out of it. The proviso does not apply to oil, whereas in the other case it does. Here it will only apply to gas.

Mr. HOSKING: This is purely an engineering problem and I do not see why it should be mucked up with restrictions. If you were an engineer out on a job and had one well on one side of the border and one on the other and you only want to pump oil and find that because there is some gas in that oil you cannot pump that oil across the border I am sure an engineer would say "what fools you have in the House of Commons who will stop us joining that up". To me it is surely an engineering problem. The boys handling oil do not want to be bothered with gas, but unfortunately they cannot get the oil without the gas. Surely you are not going to restrict them pumping this gas out to their separation plants without all this fuss.

Mr. SMALL: There has been a lot of gas in this bill.

Mr. HOSKING: These oil companies do not own the gas and have no power to own it and no one has any right to ship it out unless they obtain a permit. The restrictions on it now are so strict it would be absolutely senseless. Why muck up the operation of operating an oil field when you are talking about something that the boys handling the oil do not want anyway. When it comes out of the ground the two are mixed up together and they cannot separate it.

Mr. GREEN: You are going much farther than Mr. Barrett has gone. Mr. Barrett has said this company can operate.

Mr. HOSKING: His company can but there may be other companies that cannot.

Mr. GREEN: He said they can operate with this proviso. Mr. Barrett has a typed amendment which he just read out.

Mr. JAMES: So what?

Mr. GREEN: I did not bring in that typed amendment. We have agreed to take oil from this province. You are going much further than he has gone.

Mr. HOSKING: No.

Mr. GREEN: What you are overlooking is this policy with respect to gas by your own minister; your own government has taken that stand. Now there are other bills coming through from the other House which will involve this same thing and if you open this charter up wide for Imperial Oil each other company will want their charter wide open as well. I do suggest that the course which we should follow here is to prevent this whole business having to be fought out again in the House to the tune of hours of debate. The company are satisfied with the amendment.

The WITNESS: Not satisfied.

Mr. GREEN: Why should we go further and turn down this amendment?

The WITNESS: We do not know what the function of the government is in a bill like this but this bill in its original form was submitted to the Department of Transport and I do not know whether they accepted it but they—

Mr. MCILRAITH: They stated they have no objection to it. I do not think it means approval. I do not think they put themselves in a position of approving any private legislation.

Mr. HAHN: Could the witness tell us how many fields they control along the border which might be affected by this?

The WITNESS: We do not control any in the sense that we have or expect to have all the production. We have mineral rights scattered throughout this area usually on a checkboard pattern, so that we will own one and somebody else another and we will own another further on.

Mr. HAHN: Are there none that are in the process of being developed at the present time?

The WITNESS: Yes, Alida and Frobisher in which we have considerable interest. We may own 20 per cent in one pool and 30 per cent in another.

Mr. HAHN: On the border between Canada and the United States?

The WITNESS: There are no pools straddling the border at the present time but the wells have been drilled so close to the border that we think in the course of further drilling some of them may cross the border.

Mr. HOSKING: Let us give them the freedom to pump their oil to a separation plant.

The WITNESS: This proviso does restrict us in that regard and we have to build two separations, one on each side of the border.

Mr. BYRNE: If this amendment in any way restricts the pumping of a combination of gas and oil I do not think we should pass it. If it applies strictly to natural gas in a consumable form then it is acceptable. In view of the fact that we have said we are not going to restrict the company from collecting oil, then if it is a combination of oil and gas and the gas cannot be used until separated then I do not think we should accept this amendment.

Mr. CARRICK: Mr. Hasking has made a statement which is his idea of the effect of this amendment. It sets out his understanding of the outcome of this situation if the amendment goes through. I would like to ask Mr. Barrett, bearing in mind that this is restricted only with respect to gas lines transferring gas, whether the company is going to suffer the inconvenience which Mr. Hosking has suggested.

The WITNESS: My difficulty is that I do not really know what a main line is. Mr. McIlraith has made one suggestion if a line goes from a producing well to a refinery, what is it? It may be a very short line, and a well near it has a branch line but with the Department of Transport administering and controlling us as they do, I do not know. I am quite clear about gathering lines; they are a web of lines taking oil from individual wells to a central gathering point. But, from there on I do not think that any of us are sure of the difference between a branch line and a main line.

Mr. WESELAK: Subject to an export permit you can still gather Canadian oil on the United States side of the border.

The WITNESS: I am reading from the charter of the Trans-Canada Pipe Lines Company and this is true of all the charters of companies coming under Canada who wanted to transport gas. In the same clause 6 (a) it goes on to say:

> The company may purchase or otherwise acquire, process, refine, treat, transmit, transport and sell, or otherwise dispose of and distribute natural and artificial gas.

We have mentitoned all those products. This is section 6 (a) of the Trans Canada Pipe Lines charter and slightly about the middle of (a). That is completely excluded from our charter.

Mr. CARRICK: You told us your gaseous hydrocarbons would include gas?

The WITNESS: Yes, but there is nothing about purchase.

The CHAIRMAN: Shall the amendment carry?
On division the amendment is defeated.

Shall clause 6 carry?
Carried.

Shall clause 7 carry?
Carried.

Shall clause 8 carry?
Carried.

Shall clause 9 carry?
Carried.

Shall clause 10 carry?
Carried.

Shall the title carry?
Carried.

Shall the bill carry?
Carried.

Shall I report the bill without amendment?
Carried.

HOUSE OF COMMONS

Second Session—Twenty-second Parliament

1955

STANDING COMMITTEE

ON

RAILWAYS, CANALS AND TELEGRAPH LINES

Chairman: H. B. McCULLOCH, ESQ.

MINUTES OF PROCEEDINGS AND EVIDENCE

No. 5

Bill No. 374 (Letter X-11 of the Senate) An Act to incorporate Petroleum Transmission Company.

Bill No. 375 (Letter X-12 of the Senate) An Act to incorporate Yukon Pipelines Limited.

Bill No. 378 (Letter W-11 of the Senate) An Act to incorporate S & M Pipeline Limited.

TUESDAY, MAY 24, 1955

WITNESSES:

Mr. R. C. Merriam, Barrister-at-Law and Mr. D. A. McIlraith, Q.C., Parliamentary Agent, both of Ottawa; and Mr. R. A. Cruickshank, General Manager, Canadian Devonian Petroleums Limited, of Regina.

EDMOND CLOUTIER, C.M.G., O.A., D.S.P.
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1955

58103—1

STANDING COMMITTEE

ON

RAILWAYS, CANALS AND TELEGRAPH LINES

Chairman: H. B. McCulloch, Esq.,

and

Messrs.

Barnett
Batten
Bonnier
Boucher *(Chateauguay-Huntingdon-Laprairie)*
Buchanan
Byrne
Campbell
Carrick
Carter
Cauchon
Cavers
Clark
Decore
Deschatelets
Dupuis
Ellis
Follwell
Gagnon
Gauthier *(Lac-Saint-Jean)*
Goode
Gourd *(Chapleau)*
Green
Habel
Hahn
Hamilton *(Notre-Dame-de-Grace)*
Hamilton *(York-West)*
Harrison
Healy
Herridge
Hodgson
Holowach
Hosking
Howe *(Wellington-Huron)*
James
Johnston *(Bow River)*
Kickham
Lafontaine
Langlois *(Gaspe)*
Lavigne
Leboe
McIvor
Meunier
Montgomery
Murphy *(Lambton West)*
Murphy *(Westmorland)*
Nesbitt
Nicholson
Nickle
Nixon
Nowlan
Purdy
Ross
Small
Stanton
Viau
Villeneuve
Vincent
Weselak

Eric H. Jones,
Clerk of the Committee.

ORDERS OF REFERENCE

HOUSE OF COMMONS,
FRIDAY, May 20, 1955.

Ordered,—That the following Bills be referred to the said Committee:

Bill No. 374 (Letter X-11 of the Senate), intituled: "An Act to incorporate Petroleum Transmission Company".

Bill No. 375 (Letter X-12 of the Senate), intituled: "An Act to incorporate Yukon Pipelines Limited".

Bill No. 378 (Letter W-11 of the Senate), intituled: "An Act to incorporate S & M Pipeline Limited".

WEDNESDAY, May 25, 1955.

Ordered,—That the name of Mr. Fulton be substituted for that of Mr. Hodgson on the said Committee.

Attest

Leon J. Raymond,
Clerk of the House.

58103—1½

REPORTS TO THE HOUSE

MONDAY, May 16, 1955.

The Standing Committee on Railways, Canals and Telegraph Lines begs leave to present the following as its

NINTH REPORT

Your Committee has considered Bill No. 283 (Letter N-9 of the Senate) intituled: "An Act to incorporate Westspur Pipe Line Company", and has agreed to report it without amendment.

Clause three of Bill No. 283 provides for capital stock consisting of two million shares without nominal or par value. Your Committee recommends that for taxing purposes under Standing Order 93 (3) each share be deemed to have a value of Ten Dollars.

A copy of the evidence adduced in respect of the said Bill is appended.

All of which is respectfully submitted.

H. B. McCULLOCH,
Chairman.

WEDNESDAY, May 25, 1955.

The Standing Committee on Railways, Canals and Telegraph Lines begs leave to present the following as its

TENTH REPORT

Your Committee has considered Bill No. 374 (Letter X-11 of the Senate) intituled: "An Act to incorporate Petroleum Transmission Company", and has agreed to report it without amendment.

Your Committee has also considered Bill No. 375 (Letter X-12 of the Senate) intituled: "An Act to incorporate Yukon Pipelines Limited", and has agreed to report it with an amendment, namely:

Clause 6, *paragraph* (*a*)

Page 2, line 31, after the words "pipe lines" insert the following:

> provided that the main pipe line or main pipe lines for the transmission of gas and gaseous hydrocarbons shall be located entirely within Canada.

Clause 3 of Bill No. 375 provides for capital stock consisting of one million shares without nominal or par value. Your Committee recommends that for taxing purposes under Standing Order 93 (3) each share be deemed to have a value of Five Dollars.

Your Committee has also considered Bill No. 378 (Letter W-11 of the Senate) intituled: "An Act to incorporate S & M Pipeline Limited", and has agreed to report it with an amendment, namely:

Clause 6, *paragraph* (*a*)

Page 3, line 23, after the words "pipe lines" insert the following:

> provided that the main pipe line or main pipe lines for the transmission of gas and gaseous hydrocarbons shall be located entirely within Canada.

Clause 3 of Bill No. 378 provides for capital stock consisting, in part, of one million shares without nominal or par value. Your Committee recommends that for taxing purposes under Standing Order 93 (3) each such share be deemed to have a value of Two Dollars.

A copy of the evidence adduced in respect of the said three bills is appended.

All of which is respectfully submitted.

HENRY A. HOSKING,
Acting Chairman.

MINUTES OF PROCEEDINGS

TUESDAY, May 24, 1955

The Standing Committee on Railways, Canals and Telegraph Lines met at 11.00 o'clock a.m. this day.

Members present: Messrs. Barnett, Batten, Boucher (*Chateauguay-Huntingdon-Laprairie*), Byrne, Campbell, Carter, Deschatelets, Gourd (*Chapleau*), Green, Habel, Hahn, Hamilton (*Notre-Dame-de-Grace*), Hamilton (*York West*), Harrison, Holowach, Hosking, Howe (*Wellington-Huron*), Lafontaine, Lavigne, Leboe, McIvor, Murphy (*Lambton West*), Murphy (*Westmorland*), Nesbitt, Nicholson, Nickle, Nowlan and Purdy.

In attendance: Mr. F. T. Fairey, M.P., Sponsor of Bill No. 374; Mr. G. J. McIlraith, M.P., Sponsor of Bills Nos. 375 and 378; Mr. R. C. Merriam, Counsel, on behalf of Mr. D. K. MacTavish, Q.C., Parliamentary Agent; Mr. D. A. McIlraith, Q.C., Parliamentary Agent; Mr. C. J. Rogers, President, British Columbia-Yukon Railway Company, of Vancouver; and Mr. R. A. Cruickshank, General Manager, Canadian Devonian Petroleums Limited, of Regina.

The Clerk of the Committee stated that the Chairman and the Vice-Chairman were unavoidably absent, whereupon, on motion of Mr. Habel, it was resolved that Mr. Hosking be Acting Chairman of the meeting. Mr. Hosking took the Chair.

On motion of Mr. McIvor,

Resolved,—That the Committee print 750 copies in English and 200 copies in French of its Minutes of Proceedings and Evidence in respect of the three bills on the Orders of the Day, namely, Bills Nos. 374, 375 and 378.

The Committee proceeded to consider Bill No. 374 (Letter X-11 of the Senate) intituled: "An Act to incorporate Petroleum Transmission Company".

Mr. Fairey, Sponsor, explained the purpose of the bill and answered questions thereon.

Mr. Merriam was called, questioned and retired.

The Committee considered the bill, clause by clause. The preamble and clauses 1 to 5 inclusive were adopted.

On Clause 6:

Moved by Mr. Green, seconded by Mr. Hahn,

That clause 6, paragraph (a), be amended by inserting, after the words "and in" in line 20 of page 2, the following:

"the Yukon and".

Following debate the amendment was resolved in the negative on a division of Yeas: 11, Nays: 12.

Clauses 6 to 11 inclusive and the title were adopted; the bill was carried.

Ordered,—That the Chairman report the said bill to the House without amendment.

The Committee then considered Bill No. 375 (Letter X-12 of the Senate) intituled: "An Act to incorporate Yukon Pipelines Limited".

Mr. G. J. McIlraith, Sponsor, explained the purpose of the bill and answered questions thereon.

On clause by clause consideration of the bill, the preamble and clauses 1 and 2 were adopted.

On Clause 3:

A declaration on behalf of the promoters was submitted to the effect that one million shares without nominal or par value are to be issued for a consideration not to exceed in the aggregate $5,000,000.

On motion of Mr. Byrne,

Resolved,—That the purpose of levying a charge on the capital stock under the provisions of Standing Order 93 (3), the Committee recommend that the said charge be based on a total capitalization of $5,000,000.

On Clause 6:

Mr. D. A. McIlraith, Q.C., was called; he stated that the promoters of the bill consent to a limitation to the bill requiring the main pine line or lines to be located entirely within Canada.

Following debate, on motion of Mr. Habel,

Resolved,—That Clause 6, paragraph (a), be amended by inserting, after the words "pipe lines" in line 31 of page 2, the following:

> Provided that the main pipe line or main pipe lines for the transmission of gas and gaseous hydrocarbons shall be located entirely within Canada.

Clause 6, as amended, was adopted; clauses 7 to 11 inclusive and the title were adopted; the bill, as amended, was carried.

Ordered,—That the Chairman report the said bill to the House as amended, and request concurrence of the House in the Committee's recommendation in respect of capital stock charges.

The Committee then considered Bill No. 378 (Letter W-11 of the Senate) intituled: "An Act to incorporate S & M Pipeline Limited".

Mr. G. J. McIlraith, Sponsor, explained the purpose of the bill. Mr. Cruickshank and Mr. D. A. McIlraith answered questions.

On clause by clause consideration of the bill the preamble and clauses 1 and 2 were adopted.

On Clause 3:

A declaration on behalf of the promoters was submitted to the effect that the portion of the capital stock consisting of one million shares without nominal or par value is to be issued for a consideration not to exceed in the aggregate $2,000,000.

On motion of Mr. Habel,

Resolved,—That for the purpose of levying a charge on the portion of the capital stock consisting of one million shares without nominal or par value under the provisions of Standing Order 93 (3), the Committee recommend that the said charge be levied on an amount of $2,000,000.

Clauses 3, 4 and 5 were adopted.

On Clause 6:

Mr. D. A. McIlraith, Q.C., stated that the promoters of the bill consent to a limitation to the bill requiring the main pipe line or lines to be located entirely within Canada.

Following debate, on motion of Mr. Habel,

Resolved,—That clause 6, paragraph (a), be amended by inserting after the words "pipe lines" in line 23 of page 3, the following:

> provided that the main pipe line or main pipe lines for the transmission of gas and gaseous hydrocarbons shall be located entirely within Canada.

Clause 6, as amended, was adopted; clauses 7 to 11 inclusive and the title were adopted; the bill, as amended, was carried.

Ordered,—That the Chairman report the said bill to the House, as amended, and request concurrence of the House in the Committee's recommendation in respect of capital stock charges.

At 12.30 o'clock p.m., the Committee adjourned to the call of the Chair.

Eric H. Jones,
Clerk of the Committee.

EVIDENCE

TUESDAY, May 24, 1955,
11.00 a.m.

The CLERK OF THE COMMITTEE: Gentlemen, I see a quorum. Due to the unavoidable absence of both the Chairman and the Vice-Chairman I am open for nominations of an Acting Chairman.

Mr. HABEL: I move that Mr. Hosking be Acting Chairman of the meeting.

Mr. MCIVOR: I second the motion.

The CLERK OF THE COMMITTEE: If there are no further motions I will declare nominations closed. Agreed? Agreed.

The CLERK OF THE COMMITTEE: I declare Mr. Hosking elected Acting Chairman, Mr. Hosking, will you take the Chair?

The ACTING CHAIRMAN (*Mr. H. A. Hosking*): Gentlemen, we have before us three bills to authorize charters of pipe line companies. My first request is that someone would move that we print the minutes in English and in French in the requisite quantities.

Mr. MCIVOR: Mr. Chairman, I move seconded by Mr. Green, that the committee print 750 copies in English and 200 copies in French of its minutes of proceedings and evidence in respect of the three bills on the orders of the day, namely, bills nos. 374, 375 and 378.

The ACTING CHAIRMAN: You have heard the motion. Agreed?

Carried.

The first bill is Bill No. 374 (letter X-11 of the Senate) intituled: "An Act to incorporate Petroleum Transmission Company".

As sponsor of this bill Mr. Fairey do you wish to explain the bill at this time?

Mr. FAIREY: Yes, Mr. Chairman. This is a bill to incorporate the Petroleum Transmission Company. It is a subsidiary of the Pacific Pipe Line and they are asking for a charter to build a pipe line which really is a grid system to collect the products of the wells which have been developed in northern British Columbia and Northern Alberta. It is the purpose of the company to build what is commonly called a grid for the collection of the products and they are then to be taken to a regular transmission line. As I understand, the development of the country seems to be moving more to the northwest and therefore it is possible that they may expand into the Yukon and into Alaska. While the company has no immediate intention of building a transmission line as such yet, they are seeking power to do so because the development is becoming very rapid and it may be necessary in the future. I think that is about all I have to say, Mr. Chairman, unless there are questions to be answered.

The ACTING CHAIRMAN: Would you introduce the parliamentary agent, please?

Mr. GREEN: What will the relationship be between this company and the West Coast Transmission Limited?

Mr. FAIREY: Well, they will sell their products to West Coast Transmission Limited, which will service Vancouver, as you know, and the northwestern states. It is the product of these wells which will go into West Coast Transmission and so down to the Vancouver area and interior British Columbia.

Mr. GREEN: The applicants for this charter are the same people as are behind West Coast Transmission?

Mr. FAIREY: Yes, that is right, and Pacific Petroleum.

Mr. NESBITT: What is the basis of the operation—will it be on a royalty basis?

Mr. FAIREY: That I cannot say. Perhaps Mr. Merriam could answer that question.

Mr. R. C. Merriam, Counsel for Mr. D. K. MacTavish, Q.C., Parliamentary Agent, called:

The WITNESS: Mr. Chairman, I do not think the answer can be given. The long-range plans have not yet got down to the point where they have considered that. It might very well be on a royalty basis. It could be on a straight sale basis.

By Mr. Hahn:

Q. Well, as I understand it, you are collecting or intending to collect all the gas in the northwest and sell it to West Coast Transmission, or is this a subsidiary firm of West Coast Transmission?—A.The legal relationship there, sir, is that Pacific Petroleum is in fact the parent company. Now Petroleum Transmission will be a subsidiary of Pacific Petroleum. West Coast Transmission will be a publicly owned company in which Pacific Petroleum is very keenly interested. So there will be a rather neat tie-up there, but just how the picture is eventually going to work out as between this proposed incorporation and West Coast Transmission and Pacific Petroleum is something which apparently has not yet been thought out to its logical conclusion.

The picture at the moment, gentlemen, is simply that, due to the last explorations which Mr. Fairey has referred to, and to the considerable amount of money that has been spent by Pacific Petroleum in northern Alberta and British Columbia primarily in connection with the exploration for gas for the West Coast line, they have found in addition oil, and a lot of the gas is wet gas. Now, that entails withdrawing out of the wet gas by-products—such as natural gas, butane, propane—because wet gas cannot be transported in the same line at the same time as dry gas; so the company is going to find itself one day, unless the West Coast line can be operated, with a number of by-products which it would be uneconomical from the point of view of the company to ignore—this would be a terrific waste of the country's natural resources just to throw them away. Obviously there must be some complementary scheme to bring these by-products to market.

Now, it is all part of the problem of wells that are being located by Pacific Petroleum; in other words, they own it from the beginning but they cannot in one system take out these by-products, butane, gas and propane, so they have to go through another grid system.

There are two possibilities as to how it is going to work out in the long run and, as I say, this has not been finalized yet. They might—and this is the reason they are asking for the power—they think they might want to build a line either to the west coast, or go east, or even north because the site of these mines is in the northern part of Alberta and British Columbia, and if they took it west they might bring it down to Vancouver or down to Prince Rupert. If they bring it east from British Columbia they must go across the inter-provincial border, and if they bring it west from northern Alberta they must go across the inter-provincial border. So you might go east, west or north with the transmission line. Alternatively, they might, for example, have

simply a means of bringing these products into the line already constructed by, say, Transmountain, going west, or possibly Trans-Canada, going east, to bring these products down to those transmission lines, in which case it would be strictly a grid system. And the third alternative, of course, is even more a grid system—to bring it in to the West Coast Transmission system.

Q. It is for the purpose of separation of the oil that it may be put through Transmountain?—A. It might be that that is the best scheme to work out.

Q. There is no arrangement on that yet?—A. No, there is no arrangement between anybody as yet. It is merely that the promoters have foreseen that these products are going to be available in the not too distant future, and what they are asking permission to do now is to provide the means for handling them by some method to be determined in the future, when that may arise.

By Mr. Nesbitt:

Q. Mr. Merriam, do you see any conflict between clause 9, clause (1), and clause 11?—A. No, I do not think there is any conflict there. Is it clause 10 you are referring to?

Q. No, clause 9 (1) and clause 11. It would seem there is some conflict.—A. I don't think there is a conflict in this sense, that clause 9 is referring to a particular specific class of individual, namely, the shareholders of the company. Clause 11...

Q. It says in clause 11, "The company may pay a commission to any person in consideration of his subscribing or agreeing to subscribe..."—A. I think that is more particularly directed at marketing one's securities and allowing a commission to be paid to the broker; those provisions are contained in all pipe line applications. This follows precisely the same form as other bills.

Q. One further question: clause 6, subclause (b), a rather lengthy part, speaks of the power to purchase, hold, lease and so on, on previously constructed communities. What is the long-term view of the company in having that particular subclause in?—A. I think I am fair in saying, sir, that so far as this particular company is concerned it has no long-term view in relation to that subclause specifically. That again has become what is common and standard practice in pipe line applications or bills, and it was just inserted in this one as a matter of course. It is conceivable, of course, that many of those powers are absolutely essential to the building of a pipe line.

Q. I refer more specifically, of course, to clause 6, clause (b), where it says:

> ...deal in any property, real or personal, moveable or immoveable, or any interest and rights therein legal or equitable or otherwise howsoever and deal with any portion of the lands and property so acquired, and may subdivide the same into building lots and generally lay the same out into lots, streets and building sites for residential purposes or otherwise and may construct streets thereon...

And so forth.—A. I don't think that has any specific application to this pipe line as opposed to any other pipe line. I don't know the history of the pipe line applications before parliament in sufficient detail to know why that was inserted in the original.

Mr. FAIREY: This might relate to the future, though.

By Mr. Hamilton (York West):

Q. I assume you may be building in isolated places?—A. Yes. I would hazard a guess—it is the incorporator's practice to ask for broad powers.

Q. Clause 11 is in keeping with the powers one gets under our official Companies Act?

Mr. FAIREY: Yes, and it is a standard thing in all these affairs, Mr. Hamilton.

The ACTING CHAIRMAN: Are there any more questions?

Mr. GREEN: Perhaps we can go on to the clauses.

The Acting CHAIRMAN: Shall the preamble carry?

Carried

Shall clause 1 carry?

Carried

Shall clause 2 carry?

Carried.

Shall clause 3 carry?

Carried.

Shall clause 4 carry?

Carried.

Shall clause 5 carry?

Carried.

Shall clause 6 carry?

6. The Company, subject to the provisions of any general legislation relating to pipe lines for the transmission and transportation of gas and oil or any liquid or gaseous products or by-products thereof which is enacted by Parliament, may

(*a*) In the provinces of British Columbia, Alberta, Saskatchewan and Manitoba and in the North West Territories and outside Canada, construct, purchase, lease or otherwise acquire and hold, develop, operate, maintain, control, lease, mortgage, hypothecate, create liens or other security upon, sell, convey or otherwise dispose of and turn to account any and all interprovincial and/or international pipe lines and all appurtenances relative thereto for gathering, transmitting, transporting, storing and delivering of natural and artificial gas and oil or any liquid or gaseous products or by-products thereof, including pumping stations, terminals, storage tanks or reservoirs and all relative thereto for use in connection with the said pipe lines, provided that the main pipe line or lines for the transmission and transportation of gas and oil shall be located entirely within Canada; and buy or otherwise acquire, transmit, transport and sell, or otherwise dispose of and distribute natural and artificial gas and oil and any liquid or gaseous products or by-products thereof; and own, lease, sell, operate and maintain aircraft and aerodromes for the purpose of its undertaking, together with the facilities required for the operation of such aircraft and aerodromes; and own,lease, operate and maintain interstation telephone, teletype and telegraph communication systems, and, subject to the *Radio Act*, and any other statute relating to radio, own, lease, operate and maintain inter-station radio communication facilities;

(*b*) purchase, hold, lease, sell, improve, exchange or otherwise deal in any property, real or personal, moveable or immoveable, or any interest and rights therein legal or equitable or otherwise howsoever and deal with any portion of the lands and property so acquired, and may subdivide the same into building lots and generally lay the same out into lots, streets and building sites for

residential purposes or otherwise and may construct streets thereon and necessary sewerage and drainage systems and build upon the same for residential purposes or otherwise and supply any buildings so erected, or other buildings erected upon such lands, with electric light, heat, gas, water or other requisites, and lease or sell the same, upon such terms and subject to such conditions as appear requisite, either to its employees or to others; and

(c) exercise as ancillary and incidental to the purposes or objects set forth in this Act, the powers following, unless such powers or any of them are expressly excluded by this Act, namely, the powers set forth in paragraphs (*a*) to (*bb*) inclusive of subsection (1) of section 14 of the *Companies Act*.

By Mr. Green:

Mr. Chairman, there are two things about clause 6. First of all, I notice the applicants have included a proviso about the middle of paragraph (a) of that clause:

> "... provided that the main pipe line or lines for the transmission and transportation of gas and oil shall be located entirely within Canada;"

With that, of course, I am heartily in accord, but Mr. Fairey, in explaining the bill, mentioned the Yukon; yet I see they are only asking for the power in the provinces of British Columbia, Alberta, Saskatchewan and Manitoba and in the Northwest Territories.—A. "And outside Canada?"

Q. Well, the Yukon is in Canada yet, and apparently you are getting up pretty near the Yukon border. Is it your intention to do any work in the Yukon or not? If so, I should think the Yukon should be included in the Bill?—A. Well, Mr. Green, in the long-run picture it is conceivable that, with the development of the Yukon and so on, we might very easily want to go into the Yukon. At the moment that is probably somewhere in the future. I certainly would not object to putting the Yukon in there.

Q. It is your responsibility whatever goes in there. How far from the Yukon are you exploring now?—A. Well, we are in the Fort St. John area and slightly north of it. I am not familiar with the number of miles but I would think we are quite a distance now.

Mr. FAIREY: They are not further north than Fort St. John now, Mr. Green. The tendency is certainly in that way.

The WITNESS: The tendency is certainly toward the north, yes.

Mr. FAIREY: But we are not asking for that now, Mr. Green, unless you want to amend it to include that, in which case we would not object.

By Mr. Hahn:

Q. I would agree with what Mr. Green has just said, that in view of the progress of business and so on in that part of British Columbia and in the Yukon, I can well see if there is a strike of gas or oil or anything in that region it would be desirable to have it included. I would not be opposed to including it but, as Mr. Green has suggested, it may be desirable for you yourselves to ask for the change at this time. Where it is necessary to bring about a change in the act it is desirable to have it done in the beginning.—A. If one of the hon. members would move it we would be glad to have that.

Mr. NICHOLSON: Do we have to worry about that, as it does not appear in the bill? I gather the Yukon Pipe Lines Limited are going to look after the Yukon Territories.

Mr. HAHN: What Mr. Nicholson says might be quite true, but here we have a company which is developing that part of British Columbia, and the

natural way for development is up into the northern territory. As we are quite aware in British Columbia—I am not suggesting that these other pipe line bills at this time should not be dealt with in their proper sequence—but I would feel better about the whole situation if the whole thing were indicated at this time to make it possible for future expansion.

The WITNESS: If it should become needed in the interests of the Yukon to move up there, the power is already included, and I would agree to that.

Mr. GREEN: I move an amendment to that effect.

Mr. FAIREY: Where would you put that? Would you say in clause 6(a), "In the provinces of British Columbia, Alberta, Saskatchewan and Manitoba, and in the Yukon and the Northwest Territories—"?, after the words "Manitoba and in" add the words "the Yukon and"?

The ACTING CHAIRMAN: Gentlemen, you have heard the amendment. On line twenty of page 2, you have heard the motion, that line 20, clause 6(a) be amended to read: "Saskatchewan . . . "

Mr. CAMPBELL: Mr. Chairman, before you put the motion, is there a representative present from the Yukon Pipelines Limited? If so, could we hear from him in order to see if this would interfere with them?

Mr. FAIREY: Do you object to it, Mr. G. J. McIlraith—you are sponsor of their bill?

Mr. G. J. MCILRAITH: The only point is that the Yukon Pipelines bill is for a different purpose; but there is one thing the committee should consider, namely: the incorporators seeking incorporation here now represent a company engaged as heavily as any company in the country in the pipeline business of transporting oil and gas. They undoubtedly considered the bill before they came here and for some reason left out Yukon. They undoubtedly cleared the bill with the proper authorities in the Northwest Territories and the Department of Transport. The committee now seeks to put in something which was not asked for, for some reason which no one seems to know. I do not think the Yukon Pipeline Company has any objection. I would not imagine the Yukon Pipelines people would have any objection as such, except that they are already serving the area with existing facilities. I wonder if the committee has considered that point.

Mr. NICHOLSON: I know very little about the area involved; but we have had some experience in Canada in connection with the construction of railway lines. Before we give too wide powers to any one company, we should give them a chance to make a request. I do not think the initiative should come from this committee to change the wording without a request from the company. If this company, at some time, wishes to carry on operations in the Yukon Territory, it would be quite a simple matter for them to make representations to us. Until we receive a definite request, I suggest we should not add to what they want. In view of the fact that there is another bill coming up which deals with the Yukon Territory, I suggest we leave the bill as it is.

Mr. GREEN: I think that "Northwest Territories" might be construed as broad enough to include Yukon, because the Yukon is a territory in the same manner as Mackenzie is a territory, Franklin is a territory, and Keewatin is a territory. That may be why they merely used the words "Northwest Territories".

The work being done by these people does not conflict in any way with the proposed undertaking of Yukon Pipelines Limited. They are proposing to run a pipeline from the sea up to Whitehorse, along the right-of-way of the railway which belongs to the people who are applying for the new pipe line charter. The present applicants are working away over in the northeast

corner of British Columbia and in the northwest corner of Alberta. They have pioneered gas and oil development in that part of Canada and they deserve great credit, in my opinion, for what they have done. They also pioneered this plan of piping gas from the Peace River country down to the west coast. I certainly approve, very strongly, what they have done. They have been the real pioneers in this field.

It may be that they do not intend to get into that southeastern corner of the Yukon. Maybe they have never even thought of it. I do not know. But if these discoveries continue in the direction in which they have been going, that is, in a northwesterly direction, eventually they will reach the boundary between British Columbia and the southeastern corner of the Yukon. I do not see how anybody would be hurt by giving them the power to build a pipe line in the Yukon. Otherwise they would have to come back here and go through all the trouble of getting an amendment to their charter, merely to add the word "Yukon".

Mr. MURPHY (*Westmorland*): That is what we are here for.

Mr. GREEN: I do not care about it one way or another, but Mr. Fairey mentioned the Yukon when he made his explanation.

Mr. MURPHY (*Westmorland*): If the sponsor does not care, I think we should leave it as it is.

The ACTING CHAIRMAN: We have discussed the amendment. Are you ready for the question?

Mr. BYRNE: Mr. Green takes quite a different stand on this question that he took on the occasion of the charter for the Westspur Pipe Line Company.

Mr. GREENE: In what way?

Mr. BYRNE: Mr. Green was averse to giving the Westspur Company anything that they had not already anticipated or asked for. But, apart from that, I think that the West Coast Transmission Company, which is the parent body, did put up some considerable—while not official—objections to the pipe line. As some of us feel, they developed that area, and they have, I think, a fairly large coverage; and when they decided to ask for the powers to be granted in this bill, they did not include Yukon Territory. I notice it is going to have a very adverse effect on the development in the north for the next few years, and this committee should grant them not more than they have asked for at this time. I think we should accept the bill as it is for the present, with the understanding that we are not opposed to their development of the Yukon Territory if they see something in the future necessitating it.

Mr. FAIREY: It is true that I mentioned the Yukon. I also said there was no immediate need for it. But, as Mr. Green has said, certainly this company has pioneered the development of oil and gas discoveries in northern British Columbia, and it will require an outlet for its product. It seems to be tending that way. If there is any objection, certainly we are not going to press it; but it certainly would not, in my view, do any harm to anybody, and it might save this company making an application at a future time.

Mr. HAHN: I have one question which I would like to have cleared up in my mind before we vote; it is this: this bill must have been cleared by the Board of Transport Commissioners to begin with? Must it not? No,—I should have said the Department of Transport; but if it is cleared by the Department of Transport, would the decision to add the word "Yukon" to the bill affect in any way the latter, or would we be over-riding their decision?

The WITNESS: With great respect to Mr. McIlraith, I do not think that this has been dealt with by the Department of Transport at this stage.

Mr. G. J. McILRAITH: As I understand it, all these bills which go on the order paper in either House are checked by the Department of Transport, and usually their solicitor comes here. He usually sits at the back of the room and if he is asked he will say that they have no objection to the format of the bill. He always is in the room when it is before the Senate committee. But in any event I would not think that they would be concerned with the geographic territory. I cannot speak for them, but I would not think so.

Mr. MURPHY (*Westmorland*): Mr. Merriam must know why it was left out, because he is the solicitor for this company. He must know why Yukon was left out.

The WITNESS: Perhaps, as Mr. Green suggested, it just was not thought of. It is quite a distance from where the exploration is being carried on at the moment, and it was possibly projecting their minds a little too far into the future. But I think, strictly speaking, the answer is that it was not thought of. From the point of view of the Yukon, as I see it, there is great merit in putting it in; and if this exploration does continue, and if the power to cross that boundary between the Yukon and British Columbia is required, there may be some question of right with respect to building a pipe line across that interprovincial boundary to bring gas and oil, and whatever else may be found there, to the market.

Mr. MURPHY (*Westmorland*): You must have thought of it already?

The WITNESS: No.

Mr. HAHN: I do not understand why they would ask to go into the Northwest Territories. It would be more distant than it would be to the Yukon, from British Columbia, and the natural field of development is into the Yukon from British Columbia. I am more inclined to agree with what Mr. Green suggested a little while ago with respect to the full area that the company is concerned with, as part of the Northwest Territories, and that it would expedite them if the whole area would be covered.

Mr. FAIREY: You mean that they thought it would be an all-inclusive term?

Mr. HAHN: Yes.

Mr. FAIREY: Legally it would not.

Mr. HAHN: No, legally it would not!

Mr. MURPHY (*Westmorland*): If they thought that Northwest Territories was an all-embracing term, then they would think of it as including the Yukon.

The WITNESS: Legally speaking there is a difference, of course.

Mr. PURDY: The Yukon and the Northwest Territories are both recognized as different geographical boundaries.

Mr. BARNETT: Is it true that as far as the legal definition of the bill is concerned the term "Northwest Territories" could not be construed to include the Yukon Territory?

The WITNESS: I think that is true as a legal interpretation.

Mr. BARNETT: If that is the case, the other information which appears relevant to me is the matter of the general geographic and geological characteristics of the country. If there is no possibility of the particular corner of the Yukon Territory which has been referred to as the southeast corner being included in the area which is geologically given within the scope of the gathering system, then there is no particular point to it.

Mr. FAIREY: If the term "Northwest Territories" is an all-inclusive term for the northwestern part of Canada, there is no particular objection to particularizing and making it quite certain that the Yukon is part of the Northwest Territories.

Mr. MURPHY (*Westmorland*): If we were to do that we would say: "Yukon and the District of Keewatin, the District of Franklin, and the Northwest Territories and outside of Canada", which would make us look rather ridiculous, to put in all the districts of the territories, if the territories are included. They left it out of their bill and there must be a reason.

Mr. NICKLE: Mr. Chairman, it is common practice in western Canada to describe all gas and exploratory work in the Yukon and Northwest Territories as simply a Northwest Territory plan. I feel as Mr. Green does, that on the part of this pipe line company it was merely an oversight based on the common terminology applied to the Northwest Territories.

There is at the present time just as large an expansion under way, or development for oil and gas, in what legally is defined as the Yukon Territory, as there is in what is legally known as the Northwest Territories, and I am confident that this particular company applied the common terminology which is used.

I think the amendment which has been suggested is one which would correct an innocent error on the part of the pipe line company and would certainly do no harm to the people; and I am quite confident that they did contemplate including the legally defined Yukon Territory and the Northwest Territories in the one term "Northwest Territories".

The Acting CHAIRMAN: It has been moved by Mr. Green and seconded by Mr. Hahn, that clause 6, paragraph (a), lines 19 and 20 be amended to read as follows:

> In the provinces of British Columbia, Alberta, Saskatchewan and Manitoba and in the Yukon and Northwest Territories . . .

All those in favour of the amendment will please say, Yea. The Nays?

Perhaps we had better have a show of hands. All those in favour of the amendment will please raise their hands?

The CLERK of the COMMITTEE: Yeas: Eleven.

The ACTING CHAIRMAN: Now the nays?

The CLERK of the COMMITTEE: Nays: Twelve.

The ACTING CHAIRMAN: I declare the amendment defeated. Does clause 6 carry?

Carried.

By Mr. Nickle:

Q. On clause 6, is it posssible to get an explanation of the term "main pipe line"?—A. Mr. Nickle, that is a very difficult question in this particular application. As I tried to explain in the beginning, plans have not progressed to the point where we can say there is a main pipe line from A to B, or, even if there is a main pipe line, it might develop into a grid system to come out to West Coast or Trans-Canada or Interprovincial, and the reason that is put in there is that it is in all pipe line bills and, secondly, there is still that uncertainty as to just what form the operations of this company will take.

Q. In other words, were any line to be defined as other than "main pipe line" there would be—if it was defined as a main pipe line you would be prohibited from crossing the border?—A. Yes, I think that is perfectly true.

Q. Now, in your charter, let us take an example of what has happened in the case of the associates of the West Coast. Your main pipe line is going to be built down to the American border somewhere south of Vancouver, and it joins another pipe line built by an entirely different company, Pacific Northwest, the main pipe line reaching the American market brought in from Peace

River to West Coast. Now, under this charter it suggests they request permission to service the northwestern United States which would necessitate the building of a main pipe line into the northwest American states. Would it be possible or legal for this company or West Coast or any other company, under this clause restricting the building of main pipe lines to building within Canada, to set up a subsidiary company to build an extension of the main pipe line into the United States; or would it be forced to turn that building of main transmission line for oil or gas over to an entirely unrelated American corporation?—A. I think, Mr. Nickle, we are getting into the sphere of practical problems of rights in the United States. From a legal point of view my own personal feeling as a lawyer—and there may be all sorts of lawyers who will disagree with me on this interpretation—but my own personal understanding is that these words of limitation do not preclude any of these companies from incorporating an American subsidiary and having that subsidiary build the line within the United States.

Q. Then, by that definition—that interpretation—the inclusion of this clause does not make sense, because the clause is needless and can be easily gotten around by setting up an American subsidiary—is that right?—A. Well, Mr. Nickle, parliament in its wisdom decided that that clause should go in, some four or five years ago. I am quite sure that the members of the House of Commons when that was inserted had very good and valid reasons for inserting it, and I certainly would not take it upon myself to question the value of that particular phrase. I don't know that it has been decided up to the moment.

Q. What I am actually trying to get back to is that you have the power under this bill, as has every pipe line company—the power to build pipe lines outside of Canada as well as in Canada. Now, you have within the same charter a restriction requiring you to build your main pipe lines only within Canada. We have no clear definition of what a main pipe line is. Any pipe line reaching the border can, I think, be construed as likely to be a main pipe line and yet, what happens then, how do we define a pipe line that crosses the border?—A. I think there are two safeguards there, with respect. One is the Board of Transport Commissioners from whom one must get approval after filing very detailed plans and specifications and satisfying the board as to the feasibility of the undertaking, the size of the pipe and the size of the line itself, whether it is a 24 inch, a 30 inch—whatever it might be—satisfying them after a very thorough and complete hearing. Secondly, there is the Department of Trade and Commerce without whose consent the gas cannot be exported in any event; and, thirdly, there is usually a provincial governing body which even more restricts the issuing of its permits. Fourthly, there is the Federal Power Commission in the United States which looks at it even more closely, I think. After you have got over those four hurdles I think the scheme has been pretty well gone into.

Q. I agree with you that those four steps—provincial, federal, Transport Board, Department of Trade and Commerce and the American Federal Power Commission—do provide a measure of safeguard against the building of lines in such a way as might take away from Canada some of its precious oil and gas reserves. But with all those safeguards why is it necessary to include in your application for a charter a phrase restricting main pipe ilnes to Canada when we can't even define what a main pipe line is? We do have competent bodies set up, provincial bodies, federal bodies, transport boards, to make investigations and to provide a safeguard which parliament is attempting to provide with the inclusion of this one clause, which cannot be defined because we cannot define what a main pipe line is. My submission is that the clause should be eliminated.

Mr. HAHN: I think Mr. Nickle has just indicated to us the reason we should have had the inclusion of the word "Yukon". I think the intention there is to have that line run to the Alaska boundary, and, if it is possible and desirable and if our Department of Trade and Commerce were agreed, we could provide that right into Alaska if it were found necessary and possible. We should have heard Mr. Nickle before we dealt with the other question.

Mr. BYRNE: Mr. Hahn, of course, did not have the advantage some of us had of hearing the earlier discussions on the formation of pipe line companies. I would not say he is a rookie but he is beginning to grasp the picture very quickly.

Now, I can recall some years ago when members and others were trying to block or oppose a charter for a pipe line which would traverse the southern portion of British Columbia. The fact that the Board of Transport Commissioners existed, and the Department of Trade and Commerce, and the Federal Power Commission, had no relation whatsoever to the argument. They were absolutely insistent that this clause be written in, "the main line shall be in Canada" for the protection of Canadian resources. I see the argument seems to have changed now considerably, and we find that we have run up against a bit of a block all right, because the West Coast Transmission, as Mr. Nickle has said, built a pipe line to the coast and decided to send 85 per cent of their gas on into the United States. Then, certainly a portion of that pipe line which carries 85 per cent of the gas, regardless of its size, is going to be the main pipe line; and it may run up against difficulties. I don't think we should use that word "wisdom" too loosely.

However, I think we should pass this as it is. I think we were justified in taking a little exception, in running off in all directions after the discussions we have been subjected to in the past three or four years.

The ACTING CHAIRMAN: Shall clause 6 carry?

Mr. MURPHY (*Westmorland*): I want to ask about the same thing Mr. Nickle asked, "provided that the main pipe line or lines"—that would mean other pipe lines—"for the transmission and transportation of gas and oil shall be located entirely within Canada." And then up in the 21st line it says permission is given to construct outside of Canada. Aren't those contradictory now? If you cannot build any lines for transportation of the gas or oil outside Canada—it says they must be built in Canada—then you have to ask for permission to build them outside of Canada.

Mr. HAMILTON (*York West*): I would say that is fairly clear. It restricts main pipe lines outside Canada.

Mr. MURPHY (*Westmorland*): What does that line mean?

Mr. HAMILTON (*York West*): I would say it is modified by the adjective "main"—main pipe line or main pipe lines.

Mr. MURPHY (*Westmorland*): It is pipe lines other than main?

Mr. HAMILTON (*York West*): I would say it is quite clear. In respect of the observation that we cannot define "main" and "subsidiary" lines—I would entirely disagree with that observation. As a matter of fact in all cases we must sit back and realize that if we come to a real dispute the interpretation itself is placed on these words by a court, and there will be a very definite answer. If there has been faulty draftsmanship it may not be the answer we want; but I disagree entirely that you cannot interpret this section, because literally it must be interpreted, and there is a place to interpret it.

Mr. HAHN: Further, as a rookie in this thing, I can well visualize this whole part of the Pacific northwest now becoming an integral part of the North American gas policy, whereby beginning with the Texas fields and supplying gas into the eastern part of Canada, as I imagine they will some day despite

what our present plans may be, and coming along through the southern part of the United States up through California, running on up into British Columbia and on into the Yukon and Northwest Territories, and back down south through Minneapolis and that way, a full tie-up, so that we may eventually be buying gas back into the Peace River country from the United States —and for that consideration I would say we are going to have to define eventually what our main lines are. However, I am not going to carry on with that any further. I was interested in 6(b) if we are finished with 6(a).

The ACTING CHAIRMAN: Shall 6(a) carry?

Carried.

Mr. HAHN: In clause 6(b) it would appear to me that the discussion taking place up to this time means that the compnay would have a closed town, that is it would prevent private individuals or enterprises going into that particular community. It would be a company town?

Mr. FAIREY: Not necessarily.

By Mr. Hahn:

Q. I feel that the opportunity should be given. They may have certain standards that would be required in such a community but certainly I think the opportunity should be given to other individuals to come in there and build, providing they meet with the specifications and standards and so on of that particular company.—A. I don't think, with respect, there is any limitation in this. The powers that you see in clause 6(b) are very similar to the powers that are included in any land development company and that sort of thing. It is quite conceivable as you get up into the northern part of the province—we don't know what the future is going to be—I don't think any of us in this room know just how that country can develop, we know it has got great potential but how it is going to be developed we just don't know—it is quite conceivable that this sort of thing may be the means of commencing a vast opening up of that area. Somebody has got to go in there in the beginning and get the ball rolling.

Q. I am not opposed to the company getting the ball rolling.

Mr. FAIREY: I don't think it is exclusive, Mr. Hahn.

The WITNESS: There is nothing exclusive about it at all.

By Mr. Hahn:

Q. I see here, "purchase, hold, lease, sell, improve, exchange or otherwise deal in any property, real or personal . . ." If the company so wishes they can stop others by holding that property or just not selling?—A. I think what is contemplated is this, that they find gas or oil or something in large quantities in a particular area without labour being readily available. Now, there are no town facilities, no houses, nothing up there. This gives them the power and authority to purchase a tract of land, to build houses on it, put sanitation facilities in there, have someone come in and construct a theatre, and so on. There is nothing which limits the development of that town to what the company wants it to be. Once they get that first foothold in, there may develop a city. It is certainly not limited to the company in any way, shape or form.

Q. I can see the desirability of having standards set and so on, but I would not be too happy to feel, as they do in some of these company towns, that no one can come in there and build a home and own a piece of property, and it completely belongs to the oil company, gas or aluminum company, pulp and paper company or whatever it may be. It does away with that initiative, I think, which we should continue to have and practise in this country.

Mr. GREEN: Mr. Chairman, I think Mr. Hahn has overlooked the fact that there is provincial legislation dealing with this, that these properties come under the control of the province, and they would come under very rigid control. I know at Kitimat, which was built by the Aluminum Company, the homes are to be owned by the people themselves although the whole plan was prepared by the company. I think it is beyond our power to deal with municipal matters of that kind. This clause merely gives the company the power to build these things. We cannot interfere with the provincial law.

Mr. HAHN: That is the only fact I am .interested in. It might become a municipality unto itself then?

Mr. GREEN: Under provincial law.

The ACTING CHAIRMAN: Shall clause 6(b) carry?

Carried.

Shall clause 6(c) carry?

Carried.

Shall clause 7 carry?

Carried.

Shall clause 8 carry?

Carried.

Shall clause 9 carry?

Carried.

Shall clause 10 carry?

Carried.

Shall clause 11 carry?

Carried.

Shall the title carry?

Carried.

Shall the bill carry?

Carried.

Shall I report the bill without amendment?

Agreed.

The Acting CHAIRMAN: We shall now consider Bill No. 375, An Act to incorporate Yukon Pipelines Limited. The sponsor is Mr. McIlraith. Would he like to make an explanation?

Mr. G. J. MCILRAITH: Mr. Chairman and gentlemen, I don't know that there is much I can usefully say beyond what was said on the second reading in the House the other day. The first thing to note in the bill is that it is limited to British Columbia and the Yukon Territory in Canada and outside Canada. The second thing is that the persons seeking incorporation are in the main officers of the White Pass and Yukon Route. They operate the railway from Skagway to Whitehorse.

In 1942 the United States army leased that railway and built a pipeline on the right-of-way. Since the end of the war when the railway was returned to the company that pipe line has been put back into operation and has supplied fuel oil to Whitehorse as a side product. The main purpose of the construction of the line was to supply oil from Skagway through Whitehorse and through the Yukon back into Alaska for the United States army, and that is still its main purpose.

During the past year the United States army has built a new pipe line, eight inches in diameter, from Haines, Alaska, just across the bay from Skagway, through Alaska, operating by a different route and not through the Yukon, serving the United States army in Alaska. It is expected that that new line will be in operation shortly. Under the agreement permitting the take-off for Canadian needs on the line going through Whitehore that right can be terminated on thirty days' notice. So we have the situation that the people in Whitehorse and the Yukon Territory, who are dependent on this line for their supply of fuel oil, are very much concerned and eager to have the line remain in operation.

The cost the president can give precise information on, but the cost of bringing fuel oil from Vancouver to Whitehorse by the pipe line, carried in tankers from Vancouver to Skagway and then the 110 miles by pipe line is between $2 and $3 a barrel, and bringing it in from Edmonton by truck is $14, so you can see the interest of the Yukon people in having the line remain in operation. The incorporators are seeking in the corporate capacity to negotiate with the Canadian government authorities and the United States army authorities either to lease or buy the line over the railway serving the area.

We have today with us Mr. Rogers, who is the president of the railway companies. Incidentally, perhaps we should refer to it as the route. They operate under separate corporate structures—one a few miles in Alaska, one a few miles in British Columbia and one a few miles in the Yukon. We have Mr. Rogers here to answer any questions about the proposed operation of the line. Mr. D. A. McIlraith, Q.C., is also here to answer any questions. He is solicitor for the incoporators. It is proposed when we come to section 6 to suggest that the committee make an amendment limiting the right to build main gas lines to Canada as was done in the Westspur bill.

The Acting CHAIRMAN: Does the preamble carry?

Carried.

Mr. NICHOLSON: Could we hear from Mr. Rogers at this point?

The Acting CHAIRMAN: Shall clause 1 carry?

Carried.

Shall clause 2 carry?

Carried.

Clause 3, "Capital."

3. The capital stock of the Company shall consist of one million shares without nominal or par value.

The Acting CHAIMAN: On clause 3—I have a letter from Mr. Arsenault, Chief Clerk of Committees, advising that clause 3 of this bill provides for capital stock of one million shares without nominal or par value. It goes on:

> In order to fix the capital stock charges to be levied from this office, the value of the shares for taxing purposes will have to be determined by resolution of the committee.
>
> It is essential that this be not overlooked when clause 3 of the bill is called.

I understand that the solicitor has a declaration which he wishes be read, and to have the consent of the committee thereto. It provides that the total consideration for which these no par value shares are to be issued will not exceed the aggregate $5,000,000. Is that agreed?

Agreed.

May I have a motion that for the purpose of levying a charge on the capital stock under the provision of Standing Order 93(3) the committee recommend that the said charge be based on a total capitalization of $5,000,000?

Mr. BYRNE: I will move it.

Mr. LAFONTAINE: I second it.

Carried.

The ACTING CHAIRMAN: Shall clause 3 carry?

Carried.

Clause 4?

Carried.

Clause 5?

Carried.

6. The Company, subject to the provision of any general legislation relating to pipe lines for the transportation and transmission of oil and gas and other liquid and gaseous hydrocarbons which is enacted by Parliament, may

(*a*) with Canada in the Yukon Territory and the Province of British Columbia and outside Canada construct, purchase, lease, or otherwise acquire, and hold, develop, operate, maintain, control, lease, mortgage, create liens upon, sell, convey or otherwise dispose of and turn to account any and all interprovincial, extraprovincial and/or international pipe lines, for the transportation and transmission of oil and gas and other liquid and gaseous hydrocarbons and products thereof, including pumping stations, compressor stations, metering stations, gathering systems, terminals, storage tanks or reservoirs and all works relative thereto for use in connection with the said pipe lines; and buy, or otherwise acquire, sell, distribute or otherwise dispose of oil and gas and other liquid and gaseous hydrocarbons and products thereof; and own, lease, sell, operate and maintain aircraft and aerodromes for the purpose of its undertaking, together with the facilities required for the operation of such aircraft and aerodromes; and own, lease, operate and maintain interstation telephone, teletype and telegraph communication systems and, subject to the *Radio Act*, and any other Act relating to radio, own, lease, operate and maintain interstation radio communication facilities;

(*b*) purchase, hold, lease, sell, improve, exchange or otherwise deal in real property or any interest and rights therein legal or equitable or otherwise howsoever and deal with any portion of the lands and property so acquired, and may subdivide the same into building lots and generally lay the same out into lots, streets and building sites for residential purposes or otherwise and may construct streets thereon and necessary sewerage and drainage systems and build upon the same for residential purposes or otherwise and supply any buildings so erected, or other buildings erected upon such lands, with electric light, heat, gas, water and other requisites, and lease or sell the same, upon such terms and subject to such conditions as appear requisite, either to its employees or to others; and

(*c*) exercise as ancillary and incidental to the purposes or objects set forth in this Act, the powers following, unless such powers or any

of them are expressly excluded by this Act, namely, the powers set forth in paragraphs (*a*) to (*bb*) inclusive of subsection 1 of section 14 of the *Companies Act*.

Mr. D. A. McIlraith, Q.C., Parliamentary Agent, called:

The WITNESS: Mr. Chairman and hon. gentlemen, if one of the hon. members of the committee agrees to so move the incorporators consent to a limitation of the main gas line within Canada and in that connection it would be clause 6 (a)—at least I would make this suggestion, that clause 6(a), line 31, page 2 of the bill, after the words "said pipe lines" the following words be added: "provided that the main pipe line or main pipe lines for the transmission of gas and gaseous hydrocarbons shall be located entirely within Canada".

The ACTING CHAIRMAN: This is an almost exact duplicate of the amendment that was moved in the House in committee on a recent bill. Is there a mover and seconder? Moved by Mr. Habel and seconded by Mr. Purdy.

The ACTING CHAIRMAN: Are you ready for the motion?

Mr. NICKLE: Before passing this let me again voice my objection to the inclusion of the same phrase included in the other pipe line bill which cannot be properly defined. As I said on the previous bill the definition of "main pipe line" was something which this committee could not define and I question whether anyone else could properly define it. We have here another company which has a charter to build pipe lines within and outside Canada, to build interprovincial, extraprovincial or international pipe lines and yet it is prohibited from building main pipe lines outside Canada.

As I said before, the definition of a main pipe line is something that should be clarified for this committee. It should be clarified by the sponsors of this bill or if any clear definition of main pipe line could be given then it should be heard.

Mr. NICHOLSON: Mr. Nickle is an expert on pipe lines. Maybe he can define it?

Mr. NICKLE: I cannot for the life of me define it.

Mr. BYRNE: I think we should carry it now as it is.

Mr. NICHOLSON: Do I understand that part of this line is through the States?

Mr. GREEN: For oil, not gas. This line follows the railway track. There is no restriction on oil. This restriction is only on gas.

Mr. NICHOLSON: This line follows the railway, does it?

Mr. BYRNE: There would have to be two lines if you are going to pipe gas.

Mr. NICHOLSON: And it would not be permissible for it to follow the route this railway follows? It seems to me there might be a problem in connection with this particular bill. I understand the railway runs apparently through Alaska and the present oil line runs through Alaska. In the event that you were to have gas from Skagway to Whitehorse it would follow the railway and would have to flow through Alaska, not all the way?

The WITNESS: That is right.

Mr. GREEN: I think where Mr. Nicholson is in error is in this fact. This line is not for the export of oil; it is for the import of oil from the coast up to Whitehorse and there is no restriction whatever on oil. They can build their line outside Canada, even if they were exporting oil rather than importing it; but in addition to asking that power they are asking for wide

open powers to deal in gas. They might build a transcontinental pipe line. They might carry gas anywhere inside or outside Canada; so this restriction that they are writing into the section only applies to gas.

Mr. BARNETT: Might I, on a point of information, make a statement in regard to this line in question? Why is it desirable to introduce a bill in a general pipe line form in this particular case? Is there any practical possibility, for example, that this company would be engaged in the transmission of gas at all? Was there any particular reason why it was thought desirable to introduce this bill in this form rather than simply a bill which would give the company power to operate lines for transmitting oil from Skagway to Whitehorse?

Mr. G. J. MCILRAITH: I have always held the view that the Pipe Lines Act contemplated incorporation by special Act rather than by reference, and for that reason the charter was set out in a special Act rather than giving the railway company power to carry on an oil business. There could be a great deal of legal argument on that. You could argue about it one way or the other, and I am not dogmatic in asserting one view as against the other; but the Pipe Lines Act would seem to contemplate that companies operating interprovincial pipe lines must be incorporated by special Act.

Now, it is quite true parliament could legislate around that by incorporating by reference. It is a matter, I suppose, of taking your choice. The incorporators certainly discussed that point and it was considered.

Mr. MURPHY (*Westmorland*): Mr. McIlraith, M.P., this company can set up a good system similar to the Petroleum Transmission Company to collect oils and gases. It has the same rights and powers as the previous company?

Mr. G. J. MCILRAITH: It has the same rights and powers limited to British Columbia and the Yukon. Under the bill it has the corporate capacity to set up an oil gathering or gas gathering system.

Mr. NICKLE: Mr. Chairman, relative to this matter again, knowing a slight amount about the geography and the terrain of the territory where this pipe line company or its predecessor is now operating, I think it is fairly obvious that while gas pipe lines are not contemplated at the present time, when and if gas is found either in the Yukon or the far northeast corner of British Columbia, gas pipe lines would be built and that, just as per the existing oil line, the terrain and geography of the country would dictate that some portion of those gas lines would cross over a portion of the United States territory. Obviously, some markets are going to have to be found for some of these products which I believe are going to be found in northeastern British Columbia and the Yukon and in the territory of Alaska. The inclusion of this prohibition of building of main pipe lines outside of Canada will have the effect of forcing parliament again to consider this bill, to determine whether or not a section of the same diameter pipe line which happens to cross America is part of a main pipe line or merely some branch, despite the fact it might be the same diameter as the line passing over Canadian territory and may be an integrated part of this line. Unless we define it as part of a main pipe line it cannot be built and, by the same token, the inclusion of this restriction can prevent this company in the event it has natural gas from serving American markets that may exist near its field or near its system in American territory. For that reason again, because we cannot define the word "main", I would say that this amendment should not pass.

Mr. HAHN: Mr. Chairman, I think we can define the word "main" much as I do not like to disagree in this respect with someone as familiar with

the gas field as Mr. Nickle is, but would not that be a case of saying that that line on which you have a gauge and through which the greatest amount of gas goes would be the main gas line?

The Acting CHAIRMAN: This amendment is very similar to the one we passed in the House in committee recently. I will put for the question. Those who are agreeable to the amendment? Contrary, if any?

Carried.

Shall clause 6 as amended carry?

Carried.

Shall clause 7 carry?

Carried.

Shall clause 8 carry?

Carried.

Shall clause 9 carry?

Carried.

Shall clause 10 carry?

Carried.

Shall clause 11 carry?

Carried.

Shall the title carry?

Carried.

Shall the bill carry as amended?

Carried.

Shall I report the bill as amended?

Agreed.

THE ACTING CHAIRMAN: Are we now ready to deal with bill No. 378, an Act to incorporate S & M Pipeline Limited. We have the same sponsors and the same representatives. Does the preamble carry?

> Whereas the persons hereinafter named have by their petition prayed that it be enacted as hereinafter set forth, and it is expedient to grant the prayer of the petition: Therefore Her Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:—

Mr. GREEN: May we have an explanation?

Mr. G. J. MCILRAITH: Mr. Chairman and gentlemen, the incorporators of this company are officers of the Canadian Devonian Petroleums Limited. Now, Canadian Devonian Petroleums are exploring and developing oil mainly in the Saskatchewan area. The company has its origin in Saskatchewan and they have in the Frobisher field in southeastern Saskatchewan some wells in production. To connect the wells in that area with the interprovincial oil pipe line requires crossing the Manitoba border. Under the amendment to the Pipe Lines Act in 1953 it is necessary for a pipe line company crossing a provincial border to be incorporated by special Act. The applicants therefore seek incorporation for the purpose of constructing pipe lines in the four western provinces and the Northwest Territories.

What they have under immediate contemplation is a pipe line to serve the southeastern Saskatchewan area having their own main interest in that area because of their own wells.

A reference to gas is included and the same amendment will be proposed in clause 6 (*a*) as was previously proposed in other bills. Mr. Cruickshank, the general manager of Canadian Devonian Petroleums Limited is here and Mr. D. A. McIlraith is solicitor for the company.

THE ACTING CHAIRMAN: Does the preamble carry?

Mr. NICHOLSON: I wonder if Mr. Cruickshank would be good enough to tell the committee something about the company's operations.

Mr. CRUICKSHANK: I am general manager of Canadian Devonian Petroleums Limited and one of the petitioners; the other three petitioners for this bill are the first vice-president, another vice-president and another director of the company.

Canadian Devonian Petroleums was incorporated in 1951 as a dominion company. We propose if we are successful in getting this bill through and getting a permit from the Board of Transport Commissioners to build a pipe line from Midale east which will serve the Lampman-Frobisher-Alita field and down the interprovincial to Cromer, Manitoba. On the route it will also serve the Steelman and Nottingham fields. We are interested particularly in Canadian Devonian because Canadian Devonian discovered the Frobisher and Lampman fields, which were the first two light gravity oil fields discovered in that part of Saskatchewan. Also, to get our oil from Frobisher to Regina costs us 62 cents a barrel whereas if we had this pipe line in the first year at a minimum we could transport our oil from Frobisher to Cromer for 21 cents, which would be a saving of 41 cents. Secondly, we know that a pipe line will not only expedite the development of the field but it is going to give great impetus to further exploration in southeast Saskatchewan.

That, Mr. Chairman, is the principal reason why we have petitioned for this bill now under consideration.

Mr. HAMILTON *(York West)*: Those names you mentioned of places, they seem like the same names referred to in the Westspur?

Mr. CRUICKSHANK: That is right.

Mr. HAMILTON *(York West)*: Then this means there is a contest before the Board of Transport Commissioners to see which of them...

Mr. CRUICKSHANK: I suspect that is right.

Mr. HAMILTON *(York West)*: In other words, it is not something for us to determine but in all likelihood there won't be a duplication of service?

Mr. CRUICKSHANK: No, there will be one permit issued by the Board of Transport Commissioners.

Mr. HAMILTON *(York West)*: This is enabling legislation for you to go before that board?

Mr. CRUICKSHANK: To oppose Imperial Oil or in order to cooperate with Imperial Oil—it might be a better way to put it.

Mr. HAMILTON *(York West)*: There is a possibility that the two companies may get together in a case of that kind?

Mr. CRUICKSHANK: Yes, that is right.

The ACTING CHAIRMAN: Does the preamble carry?

Mr. NICKLE: What companies or groups other than Canadian Devonian are participants in S & M Pipelines Limited?

Mr. CRUICKSHANK: None as yet, but we anticipate that that would be offered to other producers in the area.

The ACTING CHAIRMAN: Shall the preamble carry?

Carried.

Mr. HABEL: I would like to express my view that the Socialist government in Saskatchewan should have taken the opportunity of building that pipe line.

The ACTING CHAIRMAN: Shall clause 1 carry?

Carried.

Shall clause 2 carry?

Carried.

Clause 3: "Capital." We have a similar letter from Mr. Arsenault as on the previous bill and a similar declaration except that this time there are in part one million shares of no par value and the total consideration for which the no par value stock can issue can not exceed $2 million for the common shares.

Motion for a similar recommendation is moved by Mr. Habel and seconded by Mr. Purdy.

The ACTING CHAIRMAN: Shall clause 3 carry?

Carried.

Shall clause 4 carry?

Carried.

Shall clause 5 carry?

Carried.

Clause 6:

6. The Company, subject to the provisions of any general legislation relating to pipe lines for the transmission and transportation of gas and oil and other liquid and gaseous hydrocarbons which is enacted by Parliament, may

(*a*) within Canada in the Northwest Territories and the provinces of British Columbia, Alberta, Saskatchewan and Manitoba and outside Canada construct, purchase, lease, or otherwise acquire, and hold, develop, operate, maintain, control, lease, mortgage, create liens upon, sell, convey or otherwise dispose of and turn to account any and all interprovincial, extra-provincial and/or international pipe lines, for the transmission and transportation of gas and oil and other liquid and gaseous hydrocarbons, including pumping stations, gathering systems, terminals, storage tanks or reservoirs and all works relative thereto for use in connection with the said pipe lines; and buy, or otherwise acquire, sell, distribute or otherwise dispose of gas and oil and other liquid and gaseous hydrocarbons; and own, lease, sell, operate and maintain aircraft and aerodromes for the purpose of its undertaking, together with the facilities required for the operation of such aircraft and aerodromes; and own, lease, operate and maintain interstation telephone, teletype and telegraph communication systems and, subject to the *Radio Act*, and any other Act relating to radio, own, lease, operate and maintain interstation radio communication facilities;

(*b*) purchase, hold, lease, sell, improve, exchange or otherwise deal in real property or any interest and rights therein legal or equitable or otherwise howsoever and deal with any portion of the lands and property so acquired, and may subdivide the same into building lots and generally lay the same out into lots, streets and building sites for residential purposes or otherwise and may construct streets thereon and necessary sewerage and drainage systems and build upon the same for residential purposes or otherwise and supply any buildings so erected, or other buildings erected upon such lands, with electric light, heat, gas, water

and other requisites, and lease or sell the same, upon such terms and subject to such conditions as appear requisite, either to its employees or to others; and

(c) exercise as ancillary and incidental to the purposes or objects set forth in this Act, the powers following, unless such powers or any of them are expressly excluded by this Act, namely, the powers set forth in paragraphs (*a*) to (*bb*) inclusive of subsection 1 of section 14 of the *Companies Act*.

The Acting CHAIRMAN: We are open for a motion of the same amendment as was passed on clause 6(a) on the previous bill. Mr. McIlraith will explain it.

Mr. D. A. MCILRAITH: If one of the hon. members would care to so move, the incorporators will consent to an amendment, and we suggest that that amendment be to clause 6(a) in the bill, line 23, page 3, after the words "said pipe line" the following words be inserted, "provided that the main pipe line or main pipe lines for the transmission of gas and gaseous hydrocarbons shall be located entirely within Canada"—the same amendment as before.

It is moved by Mr. Habel and seconded by Mr. Purdy.

Mr. NICKLE: Mr. Chairman, I am not going to voice the same objection but a different one. In this bill we have prohibited the construction of main pipe lines for natural gas or gaseous hydrocarbons across the international border but have left the door wide open for crude oil across the border. Perhaps someone on this committee, the sponsors of the bill, or some pipe line company could inform me why they have differentiated between gas and crude oil.

I find on checking the records for recent years of western Canada, the discovery rate to reserve, growth rate, etc., that we have been discovering crude oil at a rate of roughly six barrels of new reserve for every one barrel we have used, that this year because of increased demand for oil we will likely discover three barrels of oil for every one barrel we use. In other words, we are increasing our reserve three times as fast as we are using it.

For natural gas for the last three years we have been using only one cubic foot for every thirty cubic feet we have discovered; in other words, our gas reserves have been increasing at a rate five times greater than our discovery of crude oil. I know that our crude oil reserve at present which is about $2\frac{3}{4}$ billion barrels amounts to the equivalent of thirteen years for Canada. Our present gas reserve of 20 trillion cubic feet is equivalent to one hundred years supply based upon the present usage of natural and artificial gas in Canada; in other words, our gas reserves are actually eight times greater in terms of public supply than crude oil.

On the basis of that if we had pipe lines serving the presently available Canadian market, Vancouver to Montreal, plus all presently available markets in the northwestern states and middle western states for natural gas we should still with those pipe lines be with our natural gas reserve 10 cubic feet for every one cubic foot we were using.

Now, it seems to me that if we are going to deal with these two resources. oil and gas, on the basis of our discovery rate to consumption in Canada that we would have to exactly reverse our position on the two projects and permit the building of oil pipe lines across the border and leave the doors wide open to international transmission of national gas.

If there is anyone present who sponsors this bill or anyone else who would care to dispute this statement I have made or to present a counter-argument on it, I would like to hear it.

Mr. BYRNE: I do not think it is fair to ask the company to make that explanation. It is something we have imposed upon us in that parliament in its

wisdom, again, have insisted on this amendment. So I think someone who has taken a strong stand for the amendment should be called upon to explain it.

The Acting CHAIRMAN: Shall clause 6 as amended carry?

Carried.

Shall clause 7 carry?

Carried.

Shall clause 8 carry?

Carried.

Shall clause 9 carry?

Carried.

Shall clause 10 carry?

Carried.

Shall clause 11 carry?

Carried.

Shall the title carry?

Carried.

Shall the bill carry?

Carried.

Shall I report the bill as amended?

We shall now adjourn to the call of the chair.

HOUSE OF COMMONS

Second Session—Twenty-second Parliament

1955

STANDING COMMITTEE

ON

RAILWAYS, CANALS AND TELEGRAPH LINES

Chairman: H. B. McCULLOCH, ESQ.

MINUTES OF PROCEEDINGS AND EVIDENCE

No. 6

BILL No. 376

An Act to authorize Trans-Prairie Pipelines, Ltd. to construct, own and operate an extra-provincial pipe line

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MONDAY, MAY 30, 1955

WITNESSES:

Mr. J. M. Coyne, Barrister-at-Law, of Ottawa, and Mr. Don R. Brandt, President, Trans-Prairie Pipelines, Ltd., of Edmonton.

EDMOND CLOUTIER, C.M.G., O.A., D.S.P.
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1955

58673—1

STANDING COMMITTEE

ON

RAILWAYS, CANALS AND TELEGRAPH LINES

Chairman: H. B. McCulloch, Esq.,

and

Messrs.

Barnett
Batten
Bonnier
Boucher (*Chateauguay-Huntingdon-Laprairie*)
Buchanan
Byrne
Campbell
Carrick
Carter
Cauchon
Cavers
Clark
Decore
Deschatelets
Dupuis
Ellis
Follwell
Fulton
Gagnon
Gauthier (*Lac-Saint Jean*)
Goode
Gourd (*Chapleau*)
Green
Habel
Hahn
Hamilton (*Notre-Dame de-Grace*)
Hamilton (*York-West*)
Harrison
Healy
Herridge
Holowach
Hosking
Howe (*Wellington-Huron*)
James
Johnston (*Bow River*)
Kickham
Lafontaine
Langlois (*Gaspe*)
Lavigne
Leboe
McIvor
Meunier
Montgomery
Murphy (*Lambton West*)
Murphy (*Westmorland*)
Nesbitt
Nicholson
Nickle
Nixon
Nowlan
Purdy
Ross
Small
Stanton
Viau
Villeneuve
Vincent
Weselak

Eric H. Jones,
Clerk of the Committee.

ORDER OF REFERENCE

HOUSE OF COMMONS,
FRIDAY, May 24, 1955.

Ordered,—That the following Bill be referred to the said Committee:

Bill No. 376 (Letter U-12 of the Senate), intituled: "An Act to authorize Trans-Prairie Pipelines, Ltd., to construct, own and operate an extra-provincial pipe line".

Attest.

LEON J. RAYMOND,
Clerk of the House.

58673—1½

WEDNESDAY, June 1, 1955.

The Standing Committee on Railways, Canals and Telegraph Lines begs leave to present the following as its

ELEVENTH REPORT

Your Committee has considered Bill No. 376 (Letter U-12 of the Senate), intituled: "An Act to authorize Trans-Prairie Pipelines, Ltd. to construct, own and operate an extra-provincial pipe line", and finds that the said company is a provincial company; therefore, so as to enable the objects desired to be accomplished by the instrumentality of a company incorporated by a Special Act of Parliament of Canada, your Committee has agreed to report the said bill with amendments, namely:

Preamble

In line 1, after the words "Trans-Prairie Pipelines, Ltd." insert the following:

, a company incorporated under the laws of the province of Manitoba.

Clause 1

Delete Clause 1 and substitute the following clauses 1, 2, 3 and 4:

1. Don Raphael Brandt, oil executive, Jerry Stanley Starack, comptroller, William Stewart McGregor, oil executive, and Walter Ronald Wiebe, oil executive, all of the city of Edmonton, in the province of Alberta, Francis Leslie Croteau, geological engineer, of the city of Calgary, in the province of Alberta, and Donald John McDonald, investment dealer, and Robert George Brian Dickson, barrister, both of the city of Winnipeg, in the province of Manitoba, together with such persons as may become shareholders in the company, are incorporated under the name of Trans-Prairie Pipelines of Canada, Ltd., hereinafter called "the Company".

2. The persons named in section 1 of this Act shall be the first directors of the Company.

3. (1) The capital stock of the Company shall consist of

(*a*) five hundred thousand common shares without nominal or par value, and

(*b*) one hundred thousand preferred shares of the par value of five dollars per share.

(2) The Company may by by-law from time to time

(*a*) provide for the issue of the preferred shares in one or more series with such preference, privileges or other special rights, restrictions, conditions or limitations attaching to each series whether with regard to dividends, capital or otherwise as in the by-law may be declared, and

(*b*) subdivide or consolidate into shares of smaller or larger par value and reclassify into another or different series any unissued preferred shares and amend, vary, alter or change any of the preferences, privileges, rights, restrictions, conditions or limitations which may have been attached to any unissued preferred shares:

Provided that no such by-law shall be valid or acted upon until it has been sanctioned by at least two-thirds of the votes cast at a special general meeting of the common shareholders of the Company duly called for considering the same and until a certified copy of such by-law has been filed with the Secretary of State.

(3) Except to the extent that such rights may be provided by any by-law enacted under subsection (2), the holders of preferred shares of any series shall not as such have the right to vote or to receive notice of or to attend any meeting of the common shareholders of the Company, but no change shall be made affecting the rights or privileges of the holders of issued and outstanding preferred shares of any series except by by-law duly enacted by the directors and sanctioned by the common shareholders in the manner set forth in subsection (2), nor shall such by-law have any force or effect unless or until it has been sanctioned by at least two-thirds of the votes cast at a special general meeting of the holders of the issued and outstanding preferred shares of such series duly called for considering the same, and a certified copy thereof has been filed with the Secretary of State.

(4) Ownership of preferred shares shall not qualify any person to be a director of the Company.

4. (1) The head office of the Company shall be in the city of Winnipeg in the province of Manitoba, which head office shall be the domicile of the Company in Canada; and the Company may establish such other offices and agencies elsewhere within or without Canada as it deems expedient.

(2) The Company may, by by-law, change the place where the head office of the Company is to be situate.

(3) No by-law for the said purpose shall be valid or acted upon until it is sanctioned by at least two-thirds of the votes cast at a special general meeting of the shareholders duly called for considering the by-law and a copy of the by-law certified under the seal of the Company has been filed with the Secretary of State and published in the *Canada Gazette*.

Clause 2

Renumber Clause 2 as Clause 5.

New Clauses

Immediately following new Clause 5, add the following as Clauses 6, 7, 8, 9, 10 and 11:

6. The Company, subject to the provisions of any general legislation relating to pipe lines for the transmission and transportation of gas and oil and other liquid and gaseous hydrocarbons which is enacted by Parliament, may

(*a*) within Canada in the Northwest Territories and the provinces of British Columbia, Alberta, Saskatchewan and Manitoba and outside Canada construct, purchase, lease, or otherwise acquire, and hold, develop, operate, maintain, control, lease, mortgage, create liens upon, sell, convey or otherwise dispose of and turn to account any and all interprovincial, extra-provincial and/or international pipe lines, for the transmission and transportation of gas and oil and other liquid and gaseous hydrocarbons, including pumping stations, gathering systems, terminals, storage tanks or reservoirs and all works relative thereto for use in connection with the said pipe lines, provided that the main pipe line or lines for the transmission and

transportation of gas and other gaseous hydrocarbons shall be located entirely within Canada; and buy, or otherwise acquire, sell, distribute or otherwise dispose of gas and oil and other liquid and gaseous hydrocarbons; and own, lease, sell, operate and maintain aircraft and aerodromes for the purpose of its undertaking, together with the facilities required for the operation of such aircraft and aerodromes; and own, lease, operate and maintain interstation telephone, teletype and telegraph communication systems and, subject to the *Radio Act*, and any other Act relating to radio, own, lease, operate and maintain interstation radio communication facilities;

(*b*) purchase, hold, lease, sell, improve, exchange or otherwise deal in real property or any interest and rights therein legal or equitable or otherwise howsoever and deal with any portion of the lands and property so acquired, and may subdivide the same into building lots and generally lay the same out into lots, streets and building sites for residential purposes or otherwise and may construct streets thereon and necessary sewerage and drainage systems and build upon the same for residential purposes or otherwise and supply any buildings so erected, or other buildings erected upon such lands, with electric light, heat, gas, water and other requisites, and lease or sell the same, upon such terms and subject to such conditions as appear requisite, either to its employees or to others; and

(*c*) exercise as ancillary and incidental to the purposes or objects set forth in this Act, the powers following, unless such powers or any of them are expressly excluded by this Act, namely, the powers set forth in paragraphs (*a*) to (*bb*) inclusive of subsection 1 of section 14 of the *Companies Act*.

7. The provisions of subsection (7), (8), (9), (10) and (11) of section 12 and sections 39, 40, 62, 63, 64, 65 and 91 of Part I of the *Companies Act*, apply to the Company: Provided that wherever in the said subsections (7) and (11) of section 12, the words "letters patent" or "supplementary letters patent" appear, the words "Special Act" shall be substituted therefor.

8. Sections 162, 167, 184, 190, 193 and 194 of Part III of the *Companies Act*, shall not be incorporated with this Act.

9. (1) The Company shall not make any loan to any of its shareholders or directors or give, whether directly or indirectly, and whether by means of a loan, guarantee, the provision of security or otherwise, any financial assistance for the purpose of, or in connection with, a purchase made or to be made by any person of any shares in the Company: Provided that nothing in this section shall be taken to prohibit:

(*a*) the making by the Company of loans to persons other than directors, bona fide in the employment of the Company with a view to enabling or assisting those persons to purchase or erect dwelling houses for their own occupation; and the Company may take, from such employees, mortgages or other securities for the repayment of such loans;

(*b*) the provision by the Company, in accordance with any scheme for the time being in force, of money for the purchase by trustees of fully paid shares in the capital stock of the Company, to be held by, or for the benefit of, employees of the Company, including any director holding a salaried employment or office in the Company; or

(c) the making by the Company of loans to persons, other than directors, bona fide in the employment of the Company, with a view to enabling those persons to purchase fully paid shares in the capital stock of the Company, to be held by themselves by way of beneficial ownership.

(2) The powers under paragraphs (b) and (c) of sub-section one of this section shall be exercised by by-law only.

(3) If any loan is made by the Company in violation of the foregoing provisions, all directors and officers of the Company making the same or assenting thereto, shall until repayment of said loan, be jointly and severally liable to the Company and to its creditors for the debts of the Company then existing or thereafter contracted: Provided that such liability shall be limited to the amount of said loan with interest.

10. The redemption or purchase for cancellation of any fully paid preferred shares created by this Act or by by-law pursuant to the provisions of this Act, in accordance with any right of redemption or purchase for cancellation reserved in favour of the Company in the provision attaching to such preferred shares, or the redemption or purchase for cancellation of any fully paid shares of any class, not being common or ordinary shares, and in respect of which the by-laws provide for such right of redemption or purchase, in accordance with the provisions of such by-laws, shall not be deemed to be a reduction of the paid-up capital of the Company, if such redemption or purchase for cancellation is made out of the proceeds of an issue of shares made for the purpose of such redemption or purchase for cancellation, or if,

(a) no cumulative dividends, on the preferred shares or shares of the class in respect of which such right of redemption or purchase exists and which are so redeemed or purchased for cancellation, are in arrears; and

(b) if such redemption of purchase for cancellation of such fully paid shares is made without impairment of the Company's capital by payments out of the ascertained net profits of the Company which have been set aside by the directors for the purposes of such redemption or of such purchase for cancellation, and if such net profits are then available for such application as liquid assets of the Company, as shown by the last balance sheet of the Company, certified by the Company's auditors, and being made up to a date not more than ninety days prior to such redemption or purchase for cancellation, and after giving effect to such redemption or purchase for cancellation;

and subject as aforesaid, any such shares may be redeemed or purchased for cancellation by the Company on such terms and in such manner as are set forth in the provisions attaching to such shares, and the surplus resulting from such redemption or purchase for cancellation shall be designated as a capital surplus, which shall not be reduced or distributed by the Company except as provided by a subsequent Act of the Parliament of Canada.

11. The Company may pay a commission to any person in consideration of his subscribing or agreeing to subscribe, whether absolutely or conditionally, for any shares, bonds, debentures, debenture stock or other securties of the Company, or procuring or agreeing to procure subscriptions, whether absolute or conditional, for any shares, bonds,

debentures, debenture stock or other securities of the Company: Provided, however, that as regards shares, such commission shall not exceed ten per centum of the amount realized therefrom.

Your Committee draws to the attention of the House the fact that the amendments made were not contemplated either in the petition or the notice, but were made by your Committee for reasons of public interest.

In view of the material amendments to the Bill your Committee also recommends that the Title of the Bill be altered to read "An Act to incorporate Trans-Prairie Pipelines of Canada, Ltd."

A copy of the evidence adduced in respect of Bill No. 376 is appended.

All of which is respectfully submitted.

H. B. McCULLOCH,
Chairman.

WEDNESDAY, June 1st, 1955.

The Standing Committee on Railways, Canada and Telegraph Lines begs leave to present the following as its

TWELFTH REPORT

Bill 376 (Letter U-12 of the Senate), intituled: "An Act to authorize Trans-Prairie Pipelines, Ltd., to construct, own and operate an extra-provincial pipe line" reported by the Committee this day in its Eleventh Report, was amended to provide for capital stock consisting, in part, of five hundred thousand common shares without nominal or par value.

Your Committee recommends that for taxing purposes under Standing Order 93 (3), the aggregate value of such shares without nominal or par value be fixed at $1,500,000.

All of which is respectfully submitted.

H. B. McCULLOCH,
Chairman.

MINUTES OF PROCEEDINGS

MONDAY, May 30, 1955

The Standing Committe on Railways, Canals and Telegraph Lines met at 10.30 o'clock a.m. this day. The Chairman, Mr. H. B. McCulloch, presided.

Members present: Messrs. Barnett, Batten, Campbell, Carrick, Cavers, Goode, Gourd (*Chapleau*), Green, Hahn, Hamilton (*Notre-Dame-de-Grace*), Herridge, Holowach, Johnston (*Bow River*), Lafontaine, Leboe, McCulloch (*Pictou*), Murphy (*Westmorland*), Nicholson and Purdy.

In atendance,—Mr. G. D. Weaver, M.P., Sponsor of Bill No. 376; Mr. J. M. Coyne, Counsel on behalf of Mr. D. G. Blair, Parliamentary Agent; Mr. Don R. Brandt, President, Trans-Prairie Pipelines, Ltd., of Edmonton; and Dr. Maurice Ollivier, Parliamentary Counsel.

The Committee proceeded to consider Bill No. 376 (Letter U-12 of the Senate) intituled: "An Act to authorize Trans-Prairie Pipelines, Ltd. to construct, own and operate an extra-provincial pipe line".

On motion of Mr. Barnett,

Resolved, that the Committee print 750 copies in English and 200 copies in French of its Minutes of Proceedings and Evidence in respect of Bill No. 376.

On the preamble Mr. Coyne was called; he explained the purpose of the bill and stated that the promoters now wish to change the form of the bill from that which had been passed by the Senate, so as to meet the wish of Parliament that pipe line companies seeking extra-provincial pipe line rights should have a federal charter. He was questioned.

Mr. Weaver further explained the problem facing the promoters in regard to the bill in asking for authority of Parliament to extend their operations beyond Manitoba, under the laws of which province they are presently incorporated. Appreciating that their wish might best be achieved by their applying for incorporation by Parliament, the promoters were now suggesting amendments to the bill to this end.

(*The suggested amendments were distributed to the Committee.*)

Mr. Brandt was called; he explained the operations of the campany since its incorporation and its plans for future operations in the event that the bill and the amendments thereto now suggested were approved by Parliament. He was questioned thereon and retired.

The Committee considered the bill, clause by clause, Mr. Coyne explaining the suggested amendments to each clause.

It was agreed that the preamble be amended by inserting after the words "Trans-Prairie Pipelines, Ltd." in line 1, the following:

a company incorporated under the laws of the Province of Manitoba,

The preamble was adopted as amended.

On Clause 1

It was agreed to amend Clause 1 by deleting that clause and substituting new clauses 1, 2, 3 and 4, as follows:

1. Don Raphael Brandt, oil executive, Jerry Stanley Starck, comptroller, William Stewart McGregor, oil executive, and Walter Ronald Wiebe, oil executive, all of the city of Edmonton, in the province of Alberta, Francis Leslie Croteau, geological engineer, of the city of Calgary, in the province of Alberta, and Donald John McDonald, investment dealer, and Robert George Brian Dickson, barrister, both of the city of Winnipeg, in the province of Manitoba, together with such persons as may become shareholders in the company, are incorporated under the name of Trans-Prairie Pipelines of Canada, Ltd., hereinafter called "the Company".

2. The persons named in section 1 of this Act shall be the first directors of the Company.

3. (1) The capital stock of the Company shall consist of

(*a*) five hundred thousand common shares without nominal or par value, and

(*b*) one hundred thousand preferred shares of the par value of five dollars per share.

(2) The Company may by by-law from time to time

(*a*) provide for the issue of the preferred shares in one or more series with such preferences, privileges or other special rights, restrictions, conditions or limitations attaching to each series whether with regard to dividends, capital or otherwise as in the by-law may be declared, and

(*b*) subdivide or consolidate into shares of smaller or larger par value and reclassify into another or different series any unissued preferred shares and amend, vary, alter or change any of the preferences, privileges, rights, restrictions, conditions or limitations which may have been attached to any unissued preferred shares:

Provided that no such by-law shall be valid or acted upon until it has been sanctioned by at least two-thirds of the votes cast at a special general meeting of the common shareholders of the Company duly called for considering the same and until a certified copy of such by-law has been filed with the Secretary of State.

(3) Except to the extent that such rights may be provided by any by-law enacted under sub-section (2), the holders of preferred shares of any series shall not as such have the right to vote or to receive notice of or to attend any meeting of the common shareholders of the Company, but no change shall be made affecting the rights or privileges of the holders of issued and outstanding preferred shares of any series except by by-law duly enacted by the directors and sanctioned by the common shareholders in the manner set forth in sub-section (2), nor shall such by-law have any force or effect unless or until it has been sanctioned by at least two-thirds of the votes cast at a special general meeting of the holders of the issued and outstanding preferred shares of such series duly called for considering the same, and a certified copy thereof has been filed with the Secretary of State.

(4) Ownership of preferred shares shall not qualify any person to be a director of the Company.

4. (1) The head office of the Company shall be in the city of Winnipeg in the province of Manitoba, which head office shall be the domicile of the Company in Canada; and the Company may establish such other offices and agencies elsewhere within or without Canada as it deems expedient.

(2) The Company may, by by-law, change the place where the head office of the Company is to be situate.

(3) No by-law for the said purpose shall be valid or acted upon until it is sanctioned by at least two-thirds of the votes cast at a special general meeting of the shareholders duly called for considering the by-law and a copy of the by-law certified under the seal of the Company has been filed with the Secretary of State and published in the *Canada Gazette*.

On New Clause 3

A declaration by Don R. Brandt, on behalf of the promoters, was submitted by Mr. Coyne to the effect that the portion of the capital stock, as set out in new Clause 3, consisting of five hundred thousand common shares without nominal or par value is to be issued for a consideration not to exceed in the aggregate $1,500,000.

On motion of Mr. Purdy,

Resolved,—That for the purpose of levying a charge on the portion of the capital stock consisting of five hundred thousand shares without nominal or par value under the provisions of Standing Order 93 (3), the Committee recommend that the said charge be levied on an amount of $1,500,000.

On Clause 2

It was agreed to amend Clause 2 by renumbering it as Clause 5.

New Clauses

It was agreed to add immediately following new Clause 5 the following as Clauses 6, 7, 8, 9, 10 and 11:

6. The Company, subject to the provisions of any general legislation relating to pipe lines for the transmission and transportation of gas and oil and other liquid and gaseous hydrocarbons which is enacted by Parliament, may

(*a*) within Canada in the Northwest Territories and the provinces of British Columbia, Alberta, Saskatchewan and Manitoba and outside Canada construct, purchase, lease, or otherwise acquire, and hold, develop, operate, maintain, control, lease, mortgage, create liens upon, sell, convey or otherwise dispose of and turn to account any and all interprovincial, extra-provincial and/or international pipe lines, for the transmission and transportation of gas and oil and other liquid and gaseous hydrocarbons, including pumping stations, gathering systems, terminals, storage tanks or reservoirs and all works relative thereto for use in connection with the said pipe lines, provided that the main pipe line or lines for the transmission and transportation of gas and other gaseous hydrocarbons shall be located entirely within Canada; and buy, or otherwise acquire, sell, distribute or otherwise dispose of gas and oil and other liquid and gaseous hydrocarbons; and own, lease, sell, operate and maintain aircraft and aerodromes for the purpose of its undertaking, together with the facilities required for the operation of such aircraft and aerodomes; and own, lease, operate and maintain interstation telephone, teletype and telegraph communication systems and, subject to the *Radio Act*, and any other Act relating to radio, own, lease, operate and maintain interstation radio communication facilities;

(b) purchase, hold, lease, sell, improve, exchange or otherwise deal in real property or any interest and rights therein legal or equitable or otherwise howsoever and deal with any portion of the lands and property so acquired, and may subdivide the same into building lots and generally lay the same out into lots, streets and building sites for residential purposes or otherwise and may construct streets thereon and necessary sewerage and drainage systems and build upon the same for residential purposes or otherwise and supply any buildings so erected, or other buildings erected upon such lands, with electric light, heat, gas, water and other requisites, and lease or sell the same, upon such terms and subject to such conditions as appear requisite, either to its employees or to others; and

(c) exercise as ancillary and incidental to the purposes or objects set forth in this Act, the powers following, unless such powers or any of them are expressly excluded by this Act, namely, the powers set forth in paragraphs (*a*) to (*bb*) inclusive of subsection 1 of section 14 of the *Companies Act*.

7. The provisions of subsections (7), (8), (9), (10) and (11) of section 12 and sections 39, 40, 62, 63, 64, 65 and 91 of Part I of the *Companies Act*, apply to the Company: Provided that wherever in the said subsections (7) and (11) of section 12, the words "letters patent" or "supplementary letters patent" appear, the words "Special Act" shall be substituted therefor.

8. Sections 162, 167, 184, 190, 193 and 194 of Part III of the *Companies Act*, shall not be incorporated with this Act.

9. (1) The Company shall not make any loan to any of its shareholders or directors or give, whether directly or indirectly, and whether by means of a loan, guarantee, the provision of security or otherwise, any financial assistance for the purpose of, or in connection with, a purchase made or to be made by any person of any shares in the Company: Provided that nothing in this section shall be taken to prohibit:

(a) the making by the Company of loans to persons other than directors, *bona fide* in the employment of the Company with a view to enabling or assisting those persons to purchase or erect dwelling houses for their own occupation; and the Company may take, from such employees, mortgages or other securities for the repayment of such loans;

(b) the provision by the Company, in accordance with any scheme for the time being in force, of money for the purchase by trustees of fully paid shares in the capital stock of the Company, to be held by, or for the benefit of, employees of the Company, including any director holding a salaried employment or office in the Company; or

(c) the making by the Company of loans to persons, other than directors, bona fide in the employment of the Company, with a view to enabling those persons to purchase fully paid shares in the capital stock of the Company, to be held by themselves by way of beneficial ownership.

(2) The powers under paragraphs (*b*) and (c) of sub-section one of this section shall be exercised by by-law only.

(3) If any loan is made by the Company in violation of the foregoing provisions, all directors and officers of the Company making the same or assenting thereto, shall until repayment of said loan, be jointly and severally liable to the Company and to its creditors for the debts of the Company then existing or thereafter contracted: Provided that such liability shall be limited to the amount of said loan with interest.

10. The redemption or purchase for cancellation of any fully paid preferred shares created by this Act or by-law pursuant to the provisions of this Act, in accordance with any right of redemption or purchase for cancellation reserved in favour of the Company in the provision attaching to such preferred shares, or the redemption or purchase for cancellation of any fully paid shares of any class, not being common or ordinary shares, and in respect of which the by-laws provide for such right of redemption or purchase, in accordance with the provisions of such by-laws, shall not be deemed to be a reduction of the paid-up capital of the Company, if such redemption or purchase for cancellation is made out of the proceeds of an issue of shares made for the purpose of such redemption or purchase for cancellation, or if,

(*a*) no cumulative dividends, on the preferred shares or shares of the class in respect of which such right of redemption or purchase exists and which are so redeemed or purchased for cancellation, are in arrears; and

(*b*) if such redemption or purchase for cancellation of such fully paid shares is made without impairment of the Company's capital by payments out of the ascertained net profits of the Company which have been set aside by the directors for the purposes of such redemption or of such purchase for cancellation, and if such net profits are then available for such application as liquid assets of the Company, as shown by the last balance sheet of the Company, certified by the Company's auditors, and being made up to a date not more than ninety days prior to such redemption or purchase for cancellation, and after giving effect to such redemption or purchase for cancellation;

and subject as aforesaid, any such shares may be redeemed or purchased for cancellation by the Company on such terms and in such manner as are set forth in the provisions attaching to such shares, and the surplus resulting from such redemption or purchase for cancellation shall be designated as a capital surplus, which shall not be reduced or distributed by the Company except as provided by a subsequent Act of the Parliament of Canada.

11. The Company may pay a commission to any person in consideration of his subscribing or agreeing to subscribe, whether absolutely or conditionally, for any shares, bonds, debentures, debenture stock or other securities of the Company, or procuring or agreeing to procure subscriptions, whether absolute or conditional, for any shares, bonds, debentures, debenture stock or other securities of the Company: Provided, however, that as regards shares, such commission shall not exceed ten per centum of the amount realized therefrom.

The bill was carried as amended.

It was agreed to draw to the atention of the House the fact that the amendments made to Bill No. 376 were not contemplated either in the petition or the notice but were made for reasons of public interest.

It was agreed that, in view of the material amendments to Bill No. 376, the Committee recommend that the title of the bill be altered to read "An Act to incorporate Trans-Canada Pipelines of Canada, Ltd."

Ordered,—That the Chairman report to the house the said bill as amended and the recommendation that the title be altered; and also request concurrence of the House in the Committee's recommendation in respect of capital stock charges.

At 11.45 o'clock a.m., the Committee adjourned to the call of the Chair.

Eric H. Jones,
Clerk of the Committee.

EVIDENCE

MAY 30, 1955.

10.30 a.m.

The CHAIRMAN: Gentlemen, we have a quorum. We have before us this morning another pipe line bill, No. 376, an Act to authorize Trans-Prairie Pipelines, Ltd., to construct, own and operate an extra-provincial pipe line. This bill originated in the Senate. Mr. Weaver is the sponsor and we have in attendance Mr. J. M. Coyne, counsel for Mr. D. G. Blair who is the parliamentary agent, and Mr. Don R. Brandt of Edmonton who is the president of the Trans-Prairie Pipelines, Ltd. Before calling the sponsor may I have a motion to authorize the printing of the proceedings concerning this bill in the usual quantities? The motion is that the committee print 750 copies in English and 200 copies in French of its minutes, proceedings and evidence with respect to Bill 376.

Mr. Barnett has moved this and it was seconded by Mr. Murphy. Are you all in favour of printing that number of copies of the evidence?

Some Hon. MEMBERS: Agreed.

The CHAIRMAN: I now call the preamble. Would Mr. Weaver explain the bill and introduce the parliamentary agents?

Mr. J. M. COYNE (*Counsel for Mr. D. G. Blair*): Mr. Weaver appears to have left for a few moments, Mr. Chairman.

The CHAIRMAN: Then we shall call on Mr. Coyne.

Mr. COYNE: Mr. Chairman and honourable members, we have with us today Mr. Don R. Brandt of Edmonton, the president of Trans-Prairie Pipelines, Ltd., who will be able to explain in outline the plans which this company has. In view of the fact that there has been considerable discussion as to the form of this bill, and also due to the fact that we have prepared amendments which we are proposing to put before the committee to meet the various objections and comments that have been raised, I thought it might be of interest and perhaps of some assistance if I explained very briefly why the bill was first presented in the form in which it is before the committee today.

The reason is mainly that, as hon. members are aware, all the groups that have come before parliament previously, with the possible exception of the Niagara Gas Transmission Limited, have come with really two different purposes in mind. They have required authority to construct extra-provincial pipe lines and have also required corporate charters to give them vehicles which would build and operate their pipe lines. The company which I am representing is the first one which has actually been in the business of operating a pipe line. They have a charter, albeit a provincial one, and they are in fact today operating a pipe line in the province of Manitoba which gathers up most of the oil production in that province and delivers it to the Interprovincial Pipeline for transmission farther east. The terminal of their line is eight miles from the Saskatchewan border, and as hon. members will be aware there have been important discoveries of oil across the border in Saskatchewan. The purpose of this company is to receive authority to construct an extension of their line across the border into Saskatchewan so that they can serve the fields that are being developed there.

The company and their legal advisers, after examining the pipe lines legislation and also all the pipe line bills that have been before parliament previously, including the Niagara Gas Transmission bill which was the last one passed prior to this session, came to the conclusion that in the case of a company already in existence this was the proper form in which to proceed; and this bill went to the Senate on that basis and was passed, and, of course, has come to this House. However, I am instructed to advise the committee, as Mr. Weaver mentioned in the House, that the company is perfectly willing to suggest amendments which would turn this bill into the same sort of bill as the others which have come before. We have in fact prepared amendments, which I understand the clerk of the committee will be distributing, which would have that effect.

Mr. Chairman, I do not know whether you want to go into that first or whether you would like to hear briefly from Mr. Brandt as to the actual plans of this company.

The CHAIRMAN: I think we would like to hear from Mr. Weaver first. I see he has now returned.

Mr. WEAVER: Mr. Chairman and gentlemen. When I left the room we did not have a quorum, and I was endeavouring to ascertain that we had enough here; when I returned you had started.

I think Mr. Coyne gave you an accurate outline of what was in mind when the bill was first presented. As he pointed out, this is the first time that a company actually engaged in the business of collecting oil has had occasion to come down for permission to cross an interprovincial boundary and it was quite the natural procedure to present the request in this form. However, that is not the point. The point is that parliament is interested that all of the pipe line bills go through in the same form, and means have been explored whereby this bill as presented could be changed to go through in the form in which the other bills have gone through. As far as crossing interprovincial boundaries is concerned, you will remember that we have had the same problems arising along the Saskatchewan-Manitoba border before. When provincial boundaries were laid down they did not separate oil fields or mines. The border runs right through the Flin Flon mine and it has been necessary in the past to have declared that that particular mineral development works for the good of Canada so that federal labour laws can apply there. Here is a case where when the fields were first discovered they were discovered in the province of Manitoba, and as they have expanded and circulated out they have crossed the border. It is perfectly natural that the company that has been busy collecting this oil should want to extend its line. This is just a measure of the speed with which oil discoveries are being made in western Canada now. It is just a little over a year ago that these lines were constructed and there was no thought at that time that it would be necessary to extend that line across the border because there were no fields close to it at that time. There is no point in my delaying the committee any longer, and I think you would rather hear from Mr. Brandt at this time.

The CHAIRMAN: Mr. Brandt.

Mr. DON R. BRANDT (*President, Trans-Prairie Pipelines, Ltd.*): Mr. Chairman and honourable members. The Trans-Prairie Pipelines, Ltd. was organized as a Manitoba company on September 1st, 1954. At that time we were handling oil from the Daly field in Manitoba which was then the main producer of oil in Manitoba. We were handling then about 2,500 barrels of oil a day. We are now handling about 10,000 barrels of oil a day. The incident of discovery of oil in Manitoba and in southeastern Saskatchewan is extremely good. The company which we originally foresaw was a Manitoba company, but the discovery of Alida, Frobisher and Midale has changed our thinking and

I believe has changed the thinking of all the major oil companies in the area. It is with a great deal of pleasure that we present our case here and ask for this bill, because Canada, and western Canada in particular, is growing so rapidly in oil that every one of us should be proud of it. We are proud of our company and we hope that we can serve producers efficiently in Saskatchewan as well as in Manitoba. In the operation of our pipe line we feel, with the experience we have in Manitoba, that any oil from Saskatchewan will have to go back into Cromer for efficient handling, and we think we can help with the general oil picture in the area. If there are any questions that I could answer for you, I would be glad to do so at this time, or at any time the chairman or the members suggest.

Mr. HERRIDGE: Mr. Chairman, could the witness just describe to the committee the operations presently being carried on by the company?

Mr. BRANDT: Our company is an agent and is acting as a carrier of oil only. We are acting as an agent for Imperial who are purchasing the oil. We gather the oil for them at the field, transmit it through our pipe lines to the Interprovincial at Cromer, Manitoba and from thence it goes to the markets east.

Mr. HERRIDGE: How many miles?

Mr. BRANDT: We are now operating 27 miles of main line and 33 miles of gathering system.

Mr. CAMPBELL: Would this company interfere with the operations of the S & M Pipelines whose bill we passed last week?

Mr. BRANDT: I think we are both trying to construct the same pipe line. I think S & M Pipelines will want to construct the pipe line we are proposing to construct. We are an independent company, and we would like to construct and operate it ourselves. I believe that the Board of Transport Commissioners will grant a construction permit to the person that they so choose after a hearing on the merits of the various pipeline companies who make application to do the construction.

Mr. CAMPBELL: This is covering the same area?

Mr. BRANDT: Yes sir.

Mr. NICHOLSON: You have already constructed how many miles altogether?

Mr. BRANDT: We have 33 miles of gathering system and 27 miles of main line. We are handling now 10,000 barrels of oil a day, and I think by the end of 1956 we will be handling about 20,000 barrels a day in Manitoba.

Mr. MURPHY (*Westmorland*): I have a question which I should like to ask and perhaps you or Mr. Coyne could answer it. This bill would authorize the provincial company to operate an extra-provincial pipe line. Now, is it the intention by the amendments, rather than to give the power to a provincial company to operate an extra-provincial pipe line, to incorporate a dominion company, and is it the intention to operate your company now as a dominion company and to surrender the charter of the provincial company?

Mr. BRANDT: That has not been determined at this time, but I believe that we would have the present company as a subsidiary of the dominion company if it were formed.

Mr. COYNE: I think I might perhaps amplify that answer. The effect of the proposed amendments which the clerk is now circulating is really to change this bill into a bill incorporating a dominion company by special Act. Just precisely what happens to the existing provincial company I do not know and we will have to determine what the relationship will be, but the effect of these suggested amendments will be to incorporate a dominion company in the same way as the S & M Pipelines bill and the Westspur bill have incorporated dominion companies, and that company will be the one having authority

to apply to the Board of Transport Commissioners for permission to build an extra-provincial line.

Mr. MURPHY (*Westmorland*): This new company, the dominion company, will take over the operation of this pipe line and the construction of this pipe line that the provincial company is now doing, and this company, the Trans-Prairie Pipelines Ltd., is in fact doing what this other company proposes to do; is that correct? You are already in the field. You have already constructed a pipe line and you are carrying out the work that this S & M Pipelines company proposes, so far as you know, to do?

Mr. COYNE: That is correct. I would think that both S & M and ourselves will have applications before the Board of Transport Commissioners and the board, within its jurisdiction, of course, will decide.

Mr. MURPHY (*Westmorland*): But your company is already in the field?

Mr. COYNE: We are in the field in Manitoba. We are operating a pipe line in Manitoba.

Mr. PURDY: May I ask the parliamentary agent about the distribution of the 140,000 shares? Are they mostly held by some of the oil companies?

Mr. COYNE: Mr. Brandt could answer that, I think.

Mr. BRANDT: Our original issue was underwritten by Osler Hammond and Nanton of Winnipeg. The common shares were offered to each of the producers in the areas, and likewise with the preferred, and we have approximately 900 shareholders.

Mr. HERRIDGE: Would you not say, Mr. Brandt, that in effect the objections taken by members of this committee in the House, and the subsequent suggestion that there should be some modifications or changes leading to the acceptance of the amendments proposed, is to the advantage of your company?

Mr. BRANDT: I think that the position will be improved under these new amendments. I can certainly see the reason for the questions which were raised, and I think it is fortunate that it is going to be presented in this manner in the future.

Mr. NICHOLSON: I wonder if you would be good enough to tell us where on the map your present lines are constructed here?

Mr. BRANDT: The field in the upper right-hand corner is the North Virden Roselea field, a field in the area marked T-11, and then in the area marked T-10 is what is termed the Virden Roselea field. Our line gathers oil from those two fields, and the main line runs through to the Daly field. The heavier line is the proposed extension. Cromer is at the point where the heavy line begins. The Interprovincial Pipe Line now has 82,000 barrels capacity in their storage facilities and they store the crude from Virden and Daly. When the proper grade of crude coming from Alberta and Saskatchewan is going through the line, they inject the crude which we gather at this point. The same thing will happen when we gather oil in Saskatchewan; it will be shipped to Cromer and stored there until such time as the proper gravity crude, with the sulphur content and so forth, is available so that it meets the requirements of the refinery at the other end. I think that possibly all you gentlemen know that Interprovincial accepts oil only on tender, and it has to have a destination in the east before they will accept it for shipment.

Mr. HAHN: Where did you say that your main pipe line runs, between which points?

Mr. BRANDT: I can point it out to you if you like (*demonstrating on the map*). We are also at the present time in Manitoba considering, or drawing the blueprints, as a matter of fact, to extend our facilities to a little place called

Woodnorth, which is just a little southeast of Cromer. You can see it on your map. Now that is a discovery which is approximately eight months old.

Mr. HAMILTON (*Notre Dame de Grace*): Mr. Chairman, the witness, a couple of times, has referred to his main line and his branch lines. I wonder if he would like to define for us what he means by his main line. In other words, what would be his definition of main line as against branch line?

Mr. BRANDT: The main line in the case of the present line which we are operating is a 6⅝ inch line, and our gathering or branch lines are 3½ inch and 4½ inch.

Mr. HAMILTON (*Notre Dame de Grace*): In other words your definition of "main line" is the line of largest diameter?

Mr. BRANDT: Yes.

Mr. HAMILTON (*Notre Dame de Grace*): Thank you.

Mr. BRANDT: Let us say that our main line is running along a road, and there are on both sides of the road tank batteries where our oil is stored. We will gather it from both sides of the road through branch lines and take it down to Cromer, through the main line.

Mr. NICHOLSON: What is the maximum capacity of this main line?

Mr. BRANDT: Our present line?

Mr. NICHOLSON: Yes.

Mr. BRANDT: About 20,000 barrels a day.

Mr. NICHOLSON: And you are running about 10,000?

Mr. BRANDT: Yes, sir. During this year we hope that the minimum production in Manitoba will be about 4 million barrels.

Mr. PURDY: Is there the same distribution of your common shares as there is of your preferred shares?

Mr. BRANDT: Yes, sir. When the issue was originally sold each five preferred shares were bonused with one common share.

Mr. JOHNSTON (*Bow River*): Whereabouts does this S and M Company operate in that field?

Mr. BRANDT: Actually S & M Pipelines is not operating at all—I do not believe so. I think they are making application now for their charter. The directors of the company have farmed out to the Gulf Oil Company the lands in Frobisher which Gulf and Canadian Devonian are currently developing and building.

Mr. JOHNSTON (*Bow River*): But they have not any gathering system at all at the moment?

Mr. BRANDT: No, I do not think they even have a charter until it goes through in their bill.

Mr. NICHOLSON: What has been the difference in the cost of transportation since you came into operation last year in the field you now serve? How was this transported?

Mr. BRANDT: It was being transported previously by tank truck.

Mr. NICHOLSON: What has been the difference in the cost?

Mr. BRANDT: That of course would be an answer to be given by the producer, but I would say on the average we are about 5 cents a barrel cheaper in transportation, plus the fact that we do not have the losses. You see, we buy the oil in the field at the tank battery. A tank truck will deliver it down to Cromer and then if there is a loss in the interim, the producer has to stand it, unless he can collect it from the tanker, which is a pretty hard thing to do. We do not have the field shut down because of road bans. That has been a

terrific problem in Manitoba and in all new oil development areas roads have been a very, very serious problem. In Manitoba we had the road ban on for, I think, about five and a half weeks where no trucks at all could haul oil, so consequently you would just shut your field in and that was all.

Mr. CAMPBELL: Besides the damage that they do to the roads when they are on them.

Mr. BRANDT: It is a problem that each municipality has to face.

Mr. CAMPBELL: I have seen it in other fields, where you just cannot keep up the roads.

Mr. BRANDT: It is impossible, and of course that makes everybody unhappy when they cannot sell their oil.

Mr. NICHOLSON: What is the distance of this proposed extension?

Mr. BRANDT: Approximately 110 miles. There again I believe that from time to time you will find they will cross the Saskatchewan-Manitoba border to join this main line because of fields that are not even shown on that map. Within the next ten or twenty years there are going to be a lot of new fields in Manitoba and Saskatchewan.

The CHAIRMAN: Are there any further questions, or shall we take up the first amendment? Perhaps the clerk will read it.

The CLERK: On the preamble, to amend the preamble by adding immediately after the words "Trans-Prairie Pipelines, Ltd." a comma, and the words "a company incorporated under the laws of the province of Manitoba."

The CHAIRMAN: You have heard this amendment. All those in favour? Those against?

Carried.

Shall the preamble carry as amended?

Carried.

Second amendment?

The CLERK: To delete Clause 1 and substitute the following: New clauses 1, 2, 3 and 4. . . .

The CHAIRMAN: Is it necessary for the clerk to read all of that?

Mr. HERRIDGE: No; we all have copies.

(For detail of amendments see this day's Minutes of Proceedings.)

The CHAIRMAN: Does the new clause 1 carry?

Carried.

New clause 2?

Carried.

Now we come to new clause 3, the capital stock of the company.

The CLERK: Mr. Chairman, the following declaration has been submitted by Mr. Brandt, the president of the company, on behalf of the promoters in regard to the common share portion of the capital stock set out in the proposed new clause 3(1). I should explain—for the purposes of parliament levying the necessary charges on the capital stock in the case of the preferred stock its par value is set in the amendment so that it requires nothing further than to be calculated, but in the case of the common stock, as has been done on the last few pipe line bills where there is no par value stock a declaration is required. The declaration reads:

> I, DON RAPHAEL BRANDT, Executive, of the city of Edmonton, in the province of Alberta,

DO SOLEMNLY DECLARE:

1. That I am one of the persons mentioned in Section 1 of a private Bill to incorporate TRANS-PRAIRIE PIPELINES OF CANADA, LTD., namely, Bill U-12 of The Senate of Canada and Bill Number 376 of the House of Commons.

2. That Section 3 of the said Bill provides that the capital stock of the Company shall consist in part of 500,000 common shares without nominal or par value.

3. That the said 500,000 common shares are to be issued for a consideration not to exceed in the aggregate $1,500,000.

AND I make this solemn declaration conscientiously believing it to be true and knowing that it is of the same force and effect as if made under oath and by virtue of the Canada Evidence Act.

DECLARED before me at the City of Ottawa in the province of Ontario this 30th day of May, 1955.

(Sgd.) J. M. COYNE,
A Commissioner.

(Sgd.) DON R. BRANDT.

The CHAIRMAN: A motion is required in this regard to enable the capital stock charges to be levied on the no par value stock, and the motion is as follows:

> That for the purpose of levying a charge on the portion of the capital stock consisting of five hundred thousand common shares without nominal or par value under the provisions of Standing Order 93(3), the committee recommend that the said charge be levied on an amount of $1,500,000.

Moved by Mr. Purdy and seconded by Mr. Herridge. All those in favour signify by saying aye. To the contrary, if any?

Carried.

Mr. HAHN: Before we go any further, is it understood that these amendments will be entered in the records? We have not heard them read. There is no indication of what we are passing in this record.

The CHAIRMAN: Yes, it will all be in the record. You will have a copy of it.

Mr. HAHN: This has been decided, has it? I did not hear any suggestion made to the committee that it should be.

Mr. HERRIDGE: It was suggested that they be taken as read in regard to each item, and the members will have a copy.

The CHAIRMAN: Yes.

The CLERK: Then new clause 3, subclause (2):

> The company may by by-law from time to time . . .

Carried.

The CHAIRMAN: And clause 3, subclause (3), beginning "Except to the extent . . ."

Carried.

Mr. HAHN: Mr. Chairman, I take exception to rushing through this bill and people over there saying "Carried." I do not believe they have had time to read it.

Mr. HERRIDGE: Mr. Chairman, we have read dozens of these bills before. These are in the same form as the other bills.

Mr. HAHN: They may be, but there may be certain parts of them which are different.

Mr. MURPHY (*Westmorland*): We can manage to read them over here. Perhaps you cannot, but we can.

The CHAIRMAN: Do members wish to take them as read?

Mr. HERRIDGE: It is not necessary to go through them in detail, but we would like to have a little opportunity of reading them.

The CHAIRMAN: You have had them for some time.

Mr. HAHN: Yes, but we have had something else to listen to.

The CHAIRMAN: Well, they are all in front of you there.

Mr. HAHN: Just on a point of information, Mr. Chairman; this may be the same form, but does it compare specifically in the wording with these others? I am quite ready to go ahead and give the O.K. if they are in exactly the same wording as the others, but that has not been stated.

Mr. COYNE: Mr. Chairman, I should say that these amendments are designed to put this in almost exactly the same form as the S & M Pipelines bill, which is the nearest one to it. I should point out that there are some differences in wording, but not in substance. With regard to the capitalization provisions, for one thing we are asking for a slightly different number of shares of a preferred nature, and also there are some differences in wording. We have left out a subclause I think which was in the S & M bill because we did not feel it would be necessary for our company to have it in.

Mr. HAHN: Could you tell us which one that is?

Mr. COYNE: If we start at proposed new clause 3, subclause (2), S & M Pipelines bill provided for the creation of classes of preferred shares. Now, we have provided for the issue of the preferred shares in one or more series. That is largely a draftsman's choice, I would say. The effect is virtually the same but we preferred it in this wording because the solicitors to the company felt it was more workable. The S & M bill then had another subclause that said that the directors might by resolution prescribe within the limits set forth in any by-law passed in subsection (2) the terms of issue and the precise preferences, privileges, etc. Now in our view that is unnecessary for us because the directors under the general clauses in the Companies Act have the power to allot the shares, and the actual preferences and restrictions which will attach to these preferred shares will be fixed by the by-law under subsection (2); so we left that out of our bill.

The next subclause, which is (3), again involves some change in wording but the substance of the clause is to provide that no change shall be made affecting the rights and privileges of any holders of issued preferred shares without the sanction of at least a two-thirds vote of those shareholders. Now, that is a normal sort of provision for the protection of holders of issued preferred shares. In the S & M bill they worded it somewhat differently, and in addition to that provision they also said that the holders of preferred shares would have the right to attend and vote at general meetings on any question directly affecting any of the rights or privileges attached to such class of preferred shares. Now, for two reasons we left that out. In the first place, in our opinion the words "directly affecting any of the rights of the preferred shareholders" are words which merely invite litigation. It is extremely difficult to tell what questions would directly affect those rights, and consequently we have provided that these preferred shareholders will themselves have a meeting and vote on any changes in their rights. Therefore it seems unnecessary and indeed unfair to let them also vote with the other shareholders on the same question. But in my submission the substantial part of that section is the provision which says that no changes can be made without those changes being

sanctioned by at least two-thirds of the shareholders affected, and that remains the principal part of that section, as it was in the S & M bill.

The CHAIRMAN: All the amendments down to subclause (3) inclusive are carried?

Carried.

Now subclause (4).

Mr. COYNE: Subclause (4) says:

> "Ownership of preferred shares shall not qualify any person to be a director of the company."

That is exactly the same as in the S & M bill.

The CHAIRMAN: Is subclause (4) agreed?

Carried.

Mr. COYNE: Proposed new clause 4 is exactly a replica of all the other bills, except that our head office is in Winnipeg.

The CHAIRMAN: Is clause 4 carried?

Carried.

Shall the original clause 1 as amended carry?

Agreed.

Now on original clause 2 to renumber clause 2 as clause 5; is that amendment agreed?

Carried.

Shall clause 2 as amended carry?

Agreed.

Now, the proposed new clauses 6 to 11 inclusive:

> Add, immediately following clause 5 as renumbered, the following:—

Mr. COYNE: Now, Mr. Chairman, I might say there that here again—and this is the important portion of the bill—we have followed precisely the wording in the S & M bill as amended, that is, we have included in clause 6(a), commencing in the third line on page 3 of this mimeographed sheet, "provided that the main pipe line or lines for the transmission and transportation of gas and other gaseous hydrocarbons shall be located entirely within Canada." I understand that that is the amendment that was made in the S & M bill.

Mr. HERRIDGE: That is the one we were looking for.

Mr. COYNE: Yes. I think that is exactly the wording in the S & M bill recently.

Mr. HERRIDGE: That is already included in here.

Mr. COYNE: It is not quite exactly the same in wording but it certainly is in effect. Just to make sure that members have it correctly, the amendment in the case of the S & M bill was "provided that the main pipe line or main pipe lines for the transmission of gas and gaseous hydrocarbons," and we have said "for the transmission and transportation of gas and other gaseous hydrocarbons"—"shall be located entirely within Canada."

The CHAIRMAN: Shall new clause 6 carry?

Carried.

The CHAIRMAN: New clause 7?

Mr. COYNE: Proposed clause 7 is exactly the same except that S & M have made one section of part I of the Companies Act apply which we do

not think applies to our company. It is section 59; so we have left that out. Apart from that, it is identical.

The CHAIRMAN: Shall new clause 7 carry?

Carried.

New clause 8?

Mr. COYNE: Proposed clause 8 is identical.

The CHAIRMAN: Shall new clause 8 carry?

Carried.

New clause 9?

Mr. COYNE: Proposed clause 9 is identical.

The CHAIRMAN: Shall new clause 9 carry?

Carried.

Do you want to go over clause 9 in the different sections?

Mr. HERRIDGE: We understand that it is identical.

The CHAIRMAN: Then it is carried.

New clause 10?

Mr. COYNE: Proposed clause 10 is identical, except in the second line we have added the words "by this Act"—

> "The redemption or purchase for cancellation of any fully paid preferred shares created by this Act or by by-law . . ."

Technically I would say that the preferred shares of this company are created *by this Act.*

The CHAIRMAN: Shall new clause 10 carry?

Carried.

New clause 11?

Carried.

Mr. COYNE: Proposed clause 11 is identical.

Shall the bill carry as amended?

Mr. GREEN: I think you did not carry the change in the title. That is contained in paragraph 1 of the amendments.

Dr. OLLIVIER: That has to be done in the House. You just recommend a change in the title. You do not make the amendment here. You recommend it to the House. It is amended on the motion for final passage.

Mr. GREEN: There is a change in the title. Are we to change it here or recommend to the House that it be changed?

Dr. OLLIVIER: That is it! You will also have to draw the attention of the House to the fact that the amendments made to this bill were not contemplated in the petition or the notice. I think that will all be done in the House.

Mr. GREEN: It will be.

Dr. OLLIVIER: You will have to draw to the attention of the House that the amendments were not contemplated in the petition or the notice.

Mr. HAHN: Before the bill carries, I would like to voice some objection. I suggest that we ask all the pipe line companies, or proposed pipe line companies to follow a prescribed form if at all possible, similar to what we have now outlined.

I can understand the purpose of these gentlemen, coming before us in the way they did and in proposing the bill which they had originally drafted. I can see the reason for it now, but I do not feel satisfied with the bill as

amended, because I do not think that so many amendments as we have here now can be properly acted upon in a very short time. I am not at all suggesting for one moment that this committee has not done a good job on this bill; but I do suggest that it would be much better if a routine method was followed in drafting bills so that we would become more and more familiar with them and would know exactly what we are looking for at all times.

There have been certain clauses of bills which have come before us up to now over which there has been a great deal of discussion. But instead of trying to accept the amendments, as we have done here, and proposing them to the House, we should have an opportunity to discuss them before they go out in the form of a bill for third reading in the House. I would feel better about it if they were presented to the committee in a proper way to begin with, or in a form which we might suggest, so that we might give them a more thorough study.

The CHAIRMAN: Are you not satisfied with the way this bill has gone through the committee?

Mr. HAHN: Yes, with the understanding or explanation which Mr. Coyne has given us with respect to the various clauses which are amended.

The CHAIRMAN: Well, if there are any complaints which you want to make, now is the time for you to make them.

Mr. GREEN: The difficulty in following any other course would have been that these applicants could not get a regular charter through at this session, and the work would be delayed for a year. They have been very co-operative, I think, in coming here and making all these changes in their bill. After all, it is now in the same form as other bills and so meets the objections raised in the House. I think they really deserve credit for taking the steps they have taken. The bill as now amended is practically the same as all the other charters which have gone through the House in recent years. I think if there was a mistake, it was an innocent one, with obviously no intent on the part of the applicants to misrepresent the situation or to deceive the committee or the House.

Mr. JOHNSTON (*Bow River*): I do not think that was the intention of what Mr. Hahn said. What he said in effect was this: here you have Bill U-12 from the Senate. It has only three small paragraphs, yet you have amended it with a considerable number of amendments. I think there is some logic in what he said, and I agree with it. I am not suggesting for a moment that the sponsors of the bill were negligent in any respect. Probably they did it with the best of intentions; but it does seem to me that a little more attention exercised when the bill was drafted would not have caused these amendments to be attached to it.

Mr. GREEN: The fault is really not theirs at all.

Mr. JOHNSTON (*Bow River*): I am not suggesting that it was.

Mr. GREEN: At the last session, this House passed a bill for the Niagara Gas Transmission Company which was in the form in which this bill originally was presented to the Senate. I complained in the House about the terms of that bill, but that company was part of the picture and was tied in with Tennessee Gas and the Trans-Canada Pipe Line. It was part of the big picture and nobody thought very much about the form of the bill. These applicants merely came along and saw the bill which had gone through the House last year and they adopted the same form. That is how Mr. Coyne explained it. That is why they brought it in in that form originally.

Mr. HERRIDGE: I would support Mr. Green in what he has just said. I think he has explained it very clearly. We raised certain objections to this bill because it was in a different form to the bills we had been passing.

I think the applicants are to be commended for going to the trouble of suggesting the amendments to this committee which, in substance, make the bill the very same type of bill we have been dealing with in pipe lines over the last five years.

Mr. HAHN: By inference it has been suggested that I took exception to the way this drafting was done. I did no such thing. I said that I understood what Mr. Coyne had explained as the reasons for his coming here with the bill in its original form. What I am doing is condemning this committee for not suggesting either to the Senate or the House, or to whoever might find it necessary to draft such bills, that the bills should come here in a regular form so that we may know exactly what we are looking for, and thereby expedite the work of this committee. I feel satisfied that the amendments, as Mr. Coyne has explained, are all in order. I have taken no exception to them in the committee. But I do not feel that we can continue doing this type of work unless we have an outline provided which they can follow. Therefore my suggestion is that this committee go on record and propose to those who want to draft bills of this type, acquainting them with the methods which we prefer in the way of drafting. As far as the Niagara Gas Transmission Company was concerned, Mr. Green did raise objection at that time, but he explained that it was brought in for whole sections of the thing, so we took it for granted as something which we should not have done. But this is the proper time and I am raising my objection to carrying on in this fashion, if we can possibly change it.

The CHAIRMAN: Shall the bill carry as amended?

Carried.

Shall I report the bill as amended, and the recommendation to the House, in accordance with the motion regarding capital stock charges?

Mr. GREEN: You will also have to have a recommendation on the alteration of the title.

Dr. OLLIVIER: And also draw to the attention of the House that you have gone further than the petition, and that the amendments made to the bill were not contemplated either in the petition or the notice.

The CHAIRMAN: My final question is as follows:

> Shall I report the bill to the House, as amended, and the recommendations in accordance with the motions regarding capital stock charges and the alteration of the title of the bill to "An Act to incorporate Trans-Prairie Pipelines of Canada, Ltd."; and also drawing attention that the amendments to the bill were not contemplated either in the petition or the notice?

Is that agreed?

Agreed.

The meeting is adjourned to the call of the chair.

HOUSE OF COMMONS

Second Session—Twenty-second Parliament

1955

STANDING COMMITTEE

ON

RAILWAYS, CANALS AND TELEGRAPH LINES

Chairman: H. B. McCULLOCH, ESQ.

MINUTES OF PROCEEDINGS AND EVIDENCE

No. 7

BILL 351

An Act respecting Canadian National Railways

THURSDAY, JUNE 2, 1955

FRIDAY, JUNE 3, 1955

WITNESSES:

Mr. N. J. MacMillan, Q. C., of Montreal, Vice-President and General Counsel, Canadian National Railways; Mr. E. A. Driedger, Q.C., Assistant Deputy Minister of Justice; Mr. H. E. B. Coyne, Q.C., of Ottawa, Counsel, Canadian Trucking Associations; Mr. George C. Thompson of Halifax, President, Canadian Motor Coach Association.

EDMOND CLOUTIER, C.M.G., O.A., D.S.P.
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1955

58930—1

STANDING COMMITTEE

ON

RAILWAYS, CANALS AND TELEGRAPH LINES

Chairman: H. B. McCulloch, Esq.,

and

Messrs.

Barnett
Batten
Bonnier
Boucher *(Chateauguay-Huntingdon-Laprairie)*
Buchanan
Byrne
Campbell
Carrick
Carter
Cauchon
Cavers
Clark
Decore
Deschatelets
Dupuis
Ellis
Follwell
Fulton
Gagnon
Gauthier *(Lac-Saint-Jean)*
Goode
Gourd *(Chapleau)*
Green
Habel
Hahn
Hamilton *(Notre-Dame-de-Grace)*
Hamilton *(York-West)*
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Herridge
Holowach
Hosking
Howe *(Wellington-Huron)*
James
Johnston *(Bow River)*
Kickham
Lafontaine
Langlois *(Gaspe)*
Lavigne
Leboe
McIvor
Meunier
Montgomery
Murphy *(Lambton West)*
Murphy *(Westmorland)*
Nesbitt
Nicholson
Nickle
Nixon
Nowlan
Purdy
Ross
Small
Stanton
Viau
Villeneuve
Vincent
Weselak

Eric H. Jones,
Clerk of the Committee.

Note: The name of Mr. Balcom was substituted for that of Mr. James, the name of Mr. MacNaught for that of Mr. Carrick, the name of Mr. McWilliam for that of Mr. Cavers and the name of Mr. Hanna for that of Mr. Decore after the morning sitting on Friday, June 3, 1955.

ORDERS OF REFERENCE

HOUSE OF COMMONS,
TUESDAY, May 24, 1955.

Ordered,—That the following Bill be referred to the said Committee: Bill No. 351, An Act respecting Canadian National Railways.

FRIDAY, June 3, 1955.

Ordered,—That the name of Mr. Balcom be substituted for that of Mr. James; and

That the name of Mr. MacNaught be substituted for that of Mr. Carrick; and

That the name of Mr. McWilliam be substituted for that of Mr. Cavers; and

That the name of Mr. Hanna be substituted for that of Mr. Decore on the said Committee.

Attest.

Leon J. Raymond,
Clerk of the House.

58930—1½

REPORT TO THE HOUSE

MONDAY, June 6, 1955.

The Standing Committee on Railways, Canals and Telegraph Lines begs leave to present the following as its

THIRTEENTH REPORT

Your Committee has considered Bill No. 351, An Act respecting Canadian National Railways, and has agreed to report it with amendments, namely:

Clause 16

Page 6, line 11, delete the figures "197" and substitute therefor "202".

Clause 18

Delete Clause 18 and substitute therefore the following:

18. (1) The railway or other transportation works in Canada of the National Company and of every company mentioned or referred to in Part I or Part II of the First Schedule and of every company formed by any consolidation or amalgamation of any two or more of such companies are hereby declared to be works for the general advantage of Canada.

(2) The companies incorporated by subsection (2) of section 7 of the Canadian National-Canadian Pacific Act are hereby continued and such companies are in respect of all their affairs subject to this Act.

(3) For the purposes of this section, the expression "railway or other transportation works" does not include any works operated under the authority of section 27.

Clause 21

Delete Clause 21 and substitute therefor the following:

21. The Board of Directors shall so direct, provide and procure that all freight destined for export by sea that is consigned within Canada for carriage to National Railways either at point of origin or between that and the sea shall, unless it has been by its shippers specifically routed otherwise, be exported through Canadian seaports.

Clause 27

Delete Clause 27 and substitute therefor the following:

27. The National Company and every other railway company comprised in National Railways, may, in conjunction with or substitution for the rail services under their management or control, buy, sell, lease or operate motor vehicles of all kinds for the carriage of traffic.

Clause 31

Delete Clause 31 and substitute therefor the following:

31. The National Company may, with the approval of the Governor in Council, acquire, hold, guarantee, pledge and dispose of shares in the capital stocks, bonds, notes, securities or other contractual obligations whatsoever of any railway company, or of any transportation, navigation, terminal, telecommunication, express, hotel, electric or power company or of any other company authorized to carry on any business incidental to the working of a railway, or any business which in the opinion of the Board of Directors may be carried on in the interests of the National Company."

A copy of the evidence adduced in respect of the said bill is appended.

All of which is respectfully submitted.

H. B. McCULLOCH,
Chairman.

MINUTES OF PROCEEDINGS

THURSDAY, June 2, 1955.

The Standing Committee on Railways, Canals and Telegraph Lines met at 10.30 o'clock a.m. this day. The Chairman, Mr. H. B. McCulloch, presided.

Members present: Messrs. Batten, Bonnier, Campbell, Carrick, Carter, Cavers, Deschatelets, Fulton, Gauthier (*Lac-Saint-Jean*), Goode, Green, Habel, Hahn, Hamilton (*York West*), Harrison, Herridge, Howe (*Wellington-Huron*), James, Johnston (*Bow River*), Kickham, Lafontaine, Langlois (*Gaspe*), Lavigne, Leboe, McCulloch (*Pictou*), Meunier, Montgomery, Murphy (*Westmorland*), Nesbitt, Nicholson, Nickle, Nowlan, Ross and Villeneuve.

In attendance:

Of the Department of Transport: The Honourable George C. Marler; Mr. F. T. Collins, Comptroller and Secretary; and Mr. Jacques Fortier, Counsel: *Of the Department of Justice*—Mr. E. A. Driedger, Q.C., Assistant Deputy Minister: *Of the Canadian National Railways*— Mr. N. J. MacMillan, Q.C., Vice-President and General Counsel; Mr. Lionel Cote, Q.C., Assistant General Solicitor; Mr. P. Taschereau, Q.C., Solicitor; and Mr. J. W. G. Macdougall, Commission Counsel, all of Montreal, P.Q.: *Of Canadian Trucking Associations*—Mr. William C. Norris of Montreal, President; Mr. John Magee of Ottawa, Executive Secretary; and M. H. E. B. Coyne, Q.C., of Ottawa, Counsel: *Of the Canadian Motor Coach Association*—Mr. George C. Thompson of Halifax, President; Mr. Roch Tremblay, Q.C., of Montreal, Vice-President, (also President, Quebec Motor Coach Owners' Association); Mr. A. H. Foster of Montreal, Secretary Manager; and Mr. C. H. Belford, Ottawa, Representative: *Of Quebec Motor Coach Owners' Association*—Mr. N. A. Fournier of Quebec, P.Q., Vice-President; and Mr. Wilbrod Bherer, Q.C., of Quebec, P.Q., Counsel: and *Of Chambre de Commerce of the Province of Quebec*—Mr. Joseph Racine of Boischatel, P.Q., Representative.

The Committee proceeded to consider Bill No. 351, An Act respecting Canadian National Railways.

On motion of Mr. Langlois (*Gaspe*),

Resolved,—That the Committee print 1000 copies in English and 250 copies in French of its Minutes of Proceedings and Evidence in respect of Bill No. 351.

Mr. MacMillan was called; he outlined the historical background and the financial structure and general operations of Canadian National Railways and its predecessors; he also explained the purpose of the bill and was questioned.

On clause by clause consideration of the bill, clauses 1 to 7 inclusive were severally adopted, Mr. MacMillan answering questions thereon.

At 1.00 o'clock p.m., the Committee adjourned until 3.30 o'clock p.m. this day.

AFTERNOON SITTING

At 3.30 o'clock p.m. the Committee resumed its consideration of Bill No. 351, the Chairman, Mr. H. B. McCulloch, presiding.

Members present: Messrs. Bonnier, Buchanan, Campbell, Carrick, Cavers, Deschatelets, Fulton, Gauthier (*Lac-Saint-Jean*), Gourd (*Chapleau*), Green,

Hamilton (*York West*), Harrison, Howe (*Wellington-Huron*), James, Johnston (*Bow River*), Kickham, Lafontaine, Langlois (*Gaspe*), Lavigne, Leboe, McCulloch (*Pictou*), Meunier, Montgomery, Nesbitt, Nicholson, Nowlan, Ross, Small and Villeneuve.

In attendance: The same as at the morning sitting.

Mr. MacMillan answered questions during the clause by clause consideration of the bill.

Clauses 8 to 15 inclusive were severally adopted.

On Clause 16:

On motion of Mr. Langlois (*Gaspe*),

Resolved,—That clause 16, paragraph (a) be amended by deleting the figures "197" in line 11 of page 6 and substituting therefor the figures "202".

Clause 16 as amended was adopted.

Clause 17 was adopted.

The Committee agreed next to consider clause 18, and then clause 27, and thereafter the intervening clauses.

On Clause 18:

It was moved by Mr. Langlois (*Gaspe*), seconded by Mr. Cavers,

That clause 18 be amended by adding thereto the following subclause:

(4) For the purposes of this section, the expression "works" and "railway and other transportation works" do not include

(a) any works operated under the authority of section 27, and

(b) the works of any company mentioned in Part III of the First Schedule.

On Clause 27:

It was moved by Mr. Langlois (*Gaspe*), seconded by Mr. Cavers,

That clause 27 be deleted and that there be substituted therefor the following:

27. The National Company and every other railway company comprised in National Railways, may, in conjunction with or substitution for the rail services under their management or control, buy, sell, lease or operate motor vehicles of all kinds for the carriage of traffic.

Honourable Mr. Marler explained the purposes of the proposed amendments and answered questions thereon. Debate ensued.

Mr. Coyne made a statement on the proposed amendments to clauses 18 and 27 and was questioned.

At 5.30 o'clock p.m., the Committee adjourned until 8.00 o'clock p.m. this day.

EVENING SITTING

At 8.00 o'clock p.m., the Committee resumed its consideration of Bill No. 351, the Chairman, Mr. H. B. McCulloch, presiding.

Members present: Messrs. Bonnier, Carrick, Carter, Cavers, Deschatelets, Fulton, Gauthier (*Lac-Saint-Jean*), Gourd (*Chapleau*), Green, Hamilton (*York West*), Herridge, Howe (*Wellington-Huron*), James, Johnston (*Bow River*), Kickham, Lafontaine, Langlois (*Gaspe*), Lavigne, Leboe, McCulloch (*Pictou*), Nesbitt, Nowlan, Purdy, Ross, Small and Villeneuve.

In attendance: The same as at the afternoon sitting.

On Clauses 18 and 27

The questioning of Mr. Coyne was continued.

Mr. Thompson was called; he made a statement on the proposed amendments to clauses 18 and 27, was questioned thereon and was retired.

After debate it was agreed that further consideration of clauses 18 and 27 be deferred.

The Committee reverted to clause 19. Clauses 19 and 20 were adopted.

Following debate it was agreed that clause 21 stand.

Clause 22 was carried on division: Yeas, 10: Nays, 2.

At 10.07 o'clock p.m., the Committee adjourned until 10.30 o'clock a.m. on Friday, June 3, 1955.

FRIDAY, June 3, 1955.

The Standing Committee on Railways, Canals and Telegraph Lines met at 10.30 o'clock a.m. this day. The Chairman, Mr. H. B. McCulloch, presided.

Members present: Messrs. Batten, Bonnier, Byrne, Campbell, Carter, Deschatelets, Fulton, Gauthier (*Lac-Saint-Jean*), Gourd (*Chapleau*), Green, Harrison, Herridge, Johnston (*Bow River*), Kickham, Lafontaine, Langlois (*Gaspe*), Lavigne, Leboe, McCulloch (*Pictou*), Montgomery, Nicholson, Nowlan, Ross and Villeneuve.

In attendance: The same as at the evening sitting on Thursday, June 2, except Mr. Joseph Racine.

The Committee resumed its clause by clause consideration of Bill No. 351.

It was agreed that clause 23 stand.

Clauses 24, 25, 26, 28 and 29 were severally adopted.

The Committee reverted to clauss 18 and 27 which previously were allowed to stand.

By leave, Mr. Langlois (*Gaspe*) withdrew his motion to amend clause 18, moved by him at the afternoon sitting on Thursday, June 2.

On motion of Mr. Langlois, it was

Resolved,—That clause 18 be amended by deleting that clause and substituting therefor the following:

18. (1) The railway or other transportation works in Canada of the National Company and of every company mentioned or referred to in Part I or Part II of the First Schedule and of every company formed by any consolidation or amalgamation of any two or more of such companies are hereby declared to be works for the general advantage of Canada.

(2) The companies incorporated by subsection (2) of section 7 of the Canadian National-Canadian Pacific Act are hereby continued and such companies are in respect of all their affairs subject to this Act.

(3) For the purposes of this section, the expression "railway or other transportation works" does not include any works operated under the authority of section 27.

Mr. Driedger was called; he explained the legal aspects of the proposed amendments to clauses 18 and 27, was questioned threon and retired.

Following debate, the amendment proposed by Mr. Langlois (*Gaspe*) this day to clause 18 was carried. Clause 18 was adopted as amended.

The amendment proposed by Mr. Langlois (*Gaspe*) at the afternoon sitting on Thursday, June 2, to clause 27 was carried. Clause 27 was adopted as amended.

The Committee reverted to clause 21. On motion of Mr. Nowlan,

Resolved,—That clause 21 be amended by deleting that clause and substituting therefor the following:

> 21. The Board of Directors shall so direct, provide and procure that all freight destined for export by sea that is consigned within Canada for carriage to National Railways either at point of origin or between that and the sea shall, unless it has been by its shippers specifically routed otherwise, be exported through Canadian seaports.

Clause 21 as amended was adopted.

Clause 30 was adopted.

At 1.03 o'clock p.m., the Committee adjourned until 3.30 o'clock p.m. this day.

AFTERNOON SITTING

At 3.30 o'clock p.m., the Committee resumed its consideration of Bill No. 351, the Chairman, Mr. H. B. McCulloch, presiding.

Members present: Messrs. Balcom, Bonnier, Byrne, Carter, Deschatelets, Gourd (*Chapleau*), Green, Hanna, Harrison, Herridge, Howe (*Wellington-Huron*), Johnston (*Bow River*), Kickham, Lafontaine, Langlois (*Gaspe*), Lavigne, Leboe, MacNaught, McCulloch (*Pictou*), McIvor, McWilliam, Montgomery and Purdy.

In attendance:. Of the Department of Transport—The Honourable George C. Marler; Mr. F. T. Collins, Comptroller and Secretary; and Mr. Jacques Fortier, Counsel: *Of the Canadian National Railways*— Mr. N. J. MacMillan, Q.C., Vice-President and Counsel; Mr. Lionel Cote, Q.C., Assistant General Solicitor; Mr. P. Taschereau, Q.C., Solicitor; Mr. J. W. G. Macdougall, Commission Counsel; all of Montreal, P. Q.

On Clause 31

On motion of Mr. Langlois (*Gaspe*),

Resolved,—That clause 31 be amended by deleting that clause and substituting therefor the following:

> 31. The National Company may, with the approval of the Governor in Council, acquire, hold, guarantee, pledge and dispose of shares in the capital stocks, bonds, notes, securities or other contractual obligations whatsoever of any railway company, or of any transportation, navigation, terminal, telecommunication, express, hotel, electric or power company or of any other company authorized to carry on any business incidental to the working of a railway, or any business which in the opinion of the Board of Directors may be carried on in the interests of the National Company.

Clause 31 as amended was adopted.

Clauses 32 to 47 inclusive and the First and Second Schedules were severally adopted, Mr. MacMillan answering questions thereon.

The Committee reverted to clause 23 and adopted it.

Mr. MacMillan answered questions of which notice had been given during the sittings on June 2 and earlier this day. He tabled a copy of Order in Council P.C. 115 dated January 20, 1923, regarding the entrusting of the Canadian Government Railways to the Canadian National Railways for operation and management.

On motion of Mr. Langlois (*Gaspe*),

Ordered,—That the said Order in Council P.C. 115 be printed in this day's Minutes of Proceedings and Evidence.

It was agreed that certain information regarding the measures taken by the railways to further the use of Canadian ports, which Mr. MacMillan was unable to provide immediately, be sent to the Clerk of the Committee on Mr. MacMillan's return to Montreal and that it be printed as an appendix to this day's minutes of Proceedings and Evidence.

The preamble and the title were adopted.

The bill was carried as amended.

Ordered,—That the Chairman report Bill No. 351 to the House, as amended.

At 4.40 o'clock p.m., the Committee adjourned to the call of the Chair.

Eric H. Jones,
Clerk of the Committee.

EVIDENCE

THURSDAY, June 2, 1955.
10.30 A.M.

The CHAIRMAN: Gentlemen, we have a quorum. We have before Bill 351, an Act respecting the Canadian National Railways.

I would first like to have on record the committee's decision as to the number of copies to be printed in English and French. May I have a motion on that?

Mr. LANGLOIS *(Gaspé)*: Mr. Chairman, I move, seconded by Mr. Gauthier (Lac-St-Jean), that the committee print 1,000 copies in English and 250 copies in French of the minutes of its proceedings and evidence in respect to Bill 351.

The CHAIRMAN: Is that agreeable?

Agreed.

We have with us today Mr. N. J. MacMillan, Q.C., vice-president and general counsel of the Canadian National Railways.

Mr. JOHNSTON *(Bow River)*: Before you call on the witness, Mr. Chairman, may I ask if any of the provinces have asked to make a presentation before this committee and if so, when will they be heard?

The CHAIRMAN: Some of the trucking associations have but none of the provinces.

Hon. GEORGE C. MARLER *(Minister of Transport)*: I might say as far as I am concerned, no such representation has been made to me either.

Mr. NOWLAN: When is it proposed to hear these representations?

Hon. Mr. MARLER: I was going to ask Mr. MacMillan to give us an outline of the bill. I thought if he were to give us a general outline of the provisions of the bill and a little of the background, then we might possibly afterward deal with the bill clause by clause, and when we reach the articles on which representations are to be made, they could be made when the item is called.

Mr. JOHNSTON *(Bow River)*: There is one point on that. We know by experience sometimes we come to a clause in the bill and it takes a good deal of time before we pass that because of arguments among committee members themselves, and those who wish to make representations may be sitting here for two or three days until their clause comes up. Would it not be better to hear their representations immediately after we hear Mr. MacMillan?

Hon. Mr. MARLER: My thought is that very few of the articles are likely to be contentious. So much of it is consolidation and so little is new that I think it would probably be reasonable to proceed with the explanation first and then to call each item. If we find we are taking a long time, then the committee might reconsider the suggestion I have made.

Mr. N. J. MacMillan, Q.C., Vice President and General Counsel, Canadian National Railways, called:

The WITNESS: Mr. Chairman and gentlemen, in explanation of this bill I would like to remind you of some of the corporate history of the Canadian National Railways. The story really begins in 1852 at which time the Grand Trunk Railway Company of Canada was incorporated. It was franchised to construct a line of railway between Toronto and Montreal and limited geographically to those two points. As time passed, this railway grew enlarged

and expanded. It grew by amalgamation and by statutory extensions, by the acquisition of majority or complete control of other railways, and finally by the leasing under perpetual agreements, or 99 year leases, of the rail facilities of another group of railway companies.

In order to give you some indication of the ramifications of the growth I would like to remind you that as of 1916, which was probably the last date of the vigorous health of the Grand Trunk, it had passed through 25 amalgamations the consequence of each being a re-incorporation. It had been the subject of 15 statutes of the province of Canada prior to Confederation, and subsequent to Confederation, 56 further statutes. These 71 statutes all extended powers, authorized the issuance of bonds, or in some other way extended the corporate structure of the railway.

At the time immediately preceeding amalgamation it owned outright 23 active and operating railways. It possessed the assets of eight other railways—perpetual or long term leases—and it owned the majority of stockholdings of 36 additional companies. All of these companies were operated as the Grand Trunk System. Almost all of these companies issued their own securities, the investments, the assets of the various components being intermixed and hypothecated to secure the issuance of bonds. One of the subsidiaries of the Grand Trunk was an empire onto itself, the Grand Trunk Pacific Railway Company. It was divided into two sections; one of which was the eastern section which was authorized to lay the trans-continental railway then under construction by the Dominion government running from Quebec City to the city of Winnipeg. It was given corporate powers to build its own line of railway from Winnipeg west to the Pacific Ocean and the route was to Prince Rupert. This company was operated as a separate corporate entity to enjoy its own existence. It incorporated its own hotel company, its own steamship company, land companies, a total of 13 miscellaneous companies.

Likewise the Grand Trunk Pacific issued its own bonds, securing the issuance of the bonds by the assets of these subsidiary companies.

I should have said before that the Grand Trunk issued perpetual securities. So much for the Grand Trunk.

The Canadian Northern Railway Company at its birth gave early warning of what was likely to be the rule in that corporation. It came into existence as the result of an amalgamation which took place in 1898. By the time of the outbreak of the first war, the Canadian Northern Railway Company had gone through 14 amalgamations with 14 re-incorporations as a result. It had acquired 29 subsidiary companies. During the first twenty years of its life it came to the parliament of Canada 47 times for extension of charter and revisions.

Now we come to the Canadian National Railway Company. The Canadian National Railway Company was incorporated on June 6, 1919, for the first time. It existed in that form for three years. No directors of the company were appointed until October 4, 1922, so that it was a company existing without a railway and it had not one mile of railway to operate during that entire period. Its first operation began on January 20, 1923, when the Canadian National Railway Company began to operate the Canadian government railways under entrusting order in council. The stock of the Canadian Northern Railway Company was acquired by the federal Crown in 1917 but until 1937 the Canadian Northern Railway Company enjoyed its full independent existence and the directors of that company were the gentlemen who from time to time were the directors of the Canadian National Railway Company.

In 1923 the Canadian National was re-incorporated by virtue of the amalgamation of the Canadian National Company of 1919 with the Grand Trunk Railway Company. The Grand Trunk Railway Company disappeared after 71 years of operation.

We look on the date 1923 as the beginning of the system, as it was a first occasion on which the Canadian National really acquired any railway. The corporate problem with which we have been struggling ever since arose at that time. At the time of amalgamation we took under administration 139 active operating companies. They were railways, steamship companies, express companies, land companies, development companies, terminal elevator companies and companies doing almost everything which one can conceive. These constituents had outstanding at that time no less than 251 different bond issues charged against different assets bearing different lengths of security; several were perpetual, others were for a short term.

The legal officers of the Canadian National recognized immediately that this was a problem which would require very earnest study. The plans were laid at that time but little could be done for many years because of the clouding of the title of the assets of these various companies. We could not bring about amalgamation because had we done so the new company would in each instance become liable for the debts of the components, those companies which went into amalgamation, and we did not wish to see all the assets of any new enterprise charged in perpetuity with the debts, for example, of the Grand Trunk Pacific or any other company when the debtor company was limited geographically to lines of railways between given points. So we had to make plans before we were able to make any progress. Then again we had this problem of the four incorporation of the Canadian National Railway Company itself, the first being in 1919, another followed in 1923, it was re-incorporated again in 1933, and then came the statute of 1936.

Consequently when people in the years which have gone by have asked us what are the corporate powers of the Canadian National it has always been extremely difficult to answer categorically.

By the beginning of 1955 we had this mass of background statutes. We had the four statutes dealing specifically with the Canadian National, the legal effect of them being four incorporations and then we have 25 statutes which are shown in the second schedule on the last page of this bill, all having a direct bearing on our current operations.

As the years passed, the bond issues to which I referred a moment ago were very materially reduced in number by lapse of time permitting the calling of the bonds, or by lapse of time maturing the issues themselves. Also we embarked on an endeavour to buy in the perpetual securities, and we were successful in obtaining almost all of the outstanding perpetual bonds. As of today there are very few of that type of security still outstanding. As a matter of fact we only know of one holder; the others have vanished. But these things have made it possible to discharge bonds, discharge trustees, to the point now where we have but six of the old 251 bond issues remaining and those are maturing within the very next few years.

Now, that was the condition. Five years ago we could foresee that within the next five or ten years this problem would have simplified itself. We took under active discussion the laying of plans to simplify the entire corporate structure of the railway and to put its house in order. We recognized at that time as we recognize today that probably and theoretically the ideal would be to have a single entity, one corporation which owned and operated everything which we possessed. That we cannot achieve for the time being but we did set our sights then to reduction of our rail operations into one railway company. We would like to get rid of all the others. The components of that one railway company individually hold charter powers to build between the points in the geography of Canada which were covered by the original statute; they have different powers to do different types of business in different ways. It appears to us that the sensible plan in any railway, and particularly in the case of the Canadian National, is that the powers

over all the Railway ought to be the same. We have endeavoured to put together in Bill 351 the rail powers that existed in our old legislation—and when I say old I mean the 25 statutes that are enumerated—dropping certain provisions which have never been used and which do not adequately serve the purposes which they were intended to serve.

We are endeavouring to achieve that by amalgamation, into the old parents, of all of their corporate children; for example, the incorporations created by the Grand Trunk. All those companies which were acquired by the Grand Trunk by stock ownership we hope to bring back into the system by direct amalgamation with the Canadian National Railway Company which is just the Grand Trunk under another name. The Grand Trunk Pacific subsidiaries will take to the Grand Trunk Pacific in the first instance and then to the Canadian National. The Canadian Northern subsidiaries are some of the children we are going to take—and we have begun—into the Canadian Northern Railway Company, and then when we get it all back to these 2½ components—Grand Trunk Pacific being the half—we will bring it home to the Canadian National Railway Company, and all the rail operations will be in that name. In other operations we have had to go into the charters of these various companies and pick them out. For example, the Canadian National hotel system which we operate today as a system actually had its beginning in the Grand Trunk Pacific Development Company in respect of some hotels, the Ottawa Terminal Railway Company in regard to the Chateau Laurier Hotel in this city, the Canadian Northern System Terminals, the Inter-colonial Railway, and in the aggregate system different types of corporate holdings, but we held the titles in eleven different manners. We have picked these hotels out of the places where they were and have brought them all together under the operating name of Canadian National Hotels Limited.

Within a matter of a very short time—months—that company will be fully established and will be the hotel operating entity with no corresponding operations to be found in these other places. The same thing is true of communications. The powers of the Canadian Northern Railway Company respecting communications are different from those possessed by the Grand Trunk Pacific and different again to those possessed by the Canadian National. They should be uniform and we are bringing those together now into a telegraph operating company. The practical plan is to proceed to have one rail company, one steamship company, one hotel company, one communication company, and one land company.

We recognize in addition to that we shall probably have to have a few miscellaneous companies, but they will be minimum in number.

That, gentlemen, is really the atmosphere in which we came to the bill. The bill, as I said, represents a consolidation of the corporate powers contained in the 25 different statutes on page 19 of the bill. The language is not in every instance identical to the language in the sections which are being repealed. Those statutes, I imagine, were the result of the composition of probably 25 different individuals. They are not alike in themselves and we have, with the very great help of the Department of Justice, tried to put this language into the draftsmanship of one person so that it will remain more comprehensive than it would otherwise.

The only omissions from the legislation—and I shall give you particulars of them later on—are those sections which are duplicated—and there are several—and those sections which have long since ceased to have any further value, the method of financing the Canadian National having changed, and those sections which perform no function at all.

The objective has been to tidy up the legislation so that anyone can tell what the Canadian National is. They will not have to look through all these

books. We have proposed the extension of the powers which are referred to in the explanatory notes opposite the first page of the bill. The extensions are in every instance intended to be corporate in nature; they are in most instances merely a consolidation of the powers which we already possess in railway companies which will disappear within the next few years and we wish to be certain if they are brought into this entity the power will exist to carry on the operations which were carried on under the old incorporations.

We hope this bill will look after everything and that we will not have to come back here at some time in the future; but that no one can tell, and it may well be that we have created situations and overlooked things which we should not have. But I must say in that connection that in the preparation of this we have had about 100 statutes to play with, a very large mass of corporate history much of which has been collected for 30 odd years. We have tried to put together here something which is understandable and something which will operate in the way it should.

Mr. GREEN: What about the Intercolonial Railway.

The WITNESS: The Intercolonial Railway has no corporate existence. It is the direct property of the federal Crown and is entrusted to the Canadian National Railway Company for operation and management under the terms of the Canadian National Act of 1919.

By Mr. Nesbitt:

Q. How many of these companies still in existence have shareholders other than Her Majesty?—A. Of the companies shown in the schedules, I do not think there are many, but I shall be delighted to give you the exact figures.

Q. If there are any private shareholders other than Her Majesty, they would be very small?—A. Yes.

Mr. JOHNSTON (*Bow River*): Would those shares all be held by Canadians or are some held possibly by outsiders?

The WITNESS: No. In instances where there are outstanding holders, they are thought to have been held mostly by people not resident in Canada. We have never been able to find them. Some of these very old companies had outstanding minority holdings, but the records have long since ceased to exist—in some instances, almost 100 years—and there is no trace of who they are and in any event the holdings are very small.

By Mr. Fulton:

Q. Was the Intercolonial Railway synonymous in the old days with Canadian government railways?—A. The latter was more embracive and extended beyond the Intercolonial and was the term used to collect all of the Crown rail operations.

Q. It included the Canadian Northern and Grand Trunk?—A. No. It never did include, to my knowledge, any of the corporate operations, but did include operations such as the Intercolonial Railway, the National Transcontinental Railway and the Hudson Bay Railway, all of which were Crown operations without any corporate existence.

Mr. CAVERS: From the explanation notes to the bill it appears that the bill gives authority to the railway to construct short lines without parliamentary authority. What do you mean by short lines? What is the extent of the line which can be authorized by the company without parliamentary assent?

The WITNESS: It has reference to lines of railways not exceeding six miles in length.

By Mr. Hamilton (York West):

Q. Mr. MacMillan, was there any relation between the bonds of these various companies? You indicated they were tied down to certain sections of railway and certain assets, I assume of those individual railway companies. Did the guarantees extend from one company to the other? That is, although the Grand Trunk Pacific was quite separate would there be a guarantee to bind it to the Grand Trunk Railway as well as the Pacific Railway?—A. Yes. I would like to make an explanation of what you have in mind, but I should not like to be held to account for the entities I am going to mention. The pattern went something like this. The Grand Trunk Pacific Development Company possessed assets—they had terminal elevators, a couple of hotels and other fixed non-rail assets. The stock of that company was owned by the Grand Trunk Pacific Railway Company. The Grand Trunk Pacific Railway Company likewise owned the stock of, let us say, the Grand Trunk Pacific Branch Lines Company. When the Branch Lines Company required funds to make a rail extension, they would give as primary security a mortgage on the new line of rail together with the old line of railway owned by that corporate entity. The stock of the Grand Trunk Development Company, which you remember was the company owning the non-rail things, such as hotels, warehouses and so on, could quite easily be—and was—in many instances also covered by mortgage.

The whole of the obligation of the Grand Trunk Pacific Branch Lines Company was guaranteed by the Grand Trunk Pacific Railway Company and in some instances further back to the Grand Trunk Railway Company. The result in that example is that we could not deal with the affairs of any one of those four companies until such time as that mortgage had been discharged. We could not consolidate or deal with the Grand Trunk Pacific Development Company because we could not get the stock. The stock was under the mortgage. We could not amalgamate the Branch Lines Company into some other railway company because that would have made the new company resulting from the amalgamation liable for the mortgaged debt of the Branch Lines Company, and so on. That was really the problem and it was a question of untangling all these things.

Q. That system of guarantees then necessitated taking over all of these companies, and you could not segregate them and determine which one might be able to operate on its own without getting government assistance and which might not ?—A. That, of course, is into another field. These two systems were one; they were entities insofar as railway systems were concerned. It was only in respect of their corporate background that all of the "scrambled egg" became apparent. They had in most instances a single operating head and he was boss over the whole of the operations irrespective of the corporate factor.

Q. I note that you said 1916, I believe, was the last very vigorous year of the Grand Trunk?—A. I did not mean to convey anything by that at all. My point of 1916 was entirely because I came across a tabulation of 1916, January 1, 1916, and I thought it might be of interest to you gentlemen to tell you what the picture was as of that time. It intrigued me, for example, that the Grand Trunk existed for 71 years and it was before the parliament of Canada 71 times. But not in the same years and not always once a year; but it is a coincidence of figures which arises.

Q. The one question which is outstanding in my mind which I hope to have answered is, there was no opportunity apparently to segregate those railways which might be able to be going concerns and those which would require government assistance, because of inter-relationship of those bond guarantees?—A. That is fair; but there was another reason. It was because the whole of the undertaking of the Grand Trunk Pacific by one or another

means was underwritten by the Grand Trunk Railway Company and the Grand Trunk Railway Company as such had no operation west, roughly, of North Bay. Its operating zone was the hub of Ontario, Montreal and the east and in the most desirable location from the point of view of a railway, but that entire operation was hypothecated on the debts or obligations of the Grand Trunk Pacific.

By Mr. Fulton:

Q. Mr. MacMillan, there is not very much in the bill itself regarding capitalization with reference to share capital. I notice, for instance, you have pointed out that the Canadian government railways are entrusted to the National Company for operation. But apparently they are not capitalized or do not have any share capital. I wonder why? You give this whole corporation a share capital and the other companies being taken on do, I understand, have different amounts of share capital. Why not put that on a uniform basis and give it all a share capital held by the Crown in the right of Canada and the government appoint directors of that company? You are still going to have some of your operations represented by share capital and some not?—A. Well, that may be the case, but I do not look upon it in that way actually. The Crown properties all come to us under entrusting orders in council; they are not regarded as assets of the corporation, the Canadian National Company, but, certainly are responsibilities of the Canadian National Railway Company. The rails, lines, and assets which are the direct property of the corporation are operated, insofar as I know, and I have never thought of this feature admittedly, in the same manner as the entrusted property. We do not segregate; we do not, when we have a problem to resolve, think, now is this a corporate problem or an entrusting problem, but rather once it gets in there it is just part of the very great problem of administering the property. To do as you suggest would require that the Canadian government railways, using the term in its broader sense, would have to be brought under some type of corporate existence.

Q. That is right.—A. And evaluations made on them. It would be a very difficult problem to make a valuation that was realistic and thus create a capital that was realistic. I do not really know what would be achieved if we did it; it has never been done. It was just something else to do.

Q. I was thinking, as a matter of fact, for purposes of studying the financial results of this operation, if you had them all in there on a comparable basis so that you could arrive at a capital value for the purposes of studying the financial results of operation—one of my colleagues mentioned it might perhaps simplify in due course the problem of depreciation and so on. You are undertaking a major job of consolidation and I wondered why the other step of incorporating the Canadian government railways was not taken at the same time. Would it, to your mind, be a logical final step? I am not asking you to say it should be done now, but is there anything in the point to your mind as a corporation lawyer?—A. No, I do not think there is, and I say that with all respect, for this reason, that the test in commercial undertakings—and that is what you suggest now—is how much are the earnings in terms of capitalization, in terms of equity holding and in terms of the ownership component of the company. In the Canadian National, as you will remember, the Capital Revision Act of a very few years ago very clearly spells out what happens to earnings of the Canadian National Railway Company; they all go to the owner. In this instance, the owner, being the Crown, is the same individual who owns these entrusted lines. So that creating corporate value to the C.G.R. and its assets would not vary the amount of money that goes back to the owner at all. It is the same thing as if you or I owned a corner

grocery store outright, and in the course of our business we incorporated it and went through the normal family incorporation where we had our wives, children and brothers being directors, but 100 per cent ownership was in your name, and then it was found that the business of that little store would be enhanced if we were to get it a horse and a rig to make deliveries, and you had one at home and sent it down to be used in the grocery store; it would not make any difference to you as sole owner whether the asset represented by the horse and cart were taken into the corporate picture at all because you get everything which comes from the operations of the store.

Q. Would it not for purposes, among other things, of depreciation, makes a difference how you charge the depreciation of the horse and buggy to the corporation? You are now liable to income tax, I think.—A. I do not profess to be a depreciation expert and of course it is reasonably true, I would think, and almost fundamental, that a company cannot depreciate assets which it does not own or which do not appear in the balance sheet. But I might be wrong.

Q. The assets of the Canadian Government Railways do appear in your balance sheet as I recall your annual report. I am not going to press it, but it seemed to me it would be a final completion of the tidying up process to have put them all on a corporate basis so that they are capitalized on a uniform basis throughout for purposes of depreciation; and depreciation we hope one day will be a real problem to the C.N.R. You would have all your assets dealt with on the same basis.

What is going to happen to the Grand Trunk Western? Can you get this under this bill?—A. No, we have not attempted to deal in this legislation with any American incorporation, rather with the operation of any such incorporation. The American companies are included here for the purpose of definition and for the purpose of bringing it altogether in one statute, but of course the problem to be encountered in the amalgamation of American subsidiaries into the parent is one of taxation and an operating problem. It has always been regarded as sounder business to maintain the American corporations.

Q. What is its relationship to the Canadian National company and what will its relationship be after the bill?—A. There will be no change at all. The relationship today is that the Grand Trunk Western Railroad Company is a wholly owned subsidiary of the Canadian National Railway Company because it was in that relationship at the time of the Grand Trunk Railway Company of Canada, and at amalgamation the Canadian National acquired the Grand Trunk Western. It is operated more or less as a region, much the same as the operations in western Canada are conducted from Winnipeg and the operations in central Canada from Toronto, and so on.

Q. And it is incorporated in the United States?—A. Yes.

By Mr. Nesbitt:

Q. In the example you gave about the grocery store, at this moment I agree that the utilization of the horse and buggy in that business was certainly part of the cost of doing the business and to show whether the enterprise were profitable in itself, certain provisions and allowances should be made for the use of that.—A. Yes indeed.

Q. Isn't that good accounting procedure?—A. Yes. I admit that, and that is done in the railway with the C.G.R. properties. All the operating expenses are taken into account and all the revenues.

Q. By the statute before you, these are brought right into your consolidated accounting?

The CHAIRMAN: Shall clause 1 carry?

Carried.

Clause 2. Are there any questions on clause 2?

By Mr. Carter:

Q. Mr. Chairman, could Mr. MacMillan list the various railways which are included under the category of Canadian government railways?—A. Well, they are railways in so far as they are physical things. What we call the National Transcontinental Railway had no corporate existence other than it was built by a commission established by statute. Roughly it operated or existed between Quebec City and Winnipeg. Now, there was an extension in the maritimes. The Hudson Bay Railway, again not a corporate but a physical entitly, began immediately north of The Pas and goes north to Churchill. Then the Intercolonial Railway—of course, veryone is familiar with it—it serves the maritimes. As such, those are the Canadian government railways. There are other little bits of trackage which presumably are embraced by the general phrase "Canadian government railways", but we do not think of them as such.

Q. What is the essential difference between the two categories? Is the essential difference that the one was built by the Canadian government apart from the Canadian National Railway Act and that the others were owned and operated by the Canadian National Railways either built or acquired by the Canadian National Railways?—A. That is right.

Q. In which of these categories does the Newfoundland Railway come? —A. The Newfoundland Railways are really neither, but I should have included them as being one of the Canadian government railways. I overlooked that, and for that I apologize to you. The Newfoundland Railway, you will remember, was an asset of the commission government of Newfoundland at the time of confederation with Canada. My recollection is it began in the hands of private railway contractors and railways operators, and that through the passage, or with the passage of time, it became necessary for the government of Newfoundland to come to its aid and it passed into the possession of the government. Now, with Confederation, the Newfoundland Railway came along to the federal Crown and passed into the possession of the Canadian National for management and operation.

Q. Who physically owns the Newfoundland Railway? Who is the owner now of the Newfoundland Railway? Does the Canadian National Railway own it?—A. No, no. It is owned by the people of Canada.

Q. Is that not true of all the other railways, in effect?—A. But in a different way, the difference being that Canada as such owns this building in which we are sitting. Canada through stock ownership owns any of the Crown corporations. That is the difference.

Q. Is there any essential difference in the operation or the administration of the two categories?—A. No.

Q. None whatever?—A. No.

Q. Whatever you do for one is done for the other?—A. That is hardly the situation. It is not because of any segregation flowing from the type of employment at all, but rather the same managerial tests are applied to operations whether they be corporate or entrusted.

Q. Do any of the Canadian National Railways pay municipal taxes?— A. Yes, but you used a phrase there which is one of the reasons we bring this bill along. The term Canadian National Railways is merely a descriptive phrase, a collection of words which the statute many years ago authorized us to use to describe the operations of all these enterprises. Now, in so far as the phrase is descriptive of corporate operations, taxes are paid.

Q. You agree that the Canadian National Railways do pay municipal taxes. That is correct?—A. The companies in the Canadian National Railways pay municipal taxes, yes.

Q. Is that true of the Canadian government railways? Do they pay municipal taxes too?—A. Not as such. The pattern with respect to municipal taxation of rail property is patterned as nearly as possible after the general yardsticks provided by the Crown in the administration of any other asset of the Crown. No payment of which I am aware is made as taxes.

Q. Why not?—A. Because the Crown as such is not liable to municipal taxation. But payments are made to municipalities in lieu of taxation.

Q. They do that?—A. Oh yes.

Q. Is that true of the Canadian National Railways or the Canadian government railways?—A. They both do; actually. We do.

Q. I have one more question: when the Newfoundland Railway was taken over by the Canadian government and transferred to the Canadian National Railways for operation, there was no evaluation placed on the assets of the Newfoundland Railway. You did not set up the assets in your books at all as to the valuation of the physical assets of that railway, that is, the property, the buildings, the tracks, the cars and so forth?—A. Your question is this, I take it: that at the time of Confederation was any attempt made to determine the valuation of the assets of the Newfoundland Railway, and that valuation recorded in the books of the Canadian National Railways?

Q. Yes.—A. I do not think there was; not to my knowledge, no.

Q. But you have recorded the expenditures for new equipment; you have set up those figures now, and when you supply new cars to the Newfoundland Railway you have an entry of that in your books?—A. We enter it in our property account, in our capital account—all new equipment, everything we spend goes into the books.

Q. Do you include in your definition of railway the useable parts of the railway, or the fact that the railway itself is the land on which it runs?—A. Yes, but I do not feel that I really understand your question. Are you thinking in terms of the bookkeeping which follows it?

Q. No, I am trying to get back to the question of ownership. You say that the government owns the Newfoundland Railway and that the Canadian National Railways operate it.—A. Yes.

Q. Now then, what is it that the government owns? Does the government own only the track and the land and the physical buildings, or does the government also own the new equipment which has been supplied and which the Canadian National Railways has included in its capital assets?—A. I am just trying to answer your question and not evade it. I would say that the government owns everything; it certainly owns it all in one quality or another. In so far as the rolling stock which has been acquired as assets for the use of the Newfoundland Railway since Confederation, that is recorded; the cost of it is recorded in the books of the Canadian National Railways because that is the means by which the capital expenditures of the entire Canadian government railways are made; and I suppose if we were to be technical, it would be possible to say that the "X" boxcars which have been placed on the Newfoundland Railway are in the first instance the property of the Canadian National Railways, and, following through the corporate background, ultimately the property of the Crown in the right of Canada. I do not think there is any significance in the difference at all.

Q. I am not so sure about that. Do you own the use of these diesel engines that run on the track? Who owns them? Does the Canadian National Railways own them or the government?—A. It would be the same as the boxcars which are supplied by the Canadian National Railways as manager of the Newfoundland Railways; the cost of the diesel equipment is no doubt reflected in our capital account.

Q. In those diesel engines you burn diesel oil. Who should pay the taxes, the municipal taxes on that fuel? Would it be the Canadian National Railways, or would there be a government grant in lieu of it?—A. That is an operation of the Canadian government; the government in the right of Canada, the Federal Crown. The Newfoundland Railway is in operation in the name of the Crown.

Q. It seems to me that you are slipping from one category to another without any very real reason for it. It seems to me that you have here rather a distinction without a difference. I am not quite too clear on that.—A. I think that probably your problem flows from the fact that you think of a locomotive as being the railway. A locomotive is not the railway. If you look at the boxcars in a string in a freight train which may come into Ottawa, you will see that there are included Canadian National Railways cars, Canadian Pacific Railway cars, Milwaukee, Pennsylvania, New York Central, Baltimore and Ohio, Chesapeake and Ohio, and perhaps fifty different entities. Those cars at that time are part of the train of the Canadian National Railways, but the ownership of the equipment has no bearing on the railway itself.

Q. No, but the figures which you have set up in your books indicate that you claim ownership. Surely it is significant that they are physical assets?

By Mr. Fulton:

Q. That brings me back to my earlier question about the corporate structure of the Canadian government railways. I was just wondering whether actually the Canadian government railways which comprise four main systems, the Intercolonial, the National Transcontinental, the Newfoundland Railway, and the Hudson Bay Railway, whether they are actually shown now on the balance sheet assets of the Canadian National Railways, or whether they should not properly be shown on the balance sheet of Canada.—A. I think they are.

Q. In other words, when you look at the balance sheet of the Canadian National Railways which is appended to the annual report, you are not showing there the total of the railway assets operated by the Canadian National Railways. You are only showing the total railway assets owned by the companies forming the Canadian National Railways. Nevertheless on the statement of income and expenditures you are showing the income and expenditures in connection with those lines.—A. You will notice that on the consolidated balance sheet in the last annual report the investment of Canada in the Canadian government railways is shown as a liability of the Canadian National Railways to the amount of $379 million.

Q. What page is that?—A. It is page 3 of the light green insertion, the statistical statement. The figure shows, if you look under the item of "Government of Canada, Shareholders Account", the capital investment of the government of Canada in the Canadian government railways at a figure of $379,774,515.

Q. What about the assets? For instance, under assets, road and equipment property, are we to take it that it includes the lines of the Canadian government railways?—A. I am sorry. Where are we now?

Q. If we look at the other side of the balance sheet under the top item of assets, road and equipment property, the figure is shown of 2 billion 600 million dollars; are we to assume that that includes the Canadian government railway lines?—A. I am sorry but I cannot categorically answer the question. I do not know. I do not think there is anything there for the C.G.R., but I would not like you to be unduly influenced by my answer.

By Mr. Hamilton (York West):

Q. It must mean all the assets in some shape or form.—A. It may be.

Q. I think that Mr. Fulton's point is fairly well taken, and that we might as well have a complete consolidation and take it through, in the same way as we have done it with this, instead of having them listed separately under liabilities. At the present time we have got it under assets anyway.

Hon. Mr. MARLER: It may perfectly well be there, but it is away outside the scope of the bill itself.

Mr. FULTON: Mr. McMillan gave us an analysis of the situation when explaining the purpose of the presentation and effect of the bill. If the minister would say that would be a question which he should answer, then very well.

Hon. Mr. MARLER: No, I am not suggesting that. I suggest that the bill does not change the existing state of affairs, and I doubt if it would be within the scope of the bill to suggest that it should be changed or that the Canadian government railways should form part of the Canadian National Railways.

Mr. HAMILTON (*York West*): Is not the intent of the legislation to simplify to the greatest degree possible the financial set-up of the corporate structure?

Hon. Mr. MARLER: If you turn to the explanatory notes you will see that the purpose of the bill is to consolidate the various enactments relating to Canadian National Railways into one statute.

Mr. FULTON: Perhaps we should let it go, but we think it should be done.

By Mr. Green:

Q. May I ask Mr. McMillan if he could give us a list of the government owned railways with the mileages? I see that in the statement of the Canadian National Railways in its annual report about which there was some discussion a moment ago, the capital investment of the government of Canada in the Canadian government railways, is about 380 million dollars which is approximately a quarter of the total investment. That looms quite large in the general Canadian National Railways picture and it would be helpful if we could have an actual statement showing the mileage and just exactly what lines of railway are in that category.—A. I think we can get that for you.

Q. One other question: there is an Act known as the Government Railways Act. As a matter of fact it is referred to in the bill we are now considering. Do the Canadian National Railways which we have been discussing come under the Government Railways Act? Are they subject to the terms of that Act, or are they taken away from that Act by this present bill or by any other legislation?—A. The answer must be that it is about half-way between one and the other. All the operations of the Canadian government lines are conducted under practically the same rules as those applicable to the corporate lines. The Railway Act and this statute so provide, and the Railway Act especially is applicable to the Canadian government lines during the time of the entrustment, except with respect to certain sections in the Railway Act; and there is a block which deals with new construction, the location of lines, which are excluded from applicability to the Canadian government railways; so, as long as they are part and parcel of the Canadian National system, the same rules and regulations apply.

Q. The Government Railways Act gives the minister very wide power over government railways. Will he still have those powers once this bill 351 becomes law, or what happens to the provisions of the Government Railways Act? I can find nothing in bill 351 which removes the powers of the minister contained in the Government Railways Act.—A. Nothing happens to the Government Railways Act; it remains as a valid, as an existing piece of legislation. But the properties of the C.G.R. are no longer subject to its terms for as

long as the entrusting to the Canadian National Railways remains, subject only to the fact that sections 169 to 246 of the Railway Act do not apply to the Canadian government railways.

Q. You say that they do not apply to the Canadian National Railways at all?—A. No, no. We are just on a little different wave-length at the moment. The Government Railways Act is normally applicable to the Canadian Government Railways as such. The Railway Act of Canada determines the operation of the Canadian Government Railways under the entrustment order to the Canadian National Railways for administration. By this statute it is in section 15. The Railway Act which is applicable to operation of the railways is made applicable to the operation of the Canadian government railways, other than that sections 169 to 246 of the Railway Act do not apply to the government railways. The reason is that these sections of the Railway Act are the sections determining the means by which new lines are to be located and the construction thereof, which are matters fully covered in the Canadian Government Railways Act, and powers, to the extent that they must be resorted to for the Canadian government railways, are thus found in the corresponding section of the Government Railways Act.

Q. If it was decided to build a line extending the Canadian government railways, such as the National Transcontinental, that could be done under the powers contained in the Government Railways Act. On the other hand if it was decided to do something with the Canadian National Railways own line, that would be done either under the Railway Act or under this bill 351. Is that correct?—A. I think it is correct with one reservation or example; in the National Transcontinental I do not think that is too good an example, because I have never heard of an extension for the National Transcontinental, or of anything other than in the name of the Canadian National Railways, but in the territory of the Intercolonial Railway, the powers of the Government Railways Act have been utilized upon occasion, but whether they are the only means or not, I would not like to say because I do not know. But certainly in so far as the National Transcontinental Railway construction is concerned, anything done in my time has been done in the name of the Canadian National Railway Company.

Q. If there was a desire to build an extension or a branch line on the Intercolonial Railway, that could be done by the minister directly under the Government Railways Act?—A. Yes, I suppose legally, yes.

Q. In other words, there would be no limitation with regard to six miles or anything of that kind, and there is a wide open power in so far as the government railways are concerned for construction to take place under the authority of the Government Railways Act?—A. Yes, but you are leaving the impression that there are unlimited powers. You are giving me the impression that there are in the Canadian Government Railways Act to be found unlimited powers of construction. But I do not think there are. There are powers of construction up to the six miles, certainly, but I do not remember the power beyond that. I want to make this point to you in that connection: that all of these pieces of construction of railways are most expensive and that they cost a lot of money. The funds with which such construction is done are provided by the Canadian National Railway Company out of its budget, and the practice has been, to my knowledge, at any point to make long construction in no name other that of the Canadian National Railway Company, because we want to be sure that this corporation possesses the assets and that we have something to reconcile the records with.

Q. But in so far as the actual statutory powers are concerned, the Canadian Government railways, such as the Intercolonial, could be extended under the provisions of the Government Railways Act without having to have

a bill passed for the Canadian National Railways, as has been the custom in the past?—A. I would not like to answer that question because I do not know. I would have to check it up. I have never used that power.

Q. Could we have an answer to that question at one of our later sittings?—A. I would imagine so.

By Mr. Nowlan:

Q. Is there anything in this bill which indirectly affects any of the statutes under which the Intercolonial Railways was constructed and under which it operates?—A. No.

Q. There is nothing in this bill which affects anything in the Maritime Freight Rates Act?—A. No.

Q. Thank you.

By Mr. Nesbitt:

Q. My first question refers to the answer you gave to Mr. Green. On page 2 at the top, under assets. It says that this represents equipment and property to the extent of 2 billion 639 odd million dollars. Is a statement of assets or an inventory taken annually of all the fixed equipment, that is the locomotives, the cars, and so on, or how is that figure arrived at?—A. I am sorry. That question is a little beyond my province. I do not have much to do with the bookkeeping; but from my practical knowledge I would say that there is no physical inventory taken which embraces the entire system. It would be impossible to do it once a year.

Q. In other words, that figure in your opinion—I do not wish you to tie to it—A. I think that is reflected on the books of the company.

By Mr. Nesbitt:

Q. It is a general estimate in other words?

Hon. Mr. MARLER: Surely not an estimate it must be the result of bookkeeping up to the time of the statement.

By Mr. Nesbitt:

Q. I see there is an item on the liability side, accrued depreciation, on page 3, listed at 200 odd million dollars. Is there a reserve situation? Is there a reserve depreciation set up each year for the capital assets of these various companies or how is that arrived at?—A. I am sorry, I do not know.

Q. Could you possibly obtain that information for us for a later sitting of the committee? I think those two questions are rather basic and would facilitate the understanding of a number of these sections later on. Possibly the chief auditor of the Canadian National Railways would be able to provide that for you quickly.

By Mr. Carter:

Q. I would like to follow up Mr. Green's question. In the case where it is desirable to expand a service of the government owned railway, where does the responsibility rest for initiating such an expansion? Does it rest with the government or with the operating company?—A. That is a very difficult question to answer. Frankly, with all respect, I do not see what it has to do with the consolidation legislation. I would like to help you but I do not know how I can answer that question.

Q. Perhaps you could think about it and come up with an answer?—A. You and I perhaps might have a chat on it and examine it sometime.

Q. The second question which I have is: is the telegraph service in Newfoundland in the same category as the Newfoundland Railway? Is it government owned or C.N.R. owned?—A. That I can answer a bit, but perhaps not in the detail you would like to have it. The telegraph service was transferred to Canada at Confederation and entrusted to the Canadian National Railway Company for operation. Since that time we have made very substantial capital expenditures on telecommunications in Newfoundland. The cost of those expenditures is reflected in the corporate accounting of the railway company. I suppose it could be said that the skeleton is certainly the property directly of the Crown. The capital expenditures which have been made, probably, are the property of the corporation. I do not wish you to think from that, that we have made two such segregations in this system. It is all one system for operation.

Q. Not as far as municipal taxes are concerned. There are two different systems. What happens when all the original equipment has been replaced by equipment owned by the Canadian National Railways? Do the railway line and the telegraph line then slip out of the government category into the C.N.R. category?—A. No, it can never do that. That is why I tried to be careful not to leave the impression, where the corporate entity spends money, that it creates a segregation because that can never be. The entrusting corporation must have some meaning at all times and where a system is entrusted to a railway it must be the system. Nothing the company can do can ever destroy that. Until the time came when every tie, rail and bolt of the Newfoundland Railway had been replaced by the Canadian National Railway Company, the entrusting railway, the railway must still be the property of Canada because Canada has never conveyed it to the railway.

Q. Until that condition exists, the Canadian National Railway Company will still have figures on its books including that in its assets. Is that not so?—A. Yes. Again I did not wish to be categorical when I said it was included in the assets. I think I said I assume it is not in the assets. You are getting me into a realm where I know not of what has been. All I know is what I have picked up, which is hearsay.

By Mr. Fulton:

Q. A while ago you said, in answer to Mr. Green, if any extension were built to any of these Canadian government railways entrusted to the Canadian National Railway Company they would be built in the name of the Canadian National Railway Company under the practice which you said prevailed ever since you became associated with it. Could I suggest that might be another argument in favour of incorporation of those Canadian government railways entrusted to your company. Otherwise the situation must be that the Canadian National Railway Company as a corporation is building extensions which, in essence, will form a natural part of the system of the Canadian government railways. Yet the ownership of that system will then be divided, one part of it being owned by the company, but the other part of it being owned by the Canadian government. I am wondering if it is not in the long run going to create a very complicated and confusing picture of ownership, where you have parts of a line which in their whole form an operating whole, owned on the one hand by the Canadian government and on the other hand by the Canadian National Railway Company. Would that not be the situation under the system you have described?—A. My best answer to that has to be that we have to creep very slowly before we can run. I do not know whether that is a desirable result. Certainly we have not, in our planning, gotten anything to that point. I told you a while ago that the legal ideal is one entity; therefore, everything goes; and I say that now. But, from the practical point of view, that cannot be achieved and all we can do is to do these steps. I also said that we may

be back. We do not know that we have in this bill everything that should be there, and we may be back again sometime in the future. But we wish now to go on with this step and see what the result is.

Q. Would it be possible to incorporate those parts of the Canadian government railways which have been entrusted today to the Canadian National Railway Company for operation?—A. Would it be possible to incorporate a company, do you mean?

Q. Yes.—A. Legally there is no problem.

Q. Perhaps I could leave it for consideration in later years.

By Mr. Nesbitt:

Q. Could I go one step further? Is there any real reason for going on even with the steps suggested by Mr. Fulton, even to have a separate corporate entity for a railway, hotel, land and development company and steamship company, which I think you thought was the idea which we should be looking towards? Is there really advantage of that in an operation of this kind? Is it not possible that everything could be owned by one corporate entity, and then the bookkeeper or the accounting set-up, simply reflects the different divisions of the company's operations?—A. I think you misunderstood me before, because what I said just now was that the legal ideal, and my dream, is to see it all in one complete entity. What the accountants do, I do not care. But that is something which we are unable to achieve today. Our immediate plan contemplates these five or six other things; because, you see, it is just like sorting mail or anything else where you have to have a receptacle into which you can toss the components when the sorting is going on. That is why we want these five or six companies, then, for a sorting use, and the ideal is to build it all into one.

Mr. HAMILTON (*York West*): The answer would be a saving in cost?

The WITNESS: That is a very difficult assumption to make. These decisions create legal problems more than anything else and lack of understanding more than anything else. The railway as a railway is operated as an entity and the superintendent at any given point does not know which line between any two points is not the property of the Canadian National Railway Company, which happens to be the problem of someone else. I do not think there would be any saving in that respect.

Mr. LEBOE: Would there be any difference in municipal revenue if the government railways were brought under the Canadian National Railways incorporation? I am wondering if the municipalities are not getting as good a deal under the government ownership as if it was brought under a corporation?

The WITNESS: I would not know the answer to that.

By Mr. Johnston (Bow River):

Q. We are now discussing the interpretation of different terms, and my thought, of course, is along the same lines as it was when I was speaking in the House when the minister indicated that later on in the bill he would bring in an amendment to these things particularly as they affected the trucking industry of the Canadian National Railways. I am wondering about this term under clause 2 (b) (ii); the term there is "property". Could that term there be wide enough to include the trucking industry of the railways? The same thing applies in (iii) to the National Company. Then you will notice down further in (iii):

> ...the National Company ... unless expressly excluded, includes all properties, works, interests, powers, rights and privileges, incidental to those so entrusted and commonly used, operated and enjoyed in connection therewith.

Now, are any of those terms sufficiently wide enough to include the trucking operations of the railway?—A. I think the answer to that is very simple. This is not the Canadian National Railway Company at all. These are the assets of the Canadian government railways. They have their basis under the entrusting order in council. It is an assignment for management. That is really what it amounts to.

Q. In clause 2 (c) (i) of the bill you use the term "the National Company" and in (c) (ii) "all the companies in Canada mentioned or referred to in the First Schedule and any company formed by any consolidation or amalgamation of any two or more of such companies...". Are those terms used there wide enough to include the trucking industry of Canada?—A. This does not create any rights or limitations at all; it is merely the meaning. It is attributed to this phrase, "Canadian National Railways".

Q. That is exactly what I wanted to know. For instance, through your schedules, there are terms in the First Schedule which definitely include national trucking. There are terms there that do refer to the trucking industry, and I am of the opinion—although I could be entirely wrong as I am just trying to get some idea across here—that Canadian National Railways, or the term "national company", seems to me is sufficiently broad under the terms of this Act so that railways would be allowed to start up or conduct a trucking operation, and that that trucking operation would come under a clause of the bill. I do not want to anticipate those clauses, but they are clauses 18 and 29, and they would give the railways such wide powers that they would be able to operate in a province regardless of provincial legislation.

The Hon. Mr. MARLER: It seems to me at the moment what we are doing in this clause 2 is merely to give a meaning to the terms we are using later on in the bill. But we are not in clause 2 giving any powers or adding to the corporate structure or capacity of any one of the constituent parts either of the Canadian government railways or the Canadian National. I think these terms are merely to explain what is meant by Canadian National Railways when we use the term later on in the bill and also to explain what is meant by the national company when we will later on refer to it in other provisions of the bill instead of saying specifically Canadian National Railway Company. I think these are merely descriptive terms.

Mr. JOHNSTON *(Bow River)*: That is exactly what I had in mind. What I want to be clear on is wherever we use the term "national company" throughout this bill, or the "Canadian National Railways" throughout this bill, that the term which is used in part III of the First Schedule, the Canadian National Transportation Limited, could not be included in that. Do you see what I mean?

Hon. Mr. MARLER: Yes.

Mr. JOHNSTON *(Bow River)*: When we come along to part II of the schedule I understand you are going to suggest an amendment to that.

Hon. Mr. MARLER: But not at this point, because it is not the appropriate place.

Mr. JOHNSTON *(Bow River)*: My question when you make that suggestion is going to be, are there any other places in the Act where the Canadian National could operate trucks even though we take out that one company, Canadian National Transportation Limited in part III of the First Schedule. That is why I am concerned about this definition now.

Hon. Mr. MARLER: Quite candidly I do not think the definition is the place to look for the facts. I think you must look for the facts in other clauses of the bill. When you come to those clauses, then I think you will see how extensive they are and whether they should be or should not be restricted.

Mr. JOHNSTON *(Bow River)*: I agree with you there, Mr. Minister, and I will let the question ride now until we come to those other clauses, having in mind I have brought it up, and if there are any places where we must refer back to the definition, that it be permitted.

Mr. HAMILTON *(York West)*: I am trying to understand Mr. Johnston's point. I think it is this, that included in the definitions clause is a large group of companies that notwithstanding the deletion of one specific company in Part III of the First Schedule, would leave quite a large group which might still carry out the powers, if they are contained in their original charter or statutes, and that they could operate various types of transportation equipment. I am wondering if it is not too late then if we get down to the clause, because we are only deleting one company.

Hon. Mr. MARLER: It was never intended to delete any company in particular. As I said in the House the other day, what is intended to be done, when we come to clause 18 dealing with the declaration of works for the general advantage of Canada is that the companies listed in part III of the First Schedule should be excepted from the declaration. I mentioned the Canadian National Transportation Limited particularly because the subject had been mentioned in correspondence to me. It was not the intention to delete the name of any company from the schedule but merely to see that the declaration of general advantage does not extend to and cover the companies listed in part III.

Mr. JOHNSTON *(Bow River)*: Could we go so far as to say that the expression used in clause 18 "for the general advantage of Canada" would not apply to the term "national company" if that would include Canadian National Transportation Limited?

Hon. Mr. MARLER: I think we cannot very conveniently discuss both clauses 2 and 18 at the present time. I suggest that we deal with clause 18 on its own merits when we come to it.

Mr. FULTON: In these entrusting orders made by order in council is there a standard pattern or order in council which has been involved over the years defining the rights and powers of the company to operate these lines?

The WITNESS: Yes. There have not been very many of them.

Mr. FULTON: Could you file it for the information of the committee, which would give us a general idea of the terms under which these lines are entrusted?

The WITNESS: Yes, I think I can.

The CHAIRMAN: Shall clause 2 carry?

By Mr. Green:

Q. I would like to ask for some further clarification in regard to the definition "Canadian National Railways". In clause 2(i) it is described as including the national company. Then in (ii): "all the companies in Canada mentioned or referred to in the First Schedule and any company formed by any consolidation or amalgamation of any two or more of such companies." And then in (iii): "all companies in Canada controlled directly or indirectly by the National Company and declared by the Governor in Council to be comprised in Canadian National Railways". I take it from that declaration that any American subsidiaries are not included in the definition of Canadian National Railways. Is that correct?—A. Yes.

Q. And also that any Canadian government railways are not included in the definition of Canadian National Railways. Is that correct?—A. That is correct.

Q. In subclause (iii) you say:

All companies in Canada controlled directly or indirectly by the National Company . . .

Could you give us an example of a company that is controlled indirectly by the national company?—A. Grand Trunk Pacific Development Company would be an example. I do not know whether it is the example contemplated there. The stock of that company is owned by the Grand Trunk Pacific Railway Company and the stock of that company is owned by the Canadian National Railway Company. It is not a direct thing but it follows through.

Q. Are there any companies in which the Canadian National has an interest but not the control?—A. Oh yes. There are jointly operated properties in which we have a 50 per cent interest, the other 50 per cent being in the hands of the Canadian Pacific.

Q. That, of course, would not come under the definition?—A. No, not of Canadian National Railways.

Q. Then clause 13 provides that "The National Company may use the name 'Canadian National Railways' as a collective or descriptive designation of either railway or railway works comprised in National Railways". Now, that includes American lines and government railways, and yet you are using exactly the same name. In other words, in clause 2 "Canadian National Railways" means one thing and in clause 13 "Canadian National Railways" mean something quite different?—A. I do not think that is a fair comment. Clause 2 defines the meaning of Canadian National Railways and provides you with a definition for the purposes of this legislation. That context and the use of it there enables us to reduce the drafting of this legislation, I would think, by at least 25 per cent, because, rather than using the phrase, all of these things would have to be spelled out in many places. Clause 13 on the other hand has nothing to do whatever with the significance of the phrase in the statutes but therein provides the management of the property with a name which it can paint on the side of its box-cars and passenger equipment and/or anything, for that matter, and may use it to cover the whole operation, just like an umbrella. It has no legal significance whatsoever.

Q. I merely point out you use exactly the same words, and they mean two different things because clause 13 covers all lines of railway or railway works comprised in national railways, and national railways in clause 2 is defined as comprising not only the Canadian National Railway but also the Canadian government railways and/or the companies not in Canada, mentioned or referred to in the First Schedule. In other words, it takes in a much broader field?—A. Yes. It is everything.

Q. It would seem to me that there should also be some method worked out so that you do not have Canadian National Railways meaning one thing in one clause of the bill and a different thing in another part of the bill.—A. I do not think it is a different thing. In the interpretation clause we have both Canadian National Railways defined and National Railways defined. It would be quite unacceptable, I suggest, to the people of Canada to have us use the two words "National Railways" as being descriptive of everything we operate. The name has always been Canadian National Railways. This appeared in 1919 in the first charter of the Canadian National Railway Company. It is not anything new. At that time it was used to describe the works of the system as it had existed, and it has been repeated time and time again. It is merely a descriptive term made available to the company to cover all its operations, as we use it in advertising and for other means, and it has no significance whatever.

Q. If, in clause 2, you used the words "Canadian National Railway" instead of the plural "railways", then you would have a distinction?—A. No. We

could not do that, because the Canadian National Railway would be very confusing unless we put that "s" on it, because the Canadian National Company is a very different entity to Canadian National Railways.

By Mr. Nesbitt:

Q. Subclause 2 (c) (iii) says: "all companies in Canada controlled directly or indirectly by the National Company and declared by the Governor in Council . . .", and so on. Now, does "directly" or "indirectly" mean—or does "controlled directly"—mean theoretic control, in other words more than 50 per cent of shares or de facto control, if any companies can actually be controlled by owning not less than 50 per cent of the shares?

Hon. Mr. MARLER: Is it not referring to the manner of control, as it were, one holding the control directly, or indirectly by means of some company that is interposed? Surely it is not a question as to the kind of control, whether you have practical or absolute control mathematically, and it seems to me it is described whether or not you are holding it directly or indirectly.

Mr. NESBITT: I was referring first of all, Mr. Minister, to the word "control". Does that mean absolute control or practical control?

The WITNESS: May I answer that? I rather think that the wrong significance has been taken out of this subclause (c) (iii). In any event that subclause as of today does not bring anything in under the Canadian National Railways at all. It is a clause that determines the qualifications of companies which might in the future come into this definition.

By Mr. Nesbitt:

Q. Yes, I quite understand that.—A. It is with regard to declarations by the Governor in Council to be comprised in the Canadian National. In the 1952 and 1919 statutes there was no restriction against the declaration of companies not owned by the Canadian National, and that is new in this consolidation to the extent that these declarations have to be restricted to companies controlled directly or indirectly, and it means control-ownership.

Q. Control means ownership?—A. Yes.

Q. Does that mean full and complete ownership—over 50 per cent, or less?—A. I would say 100 per cent. I cannot contemplate the Canadian National taking into its bosom as part of the corporate family any company in respect of which we did not have 100 per cent ownership, because that is the negative of what we are trying to do here. We are trying to reduce and get it down. We have not bought companies as such for a long time where something of that nature comes along—it is the assets which flow and which are procured. As a pattern we do not take the corporate entity any more because we do not want minority votes.

Q. Then you may use the word "control" there as actually meaning 100 per cent-owned?—A. Yes.

Mr. JOHNSTON *(Bow River)*: Mr. MacMillan said we were probably taking the wrong meaning out of these expressions, and it was not intended to mean exactly what we are trying to imply it might mean. But I would like to draw to his attention that, when we pass this legislation, any interpretation we give here on the committee would not have any legal significance whatever, because we must take the exact working of the Act to get the definition of these terms. It does seem to me, when we are looking at clause 2 (c) with respect to the Canadian National Railways, and then when we refer to clause 13 they use the term "the National Company", and that does mean the Canadian National Railways or it could mean the National Railways. That takes in a lot of territory and brings me back to my other question—and I do not want to

labour the point—but when we use the term the National Company or the term the Canadian National Railways, does that also include something else which could be a trucking transport business? I know that the minister has given us his assurance that that can be properly dealt with, and I am willing to let it stand at that, but I want to draw to the committee's attention that there is a great deal of ambiguity in the definition of terms, and when the Act is being interpreted in the court, the court must confine itself to the definition as we are outlining it here today.

The CHAIRMAN: Shall clause 2 carry?

By Mr. Green:

Q. May I ask Mr. MacMillan if subclause 2 (*g*), describing "telecommunication", is wide enough to cover radio and television stations?—A. I might tell you, Mr. Green, that this definition of telecommunications is the definition to be found in the COTC Act, and we utilized that definition because we thought it was the most current pronouncement of parliament on this type of thing. You notice that the word "radio" is here and is included right in it. You asked me if I thought that was one of the things—it is a very broad definition, certainly.

Q. I take it that it would also include television?—A. Television?

Q. Yes.—A. Television, of course, is the result of communication rather than communication itself. It would cover the transmission of television, yes.

The CHAIRMAN: Shall clause 2 carry?

Carried.

Shall clause 3 carry?

By Mr. Fulton:

Q. On clause 3 I should like to ask Mr. MacMillan whether this will, in effect, produce any change, or whether it will merely continue in existence as the present corporation. I will put it this way; will it merely continue in existence—a presently existing corporation—or will it have the effect that the company now to be known as the Canadian National Railway Company will embrace a large number of other corporations which were formerly known by separate names?—A. No, the answer is that the company that will be created will replace the four Canadian National Railway companies I told you about a while ago, and its name will be the same. The Canadian National Railway companies are preserved, and the declaration is made there that all these things are declared to be the one company, and that one is the Canadian National.

Q. Well, the effect of that—I think it will be important to litigants, and unfortunately the railway is sometimes engaged in litigation—that with the exception of the Canadian government railways any action arising out of railway operations in the future can be brought in the name of or against the Canadian National Railway company, whereas previously the litigant had to be careful that he brought it against the right corporate entity.—A. This clause will have no effect whatever on that, Mr. Fulton, but as you well know, we have never been inclined to get behind the corporate cloak in litigation brought by private people; the policy of the company has always been consistent to bring the action against the proper one and in most instances we have not raised it. We do not like action in the name of and against Canadian National Railways because the plaintiff acquires no rights, in my humble opinion, from a judgment of that type, because the Canadian National Railways has no corporate existence.

Q. I was wondering if in the future it would be brought in the name of or against the Canadian National Railway company?—A. It will be the same as in the past. There is no change at all as a result of this.

Q. Let us say, in a crossing accident in western Canada which gives rise to litigation, it will still be proper to bring it in the name of or against the Canadian Northern Pacific Company?—A. Yes.

Q. And that will still provide notwithstanding clause 3?—A. Yes, clause 3 does not deal with matters of that kind at all. It simply attempts to preserve and declare to be one the companies created in 1919, 1923, 1933 and 1936, and we say those are all one company and are continuing under the name of Canadian National Railway Company.

Q. And for the rest of your railway operations everything then will be brought under one or other of the other four companies which remain?—A. I am sorry, I do not think I understand.

Q. I think you told us earlier that the step being taken under this bill was to amalgamate or bring in under the one roof all the subsidiaries, for instance, of the Grand Trunk and the Canadian Northern, and to bring them back to the parent company?—A. Not under this legislation. That I explained was the pattern we are following. Ultimately we can carry it by separate conveyances, amalgamations and other things, and we have reached the point where we think this consolidation ought to be done. But this statute will have no immediate bearing on the amalgamation of the Canadian Northern and Grand Trunk Pacific at all.

Q. I am glad that you explained that. I was confused as a result of something you said earlier and may have misunderstood you.

The CHAIRMAN: Shall clause 3 carry?

By Mr. Green:

Q. There is reference in clause 3 to amalgamation of the Canadian National Railway Company and The Grand Trunk Railway Company of Canada. Was it authorized by statute?—A. It was done pursuant to statute.

Q. There is no reference in the bill to that particular statute. Could you tell us which one it is?—A. The amalgamation question?

Q. Yes.—A. Surely, chapter 13, 1920.

The CHAIRMAN: Shall clause 3 carry?

Carried.

Clause 4.

By Mr. Hamilton (York West):

Q. In connection with clause 4, is this the usual way that shares are held in connection with Crown corporations, that is, in trust by the Minister of Finance?—A. I do not know.

Q. I am just wondering and not trying to take a course in corporation law. I am wondering in fact whether this could be further delegated?

Mr. LANGLOIS: May I suggest that Mr. Driedger of the Department of Justice answer this question.

Mr. E. A. DRIEDGER, Q.C., (*Assistant Deputy Minister of Justice*): All I can say is that very few so called Crown corporations are share corporations. So far as I can recall usually provision is made for some minister holding them in trust for Her Majesty, but not necessarily the Minister of Finance.

Mr. HAMILTON (*York West*): Have you actually considered the fact that if the minister is in fact delegated himself, can it be further delegated to him in this manner?

Mr. DRIEDGER: I am sorry, I do not follow you. If parliament says the shares are to be issued to a minister and held by him in trust for the Crown, I do not think the question of delegation arises.

The CHAIRMAN: Shall clause 4 carry?

Carried.

Clause 5?

Carried.

Clause 6.

By Mr. Fulton:

Q. On clause 6, Mr. Chairman, I do not know whether Mr. MacMillan or the minister would be the proper person to discuss this. There have been suggestions from time to time that the Board of Directors of the National Company should be enlarged. It is confined here to seven directors, all to be appointed by the Governor in Council. I am just wondering what is the attitude of the government to the suggestion that the board should be enlarged in order to provide among other things to bring into the operation and direction of the company the benefit of a wider experience which would naturally fall if you chose ten, say, instead of seven, well qualified persons, and secondly, to give to the Board of Directors a more complete geographical distribution across Canada. Now, I realize that in the case of Boards of Directors it is the desire to keep them within bounds. The number ten occurs to me as equivalent to the number of provinces in Canada. What is the attitude of the government to that suggestion?

Hon. Mr. MARLER: As I think I stated in the House at an earlier stage on the legislation, I fully appreciate that there are advantages which would accrue from having a larger board than seven, just as in the case of other large commercial corporations there are some advantages in having a large number of directors who, let us say, attract business to the enterprise which they are directing. But I think at the same time one has to be conscious of the fact that, when you increase the number of directors on the board, you at the same time diminish the responsibility of each. I am inclined to think, without having participated in the discussions when the number was originally set at seven, that that number was chosen because it represented a reasonable balance between having a very small and overpowerful board and the other extreme of having a very large board where the directors themselves would not feel, due to their number, that each had a high degree of responsibility. As I promised Mr. Macdonnell in the discussion on the resolution I am personally prepared to give further consideration to the subject of enlarging the board but I should say that it will not be possible to come to any conclusion in time to take action with respect to this question at this session of parliament.

Mr. NESBITT: On subclause 5 what is the purpose of having subclause 5 in there at all?

The WITNESS: Only because it is carried forward from the original Act of 1919. We have tried to keep this as a consolidation, and it is difficult to explain which are additions and which subtractions. It is just what it was always.

Mr. HAMILTON (*York West*): Mr. Chairman, in connection with Mr. Fulton's remarks on clause 6, has any thought been given to re-election or re-appointment of these directors on an annual basis? I think this clause may be fairly well in line with the provisions of the Dominion Companies Act, but in by far the vast majority of operating companies the directors' term of office is one year and they must be re-elected at the end of that time. That is one observation I would like to make on this. It may be that I will have the same answer as Mr. Fulton but I think very serious thought should be given to that if there is going to be an increase in the directors which I will strongly sup-

port. Unless there is some overriding legislation of some kind in connection with Crown companies, of which I am not aware, I am loath to see a situation here where people other than Canadians may be directors of this company, and I see no restriction in clause 6 that would restrict in any way the appointment of directors to Canadian citizens, and I would strongly suggest that that should be in the clause. Perhaps it is intended to appoint Conrad Hilton to the board, I am not sure.

The CHAIRMAN: Shall clause 6 carry?

Carried.

By Mr. Campbell:

Q. In respect of clause 7, subclause 1, is the chairman of the board appointed for life?—A. For three years.

By Mr. Hamilton (York West):

Q. Is there any legislation of which the chairman or the minister is aware which would restrict the appointment of directors of this company to Canadian citizens?—A. Not that I know of.

Q. Is there any objection on the part of Mr. MacMillian, or those representing the company, to a restriction of that type? Would it create any inconvenience in connection with the operation of those companies which are in the United States—those subsidiaries which may—I do not know—have members of the board who are Americans? Would it inconvenience in any way the operations of the company if that restriction were placed in the clause?—A. If I might, I would like to make this observation. There is no restriction against it in this legislation to my knowledge, and I speak with reasonable assurance of being correct, there has never been anyone on the board other than a Canadian. The appointments are all made by the Governor in Council. We have extensive international interests and I rather think it is probably below the dignity of this country to make a prohibition of this kind.

Q. I do not think so.—A. If we had the situation in reverse, we would have a very highly embarrassing condition with which to contend. The American subsidiaries all have board of directors. In so far as it is possible we try to choose people representative of the community through which the lines travel, but we always have our own people there too. If there were a restriction against anyone in the state of X, Y or Z, the Canadian National management would be in a difficult position, and the control, after all, is exercised by the government. There is no practical problem that I see.

Q. But in fact in the American jurisdiction you are faced with company restrictions there which necessitate Americans being on the board, is that not correct?—A. I do not know about that, and I will not say you are right or wrong because I do not know the answer.

The CHAIRMAN: Clause 7?

By Mr. Nesbitt:

Q. In clause 7 (1), "Subject to the approval of the Governor in Council, the directors shall appoint a President of the National Company" and so on. Then it says in subclause 1, "the President holds office during the pleasure of the directors". Could the Governor in Council prevent or veto the removal of the president of the board of directors?—A. No, I do not think he could, legally.

The CHAIRMAN: Shall clause 7 carry?

By Mr. Green:

Q. Why is a distinction made? As I read clauses 6 and 7, I observe that the chairman of the board is appointed by the Governor in Council. Apparently the directors have no authority regarding that appointment. However, under clause 7, the president is appointed by the board. Why is there a difference in the two positions?—A. The scheme of this legislation originated in 1933 at which time the board of directors were discharged and three trustees were appointed. They were appointed by the government and the chairman of the three was designated by the government. During that time the Canadian National continued to have a president but he was not a director, because there were no directors, and he functioned more or less as an entity under the three trustees. With the revision of the legislation to a large extent words were merely changed, and we still have the pattern in the legislation as it exists today of the chairman of the board being appointed by the Governor in Council, but the president of the company need not be a director of the company at all, although by statute he is permitted so to be. It is really the scheme of 1933 carried forward through the statute, and also 1936.

By Mr. Hamilton (York West):

Q. In connection with that clause, is that not an unusual arrangement that the president of the company need not be a director of the company? That is surely not in keeping with federal legislation or with provincial legislation.—A. That may be, but of course you have to read this in the light of the other clauses. The president is determined by statute to be the chief executive officer of the company. Obviously it would be impossible for the board of directors to operate effectively without the president being there.

Q. We have now had two clauses, Mr. MacMillan, in which we have said it is obvious that this is the only way that the company could operate, but we are not providing for it in the statute.—A. What we are trying to do, Mr. Hamilton, is to achieve a consolidation. This is exactly the law as it stands today, and as I have said before, we have not tried to change it. We want to put it all together. This language is exactly the language of section 10, subsection 1 of the C.N. and C.P. Act, and subsection 2 of the same section.

By Mr. Green:

Q. The language has been cut down?—A. Yes, and also rewritten. It is just a rewrite of the powers contained in those other sections. There is no change intended.

Mr. HAMILTON (*York West*): I do not want to labour this point much further, but surely when we are approaching this on the basis of a consolidation, which I think should always entail simplification, we should not have passed those last two clauses I mentioned simply on the basis of your statement that that is the way the company is operated. I cannot see an effective operation of a company with a president who is not a director, and this clause indicates that the president need not be a director; and I go one step further, as I said when speaking to the last clause, he need not even be a Canadian.

Mr. GREEN: I would like to ask the minister about that point. Would there be any serious objection to taking out that provision in clause 7 (1), "or a person other than one of the directors"?

Hon. Mr. MARLER: Personally I cannot see any particular reason for making a change. Mr. Hamilton a moment ago referred to the fact that the president might not be a director. I do not see what difference it makes. We know he is a director. I think the important thing is, have the directors access to his advice and counsel or not, and I do not think it makes any difference whether he votes, which is one thing he would do if he were a director, but

which he does not do as president. I think in this particular context that naming him the president may not be entrusting him with the role that is usually carried out by the president of a commercial corporation, but there is no doubt, when you read the statute, just exactly what he is intended to do. We say specifically that he is the chief executive officer of the railway. I do not think it is necessary to go any further than that.

Mr. HAMILTON (*York West*): Is that not a contradiction of what has already been said? It is intended here that he would be the chief executive officer and in connection with the operation of this company surely corporate practice as set out in the Companies Act of this parliament and the Companies Acts of the various provinces which makes it mandatory for the president of the company to be a director—surely there must be some reason for that type of legislation. It seems to me that it leaves it wide open as to who may be the president of this company. I would suggest that if the purpose has been to consolidate, we might attempt to simplify at the same time.

Mr. CARRICK: May I ask the honourable member what harm he thinks there is in leaving this as it is? Perhaps Mr. Hamilton could tell us the harm he sees in it.

Mr. HAMILTON (*York West*): The only harm I see is that if the man is going to be an adequately effective member of the company as president he must be a member of the Board of Directors and take part in their discussions. If not, he is going to be an appointee to whom this country will pay a salary not to do a job.

Mr. NESBITT: In subclause (1) starting at "who may be the Chairman of the Board of Directors or a person other than one of the directors". Why not leave that out and have it read:

"subject to the approval of the Governor in Council, the directors shall appoint as president of the National Company a person other than one of the directors; the president holds office during the pleasure of the directors." That would be leaving out that centre part of the subclause which says:

"who may be the Chairman of the Board of Directors."

The WITNESS: Of course the drafting is the product of an individual's mind. There are as many ways of expressing it as there are different individuals. The thought we have tried to carry forward here is the contents of the statutes which are going to be repealed. Nothing more nor less. All those points are in the previous statutes.

Mr. NESBITT: If it is left out he can appoint anyone.

Hon. Mr. MARLER: I do not say that I do not agree with you but I think we should keep it as it is.

The CHAIRMAN: Shall clause 7 carry?

By Mr. Nesbitt:

Q. It says, in the subclause 7(2):

> The President of the National Company is the Chief Executive Officer of National Railways with such powers, authorities and duties as may be defined by by-law or resolution of the directors, approved of by the Governor in Council.

Are there any special by-laws in existence at the present time?—A. By-laws of the Canadian National?

Q. Yes.—A. Yes, of course.

Q. Giving the powers of the president? Could we have a schedule of those by-laws brought in at a further meeting?—A. I do not know exactly what it is in which you are interested. There is no change here. This is the law as it is today, and it is merely a rewriting of the present Act.

Q. I would like to have an idea as to what powers the president has.

Hon. Mr. MARLER: I do not really think this is pertinent to the legislation. I think the pertinent question is whether the powers and duties should be defined by by-law or resolution. All we are doing is presenting the legislation adopted in 1923 and unless there is some reason for changing it, I think we should leave it as it is.

The CHAIRMAN: Shall clause 7 carry?

Carried.

On clause 8.

It being 1.00 o'clock we will adjourn until 3.30 p.m.

AFTERNOON SITTING

The CHAIRMAN: Order, gentlemen.

Mr. N. J. MacMillan, Q.C., Vice President and General Counsel, Canadian National Railways, recalled:

The CHAIRMAN: When we adjourned at 1.00 o'clock we were on clause 8. Are there any questions on clause 8?

Carried.

Clause 9.

By Mr. Fulton:

Q. Will Mr. MacMillan give us the historic background of that provision of subclause 1 (a), which relieves the director of personal responsibility for his absence as director.—A. That was in the original charter of the original Act of incorporation and is carried forward in that form.

Q. Can you give us any idea why it was done? I can understand in so far as the shareholders are concerned because of the peculiar nature of corporate holdings.—A. I do not know exactly what the thinking behind it was but I would speculate it was because these people were appointees of the government; they were not representing any investment of their own. There was no equity flowing through them; they were merely there as the nominees of the Crown and as such it probably was felt they should not carry the normal responsibilities of a director. Directors as you well know are usually responsible for the wages in a company, but in a case of this kind such an obligation would not be too realistic, I should think.

Q. That might be saddling them with all the obligations and would not be proper, but is it going to the other extreme to relieve them of all liability. Has any thought been given to finding a middle path?—A. We have merely carried forward the provision which was originally in the statute.

Q. Well then, perhaps to throw a light on this, I might ask a question in general terms, and I will be satisfied with a simple answer, as to whether the remuneration of the directors is to pay them for their services as directors or

simply to reimburse them for their expenses in attending a meeting? If the latter, I might be prepared to accept the complete elimination of liability. But if it were the former, that they were paid as directors, I might urge that there be some revision of that complete elimination of their liability. I am not asking for any figures.

Hon. Mr. MARLER: The amount has been mentioned in parliament. It is an annual amount.

Mr. FULTON: Does it, in your estimation, take in anything over and above a straight reimbursement for their time which they devote from their ordinary business to being directors of this company?

Hon. Mr. MARLER: That would be a rather difficult point on which to express an opinion, I think.

Mr. HAMILTON (*York West*): Are the directors employees?

Hon. Mr. MARLER: No. They are not employees of the company.

The WITNESS: I think there are two exceptions, Mr. Gordon, and Mr. Daly who was either a conductor or an engine driver and who has been a member of the board for many many years; he is not now in action at all as an employee.

By Mr. Fulton:

Q. Who are the other directors?

Mr. LANGLOIS (*Gaspé*): It will be in a report.

By Mr. Green:

Q. Under clause 1 (b) there is a provision that:

> except with the approval of the Governor in Council, subject to any pecuniary penalty under any statute.

Has there been any order in council passed on that?—A. I have no recollection of that ever being utilized at all.

Q. It seems to be a peculiar condition. —A. I agree, but it has never been used in my time.

The CHAIRMAN: Shall clause 9 carry?

Carried.

Clause 10.

The WITNESS: If I might say a word in explanation of this clause—this is a collection of powers which appeared previously in different statutes. They all deal with the same subject and we have put them altogether and tried to codify them for a better understanding. There is one very minor change and it appears in (5):

"If the Chairman of the Board of Directors is absent", and this is followed in the former statute with "if the Chairman of the Board of Directors was out of Canada". Frankly the legal people did not know why that peculiar restriction was in it. If the chairman is not at the meeting then of course there is need of a chairman and it did not seem reasonable that he should have to be outside of Canada to allow an acting chairman to be appointed. That is the only change in clause 10.

Mr. HAMILTON (*York West*): The only observation I would like to make there is tied with the experiences we have noticed in connection with the actual number of directors. That, of course, is that four directors constitute

a quorum. In subclause (6) it even indicates that the bylaws of the company may be carried forward by an executive committee which I assume will be less in number than seven. All told it would appear that the total power in this company is constituted in the very small group. I am not suggesting that the quorum should be any different so long as the number of directors remains the same, but, along with our recommendation that we feel that the board of directors should be enlarged, I think it would also be in keeping that the quorum should be enlarged. Now, unless there is something in this Act I have not noticed, subclause (4) would indicate that a vacancy does not impair the directors' power to act and, looking back at clause 6 which deals with the appointment of the directors, it would appear that they might act for some period as long as they have had four people as directors, because that would be sufficient to constitute a quorum. Now, with the company having fixed investments and assets of almost three billion dollars, I question very much whether it should be controlled by an executive committee of that size.

The CHAIRMAN: Shall clause 10 carry?

Carried.

Clause 11.

By Mr. Green:

Q. Could we have an explanation of subclauses (2) and (3) of clause 11? They evidently are new.—A. Those notes on the right side are a little misleading. The only new portion of clause 11 is the words "officers or employees", where they appear in line 6. The whole of that line is: "the directors, officers or employees of the National Company." The only addition is the three words "officers or employees". The reason for it is we do have, as we mentioned this morning, properties which are owned jointly by the Canadian Pacific and the Canadian National. Examples are the Northern Alberta Railways and the Toronto Terminal Railway Company and two or three other smaller ones. These are properties which have a separate corporate existence but which are in actual fact merely operating entities of the railway. They have their own officers limited to a superintendent, or someone of another title doing the function of a superintendent. The superintendent reports to a joint operating committee consisting of the operating officers of board of the C.N. and C.P. Now, to fulfil the corporate means of a company there must be a board of directors. The Canadian Pacific's policy has been to appoint to that board, not directors of the Canadian Pacific Railway Company, but operating officers who are concerned with it.

That is all we seek to do. We wish to be able to match them off, in other words. For example, the Northern Alberta Railways, by virtue of the old statute had to designate Canadian National directors on the seven-man board. The Canadian Pacific on the other hand designated a vice-president and other operating officials from their other lines, and we wish to do the same thing on the jointly owned properties. That is all it is.

The CHAIRMAN: Shall clause 11 carry?

Mr. GREEN: Then why is it in subclause (3)? Is it because you do not include the directors there, but only refer to officers or employees?

The WITNESS: This subclause 11 (3) was added merely to extend those corporate or company officers, including these partially control directorships, to be in the same position as the other men are put into by virtue of the other clause.

Hon. Mr. MARLER: It is a parallel provision.

The WITNESS: Exactly.

The CHAIRMAN: Shall clause 11 carry?

Carried.

Shall clause 12 carry?

Carried

Shall clause 13 carry?

Carried.

On clause 14.

Mr. NESBITT: "The Governor in Council may change to any other name the name of any company comprised in Canadian National Railways, or of any other company of which the properties or the controlling interest in the stock is vested in or held by Her Majesty." The word "control" again means the ownership?

The WITNESS: I think it does.

The CHAIRMAN: Shall clause 14 carry?

Carried.

On clause 15.

By Mr. Green:

Q. This is the one which refers to the Government Railways Act. The side note says that it replaces section 15 of the C.N.R. Act, but that section 15 does not refer to sections of the Railway Act?—A. Might I explain that. Section 15 of the original statute provided that: "Notwithstanding anything in the Government Railways Act or any other Act the provision of the Railway Act respecting the construction, maintenance and operation of a railway, (excepting those relating to the location of lines of railway, the making and filing of plans and profiles—other than highway and railway crossing plans—and the taking and using of lands and expropriation proceedings) apply to any Canadian Government Railway that would, but for the passing of this Act, be subject to the Government Railways Act." We have felt in the drafting of this legislation that it is highly desirable to remove ambiguities and uncertainties and so, rather than use this generally vague language, we have switched the Railway Act and decided that the provisions referred to in the old section 15 are those provisions contained in sections 169 to 246 of the Railway Act, so there is no uncertainty. That is the only change.

Q. Take for example, section 169 of the Railway Act which is entitled "Commencement of Works":

> The company shall not, except as in this Act otherwise provided, commence the construction of the railway, or any section or portion thereof, until the general location has been approved by the board as hereinafter provided, nor until the plan, profile and book of reference have been sanctioned by and deposited with the board and duly certified copies thereof deposited with the registrars of deeds, in accordance with the provisions of this Act.

Then there follows another heading, "Location of Line". Turning to section 15 of the Canadian National Railway Act we find there that the section starts with those provisions related to construction of lines of railway; then it goes on:

> the making and filing of plans and profiles—

and so on. So it would appear that you have gone one step further and taken out the provision of 169 in so far as these Canadian government railways are concerned, which would mean that they do not have to apply to the board

under 169. In other words, you seem to have widened out your section to take in more territory than was taken in by section 15 of the Canadian National National Railways Act?—A. I can assure you that was not the intention. The best opinion on this subject has always been that section 169 and what is now 246 were not applicable to the Canadian government railways because there are provisions in the Canadian Government Railways Act which do the same thing and provide different machinery under which construction by the minister is to be undertaken. We have not intended to increase the deletion at all. We have just made an earnest attempt to translate into actual facts this generally vague language which appears in the old section 15, because it is not desirable.

The discussion you and I are having is the best evidence of it. The only way to achieve certainly of the intent is to put it in. These have been studied and the conclusion reached is that the beginning is at 169, and that the end is at 246. You will remember always that here we are talking about the provisions of the Railway Act as applying to Canadian Government railways. The situation is not identically the same when we get to the Canadian National Railway Company which is in the next section. I will show you the difference.

Q. In other words, the practice has been that in the case of the Canadian government railways you have never been subject to section 169 of the Railway Act?—A. We do not utilize these powers at all when you get to the Canadian Government railway at least, not to my personal knowledge. These are powers to the minister, not to the railway; they are powers to the minister to build.

Q. In the case of government railways?—A. Exactly.

Q. And those powers will remain with the minister?—A. Yes. They are the minister's; they are not the railway's.

The CHAIRMAN: Shall clause 15 carry?

Carried.

Clause 16.

Mr. NOWLAN: What are those exception in clause 16?

The WITNESS: I was going to ask for the opportunity of explaining this clause and I wish to make a little change here. The new clause 16 stands in lieu of section 16 (1) of the old statute. There you will see that there are exceptions from the applicability of the provisions of the Railway Act numbered a, b, c, and those are all in general terms. Section 16 (a) is:

> such provisions as are inconsistent with the provisions of this Act.

That is a very difficult phrase to operate under. (b) is:

> the provisions relating to the location of lines of railway and the making and filing of plans and profiles, other than highway and railway crossing plans.

That is a little better, but it is still far from satisfactory. Then, (c):

> Such provisions as are inconsistent with the provisions of the Expropriation Act as made applicable to the company by this Act.

Now we consider that the three subsections just read, expressed in specific sections of the Railway Act, are those contained in subsection (a) of clause 16 in the bill. The change is as it might appear in line 11 where we say: "sections 197 to 205." Those sections deal with the question of mineral rights under lines of railway, and since the drafting of the bill the question of

whether section 198 is applicable to the Canadian railways has been the subject of litigation in western Canada, and it is likely to be the subject of a reference to the court of appeal. I would like to change "197" where it appears to "202" so that we are not specifically excluding sections 197, 198, 199, 200, and 201. The reason being that I would not like to take this avenue of avoiding the consequences of litigation which have come along, although it would be a very happy result. There is no danger in it from our point of view, because if the court of appeal finds it is poor law or not applicable we get out under subsection (b). You will notice in subsection (b), for the sake of greater safety, we have carried forward:

> such other provisions as are inconsistent with this Act or the Expropriation Act as made applicable to the National Company by this Act.

because we do not regard ourselves as infallible, and we may have missed something.

By Mr. Green:

Q. Why do you ask exemptions from these sections 202 to 205? Those are sections which define the power of the railways to take lands without the consent of the owner.—A. Because we do not have that power. We do not have the power to expropriate under the Railway Act.

Q. You are asking to have this taken right out?—A. No; what I am doing is translating in this specific clause the significance of the language of the section of 1919, that is all. We are not asking for the extension of any powers or the restriction of any; but to get rid rather of the uncertainty of this present vague language we put in specific section numbers, attempting to the best of our ability to do that and maintain the *status quo* exactly, not increasing or restricting the exemption.

Q. You are now asking to be exempted from the provisions of the Railway Act having to do with branch lines. Have you never been subject to those provisions?—A. No. We do not build under those provisions. These powers were never granted to the Canadian National, the powers dealing with the location of lines, the construction and so on; that was not the concept of the Canadian National at the beginning at all. The concept was that it was a creature of parliament and was to come under parliament when it sought things. All its powers flowed from parliament. The reason is perfectly obvious here was something which would come into the possession of Canada. The former railways had come from a jurisdiction presided over by the board. It was an extraordinary remedy which was being applied, they were being put together in a unit into one, and the people who were going to put it together, I take it, wished to retain complete control of its avenues, then and for the future. Consequently when they passed the Canadian National Act of 1919 all of these powers to which you are now referring were not made applicable to the Canadian National at all. There were other provisions inserted in the statutes to do the same thing.

Q. Under what section would you have power to build branch lines?—A. They are very limited in section 20. It is because of the limitation on the branch line powers that the Canadian National comes back to parliament, year after year, with special bills empowering it to build such lines of railway.

Q. Then under the Railway Act there is a provision in section 188 for the building of industrial spurs and there is power there to force the railway to put in an industrial spur?—A. Yes.

Q. Apparently you were exempted from that before?—A. It does not apply to the C.N.R.

Q. Is a similar regulation binding the C.N.R.?—A. No. You mean is there any section comparable to 188 which is applicable to the C.N.R.?

Q. Yes.—A. No, not to my knowledge.

Q. As I read 188 there is provision for industry rather than for the railway.

Hon. Mr. MARLER: Yes.

By Mr. Green:

Q. The C.N.R. is not subject to any such provision?—A. That is right, but I can assure you that if the machinery contemplated in sections 188 and 189 would be put into motion I think any railway in Canada would be happy to do the construction, because those are industrial lines and the industry is called upon to put the money on the barrel-head before the construction commences, and the railway, by order of the board or by special arrangement, commits itself to rebate in some pre-determined manner at the rate of $2, $3 or $4 per carload of traffic on the spur, or in some means, under which the industry gets its money back again if and when traffic materializes. I do not think a railway can lose in such a situation.

Q. And industry could compel the C.P.R. to put an industrial spur under this section 188 of the Railway Act, could it not?

Hon. Mr. MARLER: You will remember, under the Act the owner has to deposit the cost of the work.

By Mr. Green:

Q. But there is a difference apparently there, that an industry can compel the C.P.R. or any one railway, except the C.N.R., to put in a spur. Apparently it cannot compel the C.N.R. to do that? Is not that different?—A. I think that is right. I do not wish to describe the powers and rights and privileges of the Canadian Pacific, but I think the intent of the section is quite clear.

Q. There is also the power in section 190 of the Railway Act in the Board of Transport Commissioners to prevent the removal of a spur?—A. Yes.

Q. Is the C.N.R. subject to a provision of that kind?—A. The C.N.R. is subject to those provisions under which none of its trackage may be abandoned without the concurrence of the board.

Q. When was that written into the law governing the C.N.R.?—A. The Canadian National Act, section 22 (1). The section is in the C.N.-C.P. Act, section 2 (3). We are also subject to the provisions of section 168 of the Railway Act itself which provides that no abandonment shall take place without the approval of the board. There are three restraining sections.

The CHAIRMAN: Shall clause 16 carry?

Hon. Mr. MARLER: Note the amendment changing the figure "197" to "202", in the fourth line of clause 16.

The CHAIRMAN: Shall the amendment carry?

Carried.

Shall clause 16 carry as amended?

Carried.

Clause 17.

The WITNESS: This is a complete rewriting of section 16, subsections 2 and 3, of the present Canadian National Railway Act.

By Mr. Green:

Q. Could we have a brief explanation of the difference in power of expropriation held by the Canadian National and by the C.P.R.?—A. I am

quite willing and able to tell you the power of the Canadian National. It is hardly fair for you to ask me to tell you the powers of the Canadian Pacific; I am no authority on that. They have powers and procedures with which I am, frankly and honestly, not familiar.

Q. You would be familiar with its powers of expropriation contained in the Railway Act itself? How do those powers compare with the powers which will be in this new clause 17?—A. Well, the powers that will be here, I would like to say, in the first place, are exactly the same powers that have always been here. There is no change made in them at all. This is the power under which we have operated for 36 years. The machinery of course is that we take under the authority of the Federal Expropriation Act. The first requisite is the dollars; the dollars properly authorized must be present, and having done that, then we take, in the same manner as any department of government does, the power under the Railway Act. I must not pass here without saying that the powers of expropriation are very seldom utilized to compel sales. The powers of expropriation are normally only utilized with the full concurrence of the owner to clear flaws in titles and provide a means by which conveyances can follow in the filing of plans. I doubt if we have one case a year in which we take title under expropriation at all. It is always just a means of clearing up mechanical difficulties.

Q. How do these powers compare with the powers of expropriation as set out in the Railway Act itself?—A. I would have to look that up, Mr. Green.

Q. It has been my understanding that the C.N.R. has much wider power of expropriation than another railway would have under the Railway Act. I may be wrong on that.

Hon. Mr. MARLER: I think you are right in that. It has been represented to me that the principal difference—and I want to say to the committee that I have not verified this assertion—is that the Expropriation Act used by the Canadian National provides for immediate possession upon depositing the plan; whereas I understand the situation under the Railway Act, is that the railway, and specifically the Canadian Pacific, has not the right to take immediate possession.

By Mr. Johnston (Bow River):

Q. Will they be coming back and asking for similar powers?

Hon. Mr. MARLER: I cannot read the future.

Mr. CAVERS: Do you feel that the deposit of the plan is sufficient notice?

The WITNESS: I do not think we ever just deposit plans. We always append a description.

Mr. CAVERS: The section says a description is not necessary?

The WITNESS: Yes, but we do in those cases in which we find we have to use this procedure we cannot get a proper plan without a surveyor having determined on the description, and the description is filed. I remind you of what we said a moment ago. We do not feel we should utilize these expropriation powers in a heavy handed manner at all. We do not do that; we go to the people and talk it over. In the vast majority of cases there is no question as to the conveyance flowing in due time. We often find a cloud on the title through mistakes and lack of definite surveys in the early days, and with the consent and full knowledge of the owner we file a plan and do it with the provincial governments.

By Mr. Green:

Q. If you follow up that practice why should your powers of expropriations not be the same as the powers of the other railway companies? That

is, why is it that the C.N.R. does not expropriate under the provisions of the Railway Act?—A. Because the government many, many years ago decided that it was not their concept of what the Canadian National was to be. They went to great lengths to safeguard it against being a company subject in all respects to the Railway Act. They had reasons; what they were, I do not know. But they provided a different code for the Canadian National. We are not advocating any change; we are not saying it is better than the C.P.R.'s, or worse than theirs. This is the skeleton on which the Canadian National has been created. We know this animal; all we are trying to do is to carry on in a manner which we know.

By Mr. Hamilton (York West):

Q. Is that service of notice ordinarily a matter of policy or is there a provision?—A. There was no provision in the statute requiring the serving of a notice, but we do send one just because it is good public relations.

By Mr. Green:

Q. This clause 17 gives the Canadian National Railway Company special powers of expropriation. What about the Canadian government railways? Do they come under this clause 17?—A. No, no.

Q. When you are dealing with Intercolonial, do you in effect have the full Dominion power of expropriation?—A. The Canadian government railways are governed by the Government Railways Act. The affairs of the Intercolonial are pursuant to that Act in so far as they are preserved. I must tell you, as I read the situation of the maritimes, that is the way the people of the maritimes want it; they want it under this government railways legislation.

Q. I am asking you now about the powers of expropriation. What are these powers in the case of Canadian government railways as distinguished from Canadian National Railways?—A. Canadian government railways undoubtedly possess expropriation powers under the same legislation in the Expropriation Act of Canada because it is the only federal statute which I have known of which permits compulsory taking for any arm of the Crown. It seems to flow from that, that the Canadian government properties would take under that statute.

Q. Then the powers of expropriation in respect of the Canadian government railways are wider than the expropriation powers of the Canadian National Railway Company?—A. I do not know exactly what you are trying to get at; if I did I would try to help you. The same statute which is applicable in both cases.

Q. You have in your system these two groups of railways, one the Canadian government railways such as the Intercolonial, the Hudson Bay and the Newfoundland Railways, and then the others, the main bulk of the railway system, called the Canadian National Railway Company. Is there any difference between the expropriation powers of those two groups?—A. There is this fundamental difference. The powers for the Canadian government railways in expropriation are the powers of the minister of the Crown; the Canadian National powers are the same pursuant to the same statute but not exercised as the minister of the Crown but exercised as Canadian National Railway Company under this legislation.

Q. What is the difference in the actual powers in the two cases? I realize in the case of the Canadian government railways there is the power of expropriation just as broad as in the Department of Public Works?—A. Academically the same power.

Q. Are the powers of the Canadian National Railway Company any less, and, if so, to what extent?—A. It is difficult to say whether they are less or

not, because they are not the same; they are different. The powers of the Canadian National to do anything must be found within the statute. If we have powers as recorded in the statute then it says we need resort to the Expropriation Act. The Expropriation Act, on the other hand, confers on the Queen the right to expropriate for a public work. In a public work, as I remember, the right is defined as a work which, in effect, has been the subject of an estimate, so that in the one instance parliament must have deliberated on the question in the approval of the estimate to bring the powers of the expropriation into play; I think this is the way it works. We do not work under that procedure at all. That, I take it, would be a relatively simple bit of machinery. The Canadian National, on the other hand, starts at a different point. We start again with parliament because it is only from parliament that we get our dollars. I hope I have resolved your difficulty.

Q. You are giving the origin for at least the provision made for the expenditure of the money, but in the actual expropriation is there any actual difference between the powers which can be used in the case of a Canadian government railway, and the powers which can be used by the Canadian National Railway Company?—A. I am not trying to avoid your question. I frankly do not know the answer. I would expect that for all practical purposes they would be the same.

Q. For all practical purposes the Canadian National Railway Company has the powers of the government itself in so far as expropriation is concerned? —A. No, they do not have. They have the same procedure as provided for the government, but the machinery required has a condition precedent in the case of the Canadian National and is not the same nor as simple as in the case of the Crown. That is what I attempted to explain to you a little while ago. You know all the conditions precedent which have been made the way parliament works under the same statute; the mechanics are the same.

The CHAIRMAN: Shall clause 17 carry?

Mr. CARRICK: Have you had any complaint about the exercise of these powers as now in the Act.

The WITNESS: No. There have been very, very few.

The CHAIRMAN: Shall clause 17 carry?

Carried.

As the reporter has been kept pretty busy I think we should have a recess for a few minutes.

Hon. Mr. MARLER: I wonder, if before the recess, I might give to the members of the committee copies of a proposed amendment to clause 18 which will give everybody an opportunity to read it during the recess.

The CHAIRMAN: Following the recess, we are on clause 18.

Mr. LANGLOIS (*Gaspe*): I have a suggestion to offer to the committee. In order to avoid duplication of the discussion and of the evidence which the committee might wish to hear, may I suggest that we deal with clauses 18 and 27, since these two clauses are closely related one to the other, leaving the intervening clauses to stand.

Agreed.

Mr. FULTON: Are we to hear the evidence of those who are here?

Mr. LANGLOIS (*Gaspe*): There are two amendments to clauses 18 and 27 respectively which I am prepared to move now, and I understand that the minister has an explanatory statement to make after these amendments have been placed before the committee.

Mr. Chairman, I move, seconded by Mr. Cavers, that clause 18 be amended by adding thereto the following subclause:

(4) For the purposes of this section, the expression "works" and "railway or other transportation works" do not include

(*a*) any works operated under the authority of section 27, and

(*b*) the works of any company mentioned in part III of the First Schedule.

I also move that clause 27 be deleted and that there be substituted therefor the following:

27. The National Company and every other railway company comprised in National Railways, may, in conjunction with or substitution for the rail services under their management or control, buy, sell, lease or operate motor vehicles of all kinds for the carriage of traffic.

Hon. Mr. MARLER: Mr. Chairman, the first point I would like to mention is, as I said when I proposed the second reading of the bill in the House last week, that we wish to except from this declaration as being works for the general advantage of Canada the works of any company mentioned in part III of the First Schedule. Among the companies mentioned in part III, I said in the House the other day, is Canadian National Transportation, Limited. Of course, the other companies are those the names of which will be found by referring to part III of the First Schedule.

The reason for the amendment is that the works of these companies, many of which are not even established in Canada, would not be declared to be works for the general advantage of Canada.

Then, in order to carry out what I said to the House the other day in respect to operations, the declaration has been further restricted so as to exclude any operations under the authority of clause 27. The purpose of the amendment in the terms which are now before the committee is to make it abundantly clear that the powers which the national company and every other railway company will obtain under clause 27 will be exercised in conformity with the laws of the provinces.

When I first thought about the matter my inclination was to believe that we should have specific words referring to provincial jurisdiction appear somewhere or other in the text, but when I went into the matter, and when the subject was explained to me fully, I realized that if we were to put it in one clause then the implication would be that in other clauses of the bill, where other powers are being given which have in some cases to be exercised, subject to provincial jurisdiction, we would seem to be creating a distinction between the two classes of powers. The legal advisers of the Department of Justice have told me that the powers under clause 27 can best be made subject to the authority of the province by excepting the works being carried out under clause 27 from the declaration "for the general advantage of Canada".

I hope I have made myself clear. As I said at the very beginning of consideration of this bill it is intended, and always has been intended, that the Canadian National Railways in its delivery and pickup services and in the establishment of truck or bus services in the case of the railway line abandonments would carry out its operations subject to such laws of the province as were applicable to those particular operations.

Mr. JOHNSTON (*Bow River*): In the First Schedule on page 17 I notice there are several names mentioned, for instance, the first one is the Canadian National Express Company and then, later, the Canadian National Transfer

Company. Would it not be possible that those could be declared to be works for the general advantage of Canada, and that therefore they could carry on even if eliminated by part III?

Hon. Mr. MARLER: They are already subject to the declaration as being works for the general advantage of Canada and no change is being made in respect to them at all.

Mr. JOHNSTON *(Bow River)*: But could that not work regardless of provincial legislation?

The WITNESS: They have no highway motor vehicle powers at all.

Mr. JOHNSTON *(Bow River)*: Could they not extend it to include that?

The WITNESS: If they sought amendment to their charter, presumably.

Mr. JOHNSTON *(Bow River)*: Would they have to seek amendment to the charter? If this bill is passed they could just go ahead and put their trucks on the highway?

Hon. Mr. MARLER: I think they can only do it if they have power under the charter. They are not getting power under this bill.

Mr. JOHNSTON *(Bow River)*: I take it that the power they have under their general charter would not permit them under any circumstances to operate on the highways or to do other things contrary to provincial legislation?

The WITNESS: That is my understanding, yes. I point out to you that clause 27 is restricted to railway companies. Neither of the companies which you mentioned are railway companies; they get no powers under clause 27.

The CHAIRMAN: We have representatives of the Canadian Trucking Associations here now. Mr. William C. Norris is president and Mr. John Magee is the executive secretary. Mr. H. E. B. Coyne of Ottawa is their counsel; I would suggest that Mr. Coyne come forward.

Mr. NESBITT: There is one brief question I would like to ask the minister. This section 18 (1) is: "The railway or other transportation works of every company . . ." and so on. Does that mean that the term "other transportation" means works which are contributed in part by the railway? I mean, for example, grade crossings where the railway contribution is only a relatively small percentage?

The WITNESS: I think that the answer must be in the negative, because it goes on to say "of the railway" and I think that implies ownership.

By Mr. Hamilton (York West):

Q. Did we have a binding answer that no company under part I or Part II of the schedule has the power to operate vehicles of any kind on a public highway?—A. The first part of the answer has to be that clause 18 as written does nothing for those companies in parts I and II that it has not always possessed. There is no extension of the declaration by the proposed clause 18 to any company in this tabulation other than a couple to which I will refer that have not always had it.

The second thing is that to the best of my knowledge none of these companies in part I or II possesses highway motor vehicle powers at all; certainly they have never been utilized.

Q. Is there any special provision that it might be considered that they had ancillary highway powers, much the same as you obtain under the corporation Act type of corporation? Would there be a reasonable extension of their powers without coming back to parliament? That is what I mean. Are these companies purely incorporated under an Act of parliament?—A. Not all of them. The majority are.

Q. Would it be reasonable to say if they had obtained their powers under letters patent and not by statute that they might have ancillary powers to operate vehicles.—A. Not to the exclusion of provincial jurisdiction. I cannot see how that could be—no.

Q. If they come under clause 18, they would; and would they not be included in the phraseology?

By Mr. Johnston (Bow River):

Q. If they come under clause 18 they would be declared works for the general advantage of Canada, and then they would.—A. In the first place I think there are very serious doubts on the academic point as to whether a motor vehicle operation is a transportation work. Frankly that is not my concept of the significance of the declaration "for the general advantage of Canada" at all. I think the case law tends to the view that works are fixed physical developments. This bill is a "works" if you wish; but an automobile on a street at this street corner at this minute, and away down the street five minutes later, I doubt very much if it is a work within the intent of clause 18 or of any other declaration. It is opposed to the general basis of the whole problem.

Q. Now, are you suggesting then that we may be under an obligation to refer to some case law to decide that issue if this amendment goes through as it is?—A. No. I am not suggesting anything of the kind. What I said in the first place was that subclauses 1 and 2 of clause 18 do nothing that has not always existed.

If you will refer for a moment to the schedule I would like to point out to you those companies which have never been declared to be works "for the general advantage of Canada" and they are, I think, four in number. In the part I of the First Schedule there is the Dalhousie Navigation Company Limited; with that, Mr. Hamilton, you are very familiar. It was a lakeboat operation across Lake Ontario. The charter which was a letters patent charter is presently in the hands of the Secretary of State with an application for surrender; it is empty and the operation has gone. As soon as the machinery of the Department of State has turned, it will disappear.

Mr. HAMILTON (*York West*): You probably would like it back.

The WITNESS: I do not want it back. I have others. That is the only one on the first list which is not already declared just the way it is dealt with in clause 18. In part II of the First Schedule the second listed is the Canadian National Steamship Company Limited. We can find no specific declaration to cover that. That is a shipping company covered under the British North America Act and it is there anyway. The next is the Central Counties Railway Company, a very small segment of our line between Ottawa and Toronto. The company is completely dominant over the line under a perpetual lease. We do not find any declaration for it.

On the next page, page 18 of the bill, there is the Grand Trunk Pacific Railway Company, and we cannot find that it has ever been the subject of a specific declaration. Why it was overlooked I do not know unless it was so big and so important that they forgot it. Then there is the St. Clair Tunnel Company, and this, you may be interested to know, is a company resulting from the amalgamation, if it is legally possible, of an American and a Canadian company, two companies of the same mother company, making the tunnel going from north to south, originating in Ontario and terminating in the United States; there were two tunneling companies, one originating in the state of Michigan and the other in Canada. They were amalgamated and that company has never been declared. Every other company in parts I and II of the First

Schedule of the bill has previously been declared works for the general advantage of Canada. What we tried to do in clause 18 was to separate the context of the old section 7 of the C.N.-C.P. Act of 1933 and section 17 of the Canadian National Act of 1919, and in a language which was easily understood boil it down to that. Subsection (2) I should tell you in our view has no significance at all because you will notice that it is in respect of companies incorporated by the provinces. In 1933 the C.N.-C.P. Act incorporated all provincial companies in Canadian National Railways as dominion companies. Since that time there has not been a provincial incorporation by Canadian National. We would have left the provision out but it was there in the other legislation and has an historical advantage. That is its explanation. In so far as we are concerned I think it is totally ineffective because I do not know any company to which it would apply.

Mr. GREEN: Would it apply if you incorporated any new companies?

The WITNESS: I do not think it would.

Mr. JOHNSTON (*Bow River*): Do any of those companies mentioned in parts I and II operate to run buses?

The WITNESS: No; all the trucks or buses are operated under the name of the Canadian National Transportation Limited.

By Mr. Fulton:

Q. I would think that Mr. Johnston's concern would be in connection with the Canadian National Express. You operate trucks there at the present time for the purpose of delivering the express parcels and picking them up?—A. No, we do not.

Q. Do they not operate motor vehicles?—A. No.

Q. Does Canadian National Transportation operate the vehicles?—A. No. The Canadian National Railway Company conducts the express business. This is one of those points on which I spoke this morning where all of these companies had their appendages. The Canadian National Express at one time was the Canadian Northern Express Company. We must put a couple of others in there and have changed their name because we are trying to get rid of Canadian Northern as a name. It is a non-operating corporation. The express business of the Canadian National is conducted there but under the authority of the Canadian National Act.

Mr. MONTGOMERY: It is subject to the provincial laws at the present time?

The WITNESS: Yes. We have always abided by provincial laws.

Mr. HAMILTON: (*York West*): Notwithstanding what you told us about these companies, there is power there if you should want to exercise and make use of these charters, and I think I might differ with you on the meaning of subsection (2) of clause 18, on Mr. Green's question because I would be almost certain if a new company were incorporated in the future it could be construed to have the rights set out in clause 18 (2). The Act might not have retroactive effect, but certainly would have—

Mr. LANGLOIS (*Gaspe*): Would not these companies have these rights only if the provincial legislatures wish to give them corresponding corporate powers? They would be operating under provincial charters.

Mr. GREEN: Section (2) of 18 reads:

> The works of every company that is comprised in Canadian National Railways but is not incorporated by or under the laws of Canada are hereby declared to be works for the general advantage of Canada.

Now, if the railway company decide to incorporate a company under the Companies Act of the province of Ontario, it seems to me that the works of that company would automatically get the benefit of your subclause (2) and become works for the general advantage of Canada?

The WITNESS: That would not put it into the Canadian National Railways, and unless it is part of the Canadian National Railways it cannot even be argued that the statute speaks. We cannot go willy-nilly, and incorporate provincial companies and put them into the nest of what is Canadian National Railways. It requires further action. What is Canadian National Railways is determined by the statute. It is another of the things I mentioned before. Other railway companies probably could do that, but the Canadian National cannot.

Mr. JOHNSTON (*Bow River*): That is why I was so particular at the first about these definitions. When we see clause 18 (2) it says:

> The works of every company that is comprised in Canadian National Railways . . . . . .

which would mean a Canadian railway company. It would seem there that they could set up these companies and gain those extra powers which it is not the intention that they should do.

The WITNESS: Le me assure you, that is not possible. It is not what the statute says. It is not possible for the Canadian National of its own determination to create a company and have it become part of the Canadian National Railways.

Mr. HAMILTON (*York West*): Under clause 2 (c) (iii) it would appear that you could incorporate a provincial company and then have it declared by order of the Governor in Council to be part of the national system.

The WITNESS: Well, I do not think that it is quite as simple as that. That is one way by which it can be brought in other than coming back to parliament, but that is not something which is within the power of the Canadian National Railway Company. Under that section it is the Governor in Council, but not the company.

By Mr. Johnston (Bow River):

Q. It could be done without coming back to parliament to have it done? —A. Yes.

Q. Then you can, once the Act is passed, incorporate another company without coming back to parliament, solely by the powers which this bill gives you. Therefore, you could set up a company which could have all the rights and privileges given under this Act despite anything which is in provincial legislation.

Mr. GREEN: Under clause 14 (2) that expressed power is set out:

> The Governor in Council may declare any company in Canada that is directly or indirectly controlled by the National Company to be comprised in Canadian National Railways.

So you could incorporate an Ontario company and then, if the Governor in Council declared that to be part of the Canadian National Railways, it would automatically be in your system, would it not?

The WITNESS: Well, you have provided ways and means which are completely beyond my ken at the moment.

Mr. BARNETT: Perhaps we are opening up avenues to you which you never thought of.

The WITNESS: The interesting point is there is nothing intended to be concealed in this. We do not have any need for these powers. The desire to operate in opposition to provincial jurisdiction I have never heard expressed.

I think it would be poor business and very poor public relations to carry on an operation in that way. We have had trucks for many years and we have at all times accepted and complied with provincial jurisdiction; that is the policy of the company.

Now, in these last few minutes you have shown me an avenue which in your opinion will take us beyond the competency of a provincial tribunal. I do not accept it, but nevertheless it is a most ingenious stroke.

By Mr. Johnston (Bow River):

Q. Of course you must admit that it is not the case of whether the railway companies or the government has ever exercised the powers to do that which you say they had no intention of doing, but the actual fact is they could under the present legislation do that very thing. It is a very easy thing for the company to change its mind in a few months or years and say "I guess it is time to set up another trucking company", and they go back to the Act, look through the Act, and see that there is power and that they do not have to come to parliament; then they go ahead and do the very thing which we are trying to prevent.—A. You overlook that the railways themselves cannot do that.

Q. Who can?—A. The Governor in Council.

Q. The railway can come to the minister and say this is what we want to do, and the minister could say we can do that by order in council and they proceed to do it that way. In effect it is the same thing.

Hon. Mr. MARLER: I do not think that anyone is foolish enough to think we are not following intentions. We are dealing with a text of law and quite obviously we want the text to conform to our intentions.

Mr. FULTON: The board, as I understand it, is obliged to make certain legislation accomplish only what is desired.

Hon. Mr. MARLER: Quite.

Mr. FULTON: I wonder if Mr. MacMillan would consider whether it would embarrass you, either at the present or at the future, if we inserted in subclauses (1) and (2) of clause 18 the word "now". It would make it:

> every company that is now comprised in Canadian National Railways...

in both of those subclauses.

Mr. CARRICK: May I ask a question?

Mr. FULTON: I am sorry; the wording should be "as of the date of the passing of this Act".

Mr. NOWLAN: That would do it.

Mr. FULTON: That would not tie your hands too much, would it?

The WITNESS: No. My hands are quite unfettered. I think this is a question with which the Department of Justice would have to deal.

Mr. JOHNSTON (*Bow River*): In the meantime, could we not hear the presentation, Mr. Chairman, of which you spoke a moment ago?

Mr. CARRICK: I would like to ask a question first. I wonder if Mr. MacMillan could explain this: I know this is a difficult piece of draftsmanship but clause 18 with its amendments as suggested declares certain railways and works would be for the general advantage of Canada and that includes all the companies mentioned in the three parts of the First Schedule by definition. Then clause 27 as you have redrafted it gives those same companies the same power.

Hon. Mr. MARLER: Not the same companies; the national company.

Mr. CARRICK: The national company as defined which includes all companies in schedule (*a*). It gives those companies power to control motor vehicles. Now it seems to me that the amendment which says that clause 18 shall not apply to any works operated under clause 27 is the very widest language you could have, and that would automatically prevent any company included under the First Schedule from doing that very thing we want to prohibit. It seems, when you go on by this amendment and say it also includes the companies mentioned in part III of the First Schedule you are raising a question as to the status of the companies under parts I and II. It may be better to leave out the specific reference to part III. In other words, I think you have accomplished everything you want to accomplish by 4 (*a*) and you only weaken it by putting in 4 (*b*).

Hon. Mr. MARLER: I think the objection to that, offhand, is that if we strike out this subparagraph (*b*) then the Canadian National Transportation Limited is declared to a work for the general advantage of Canada.

Mr. CARRICK: Even so, by virtue of clause (*a*) it has no right to control, buy, sell or lease motor vehicles under clause 27.

Mr. FULTON: It has it under its charter and does not need clause 27 for its authority.

By Mr. Green:

Q. Is not that the root of the whole question? Why is it necessary for the railway company to take this power to operate motor vehicles? Why cannot that business be carried on as it is at present by the subsidiary company Canadian National Transportation Limited?—A. Well, the operations are entirely different. The power contained in clause 27 in the first place is restricted to railway companies. It is not intended to be a power comparable to the power which anybody can obtain by going to the Dominion Companies Act. There is a restricted power. When it was drafted we thought we were using restrictive language. It is merely part of the general housekeeping to put into this statute the things which this railway must do. The railway as such is a creature of parliament and then in its operations it must have motor vehicles. We have ambulances, and we have police cars; we have cars in the hands of the operations department, we have trucks and other types of motor vehicles. It can be well argued that we would not require the power at all to possess and utilize those vehicles. I think that it is a fact and that it is axiomatic that the company must use these things, but I think also it is desirable that what we do should be somewhere in this book, in the statute.

The providing of the cartage service which has been mentioned we think is part of the operation of the property. It has never been the subject of any action in the past; it is the beginning and/or the end of a rail movement; it is urban in character; and it is not that we are in doubt as to the power, but rather that the power should be spelled out. That is all that is intended in conjunction with the railway. It does not mean over-the-road highway operations because we do not do that. We have a company clothed with the authority it requires to do that type of operation. The other part of this power—and I remind you that the power is much more restricted with these two things in it than it would be if they were not there—is in substance for abandoned lines of railway, abandoned train service.

We can conduct those operations in the name of the Canadian National Transport Company Limited. But almost all these operations are of a non-commercial character and frankly I do not know any at the moment which is

not at a non-commercial character and they are invariably in sections of the country which are not productive of traffic; there is not enough traffic to move on the railway to justify the continuation of the railway. They are areas which are adequately served by highways and the times when we would utilize those powers would be instances in which we cannot get anyone else to do it. We have to supply to the Board of Transport Commissioners for authority to abandon 10, 20 or 30 miles of rail, and the Board of Transport Commissioners take the position if and when service is made by highway to the communities which are to be deprived of the service by the abandonment, then we will be granted the order. That is all that is implied.

By Mr. Green:

Q. But you are able to carry out that service now by using the Canadian National Transportation Limited. Are you not?—A. Yes.

Q. If you use the Canadian National Transportation Limited then you do not bring up any of these controversial questions as to whether or not that company is subject to provincial authority?—A. We do not bring that question up anyway.

Q. That is what is causing all the trouble because you are now asking for the power for the Canadian National Railways to run that service as distinct from the Canadian National Transportation Limited which would certainly be subject to the provincial regulations.—A. But in the same breath we have asked we be given this corporate power—it is a question of corporate power—and that we should go on the road to operate the service where there is none available.

Q. You could operate that service through the Canadian National Transportation Limited?—A. Yes, but it is not a Canadian National Transportation Company operation. The railway is operated by the railway operators, and they are the operating department of the property, and it is a fully known organization all through Canada whose sole function is to operate the railway as such. The transportation company on the other hand is a different arm of the organization. There are areas where rail traffic has shrunk to a point that there is freight available on the line but the passenger service has dried up and there are no passengers to speak of moving between the points, as there are highways serving them.

Then we would apply for authority to abandon passenger service. It is competent to the board to say that you have made a case but you have not provided or you have not satisfied us that public transportation is available for the residents of that community to move from point "A" to point "B", and if you will satisfy that, we will permit you to fold up the passenger service. The railway is going to remain there as a railway; the operating people are there; everybody is there, and if we are to provide the service—and we are not seeking it—it would be more economical for us to operate that little segment of a bus line in the name of the railway than it would be to bring in the Canadian National Transportation Company with its different avenues of reporting, organization and everything else. In those cases as I stated, we have in many instances endeavoured to interest bus operators in providing the service but have not been able to get anybody to do it.

Our purpose is not to go into the bus business itself, but rather the operation of it. Passenger train or passenger equipment or a way freight carries with it a loss of a certain magnitude and the loss of the business will in every instance be less than the operation of a rail service, and we prefer to take the smaller loss.

Q. Is it not true that the Canadian Pacific Railway is operating its services of this kind through a company similar to the Canadian National

Transportation Limited?—A. I cannot speak with authority about the Canadian Pacific. I hear that that is the case, but our highway operations, I do not think can be regarded as in any way parallel to the highway operations of the Canadian Pacific.

Mr. JOHNSTON (*Bow River*): Mr. Chairman, I would suggest we hear what the truck companies have to say at this time.

By Mr. Hamilton (York West):

Q. May I ask another question. I think this morning I asked if there was a consolidation of all these companies and keeping in mind the latent sections of the Income Tax Act if he would not have a saving in the over-all picture of operations and I think his reply was no. He did say it that way and yet he has answered Mr. Green and said there would be a saving if the railway company could operate here without bringing in the Canadian National Transportation Limited with all the problems of reporting separately.—A. I think that the difference is a difference of degree of magnitude in which you are speaking. You asked me this morning about the broad final consolidation. I think that is a very different thing to the question which I just answered a moment ago where we were talking about a little segment of the railway and/or bus operation.

Q. But did we not add up all those segmentary operations into a large operation of the Canadian National Transportation Limited and with it get the cost of reporting and administrative expense which we would avoid if eventually you could put them all into one company.

Hon. Mr. MARLER: Is that not an argument in favour of giving the company the power?

Mr. HAMILTON (*York West*): I do not know, but I would like an answer to that question on economy.

The WITNESS: I think I can only answer it the way I did a moment ago that in the final consolidation you have a very different result to what we would possess in the wee segments.

Mr. CARRICK: I am in trouble about Part III of the First Schedule yet. In answer to a question I asked, one of the members said that companies under part III of the schedule I, such as the Canadian National Transportation Company, are declared to be works for the general advantage of Canada outside this Act. Is that the correct understanding?

Mr. FULTON: No. I said the Canadian National Transportation Limited does not require the authority of clause 27 to operate road transport. It has under its Act of incorporation or charter.

Mr. CARRICK: So declaring that was a work for the general advantage of Canada.

Mr. FULTON: Yes.

The WITNESS: No.

Mr. FULTON: So it would get it under this Act.

The CHAIRMAN: I think we will now hear from Mr. Coyne.

Mr. Coyne is counsel for the Canadian Trucking Associations.

Mr. H. E. B. COYNE, Q.C., (*Counsel for the Canadian Trucking Associations*): After hearing the amendment proposed by the minister to clause 18, we do not wish to make any representations with respect to that section.

Now, as to clause 27 I would like it to be first of all clearly understood that we have no objection to any one's engaging in trucking operations provided those operations are under provincial jurisdiction. But we say that clause 27 will permit the C.N.R. to establish and operate truck and bus lines on the

highways, and our submission is that any highway transport lines which may be established by the C.N.R. under clause 27 will come under the language of subsection 10 (*a*) or section 92 of the British North America Act and will therefore be under dominion jurisdiction and not under the jurisdiction of the provinces.

Subsection 10 (*a*) is as follows:

"Lines of steam or other ships, railways, canals, telegraphs, and other works and undertakings connecting the province with any other or others of the provinces, or extending beyond the limits of the province."

The Canadian National Railways system consists in part of Government Railways, in part of railways owned by the Canadian National Railway Company, and in part of railways owned by subsidiaries of the C.N.R. Company. Each of these railways is a part of a continuous system of railways operated together by the C.N.R. Company and connecting the provinces, and therefore each of these railways comes under the subsection 10 (*a*) which I have just quoted.

Even a railway line which is wholly within a province and is constructed under provincial legislation will, if it connects with the C.N.R. system and is operated by the C.N.R. Company, come within the language of the subsection and be subject to Dominion jurisdiction. On this point I should like to quote a passage from the judgment of the Privy Council in Luscar Collieries *v.* McDonald (1927) A.C. 925; (1927) 4 D.L.R. 86; 57 Canadian Railway and Transport Cases, 399. The question in this case was whether a railway line known as the Luscar Branch was under Dominion jurisdiction. The Luscar Branch was only a few miles in length, wholly within the Province of Alberta and constructed under provincial legislation. It was connected with the Mountain Park Railway, another small provincial railway which in turn was connected with a railway of a subsidiary of the C.N.R. Company. By agreement both the Mountain Park Railway and the Luscar Branch were operated by the C.N.R. Company. The Privy Council held that in these circumstances the Luscar Branch came within the language of subsection 10 (*a*).

Their lordships said at page 405:

"Their Lordships agree with the opinion of Duff, J., that the Mountain Park Railway and the Luscar Branch, are, under the circumstances hereinbefore set forth, a part of a continuous system of railways operated together by the C.N.R. Company and connecting the Province of Alberta with other provinces of the Dominion. It is in their view, impossible to hold as to any section of that system which does not reach the boundary of a province that it does not connect that province with another. If it connects with a line which itself connects with one in another province, then it would be a link in the chain of connection, and would properly be said to connect the province in which it is situated with other provinces."

Subsection 10(*a*) of course covers other things besides railways. Highway transport lines also come under this subsection if they connect a province with any other or others of the provinces or extend beyond the limits of a province. This is the effect of the judgment of the Privy Council in Attorney-General of Ontario *vs.* Winner, (1954) A.C. 541; 71 Canadian Railway & Transport Cases, 225. Winner operated motor buses for the carriage of passengers and goods from Boston through the Province of New Brunswick to Glace Bay in Nova Scotia. The Privy Council decided that this motor bus line came within the language of subsection 10(*a*) and therefore was under Dominion

jurisdiction. The Privy Council further held that the undertaking in question was one and indivisable, and that therefore the Province of New Brunswick could not prohibit Winner from taking up and setting down purely provincial passengers, ie., those whose journey begins and ends within the province.

If clause 27 of Bill 351 is enacted, the C.N.R. will have power to establish highway transport lines. Each of these lines operated "in conjunction with or substitution for the rail services" will form part of a continuous system of transportation operated by the C.N.R. Company, and will be a link in a chain consisting in part of railways and in part of highway lines and extending from coast to coast. Eich of these highway lines would therefore properly be said to connect the province in which it is situated with other provinces, and will come within the language of section 10(*a*) of Section 92 of the British North America Act. It follows that these highway transport lines will be under the jurisdiction of the Dominion and not under the jurisdiction of the provinces.

I therefore submit that, if clause 27 is enacted, the effect will be to give the C.N.R. an undue preference in respect to highway traffic, and to place its competitors in that field at a serious disadvantage. For the C.N.R. will be free from any provincial regulations such as regulations requiring carriers to show public necessity and convenience before they are allowed to engage in highway traffic or regulations governing the charges for transport services; and it is clear from the judgment of the Supreme Court of Canada in the Beauport case—that case is Beauport *vs.* Quebec Railway reported in 1948 Supreme Court reports at page 16 and in 57 Canadian Rail and Transport Cases, page 245. It is clear from the judgment of the Supreme Court of Canada in that case that the Board of Transport Commissioners for Canada would have no power to deal with the rates charged by the C.N.R. in respect to highway traffic.

In view of the effects to be foreseen from the enactment of clause 27, I respectfully submit that this clause ought to be deleted.

Mr. JOHNSTON *(Bow River)*: May I ask one question of the witness? Since the government has submitted an amendment to clause 27 and given us a copy of it—and I think Mr. Coyne has a copy of it—would he consider that this amendment presented by the minister would cover the objections he has raised on this?

Mr. COYNE: No.

Mr. JOHNSTON *(Bow River)*: It is your view that the whole clause should come out?

Mr. COYNE: That is our submission.

Mr. HAMILTON *(York West)*: In connection with your position that there would be an undue privilege to the railway, that is tied up with your two reasons given that the railway would not have to prove public convenience and would not be subject to fixation of rate structure under provincial regulation ?

Mr. COYNE: Those are two points. I really am not too familiar with provincial regulations but I know in some provinces those are some of the regulations.

Mr. HAMILTON *(York West)*: Does that necessarily mean the public is going to suffer?

Mr. COYNE: Its competitors might suffer.

The CHAIRMAN: Gentlemen, we only have one reporter today and I think if it is agreable we will adjourn now until 8.00 o'clock.

Mr. MONTGOMERY: Mr. Coyne, may I ask a short question? Would your objection be met if an amendment to clause 27 by adding a subclause to read:

> All vehicles operated under subjection (*a*) would be subject to provincial jurisdiction.

Mr. COYNE: I think that would be ultra vires.

Mr. JOHNSTON (*Bow River*): Since you have suggested that we should adjourn now, I take it that Mr. Coyne will be in his present place at 8.00 o'clock?

The CHAIRMAN: Yes.

EVENING SITTING

The CHAIRMAN: We will proceed. Are there any further questions members of the committee would like to ask Mr. Coyne?

Mr. JOHNSTON (*Bow River*): Mr. Coyne has heard the evidence given by Mr. MacMillan in respect to the safety clauses which they think they wished put in here to protect the services. On page 17 of the bill, Mr. Coyne, in the first schedule, there is the expression "The Canadian National Express Company" and down further the Canadian National Transfer Company and there are several other companies. Have you any objection at all to these names being allowed to remain there? Do you think they could operate a trucking service under that heading?

Mr. COYNE: Well, my instructions are to make no representations with respect to clause 18.

Mr. JOHNSTON (*Bow River*): I am not referring to clause 18; I am referring to page 17. You will see on the first part of that schedule there are references made, for example, to the Canadian National Express Company.

Mr. COYNE: Yes.

Mr. JOHNSTON (*Bow River*): Is it your opinion that the Canadian National Railways could operate a bus service under that heading and get all the privileges they desire regardless of the removing of clause 27?

Mr. COYNE: That is not my point of view under this schedule. The schedule simply gave the names of the company. If you are referring to some clause of the bill, such as clause 18, then as I said in my introductory statement my instructions are not to make any representations in respect to clause 18. We are simply making representations with respect to clause 27.

Mr. JOHNSTON (*Bow River*): You have no comments to make at all then on the pickup service which the railways are operating now?

Mr. COYNE: Oh! The pickup and delivery service as it has been referred to?

Mr. JOHNSTON (*Bow River*): Yes.

Mr. COYNE: Well, charges for services of that kind are referred to as charges for cartage. I am not sure whether the impression I have is correct, but there was some suggestion that the C.N.R. might not have the power to pick up and deliver. I must say that is the first time I have ever heard the question raised. In the Railway Act the definition of tolls includes cartage charges, and I would add also in section 331 of the Railway Act special arrangement tariffs include cartage rates, so that evidently it was in the contemplation of the Railway Act that the railways should do cartage; that is pick up and delivery. The Board of Transport Commissioners has had a number of cases with regard to cartage charges. They have always said that the railways are

not required to do cartage, but if they choose to do so they are entitled to charge for those services, and that they would be subject to the regulations with regard to reasonableness of charges and with regard to unjust discrimination, but the question whether a railway has the power to pick up and deliver I have never heard raised. The railways have been doing it for fifty years and no question has ever been raised that I have heard of.

Mr. JOHNSTON (*Bow River*): You will notice that in the amendment which the minister has proposed to clause 27 he has left out the words "may charge tolls." Do you think that has any significance if they can charge tolls under the Railway Act? Would that make any difference if that is left out in clause 27?

Mr. COYNE: It would not be a toll under the Railway Act according to the decision of the Supreme Court in the Beauport case. You are speaking now not of pick-up and delivery?

Mr. JOHNSTON (*Bow River*): No, I am speaking of the other charges.

Mr. COYNE: Under the Beauport case the Board of Transport Commissioners would have no regulatory power over charges made by the railway in respect to highway traffic.

Mr. FULTON: Mr. Coyne, the Beauport case was decided before the Winner case, was it not?

Mr. COYNE: Yes.

Mr. FULTON: I do not know if this is your submission, but I have been supplied with a submission by the Canadian Trucking Associations Incorporated, and I take it your reference to the Beauport case was in addition to the submission that we have got here.

Mr. COYNE: The Beauport case is referred to on the last page, I think.

Mr. FULTON: Yes, it is, I am sorry; I missed that. Would you as a professional lawyer, to an amateur lawyer, care to express an opinion as to whether the decision in the Beauport case was overruled by the decision in the Winner case?

Mr. COYNE: I do not think so. I do not think it is referred to in the Winner case.

Mr. FULTON: So you think then that you would be firmly of the opinion that if this clause 27 is enacted the C.N.R., so far as it engages in trucking and bus transport, would not be subject to any regulation whatsoever?

Mr. COYNE: No. There is a possibility that under the Motor Vehicles Act which was passed at the last session of parliament certain lines might come under provincial powers, but that Act at the present time only applies to certain provinces, as I understand it. It does not apply, for example, to Quebec.

Mr. FULTON: So far as I understand the situation it has not been proclaimed in New Brunswick either?

Mr. COYNE: No, but the number of lines which should be very doubtful whether any of the lines that would be at present contemplated by the C.N.R. would be affected by that Act because they would not cross provincial boundaries, and my opinion is that that Act does not apply to lines that do not cross provincial boundaries.

Mr. CARRICK: I wonder if we could hear from the representative of the Department of Justice on these points?

The CHAIRMAN: Not yet; I think we will hear the Transport people first.

Mr. HAMILTON (*York West*): Did your instructions not to make any statement on clause 18 arise as a result of the amendment which have been placed before us today—did you have any prior knowledge of that amendment, and is that one reason why you are not objecting to it tonight?

Mr. COYNE: My instructions are that in view of the amendment that has been proposed we should not make any representations with regard to clause 18.

Mr. HAMILTON (*York West*): Right, but notwithstanding this amendment, and in view of the cases which you have quoted here in your brief, clause 27 does still leave the railway with a complete leeway.

Mr. COYNE: It leaves any highway transport lines that are established under clause 27 under dominion jurisdiction. That is my submission regardless of any other provisions in the Act.

Hon. Mr. MARLER: Mr. Coyne, would that arise because of its operation in connection with the railway system, or does it arise because power is being granted by parliament?

Mr. COYNE: It arises because these powers are granted by parliament, and these highway lines are specifically stated to be in conjunction with or substitution for railway services so that the whole system is operated together.

Mr. LANGLOIS (*Gaspe*): Is it your contention, Mr. Coyne, that a pick-up and delivery service operated in conjunction with the National Transportation system of the National railways, does not come under provincial control?

Mr. COYNE: I should think it would not be subject to provincial legislation, no. There is one qualification there—even a dominion railway is subject to some extent to provincial legislation, and even a dominion highway transport line would be subject to provincial regulations with regard to the highway, for example, and regarding the speed of vehicles, the regulations requiring vehicles to travel on the right side of the road and so on, but those are minor things.

Hon. Mr. MARLER: Should I infer from your answer that if the words "In conjunction with or substitution for the rail services, under their management or control"—

Mr. FULTON: I am sorry, but the accoustics seem to be worse coming from your direction to ours than the other way around.

Hon. Mr. MARLER: I shall talk louder then. Mr. Coyne, am I right in inferring from what you have just said that if we were to strike out the words "in conjunction with or substituion for the rail services under their management or control"—your objection to clause 27 would then disappear?

Mr. COYNE: No sir. Those words limit the trucking and bus lines that can be established, but if those words are taken out, it just leaves it at large. They can establish lines in conjunction with or as substitution for the railways.

Hon. Mr. MARLER: But a moment ago those were the essential words that gave it the dominion character you were referring to; but if we take them out seemingly we are back to where we started. I find it difficult to understand. Your point of view seems to be that it is impossible under any wording whatever to give the national company or any other railway company comprised in national railways the power to operate motor vehicles under provincial jurisdiction.

Mr. COYNE: That is my position.

Hon. Mr. MARLER: It seems an extreme one. Your suggestion in effect is that it is impossible for a railway system to operate motor vehicles under provincial jurisdiction.

Mr. COYNE: They have a general power to operate motor vehicles anywhere under clause 27 and that would include the power to operate motor vehicle lines in conjunction with the railway connecting with the railway or in conjunction for a rail line of the railway.

Mr. FULTON: Well, Mr. Coyne, do you take objection to the fact the C.P.R. operates motor vehicles services?

Mr. COYNE: Not the slightest.

Mr. FULTON: Now then, if the C.N.R. were enabled to operate motor vehicle services on a comparable basis as the C.P.R.—

Mr. COYNE: They have that power now.

Mr. FULTON: Would you elaborate on that statement because I am very interested in that?

Mr. COYNE: The C.P.R. has a subsidy company that operates motor vehicles on highways and the C.N.R. has a subsidiary company—they are both on the same basis.

Hon. Mr. MARLER: Why cannot the parent company have one?

Mr. COYNE: Because, sir, if the parent company has those lines and operates those lines in conjunction with the railway, then it comes under dominion jurisdiction and therefore those highway lines are free from provincial jurisdiction. They are not subject to the regulations of the province, and they are not subject to any regulations of the dominion.

Mr. FULTON: Well, Mr. Coyne would you assist us by explaining the basis on which the C.P.R. operates its motor vehicle services which is not objectionable from the point of view of truckers; and would you suggest to us the basis on which the C.N.R. might be able to do the same thing on a basis which would not be objectionable.

Mr. COYNE: I am no authority on how the C.P.R. operates its motor vehicles, but the C.P.R. has a subsidiary and the C.N.R. has a subsidiary. Both engage in motor vehicle transportation. Now the powers of these companies are almost exactly the same. They are both on the same basis at the present time. This bill wil change that position absolutely.

Mr. FULTON: Is your contention this—that if we eliminate clause 27 the Canadian National Railways would be left in the same position as the Canadian Pacific Railways at the present time?

Mr. COYNE: Yes.

Mr. JOHNSTON *(Bow River)*: Under what Act does the C.P.R. get that power—under the Railway Act?

Mr. COYNE: They have incorporated the company by letters patent as I understand it.

Mr. NESBITT: How is that operation carried out?

Mr. COYNE: I suppose it is under the Dominion Companies Act. I really do not know.

Mr. FULTON: May I ask you this further question: is it your contention that the operation of motor vehicle transport by the railway must be left to a subsidiary rather than being vested in the company itself?

Mr. COYNE: It depends upon what sort of motor transportation you are setting up. Take the pick-up and delivery service for example—the railway have been connected with that for 50 years and longer. There is no question whatever about the power of the Canadian National Railway or of any other railway who are engaged in that. But you are speaking—at least I think this is what you mean—of highway transport lines which have a regular schedule.

There is no objection on our part to a subsidiary of either the Canadian Pacific or the Canadian National engaging in that service because it would be under provincial jurisdiction, but we do object to the C.N.R. getting this special and unique privilege of operating directly with the parent company and we say that if that is done that brings it under the jurisdiction of the Dominion and excludes the jurisdiction of the province.

Mr. FULTON: By virtue of section 10?

Mr. COYNE: 10 (a). Section 92 of the British North America Act.

Mr. FULTON: I see.

Hon. Mr. MARLER: I find it a little difficult to understand your point. You say in effect that so far as a delivery and pick-up service is concerned there is no question that the railways have the power.

Mr. COYNE: It has never been questioned, to my knowledge.

Hon. Mr. MARLER: I find it difficult to understand why you object to our saying that it has got that power in clause 27.

Mr. COYNE: Clause 27 goes very much farther; it would not only authorize the Canadian National Railways to engage in pick up and delivery service, but it would enable the Canadian National Railways to establish bus-line service on a regular schedule or truck line service. That is something quite different from pickup and delivery; that means that the railway would pick up goods at a consignor's warehouse and convey them to the railway station, and from the railway station to the consignee's warehouse, but that is the limit of the pickup and delivery service.

Mr. HAMILTON *(York West)*: Getting back to Mr. Fulton's line of questioning, I understand that you have indicated that there is no way whereby the federal parliament can divest the Canadian National Railways of this authority without leaving it more or less suspended in the air without any other authority having jurisdiction over it. Do you not see any way by which clause 27 could be modified to permit the use of cars, which would cover pickup and delivery which you say has been recognized for fifty years, and which still exclude the further powers which you say this section provides?

Mr. COYNE: If pickup and delivery is all that is intended, then why put in the clause at all? It is unnecessary.

Hon. Mr. MARLER: That is not the only thing.

Mr. LEBOE: Is it not true that they have a problem in respect to sustaining service, passenger service on railway lines, and that they may not be able to get a private contractor to contract to haul passengers on the highways, and that therefore when they come before the Board of Transport Commissioners they say: "When you can guarantee a service, we will let you discontinue the passenger service of your railway line." And if they cannot get a contractor, it puts them in a very awkward position in respect to getting a release from the heavy loss in passenger service on that particular line.

Mr. COYNE: They are in exactly the same position as any other railway and they have their subsidiaries. Surely they can guarantee what their subsidiaries will do.

Hon. Mr. MARLER: Pushing this off always on somebody else to do it is in my way of thinking a very lame argument. I cannot help thinking that it should be possible for the national company itself to do what a subsidiary could do. It is all very well to say that we recognize that this operation can be done through a subsidiary, but we want it recognized that it can be done by the parent company itself.

Mr. COYNE: It is the effect of doing that, which as I submit, is to place that operation under Dominion jurisdiction whereas the operation of the subsidiaries are under provincial jurisdiction. As I understand the government's policy, it is not to take jurisdiction with regard to highway traffic.

Mr. NESBITT: I am not an expert in these matters, but the Canadian Pacific Railway for instance undoubtedly has power under its charter to hold shares in other companies. For instance, they are directly related to Consolidated Mining and Smelting and Company and things like that; and also to hold shares of subsidiary companies in respect to trucks and transports. Does the Canadian National Railways have the same power?

Mr. COYNE: It has the powers in this bill, I think, in clause 31. "The national company, may with the approval of the Governor in Council, acquire, hold, guarantee, pledge and dispose of shares in the capital stocks, bonds, notes, securities, or other contractual obligations whatsoever of any railway company or of any transportation, navigation, terminal, telecommunication" and so on.

Mr. NESBITT: There is one more thing in there:

> Or of any other company authorized to carry on any business incidental to the working of a railway, or any business which in the opinion of the Board of Directors may be carried on in the interests of the national company.

In other words, the Canadian National Railways is only empowered under this bill to hold their shares in companies directly concerned with the transportation business. Would that not again bring it back to this argument that again they might not have any power to operate; at least get back to the objection of 92 (10) (*a*)? If those subsidiary companies can only be subsidiary companies which can operate a bus incidental or in connection with the railway, would that not bring any subsidiary company under 10 (*a*)?

Mr. COYNE: No.

Mr. NESBITT: Or is the company a corporate entity itself?

Mr. COYNE: Right. They are separate entities.

Mr. LEBOE: Would it be possible to make an amendment to that section, say section 92 of the British North America Act to apply to 10 (*a*)?

Mr. COYNE: No, I do not think that would be possible. I think that would be ultra vires of the parliament of Canada.

Mr. FULTON: How about this one? I do not know if the government will accept this but it is by way of a suggested amendment since I understand that the Canadian National Railways is to enable the parent company to operate these services either through the parent company or a subsidiary as may be more convenient for their purposes. I understand that it is not their desire to be in a different position from any other railway or highway transportation company. I wonder if this amendment to clause 27 would be acceptable:

> The national company, either itself or through any subsidiary subject always to the provisions of the Motor Transport Act, may in conjunction with or substitution for the rail services under their management or control, buy, sell or lease motor vehicles of all kinds and maintain and operate motor vehicles on highways in Canada or elsewhere for the carriage of traffic.

The words inserted are: "of itself or through any subsidiary subject always to the provisions of the Motor Transport Act."

Mr. CAVERS: It must be subject to that Act. Would it not?

Hon. Mr. MARLER: Would you mind giving me the wording again, please, Mr. Fulton?

Mr. FULTON: I will read it slowly. I am making this as an amendment. This would be my suggestion and I am asking Mr. Coyne whether he thinks this would be acceptable:

> A national company may either itself or through any subsidiary...

I am trying to preserve the position of the national company.

Mr. COYNE: Would you like to make it railway subsidiary?

Mr. FULTON: You can take any subsidiary you like.

...subject always to the provisions of the Motor Transport Act...

Mr. CAVERS: Do you need that? Even the present section is subject to that Act. Is it not?

Mr. FULTON: I am not sure. My thought there is that last year we enacted the Motor Transport Act and this year we are enacting this bill and including in it a declaration that all the operations of the National company are declared to be works for the general advantage of Canada. My suggestion is, for the sake of clarity, if you like, that we should in this section say that the right to operate highway transport vehicles is subject to the provisions of the Motor Transport Act. That is all. So the suggestion I have to make is that the clause might read:

> The national company may, either itself or through any subsidiary, subject always to the provisions of the Motor Transport Act, and in conjunction with or substitution for the rail services under their management or control, buy, sell or lease motor vehicles of all kinds and maintain and operate motor vehicles on highways in Canada or elsewhere for the carriage of traffic.

Now, as I understand it, it is not the intention of the Canadian National Railways to operate highway traffic except under the provisions of the provincial jurisdiction. There is no objection on the part of Mr. Coyne to their operating motor vehicles on the highway provided they are on the same terms as the people he represents now under provincial jurisdiction. If that desired objective could be reached then we are all happy.

Hon. Mr. MARLER: Did Mr. Coyne as yet say whether or not he would like that amendment?

Mr. COYNE: That amendment is just as objectionable as the present clause, because if the national company establishes motor vehicles lines, they will be excluded from provincial jurisdiction.

Mr. FULTON: Not if they were made subject to the provisions of the Motor Transport Act?

Mr. COYNE: Oh, yes. For example, the C.N.R. establishes a line from Hamilton to Brampton; that would not come under the Motor Vehicles Act.

Hon. Mr. MARLER: That is an entirely intra-provincial operation. Are you suggesting that would not be subject to provincial jurisdiction?

Mr. COYNE: I am. It would be excluded from provincial jurisdiction.

Hon. Mr. MARLER: I think that we can probably infer that in your view there is no method by which we can give the national company power to do what we are talking about.

Mr. COYNE: There is no method, sir.

Mr. CARRICK: I have the Motor Vehicle Transport Act here and section 3(1) says:

> Where in any province a licence is by the law of the province required for the operation of a local undertaking, no person shall operate an extra-provincial undertaking in that province unless he holds a licence issued under the authority of this Act.

Why would not that exactly cover this situation? You say that any highway connection that is created by the C.N.R. is a local undertaking and within

the meaning of 92(10) of the B.N.A. Act. If that is so, then this Act, in effect, says that such an operation will require permission from the local authority under the Motor Vehicle Transport Act. Why would it not be applicable?

Mr. COYNE: Would the committee permit me to get a copy of the Motor Vehicles Act?

Mr. JOHNSTON (*Bow River*): I would think if that were done and done by the parent company, then the parent company has been designated to be "works for the general advantage of Canada".

Hon. Mr. MARLER: That is excluded specifically under clause 18. Section 18 as amended is to say that all works operated under clause 27 are excluded from the declaration as being works for the general advantage of Canada.

Mr. JOHNSTON (*Bow River*): Yes, it does.

Mr. COYNE: The essential provisions I think on this point are the Motor Vehicle Transport Act:

> "Extra provincial undertaking" means a work or undertaking for the transport of passengers or goods by motor vehicle, connecting a province with any others or others of the provinces, or extending beyond the limits of a province.

Now, I do not think that a highway line between Toronto and Brampton is an undertaking for the transport of passengers by motor vehicle connecting a province with another or others.

Mr. FULTON: Would you read the definition of local undertaking?

Mr. COYNE:

> Local undertaking means a work or undertaking for the transport of passengers or goods by motor vehicle, not being an extra-provincial undertaking.

Mr. FULTON: Then read section 3.

Mr. COYNE:

> Where in any province a licence is by law of the province required for the operation of a local undertaking, no person shall operate an extra-provincial undertaking in that province unless he holds a licence issued under the authority of this Act.

Shall I read the next section?

Mr. FULTON: Yes.

Mr. COYNE:

> The provincial transport board in each province may in its discretion issue a licence to a person to operate an extra-provincial undertaking into or through the province upon the like terms and conditions and in the like manner as if the extra-provincial undertaking operated in the province were a local undertaking.

Mr. CARRICK: If that Act does not cover the situation we envisage, do you think there would be any difficulty in amending the Motor Vehicle Act so that it would cover it?

Mr. COYNE: Yes, I do not think it could be amended to cover the situation.

Mr. GREEN: As I understand it, the point is because of section 92(10)(*a*) a railway operating a bus service from Toronto to Hamilton would not be considered a local undertaking under this Motor Vehicles Transport Act?

Mr. COYNE: It would not be an extra-provincial undertaking in my opinion.

Mr. GREEN: And would it be a local undertaking? I think those were the words used.

Hon. Mr. MARLER: I think it must be one or the other.

Mr. COYNE: Local undertaking is not covered by the Act. I think as far as I recollect in subsection 2 of (3) it says:

> . . . as if the extra-provincial undertaking operated in the province were a local undertaking.

It could be put in the same category.

Mr. GREEN: Would your argument be that a province would have no authority to licence a line of that kind if it were run by the railway company?

Mr. COYNE: I would say that the railway company would not have to apply for licence.

Mr. FULTON: But surely if you give the authority to the railway company to run such a line subject to the provisions of the Motor Vehicle Transport Act then that would have to apply, would that not?

Mr. COYNE: That is a rather doubtful point. Provided that you have a bus line or a truck line which crossed a provincial boundary then possibly it might come under this Act. But in the first place I see there are certain provinces which are not affected by this Act. Among them is the province of Quebec.

Hon. Mr. MARLER: New Brunswick, Newfoundland, Prince Edward Island.

Mr. HAMILTON (*York West*): What you are saying is that if we make it subject to that Act the provisions of that Act itself do not cover this particular situation.

Mr. COYNE: By no means, except with the possibility that it might cover the odd line.

Mr. CARRICK: It is obvious that we have come to a point where there is a question of law involved and we cannot hope to settle it. Perhaps we should have a representative of the Department of Justice speak on it and we can come back to the transport people later on.

Hon. Mr. MARLER: So far as I am concerned I would like to suggest that we hear any other expressions of opinion which the bus organizations or others might wish to voice with regard to the section and after we have heard them, we might be allowed to consider the various representations made and decide whether some change should or should not be made in the amendments now before the committee.

Mr. HAMILTON (*York West*): Perhaps Mr. Coyne might be recalled for an anwer.

Mr. CARRICK: In the case you gave of a bus line being operated between Brampton and Hamilton, you said it would not be an extra-provincial undertaking within the meaning of the Motor Vehicles Transport Act.

Mr. COYNE: Yes.

Mr. CARRICK: I thought your argument in opening was that any bus line in a province which connected with a railway at all automatically became a work or undertaking under section 92—A of the British North America Act and thus came under federal jurisdiction.

Mr. COYNE: Yes.

Mr. CARRICK: If it does come under federal jurisdiction why wouldn't it be considered as coming under the Motor Vehicles Transport Act as a work or undertaking within a province?

Mr. COYNE: These are two different Acts, and the exact language used in describing an extra-provincial undertaking—

Mr. CARRICK: Is the wording not the same as that in the British North America Act?

Mr. COYNE: Yes, but the words connecting one province with another and so on. It is an undertaking for the transport of passengers or goods by motor vehicle.

Mr. CARRICK: Yes.

Mr. COYNE: Certainly you cannot say that a transport line between Hamilton and Brampton connects Ontario with any other province by motor vehicle. Even if it is operated by a railroad it does not connect by motor vehicle.

Mr. LEBOE: Unless it is delivered to or from the railway in connection with one freight charge.

Mr. COYNE: No, you cannot regard that.

Mr. LEBOE: Operating in conjunction with a railroad?

Mr. COYNE: No, no. It is not an undertaking by motor vehicle connecting one province with another province. It may be, as I suggest, in connection with subsection 10A, a continuous system of transportation composed in part of highways links and railways links, but that is not within the intent of the definition in the Motor Vehicles Transport Act.

The CHAIRMAN: I think it would be well now to hear from Mr. Thompson, president of the Canadian Motor Coach Association.

Mr. GEORGE C. THOMPSON (*President of the Canadian Motor Coach Association*): Mr. Chairman, Mr. Minister, members of the committee, the Canadian Motor Coach Association represents highway bus companies from coast to coast in Canada. These companies have been developed during a period of approximately fifteen to 25 years depending on the territory in Canada concerned. These bus operations are largely intra-provincial operations. They have inter-line connections which provide service to people, not completely from coast to coast in Canada, but substantially, with a slight detour to the United States, so that it is possible to travel by bus from coast to coast.

These operations have been developed under provincial authority, the only authority existing until recent years under which bus operations could be developed. These provincial boards exercise strict control. They require convenience and necessity as a basic factor in issuing certificate and franchises or licenses; they require financial responsibility. They require strict observation of service tariffs, and other practical operating requirements.

The history during that period in which it can be said clearly that substantially worthwhile operations have been developed from coast to coast. The regular service operated almost completely throughout the year. That is the story of the position of the highway bus industry in Canada.

The first real jar to the position of the highway bus in Canada came with the decision of the Privy Council in the Israel Winner case which in substance said that highway transportation in Canada on an intra-provincial basis is a matter for the federal authorities and not for the provincial authorities. It may be said also that the decision in the Winner case was that the certificate held by the carrier then concerned was invalid or had no value. At least it may be argued quite seriously, and it is a matter of some significance today, in this whole problem. The federal government did not wish

to accept that authority and after careful consultation with the provinces concerned, the Motor Vehicles Transport Act, being chapter 59 of the Act of 1954, was passed. The purpose of that Act as stated when it was in the form of Bill 474 was simply to provide for the control and regulations of intra-provincial and international highway transport.

It seemed that the whole problem of highway bus and transport operations in Canada had been settled. Those of us in the Maritimes—and I happen to come from Halifax—are very familiar with the history of the so-called Israel Winner case, because in recent years the Canadian National Transport Company, known as the MacKenzie Through Line—a surprise perhaps not intended which came about within the past three weeks when a notice appeared in the Halifax papers of May 11 on behalf of the Canadian National Transport Company, and the MacKenzie Bus Lines, that hearings would be held at Halifax on May 20 in order to confirm the certificate issued to Israel Winner in June 1948, and further to delete the condition placed on that certificate, so that he could not pick and drop passengers within the province of Nova Scotia.

It was somewhat surprising at the hearings to hear the local representative of the Canadian National Transport Company contend with respect to these things that the board could not refuse to grant a licence; that they would merely operate seasonal service; that they need not prove financial responsibility; and that the board could do nothing to delete the condition because in fact they were doing it, and there was nothing the board could do to stop them from carrying on intra-provincial trucking.

Evidence at the hearing brought out such facts that if an intra-provincial passenger was on the bus going from one point to another in the province and an intra-provincial passenger got on with a reservation, the local passenger would have to get off and give up his seat to the through passenger. I refer to this case because I believe it is specific to this whole problem we are discussing now, namely, that the Canadian National is talking one way in Bill 351, and they are here thinking through the subsidiary situation of the Canadian National Transport Company. They are attempting to make an end run or to manoeuver around the Motor Vehicle Transport Act. I say that quite seriously because I know that all of us are quite serious about this problem. But it is difficult for me to understand the comments given here that what the Canadian National Railway is trying to do is to detach the problem from the Board of Transport Commissioners and to have somebody provide a service when we want to furnish a line.

Canadian transportation is definitely persisting in the continuation of a losing proposition. It can be established that it has lost at least half a million dollars over the last period of years by Israel Winner and his predecessors, and it is a highly seasonal operation, and that it is only connecting with Halifax on the weekends. It was further surprising that the Canadian National Transport Company, perhaps somewhat mistakingly, indicated that they had every intention to proceed with this service this year, and that the only reason there was a hearing was because the Board of Examiners, or Board of Public Utility of Nova Scotia is acting as the provincial transport board, that the matter was heard, and that there was new hearings.

There has been no decision in the case yet, although an early decision was sought. I do not know what the board will decide. We can imagine the effect if the decision is that a new certificate should be issued to Canadian National Transport Company to operate this inter-provincial business, which would be the beginning of operating a highway bus service from coast to coast in Canada. Our position is that if we are going to run a competitive service throughout this country with inter-provincial operations, then the public will

suffer because, in its wisdom in granting a limited franchise, the board of the province have decided it is better to control the whole part of this operation than to permit several operators to operate with limited revenues for all concerned.

The limiting of the control is with respect to the number of franchises or certificates granted, but there is control in respect of the public in order that there may be a regulated, controlled and good service provided by them.

In some cases there are two or more services under circumstances where, if there is a failure to provide a good and sound service to the public the operator risks the possibility of losing his certificate and someone replacing him. Now, coming to Bill 351, in the view of the Canadian Motor Coach Association we think it is a sensible idea to attempt to consolidate the Acts of the Canadian National Railways, but we believe there is no sensible reason for thinking that the national project should be permitted to do these things which its subordinates might do. When Bill 351 was first introduced, that point emerged with respect to section 92-A-10 of the British North America Act and it was thought that it would mean that the Canadian National Railways envisaged completely circumventing the intention of the Motor Vehicles Transport Act, of being required to go through the provincial boards. May I say as an aside that there seems to be a legal question, not one which I would attempt to answer, that the Motor Vehicle Transport Act either delegates full authority to the provinces to administer it, or it merely sets up an arrangement for the provinces to act as a federal-provincial transport board and to administer the Federal Act. When these thoughts are combined with the possibility of the Canadian National Railways, including the Canadian National Transport Company—with the limitation that they could be works for the general advantage of Canada—it seemed to us that the whole of the Motor Vehicle Transport Act would be defeated.

The amendment that was proposed is such that it seems substantially to eleminate any objections we have to bill 351 as amended. Our basic fear is that possibly unless some phrasing is added to clause 27 it might be possible for the subsidiary, Canadian National Transportation to ignore the provincial boards and get itself into competitive business with the provincial bus operators and thereby destroy what has been built up under the supervision of the provinces to the advantage of the people, primarily, as well as to the advantage of the operators and provinces. That duplication is something which the highway transport industry cannot stand. Now the views of the Canadian National Railway as expressed ably today by Mr. MacMillan are such that any of us may well accept and not worry any more. I think all of us realize that the views expressed here today, however, though instructive and helpful, are just views; when the Act is defined the intentions which have been expressed here will not be the important factor. It will be the words of the Act and interpretations of the cases under the British North America Act—some of which have been referred to here today—which will count.

Therefore, Mr. Chairman, in ending my remarks I say that if there is some way whereby your committee can be ensured that the intention of the Motor Vehicles Transport Act will be carried out by all concerned we feel there is nothing further we can object to.

The CHAIRMAN: Have members of the committee any questions which they would like to ask Mr. Thompson.

Mr. JOHNSTON (*Bow River*): I understood Mr. Thompson to say that if there were some way by which we could take the Canadian National Transportation law out from clause 27 that that would meet his desire.

Mr. THOMPSON: Permit me to correct you, Mr. Johnston. I did not have that thought. My thought was expressed along the lines that possibly some wording should be added to clause 27 to make sure that the actions of the Canadian National Railways and/or the Canadian National Transportation . . .

Hon. Mr. MARLER: I think, Mr. Thompson, we ought to except that because after all we are talking about the national company and every other railway company under the National Railways.

Mr. THOMPSON: If you wish. Our thought is that this clause should be limited so that it will be necessary for the national railways to go through the same channels that others must do and in their case, when it is intra-provincial transportation, that is through the Motor Vehicle Transport Act which was passed last year. That means in effect that they must do things similarly to the provincial operators before the Provincial Boards.

Mr. JOHNSTON (*Bow River*): Do you believe that the amendment that the minister is suggesting now will take care of that?

Mr. THOMPSON: I think it will, subject to what further can be done under clause 27 to ensure that—for example, "subject to the rights of the provinces" or "subject to provincial Acts" or some phrase such as that.

We feel that whether or not the C.N.R. or the C.N.T. does these things is incidental.

Mr. JOHNSTON (*Bow River*): I think you heard the minister say he was proposing to make an amendment of clause 27. Do you still contend that even with this amendment your problem would not be covered—the problem which you have in mind?

Mr. THOMPSON: Yes.

Mr. JOHNSTON (*Bow River*): Something else should be added?

Mr. THOMPSON: We feel so.

Mr. JOHNSTON (*Bow River*): Have you any suggestion as to what might be added—have you any proposal to make?

Mr. THOMPSON: The phrasing which has been suggested to us is, I believe "subject to the Acts of the provinces" but that may not be sufficient if in court cases at a later date it was held that the Provincial Transport Board, acting under the Motor Vehicle Transport Act, was acting under federal statute and therefore that the limitation would not apply. If some phrase was used such as "subject to the rights of the provinces" it is possible that such a limitation woud overcome the objection I have mentioned.

Mr. JOHNSTON (*Bow River*): You would be satisfied with an amendment which had that in view?

Mr. THOMPSON: Yes.

Mr. JOHNSTON (*Bow River*): But you have no definite wording in mind which you wish finally to suggest to the committee?

Mr. THOMPSON: That is correct.

Mr. HAMILTON (*York West*): Mr. Thompson, have you got any answer to the position which Mr. Coyne has taken, namely that nothing short of the complete abolition of clause 27 will do?

Mr. THOMPSON; I am an admirer of Mr. Coyne and of his great knowledge in this particular field, but I must state that I take an entirely different view from his. I have no objection to the C.N.R.—doing what its subsidiaries are doing because it is common sense that the C.N.R., one single organization with many subsidiaries, should be permitted to do these things.

Mr. HAMILTON (*York West*): I think Mr. Green suggested that the subsidiary should be subjected to the provisions of the Act we have been speaking about.

Mr. THOMPSON: We do not think that.

Mr. HAMILTON (*York West*): You do not agree?

Mr. THOMPSON: No, we think that clause 27 is somewhat similar to giving corporate powers to a corporation and it is reasonable that the C.N.R. should have in their statute words and phrases to permit them to do things which they are in fact doing.

Mr. JOHNSTON (*Bow River*): You base that view on the matter of law in this case—or do you base it just on the common sense point of view?

Mr. THOMPSON: I base it largely on the common sense view and on my own limited knowledge in the field of law.

Mr. FULTON: Surely common sense and the law are the same?

An hon. MEMBER: Not always.

Mr. THOMPSON: As I said, I base it largely on common sense. Secondly, in my own limited way, I believe a reasonable interpretation of the phrase involved in the British North America Act would give all the powers as a right.

Mr. JOHNSTON (*Bow River*): Have you anything on which to base that opinion?

Mr. THOMPSON: I would answer "no" to that. I do not wish to cite any particular case.

Mr. JOHNSTON (*Bow River*): I wish we could have the exact wording which you have in mind in order to remove your objections, because we have been trying to find some way out of this but it seems that we cannot. Both you and Mr. Coyne and your organizations have given this matter considerable thought and are probably in a better position than most of us here—we are not lawyers—to contribute to the solution of the problem and even if it took you some time I would like to see a draft amendment which would be satisfactory to you to section 27.

Mr. THOMPSON: We would endeavour to do that, but the difficulty in our minds is mainly the two-headed face of the C.N.R. which we are discussing, and the C.N.T. which we are not discussing.

Mr. LEBOE: What bearing would the views which have been expressed during the discussion today have on decisions of the courts?

Hon. Mr. MARLER: I think they would be very interested, but no more than that.

Mr. GREEN: Is it the intention that the Canadian National Railways, if it gets this power, should have to go to its provincial boards for a licence in the same way as traffic companies today?

Hon. Mr. MARLER: Exactly.

Mr. GREEN: Everybody is aiming at the same objective and it comes down merely to a question of phraseology.

Hon. Mr. MARLER: I think so. I might ask you a question, Mr. Green; supposing, Mr. Green, that we added to the end of clause 27 that the power granted in this section shall be exercised subject to the rights of the provinces, or some such wording. What is the effect of putting that in clause 27 but not putting it into clauses 28 and 29 and some of the other clauses of the bill? Would it be your opinion that by putting it into one but not putting it into the other you would create a rather invidious difference between the two articles? Would you not think that by putting it in in the one case and not in the other—if, in the one case, you inserted the phrase "to be exercised subject to provincial rights" but did not do so in the other cases—you would be creating a distinction which might lead to difficulties?

Mr. GREEN: I have not given the matter very careful thought and I hesitate to express an opinion but I would think that to use the words "provincial rights" would be going very far. Maybe there should be a restriction worded something like this: "subject to provincial enactments having to do with control of motor traffic and also subject to the provisions of the Motor Vehicle Transport Act of the Dominion. If you put that in it might get you out of the difficulties.

Mr. FULTON: Is not the answer to the point which the minister has raised: that all the other clauses of the bill apply to railway matters which are subject to provincial jurisdiction. In clause 27 you refer suddenly to highway.

Hon. Mr. MARLER: The word "highway" does not appear.

Mr. FULTON: But we are authorizing the railway company to operate vehicles on highways and which in the Motor Transport Act last year we made subject to provincial jurisdictions. Therefore to suggest such limiting words as the minister has indicated he is prepared to contemplate is not to make an invidious distinction between clause 27 and the other clauses of the bill but is perfectly logical because this is the only clause—at least it is the main clause —which deals with highway transport in this bill.

Hon. Mr. MARLER: I was going to suggest that if no one else wishes to make representations with regard to clauses 18 and 27 that perhaps we might leave them in suspense for the time being while the railways consider the views which have been expressed in the committee today, and that we might perhaps go on to deal with clause 19 and following clauses of the bill.

Mr. HAMILTON (*York West*): Are there any other representations to be heard?

Hon. Mr. MARLER: I said we might go on if no one else wished to speak . . .

Mr. JOHNSTON (*Bow River*): Would it materially affect anything he has in mind with regard to the operations of the railway companies? He has expressed the view that he does not want to give them any more power than they had before, and that they must comply with provincial legislation.

Mr. THOMPSON: I did not say the first part of that, Mr. Johnston.

Mr. JOHNSTON (*Bow River*): I said that in view of the fact that you have expressed the opinion that you are not advocating that the railways should be given any more powers than they already have.

Mr. THOMPSON: I did not say that. I said the powers that they were to be given under clause 27 were to be exercised subject to the jurisdiction of the provinces.

Mr. JOHNSTON (*Bow River*): Yes. If we left clause 27 out entirely would that accomplish what you have in mind?

Mr. THOMPSON: It would, very positively.

Mr. HERRIDGE: I think the suggestion of the minister that we might pass on while the railways are considering this matter an excellent one.

Mr. HAMILTON (*York West*): Would it be possible to hear the representative of the Department of Justice before we retire?

The CHAIRMAN: We may have another gentleman to give evidence.

Mr. LEBOE: Do you think that the Motor Vehicle Transport Act would apply to this legislation with the suggested amendment?

Mr. THOMPSON: I am not sure that I know what you mean.

Mr. LEBOE: Did you think that the Motor Vehicle Transport Act would apply to the suggested legislation before you had heard Mr. Coyne's argument?

Mr. THOMPSON: It is difficult to answer because I discussed that argument with an associate of Mr. Coyne last night and I disagreed at that time, so I was not affected, perhaps, by his argument today. I respect his opinion but I come to a different conclusion.

Mr. LEBOE: Thank you.

Mr. NOWLAN: I was wondering whether Mr. Farebrother is here.

The CHAIRMAN: I am expecting him, to represent Mr. Todd.

Mr. NOWLAN: Mr. Todd is not here but Mr. Farebrother was coming here to represent him.

Mr. JOHNSTON (*Bow River*): Are we going to hear the Department of Justice now?

Hon. Mr. MARLER: I think it would be better if we postponed that until we know what we are going to deal with specifically.

The CHAIRMAN: Clause 19. Are there any questions on 19?

Mr. GREEN: Could we have an explanation from Mr. MacMillan?

The WITNESS: Clause 19 is a complete rewrite of section 18 in the C.N.R. Act of 1919. There is no change whatever.

The CHAIRMAN: Shall clause 19 carry?

Carried.

The WITNESS: The same is true of clause 20. It is section 19 of the C.N.R. Act of 1919.

The CHAIRMAN: Shall clause 20 carry?

Carried.

Clause 21.

The WITNESS: Clause 21 is exactly the same as section 14 (2) of the C.N.-C.P. Act of 1933.

Mr. NOWLAN: I do not wish to argue, but I would suggest there is some slight variation between clause 21 as in the bill and section 14 (2) of the C.N.-C.P. Act, because in section 14 (2) of the C.N.-C.P. Act the words are:

"....direct, provide and procure...."

Those words for some reason or other have been left out.

Hon. Mr. MARLER: The word "procure".

Mr. NOWLAN: Yes. I think the word "procure" is a very, very important word in freight and I wonder why it was left out of section 2. When you look at section (2) you will find it says:

"direct, provide and procure...."

and so on. The procuration is left out entirely in clause 21 as it now appears in the bill. I do suggest, with all deference to Mr. MacMillan, that those words have some significance wherever they are used, but in particular when they are used with respect to the acquisition of freight. I know that someone will suggest that the word "procure" is one of doubtful meaning, but I do think those words should be left there and that we should have the old enactment of "direct, provide and procure." I would also like to ask Mr. MacMillan what is being done in the Canadian National system today in directing and providing that this be done, because when you look at the figures provided by the Dominion Bureau of Statistics you will see that they certainly have been ignored entirely by those who presumably are responsible. I would like to have his comments on that.

Mr. HAMILTON (*York West*): I notice the wording is not the same. Clause 21 says:

"All freight originating in Canada, destined for export by sea and consigned for carriage . . ."

and the old section said:

"All freight destined for export by sea that is consigned within Canada for carriage . . ."

I would think that there is a difference in the meaning between "point of origin" in the one case and "destined" in the other. Under the old Act no matter where those goods came from if they were consigned within the limits by an exporter in Canada they would go through a Canadian port and under the new section the goods themselves would have to originate from Canada to go through that Canadian port. I think there is a restriction there which does not exist in the original Act.

The WITNESS: May I answer the second question first. There is nothing sinister in this new language at all. We have tried to explain the thoughts in the old section 14 (2). My own view is that this language is more apt and more descriptive than the old language and that we have not tried to do anything in respect of this at all.

Mr. NOWLAN: You have omitted the word "procure".

The WITNESS: I grant that and I say we have no bones to pick with the word "procure". My humble opinion is that it does not add anything to the language at all.

Hon. Mr. MARLER: Certainly the grammar leaves much to be desired.

The WITNESS: It is to put it in more grammatically correct form.

Mr. HAMILTON (*York West*): What about the illustration I gave?

The WITNESS: You are placing on it a very restricted meaning, that it would be applicable to goods manufactured only in Canada. We are not thinking in those terms at all. It is freight and goods on the railway, the shipment of which begins within Canada. I should point out to you, of course, that the instances in which any railway—not the Canadian National but any railway—is able to direct traffic are infrequent. Traffic is almost entirely routed by the consignee or consignor in the manner in which it receives the most rapid delivery.

Mr. NOWLAN: That was the reason why I objected to the word "procure". I quite realize that the consignee has an over-all control over the situation. But, the Act as it is now drafted says:

"That the board of directors"—which of course is a pseudonym—shall direct and provide and as Mr. MacMillan has said you can direct and the consignee may say "I am sorry, but I am going to send it out by Portland Maine". That is the way a tremendous amount of goods originating in Canada are shipped today. I am willing to admit that legally it would not impose any very great legal burden. You have been establishing all day that your organization is responsibile to the parliament of Canada and I would suggest to you and to the minister that it is an obligation that you should accept and that you should not even try to—and I am not saying you do it deliberately—disallow occasionally this responsibility of trying to procure traffic over Canadian lines and to Canadian ports.

I would suggest that those words should be re-inserted in the clause. Having said that I also would like Mr. MacMillan to comment on what the

directors have done under the "directing and procuring" and now as the section stands: "Directing and providing". What has been done by the Canadian National Railways in making sure Canadian goods have been shipped over Canadian railways to Canadian ports? We all know the figures of how that traffic has diminished to such an extent that it is really appalling at the ports of Halifax and the St. Lawrence and all Canadian ports in the east and west. I think that we should have a little accounting from the Canadian National Railways as to what they have done to implement that section in the past.

The WITNESS: I do not know that I can answer. That is a question which I have never had to answer before. It is something which is rather broad in scope. I would suggest that it would require some study to provide you with an answer. It is a freight traffic problem. It seems to me odd that what you contemplate should arise in the discussions dealing with the consolidation of the legislation.

Mr. NOWLAN: You spelled it right out in clause 21.

The WITNESS: I am sorry I am just unable to answer that.

By Mr. Fulton:

Q. I wonder if Mr. MacMillan would not be prepared to agree that apart from what might have necessitated the dropping of the word "procure" there is a subtle difference between the words "destined for export by sea and consigned for carriage by national railways" and the old words "destined for export by sea that is consigned within Canada for carriage to national railways". I must say that it seems to me to say now that the phrase "must originate in Canada" is a very different thing from saying the phrase "must be consigned through national railways in Canada."

Hon. Mr. MARLER: The present language is "consigned within Canada".

Mr. FULTON: No.

Hon. Mr. MARLER: It is in the Act.

Mr. FULTON: Do you mean in the present Act?

Hon. Mr. MARLER: Yes.

Mr. FULTON: The present Act is:

> The Board of Directors shall direct and provide that all freight originating in Canada, destined for export by sea and consigned for carriage by National Railways either from the point of origin or between that point and the sea, shall, unless it has been by its shippers specifically routed otherwise, be exported through Canadian seaports.

Hon. Mr. MARLER: Is there any difference between: "consigned in Canada" and "freight originating in Canada"?

Mr. FULTON: I would think that there most certainly is. Freight originating outside of Canada might be consigned within Canada for carriage by Canadian National Railways; that freight would have then to be directed to a Canadian port. But now, to bring it within the provisions of the proposed section, the freight has to originate in Canada. Unless there has been some judicial interpretation given to the words of the old section of which we are not aware I am quite convinced there has been a substantial difference in meaning.

Hon. Mr. MARLER: Quite frankly I see a little difficulty, with respect to the "procure", in seeing how one could say in effect that the Board of Directors shall procure that all freight shall do something. It seems to me that is not good English.

However, in view of these observations we might take another look at this and perhaps we should let it stand for the time being.

By Mr. Johnston (Bow River):

Q. When Mr. MacMillan was talking about this clause and pointed out that it was exactly the same as in the old Act I thought that that meant exactly what it said. Now I am a little surprised when Mr. Nowlan suggests it is different and Mr. MacMillan is very reluctant to put it back in again.—A. Oh, no. What I should have said if I did not say it—and I think I did—was that it was intended to be identically the same. This little section here is merely in these words to try to bring it into conformity with the English throughout the statute. It has had the examination of half a dozen legal people working on it. Unfortunately it comes in a form which you do not find palatable.

Q. Why not put it back in and let it go at that?

Hon. Mr. MARLER: On that basis we are just doing a scissors and paste job.

Mr. GREEN: Surely this is a kind of situation the intention of which can only be implemented by some definite action taken by the Canadian National Railways. We are very much interested on the west coast although I think it is more important to the ports in the maritimes. Could Mr. MacMillan not find out, before we meet tomorrow, what actual steps are taken by the Canadian National to see that this section is carried out? He said that nothing much could be done about persuading shippers to ship in one particular way—

The CHAIRMAN: Could we let the clause stand until tomorrow?

Mr. GREEN: Just a minute—and that the shippers would ship as they wished. But if it happens that across Canada your agents have had definite instructions from the C.N.R. management that they should procure or provide or that they should always keep this section in mind? It does seem to me there would be far more likelihood of the section being of some value. Could we hear from Mr. MacMillan tomorrow?

The CHAIRMAN: We will let this clause stand until tomorrow.

Hon. Mr. MARLER: Mr. MacMillan will endeavour to obtain the information but he may not have it by tomorrow morning.

The CHAIRMAN: Clause 22.

Mr. LEBOE: As a shipper of many hundreds of carloads of lumber in the past, I say that one of greatest bargaining advantages we have is this business of where the load is going to be carried, whether it is to be a long haul or a short haul, and at what place it is going to cross the border, and that in my opinion is the substance of the whole thing, and the rest of the business does not amount to anything in my opinion, because that is where the bargaining power rests, and I think Mr. MacMillan will bear that out.

The WITNESS: I really would not wish to answer on that question.

The CHAIRMAN: We will let 21 stand. Clause 22.

By Mr. Green:

Q. Could we have an explanation of what steps must be taken at the present time in order to build a branch line, in the first place by a Canadian Government Railway and in the second place by the Canadian National Railway—and then what steps will be necessary under this new section.—

A. I had hoped, Mr. Green, that the lengthy discussion we had this morning on this subject had resolved all your difficulties on that point. The procedure presently applicable to the construction of branch lines is that contemplated by section 20 of the Canadian National Act and you will notice that under that section, "with the approval of the Governor in Council", there must be an order in council and "upon any location sanctioned by the Minister of Transport", the minister must sanction the location, the railway may "from time to time construct and operate railway lines branches and extensions or railway facilities of any description in respect to the construction whereof respectively parliament may hereafter authorize the necessary expenditure or the guarantee of issue of the company's securities".

That language has been in the Act since the beginning. It has been determined as meaning that the essential characteristics or condition precedent is the financial aspect of the matter. Parliament must have either authorized the necessary expenditure or in the alternative authorized the issuance of company securities and crown guarantee.

The procedure is to insert an item covering intended construction into the annual budget and that budget is placed before parliament in due time; it is approved by the Annual Financing and Guarantee Act and members of the committee will recall that each year they deal with that statute.

The Financing and Guarantee Act does two things: it first authorizes the expenditures contemplated in the first section which would meet the requirements of section 20, but it also goes on to authorize the issuance of guaranteed security so that we actually meet the different conditions set out towards the end, and now under the new section.

Q. Before you leave your account of the procedure under the existing law, will you tell the committee in what cases the railway company asks parliament for a special Act? For example we had a special Act to construct the Lynn Lake line and several others, and apparently sometimes you proceed in these matters by special Act of that kind, while in other cases you just have the regular C.N.R. financing legislation. Where is the line drawn?—A. Where the line is drawn? Those were the lines to which I referred to a minute ago—the small industrial lines—the lines of no great length required to service industries. They are really in the category of industrial spurs. Where we were contemplating the construction of what would become branch lines we invariably apply for a special statute authorizing this construction.

Q. I see. There is no fixed rule.—A. No, there is no fixed rule that I know of. I would say that the normal saw-off is the five or six mile category.

Q. Would you go on and explain what the procedure will be under the new section?—A. Under the new section—do you wish me to read it?—Almost the same routine is provided there as under section 20 with the one exception that if the branch line or the extension does not exceed six miles in length we do not have to have prior parliamentary approval of the expenditure or to guarantee the securities.

Q. Some of these extensions would cost a great deal. I think the Kitimat line is costing about one million dollars a mile.

Hon. Mr. MARLER: I do not think it would be quite so much as that.

Mr. GREEN: No. But it means that several million dollars could be committed by the railway without getting parliamentary authority.

The WITNESS: The practical application of course is that what we are talking about here are industrial spurs—spurs to serve industry and I should tell you that we do not build spurs to serve industry unless we can either get a positive guarantee of traffic in return or in the alternative, money is put

right on the table as it is in many instances. The fact does remain that five or six miles of construction could involve a fairly substantial sum but nothing of the order of magnitude to which you have referred. The Kitimat line is 40 miles long.

By Mr. Green:

Q. Forty six.—A. It runs through difficult territory, you remember. This situation which is contemplated here is not that one at all. This is a power which would be utilized to build short lines into a factory which might be located a short distance off the main line or off some other line.

Q. Well, why should Canadian National Railways not be subject to the Railway Act—to the provisions of the Railway Act—in respect of branch lines in the same way as other railways in Canada?—A. We talked about that at considerable length this morning. The reason why is, I think, that in the beginning it was determined that it should not be. I cannot tell you what was in the minds of the government of the day, but that was the determination reached.

Q. Would the new subclause 1 (*b*) give the railways the power to have included in their estimate which comes before parliament the amount that would build a line, say 50 miles long?—A. It might be, but it would not give us the franchise.

Q. The way this is worded here—A. It is exactly the same as the old section.

Q. I know, but the way this is worded—Would you not have power under this clause to build any line you wished? This is not limited to branch lines. The Railway Act refers only to branch lines but this bill says "railway lines, branches and extensions". Now as I read clause 22 you could build a line 50 miles long or a line 100 miles long or a line 150 miles long under that section. Is there any legal restriction?

Hon. Mr. MARLER: I think Mr. Green, that the clause makes it quite clear that if the lines, branch or extension does not exceed six miles in length you can do it without obtaining parliamentary approval or getting a parliamentary vote in respect of the moneys; but if it is more than six miles in length then subparagraph (*b*) provides that the necessary expenditure or the issue of securities must be authorized by parliament.

Mr. GREEN: Yes, but in that sub-clause (*b*) there is no restriction so that they could build any line as I see it, irrespective of the length of the line.

Hon. Mr. MARLER: If that is so under this clause it was so under section 20 of the Canadian National Railways Act.

Mr. GREEN: That is quite true. But is it right that there should be a wide open field?

Hon. Mr. MARLER: I do not think the field is wide open. I think that parliament either by authorizing the expenditure or by specifically authorizing a new project has effective control.

Mr. GREEN: In any case it is the policy of the railway company to get a special Act of parliament for any lines which are in fact new lines.

Hon. Mr. MARLER: I think that has been the case in the past few years.

By Mr. Green:

Q. Is there any intention to change that policy?—A. We would not change it because we want some place in a statute to be able to read that parliament has said "you can build a line from Loon lake to Loon river" for example.

Q. Under this section the Minister of Transport can say that?—A. No, he cannot. Parliament must say it. I am not familiar with parliamentary pro-

cedure but I would think that whether parliament is saying "you are hereby authorized to make the following expenditure..." —and they are tabulated in an official Act, which is one way in which parliament speaks—or whether it is through the enactment of a charter authorizing the construction, it is still parliament which is speaking and an Act of parliament by virtue of which we build.

Q. Yes but I am referring to special Acts, such as the Kitimat Act or the Lynn Lake Act. Those are the cases to which I am referring. Under this clause it reads:

> With the approval of the Governor in Council and upon any location sanctioned by the Minister of Transport, the National Company may construct, maintain and operate railway lines, branches and extensions
>
> (a) if the line, branch of extension does not exceed six miles in length, and
>
> (b) in any other case, if parliament has, in respect of the construction thereof, authorized the necessary expenditure or the guarantee of an issue of the National Company's securities.

That gives the power to the minister to say there will be railway from Terrace to Kitimat.—A. It does not if parliament—and I emphasize the word "parliament"—has not authorized the necessary expenditure or the guarantee of the issue of the National Company's securities, and that is what we ask parliament to say in the special Act which is passed, and this is really, if it is anything at all, an invitation to the Canadian National to apply for a special Act to endorse the construction of a line from Loon Lake to Loon River, for example.

Q. There is no intention to change the policy which has been followed so far?—A. None.

Q. What is the situation with regard to Canadian Government railways as distinct from Canadian National Railways?—A. Well, as I said, Mr. Green, the power of Canadian Government Railways is the power of the minister. That is the power of the Canadian National. Construction by the Canadian National comes under clause 22. If the minister were to chose to do some construction by way of extension to the Canadian National Railways, presumably he would do it under the Government Railways Act.

Q. What is the procedure followed under the Government Railways Act for the building of branch lines or new lines or extension?—A. Would you like me to read the provision from the statute? This is section 8 of the Government Railway Act:

> The Minister may, by and with the authority of the Governor in Council, build, make and construct, and work and use sidings or branch lines of railway, not exceeding in any one case six miles in length, for the purpose of
>
> (a) connecting a city, town, village, manufactory, mine, or any quarry of stone or slate, or any well or spring, with the main line of the railway, or with any branch thereof,
>
> (b) giving increased facilities to business, or
>
> (c) transporting the products of any such manufactory, mine, quarry, well or spring.
>
> The Minister and those acting under him, for every such purpose, have and may exercise all the powers given them with respect to the main line; and all the provisions of this Act that are applicable to extensions extend and apply to every such siding or branch line of railway.

Where the branch or siding does not exceed one mile in length, the minister may construct such branch or siding without an order in council; and in the event of his so constructing a branch or siding not exceeding one mile in length, all the provisions of this Act that are applicable to extension, as aforesaid, likewise apply in the manner aforesaid.

Q. How do they go about having parliament approve the expenditure of the money in the case of the branch lines of the Canadian National Railway?—A. You have in mind construction by the minister? I cannot answer that. I do not know.

Hon. Mr. MARLER: There is no statutory power given to the Minister of Transport to spend money under the Act. The money must be voted by parliament for the purpose, so again you come back to the necessity of having parliamentary authority.

Mr. GREEN: Has it been the practice in the case of lines over six miles in length to come to the House for special authority?

Hon. Mr. MARLER: I have not been minister long enough to be able to answer the question.

By Mr. Fulton:

Q. I think you told us this morning Mr. MacMillan that all these lines have been built by the Canadian National Railway.—A. That is my understanding.

Q. The policy of the railway in future I take it then, is to operate any of these branch lines under the new clause, clause 22?—A. Oh yes.

Q. Even if they are branch lines of the Canadian Government Railway?—A. Branch lines, yes. I would like to say this that in regions such as that in which the Intercolonial operates, if an industry came along and sought a little track to serve that industry I do not know that the question of whether that half mile, or quarter mile, or 200 yards of track was going to be regarded as Canadian Government Railways or Canadian National Railways. It is not the type of thing that is going to create very much excitement in any place. But it is just a service to the industry. Branch lines as such, running off the Canadian Government Railways have in fact been built under the authority of special Acts and the most recent one which I recall was the extension made from Barraute to Kiask Falls. I think it was roughly 60 miles long, and we built about 40. That originated on the National Transcontinental and it was the Canadian National Railway Company that was authorized to do that construction, and it was that company which built the line.

Q. What does the C.P.R. have to do, Mr. MacMillan, to build a line of any more than six miles in length?—A. As I said, Mr. Fulton, I am reluctant to tell you what the C.P.R. does. I do not want to say anything which could be taken as binding on them, and I am not familiar with their procedure.

Q. What are the requirements of the Railway Act or any other statute which would be binding on the Canadian Pacific Railway in this regard?

Hon. Mr. MARLER: I think it is perfectly clear that under the Railway Act the Canadian Pacific Company can build lines up to six miles in length with the approval of the Board of Transport Commissioners, but as I said in parliament the other day so far as branches off their main lines are concerned—which, I understand, means west of Callander, Ontario, they may build without any authority whatever.

Mr. FULTON: Up to six miles in length?

Hon. Mr. MARLER: No. The six mile limitation does not apply and they do not require permission of the Board of Transport Commissioners if they are building branches off their main line west of Callander. That is the result of the agreement between the Canadian Government and the Canadian Pacific Railway in the last century.

Mr. FULTON: East of Callander to build over six miles do they have to come before parliament?

Hon. Mr. MARLER: No. They merely have to go before the Board of Transport Commissioners.

Mr. GREEN: The question was over six miles.

Mr. FULTON: I am trying to establish a comparable position.

Hon. Mr. MARLER: If it is over six miles that would require parliamentary approval.

By Mr. Fulton:

Q. Apart from the position west of Callander, if this goes through the Canadian Pacific will be placed in a more competitive position?

Hon. Mr. MARLER: The positions will be not identical, but fairly comparable.

Mr. FULTON: But the C.P.R. requires a special Act, whereas the C.N.R. only requires a parliamentary vote.

Hon. Mr. MARLER: That is one distinction; the other is, I think, in one case order in council approval and in the other it is Board of Transport Commissioners approval. But the two railways are in a fairly comparable position.

Mr. FULTON: Look at subclause (2) of 22 which says:

> A copy of any plan and profile made in respect of any completed railway shall be deposited with the board.

Does that not necessitate obtaining the prior approval of the board?

Hon. Mr. MARLER: No.

The WITNESS: In respect of highways which are to be crossed by a projected line we do go to the board for approval. When the line is completed we deposit the plans and profiles pursuant to subclause (2); and that is an exact rewrite of that provision.

Mr. FULTON: The C.P.R. would have to go to the board first for the approval, whereas the C.N.R. would only have to deposit a plan of its line with the board after it is completed. Is that correct?

The WITNESS: With the qualification to which the minister referred.

Mr. FULTON: I am talking about lines east of Callander.

The CHAIRMAN: Shall clause 22 carry?

Mr. FULTON: No. I do not understand why one railway company is placed in a different position to another in regard to getting approval from the Board of Transport Commissioners.

Hon. Mr. MARLER: The Canadian National Railway is an instrument of the Crown, whereas the Canadian Pacific Railway is not.

Mr. FULTON: Yes, but the Canadian National Railway is owned by the public and if it had to come to parliament for approval or licence you might say we are substituting parliament for the board, but I understand they do not have to come to parliament and only have to obtain an order in council, whereas the C.P.R. has to go to the Board of Transport Commissioners and get approval. So the two railways are not in the same position.

Hon. Mr. MARLER: No, but they are in a comparable position.

Mr. FULTON: It seems to me you are enacting a new provision here. The six miles provision is new.

Hon. Mr. MARLER: We have been saying all along that it is new.

Mr. FULTON: What is the reason for placing the two railways in a different position? Why not say that the C.N.R. has to go to the Board of Transport Commissioners for approval?

Hon. Mr. MARLER: We do not think it should.

Mr. FULTON: Why not?

Hon. Mr. MARLER: Because I think it is an instrument of the Crown and I do not think it should have to go to another instrument of the Crown for approval.

Mr. FULTON: I do not accept that principle.

Hon. Mr. MARLER: It is a free country.

The CHAIRMAN: Shall the clause carry?

Mr. FULTON: No.

The CHAIRMAN: Shall the item carry?

Mr. FULTON: No.

The CHAIRMAN: Have you anything else to say?

Mr. FULTON: I have nothing further to say. I am prepared to put it to a vote.

The CHAIRMAN: All those in favour of clause 22 being carried, please signify by raising their right hands.

Mr. FULTON: I call for a poll of the committee on division.

The CHAIRMAN: On the show of hands I declare that clause 22 carries on division.

Let us call it 10.00 o'clock. The committee is now adjourned until 10.30 tomorrow morning.

FRIDAY, June 3, 1955.
10.30 a.m.

The CHAIRMAN: Gentlemen, we have a quorum. I have been asked to announce that the adjournment will be at 1:00 o'clock, that the afternoon sitting at 3:30 will be in room 368 and this evening's sitting at 8:00 o'clock if we continue also, in room 368. I have been requested to adjourn then at 5:00 o'clock and if we cannot finish at 10:00 o'clock tonight to sit a little later tonight and finish up so that the men who are away from home can go home tomorrow.

We were on clause 23 but I think possibly we should finish 21 before we start on 23.

Mr. GREEN: Mr. Nowlan is interested in that and he is not here yet.

Hon. Mr. MARLER: I think we can leave 21 to a little later on in the morning when we have received the amendment.

Mr. GREEN: What about 18?

Hon. Mr. MARLER: Yes, and then we can go on with the other. I think copies will be distributed possibly in half an hour.

The CHAIRMAN: Clause 23.

Mr. GREEN: Mr. Chairman, I have a statement to make with regard to clause 23. This is the section which gives the power to the Canadian National Railways to make agreements with other railways, for example, pooling trains and agreements for amalgamation leaving out, of course, the Canadian Pacific Railway. The amalgamation of that system is expressly excluded. I am wondering whether or not it would be possible to write into this section some provision for the men of the Canadian National Railways who lose their jobs as a result of this arrangement. I point out that in section 17 of the Canadian National-Canadian Pacific Act which deals with cooperative measures, plans and arrangements by the Canadian National Railways and Canadian Pacific Railways there is a provision of the kind I have mentioned which reads as follows . . .

Hon. Mr. MARLER: What is that you are reading?

Mr. GREEN: Section 17.

Hon. Mr. MARLER: Of what?

Mr. GREEN: Of the Canadian National-Canadian Pacific Act. I am reading the last third of that section:

> And they are further directed that whenever they shall so agree they shall endeavour to provide through negotiations with the representatives of the employees affected as part of such measure, plan or arrangement or otherwise for a fair and reasonable apportionment between the employees of National Railways and Pacific Railways respectively such employment as may be incident to the operation of such measure, plan or arrangement.

That was a provision written into the law to help provide for the employees who were affected by a cooperative arrangement.

I bring this up because within the last two months we have had a situation develop on the west coast which in my judgment is extremely unfair to employees of the Canadian National. When the Grand Trunk Pacific put its main line through the terminus was Prince Rupert. That was a Grand Trunk port. It was supposed to be in competition with Vancouver and was to be built up as a regular Grand Trunk port and when the Canadian National Railways took over the Grand Trunk Pacific Railway, Prince Rupert, of course, became their port and has continued as such ever since.

In connection with the port there was a line of steamships running from Prince Rupert to Vancouver and that has been the case—oh, for it must be nearly fifty years and Prince Rupert has always been considered a Canadian National Railways port and the boat traffic up there was primarily Canadian National traffic.

Now, this year for some reason or other the Canadian National Railways officers in Montreal decided that they would turn over the year round operation of that route to a Canadian Pacific Railway ship. Mind you, there is some sort of a working agreement whereby this ship will do the business for both lines but the men of the Canadian National Railways who had been employed on their boat, the Prince Rupert, which is to be laid off, have been or some of them have been let out and others have had to take drops, for example, captains, dropping back to second and third officers and in fact that service, to me at least it appears, is being turned over to the Canadian Pacific Railways.

That was brought up in the Sessional Committee on Government Owned Railways and Shipping, and I refer to page 199 of the evidence where Mr. Donald Gordon was being questioned by Mr. Fulton and Mr. Gordon had this to say:

> ...it is not proper to call it a pool operation but a joint operation with the Canadian Pacific Railway...

In other words, it does not come under the pooling section of the Canadian National-Canadian Pacific Act; it is a separate deal and these men are not protected by the protection that is written into section 17 of the Canadian National-Canadian Pacific Act.

Then, Mr. Gordon had this to say at page 200:

> Under our agreement with the Canadian Pacific Railway the crew of the joint ship...

which, as I pointed out is a Canadian Pacific Railway ship...

> ...will be supplied by the Canadian Pacific.

Then again:

> Well, all I can say is that there are competitive services there where they could find work...

In other words, it is up to them to get out and find themselves a job...

> But it is a fact that it is a discontinuance of service and that does mean an end of employment. We have no other place for the crew of the Prince Rupert as such and they are being dealt with on reasonable notice and it is another indication that discontinuance of service does mean unemployment. I would remind you, however, that there are other steamship services on the B.C. coast.

Which statement means in fact that these men are simply being told to go out and try to find a job with another company.

> Mr. Fulton: Have the offices of your company been used in any way or have they been able to be of assistance in finding alternative employment?
>
> Mr. Gordon: Not specifically, no.

Now, I regret greatly in the first place that the Canadian National Railways has seen fit to drop that service. Mind you, they still have the Prince George which will carry on a cruise service during the summer months but the Canadian National Railways is now out of the all-year-round service in its own port of Prince Rupert and I think it is very unfair to those men some of whom have had thirty-five or thirty-six years of service with the Canadian National Railways—there is nobody any better qualified for operating ships on the west coast, they have had experience on that difficult run for all these years and yet they are now being forced to either get a new ship or take cuts which involve in some cases $100 or $200 a month and I submit that a section such as section 23 of this bill should have written into it some provision such as the one I have quoted from section 17 of the Canadian National-Canadian Pacific Act: otherwise Canadian National Railway employees will just be turned loose and expected to fend for themselves.

I don't know in what form the amendment should be written but I hope that the minister will give consideration to writing in an amendment of that kind. You cannot expect to maintain the high morale of the railway staff if they are not given protection of this kind. I repeat that what has happened on the west coast has been a severe jolt to the men employed on the Canadian National Railways ships and I think it is a change which has been very unfair to them.

Hon. Mr. MARLER: Of course, Mr. Chairman, with regard to employment generally speaking I have no doubt whatever that the management of the Canadian National Railways is just as reluctant to allow old employees to go as any one of the members of the committee would be if he were an employer of labour himself. But I do not think anybody can argue that merely because it is a national railway that we should keep on employees when unfortunately the traffic does not justify using their services.

Mr. GREEN: No, but the point is this. I read from Donald Gordon's evidence and the crew of this new ship is to be entirely a Canadian Pacific Railway crew. Now, why did not the agreement include a provision that half of the crew would be Canadian National Railway men? Why should they be simply thrown aside and the Canadian Pacific Railway men take the job?

Hon. Mr. MARLER: Well, I suppose Mr. Green, the reason was it was a Canadian Pacific Railway ship and I would think it was rather logical that they would go on using a Canadian Pacific Railway crew. I am not attempting to defend the Canadian Pacific Railway or say they have no right to keep

on their crew but I would think it was an understandable arrangement despite the fact that it does seem to produce some unfortunate results for the Canadian National Railway employees.

Mr. GREEN: But may I point out that the Canadian Pacific Railway ship is actually to be renamed and to be operated as a joint ship and yet there are not going to be any Canadian National Railway men in the crew.

Hon. Mr. MARLER: I would take it that changing the name of the ship does not altogether alter the fact that those who operated her in the past would probably be the ones most competent to operate her in the future. What I was going to say was that I do not think it is the most appropriate time to bring up this subject because I think if Mr. Green will examine clause 23 he will find it does not refer to the operation to which he has just been speaking but perhaps Mr. MacMillan can explain the purpose of clause 23.

Mr. N. J. MacMillan, Q.C., Vice-President and General Counsel, Canadian National Railways recalled:

Clause 23 I probably can best explain by giving you the references to the old statutes. Subsection (1) has no counterpart in the statute today and to achieve the rights of our subsidiary rail companies to run over the tracks of another railway company it has in the past been necessary to go through a formal running rights agreement; in other words, the vice-president of operations of a region has to sign an agreement twice on behalf of one company and again on behalf of the other company and we have to go through the machinery. The train is identical, the same train in every instance. Consequently we propose in subsection (1) that any of our own companies be given the right to run over the tracks of any other of our own companies by statute. That is the only new element in this entire clause 23 and subsection (2) is intended to be identical, the same as old section 23 together with the provisions of section 14 of chapter 11, 1928.

Subsection (3) to subsection (10) are just a re-write of section 23 of the Canadian National Railways Act, section 14 of chapter 11 of 1928 to which I referred and section 10 of chapter 32 of 1929. These subsections and for that matter all of clause 23 are intended to look after the amalgamation and the tidying up of the corporate household of the Canadian National. It is not extended to transactions between any other companies because you will notice that these agreements are restricted to those appearing in subsection (*a*) and (*b*). Subsection (*a*) between any two or more companies comprised in national railways, and (*b*) between any company comprised in National Railways and any company approved or designated for the purpose by the Governor-in-Council.

It is not contemplated that it would embrace an agreement between the Canadian Pacific and the Canadian National or other companies in the Canadian National.

By Mr. Green:

Q. No, it does not read that way Mr. MacMillan. It says:

> (2) (*b*) between any company comprised in National Railways and any company approved or designated for the purpose by the Governor--in-Council.

Now, the Governor-in-Council can designate the New York Central or any other line and obviously he might designate the Canadian Pacific Railway because in section 10 you put in an express provision that there shall be no amalgamation with the Canadian Pacific Railway and if that section 10 is

necessary at all it shows there was power under 2 (b) to bring about a compromise agreement with the Canadian Pacific Railway or obviously with any other outside company.—A. I must apologize, Mr. Green, the answer I gave you before was too general. The type of agreement with the Canadian Pacific Railway that I have in mind which was not contemplated in this section was your shipping agreement. That is a non-rail agreement and not affected by the provisions of this section at all. The section certainly is broad enough to encompass the Canadian Pacific if it is a designated company by the Governor in Council and agreements with the Canadian Pacific and the New York Central to use your example presumably could be completed in respect of the matters tabulated in subsection (3) other than the amalgamation in subsection (10).

Q. Well, the only railway with which you cannot amalgamate is the Canadian Pacific Railway. You can amalgamate with any other railway under this section.—A. Presumably if all other railways had been previously designated by the Governor in Council.

Q. As a matter of fact, subsection (5) reads:

> "a company approved or designated under paragraph (b) of subsection (2) has the power or capacity to enter into the agreement."

In other words this bill actually goes so far as to say if the Governor in Council designates the New York Central, then the New York Central are given power to go ahead with the agreement under subsection (5) are they not?—A. I would say they are and that would certainly be applicable to a corporation created by Canada but I don't know whether it gives power to a provincial company or an American company but in any event that is a provision of the law and it has been that way all through the years.

Q. Well, under this section this agreement with the Canadian Pacific Railway about the shipping service from Vancouver to Prince Rupert could be made, could it not? It would be under this section that you would get that authority? —A. I would doubt that, Mr. Green.

Q. Well, under what authority do you get it?—A. I would think that must flow from the general powers of the corporation to carry on its affairs. It is not a rail operation. That is the point I wish to make. There is no question but that the agreement was entered into.

Q. Well, for example, under (3) (d) it provides for making a half interest agreement. Isn't that wide enough to cover an agreement about ships?—A. Yes if it were a rail operation but the agreements discussed in this section and the sections to which reference is made are all in the Railway Act and the Railway Act, of course, covers the operation of the railway as a railway.

Q. But where does this section restrict this power to railways?—A. I don't know that it expressly does restrict it, but they are talking about railways and of the powers of the railway under the Railway Act.

Q. But it does say that in addition to (d) which does authorize the making of an agreement (b) authorizes

> The purchase, sale or leasing of the railway or the undertaking in whole or in part of either party to the Agreement.

Now, the shipping is part of the undertaking of both companies. Surely that section is wide enough to give power to make agreements of the type I have mentioned.—A. I don't think too much hinges on it, Mr. Green. I frankly do not think that agreement would be made under proposed clause 23 but I don't think it matters.

Q. Well, suppose you make an agreement about a railway. For example, suppose you make an agreement with the Pacific Great Eastern Railway in

British Columbia. That certainly would come under this clause 23, would it not?—A. Yes, I would say it would.

Q. Well, what protection have the Canadian National Railway employees got in the case of a joint operation of that kind?—A. I don't think they have any statutory protection. That question is very general. It is difficult to answer that question. You have said assuming they make an agreement with the Pacific Great Eastern. I don't know what kind of an agreement it is. If it was an agreement under which the Canadian National became committed to take over the Pacific Great Eastern the Pacific Great Eastern would have the problem of what to do with their employees. If it were the other way around and the Pacific Great Eastern took over a segment of the Canadian National or part of the undertaking the problem is in reverse. You would have to be a little more explicit but the fact is that I don't know of any statutory protection accruing to the employees of any railway other than under the provisions of the Canadian National-Canadian Pacific Act.

Q. When I started I quoted you the section of the Canadian National-Canadian Pacific Act which expressly provided that there must be protection given to the employees. Now, why could there not be a similar proviso written into clause 23?

Hon. Mr. MARLER: Why wasn't it written in in the first place, Mr. Green, because after all what we are dealing with here is legislation which was under consideration at the time the Canadian National-Canadian Pacific Act was passed.

Mr. GREEN: But at the time the Canadian Nationl-Canadian Pacific Act was passed the only employees affected would be the employees of the two companies. Here I have just quoted an actual example this year of a new pooling arrangement on the west coast in the course of which the Canadian National Railway employees have been left out in the cold.

Hon. Mr. MARLER: Do I understand, Mr. Green, that what you are proposing is that we should incorporate in this bill legislation which provides in effect either payment without work or necessarily a job for everybody who loses his job because of some process of amalgamation?

Mr. GREEN: No, I am not advocating that at all. I am saying that where there is a pooling arrangement that then the Canadian National Railway employees should get their fair share of the jobs under the new arrangement. That is all I am asking and I think it could be covered by writing a section into the bill of the type which is found in section 17 of the Canadian National-Canadian Pacific Act.

By Mr. Campbell:

Q. I would like to ask Mr. MacMillan what arrangement the Canadian National has with the Canadian Pacific regarding the use of lines? For instance, if the Canadian Pacific run over your lines they must do so by some kind of agreement. Are they allowed to pick up freight on your line and vice versa? —A. That type of operation is governed by an agreemnt appertaining to the particular line in question. There is no rigid pattern in these agreements. Some of the agreements we call "running rights agreements" in which the user railway as opposed to the owner has pure running rights over the trackage. They come on at the common point, occupy the rails of the owner to the end of the joint section and leave it without having any traffic rights whatever in the local territory. There are other running rights agreements in which the rights of the user range all the way from limited rights to acquire traffic to the other end of the scale where they have full rights to acquire traffic, to pick up, set out and do all the work that the owner possesses.

The latter type of agreement is frequently encountered in instances in which resort has been had to the provisions of the Canadian National-Canadian Pacific Act where at one time there were fully duplicate lines running in close proximity to one another and one or the other of these lines was abandoned and the two railways are now utilizing the one set of tracks.

Q. What I had in mind was, running out of the city of North Battleford the Canadian National has a line running north and the Canadian Pacific comes out over that line and then branches out to the northeast but on that piece of Canadian National line that they ran over there is a point called Hamlin and the trainmen have informed me they do not like the idea of the Canadian Pacific picking up carloads of freight at this point, Hamlin, but apparently they have an arrangement whereby they can do it.—A. Well, I am not familiar with that, I am sorry to say, but we would find if we looked into it that the agreement governing the operation of this trackage no doubt gives the Canadian Pacific Railway traffic rights at the point that you mention and it is there for a very good reason. They probably had another piece of track in some other location which they abandoned and came over and occupied our rails between those points and in the negotiations local rights were given at that one point.

The CHAIRMAN: Shall clause 23 carry?

Mr. NOWLAN: Mr. Chairman, before carrying it I think Mr. Green asked a perfectly reasonable question here. The minister said a few minutes ago that no one regretted laying off men more than the Canadian National and I am sure we all believe that. None of us think that the management of the Canadian National Railways are hard-hearted executives who love firing men but if they are going to negotiate any more agreements such as this it certainly would strengthen their hands in negotiations with the other railway if they were able to say: "We have a section in the Act which says we must protect our men to the best of our ability"—to protect the men to the extent of not getting paid for doing nothing but that they get their fair share of the jobs. We have that provision in the Canadian National-Canadian Pacific Act and I see no reason why it cannot be included in this bill and if there is any good reason why it should not be then the minister should expain it to us; otherwise I think the committee should ask that it be put in.

Mr. GREEN: I would like to read again the provision which is in the Canadian National-Canadian Pacific Act which says:

> They are further directed that whenever they shall so agree (that is whenever they reach a joint agreement) they shall endeavour to provide through negotiations with the representatives of the employees affected as part of such measure, plan, or arrangement or otherwise for a fair and reasonable apportionment...

Now, that is all that I am asking to be put in this bill—for a fair and reasonable apportionment as between the employees of the Canadian Pacific Railways and the National Railways in respect of any such measure, plan or arrangement.

What is suggested is that there be written into clause 23 a provision that where there is an agreement made with another company for pooling or for a half-interest that this provision should be put in that there shall be fair and reasonable apportionment of the jobs between the employees of the two companies that are going to be affected in the operation.

The minister is having two or three other clauses of the bill stand until later today and I would ask that he let this clause stand awhile just to see whether a subsection of that kind can be added.

Mr. LANGLOIS (*Gaspé*): Would you restrict your suggestion to the Canadian Pacific?

Mr. GREEN: Oh no, any other lines. You see, actually this agreement about the ships does not come under the Canadian National-Canadian Pacific Act at all. I submit it would come under this clause 23 of the present bill.

Mr. LANGLOIS (*Gaspé*): I was asking that because section 17 of the Canadian National-Canadian Pacific Act is restricted to agreements between the Canadian National and the Canadian Pacific.

Mr. GREEN: No, I think it should be the general principle that where the Canadian National Railways makes a pooling arrangement with another company that there should be a fair apportionment of the jobs between the employees of the companies concerned.

Hon. Mr. MARLER: Well, Mr. Chairman, I think we may think over what Mr. Green has said. It is agreeable to me that we let the article stand if that is the wish of the committee.

Agreed.

The CHAIRMAN: Clause 23 stands.

Clause 24. Shall clause 24 carry?

Mr. GREEN: Clause 24 is a new section, Mr. Chairman, and I think it would be helpful if Mr. MacMillan could explain why this new provision is necessary.

The WITNESS: I shall be delighted to do that. Clause 24 is inserted to provide a means by which empty charters at the end of our clean up program may be cancelled without the need of coming back to parliament for formal cancellation of them. Private act companies or special Act companies will continue in existence in empty form until such time as parliament has specifically cancelled them. The thought is that where we have no longer any need of a company, where the assets of that company have been transferred into the Canadian National or the Canadian Northern, in the process of consolidation we will leave outstanding the name of these companies and we would like to get rid of them. It is just a formal mechanical means by which they can be disposed of. With letters patent companies you all know when they have served their purpose we may go back to the companies branch of the Secretary of State and surrender the charter. There is no corresponding provision or corresponding machinery under which parliamentary charters may be surrendered.

The CHAIRMAN: Shall clause 24 carry?

Mr. GREEN: Clause 24 does not limit this power to companies that have parliamentary charters. As I read the clause it would provide for companies that have been incorporated under the Companies Act.

Hon. Mr. MARLER: It is already a very simple procedure for the letters patent company and you do not need these. If this clause were not passed there would be no difficulty in winding up letters patent companies. Therefore it primarily applies to companies incorporated by Act of parliament.

By Mr. Green:

Q. But is it the practice to wind up these letters patent companies merely by getting a declaration from the cabinet?—A. Our practice, Mr. Green, has always been to go back to the Secretary of State with the charters and I know of no reason to change it. I told you yesterday that we have one in our hands right now for surrender. It is a very simple procedure. Frankly, we do not have in mind that type of company at all because we have always been able to get rid of them and we are getting rid of them in that way. The companies to which I referred were the Special Act Companies.

The CHAIRMAN: Shall clause 24 carry?

Carried.

Clause 25?

By Mr. Green:

Q. Could we have an explanation of this?—A. This is just section 24 of the Canadian National Railways Act of 1919.

Q. How are you carrying on your express business now?—A. Under this power.

Q. But is it carried on by the Canadian National Railways Company or by a subsidiary?—A. Canadian National Railway Company.

Q. Where does Canadian National Express Company come into the picture? —A. Canadian National Express was a Special Act company created in 1902-3 in the name of the Canadian Northern Express Company. The name was changed sometime. It is inactive.

Q. You are not doing anything now?—A. No, the express business is conducted by the railway company.

By Mr. Montgomery:

Q. That would be one of the companies you would want to close out and get rid of?—A. Yes.

By Mr. Johnston (Bow River):

Q. As is expressed there "National Company" includes an express business and then if we look at the schedule we find out in part 1 there is the Canadian National Express Company and Canadian National Transfer Company and the operation of both of those companies which are now declared to be for the general advantage of Canada can be carried on anywhere where the operations of the National Company are carried on.—A. I don't know how broad their geographical powers are. I say this to you: the Canadian National Express was a special Act company created and I will get you the exact date, but it was 1902 or 1903. It has been inactive so far as I know for decades. The other one, the Canadian National Transfer Company, that was originally Canadian Northern Transfer Company, and likewise has been empty for at least 20 years. I have never known of an operation being conducted in the name of that company and they were both in the original Act of 1919 as companies in Canadian National Railways because they were both the property of the Canadian Northern Railway Company and subject to all of the declarations that flowed from that statute.

Q. You say, Mr. MacMillan, that the Canadian National Transfer Company was the old Canadian Northern Transfer Company, is that right?—A. Yes.

Q. And did the Canadian National Transfer Company then assume all the powers which were granted to the Canadian Northern Company?—A. I would think so, yes.

Q. Then you mentioned the Canadian National Express Company. That was the Canadian Northern Express Company?—A. Yes sir.

Q. And this company then, the Canadian National Express Company assumed all the powers that the old company had. It was just a change of name, in other words?—A. Yes.

Q. Assuming the same powers as the older company had?—A. Yes.

Q. And now these two then, the operations of either one of these can be carried on under the National Company?—A. Oh, no.

Q. Well, it says "The National Company may establish . . . "

Hon. Mr. MARLER: The National Company means the Canadian National Railway Company.

The WITNESS: It is the Railway Company.

Mr. JOHNSTON (*Bow River*): But it says "The National Company may establish, construct, or acquire, by purchase, lease, etc."

Hon. Mr. MARLER: You are on the wrong clause.

Mr. JOHNSTON (*Bow River*): "The National Company may carry on all business that is customarily carried on by express companies . . ."

Hon. Mr. MARLER: It already has that power, Mr. Johnston.

Mr. JOHNSTON (*Bow River*): It has that power and that is what I am trying to point out to you, Mr. Minister. You remember the other day when you said in your amendments you were going to have that excluded from the declaration but I pointed out to you then that even though it was excluded from the declaration since we had in part I of these two companies the Canadian National Express Company and the Canadian National Transfer Company that the railway would be able to carry on a transportation business which had been declared to the general advantage of Canada whether or not we took that one out of part III.

Hon. Mr. MARLER: Well, Mr. Johnston, isn't is rather obvious that if we had wished to do that we would not be bringing in a consolidation at this time of the very same provisions. If we wanted to do this surreptitiously the very thing we would do would be not to present the legislation at all. These companies have already been declared before for the general advantage of Canada. We are not asking for anything new. We are not asking for greater powers than the express company already has. This is to consolidate the position.

Mr. JOHNSTON (*Bow River*): Yes, I quite agree with you, Mr. Minister, in that regard but my concern was over the powers which the railway would have to start a transportation business.

If we take account of the Canadian Northern Transfer Company which is the old Canadian Northern Express company we find that according to the powers of their charter—and I am reading from the statutes of 1902, chapter 49, and this is what it says about that and you will see there, of course, I do not think you will disagree with it because you have already indicated that those powers are there and in section (7) it says:

> The company may for hire send, carry and transport from and to any place in Canada or elsewhere goods, wares, merchandise, packages, parcels and money and for such purposes may contract with all persons and companies and may construct or acquire by purchase, lease, charter or otherwise and may maintain, operate, sell, lease and otherwise dispose of boats, vessels, cars, vehicles and other conveniences and conveyances and may carry on generally the business of an express company.

And the same thing is true of the Canadian National Express Company.

I draw to your attention again that although we do remove those companies in part III from the declaration, that there is power here for the railway companies under part I of the schedule to operate any complete transportation system they wish. Now, you say well, they have never exercised it.

Hon. Mr. MARLER: No, I did not say that. All I am saying is that we are not changing the position of Canadian National with regard to the express business.

Mr. JOHNSTON (*Bow River*): Well, I think you did say—you will correct me, of course, if I am wrong—that if you had wanted to bring it in you could have done so through the back door method and you could have used this long ago.

Hon. Mr. MARLER: I think that is right.

Mr. JOHNSTON (*Bow River*): Would that be sufficient, though, to assure the committee that the railways have not got the power to carry on a full transportation business?

Hon. Mr. MARLER: But, Mr. Johnston, I am making no such statement as that at all. What we are talking about at the moment are the express companies and I say we are not asking for new powers with regard to the express business. What we are asking for is that we should have in this bill the same powers as we have at the present time. If you want to talk about highway transportation let us talk about that but we are now talking about this portion of the bill.

Mr. JOHNSTON (*Bow River*): In my judgment it does not make much difference whether we remove those sections in part III of Schedule 1 or not because the railway company can operate the same type of business under a different section.

Hon. Mr. MARLER: I think that would be so, Mr. Johnston, but I say the objections raised to the bill outside of the committee have been raised against not what is already in the powers of the Canadian National; it is clause 27 which has attracted the opposition.

Mr. JOHNSTON (*Bow River*): I quite agree with you there that that was the objection that the other parties raised but I wanted to go one step further and wanted to tell you that even though part III of the schedule was removed the same power could be kept on under another part of the Act.

The CHAIRMAN: Shall 25 carry?

Carried.

Clause 26.

By Mr. Montgomery:

Q. May we have an explanation of this as it is new?—A. Clause 26 is new. What we have attempted to do here is to give to the parent company the powers under telecommunications on a national basis, nationally and geographically, the powers presently possessed by one or more of the subsidiary companies. Several of the old railway companies have broad telecommunication powers. That phrase does not appear in their statutes because it had not been coined as of then but they do encompass the type of operation contemplated in the business of telecommunication.

All, as I told you in my opening remarks, almost all of these parent companies had telegraph companies, so called, possessing broad telecommunication powers. The powers expressed in clause 26 are intended to be a consolidation of all of those powers.

If you would like me to give you the references I would be delighted to do so. The Canadian National possesses its powers through amalgamation with the Grand Trunk which in turn obtained its powers through amalgamation with the Canada Atlantic.

Canadian Northern possesses its powers by charter, the Grand Trunk Pacific Railway Company has its, the Grand Trunk Pacific Branch Lines has its, the Canadian National Telegraph Company possesses its by virtue of amalgamation with the Grand Trunk Pacific Telegraph Company and then on top of that we have the Great Northwestern Telegraph Company. It has not as yet been amalgamated, but will be very shortly, and when they are all put together we think all the powers resulting will be that power expressed in clause 26.

By Mr. Montgomery:

Q. This clause is in substitution for all these others?—A. It is preparing the house so that they will be there when the amalgamations are completed.

The CHAIRMAN: Shall clause 26 carry?

Carried.

Clause 27, stands.

Clause 28?

By Mr. Green:

Q. Mr. MacMillan, would you explain 28? The side note indicates that it corresponds to section 12 of the Grand Trunk Railway Act, 1888. That section reads as follows:

> The company may own or hire and run steamships for carrying freight and passengers to and from any port with which their lines of railway connect.

That, of course, would apply very directly to the Prince Rupert to Vancouver run. Then it goes on:

> To and from any ports in Great Britain or Ireland.

That is the foundation section giving this authority apparently. I notice that you have expanded it quite a bit in your new section. Will you explain the changes?—A. The powers in clause 28 are fundamentally those now found in section 12 of the Grand Trunk Railway Act of 1888. Those powers passed to the Canadian National at the time of amalgamation in 1923.

Now, in addition to those present powers there are all the powers of the shipping companies referred to in Part I and II that are possessed by the system as a system today. What we are trying to do again as we did in the telecommunication system is to prepare the way for the future if and when all of those steamship companies are carried forward into the parent company.

By Mr. Nowlan:

Q. Is it under that section that you operate ferries like the Yarmouth-Bar Harbour ferries or those which are operated for the Canadian government?—A. The first part of your question was correct, but your example was not. The railway ferry operation would be conducted under these powers so far as they are regarded as a water operation. We know, of course, that some of our ferry operations by statute are regarded as rail operations. The Yarmouth-Bar Harbour ferry is not going to be operated by the Canadian National as a company facility but rather under an entrusting order in council in which we are the agency for operation.

By Mr. Green:

Q. Would that not come under this clause?—A. No, I don't think it does, Mr. Green. It is difficult to answer that question too. Although it is a water operation it is not our operation; it is a Crown operation. As I remember and understand it is a combination between Nova Scotia and Canada. We are the manager, we are the operators, but it is not ours, and if it was to be ours under the railway company, it would be pursuant to this section.

Mr. NOWLAN: Well, you must have some power somewhere in this Act to do it. Where would you get the power if you did not get it under that section?

Hon. Mr. MARLER: Is there a distinction to be made where the railway is acting as an entrusted agent of the Crown and a case where it is operating

under its own power? If it was its own operation it would operate under the section, but if it is acting as agent of the Crown, it would come under an entrusting order.

By Mr. Nowlan:

Q. But it must have some power under the charter to carry out the entrusting order?—A. The power to carry out the duties under an entrusting order in council are contained in clause 19.

By Mr. Johnston (Bow River):

Q. Under the present bill?—A. Yes.

By Mr. Green:

Q. Clause 19 is intended to cover ships?—A. It covers anything. You notice it does say:

> Any part of anything referred to paragraph (*a*) or any right or interest therein...

Q. Then, we have had evidence that the Canadian government railways are operated by the Canadian National Railways under an entrustment order. Apparently there are some ship services operated under entrustment orders?—A. Yes sir.

Q. Could we have a list of these services operated in that manner?

Hon. Mr. MARLER: Is it really material, Mr. Green?

Mr. GREEN: Yes, I think it is material. Just as I was promised a list yesterday of the Canadian government railways operated by the Canadian National Railways.

Hon. Mr. MARLER: My difficulty quite frankly, Mr. Green, is to see what the relevancy of that is to what we are talking of.

Mr. GREEN: Well, apparently clause 19 gives the company power to operate shipping which is entrusted by the government to the company?

Hon. Mr. MARLER: Yes.

Mr. GREEN: In just the same way as the Canadian government railways runs the Inter-Colonial, Newfoundland railway. Hudson's Bay Railway and the National Trans-Continental Railway which are entrusted to the Canadian National, and I think the committee would be entitled to know which shipping services are under that category. Apparently they are operating some as Canadian National Railway ships and others they are merely operating for the government.

Hon. Mr. MARLER: I would not hesitate to agree with you, Mr. Green, if we were in the select committee which is set up to examine the operations of the railway each year. But that has already been done. The committee has sat; we had two days on the affairs of the Canadian National Railways and the Canadian National West Indies Steamships, the committee had the opportunity of going into the whole operations of the Canadian National Railways and of the steamships company, and I must say that I do find it strange that we should be considering operations in this committee. If it was to illustrate, for example, what the effect of an entrusting order was, well, Mr. MacMillan has already said: "I will produce one" but I must say that I find it a little difficult to see why we should go through the whole gamut of operations carried out by the Canadian National Railways under entrusting orders so that we may pass clause 28.

Mr. GREEN: I am not intending to go through the whole gamut. I am asking for a list of shipping services entrusted to the Canadian National Railways and this committee is far more directly concerned with that question than the committee on government-owned railways and shipping, because we are asked here to deal with the section which actually gives the power to entrust the services to the Canadian National Railways. That is one of the questions which is directly the business of this committee.

For example, this very clause, 28, brings that question up now, and under clause 28 the company does not operate the shipping services which are entrusted to it, but only operates services it owns. Then, we are told we have to go back to clause 19 to find the power to operate services which are entrusted, and I think it is very material the committee should know just as much as possible. We can get it later in the day.

Hon. Mr. MARLER: I will see if it is possible to produce a list. I will let the committee know the situation.

Mr. GREEN: And what other types of services are entrusted as distinguished from government-owned in addition to railways and shipping services?

Hon. Mr. MARLER: Well, I think you are asking me for a great deal, Mr. Green. I am not going to say if I am going to be able to measure up to your request. However, we can look into it.

Mr. GREEN: But, Mr. MacMillan should know that off hand.

The WITNESS: I know a few, yes, but I would not say they were embracive. There is Ogden Point docks in Victoria. At one time that was entrusted when I was working in western Canada. Whether it is now I do not know. The telegraph and telephone services in Newfoundland is another example. Whether those two are the only ones, I would hesitate to say.

The CHAIRMAN: Does clause 28 carry?

Carried.

Clause 29.

The WITNESS: 29 is a consolidation of section 3 of the Grand Trunk Act in 1926.

By Mr. Green:

Q. This is the clause which deals with hotels. Is that the authority under which you operate all your hotels?—A. I think it is, Mr. Green, yes.

Q. For example, the parliamentary assistant tabled in the House the other day three orders in council concerning the operation of three hotels, one the Nova Scotian in Halifax, one the Newfoundland Hotel in St. John's and the Charlottetown Hotel in Charlottetown. Now, how are those hotels operated?—A. I am unfortunately not familiar with the orders in council to which you refer and consequently I cannot answer categorically regarding their content, but those three hotels were operated as a component of Canadian National hotel system. The Newfoundland Hotel you will well remember was the property of the commission government of Newfoundland at the time of Confederation and passed to Canada on Confederation. It was entrusted to the Canadian National under an entrusting order in council for management and operation. The exact status or condition with regard to the Charlottetown and Nova Scotian I cannot tell you at the moment. I would have to ascertain what it is. They are both in territories in which the railway is a government-owned railway, and it could well be that they were able to buy those hotels and if that is the case, I expect they are something of entrusting orders too.

Q. This order in council, for example, the one concerning the Charlottetown Hotel by order in council, P.C. 115 of 20th of January, 1923 being amended 1950, deleted from the entrustment to the Canadian National Railway Company

the property of Her Majesty in right of Canada as described in the schedule and (2) the said hotel property, including land, structures and appurtenances, be transferred by Letters Patent for a nominal consideration to the Hotel Company. What is the effect of that?—A. If I may see that I would be delighted to explain it to you. This no doubt is an implementation of the plan which I described for consolidation of all these hotels.

The Charlottetown Hotel obviously was an entrusted property which was a part of the Canadian government railway. The plan is, having created Canadian National Hotels Limited, to put all of these hotels into that company. It is the first step in a sorting out process, the principle we discussed, the task of the mail sorter who puts it into one bin first. It is a step being taken to consolidate all the hotels into Canadian National hotels. It is a question of clearing up the title, trying to get the management into understandable form. The other hotels are also operated differently or were operated differently originally. We are putting them together.

Q. This company Canadian National Hotels Limited does not appear to be in the schedule to the bill?—A. No sir, it is a Letters Patent company of recent incorporation.

Q. The plan is to put all these hotels into the ownership of that company?—A. Yes.

Q. The one with regard to the Newfoundland Hotel contains this provision, that the Newfoundland Hotel be placed under the management and control of the Minister of Transport. Now, how does the Minister of Transport get into the hotel business as distinct from the Canadian National Hotels Limited?—A. I do not know what is the reason for that, but I facetiously speculate that he is in the hotel business as a result of the act of Confederation of Newfoundland.

Q. He is going to be running a beer parlour.

Hon. Mr. MARLER: I have known businesses that were less profitable, Mr. Green.

Mr. GREEN: That particular order in council has three operating paragraphs, the order in council 4531 of 25th September, 1950 merely entrusts the Newfoundland Hotel to the railway for management, and operation.

Hon. Mr. MARLER: I understand the reason for that, Mr. Green, is that the entrusting order was in fact revoked in order that the hotel be placed under the management and control of the Minister of Transport, so that in turn he could recommend that it be sold to the hotel company.

Mr. GREEN: He has been fired as an operator of the hotel?

Hon. Mr. MARLER: At times I wonder if it should not be voluntary retirement.

The CHAIRMAN: Shall clause 29 carry?

Carried.

The CHAIRMAN: Now, I think a short recess for five minutes for the sake of the reporter who has been working very hard.

—Recess.

The CHAIRMAN: Order, gentlemen. We will go back to clause 18.

Mr. LANGLOIS (*Gaspe*): Mr. Chairman, yesterday I moved an amendment to clause 18, and I am now seeking permission from the committee to withdraw it, and move the following amendment instead. I will read this new amendment.

The CHAIRMAN: Agreed? Agreed.

Replace Section 18 by the following:

18 (1) The railway or other transportation works in Canada of the National Company and of every company mentioned or referred to in Part I or Part II of the First Schedule and of every company formed by any consolidation or amalgamation of any two or more of such companies are hereby declared to be works for the general advantage of Canada.

(2) The companies incorporated by subsection (2) of section 7 of the Canadian National-Canadian Pacific Act are hereby continued and such companies are in respect of all their affairs subject to this Act.

(3) For the purposes of this section, the expression "railway or other transportation works" does not include any works operated under the authority of section 27.

Hon. Mr. MARLER: Mr. Chairman, I wonder if I may perhaps give a few words of explanation. Yesterday in the committee when we came to discuss clause 18—Is Mr. Johnston here? I would particularly like to convince Mr. Johnston of the wisdom of what I have to say.

Mr. JOHNSTON (*Bow River*): I am sorry, Mr. Chairman, I thought you were going on with the other section.

Hon. Mr. MARLER: I thought we would go back to clause 18 so as to allow the representatives of the truck operators to spend as little further time with us as is necessary.

Well, Mr. Chairman, when we went over clause 18 one of the difficulties we ran into, it seemed to me, was that the expression "every company that is comprised in the Canadian National Railways" seemed to include other companies than those that we now had in mind and companies other than those listed in the schedule, and I think members of the committee and perhaps particularly Mr. Johnston feared that with the language as used in that expression "every company that is comprised in the Canadian National Railways" we might by some process of declaration such as was contemplated in section 2 (c), paragraph (3) or under clause 14 of the bill bring in some other company with broad powers and thereby bring into the works declared to be for the general advantage of Canada operations and works that we are not at the moment contemplating at all.

I did consider whether we might limit it by saying "every company that at the passing of this Act is comprised in the Canadian National Railways" and so on, and found that that gave rise to difficulty because of the possibility that some of these companies might hereafter be amalgamated, and might in consequence lose the benefit of the declaration that their works were for the general advantage of Canada, and consequently the first step that we have undertaken is to narrow the terms of the declaration, if I may so call the object of clause 18, to the works of the national company and of the various companies whose names appear in either Part I or Part II of the schedule, and I am sure members will realize right away that by referring to Part I and Part II we thereby make it unnecessary to exclude particularly the companies in Part III because the declaration will not extend to those companies as it has been drafted in paragraph (1).

Then, a further amendment has been made in the proposal that was submitted yesterday, and that is because the declaration is now contained in one section which begins with the words: "The railway or other transportation works", instead of in two separate sections as it is in the printed bill. In other words it is possible to compress the definition by merely saying that the expression "railway or other transportation works" does not include any works

operated under the authority of section 27, rather than having the double-barrelled expression used yesterday.

Now, I think all members of the committee—and by that I am not using it in the collective sense—I think the members of the committee were unanimous yesterday in agreeing that we should strive to make it perfectly clear that the operations that were carried on by the National company under clause 27 would be subject to the jurisdiction of the provincial regulating authorities.

It seemed to me on thinking the matter over that the operations that might be carried out by the National company or by any other railway company under clause 27 necessarily had to fall into one of two categories, either operations that were essentially inter-provincial because they crossed provincial boundaries or essentially intra-provincial because they were carried out wholly within the limits of a province.

So far as the inter-provincial operations are concerned I do not think there is any question but that automatically they fall under the provisions of the Motor Vehicle Transport Act under which, as the hon. members of the committee know, the provinces or such of the provinces as wish may exercise jurisdiction under the statute that was passed last year.

Now, so far as the operations that are strictly local are concerned, it seems to me that there is no doubt that under section 92 of the British North America Act, subsection 10, operations carried out entirely within the provinces would be local undertakings or "local works and undertakings", to use the words of the British North America Act, unless they fell under exceptions (*a*) or (*b*) or (*c*).

Now, (*a*) speaks of—

> Lines of Steam or other Ships, Railways, Canals, Telegraphs and other Works and Undertakings connecting the Province with any other or others of the Provinces or extending beyond the Limits of the Province:

That is clearly an extra-provincial operation or inter-provincial operation—

> (*b*) Lines of Steam Ships between the Province and any British or Foreign country:

That is clearly extra-provincial.

And then—

> (*c*) Such Works as, although wholly situate within the Province, are before or after their Execution declared by the Parliament of Canada to be for the general Advantage of Canada or for the Advantage of Two or more of the Provinces.

And if we come back to 18 we will find that clause 18 expressly excludes works carried out under clause 27 as being works for the general advantage of Canada.

I think the amendment before you makes that abundantly clear. I think the only point as to which there might be any dispute is the view expressed last evening by Mr. Coyne that the fact that these works were part of the operations of the railway made them necessarily works for the general advantage of Canada.

I have thought about that proposition since I spoke to Mr. Coyne last night, and the more I reflect on it, the more I am convinced that the argument that because they are integral parts of the railway they become works for the general advantage of Canada cannot be sustained in view of the expressed declaration that they are not to be works for the general advantage of Canada.

Now, it is my conviction after reflecting on the matter and going into the question very fully, that by excluding these works as being works for the general advantage of Canada we come back to this situation, first that the inter-provincial operations that may be carried out under clause 27 would be governed by the general law which in this particular case is the Motor Vehicle

Transport Act under which the provinces that wish to exercise jurisdiction may exercise jurisdiction, and second, the strictly provincial works which very clearly in my opinion under section 92, 10 are provincial matter and over which the provinces would exercise their jurisdiction.

Now, despite the fact that I have practised law for quite a long time, I have still a certain hankering for plain language, and I think that it would have been very good of you if we could have found some phrase that would have said: "Well, all these purposes will be carried out under provincial jurisdiction" or something of that kind. But after reflecting most carefully I came to the conclusion the most effective way of doing that is by stating expressly that these operations do not fall in the category of works for the general advantage of Canada, and that that is the proper legal way of giving the provinces jurisdiction over the proposed operations.

I must tell the members of the committee that since I made a statement in the House the other day, I have been very much aware of the fact that I had made the declaration, and I want the committee to feel that I am living up to the undertaking that I gave the House the other day, and that I have no desire whatever to evade the issue.

It occurred to me after Mr. MacMillan, Mr. Dreidger and I had looked at this amendment this morning that it would be very helpful to the committee to have Mr. Driedger of the Department of Justice explain more clearly than I have done what exactly is the effect of clause 18 which is now before the committee, and if the members of the committee are agreeable, I will be very glad if Mr. Driedger would give us his opinion on it.

The CHAIRMAN: Then, is it agreed that Mr. Langlois may withdraw the motion of yesterday and amend clause 18 and substitute therefor the new amendment he has read?

Agreed.

We will now hear from the Department of Justice.

Mr. E. A. DRIEDGER, Q.C. (*Assistant Deputy Minister of Justice*): Mr. Chairman and gentlemen, there has been a good deal of discussion here of some rather complicated legal points, if I may say so, and I hope that I am not going to be looked upon as a Solomon. I do not feel like one and I do not think I am one. I do not pretend that I am going to be able to answer all the legal questions that have been raised to your satisfaction. All I hope to be able to do is to offer a few comments that might assist the committee in its deliberations.

I think we must begin with this point: this is a statute that incorporates or continues a corporation and it confers upon that corporation certain corporate powers. Now, there is nothing unusual about that. Many companies are incorporated by or under a statute and the statute sets out the powers that the corporation has and I think it is axiomatic that the powers of a corporation must be exercised in accordance with the law. If, for example, a company is incorporated to carry on a trading business it must carry on the business in accordance with the law and so with every other company.

The question as to what law is applicable is not too easy to answer because there are many laws and there are many activities and every company, like every person, is in some respects subject to federal law, to provincial law, to municipal law, to the common law and so on.

Now, a company, for example, that is incorporated under the Companies Act, shall we say, to carry on a trucking business would find that it is subject to municipal law so far as the parking of vehicles is concerned, it would be subject to provincial law so far as operators' licences and other licences are concerned. If it bought any vehicles it would probably be subject to the provincial law of contracts, if it imported any vehicles it would be subject to federal law relating to importation and so on. You cannot say that a company

like that is subject entirely to federal law or that it is subject to provincial law only or that any one law exclusively applies. I don't think you can say that. I think we have to look at each activity and see what legislative authority has jurisdiction over that activity; in other words, who has jurisdiction over the subject-matter.

Now, coming down to clause 27 of this bill, the company is empowered to buy, sell or lease motor vehicles and maintain and operate them. That covers a very wide field of activity and so far as I have gathered from the discussions of the committee here they are not much concerned about the laws of parking vehicles or speed limits or laws of that kind. I think undoubtedly the company would be subject to provincial or municipal law and I do not think this committee has concerned itself with all the possible activities of a company operating motor vehicles.

It seems to me that the activity that was considered is what I might call the franchise, that is to say, the authority to operate a motor vehicle and the service between certain points and I believe that the committee is concerned about the application of either federal or provincial law to that activity; and if we confine ourselves to that, the question is then to what laws respecting that activity would this company be subject.

Now, here again I don't think there is any categorical answer. I don't think you can say that no federal laws apply or that no provincial laws apply. For example, if a company is incorporated to carry on a banking business, parliament has jurisdiction over banks and banking and the laws relating to banks and banking would, of course, be federal laws but there are provincial laws too with which the banks would have to comply. If you incorporated a trading company the law of contracts would probably be a provincial law.

In this case, however, I think it is clear that parliament does not have jurisdiction on the ground that it is by section 91 given express jurisdiction over motor vehicles, like it is over banking, navigation, shipping and so on. There is no provision in section 91 that gives parliament jurisdiction over the operation of motor vehicles as such. So that cannot be the ground of the exercise of jurisdiction by parliament.

Another possible ground is that it is a dominion company, a company incorporated by parliament, but that I do not think gives parliament complete jurisdiction over the activities of the company. You could, for example, incorporate under the Companies Act, under the Dominion Companies Act, a trading company to buy and sell goods, but the buying and selling of these goods would be subject to provincial law. The mere fact that it was incorporated under the Companies Act does not give parliament complete legislative jurisdiction over that activity, and likewise, here, the fact that this National Company is incorporated by Act of Parliament does not, in my opinion at least, confer upon parliament complete jurisdiction over its activities.

Another possibility is a declaration under section 92.10(c) of the British North America Act. If these works are declared to be for the general advantage of Canada then parliament has jurisdiction. That is in the printed bill but it is now intended to take away that declaration so that parliament does not have jurisdiction under 92.10(c).

There is a possibility, which was suggested yesterday, that because highway operations would form an integral part of railway operations and because railway operations extend beyond the limits of a province or connect two or more provinces the highway operations would also fall under that category and would be subject to parliament's jurisdiction. I am not prepared to go that far. We had an interesting example a few years ago. The Canadian Pacific Railway Company operates hotels as an integral part of its railway system and parliament undoubtedly has exclusive legislative jurisdiction over the operation of the railway, but the Privy Council held that the operation of the

hotels was subject to provincial law. Similarly here if the National Company operates a motor vehicle service the mere fact that it also operates a rail service that is within parliament's jurisdiction would not give, in my opinion, complete jurisdiction to parliament over the operation of the motor vehicles. I think you have to go a little farther than that, but I do think that some of these operations would be within parliament's jurisdiction in so far as they connect two or more provinces or in so far as they extend beyond the limits of the provinces, but if they do not do that I should think that they would be completely within the jurisdiction of the provinces.

The position then, I suggest, is that under 27 we would find that some of these operations would be subject to federal law and some would be subject to provincial law. How much of one kind and how much of the other I cannot say, but I think you would be in both camps; and the problem, briefly is how can we submit to provincial jurisdiction those works that under 27 are now under federal jurisdiction.

One might think a simple and easy way of doing that is to say "This is subject to provincial law" or that "provincial law applies to this," but unfortunately it happens to be one of those cases where apparently what can be simply said is in reality rather complicated.

If the law of a province, if a provincial statute, cannot constitutionally apply to certain operations then there is nothing that the provincial legislature or parliament can do to make that law apply. It cannot apply by its own terms and neither parliament nor the legislature of the province can amend it to make it apply; because constitutentionally it cannot apply. What may happen though is that parliament can with reference to a subject-matter within its own jurisdiction enact the same law that the province has enacted with reference to those things within its jurisdiction; but that is not accomplished by saying simply that the provincial law applies.

Now, I can give you two illustrations of that. The provincial workmen's compensation law does not and cannot apply to employment of civil servants by the government of Canada and if a provincial law purported to apply it would be ultra vires and I do not think that parliament could say simply that the Workmen's Compensation Act of Ontario applies to federal government employees. But what it has done in the Government Employees' Compensation Act is to say in effect that if an accident happens in circumstances under which compensation would be payable under the provincial law if the employer were some person other than the government of Canada then compensation is to be paid out of the Consolidated Revenue Fund of Canada, the compensation to be determined by the same board that determines it in provincial cases and the amount is to be the same. In that way parliament has in fact enacted as a federal law a law that is in the same terms as the provincial law.

We have another example in the labour laws. There again the legislature of the provinces cannot apply to federal works provincial labour statutes, and parliament cannot say that they do apply. What has happened is that the two jurisdictions have enacted what is in fact the same law, but the one is a provincial law and the other is a federal law. And there are other examples of the same type of legislation. We have an example on this subject because that is precisely what parliament did last year. Parliament did not give jurisdiction to the provinces and parliament did not make provincial law applicable to operations that the Privy Council in the Winner case declared were subject to parliament's jurisdiction. But what parilament did say was that where in any province a licence is required for any franchise—it does not say it in those terms—then the operator must have a licence under this Act, that is to say, the Motor Vehicle Transport Act and it confers authority on provincial boards to issue a licence and authorizes those boards to issue that licence

in the same terms as they would in the case of a provincial licence; in other words, it has enacted a federal law that is applicable to these operations but that federal law happens to be the same as the provincial law.

Now, when we come back to 27 and assume that some of those operations are under provincial jurisdiction and some under federal jurisdiction we get this result, that in so far as the operations are subject to provincial jurisdiction they are subject to provincial law and in so far as they are subject to federal jurisdiction they are subject to federal law and that federal law is the Motor Vehicles Transport Act, which has provided the same kind of a licensing system under the same conditions as exists under provincial law. So that parliament has in fact, if you like, by the Motor Vehicle Transport Act subjected carriers under parliament's jurisdiction to provincial law. That is the effect of it and if you combine the two, a provincial law plus a federal law you have in the result a provincial law applying to all the operations under clause 27.

The CHAIRMAN: Any questions anyone would like to ask?

Mr. GREEN: Do you attach any significance whatever to the provision in the proposed amendment to clause 27, which reads: "In conjunction with or in substitution for the railway services under their jurisdiction"?

Mr. DRIEDGER: I don't think I would.

Mr. GREEN: That would certainly appear to make this highway traffic part of the general railway system.

Mr. DRIEDGER: I don't think, sir, that you can make so general a proposition. I think you would have to look at the facts of each particular case. You might conceivably have a railway operating between points A and B in a province and then it is discontinued and you now put a bus line in there between A and B. I have great difficulty in seeing why that would not be a local work. I agree it was put there in substitution for what was a rail service. I think you would have to look at each operation and look at the facts in each case. I assume you would find that in some cases it was a local work and in others you would undoubtedly find that it was not a local work.

Mr. JOHNSTON (*Bow River*): Even if it was a local work and it came under section 92.10 (c), whether it was declared to be a work for the general advantage of Canada it would automatically whether it was a local work or not be put under federal jurisdiction entirely?

Mr. DRIEDGER: I thought I dealt with that before. If you apply 92.10(c) it is a federal work, but the proposal is that operations under 27 be removed from the declaration under 18.

Mr. JOHNSTON (*Bow River*): That would be so under the amendment, would it not?

Mr. DRIEDGER: Yes. So that would not apply.

Mr. GREEN: The Motor Vehicle Transport Act does not apply at all in the case of a service which is entirely within one province?

Mr. DRIEDGER: A local service no, it does not apply.

Mr. GREEN: It would not apply in a case of a trucking service replacing a line from Toronto to Windsor?

Hon. Mr. MARLER: Two points within a province, let us say.

Mr. GREEN: Is that correct?

Mr. DRIEDGER: Yes, the definition of local work there, I believe, is everything that is not an extra-provincial work and an extra-provincial work is defined as one connecting two provinces or extending beyond the limits of a province.

Mr. GREEN: Could there be a proviso written into Bill 351 which would make the Motor Vehicle Transport Act applicable to a work of the railways within one province?

Mr. DRIEDGER: That is the point I was trying to make, that if you did have a work that was a local work it would be completely outside parliament's jurisdiction. The only way in which parliament could have jurisdiction would be to declare it to be for the general advantage of Canada.

Mr. GREEN: Well, what harm would there be in writing in a provision to make that perfectly clear, that parliament did not intend to have any jurisdiction over the railway lines on that account?

Hon. Mr. MARLER: What could be clearer than saying it was not a work for the general advantage of Canada?

Mr. JOHNSTON (*Bow River*): That would be cleared up in the amendment, I take it, is that so?

Hon. Mr. MARLER: I think so.

Mr. GREEN: I am afraid that the sum and substance of this is that we have had a legal opinion and eventually this will have to go to the courts. The Supreme Court of Canada may have an entirely different opinion and we had evidence given last night that the subsidiary, Canadian National Transportation Limited, is actually asserting in Nova Scotia now that it is not subject to the provincial laws. What clearer indication can there be that right now that plan has been taken up by the railway company and we are asked to let this bill go through in its present form on the basis that we have had a legal opinion that the province can control this traffic?

Now, why not make it certain by writing something into the Act? The minister admitted last night his intention is to make the Canadian National Railways subject to these provincial boards and yet it is going to be left completely up in the air and at the same time the railway is actually challenging the jurisdiction in Nova Scotia.

Hon. Mr. MARLER: Mr. Green, I don't think that is a fair statement.

Mr. GREEN: If the evidence given last night was correct.

Hon. Mr. MARLER: I am not disputing the correctness of the evidence that was given because I am perfectly prepared to accept what Mr. Thompson has said, but what we are talking about at the moment is the amendment to clause 18 and the amendment to clause 18 expressly excludes anything that may be done under clause 27 from being a work for the general advantage of Canada. What could be clearer than that in order to show that the federal government is not attempting and in fact not only is not attempting but expressly says it is not exercising jurisdiction over something which falls under provincial jurisdiction?

Mr. GREEN: If Mr. Coyne's submission last night is correct—and the motor transport lines within a province are considered as part of the general railway system then there does not need to be a declaration by the dominion at all. The jurisdiction remains in the dominion and the provincial boards have no recourse at all.

If his argument last night was sound, and it certainly seems fairly reasonable, we have a conflicting opinion today but after all these are two opinions. Now, we are all agreed on the objective. I understood last night that everyone was in agreement that the railway must go to this provincial board.

Hon. Mr. MARLER: Everyone is agreed on that and it seems to me that what we are concerned with is the method of achieving that and all I can say is after having thought about it since last night I would like to know a better way of doing it than we are doing now.

Mr. DRIEDGER: Perhaps I might suggest this, Mr. Green. If these works, as has been suggested, fall within parliament's jurisdiction it can only be because they come within paragraph (a) of 92 (10) of the British North America Act; in other words, it can be only because they connect two or more provinces or extend beyond the limits of a province, but if that is so then it must, I should think, necessarily fall within the definition of extra-provincial transport under the Motor Vehicle Transport Act because that definition is in exactly the same terms.

Mr. GREEN: Section 92, 10 (*a*) reads as follows:

> Lines of Steam or other Ships, Railways, Canals, Telegraphs and other Works and Undertakings connecting the province with any other or others of the Provinces or extending beyond the Limits of the Province:

That can be read and I think was intended to be read as simply describing where a system extended beyond the bounds of a province, not that every single work of that Canadian National Railways system had to extend beyond the border of the province. Mr. Coyne's submission was that this right would be automatic, that being part of the railway system they automatically came under the dominion jurisdiction and therefore the provinces had no jurisdiction over it at all.

Mr. DRIEDGER: Have you the Motor Vehicle Transport Act there?

Mr. GREEN: Yes.

Mr. DRIEDGER: Would you read the definition of extra-provincial undertaking?

Mr. GREEN:

> 'Extra-provincial undertaking' means a work or undertaking for the transport of passengers or goods by motor vehicle, connecting a province with any other or others of the provinces or extending beyond the limits of a province.

Well, that is not the same definition because that is qualified by the words "by motor vehicle." The other definition in 92, 10 (*a*) of the British North America Act covered the whole system.

Mr. DRIEDGER: And, of course, the Motor Vehicle Transport Act deals only with vehicles so would have to be confined to that.

Mr. GREEN: Why can't an amendment be written into this Act to make it clear that the Motor Vehicle Transport Act does apply to these lines?

Hon. Mr. MARLER: Mr. Green, doesn't it automatically follow that that Act is going to apply to operations that come within its scope just as a whole series of other Acts are going to apply, for example, the Criminal Code so far as the drivers of these motor vehicles are concerned? It seems to me the idea of putting in the statute things named expressly is weakening rather than strengthening it.

Mr. DRIEDGER: If a provision like that were written into this section it would make sense only on the assumption that the opinion to which you referred is correct. I am not disputing it but you are assuming that the courts would hold that that was so, and if they held perchance that it is not so, and that some of these works are local and subject to provincial jurisdiction, then the additional words you have suggested would purport to legislate on things beyond parliament's jurisdiction and you would vitiate the whole section. Your amendment is based on the assumption that the opinion must be this way, but if the courts should hold that an undertaking connecting two points within a province does not fall under 92 (10), if they should hold that then by the amendment you suggest parliament would have assumed jurisdiction

over it, and would be purporting to bring into the Motor Vehicle Transport Act an operation that was purely provincial—which parliament could not do.

Mr. GREEN: Parliament is giving authority under this Act to a railway company.

Hon. Mr. MARLER: Giving a corporate power.

Mr. GREEN: Yes, giving a corporate power. Now, I think that parliament should make it clear what is meant and if you add the proviso at the end of this section 27 that the powers are subject to the provisions of the Motor Vehicle Transport Act, then you at least make it clear that parliament's intention was to make these lines subject to the provincial boards, and the actual result would be that the railway would not challenge that situation. It is the railway with which we are dealing, and if parliament tells the railway by writing something like that into the Act that the railway is subject to these boards, then I am certain the Canadian National Railways are not going to go to the courts to have the act upset. They will accept that as the actual situation, and I think something of that kind should be done so that the Canadian National Railways have it right in the Act that they will be subject to the provisions of that Motor Vehicle Transport Act. If you do not do that, the railway is free to refuse to go to the board or to take a stand such as it is taking now in Nova Scotia, and then somebody else has to start a case and take it through to the Supreme Court of Canada with all sorts of difficulties resulting; it does seem to me it would be very easy for us to make our position clear when we say we want this trucking business subject to these provincial boards. We are here to legislate—not here to rule on legal opinions, and we can certainly put in the legislation wording which makes it clear what we have in mind.

If that is so I think the Supreme Court of Canada would realize that that was the intention and would hesitate to rule a provision invalid, and the only people who could have it challenged and try to have it declared invalid would be the Canadian National Railway; I don't think in the face of an amendment like that, that the Canadian National Railways would go to the court and try to upset that section.

Hon. Mr. MARLER: Mr. Chairman, just one final word as far as I am concerned. It seemed to me last night when Mr. Fulton made a suggestion along those lines, a very attractive suggestion. The only reason which moved me, however, to discard was that I did not feel I was being honest with the committee by merely putting in the Motor Vehicle Transport Act when I think other legislation also applies.

The reason I did not wish to accept the suggestion which Mr. Coyne has made is that I believe the method we have followed in this amendment of section 18 is a more effective way of doing what we have in mind.

Mr. GREEN: It would still be in, you would still have the amendment to clause 18.

Hon. Mr. MARLER: But I must admit as a draftsman, I do not like putting in only one statute when I know there are other statutes that apply. As a matter of fact, the committee is free to decide on what it wishes obviously, but I do not feel that is the effective way of doing what we have in mind, and that is the reason I cannot recommend it to the committee. I feel that with this express declaration, the narrowing down first of all of these companies that are specifically mentioned in Part I or II and the fact that we say expressly: "The railways or transportation works carried out under section 27 are not to be considered works for the general advantage of Canada", nothing could be said more clearly which will give the provincial government jurisdiction under section 27, the interprovincial operations being subject to the Motor

Vehicle Transport Act and the provincial operations being subject to the provincial legislation which applies to them.

Mr. JONSTON (*Bow River*): Indeed the more I hear of this legal argument, the more confused I become, because it does seem to me the minister has put forward a very good case and he has tried to express that in this amendment, and I think it seems to take care of it, but on the other hand in view of the court's action in Nova Scotia now, I think Mr. Green has something worthwhile to consider.

Would it be all right, Mr. Chairman, if we heard the comments now of the trucking concerns and the bus concerns which gave us a hearing yesterday as to the suggestion that the minister has made and Mr. Green has made and if they are both satisfied that the minister's contention is right—

Hon. Mr. MARLER: I doubt if Mr. Coyne would recede from the position he took last night that we could do anything to change this.

Mr. COYNE: With all respect to the views that have been expressed this morning, my opinion remains the same as I expressed last night and I still do not think there is any method by which if you leave 27 in the Act you can bring the operations under provincial jurisdiction.

Mr. LANGLOIS (*Gaspé*): Then you do not accept Mr. Green's suggestion?

Mr. COYNE: Well, of course, if you adopt Mr. Green's suggestion you would not be in accordance with the opinion expressed by the Department of Justice. That would be adopting my interpretation of the Act, I would say.

Mr. JOHNSTON (*Bow River*): Then, Mr. Coyne, do you suggest that the amendment which Mr. Green has suggested would not meet your requirements either?

Mr. COYNE: I am really not quite sure just what Mr. Green's amendment was and the exact terms of it.

Mr. JOHNSTON (*Bow River*): It was very simply put and probably he could explain it himself. He was going to add in the amendment words to the effect that the Motor Vehicle Transport Act...

Mr. GREEN: What I had in mind, Mr. Coyne, was adding at the end of the proposed new section 27 such words as "subject to the provisions of the Motor Vehicle Transport Act".

Mr. COYNE: I do not think that would have any real effect. If any of these things are subject to that Act they are subject to it.

The CHAIRMAN: Perhaps Mr. Thompson can give us some opinion about this?

Mr. THOMPSON: Well, Mr. Chairman and gentlemen, we have discussed briefly the proposed amendment and we believe it is acceptable to us and I am prepared to withdraw the suggestion of last evening of amending 27. I think the expression of opinion on the part of the Department of Justice this morning is very clear cut and in my limited way I believe it is quite sound and I think our position is such that if perchance a court decision at a later date should be contrary to that opinion it would be reasonable for us to come to the government or the Department of Transport and solicit a subsequent amendment in order to put the situation in the position which the Minister of Transport has said he wishes it to be in. Therefore the amendment of this morning to 18 is acceptable to our association.

The CHAIRMAN: Shall the amendment to clause 18 carry?

Carried.

Shall clause 18 as amended carry?

Carried.

Shall the amendment to clause 27 carry?

Mr. GREEN: Mr. Chairman, on clause 27 we will have to reserve our position on that. We are not in a position to say we are for it or against it. We want to make clear we are reserving our rights on it.

Hon. Mr. MARLER: Quite frankly, Mr. Green, I am most anxious that the committee not feel that I am trying to escape the commitment I gave in the House the other day. I think the only difference that seems to exist between us is as to how effectively we achieve what seems to be the common purpose.

The CHAIRMAN: Shall clause 27 carry?

Mr. JOHNSTON (*Bow River*): We would like to reserve our rights on that clause too.

Hon. Mr. MARLER: Could we deal with clause 21, Mr. MacMillan.

The WITNESS: I would like to deal firstly with the second portion of your representations of last evening. They were not in the form of a question but rather you asked me to institute inquiries as to the action of the board of directors under that section. I have done so but I have not had the material furnished to me yet. It will be along.

In so far as the language of 27 is concerned, I told you that we had nothing in mind at all other than to recast it in accordance with the drafting of this Act in the bill . We are not wedded to the language in so far as the company is concerned. We are quite happy to have the language as it appears in the statute being repealed. It is not a matter of any consequence to us.

By Mr. Nowlan:

Q. Mr. Chairman, I am glad Mr. MacMillan is taking that position. I feel it is of some consequence but I am not going to give reasons for it at the moment but we think the intention is the same, that it is to perpetuate the situation as it existed before and I would hope that Mr. MacMillan could produce an amendment then which would restore those words as they were in the former section;—: "direct, provide and procure," rather than just direct and provide as it is today. I can give reasons but I do not want to take the time of this committee. I hope Mr. MacMillan is willing to amend that section accordingly. If a motion is necessary I would be very glad to move it. —A. It is not encumbent on me to make an amendment but I would be delighted to read you the section in the language in which it appears today and as far as the company is concerned that will be quite all right. The language incorporated in the law today is:

> The Board of Directors shall so direct, provide and procure that all freight destined for export by sea that is consigned within Canada for carriage to National Railways either at point of origin or between that and the sea shall, unless it has been by its shippers specifically routed otherwise, be exported through Canadian seaports.

Mr. NOWLAN: Mr. Chairman, is it open then to move that clause 21 of the bill be amended by reproducing section 14 (2) of the Canadian National-Canadian Pacific Act as the explanatory note said was intended to do? If so, I will make that motion.

Mr. JOHNSTON (*Bow River*): That would put clause 21 in the same words that Mr. MacMillan has read?

The WITNESS: That is right.

By Mr. Johnston (Bow River):

Q. And I understood Mr. MacMillan to say the company would have no objection to that?—A. None whatever. We think grammatically it leaves something to be desired but that is all.

Hon. Mr. MARLER: I have drafted the amendment for you, Mr. Nowlan.

Mr. NOWLAN: Thank you very much, sir.

Hon. Mr. MARLER: You might like to read it.

Mr. NOWLAN: Mr. Chairman, I move that clause 21 of the printed bill be deleted and the following substituted therefor:

> The Board of Directors shall so direct, provide and procure that all freight destined for export by sea that is consigned within Canada for carriage to National Railways either at point of origin or between that and the sea shall, unless it has been by its shippers specifically routed otherwise, be exported to Canadian seaports.

Hon. Mr. MARLER: I congratulate you on reading my writing.

Mr. NOWLAN: I have read Mr. Jim MacDonnell's so long that it is easy to read yours.

The CHAIRMAN: Anyone second that?

Mr. GREEN: I will second that. Mr. MacMillan was going to give us some information as to what steps the railways would actually take.

The WITNESS: I spoke of that at the beginning of my remarks.

Mr. GREEN: You have not got that yet?

The WITNESS: No.

The CHAIRMAN: Shall the amendment to clause 21 carry?

Carried.

Shall clause 21 as amended carry?

Carried.

Clause 30?

Carried.

Clause 31?

By Mr. Green:

Q. Could we have an explanation of 31?—A. Clause 31 is, as the note states, intended to convey what was in clause 26 of the Canadian National Railways Act. It is identical in context. It is the general corporate power of the company dealing with the acquisition of securities and equity holdings of other companies. It was in the original charter of incorporation. We have changed one word. The word "telecommunication" in line twenty, is in lieu of "telegraph" in the other section.

Q. The provision in the last three lines seems to be broad:

> ...or any business which in the opinion of the Board of Directors may be carried on in the interests of the National Company.

Can you give us any examples of what type of business is covered by that?—A. I don't really know of any at the moment but I can tell you a set of circumstances in which we do use those last three lines. These circumstances arise from the peculiar language of the section. We have not changed it. I would like to change it but if you will read it above you will notice that the power to acquire securities in the first place is conditional upon the approval of the Governor in Council and then it is in respect of shares of companies, transportation, navigation, terminal, telecommunication, and so on. Then you have to leave out to try to get what I am trying to explain to you and come down to "authorized to carry on any business incidental to the working of a railway..." so that the qualification of the companies in which we may invest or guarantee

as a company is that company being authorized to carry on any business incidental to the working of a railway. I don't think that was ever the intent at all. I think the intent was that the company would be limited to investments in these particular types of companies such as the terminal company—presumably a terminal elevator company, and it is very infrequently that a terminal elevator company would be restricted in its operations to the conduct of a business incidental to the working of a railway. It is not something that is normally inherent in an operation of that kind at all.

An electric power company, for example, it is awfully difficult to conceive that in the charter, be it by letters patent or special Act, that they would ever have gone on to say that the primary undertaking was to be carried on as incidental to the working of a railway.

Q. Well, to electrify the railway?—A. Yes, but to use that very example, assuming we electrify a segment of our railway and we desire to acquire the company that generated the electricity—under this section we cannot make that acquisition under the first part of the section but rather we would have to ask in the first instance that the board of directors determines that the operations of the Acme Power Company could be operations carried on in the interests of the railway and then go back to the Governor in Council for the authority. I don't think that was ever intended because it would be very awkward, but you could not find a more justifiable instance than the one you gave yourself where we have need of electricity, the electricity is generated locally and it is in the company's interest to buy that power company thereby having our own source of supply but we cannot do in the language which is now provided down to line 21. We have to go to lines 22, 23 and 24 and I would very much like to see the comma which appears between the words "electric" and "power" in line 20 removed and substitute for it the word "or" and then at the end of line 20 the word "company" so that it means that "with the approval of the Governor in Council, the railway may acquire" stocks, bonds, etc., in companies of the classes tabulated, because I think that surely must have been the intention in the beginning because it is a nullity really the way it stays unless we have resort to the last three lines.

The CHAIRMAN: Carried?

Carried.

We will now adjourn and meet at 3.30 this afternoon in room 368.

AFTERNOON SITTING

The CHAIRMAN: Gentlemen, we have a quorum.

Mr. N. J. MacMillan, Q.C., Vice-President and General Counsel, Canadian National Railways, recalled:

The CHAIRMAN: We will go back to clause 31.

Hon. Mr. MARLER: After talking with Mr. MacMillan during the recess, I thought that we might go back to dealing with that and making the change to which the committee, I think, seemed agreeable when we came to deal with clause 31. It is a very small change in the wording which I think has the effect of clarifying the clause. Mr. MacMillan explained it fully, but perhaps he might just briefly explain the purpose of the amendment. I think a few copies of this have been distributed, it is just two words that are added: the word "or" between "electric" and "power", which you will find at the end of the sixth line, and the word "company" which is added as the first word of the next line. Perhaps, Mr. MacMillan might explain.

Mr. LANGLOIS (*Gaspé*): I move, seconded by Mr. MacNaught, that clause 31 be deleted and replaced by the following:

> 31. The National Company may, with the approval of the Governor in Council, acquire, hold, guarantee, pledge and dispose of shares in the capital stocks, bonds, notes, securities or other contractual obligations whatsoever of any railway company, or of any transportation, navigation, terminal, telecommunication, express, hotel, electric or power company or of any other company authorized to carry on any business incidental to the working of a railway, or any business which in the opinion of the board of directors may be carried on in the interests of the National Company.

Hon. Mr. MARLER: That is just the change that Mr. MacMillan discussed.

Mr. GREEN: Yes, I think it is a very good change.

The WITNESS: All we are doing is deleting a comma and inserting the word "or" and the word "company". In this other form it is virtually meaningless.

The CHAIRMAN: Shall the amendment carry?

Carried.

Shall clause 31 as amended carry?

Carried.

Then we come to clause 32.

By Mr. Green:

Q. That is an exact copy, is it, of section 29 of the C.N.R. Act?—A. No, it is not. There is one slight addition to it, and the addition is to be found in the last four lines beginning at line 29 with the word "and," the addition being "and whenever any such issue is arranged with and made by a trustee the National Company may guarantee payment of the principal and interest thereof and thereon." In the issuance of equipment certificates we very frequently have resort to a plan under which trustees function between the borrower and the loaner of the money. The obligations, of course, are primarily those of the Canadian National, and to sell them at all they have to be guaranteed. This provision permits of the company guaranteeing those obligations. It is the practice that has always been followed, but in the years gone by that guarantee has been given under the authority of what will now be clause 31. You will notice there that in the second line the National Company is authorized to guarantee, and then as we go on down towards the very end it says, "The bonds . . . . obligations" and so on, "or any business which in the opinion of the board of directors may be carried on in the interests of the National Company." We had to go through the fiction of having the board declare that this was a business carried on in the interests of the railway company, and the guarantee was given. This addition to clause 32 permtis us to do directly what has always been necessary in the issuance of equipment certificates; otherwise it is a complete rewrite of section 29 of the Canadian National Act.

The CHAIRMAN: Shall clause 32 carry?

Carried.

Clause 33?

The WITNESS: Clause 33 is identically the same in context as section 30 of the C.N.R. Act and it appertains to the depositing of mortgages. It is of little practical importance any more.

The CHAIRMAN: Shall clause 33 carry?

Carried.

Clause 34?

The WITNESS: Clause 34 is the old section 31 of the Canadian National Railways Act.

The CHAIRMAN: Shall clause 34 carry?

Carried.

Clause 35?

The WITNESS: Clause 35 is new in the legislation of the corporation, but it is taken from section 79 of the Financial Administration Act to which legislation we are subject, and we felt that it was intelligent and desirable to put it in the company's statute.

The CHAIRMAN: Shall clause 35 carry?

Carried.

Clause 36?

The WITNESS: Clause 36 is merely the context of section 8 of the Canadian National Railways Capital Revision Act, but since it dealt with the matter of continuing interest, again to make the scheme of things understandable, we put it in there.

Mr. HERRIDGE: Mr. MacMillan, what would be the reason for subclause (2):

> This section does not apply to such Canadian Government Railways as are designated by the Governor in Council.

The WITNESS: The Prince Edward Island car ferry is an example. That operation, you will remember, does not form part and parcel of the system as a corporate entity. The receipts from the operations accrue to government and the expenses of operation are paid by government.

Mr. GREEN: Are there any other Canadian government railway operations that are exempted?

Hon. Mr. MARLER: I think the Hudson Bay Railway is another example.

The WITNESS: Yes, that is of the same nature.

Hon. Mr. MARLER: I think that in all the other cases the deficit is met by parliamentary vote.

By Mr. Green:

Q. This means that these particular operations are not included in the deficit of the Canadian National Railways?—A. That is correct.

Hon. Mr. MARLER: I would judge, Mr. Green, that they are, for the most part, operations which are inherently likely to be unprofitable, as for example the ferry between Prince Edward Island and the mainland. It operates at a loss and has operated at a loss for a good many years simply because I think that the basis of operation is not one of profit but one of service.

By Mr. Green:

Q. Is the Newfoundland Railway one of them?—A. No, it is not. The results of operation of the Newfoundland Railway as such are included in the results of operation of the system. The Bar Harbour ferry is another example. It is in our management but the receipts do not go to the account of the Canadian National, nor do the expenses of operation.

Q. Is there any basis on which the distinction is made or is it merely an arbitrary rule?—A. I really could not tell you the answer to that. I know that some of these are that way.

Mr. MACNAUGHT: So far as the Prince Edward Island ferry service is concerned that is kept separate because that it is grounded in confederation. I think that is probably the real reason why there is a differentiation there.

Hon. Mr. MARLER: I think that probably the real distinction is that operations which are not naturally a part of the railway but which are likely to be inherently unprofitable are borne by the taxpayers at large rather than by the system.

Mr. GREEN: Of course the money all comes out of the same pocket.

Hon. Mr. MARLER: Yes. It is really just a matter of bookkeeping, but the results of the system are not being directly burdened with operations that are unprofitable.

Mr. LANGLOIS (*Gaspe*): In the case of the Bar Harbour ferry the money does not come from the same pocket. It is a joint operation by provincial and federal authorities.

The CHAIRMAN: Does clause 36 carry?

Carried.

Clause 37?

The WITNESS: This is the same as section 12 of the C.N.-C.P. Act with the exception that in subclause (2) you will notice the two ministers, the Minister of Transport and the Minister of Finance. The Minister of Finance is added, so that it is on the joint recommendation now of the two ministers.

By Mr. Green:

Q. Why was that added?—A. It was added on the request of the Department of Finance.

Q. Why is there this provision in subclause (4) that the income deficits of National Railways shall not be funded?—A. That is a provision that has been carried since either 1933 or 1936, but it is intended to prevent an annual deficit of the railway being the subject of a bond issue; so that if there was a deficit of $5 million the money is to be paid without a bond issue being used to raise the funds and thereby adding to the capital structure.

Q. Does that mean in effect that the income deficit has to be provided each year by parliament?—A. That is right.

The CHAIRMAN: Does clause 37 carry?

Carried.

Clause 38?

By Mr. Green:

Q. With regard to subclause 5, could you just explain that?—A. Yes. That is clearly intended to prevent the railway from selling bonds for capital purposes and utilizing the funds to satisfy a deficiency in operating revenue.

Q. There is provision for such procedure being followed if it is authorized by parliament?—A. There is no procedure, but of course parliament can authorize the railway to do anything.

Q. There is provision in the subclause for that to be done. Has there ever been a course of that kind followed?—A. You mean where we have used capital moneys for operations?

Q. Yes.—A. No, not to my knowledge. I cannot conceive of it being done.

Q. Parliament has never authorized that being done?—A. No.

The CHAIRMAN: Does clause 37 carry?

Carried.

Clause 38?

The WITNESS: Clause 38 is the same as section 13 of the C.N.-C.P. Act.

By Mr. Green:

Q. Why is that work not done by the Auditor General?—A. It never has been, Mr. Green, and it is the determination of parliament to do it in this way. It came into the statute I think in 1933.

Mr. MACNAUGHT: It has been decided many times in the House.

Mr. GREEN: I know it has been raised in the House on different occasions, but what advantage is there to the railway in having it done by an outside auditor rather than by the Auditor General?

Mr. LANGLOIS (*Gaspe*): This was explained in the House on many occasions, and I did explain it last year when the auditors bill was introduced. The firm of Touche and Company is appointed because of the fact that the Canadian National also operates branches in the United States and has interests in England and France, and it is considered desirable to appoint auditors having business connections in these countries. It is much easier and less expensive to do it in this way.

Mr. HERRIDGE: One of the present ministers was very keen on it being done by the Auditor General at one time, was he not?

The CHAIRMAN: Does clause 38 carry?

Carried.

Clause 39?

The WITNESS: Clause 39 is a rewrite of sections 14 and 15 of the C.N.-C.P. Act 1936.

By Mr. Green:

Q. By the way, what is going to be left of this C.N.-C.P. Act?—A. Part 2.

Q. Just part 2?—A. Yes, all of Part 2. That is the portion of the Act that deals with the cooperation between the Canadian National and the Canadian Pacific. Part 1 was purely corporate to the Canadian National. Why it was put in as Part 1 and not by way of amendment of the 1919 statute has always been one of the great unsolved mysteries to me. However, that was the scheme, and what we are trying to do is to get rid of these parts and put them all in the same place. Part 2 will remain completely as it is.

Q. Has there been any attempt at extending these fields of cooperation between the two railways?—A. Yes, we work on it all the time. There is an active joint committee comprising officers of the Canadian National and the Canadian Pacific examining projects pretty well all the time, and reference is made to parliament each year of what has been done. It is under that provision that we work out these schemes for joint running rights to which I referred this morning.

Q. The pooling of trains is done under that?—A. The pooling of trains is done under this too, yes.

The CHAIRMAN: Shall clause 39 carry?

Carried.

Clause 40?

The WITNESS: Clause 40 is just a rewrite of section 16 of the C.N.-C.P. Act.

The CHAIRMAN: Shall clause 40 carry?

Carried.

Clause 41?

The WITNESS: Clause 41 is a power that was inserted in the Canadian National Railways Financing and Guarantee Act a couple of years ago, really

at my own personal request, because it fell to me to sign all the bonds, and I thought it was a terrific waste of time to spend hour after hour after hour signing bonds when they could be signed by facsimile.

The CHAIRMAN: Does clause 41 carry?

Carried.

Clause 42?

The WITNESS: Clause 42 is a corresponding provision relating to the representative of the Department of Finance.

The CHAIRMAN: Does clause 42 carry?

Carried.

Clause 43?

By Mr. Green:

Q. Clause 43 is the one having to do with the pension plan for the company?—A. Yes.

Q. Could you explain that?—A. Yes, I would be delighted to do that. In the first place I would like to correct the note on the right-hand side. It refers to chapter 14, but it should be 4 rather than 14. Clause 43 is a consolidation of the Canadian National Pension Act of 1907 as amended in 1929, together with provisions taken from chapter 65 of 1874, chapter 25 of 1878 and chapter 58 of 1888, all of which were Grand Trunk Railway statutes. The last three Grand Trunk statutes to which I referred are the basis for the additional language which is in the last clause of the first subsection, being "Insurance against accidents, sickness or death or other purposes." Otherwise it is a consolidation of the 1929 power. On the next page, subclause (2), there is a slight extension to the degree that this language would permit of employees of the Intercolonial Railway who belong to the Intercolonial Provident Fund gaining admittance to the regular pension plan of the Canadian National. Now it is not in any way intended or expressed in this section that the railway corporate pension funds be extended to these employees, but rather this will provide a means by which they may come in, if it is their wish to do so. I should point out to you that the two pension schemes are different and the benefits under the Intercolonial fund, in the opinion of most of the members are more favourable than the benefits under the Canadian National fund, but there are some who because of personal circumstances would prefer to be in the other fund. Our view is that since they are all Canadian National employees they ought to be able to transfer if they see fit.

Q. Can an employee of the Canadian National transfer to the Intercolonial fund?—A. No. That fund was closed to new members many years ago. I would hesitate to state the date categorically but it was some years ago, at least twenty years ago.

Q. Then what about subclause (4), "Existing plan continued"?—A. That is because you see the plan under which we are now operating was constituted under the Act of 1929, and we are going to repeal that statute. That is just for greater security. We do not want that plan cancelled because the Act on which it was based will have been repealed. It is just continuing the formalities of the 1929 statute.

Q. There have been some complaints about the size of some of these pensions, that is, with the decrease in the value of the dollar. Some of the smaller pensions have become of very little help, and from time to time suggestions have been made that there should be some change in the plan so that these pensions could be increased. Would that be possible under this section?—A. I do not think this section really changes anything in that respect. It is really just a consolidation of the powers that were there before.

Q. Subclause (3) says:

The directors may make rules and regulations for the due and efficient management, "administration and disposition of any fund or plan established under this section."

A. Yes. Well, that was there; they had that power before.

Q. Would that give them power to increase these small pensions?—A. I would think it would. I do not really know. I would have to examine it, but it would seem to. We would have to be a little more specific than we are to answer your question, but the directors do have power to revise the terms and conditions of the pension plan.

Q. That clause seemed to conflict with (4) which continues the existing plan?—A. Well, the plan itself provides that its terms and conditions may be revised and amended by the board of directors.

Q. That is by the board of directors of the Canadian National Railways? —A. Yes.

Q. So that in effect then the directors can increase those payments if they decide to do so?—A. They can certainly revise the plan. You see, when you revise the plan, it is possible that in some instances it could bring about an increase, but I should think there are other instances in which the reverse would be true. When rules are drawn they are drawn on a general basis, and how they will fit the individual is determined by his own circumstances. Length of service, his position at the time of retirement are the things that go into the determining of the pension whether he has contributed or not.

Q. Will the employees have any representation on the group of people who decide about the rules of the fund?—A. Not on the body making the rules, but the employees are represented on the Pension Board which is the board that administers the rules, and the employees have been consulted to my personal knowledge on every rule change for some years. We have sat with employee representatives and discussed rule changes.

By Mr. Herridge:

Q. Would some of those rule changes result from representations on the part of the employees?—A. I would not like to put it that way; I would like to put it more that rules have been changed as the result of deliberations between the company officers and the employees certainly.

Q. So their representations do have an effect in changing the rules?—A. Oh yes, we do not hold them at arms length. They are employees too.

By Mr. Green:

Q. There is no provision in this clause 43 for a pension board?—A. No, that is set up under the rules.

Q. That is set up under the rules?—A. Yes.

The CHAIRMAN: Shall 43 carry?

Carried.

Clause 44.

The WITNESS: Clause 44 is merely section 32 of the old Act and it provides for the bringing of actions against the company.

The CHAIRMAN: Shall 44 carry?

Carried.

Section 45?

By Mr. Green:

Q. Is 45 an exact repetition of the section under the Canadian National Railways Act?—A. It is intended to be identified in context. Whether the language is identical or not, I do not know. I would have to check it.

Q. Section 33, I notice, contains a reference to the management of the company—

> The Minister of Transport may appoint or direct a person to inquire into and report upon any matters or things relating to or affecting the Company or its works and undertakings, including its management and operation of the Government railways . . .

Now, those words do not appear in the new section and also it say:

> . . . or relating to or affecting any other company and the works and undertakings thereof, owned, controlled or operated by the company . . .

Now, those words too appear to have been left out?—A. Yes, but in lieu of those words these words have been put in, they being the context of section 71 of the Railway Act to which reference is made in the last line:

> The Minister, the Board, or the inspecting engineer, or person appointed under this Act to make any inquiry or report may
> (*a*) enter upon and inspect any place, building, or works, being the property or under the control of any company, the entry or inspection of which appears to it or him requisite;
> (*b*) inspect any works, structure, rolling stock or other property;
> (*c*) require the attendance of all such persons as it or he thinks fit to summon and examine and require answers or returns to such inquiries as it or he thinks fit to make;
> (*d*) require the production of all material, books, papers, plans, specifications, drawings and documents; and
> (*e*) administer oaths, affirmations or declarations; and has the like power in summoning witnesses and enforcing their attendance, and compelling them to give evidence and produce books, papers or things that they are required to produce, as is vested in any court in civil cases.

I imagine it was felt that that would be broader than what we had before.

Q. That does not cover "including its management" and "operation of the government railways"?—A. But it does by reference to section 15 of the statute, because section 71 of the Railway Act which I have just read is not one of the sections which have been excluded from reference to the government railways.

Mr. HERRIDGE: How frequently would the minister exercise that power?

Hon. Mr. MARLER: This minister has never exercised it.

By Mr. Green:

Q. Has that power ever been exercised?—A. I cannot answer that, Mr. Green. To my knowledge it has never been exercised.

The CHAIRMAN: Shall 45 carry?

Carried.

Shall 46 carry.

The WITNESS: 46 is a new section. It is merely to make sure that what was done under the statues which are being repealed shall continue to be valid and subsisting. We would not wish any action we had legally taken under the old statute to become illegal because the statute on which we had based our authority had disappeared.

By Mr. Green:

Q. Well, is there not some chance of conflict there? Unless you are very careful to rescind all the old regulations and by-laws and orders as you make new ones, will there not be some difficulty?—A. The risk of doing what we are trying to do here is that we have missed something, and all we can do is to give you my assurance that we have done our level best not to, because we

might find ourselves in difficulty if we have slipped, and in that case, I would have to ask your indulgence to hear me again on another occasion, but we think we have looked after what has to be looked after.

The CHAIRMAN: Does 46 carry?

Carried.

Clause 46?

Carried.

The CHAIRMAN: We will revert now to 23.

Hon. Mr. MARLER: Perhaps we might deal with the schedules.

The CHAIRMAN: Shall the first schedule carry?

By Mr. Green:

Q. I notice just as a matter of interest, what is the position of this Canadian National Railways (France)?—A. That is a company that was organized in France because we have a traffic office there and we still own the Hotel Scribe, and they have some legislation in France which requires a domestic corporation. I think almost everybody doing business in France has a French company. That is all it is.

Q. What are these two companies the Prince George Limited and the Prince Rupert Limited?—A. In the old days it was the practice of the Grand Trunk and Canadian Northern to have a company incorporated for every ship they owned, and which was floating, so that the Prince William was owned by the Prince William Limited, the Prince David by the Prince David Limited. There were dozens and dozens of these. We have surrendered them, and we are down now to these two, those being the remnant of the shipping companies owned by the Grand Trunk Pacific Company on the west coast and they will disappear, because that is not the modern practice any more.

Q. But the Prince George was built just a few years ago?—A. That was the old company. We just changed the name to Prince George. We had a Prince George years ago, if you remember.

Q. The present Prince George, is she owned by this company?—A. I doubt it very much, but I would not wish to say definitely.

The CHAIRMAN: Shall the first schedule carry?

Carried.

Shall the second schedule carry?

Carried.

Hon. Mr. MARLER: I think Mr. MacMillan wants to make one or two remarks on the second schedule about some of the legislation being repealed.

The WITNESS: No, it was more that in the consolidation there have been a few small sections deleted and I thought that I should tell you that and very quickly run through them. I would not want anyone to think that we had left them out, and had omitted to point them out to you.

I do not suppose you are really interested in much detail, but we have dropped all of section 2(c) of the Canadian National Railway Act which defines the Canadian Northern, because at no place else in the legislation does the Canadian Northern appear, and it was completely superfluous.

We likewise dropped the definition of Canadian Northern System formerly appearing in 2(d) because at no place else is reference made to the Canadian Northern System.

Then, under section 3(1) of the Canadian National Act there was provision regarding the number of the directors, but since that provision was completely obsolete by the provisions of the incorporation of 1936, we have dropped it too. The context of it is too general in this bill at the point we mention.

Then, section 4(4) of the Canadian National Railways again provided for an annual meeting, but that, of course, has no practical value because of the provisions of the Canadian National-Canadian Pacific Act, and the procedure under which a report is made to a parliamentary committee annually by the company.

Section 14 contained financial provisions respecting the Canadian government railways which were substituted by the provisions of the Canadian National Railways Capital Revision Act. These latter provisions have been retained in the bill as clause 37.

Section 21 is in respect of municipal street crossings, and that is a matter that is governed by section 258 of the Railway Act and administered by the Board of Transport Commissioners.

By Mr. Green:

Q. Why was that in the old Act, Mr. MacMillan?—A. I do not really know, Mr. Green. I do not know why several of these things were in the old Act.

Q. Which section of the Railway Act?—A. 258.

Q. Section 21, of course, is for the protection of the municipalities. Are their rights then as broad in section 258 of the Railway Act?—A. I think they are. I think the board is interested in this instance primarily in the rights of the people at the crossings. This section to my knowledge, has never been utilized. The applications and the procedures taken are always taken under the other section, the section of the Railway Act.

Q. Well, under section 21 of the Canadian National Railway Act you cannot build a railway along a municipal road without the consent of the municipality, is that not right?—A. Yes, that is right.

Q. But under the Railway Act, the Board of Transport Commissioners can force the municipality to allow that railway to be built, can it not?—A. Well, you may be correct. Have you got the section there by any chance?

Q. Yes.—A. Do you notice it goes on to provide for compensation and the consent and then:

> Unless the company has first obtained the consent through by-law of the corporation of such city or incorporated town.

Q. Well, the municipality has some protection, has it not, under section 21 of the Canadian National Railway Act, because there there is an outright prohibition of putting your railway along a road in a municipality without the consent of the municipality. Under the Railway Act the Board of Transport Commissioners can force the municipality to allow the railway to be put along the road.

Mr. HERRIDGE: Why should not the corporation suffer from the same inconveniences as the individual?

Hon. Mr. MARLER: I find it difficult, Mr. Green, to see how section 258 enables the railway, "without the consent of the municipality to build upon, along or across any highway," because after saying that the railway may, if leave is first obtained from the board it goes on to say that "The board shall not grant leave to any company" and so on "Until the company has first obtained the consent furnished by by-law of the municipal authority of such city, or incorporated town."

I might say also that when my attention was drawn earlier to the fact that this article had not been included in the consolidation I did take the trouble to look up the Railway Act and I thought it was covered by section 258.

By Mr. Green:

Q. Well, if the coverage is the same, of course, there is no objection.—A. In any event this section 258 is the section that is applicable to every railway in Canada.

Q. That is the one in use in actual practice?—A. In actual practice this is the one under which the crossings are arranged. It is of general application to every railway in the country.

The CHAIRMAN: Carried.

The WITNESS: We deleted section 22 because it was felt that it had been repealed by inference by section 2 (3) of the Canadian National-Canadian Pacific Act and that is the question of the power to abandon the lines. The power is clearly expressed in the statute.

By Mr. Green:

Q. How do you abandon the lines now?—A. By application to the Board of Transport Commissioners followed by representations by those in opposition and hearings and notices—a very protracted procedure.

Q. But under what law?—A. It is under the Railway Act. There is a definite prohibition against it in the Railway Act. There is likewise a prohibition against it if the Canadian National-Canadian Pacific Act in section 2 (3) and this provision provides:

> notwithstanding anything in this Act or in any other Act any railway may abandon the operation of any line of railway with the approval of the Board of Transport Commissioners for Canada and no railway company shall abandon the operation of any line of railway without such approval.

That continues to be the law.

By Mr. Herridge:

Q. And that is the same with respect to a telegraph line?—A. No, that applies to railways. I would have to look it up.

By Mr. Green:

Q. That is the Railway Act you are reading from?—A. No, that was the Canadian National-Canadian Pacific Act subsection (3) of section 2.

Q. Then section 22 of the Canadian National Railway Act provides for the protection of security holders. Is that provided by law in the other statutes? I suppose it would not be applicable now anywhere but on any of the Canadian National Railway lines?—A. Well, there are six issues outstanding to which I have referred in which that could arise but that is a little different because that goes to the root of the railway's corporate relationship. The other one is the physical abandonment and we cannot abandon the operation of a line of railway irrespective of the wishes of the security holders without the prior consent of the Board of Transport Commissioners.

Then, from the Canadian National-Canadian Pacific Act, part I, we have deleted subsection (2) of section 4 which had reference to the appointment of the directors and have carried forward into the consolidation those provisions of the Canadian National Act of 1919.

Section 6, subsections (1), (2) and (3), dealt with the appointment of the original directors and, of course, that has become obsolete with the expiration of the first three years of the existence of the company. So there were no need to carry those forward.

Then, section 8 (2) dealt with the powers of the board of directors appointed immediately after assent to that legislation and it spoke in relation to those individuals of 1936, and, of course, has been rendered obsolete by the consolidation and the passage of time.

Then, in 10 (5) there was a statement to the effect that the then chief operating officer of the railway was to be the acting president. Of course, that became obsolete too with the passage of time.

Then, in 11 (3) there was a provision dealing with the board of directors deliberating by way of a written minute and it was considered that that need not be carried forward because of the authority for the appointment of an executive committee which had always existed.

Those are all of the deletions.

The CHAIRMAN: Shall we go back to 23?

Hon. Mr. MARLER: Well, Mr. Chairman, as far as I am concerned I find it very difficult to see how I can add to clause 23 a provision like that which Mr. Green referred to this morning which in fact—I suppose Mr. Green has not drafted any amendment but I take it that what he would like to see is that the clause should be amended so that it would provide expressly that in the event of an amalgamation or purchase, sale or lease of a railway or of an undertaking or of the making of half interest agreements or the granting of privileges for joint operation or joint ownership of any undertaking that there shall be a fair apportionment of employees as between the two enterprises.

I don't really believe that that is any more than a rule of conduct. I don't really think it is an enforceable provision and quite candidly I don't think it will add anything to the bill to put it in.

Quite obviously Mr. Green might have other views about it but I don't really believe I should accept the amendment to the article in that sense. I don't want to say that as if I would never change my mind on the subject because I don't believe in taking such attitudes as that but if Mr. Green can give me something a little more precise than what I have I will be glad to look at it.

Mr. GREEN: The same as the words in section 17 of the Canadian National -Canadian Pacific Act.

Hon. Mr. MARLER: I cannot help thinking these provisions are inclined to be no more than the expression of a pious hope.

Mr. GREEN: Well, the article dealing with shipping through Canadian ports is in that category too.

Hon. Mr. MARLER: Yes, I suppose it is. I suppose we have all been legislating in one field or another long enough to know that one puts into statutes or other enactments things that really amount to a pious hope because they are not really enforceable. Personally, I have not been a believer in putting in ineffective or ineffectual terms unless you are setting out a whole line of policy. I have drafted by-laws in that form. I was not very enthusiastic about it. I do not think anyone can deal competently with it or affect what actually takes place very materially. I would personally prefer to leave the management of the railway in a position to manage its affairs and to carry on any such amalgamation as is contemplated here in the way it thinks best in the interests of the company and I firmly believe that the management is anxious to treat its employees well and to conserve for them the maximum amount of employment.

By Mr. Johnston (Bow River):

Q. Has there been a case where there was an amalgamation where one company that was taking over just fired everyone of the other company and let them go?—A. I don't know of any. I can't answer beyond that. I know of instances where we have taken property over and we have assimilated employees.

Q. It is the general practice, isn't it?—A. Yes, we acquired the Temiscouata Railway. Those employees were generally merged in with ours. There are difficulties arising sometimes because of the terms and conditions of the organization, sometimes that places the management in a rather difficult position but generally they came over.

Again when the line from Quebec City to roughly Ste. Anne de Beaupre—it was the Quebec Railway—when we acquired that those employees were shuffled in with the railway employees.

The same thing was true when the Harbours Board Railway in Vancouver was taken over by the Canadian National. The general rule being that they came in and I think I can think of others. But the corporate policy, of course, is to try and do these things because we are just as conscious as anybody is of the dislocation caused by a cessation of employment.

Mr. JOHNSTON (*Bow River*): I can see a case like the case mentioned a while ago where companies were being amalgamated that you just could not find jobs for everybody and there may be the odd case where you would have to let a few go. Whether you like to keep them or not you will have to let them go.

Hon. Mr. MARLER: I think often that is one of the most disturbing consequences of some of our modern improvements. Nobody would want to stop a railway or other undertakings from progressing but sometimes progress does cost people their jobs. We all can think of lots of examples where people have lost their jobs simply because there was no longer any need for them.

Mr. GREEN: That was not the case I mentioned. In the case I mentioned, the Canadian National made a deal with the Canadian Pacific in which the Canadian Pacific ship has taken over a run of the Canadian National. The Canadian National did not make any provision for its own crew which was displaced by that agreement.

Hon. Mr. MARLER: But if we push that a little bit further it was merely a question of, let us say, of whether half the crew should be struck off the Canadian National payroll or whether it should be struck off the Canadian Pacific payroll. There were not going to be any more people to run the ship whether it was operated by the Canadian National or the Canadian Pacific or jointly.

Mr. BYRNE: After all, aren't most of the amalgamations the other way? The Canadian National Railway is an amalgamation of many different companies and the Canadian National Railway employs these other employees as time goes along. Give us one instance dreamed up where there is no risk of raising an international issue.

Mr. GREEN: No one is raising an international issue at all, but there is no reason why the Canadian National Railways cannot keep running that ship but it has been the Canadian Pacific which has taken it over.

Mr. BYRNE: It is not our position to determine that.

Mr. GREEN: We are only dealing with the Canadian National. They only had two ships and they laid off one. The Canadian Pacific had perhaps a dozen. There is far more chance to get work.

Mr. BYRNE: We are dealing as legislators for all people and we should feel just as sorry for Canadian Pacific employees as Canadian National employees.

Mr. GREEN: But half of the men of the Canadian National should have a chance to get on the combined ship and they were put out in the cold.

Hon. Mr. MARLER: It would be interesting to know what the present crew would think of that proposition.

Mr. GREEN: I can't help that. Surely the Canadian National Railways can look after its own employees.

Hon. Mr. MARLER: I would not wish to leave with the committee the impression it was not looking after its employees but I would say that so far we have dealt with only one aspect of the question and I would hesitate to express any opinion until I knew what all the facts were.

Mr. GREEN: The Canadian National Railways should not have given up the run but kept it themselves.

Hon. Mr. MARLER: And lost more money?

Mr. GREEN: No, the northern part of British Columbia is opening up every day—more big developments going in. It is far better now than it ever was.

Hon. Mr. MARLER: I think, Mr. Green, you ought to sit around when the question of the maritime subsidies comes up and see what the views of the ship operators are at that time.

Mr. GREEN: Here is the member from Cariboo. He can tell you about it.

Mr. LEBOE: I think the development in the north country is going to go on.

Hon. Mr. MARLER: I think if we stop running aeroplanes to Victoria from Vancouver the ships would have a chance.

Mr. GREEN: You announced today that you were paying a subsidy to build a new railway into northern British Columbia. We are doing that with one hand and taking off your ships with the other.

Hon. Mr. MARLER: Well, I think it is clear nobody is going to lose money on the Pacific Great Eastern unless it is the government of British Columbia.

The CHAIRMAN: Does clause 23 carry?

Hon. Mr. MARLER: Mr. MacMillan, I think, has one or two statements which he was asked by the committee to make.

The WITNESS: Mr. Fulton asked yesterday that we tender a copy or a a duplicate of entrusting order in council and I am tendering a copy of order in council P.C. 115 passed on 20th of January, 1923. That was the first order in council and it is on that basis that all the others have been predicated.

Hon. Mr. MARLER: I take it that that might be transcribed in the minutes of the committee.

Mr. LANGLOIS: I would so move, Mr. Chairman.

P.C. 115

Certified copy of a Report of the Committee of the Privy Council, approved by His Excellency the Governor General on the 20th January, 1923.

The Committee of the Privy Council have had before them a report, dated 18th January, 1923, from the Acting Minister of Railways and Canals, stating that under the "Act to incorporate the Canadian National Railway Company and Respecting Canadian National Railways" (being Chapter 13 of the Statutes of 1919) hereinafter called the said Act, authority was given by Section 11 to the Governor in Council from time to time by Order in Council to entrust to the Canadian National Railway Company—

> The management and operation of any lines of railway or parts thereof and any property or works of whatsoever description, or interests therein, and any powers, rights or privileges over or with respect to any railways, properties or works, or interests therein, which may be from time to time vested in or owned, controlled or occupied by His Majesty, or such part or parts thereof, or rights or interests therein, as may be designated in any Order in Council, upon such terms and subject to such regulations and conditions as the Governor in Council may from time to time decide; such management and operation to continue during the pleasure of the Governor in Council and to be subject to termination or variation from time to time in whole or in part by the Governor in Council.

That the Canadian National Railway Company, hereinafter called the Company, has been brought into existence by virtue of an Order in Council passed on the 4th day of October, 1922, whereby certain persons were nominated directors of the Company pursuant to the provisions of Section 1 of the said Act.

That the powers of General Manager in respect of the Canadian Government Railways were heretofore entrusted by Order in Council, dated 20th November, 1918, to certain persons from time to time constituting the Board of the Canadian Northern Railway Company, and that the powers of General Manager in respect of the Canadian Government Railways so entrusted are now being exercised by the persons who constitute the Board of Directors of the Canadian National Railway Company.

That it is expedient to terminate the authority of the said persons to act as General Manager of the Canadian Government Railways and to entrust in lieu thereof the management and operation of the said railways to the Company, pursuant to the provisions of Section 11 of the said Act as above in part mentioned. The effect of said change will be to make applicable to the management and operation of the said railways many of the provisions of the said Act, and to accomplish the main purpose of the said Act as expressed in the recital thereto, namely—

> to provide for the incorporation of a Company under which the railways, works and undertakings of the Companies comprised in the Canadian Northern System may be consolidated, and together with the Canadian Government Railways operated as a national railway system.

The Minister accordingly recommends that the Canadian Government Railways, which for the purpose of Section 10 of the said Act, shall include the following lines designated specifically—

The Intercolonial Railway,
The National Transcontinental Railway,
The Lake Superior Branch leased from the Grand Trunk Pacific Railway Company,
The Prince Edward Island Railway,
The Hudson Bay Railway.

and as a general designation all other railways and branch lines, the title to which, and to the lands and properties whereon such railways are constructed, is vested in His Majesty, be by Order in Council entrusted in respect of the management and operation thereof to the Company on the terms in the said Act expressly specified, namely, that such management and operation shall continue during the pleasure of the Governor in Council and shall be subject to termination or variation from time to time in whole or in part by the Governor in Council.

The Minister also recommends that the full benefit of all powers, rights, privileges and interests vested in His Majesty under any agreement for joint operation or running rights with any other corporation in connection with the operation with any of the said Canadian Government Railways, be also entrusted in respect of such operation and management to the Company on the same terms as hereinbefore set forth.

That the Order in Council of November 20th, 1918, above referred to, be cancelled.

The Committee concur in the foregoing recommendations and submit the same for approval.

RODOLPHE BOUDREAU,
Clerk of the Privy Council.

The WITNESS: Then I was asked—unfortunately I do not know who asked me—but it was a question regarding the reserves for depreciation.

Hon. Mr. MARLER: I think it was Mr. Hamilton.

The WITNESS: Either Mr. Hamilton or the gentleman who sat at the end opposite Mr. Fulton.

The CHAIRMAN: Mr. Nesbitt.

The WITNESS: In any event he was referring to an item in the railway balance sheet of December 31, 1954, entitled "Accrued depreciation $230,188,287" which is found on page three in the light green pages in our 1954 annual report and the question asked was whether or not there existed a cash reserve for that account.

The answer is that we have no funded reserve, that the amount of $230 million odd represents the accumulation of annual reserves and our annual reserves are reinvested in the business of the railway as authorized annually by the Canadian National Railways Finance and Guarantee Act.

Then, Mr. Green, asked yesterday for a tabulation of the lines of railway of the Canadian government railways and their respective mileages. I have particulars of them in a form and I do not know whether this form is really the form in which Mr. Green wishes them to be or not but it might be all that is required.

The list is:

National Trans-Continental Railway	2038·53	miles
Newfoundland Railway	774·76	miles
Hudson Bay Railway	777·8	miles
Temiscouata Railway	106·96	miles
Lake Superior Branch	185·41	miles
Intercolonial, Prince Edward Island and other maritime lines	3669·18	miles
Total	7352·46	miles

I should point out that this is the aggregate of track miles representing first track mileage to which is added second track mileage where it exists or tracks and spurs and to give you a basis of comparison the corresponding figure for the entire system is 33,668·46 miles and the breakdown of that figure will be found on page 14 of the green sheets in the annual report.

Now, if you desire I can break it further but I hope that is sufficient for you.

By Mr. Green:

Q. That is sufficient.—A. Then again this morning—and unfortunately we have not had sufficient time to make a comprehensive answer to your question—you asked for a list of shipping operations that had been entrusted. We have ascertained but three, they being the Newfoundland Shipping Services, The Prince Edward Island Ferry Service and the Yarmouth-Bar Harbour service which is not in operation and I would like to say that I shall go on with the examination of this and if there are any more then we will make a supplementary return.

Q. You were going to let us know about the actual measures taken by the railways to further the use of Canadian ports?—A. Yes, unfortunately I have not had time to do that and it will have to be filed later.

Q. We can get that later, can we?

Hon. Mr. MARLER: I think so. I don't see any particular reason why not. I take it we might have a letter from Mr. MacMillan to the clerk of the committee, to be printed as an appendix.

Agreed.

The CHAIRMAN: Agreed. Shall the preamble carry?

Carried.

Does the interpretation clause carry?

Carried.

Shall the title carry?

Carried.

Shall the bill carry as amended?

Carried.

Shall I report the bill with amendments?

Agreed.

Mr. MACNAUGHT: Before we adjourn I would like to ask that the committee go on record as expressing its deep appreciation to Mr. MacMillan, vice-president and general manager, Mr. Cote, Mr. Taschereau and Mr. Macdougall and others for the assistance they have given us today.

The CHAIRMAN: Also the reporters who have worked hard taking it.

Hon. Mr. MARLER: Mr. Chairman, I would also like to thank the committee for having received me so cordially at times, even when it came to the more difficult clauses.

Mr. JOHNSTON (*Bow River*): You were very agreeable too.

The CHAIRMAN: The committee is adjourned until the call of the chair.

APPENDIX

CANADIAN NATIONAL RAILWAYS
LAW DEPARTMENT

MONTREAL 1, June 7, 1955.

Mr. Eric H. Jones
Clerk of the Committee,
Committees Branch,
House of Commons,
OTTAWA, Canada.

Dear Mr. Jones:

In the course of the meetings last week of the Standing Committee on Railways, Canals and Telegraph Lines, dealing with Bill 351, Mr. Green and Mr. Nowlan asked for a statement as to what has been done to implement the statutory direction contained in subsection (2) of section 14 of the Canadian National-Canadian Pacific Act respecting the routing of export traffic through Canadian seaports.

Even before the enactment of that legislation, Canadian National always pursued the policy of endeavouring to influence export shippers to make use of Canadian ports whenever possible. The most active organization to promote export through Canadian seaports is the Canadian Port Committee, of which Canadian National is an active member, along with Canadian Pacific, National Harbours Board, Canadian Exporters Association, Canadian Manufacturers Association, Canadian Importers and Traders Association, Maritime Transportation Commission, Canadian Maritime Commission, Shipping Federation of Canada, Canada Steamship Lines, the Department of Trade and Commerce, and others. This committee meets frequently and its sole purpose is to attempt to influence Canadian industry to ship through Canadian seaports.

Under existing export trade practices, there is no traffic that has not already been routed when it reaches the Railway, as when such traffic is delivered to the Railway, the identity of the port and of the ship where the goods are to be loaded for the sea voyage has already been determined, the shipper having had to pre-arrange for the booking of ship space. Therefore, the only method which Canadian National can use to influence the movement of export traffic through Canadian ports is to provide attractive rates for the carriage of goods to such ports and adequate advance solicitation.

To encourage routing through Canadian ports, Canadian National maintains its export rates through Canadian Atlantic ports on a parity with United States Atlantic ports, although the mileage to our Atlantic ports is considerably greater than that of the United States Atlantic ports. Our activities in soliciting traffic are not limited to Canada, as we also maintain soliciting forces in the United States, which endeavour to obtain routing from shippers through Canadian Atlantic and St. Lawrence ports whenever ocean bookings are available. Our efforts in that line have been successful, as we have obtained a substantial tonnage from the Midwest United States for export through Canadian ports.

Yours very truly,

(sgd) N. J. MACMILLAN,
Vice-President and General Counsel

HOUSE OF COMMONS

Second Session—Twenty-second Parliament

1955

STANDING COMMITTEE

ON

RAILWAYS, CANALS AND TELEGRAPH LINES

Chairman: H. B. McCULLOCH, ESQ.

MINUTES OF PROCEEDINGS AND EVIDENCE

No. 8

Bill No. 406 (Letter T-12 of the Senate) An Act to incorporate Stanmount Pipe Line Company.

Bill No. 408 (Letter Z-12 of the Senate) An Act to incorporate Trans-Border Pipeline Company Ltd.

Bill No. 414 (Letter B-14 of the Senate) An Act respecting Westcoast Transmission Company Limited.

TUESDAY, JUNE 7, 1955

WITNESSES:

Mr. R. C. Merriam, Barrister-at-Law, of Ottawa; Mr. C. R. J. Smith, Executive, of North York; Mr. Hugh Plaxton, Barrister-at-Law, of Toronto; and Mr. S. Donald Moore, Executive, of Edmonton.

EDMOND CLOUTIER, C.M.G., O.A., D.S.P.
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1955

59281—1

STANDING COMMITTEE
ON
RAILWAYS, CANALS AND TELEGRAPH LINES

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and
Messrs.

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Byrne
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Green
Habel
Hahn
Hamilton *(Notre-Dame-de-Grace)*
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Hanna
Harrison Healy
Herridge
Holowach
Hosking
Howe *(Wellington-Huron)*
Johnston *(Bow River)*
Kichham
Lafontaine
Langlois *(Gaspe)*
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Leboe
MacNaught
McIvor
McWilliam
Meunier
Montgomery
Murphy *(Lambton West)*
Murphy *(Westmorland)*
Nesbitt
Nicholson
Nickle
Nixon
Nowlan
Purdy
Ross
Small
Stanton
Viau
Villeneuve
Vincent
Weselak

Eric H. Jones,
Clerk of the Committee.

ORDERS OF REFERENCE

HOUSE OF COMMONS,

FRIDAY, May 27, 1955.

Ordered,—That the following Bill be referred to the said Committee:

Bill No. 406 (Letter T-12 of the Senate), intituled: "An Act to incorporate Stanmount Pipe Line Company".

TUESDAY, May 31, 1955.

Ordered,—That the following Bills be referred to the said Committee:

Bill No. 408 (Letter Z-12 of the Senate), intituled: "An Act to incorporate Trans-Border Pipeline Company Ltd."

Bill No. 414 (Letter B-14 of the Senate), intituled: "An Act respecting Westcoast Transmission Company Limited".

FRIDAY, June 3, 1955.

Ordered,—That the name of Mr. Balcom be substituted for that of Mr. James; and

That the name of Mr. MacNaught be substituted for that of Mr. Carrick; and

That the name of Mr. McWilliam be substituted for that of Mr. Cavers; and

That the name of Mr. Hanna be substituted for that of Mr. Decore on the said Committee.

Attest.

Leon J. Raymond,
Clerk of the House.

59281—1½

REPORTS TO THE HOUSE

TUESDAY, June 7, 1955.

The Standing Committee on Railways, Canals and Telegraph Lines begs leave to present the following as its

FOURTEENTH REPORT

Your Committee has considered the following Bills and has agreed to report the said Bills without amendment:

Bill No. 406 (Letter T-12 of the Senate), intituled: "An Act to incorporate Stanmount Pipe Line Company".

Bill No. 414 (Letter B-14 of the Senate), intituled: "An Act respecting Westcoast Transmission Company Limited".

Your Committee has also considered Bill No. 408 (Letter L-12 of the Senate), intituled: "An Act to incorporate Trans-Border Pipeline Company Ltd.", and has agreed to report the said bill with one amendment, namely:

Clause 6

Page 2, line 31, after the words "pipe lines," insert the following:

"provided that the main pipe line or main pipe lines for the transmission of gas and gaseous hydrocarbons shall be located entirely within Canada,"

A copy of the evidence adduced in respect of the said bills 406, 408 and 414 is appended.

All of which is respectfully submitted.

H. B. McCULLOCH,
Chairman.

TUESDAY, June 7, 1955.

The Standing Committee on Railways, Canals and Telegraph Lines begs leave to present the following as its

FIFTEENTH REPORT

Clause 3 of Bill No. 406 (Letter T-12 of the Senate), intituled: "An Act to incorporate Stanmount Pipe Line Company", reported by the Committee this day in its Fourteenth Report, provides for Capital Stock of one million shares without nominal or par value.

Your Committee recommends that for taxing purposes under Standing Order 93(3) the aggregate value of the said shares be fixed at $5,000,000.

All of which is respectfully submitted.

H. B. McCULLOCH,
Chairman.

MINUTES OF PROCEEDINGS

TUESDAY, June 7, 1955.

The Standing Committee on Railways, Canals and Telegraph Lines met at 10.30 o'clock this day. The Chairman, Mr. H. B. McCulloch, presided.

Members present: Messrs, Balcom, Batten, Campbell, Carter, Green, Hahn, Hanna, Healy, Herridge, Kickham, Lafontaine, MacNaught, McCulloch (*Pictou*), McIvor, McWilliam Montgomery, Villeneuve and Weselak.

In attendence: Mr. R. F. Hanna, M.P., for Mr. John Decore, M.P., Sponsor of Bill No. 408; Mr. F. T. Fairey, M.P., Sponsor of Bill No. 414; Mr. R. C. Merriam, Counsel on behalf of Mr. D. K. MacTavish, Q.C., Parliamentary Agent; Mr. C. R. J. Smith of North York, Executive; Mr. Hugh Plaxton of Toronto, Counsel; and Mr. S. Donald Moore of Edmonton, Executive.

On motion of Mr. McWilliam,

Resolved,—That the Committee print 750 copies in English and 200 copies in French of its Minutes of Proceedings and Evidence in respect of the three bills on the Orders of the Day, namely, Bills Nos. 406, 408 and 414.

The Committee proceeded to consider Bill No. 406 (Letter T-12 of the Senate) intituled: "An Act to incorporate Stanmount Pipe Line Company."

Mr. Plaxton was called; he explained the purpose of the bill, answered questions thereon and was retired.

Mr. Smith was called and explained the proposed operations of the company; he answered questions and was retired.

On clause by clause consideration, the preamble and clauses 1 and 2 were adopted.

On Clause 3

A declaration on behalf of the promoters was submitted that the aggregate consideration proposed to be received by the company on the issue of the one million shares without nominal or par value constituting the authorized capital of the company is five million dollars.

On motion of Mr. Lafontaine,

Resolved,—That, for the purpose of levying a charge on the capital stock consisting of one million shares without nominal or par value under Standing Order 93(3), the Committee recommend that the said charges be levied on the amount of $5,000,000.

Clause 3 was adopted.

Clauses 4 to 11 and the title were severally adopted; the bill was carried.

Ordered,—That the Chairman report Bill No. 406 to the House without amendment and request concurrence of the House in the Committee's recommendation in respect of capital stock charges.

The Committee then considered Bill No. 408 (Letter Z-12 of the Senate) intituled: "An Act to incorporate Trans-Border Pipeline Company Ltd."

Mr. Hanna, for the Sponsor, briefly explained the bill; Mr. Merriam made further explanation; Mr. Moore was called, answered questions and was retired.

The preamble and clauses 1 to 5 inclusive were severally adopted.

On clause 6

Following debate, on motion of Mr. Hanna,

Resolved,—That Clause 6 be amended by inserting, after the words "pipe lines," in line 31 of page 2, the following:

"provided that the main pipe line or main pipe lines for the transmission of gas and gaseous hydrocarbons shall be located entirely within Canada,"

Clause 6, as amended, was adopted; clauses 7 to 11 inclusive and the title were severally adopted; the bill, as amended, was carried.

Ordered,—That the Chairman report Bill No. 408 to the House, as amended.

The Committee then considered Bill No. 414 (Letter B-14 of the Senate) intituled: "An Act respecting Wescoast Transmission Company Limited."

Mr. Fairey, Sponsor, explained the purpose of the bill and answered questions thereon.

The preamble, clause 1 and the title were severally adopted; the bill was carried.

Ordered,—That the Chairman report Bill No. 414 to the House without amendment.

At 11.40 o'clock a.m., the Committee adjourned to the call of the Chair.

Eric H. Jones,
Clerk of the Committee.

EVIDENCE

TUESDAY, June 7, 1955.
10.30 a.m.

The CHAIRMAN: Gentlemen, we have a quorum now. We have three pipe line bills before us this morning but before we proceed to consider them I would ask whether the committee considers it necessary to print our proceedings on these three private bills? Somebody should move to do so if they wish to have it printed.

Mr. LAFONTAINE: We don't need them.

Mr. GREEN: Mr. Chairman, all the others have been printed.

Mr. LAFONTAINE: We will save some money.

Mr. GREEN: Well, we should have a record of them all.

Mr. MCWILLIAM: What is the usual number that is printed?

The CHAIRMAN: The usual motion for this is as follows: That the committee print 750 copies in English and 200 copies in French of its minutes of proceedings and evidence in respect of the three bills on the order paper, namely, 406, 408 and 414. Would somebody move that?

Mr. LAFONTAINE: I will.

Carried.

The CHAIRMAN: Bill 406, Senate letter T-12. I will now call the preamble. Mr. Hellyer, would you introduce the bill as sponsor and then we may hear from Mr. Merriam. Mr. Hellyer is not here? Then we will hear from Mr. Merriam.

Mr. R. C. MERRIAM: Mr. Chairman and gentlemen, Mr. Hugh Plaxton who is the solicitor for the proposed company and is thoroughly familiar with the details of incorporation and of the operations of the company is here and I would suggest that in order to save time we ask Mr. Plaxton to explain the bill to you and to answer any questions you may have.

The CHAIRMAN: Will you come and take a seat, Mr. Plaxton?

Mr. HUGH PLAXTON: Mr. Chairman and hon. members, I have with me in addition to Mr. Merriam, Mr. Smith, who is the Canadian principal in this proposed venture.

The purpose of this bill is to permit of the construction of a ten-inch line for the transportation of oil which will connect up the Tioga and Beaver Lodge fields in northwestern part of North Dakota in the Williston basin with the Interprovincial Pipeline at Cromer. The line will be approximately 140 miles in length and half of it will be constructed in the United States through a wholly-owned subsidiary of the proposed company and the other half will be constructed in Canada and will be owned and operated by the proposed company, Stanmount Pipe Line Company.

Interprovincial Pipeline Company has expressed its agreement with the taking of this oil into its line at Cromer and delivering it back into the States via this new Canadian line and its wholly-owned American subsidiary, the Lakehead Pipeline Company. Thus, you have really, in this proposed bill and in the proposed operations of this company, the reversal of what is happening in the case of Interprovincial, where they take Canadian oil through

the western provinces and down into the States through their American subsidiary company, and into Canada at Sarnia. We are proposing the reverse, in that we will take it from the Williston basin, from the fields I have just mentioned, Tioga and Beaver Lodge, up through to Canada and back into the States where it will be dumped off in the Minneapolis-St. Paul area. Then there may be other branch lines, possibly to a place called Sheboygan and other places, as business develops.

The total initial cost of this venture will approximate about $6 million of which approximately half would be spent in Canada and half in the United States.

There is one point which I think is worthy of note in connection with this bill and that is that the Williston basin area, located partly in North Dakota and partly in Montana, is estimated by authoritative engineers to have a proven and semi-proven quantity of oil approximating 600 million to 700 million barrels. At the present time that oil is virtually immobile because, outside of railways and trucks which is a very costly means of transporting oil, that oil has not got a ready and economic access to the markets in the United States which lie to the east, and it is thought in the view of very skilled engineers who have ben consulted in this matter—and I refer to Bascule Services of New York who are identified with the Interprovincial Company and other pipe lines which are in operation in western Canada today, and also Mr. Morgan Walker who is rated one of the top pipe line engineers in the world today—that this proposed line is not only economic but fills a great need. I might add in that connection that, while at the moment we are passing through what might be termed a semi-peaceful era in this world, from the viewpoint of a possible national emergency this pipe line, if it is permitted to be constructed, would be a great asset both to the United States and to Canada in that it would help in facilitating the movement of this vast quantity of oil presently laid up in the Wiliston Basin.

As I have said, I have with me Mr. Smith of the city of Toronto who is the Canadian Principal in these proposals and if there are any questions of detail which the committee would like to ask, I know he would be delighted to answer.

Mr. McIvor: I would like to ask a question. It says here: "in the province of Ontario, Manitoba and Saskatchewan". Does that mean that this line would go through Fort William and Port Arthur?

Mr. Plaxton: No. I should perhaps have explained that. Would you look at the map? This line will run right from Kioga and the Beaver Lodge fields across the southeast corner of Saskatchewan into the Interprovincial line at Cromer until it gets back to the United States. The oil will be transmitted by the Interprovincial pipe line and the lakehead pipe lines in the United States. It is not proposed to cross through the hon. member's constituency. The reason Ontario is included is because it is proposed that the head office of the company should be located in Toronto.

Mr. Weselak: Does the Federal Power Commission have to authorize the building of the line in the United States, and has it already done?

Mr. Plaxton: My understanding in that connection is that the only permission needed in the United States is what is called a certificate of necessity which permits an accelerated writing-off of the costs of the line. Otherwise you can proceed to construct. I am informed by Mr. Smith that it is subject to the approval of the rates.

Mr. Weselak: Does this company have to be formally set up by American jurisdiction as well?

Mr. Plaxton: Yes. There has already been a subsidiary company called the Stanmount Pipe Line Company of Delaware. It has already been formed.

Mr. HAHN: I take it this oil line will carry oil only?

Mr. PLAXTON: Oil only.

Mr. HAHN: Is it the intention to take oil from the Saskatchewan fields and the Manitoba fields?

Mr. PLAXTON: Naturally, if we have room in the pipe and if we are going through an area and they are willing to give us freight we will be glad to carry it. We will be a common carrier, anyway, and therefore we will have to take it.

Mr. WESELAK: I gather the line begins and ends in the United States.

Mr. PLAXTON: No, our line starts in Kioga, and proceeds northeast across the international boundary to Cromer, Manitoba. That is the extent of our line. We worked out a joint arrangement with Interprovincial, and they have adequate room in their line to transport it down into the United Staes—using a line which is already constructed, rather than build a line right through to the United States, which would be very costly.

Mr. HAHN: You have already negotiated with Interprovincial on the understanding that this is to be authorized?

Mr. PLAXTON: Yes, we have.

Mr. WESELAK: You take if from one point in the United States and deliver it to another?

Mr. PLAXTON: Exactly. The oil would travel through Canada in bond.

The CHAIRMAN: Gentlemen, on clause 3 of this bill we will have to have a motion in regard to capital stock charges. Shall the preamble carry?

Carried.

Shall clause 1 carry?

Carried.

Shall clause 2 carry?

Carried.

On clause 3, the Clerk of the Committee will now read a declaration in regard to the no par value stock.

The CLERK OF THE COMMITTEE: This is a declaration signed by Mr. Plaxton. It reads as follows:

Province of Ontario
County of Carleton
To Wit:

IN THE MATTER OF the application of CLIFFORD RICHARD JOHN SMITH and others for an Act of Parliament incorporating STANMOUNT PIPE LINE COMPANY

I, HUGH PLAXTON, of the City of Toronto in the County of York, Solicitor, make oath and say as follows:

1. I am the Solicitor for the applicants herein and as such have knowledge of the facts herein deposed to.

2. The aggregate consideration proposed to be received by the Company on the issue of the one million (1,000,000) shares without nominal or par value constituting the authorized capital of the Company is five million dollars ($5,000,000).

SWORN before me at the City of Ottawa, in the County of Carleton, this 7th day of June, 1955.
'Ronald C. Merriam'
A Commissioner, etc.

HUGH PLAXTON"

Mr. LAFONTAINE: I move, seconded by Mr. Balcom,

"That for the purpose of levying a charge on the capital stock consisting of one million shares without nominal or par value under the provisions of Standing Order 93(3), the Committee recommend that the said charge be levied on an amount of $5,000,000."

The CHAIRMAN: You have all heard the motion read. Does the motion carry?

Carried.

Shall clause 3 carry?

Carried.

Shall clause 4 carry?

Carried.

Shall clause 5 carry?

Carried.

Shall clause 6 carry?

Carried.

Shall clause 7 carry?

Carried.

Shall clause 8 carry?

Carried.

Shall clause 9 carry?

Carried.

Shall clause 10 carry?

Carried.

Shall clause 11 carry?

Carried.

Shall the title carry?

Carried.

Shall the bill carry without amendement?

Carried.

Shall I report the bill without amendement?

Agreed.

Mr. LAFONTAINE: There was an amendment.

The CHAIRMAN: No, there was only a recommendation. Shall I report the recommendation to the House in accordance with the resolution regarding capital stock charges?

Agreed.

Bill 408, Letter Z-12 of the Senate, "An Act to incorporate Trans-Border Pipeline Company Ltd." Mr. Hanna, will you speak for Mr. Decore, the sponsor?

Mr. HANNA: The purpose of this bill is to incorporate a company which will endeavour to acquire a pipe line which is now in existence, known as the Canol Pipeline, which lies between Skaway, Alaska and Whitehorse, in the Yukon.

The counsel for the parliamentary agent for the company, Mr. Merriam, is here, and one of the principal, Mr. S. Donald Moore of Edmonton is also here. Perhaps the committee would like to direct its questions to them and get an explanation of the bill and of this proposed incorporation.

The CHAIRMAN: Mr. Merriam is here to answer any questions which may be asked. Are there any questions?

Would you like to explain the situation, Mr. Merriam?

Mr. R. C. MERRIAM: Mr. Chairman and hon. members, Mr. Hanna has certainly given you the general purpose of the bill. There is not a great deal to add. I think the answer is simply this, that the petitioners have come to parliament asking parliament to endow them with the capacity to carry on negotiations for the taking over and operation of this pine line mentioned by Mr. Hanna which was built as part of the Canol system during the war and has now served its purposes as far as the government of the United States and the government of Canada are concerned and is available, as I understand, for operation by private individuals.

There is a desire, we understand, on the international level, to maintain this pipe line in operation if for no other reason then as a standby emergency line. The United States government has itself built an alternative line which will be in operation later this year, but I think the desire is that if at all possible this line should continue at least as an emergency standby possibility.

It is for the purpose of carrying out the necessary negotiations, or to have the capacity to do so, that the petitioners have come before parliament asking for the incorporation of a company which would give them that right.

Mr. CAMPBELL: Is this a four inch pipe line?

Mr. MERRIAM: I think it is a six or eight inch pipe line.

Mr. CAMPBELL: Is it the same line as in the Yukon bill?

Mr. MERRIAM: Yes, the same line exactly.

Mr. GREEN: There was some discussion in the House about an amendment to this bill. Mr. Decore indicated that when the bill came to committee he would move an amendment, an amendment to clause 6. Is that still the intention?

Mr. MERRIAM: Yes. We are not opposing that amendment. As I understand it the amendment which was discussed at that time is worded that there be included in clause 6 at the appropriate place the words "provided that the main pipe line or main pipe lines for the transmission of gas and gaseous hydrocarbons shall be located entirely within Canada," I believe that is the amendment to which you are referring. The promoters have no objection to that amendment being inserted if this committee so desires.

Mr. GREEN: Your company appears to be in direct competition with Yukon Pipe Lines Limited.

Mr. MERRIAM: That is correct.

Mr. GREEN: And is this pipe line laid on the right of way of the White Pass and Yukon Railway?

Mr. MERRIAM: To a large extent, yes.

Mr. GREEN: And the Yukon Pipe Lines Limited is a subsidiary of the White Pass and Yukon Railway?

Mr. MERRIAM: I do not know, but I understand that is the situation.

Mr. GREEN: Your clients will attempt to get this pipe line which is laid on the right of way of your competitors? Is that right?

Mr. MERRIAM: We will both be negotiating with the present owners to maintain and operate that pipe line.

Mr. GREEN: Who owns the pipe line now?

Mr. MERRIAM: As I understand it the ownership is now vested in the Canadian and United States governments as part of that Canol project during the war.

Mr. GREEN: The Canadian government has an interest in it?

Mr. MERRIAM: Yes.

Mr. GREEN: A half interest?

Mr. MERRIAM: I am not sure what the proportion is between the two governments. I think the negotiations must be with the governments.

Mr. GREEN: What is the estimated value of the line?

Mr. S. DONALD MOORE: The value of the line which is now about eleven years old is subject to some evaluation by competent engineers when and if we receive the power to negotiate for the line before the Board of Transport Commissioners. I would say an estimate would now be that the value is somewhere around $500,000 or thereabouts. The company itself is not completely up to date as to the maintenance and current condition of the line, but about two years ago it was in fairly good shape and worth about that amount of money on an outright purchase.

Mr. GREEN: Could you tell us something about the applicants for incorporation?

Mr. MOORE: The applicants are largely the officers and directors and associated interests of Developments Limited which company is engaged in the development and exploration of mine, mineral, oil and gas resources in western Canada, including the Yukon and Northern British Columbia.

Mr. GREEN: Are they promoters?

Mr. MOORE: I would not know quite how to answer that except that this company is now adequately financed for its work and is actively engaged in a number of different exploration projects in western Canada.

Mr. GREEN: Are these applicants engaged in the oil business in any way at the present time?

Mr. MOORE: Yes, they are. They control and own interests in some 175,000 acres of oil and gas leases, reservations and royalty interests in Alberta and Saskatchewan.

Mr. GREEN: But are they actually in the business of producing oil?

Mr. MOORE: No, not at the moment.

Mr. GREEN: Or are they in any other pipe line business?

Mr. MOORE: Not at the moment, no.

Mr. GREEN: What do the individuals do who are applying for this charter?

Mr. MOORE: They include engineers, geologists, a fuel oil distributor for the province of Alberta, and an accountant who was directly connected with the operation of this line while it was under United States army control.

Mr. GREEN: Who is he?

Mr. MOORE: He is Thomas W. Connell. He was with the United States army for two or three years with the line in Whitehorse.

Mr. GREEN: What is Lt.-Col. Colquhoun?

Mr. MOORE: He is the manager of R. S. Weston Company Limited, a securities house in Vancouver, B.C.

Mr. GREEN: What is Mr. McIntyre?

Mr. MOORE: He is a financial agent in the city of Edmonton.

Mr. GREEN: And Mr. Plotke?

Mr. MOORE: Mr. Plotke is connected with one of the largest fuel oil distributing organizations in the province of Alberta, Canada West Distributors.

The CHAIRMAN: Are there any further questions?

Mr. MONTGOMERY: How many miles in length is this line?

Mr. MOORE: 110 miles.

Mr. MONTGOMERY: Have you any idea of the cost of building that line today?

Mr. MOORE: I do not think I have. It was built under war emergency and the costs of building it are probably out of line with the costs which would pertain to ordinary circumstances.

Mr. MONTGOMERY: You mentioned the price of $500,000 as an estimated value now?

Mr. MOORE: That is a rough estimate.

Mr. MONTGOMERY: Would it cost at least twice as much to replace it?

Mr. MOORE: It would probably be somewhat more than twice as much to replace that line.

Mr. MONTGOMERY: Do I understand that it is dormant now?

Mr. MOORE: No. It is now in operation and has been since its inception. It is quite important to the city of Whitehorse in that it supplies Whitehorse and practically all the Yukon with all its fuel oil.

Mr. MONTGOMERY: Who is operating it at the present time?

Mr. MOORE: The United States army.

Mr. MONTGOMERY: Would that be under lease?

Mr. MOORE: The status of the line is that it is a United States Government facility, owned now entirely by the United States government. Pursuant to the Canol agreements made during 1942, 1943, 1944, the United States government, when it wished to dispose of the line, was committed to communicate with the Canadian government, and further agreements in 1947, I believe, committed the United States government to turn over that portion of the line in Canada without cost to the Canadian government or at the Canadian government's direction. Further the United States government was committed to make a reasonable deal for that portion of the line within Alaska. That is where it stands right now.

Now, about April 20 this year, the United States army offices, which had direct control of the line and still have, issued a directive to the Anchorage, Alaska, engineering office to commence negotiations pursuant to these exchanges of notes between the two governments with the appropriate Canadian authority leading to the disposal of the line on which the Haines-Fairbanks Pipe Line was in operation.

Mr. GREEN: How would you get the right to operate this on the right of way of the White Pass Yukon line?

Mr. MOORE: The White Pass Yukon Line is receiving something like $31,000 a year from the United States army for their right of way and it is something similar to pipe lines running through the farmer's field. They do not give the farmers any vested interest in the pipe line but arrangements are made with owners of the properties through which the pipe line right of way runs. The topographical requirements of the area—restrictions of topography—dictated that the pipe line be laid along or near the right of way of the White Pass and Yukon Railway.

Mr. MONTGOMERY: In other words it is laid under an easement?

Mr. MOORE: I am not sure what the arrangements are but it is equivalent to that exactly.

Mr. GREEN: Are there any men of the United States army interested in this corporation?

Mr. MOORE: No, sir.

The CHAIRMAN: Shall the preamble carry?

Carried.

Shall clause 1 carry?

Carried.

Shall clause 2 carry?

Carried.

Shall clause 3 carry?

Carried.

Shall clause 4 carry?

Carried.

Shall clause 5 carry?

Carried.

On clause 6 there is an amendment to clause 6. Have you an amendment, Mr. Hanna, to clause 6?

Mr. HANNA: Mr. Chairman, as I understand it the principals are not asking for this amendment. They have asked me to move the bill. I am not quite clear about the wishes of the committee as to whether it wishes, or insists on this amendment. I am not quite clear on the significance of the amendment and I wonder if those people who are proposing the amendment would explain it further. In other words, I do not want to be in the position of moving an amendment which I am not quite clear on. I am pinch hitting for Mr. Decore who could not be here this morning. So, before moving the amendment I would like to hear further discussion on it.

Mr. GREEN: I point out, Mr. Chairman, that in the House Mr. Decore said:

> I have been authorized to say that when this bill is dealt with in committee the agent acting on behalf of the proposed company will have no objection to amending section 6 in the bill so that it will provide that the main pipe line for the transmission of gas and oil and other liquid and gaseous hydrocarbons shall be located entirely within Canada.

Then, he changed it later on on a subsequent day to read:

> The proposed company will have no objection to amending section 6 in the bill so that it will provide that the main pipe line for the transmission of gas and gaseous hydrocarbons shall be located entirely within Canada.

In other words, he took out oil. I point out that these people are in direct competition with the Yukon Pipe Lines Limited which was sponsored here by Mr. McIlraith. These people are trying to get the pipe line which is actually laid on the right of way of the applicants for whom Mr. McIlraith appeared. In Mr. McIlraith's bill an amendment of this type was inserted. Now there is not any reason why these people should have any better position than the Yukon Pipe Lines Limited. You will notice that those corporations are asking for the power to build gas pipe lines. It is not confined to the Yukon. The Trans-Border ask power for British Columbia, Alberta and Yukon Territory, and outside Canada; and Yukon Pipe Lines Limited asked for that power in the Yukon, British Columbia, and also outside of Canada. Now there is some doubt whether we should even approve of this incorporation because it looks as though the applicants are a group of promoters who are trying to get this pipe line although the line

is actually laid on the right of way of the White Pass and Yukon. Certainly they are entitled to no better position than their competitors, the Yukon Pipe Lines Limited. I think that the undertaking given by Mr. Decore in the House was broad enough to indicate that when the bill came before the committee he would make that amendment.

Mr. MERRIAM: In view of what Mr. Green has said and in view of the impression which Mr. Green and undoubtedly a number of other members have, I think we would be very happy if Mr. Hanna would be good enough to move the amendment of Mr. Decore at this time.

Mr. HANNA: Mr. Chairman, I said I was not here when this bill was discussed and considered originally. I was not present when Mr. Decore made the statement which Mr. Green has referred to. However, in view of the fact that apparently this amendment is desirable I would like to move that on page two, line 31, after the words "pipe lines", insert the following:

> provided that the main pipe line or main pipe lines for the transmission of gas and gaseous hydrocarbons shall be located entirely within Canada;

The CHAIRMAN: Moved by Mr. Hanna and seconded by Mr. Lafontaine. All in favour of the amendment?

Carried.

Mr. CAMPBELL: This is mainly for gas and gaseous hydrocarbons and now you say you want to take on an oil pipe line?

Mr. MERRIAM: This is an oil pipe line.

Mr. CAMPBELL: The pipe line you want to get is an oil pipe line?

Mr. MERRIAM: Yes. This type of limitation has not, to the best of my knowledge, been general in oil lines. But the reason it has been suggested that it be inserted here is because clause 6, which conforms to the general clause 6 in all pipe line bills, is broad enough to include the construction and operation of a gas pipe line which would be something entirely divorced from that particular line to which our attention has this morning been addressed. But, in the future the company might say, "We would like to build a gas line", and in the event that that should happen then this limitation comes into play.

The CHAIRMAN: All those in favour of the amendment?

Carried.

Shall clause 6 as amended carry?

Carried.

Shall clause 7 carry?

Carried.

Shall clause 8 carry?

Carried.

Shall clause 9 carry?

Carried.

Shall clause 10 carry?

Carried.

Shall clause 11 carry?

Carried.

Shall the title carry?

Carried.

Shall the bill carry as amended?

Mr. HAHN: Before you carry the bill, what effect has the sale of shares upon the public at large in companies such as this where we have a duplication of lines? What protection have we for the public that they do not buy stock in a company which is going to be non-existent by reason of the fact that two of them are competing for the same line and each of them goes out and sells shares when only one can get it? What protection have we for them?

Mr. MERRIAM: I think that the answer to that question is a practical answer, that in order to market shares of this size, $5 million or whatever this appears to be, the services of an underwriter in the first place must be employed, and in the second place the company must file a prospectus with the provincial authorities and the federal authorities indicating in very great detail the basis for the issuance of those shares, the security behind the company, the status of the company and so on; and unless the company had the assets, in this case the right to operate that pipe line, neither an underwriter nor the provincial nor the federal authorities would ever approve of the issuing of the shares. The underwriter in the first place would not cover them, and in the second place the provincial authorities are charged with the responsibility of ensuring that worthless stocks are not marketed, and they would never approve the prospectus.

Mr. HAHN: A number of these companies may never exist as such and no shares will be sold to the public in their name?

Mr. MERRIAM: Until the company manages to get to the Board of Transport Commissioners and can prove and show it the earning power available in its hands, then it can say to its financiers and undertakers this is what we have and what do you think our shares are.

Mr. HAHN: They have to have a licence before they can issue shares? There is no condition to that; they must have a licence? Could we go as far as to say that?

Mr. MERRIAM: No. They need not have a licence.

Mr. HAHN: At what point then is the public protected before they can transport gas or hydrocarbons or oil? They must get a licence from the Transport Commissioners?

Mr. MERRIAM: Yes.

Mr. HAHN: At what point does the public know that they have that licence? If they can sell shares before they have that licence, what guarantee have we that the public are going to be investing in a sound company?

Mr. MERRIAM: These private act companies are subject to the same provincial laws with regard to the issuing of shares and securities as is any other company, whether incorporated under the Dominion Companies Act or under the Provincial Companies Act, or under an extra provincial incorporation. Those laws are very strictly enforced by the Security Exchange Commissions of each particular province. Before a company or an underwriter can offer shares to the public, the securities commission in each province must be satisfied that those shares are of some value. The public, in the case of these private act companies, has the same protection it has in the case of any other company.

Mr. HAHN: You have mentioned the provinces in each instance. How about the Yukon Territories?

Mr. MERRIAM: I am not sure. I have never had occasion to deal with a prospectus or any financing in the Yukon Territories, but I do not think that a company would be able to do much financing in the Yukon. These companies, generally speaking, have to finance in the large industrial centres. This company operates in the Yukon but that does not mean it can get its money from the Yukon.

Mr. GREEN: The position will be that one or the other of these companies will have to make a deal with the Canadian government for that part of the pipe line which is in Canada, and with the American government for that portion of the line which is in Alaska. Is that the situation?

Mr. MERRIAM: I think generally speaking that is the type of negotiations which will have to be completed.

Mr. GREEN: In effect somebody has to make a deal with the two governments?

Mr. MERRIAM: Yes.

Mr. HAHN: What will the position be if one company makes a deal with the Canadian government and the other company makes a deal with the United States government?

Mr. MERRIAM: I think Mr. Moore can answer that question better than I can.

Mr. MOORE: First I would like to state that we as well as our competitor applicant are here merely to obtain the power to incorporate a company so that we can approach the Board of Transport Commissioners for permission to operate a pipe line pursuant to the Pipe Lines Act as amended.

As I stated previously on this one question of the rights of the two companies, in the light of the notes of agreement between the two governments it provides that the Canadian government will take over the entire line between Skagway and Whitehorse because it is of significance only to Canada and the Yukon. The section of the line in Alaska is a small percentage of the total mileage, which is a small line in itself of 110 miles. But the Canadian government will take over without compensation according to the agreements that section of the line within British Columbia and within the Yukon and will then negotiate with the United States government on that section plus the loading facilities in Skagway—the tankage facilities—to acquire that section of the line as a complete entity. Therefore the two companies will merely have to negotiate with the Canadian government to take over this facility.

Mr. HAHN: In clause 6 we have:

> The company, subject to the provisions of any general legislation relating to pipe lines for the transmission and transportation of gas and oil and another liquid and gaseous hydrocarbons which is enacted by parliament may
>
> (*a*) in the provinces of British Columbia and Alberta and the Yukon Territories . . .

I come back to this question of the Yukon Territories. You are in effect getting the right here to build a pipe line in the Yukon Territories. Is it not true you could build other lines in the Yukon Territories if we pass this bill?

Mr. MOORE: Yes.

Mr. HAHN: That line which you hope to get may never materialize but you would be prepared to go ahead with the construction of any other line in the Yukon Territories, depending upon the issuance of a licence from the Board of Transport Commissioners?

Mr. MOORE: Yes.

Mr. SHAW: If you make such an application and it is refused at what point is the public in Canada protected, in the event of this Yukon Territories thing alone never materializing? There is no provincial jurisdiction in respect to the issuance of stock. Just where does the control come in on that line?

Mr. MOORE: That is the point.

Mr. HAHN: That is the point.

Mr. MOORE: That is a federal body which administers the affairs of the Yukon Territory. Now I cannot go on record as saying that they examine any prospectus or any proposed issue of stock in the case of a Yukon Territory Company—I do not know—but let us assume for a moment that the company is going to build a pipe line in the Yukon Territory, and say for purposes of argument that it is going to consider $5 million, without knowing too much about the Yukon Territories. I would rather doubt that the company could raise $5 million in the Yukon Territories, so that, as a matter of practical financing, the financing of these companies must be done through the large centres of New York, Montreal and Toronto. That certainly has been the experience in any pipe line so far because of the amount of capital required. Immediately you get down to those centres you first of all have to deal with a large firm of financial underwriters. They just will not look at these things, and will hardly give you any more than a letter of intent, until you have got all your licences, your easements, and can show them in black and white precisely where your income is coming from. And they see also your licences from the Board of Transport Commissioners and the Federal Power Commissioners. After all those conditions are complied with, then you must go to the provincial authorities in the province in which you hope to obtain the money. Again, if you are looking for $25 million, you are not going up to the Yukon Territories. You may sell some in Vancouver, Calgary, Edmonton, Winnipeg, and so on, and all those are very closely guarded by the provincial securities commission. So I think the public has ample protection all along the line.

The CHAIRMAN: Shall the bill carry as amended?

Mr. MONTGOMERY: The witness indicated they would have to apply to the Security Commission in each province before they could sell that stock.

Mr. MOORE: One must file a prospectus with the Provincial Securities Commission.

Mr. MONTGOMERY: Yes, but if your head office is in Alberta and all your property is in the Yukon Territory, is it true that you have to apply to the Quebec Securities Commission to obtain permission?

Mr. MOORE: If you want to sell shares in Quebec.

Mr. MONTGOMERY: The same for Ontario?

Mr. MOORE: Yes.

Mr. MONTGOMERY: And for Nova Scotia?

Mr. MOORE: Yes.

The CHAIRMAN: Shall the bill as amended carry?

Carried.

Shall I report the bill as amended?

Agreed.

The CHAIRMAN: Bill 414, an Act respecting West Coast Transmission Company Limited.

Mr. FAIREY: Mr. Chairman, and gentlemen, this is a bill for the West Coast Transmission Company Limited which is, as I think members know, the company which is building a pipe line in northern British Columbia and in Alberta through the Vancouver district to transport national gas. In addition to that, the Pacific Northwest Pipe Line System of the United States has made application to the United States Federal Power Commission for permission to import 200 million cubic feet daily of gas which is to be sold in the United States. This pipe line which was originally intended to be a 24-inch pipe line would not be economically sound unless this gas was

to be sold not only in the Vancouver and lower mainland area of British Columbia but also in the northwestern United States. That seems to be assured. For that reason, the company feels that it will be necessary to increase the size of the pipe, probably to a 30 inch pipe, and perhaps have even an additional pipe line. In order to have a little more freedom in their capitalization, it is suggested by this bill that they be given power to change the capital stock from 5 million shares to 25 million shares. The reason for this is to give them a little more freedom in the transfer of shares. It is not intended that the total value of the capitalization will be increased.

If there are any more questions in respect to this I think that Mr. Merriam will be in a position to answer them.

Mr. MERRIAM: I can only assure the members of the committee that the aggregate value placed on the 5 million no par value shares when the company was incorporated in 1949 is not being changed. We filed an affidavit at that time indicating the aggregate value, to be $50 million. That amount remains unchanged.

Mr. MONTGOMERY: It gives a wider distribution?

Mr. MERRIAM: Yes.

The CHAIRMAN: Shall the preamble carry?

Carried.

Shall clause 1 carry?

Carried.

Shall the title carry?

Carried.

Shall the bill carry without amendment?

Carried.

Shall I report the bill without amendment?

Carried.

The CHAIRMAN: The committee stands adjourned to the call of the chair.

HOUSE OF COMMONS

Second Session—Twenty-second Parliament

1955

STANDING COMMITTEE

ON

RAILWAYS, CANALS AND TELEGRAPH LINES

Chairman: H. B. McCULLOCH, ESQ.

MINUTES OF PROCEEDINGS AND EVIDENCE

No. 9

BILL No. 416 (Letter C-14 of the Senate),
An Act to incorporate Consolidated Pipe Lines Company.

BILL No. 453 (Letter I-15 of the Senate),
An Act to incorporate Baudette and Rainy River Municipal Bridge Company.

THURSDAY, JUNE 16, 1955

WITNESSES:

Mr. Hugh O'Donnell, Q.C., Parliamentary Agent, representing the Consolidated Pipe Lines Company; and Mr. Gregory J. Gorman on behalf of Alastair Macdonald, Q.C., Parliamentary Agent for the Baudette and Rainy River Municipal Bridge Company.

EDMOND CLOUTIER, C.M.G., O.A., D.S.P.
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1955

59371—1

STANDING COMMITTEE

ON

RAILWAYS, CANALS AND TELEGRAPH LINES

Chairman: H. B. McCulloch, Esq.,
and Messrs.

Balcom
Barnett
Batten
Bonnier
Boucher (*Chateauguay-Huntingdon-Laprairie*)
Buchanan
Byrne
Campbell
Carter
Cauchon
Clark
Deschatelets
Dupuis
Ellis
Follwell
Gagnon
Gauthier (*Lac St. Jean*)
Goode
Gourd (*Chapleau*)
Green
Habel
Hahn
Hamilton
Hamilton (*Notre Dame de Grace*)
Hamilton (*York West*)
Hanna
Harrison
Healy
Herridge
Hodgson
Holowach
Hosking
Howe (*Wellington-Huron*)
Johnston (*Bow River*)
Kickham
Lafontaine
Langlois (*Gaspe*)
Lavigne
Leboe
MacNaught
McIvor
McWilliam
Meunier
Montgomery
Murphy (*Lambton West*)
Murphy (*Westmorland*)
Nesbitt
Nicholson
Nickle
Nixon
Nowlan
Purdy
Ross
Small
Stanton
Viau
Villeneuve
Vincent
Weselak

E. W. Innes,
Clerk of the Committee.

REPORT TO THE HOUSE

FRIDAY, June 17, 1955.

The Standing Committee on Railways, Canals and Telegraph Lines begs leave to present the following as its

SIXTEENTH REPORT

Your Committee has considered the following Bills and has agreed to report them without amendment:

Bill No. 416 (Letter C-14 of the Senate), intituled: "An Act to incorporate Consolidated Pipe Lines Company".

Bill No. 453 (Letter I-15 of the Senate), intituled: "An Act to incorporate Baudette and Rainy River Municipal Bridge Company".

A copy of the evidence taken in respect of the said Bills is appended.

All of which is respectully submitted.

H. B. MCCULLOCH,
Chairman.

59371—1½

MINUTES OF PROCEEDINGS

THURSDAY, June 16, 1955.

The Standing Committee on Railways, Canals and Telegraph Lines met at 11.30 o'clock a.m. The Chairman, Mr. H. B. McCulloch, presided.

Members present: Messrs. Balcom, Barnett, Bonnier, Buchanan, Campbell, Gourd (*Chapleau*), Green, Habel, Hamilton (*Notre Dame de Grace*), Healy, Herridge, Holowach, Kickham, Lafontaine, Leboe, McCulloch (*Pictou*), Meunier, Murphy (*Westmorland*), Nixon, Purdy, Small, Viau, and Weselak.

In attendance: Mr. H. P. Cavers, M.P.; Mr. William Benidickson, M.P.; *Representing Consolidated Pipe Lines Company:* Mr. Hugh O'Donnell, Q.C., Parliamentary Agent, and Mr. Charles Stanley Robinson, Director and General Manager, of Consolidated Gathering Systems, Alberta. *Representing Baudette and Rainy River Municipal Bridge Company:* Mr. Gregory J. Gorman, on behalf of the Parliamentary Agent, Mr. Alastair Macdonald, Q.C..

On motion of Mr. Viau,

Resolved,—That the committee print 600 copies in English and 200 copies in French of its Proceedings on Bills Nos. 416 and 453.

The Committee proceeded to the consideration of Bill No. 416, (Letter C-14 of the Senate), intituled: "An Act to incorporate Consolidated Pipe Lines Company".

Mr. Cavers, sponsor of the bill, spoke briefly and introduced Mr. O'Donnell who in turn outlined the purposes of the bill.

The Preamble, Clauses 1 to 11 inclusive, the Title and the Bill were adopted.

The Chairman was ordered to report the Bill, without amendment.

The Committee then considered Bill No. 453 (Letter I-15 of the Senate) intituled: "An Act to incorporate Baudette and Rainy River Municipal Bridge Company".

Mr. Benidickson, sponsor of the bill, explained its purposes and, assisted by Mr. Gorman, answered questions thereon.

The Preamble, Clauses 1 to 23 inclusive, the Title and the Bill were adopted.

The Chairman was ordered to report the Bill, without amendment.

At 12.15 o'clock p.m., the Committee adjourned to the call of the Chair.

E. W. Innes,
Clerk of the Committee.

EVIDENCE

THURSDAY, June 16, 1955.
11:30 a.m.

Mr. VIAU: Mr. Chairman, I move that the committee print 600 copies in English and 200 copies in French of its Proceedings on Bills Nos. 416 and 453.

The CHAIRMAN: Is it the wish of the committee to have this number printed?

Carried.

The first bill to be considered is No. 416, (C.14 of the Senate) intituled "An Act to incorporate Consolidated Pipe Lines Company." Mr. Cavers?

Mr. CAVERS: Mr. Chairman and gentlemen: This bill stands in my name. On second reading I gave a general explanation of the bill, however, today I wish to introduce Mr. Hugh O'Donnell, Q.C., of Montreal who is the parliamentary agent, and who will be able to give a more satisfactory explanation of the bill than I was able to give.

The CHAIRMAN: Please come right up to the head table, Mr. O'Donnell.

Mr. Hugh O'DONNELL, Q.C.: Mr. Chairman, and gentlemen: This bill is virtually the same as three or four other bills which your committee has considered recently, such as the Westpur Pipe Line Bill, the S & M Pipeline Bill, and the Petroleum Transmission Company Bill. This bill is in the same terms and the applicants are asking for permissive authority to apply for permits to construct and operate, as the case may be, in the provinces of British Columbia, Alberta, Saskatchewan, Manitoba, and in the Northwest Territories. The rest of the bill is just as the other bills were. I would draw attention however to the fact that in clause 6 of the bill there is a provision which your committee has insisted upon for the past several years. It was Mr. Green, I think, who originally asked for it to be incorporated. So there is incorporated in this bill, as there was in some of the others which I happen to have, the provision that the main pipe line or lines for the transmission and transportation of gas and oil or any liquid or gaseous products or by-products thereof, shall be located entirely within Canada.

The other provisions are in the very same terms as the other bills which I mentioned. The purpose of the applicants is to obtain authority to construct and operate gathering or feeder lines. There is no intention on the part of the applicants to enter into competition with Trans Canada or any of the main line operators.

The applicants feel that through the years there will be many, many cases where short lines from an oil or gas field would be required to bring the oil or gas as the case may be into a refinery which has been or which is to be erected, or to bring it into a main pipe line for transmission.

In this case, at the moment, there is a refinery being built at Dawson Creek, British Columbia, and there is an oil field at Sturgeon lake, Alberta; and the applicants have been in communication with the people who are erecting the refinery with a view to constructing a pipe line from the oil field. I merely mention this as an instance of the type of thing which the applicants would hope to be able to carry out through the years.

If one looks at the pipe line map of the United States, it is a veritable cobweb of crisscrossing pipe lines of varying lengths and sizes.

Generally speaking that is about all I have to say unless the committee is interested in some particular feature.

The applicants, it might be interesting to note, are all Canadians. Norman Alexander Dutton whose name is mentioned in the bill is a gentleman who is more familiarly known to the committee as "Red" Dutton, the famous old hockey player who is a contractor of very considerable competence and who through the years has done many million dollars worth of work. He is thoroughly able and competent. Associated with him is Mr. Ralph Will who, incidentally, is president of the Alberta Gas Trunk Line Company Limited which is the company that is to gather in Alberta the gas which will ultimately be put through the Trans Canada Pipe Line. It will take the gas to the Alberta-Saskatchewan boundary and there turn it over to the Trans Canada Line.

Mr. William S. Knode is an engineer and the general manager of the Alberta Gas Trunk Line company, and Mr. Charles Stanley Robinson is a director and manager of an Alberta company called the Consolidated Gathering Systems Limited, which is registered to do business in all the western provinces.

By virtue of section 10A of the Pipe Lines Act, if a provincial or an international boundary is to be crossed, the company must have a federal charter.

Mr. Robinson is also a director of Calnorth Oil Limited, but there is no conflict between this company and Trans Canada. As a matter of fact, they are cooperating very closely. With the president and general manager, Mr. Will, and Mr. Knode, of the Alberta Gas Trunk Line Company, who are among the present applicants; it is obvious that there would be no conflict.

The other applicant is Mr. Patrick Morgan Mahoney, barrister and solicitor. And associated with the actual applicants are Mr. C. R. Walker, president of Merrill Petroleums, and Mr. Max Bell, president of Calvan Consolidated Oil Company, which has recently been sold to Canadian Petrofina. "Calvan" is said to be the largest owner of the gas at Provost. These people form a well-balanced team, as Mr. Cavers said in the House, of engineers, contractors, and people experienced in the oil and gas business, and as I said they are all Canadians. Therefore, in the light of the very extensive developments in this industry which are taking place, and which are largely controlled by, or in the hands of persons, other than Canadians, they as a Canadian group consider that they should get in on some of this business. Through the years there will be plenty of it at their disposal on the basis of comparison with the volume which exists in the United States. Mr. Robinson was previously with the well-known financial firm of Osler, Hammond & Nanton, and is thoroughly familiar with the oil and gas business and with the financing of it, so there will be no difficulty, according to my instructions, in acquiring any finances which may be needed to carry out any of these individual projects. That is all I have to say, unless the committee would like to have some further comment.

The CHAIRMAN: The committee might like to ask you some questions.

Mr. LAFONTAINE: You have covered everything!

The CHAIRMAN: Shall the preamble carry?

Carried.

Shall clause 1 carry?

Carried.

Shall clause 2 carry?

Carried.

Shall clause 3 carry?
Carried.

Shall clause 4 carry?
Carried.

Shall clause 5 carry?
Carried.

Shall clause 6 carry?
Carried.

Shall clause 7 carry?
Carried.

Shall clause 8 carry?
Carried.

Shall clause 9 carry?
Carried.

Shall clause 10 carry?
Carried.

Shall clause 11 carry?
Carried.

Shall the title carry?
Carried.

Shall the bill carry?
Carried.

Shall I report the bill without amendment?
Carried.

Mr. O'DONNELL: Thank you, Mr. Chairman, and gentlemen.

The CHAIRMAN: The next bill to be considered is Bill No. 453—Letter I-15 of the Senate—entitled an Act to incorporate Baudette and Rainy River Municipal Bridge Company. Mr. Benidickson is the sponsor so I will therefore call Mr. Benidickson.

Mr. W. M. BENIDICKSON, M.P.: Mr. Chairman and gentlemen, I have the privilege of sponsoring this bill because the project is one which my constituents on the Canadian side of the Rainy River have hoped for for a great number of years. During my ten years as member of parliament for the area I have made a number of attempts to see if it were possible to obtain public funds to construct a toll-free bridge and I know that similar efforts have been made in the hope that it might be appropriate for the provincial government to make a contribution as part of their highway development. These efforts have not been successful and as a result it has appeared the most likely way to proceed with this project is to follow the pattern which has been followed in connection with many other international bridges: municipal revenue bonds are sold in the United States and after they are retired as the result of the earnings from tolls the bridge reverts to Canadian and American public ownership.

You, gentlemen, will be familiar with the bill which received your approval this session to link up Sault Ste. Marie, Michigan, with Sault Ste. Marie, Canada. While I have not drafted the present bill I am assured that it

is similar to that bill. The financing will be similar, and the terms of the bond issue, the interest arrangements and so on are again similar. Though no Canadian investment will be made in this bridge I would think that the area around Rainy River would benefit as much as or probably more than the area round Baudette municipality although Baudette municipality is really sponsoring the bill and arranging the financing through the sale of bridge bonds.

The nearest international bridge is at Fort Francis which is about 65 miles east of Rainy River, and the nearest international entry point west is about 100 miles to the west in Manitoba.

Rainy River, as you can see on the map on our wall, is on the Lake of the Woods in the southwest corner of Ontario and members of the committee will appreciate that we have quite a strategic position there on the International Boundary; a great influx of tourists comes into our territory from both central and western United States.

At the moment anyone who desired to go from Rainy River to Winnipeg would have to travel east 65 miles to Fort Francis and then go back west and north over a highway connecting Fort Francis and Kenora with Winnipeg, or else take the same road east to Fort Francis and go across the international bridge there and then back west on the American highway which parallels the boundary; or there is for six months of the year a small ferry which provides accommodation for six cars. I am told that a number of people have some doubts about using that ferry.

The intentions concerning this bridge have been advertised in the usual way for a number of weeks not only in the local papers but in the Canada Gazette and during the period publicity was being given to the project I personally received no adverse comments or correspondence and I know of no criticism which has been received by any one else.

Mr. GREEN: How wide is the river?

Mr. BENIDICKSON: The river is about 1,000 feet wide at the point where it is suggested the bridge should be built, and with its approaches the bridge would probably be about 1,200 feet in length. I am told the estimated cost is about $600,000. There is a railway bridge near the proposed location for this bridge but no interference will develop. The Canadian National Railways have not been willing that their bridge should be enlarged to provide for the vehicular traffic and have even looked unfavourably on pedestrians going across the railway bridge.

Mr. VIAU: What will be the height of the bridge?

Mr. BENIDICKSON: I am afraid I cannot answer that. I know something about the depth of the water at the site—the deepest point is about 30 feet.

Mr. GREEN: Is the river navigable?

Mr. BENIDICKSON: It used to be the route of the old fur trade from Port Arthur up through to Kenora, Winnipeg river and so on. But there is a power plant now at Fort Francis which serves the Ontario-Manitoba paper company and there is now no commercial traffic because of the present highway facilities.

Mr. HAMILTON (*Notre Dame de Grace*): Can the witness tell me whether Mr. Vennes, the Postmaster or Mr. Olinyk, the Customs Officer, are employees of the Canadian government?

Mr. BENIDICKSON: Yes, they both are. The chief industry of the town of Rainy River is the C.N.R. and as this is an entry point we have customs and immigration officials; there are also a few merchants serving the agricultural area, but the population is only about 1,300. Mr. Olinyk is mayor of Rainy River and Mr. Vennes—one of the Messrs. Vennes—is a member of the council. One of the applicants, Mr. Ramage, is head of the Chamber of Commerce, and Mr. McQuarrie has been for a great number of years chairman of the Rainy

River Bridge committee which has been trying to develop this project. It is intended that the Canadian Corporation, with your approval, would be 90 per cent owned by the town of Rainy River and these men are applicants simply in their official capacities and would have no personal financial interest in the bridge company.

Mr. HAMILTON: Actually there is an interesting point here, when we begin to get members of the Civil Service of Canada applying for the incorporation of a bridge company and becoming directors of an incorporated company.

Mr. HABEL: They are citizens of this country, I believe—

Mr. HAMILTON: I do not as yet imply any criticism. I said this is an interesting point. The criticism may come, but let us not debate it until such time as it is made.

The next point which might be raised in that connection is this: I presume it would be possible for these people to be paid remuneration as directors of the corporation?

Mr. BENIDICKSON: I think it would be possible, Mr. Hamilton, but I recall that the same point was raised in connection with the Sault Ste. Marie bridge and assurances were given that there was no intention that that would be done. It is expected that just as soon as the stock is transferred from the provisional applicants that the municipality, owning 90 per cent of the stock, would have the power to make any decision as to remuneration. This would be in the hands of the municipal council and certainly the practice has been in connection with other bridges that no salaries are paid except for time serviced by those who are actually managing the bridge, taking the tolls and so on.

Mr. HAMILTON: Is there any provision whereby members of the Civil Service of Canada are not allowed to accept other employment? Is that not your understanding of the position?

Mr. BENIDICKSON: I am not too familiar with that. I do recall that the point was raised in connection with the local municipal election here and I think it was due to the fact that in the case of the public office which was being considered that the possible candidate for mayorality of a city as large as this would have to resign from his post, because it would occupy a good deal of his time. I do not think that in these small communities the question has ever been raised. It is simply something which flows from the unpaid public services which these men are giving as members of the Chamber of Commerce and as members of the Municipal Council of the town of Rainy River. I do not believe salaries are paid to Rainy River councillors. They may get a nominal amount for expenses.

Mr. HAMILTON: I do not know whether there is any precedent for this particular situation. It seems to me—and if the hon. member is looking for any criticism of the situation, here is that criticism—as if we may be concurring in something which in the first place is contrary to the requirements of the Civil Service Act and in the second place would be setting a precedent which would be open to considerable question. I have nothing except admiration for anyone, civil servants or others, who choose to spend a portion of their free time in the service of their municipality, or in welfare services or anything else, but I think we have reached a point at which when a civil servant, who presumably should be in a position to exercise his function without any bias whatsoever comes before us as an applicant for an act of incorporation of a company, perhaps that civil seravnt may be putting himself in a position which is open to some question.

For example I think it is obvious to all of us that if another civil servant—say, the Deputy Minister of the Department of Transport—came before us as an applicant for the incorporation of a pipe line we should view the situation

with some reservations—at least I certainly would—and I can think of a great many other instances of a similar nature. This is exactly the same thing in principle, though not to the same degree. A customs officer who presumably may be one of the people engaged in handling entries over this bridge, since it runs between the United States and Canada—

The CHAIRMAN: Mr. Hamilton, is it not true that if a civil servant takes a remunerative post under this he would have to resign his position?

Mr. HAMILTON: That would be my understanding. Yet here we are being asked to authorize the incorporation of a company of which a director is a civil servant and with regard to which it is openly stated he is a civil servant.

Mr. HABEL: This is a preliminary organization?

Mr. BENIDICKSON: One civil servant is, of course, an applicant because he is the mayor of his town. It would be most unusual if the town were to become the owners of 90 per cent of the stock of this company if the mayor were not one of these representative citizens who would apply to us for incorporation.

The CHAIRMAN: He would not have to resign if he was not receiving a salary?

Mr. BENIDICKSON: No. Mr. Gorman is the parliamentary agent and has drafted this bill. He points out to me that it is obvious that no profits can go as a sideline to these civil servants. Clause 4, subclause 2 reads:

> No dividends or profits shall be paid to or received by the said shareholders or any of them directly, or indirectly, and all operating or other profits shall, after payment of carrying charges, be used for the payment and retirement of any bonds, bonded indebtedness or other securities of the Company.

I think the honorary nature of their association with this project is covered by clause 4, subclause 2.

Mr. NIXON: As far as I can see, this bill is drafted almost exactly the same as the one drafted for the Sault Ste. Marie bridge. At that time I remember sponsoring the bill in the House of Commons. When it came before this committee it was very carefully gone into. The men whose names appear in clause 1 do not receive any remuneration at all; it is purely a preliminary arrangement, according to law, for tax agreement or arrangements. That is why it has to be done in this way. I would like to support this bill. As I said before, the Sault Ste. Marie bridge bill was similar, if not identical. It was carefully gone over then. I see no reason for any lengthy discussion on this bill.

Mr. MURPHY (*Lambton West*): We do not even know if the postmaster is a civil servant. There are only 1,300 people in the town. I doubt whether the postmaster is a civil servant.

Mr. HAMILTON (*Notre Dame de Grace*): The customs officer is a civil servant, I hope.

Mr. HERRIDGE: I do not think Mr. Hamilton's point is very well taken because I know of a number of federal and provincial civil servants who are officers in public companies or members of councils, mayors or aldermen who are officers of companies. I know it is quite general in British Columbia. I have never heard of the practice being questioned before.

The CHAIRMAN: Perhaps you would like to hear from Mr. Gorman.

Mr. GREGORY J. GORMAN (*Council for Alastair Macdonald, Q.C., Parliamentary Agent*): Mr. Chairman and honourable members. I have very little to add to what Mr. Benidickson has said about this bill. I shall be very pleased however, to attempt to answer any questions that hon. members may have in connection with any of the provisions of the bill as drafted. I should

perhaps say it is in exactly the same form as the St. Mary's River Bridge Bill with the exception of one section which was in that bill but which is not in this one, and that section dealt with a railway bridge owned by what they call the St. Mary's River Company which is actually a subsidiary of the C.P.R. and the Ferry Company. There were special provisions dealing with those two items in that bill and in the Act as finally passed, because there was a special problem there which does not exist here.

The bridges are being financed in the same way, and the bill is in the form which has in the past received the approval of the financial houses who will be underwriting the bonds. They are financial institutions having headquarters in New York City. The form of the bill both as submitted to this parliament and as passed by congress in the United States is in line with what they consider necessary for the protection of the bond holders. There have been a number of other bills, including the Act incorporating the company to build the bridge at Ogdensburg, which are also along similar lines. That, too, of course was an Act of this parliament passed, I think, two or three sessions ago.

Mr. WESELAK: I have one or two questions. I notice the capital stock is $1,500. It hardly seems sufficient to build a bridge.

Mr. GORMAN: That is the capital stock. The financing of the bridge itself will be done entirely through the issue of bonds, so that the amount set out as the value of the capital stock is purely nominal. As was explained by Mr. Benidickson, I think, it is expected that the total cost of the bridge will be about $600,000 and that will all be taken care of by the issue of bonds.

Mr. PURDY: I am going to ask the witness if the bridge costs $600,000 why is it necessary to issue up to $2 million in securities?

Mr. GORMAN: The figure of $2 million, sir, is an arbitrary one. It was inserted in the draft bill before we had the actual estimates of the cost of the bridge from the engineering firm who have been making a preliminary survey of the location and the cost. It was felt that we should insert a figure which erred on the side of excess rather than the other way. I think I can assure the committee, however, that certainly no greater issue of bonds will be made than is required for the actual cost of construction.

Mr. HOLOWACH: Do you anticipate receiving a grant from the federal government?

Mr. GORMAN: No, sir; this is to be financed entirely through the sale of bonds and there will be no grant from the federal government or from any other government authority other than the village of Baudette in Minnesota which is also a very small centre. I think the population is also 1,300. Their contribution to this project has been in underwriting the preliminary cost of traffic surveys and engineering reports and that sort of thing. They have done that on their own initiative and that has been and will be the only public contribution to the cost of the bridge.

Mr. LEBOE: Is there any possibility of an exodus, shall I say, from the one Canadian point to the United States point by virtue of the bridge being built, do you think? I mean, is there any possibility of Canadians eventually moving into the United States by virtue of the fact that they can go back and forth across the river so much easier?

Mr. GORMAN: Perhaps I should ask Mr. Benidickson to answer that question because he is much more familiar with the locality.

Mr. LEBOE: It has no real bearing—it is a question which just occurred to me.

Mr. BENIDICKSON: There is, of course, a very considerable traffic now, but in an awkward manner, between Rainy river and Winnipeg through the U.S.A. The stockyards are in Winnipeg. Rainy river is the centre of an agricultural area. They market cattle in Winnipeg and this will considerably reduce the length of the trip if they are using the highways. Similarly, if they were going south on a vacation they would now have to go east even although their ultimate destination might be west.

The CHAIRMAN: Any further questions? Shall the preamble carry?

Mr. GREEN: Shall we take it by clauses?

The CHAIRMAN: Clause 1.
Carried.

Clause 2.

Carried.

Clause 3.

Carried.

Clause 4.

Carried.

Clause 5.

Carried.

Clause 6.

Carried.

Clause 7.

Carried.

Clause 8.

8. The Company may, subject to the provisions of this Act,

(*a*) construct, maintain and operate a bridge across the Rainy River, in the province of Ontario, for the passage of pedestrians, vehicles, carriages and for any other like purpose, with all necessary approaches from a point in or near the village of Baudette, in the state of Minnesota, to a point in or near the town of Rainy River, in the province of Ontario, and may purchase, acquire and hold such real estate, including lands for sidings and bridge heads, and other equipment required for the convenient working of traffic to, from and over the said bridge as the Company thinks necessary for any of the said purposes; but the Company shall not commence the actual construction of the said bridge nor exercise any of the powers hereunder until an Act of Congress of the United States of America or other competent authority in the United States of America has been passed authorizing or approving the construction of such a bridge across the said river;

(*b*) acquire, maintain and operate, subject to Ontario highway traffic laws and requirements, buses across such bridge to carry passengers and personal luggage and effects to and from a terminal in the said town of Rainy River to and from a terminal in the said village of Baudette: Provided no such buses shall receive any passenger at any point in the town of Rainy River, Canada, and carry him or her to another point in the said town.

Mr. GREEN: Mr. Chairman, in clause 8 at the foot of the second page, it is mentioned that the construction of the bridge cannot be commenced until passed by the United States Congress.

Mr. BENIDICKSON: There has been stand by permissive legislation in the United States Congress for quite a number of years. I have quite a number of copies of the U.S. bills here. My understanding is that there is a basic bill in the United States Congress which authorizes this project as an international project, but in this bill there was a provision that the authority terminates if construction is not proceeded with within a certain number of years. From time to time that expiry date has been passed. The last time it was due to the Korean war and it was not possible to proceed with construction because of the difficulty in obtaining structural steel. One renewal was obtained, and it may be necessary to have a further renewal. It simply involves a very short congressional bill saying this is put back into full force and effect under the legislative enactment of some ears ago. I believe another application was made for this at this session of Congress and the people in Beaudette have assured us they anticipate no difficulty obtaining it.

The CHAIRMAN: Shall clause 8 carry?

Carried.

Clause 9.

9. The Company may

(*a*) expropriate and take any lands actually required for the construction, maintenance and operation of the bridge or may expropriate and take an easement in, over or through such lands without the necessity of acquiring a title in fee simple thereto after the plan of such lands has been approved by the Governor in Council; and all provisions of the *Railway Act* applicable to such taking and acquisition shall apply as if they were included in this Act; and all the provisions of the *Railway Act* which are applicable shall in like manner apply to the ascertainment and the payment of the compensation for or damages to land arising out of such taking and acquisition or the construction or maintenance of the works of the Company;

(*b*) in reduction of the damage or injury to any lands taken or affected by such authorized works, abandon or grant to the owner or party interested therein, any portion of such lands, or any easement or interest therein, or make any structures, works or alterations in or upon its works for such purposes; and if the Company by its notice of expropriation or some subsequent notice, prior to the first meeting of the arbitrators, specify its decision to take only such easement or undertake to abandon or grant such lands or easement or interest in lands, or to make such structures or works or alterations, the damages (including damages, if any, resulting from the change in the notice of expropriation) shall be assessed by the arbitrator or arbitrators appointed pursuant to the provisions of the *Railway Act,* in view of such specified decisions or undertaking, and the arbitrator or arbitrators shall declare the basis of their award accordingly, and such award, as well as such specified decision or undertaking of the Company, may be enforced by The Board of Transport Commissioners for Canada;

(*c*) enter into and upon any lands, buildings or structures proximate to the said bridge for the purpose of ascertaining the state of repair thereof, and for devising the best means of avoiding any possible damage which the execution of the authorized works might occasion thereto, and make upon or in connection therewith any works, repairs or renewals, for the purpose of preventing or mitigating any such damage, and the Company shall make compensation in the manner specified in the *Railway Act,* to all persons interested for

the damage sustained by them, if any, by reason of the exercise of the powers in this paragraph contained; and section 242 of the *Railway Act*, shall apply to the exercise of the powers in this paragraph granted so far as is necessary to enable the Company to carry them into effect.

Mr. HERRIDGE: Could you tell us to what extent under subclause (c) private interests might be disturbed. What would be the extent of expropriation on the Canadian side of this bridge?

Mr. BENIDICKSON: In so far as Canada is concerned, I am advised that the town of Rainy River quite a number of years ago acquired land, which I am told will be really all that is necessary in order to provide for the approaches for the bridge on the Canadian side. It is usual, however, to have a clause of this kind in the bill in the event that it is found at some time in the future that the non professional people did not provide for all the land that engineers make now say is necessary.

The CHAIRMAN: Shall clause 9 carry?

Carried.

Clause 10.

10. Subject to the provisions of the *Railway Act*, the Company may charge tolls for the use of the said bridge, approaches and facilities and may regulate the tolls to be charged, and the rates of toll shall be so fixed and adjusted as to provide a fund sufficient to pay the reasonable cost of maintaining, repairing and operating such bridge, approaches and facilities, and to provide a sinking fund sufficient to amortize the cost of such bridge, approaches and facilities, including reasonable interest and financing cost, as soon as possible under reasonable charges, but within a period of not to exceed forty years from the completion thereof.

Mr. GREEN: Clause 10 provides for the imposition of tolls. Does the Board of Transport Commissioners have an authority over these tolls?

Mr. GORMAN: Yes. Section 42 of the *Railway Act* is applicable. The Board of Transport Commissioners must approve the rate of tolls to be charged.

The CHAIRMAN: Shall clause 10 carry?

Carried.

Clause 11.

Carried.

Clause 12.

Carried.

Clause 13.

Carried.

Clause 14.

14. The Company may make agreements with any company, body or commission, incorporated or created under the laws of Canada or under the laws of the United States of America, or the state of Minnesota respecting the financing, controlling, construction, maintenance and use of the said bridge and its appurtenances and acquiring the approaches and lands therefor in the state of Minnesota, as well as in Canada, and may, subject to the provisions of this Act, unite with any such company, body or commission in financing, controlling, building, working, managing, maintaining and using the said bridge, terminals and approaches, and may amalgamate with any such company, body or commission on

such terms and conditions as may be agreed upon subject to such restrictions as the directors deem fit, and may assign, transfer and convey to any such company, body, or commission at any time before the completion of the said bridge such part, if any, of the said bridge as may then have been constructed, and all rights and powers acquired by the Company, including those rights and powers acquired under this Act, and also all the franchises, surveys, plans, works, plant, machinery and other property to it belonging, upon such terms and conditions as may be agreed upon by the directors: Provided that such agreement or agreements, amalgamation, union, assignment, transfer or conveyance shall have been first approved by the holders of two-thirds of the shares at a special general meeting of the shareholders, duly called for the purpose of considering it, at which meeting shareholders representing at least two-thirds in number of the subscribed shares of the Company are present, or represented by proxy, and that such agreement or agreements, amalgamation, union, assignment, transfer or conveyance shall also have received the sanction of the Governor in Council and certified copies thereof shall be filed forthwith in the office of the Secretary of State for Canada.

Mr. GREEN: Could we have a reason for clause 14? It appears to anticipate some sort of agreement with the Americans?

Mr. GORMAN: The scheme under which the financing is done requires the American authority, in this case, the town of Baudette, Minnesota, to issue bonds. The town of Baudette is empowered under an Act of the state of Minnesota—I can give you the reference here in a moment—to issue the bonds and to collect tolls, and is given the power similar to those given to the company under this bill. The town of Baudette is also permitted to enter into amalgamation and other agreements with the authority to be set up on the Canadian side which is provided for in this bill.

The clause to which you refer which enables this company to enter into an agreement with, in this case the town of Baudette in order to operate the bridge. In the case of the St. Mary's river bridge there was a similar provision but in that case the United States authority was the International Bridge Authority of Michigan which is a special body set up for the purpose of building and operating international bridges.

Mr. HOLOWACH: What assurance is there that the equity in this company will be held by Canadians in the best interests of Canada? According to section 14 I understand that the company can "assign, transfer and convey to any such company, body, or commission at any time before the completion of the said bridge, such part, if any, of the said bridge as may then have been constructed, and all rights and powers acquired by the company . . ." This company has the right of assigning all such powers to another company if it so wishes. Is there no assurance that the equity in this company will be held by Canadians?

Mr. GORMAN: That, I think, will have to be provided for in the agreement to be entered into between the two companies, between this company and the United States authority. The final protection, of course, is that at the expiry, when the bonds have been paid off, that part of the bridge which is in Canada will revert to the Crown in the right of Canada or whatever body is designated by the Crown to take title to it.

Mr. HOLOWACH: In other words, there is no definite assurance that this company will remain in Canadian hands. It could eventually be transferred to American interests. Is that right?

Mr. GORMAN: I suppose there is that possibility. The safeguard would have to be in the fact that it is intended that 90 per cent will be held by the town of Rainy River in Ontario and they will look after their own interests in that respect.

The CHAIRMAN: Shall clause 14 carry?

Carried.

Shall clause 15 carry?

Carried.

Clause 16?

Carried.

Clause 17?

Carried.

Clause 18?

Carried.

Clause 19.

19. When the corporate obligations and stock of the Company and of any of the companies or bodies mentioned in sections 14, 15, 16, and 17, with which the Company shall join or unite in the construction of said bridge have been retired, in the manner prescribed in their by-laws, then such bridge and the approaches thereto and all appurtenant structures, property rights and franchises, so far as the same are located within the United States of America, shall be conveyed by the Company, its successors and assigns without cost or expense to the state of Minnesota or to such municipality or agency of the state of Minnesota as the legislature of said state may designate, and so far as the same are located within Canada shall be conveyed, without cost or expense to Canada or to such province, municipality or agency thereof as the Governor in Council may designate, and all rights, title and interest of the Company, its successors and assigns, in such bridge and the approaches thereto and all appurtenant structures, property, property rights and franchises, so far as the same are located within Canada, shall then cease and determine.

Mr. GREEN: Does clause 19 have the effect of bringing about the transfer of the part of the bridge which is in Canada either to the dominion government or the provincial government or some municipality when the bonds have been paid off ?

Mr. GORMAN: Yes, sir, and that is the section which makes that provision.

Mr. GREEN: The bridge will then be, like any other international bridge, owned by the two governments?

Mr. GORMAN: Yes.

The CHAIRMAN: Shall clause 19 carry?

Carried.

Clause 20?

Carried.

Clause 21?

Carried.

Clause 22.

22. (1) If available in Canada, Canadian labour and materials to the extent of at least fifty per centum of the cost thereof shall be used in the construction of the said bridge and verification of the fulfilment

of this requirement shall be supplied the Department of Labour of Canada by a certified statement to it from the Company or its agent at the end of each calendar month during construction.

(2) The *Fair Wages and Hours of Labour Act* shall apply to labour from Canada employed by the Company.

Mr. HERRIDGE: This *Fair Wages and Hours of Labour Act* is an Act of the legislature of Ontario?

Mr. BENIDICKSON: I think because it is an international bridge that it comes under federal legislation. A side note refers to revised statutes 1952, chapter 108. I would think that would be a federal statute because it is an international project.

The CHAIRMAN: Shall clause 22 carry?

Carried.

Clause 23?

Carried.

Shall the title carry?

Carried.

Shall the bill carry?

Carried.

Shall I report the bill without amendment?

Carried.

The CHAIRMAN: Thank you gentlemen. The committee is adjourned until the call of the chair.

HOUSE OF COMMONS

Second Session—Twenty-second Parliament

1955

STANDING COMMITTEE

ON

RAILWAYS, CANALS AND TELEGRAPH LINES

Chairman: H. B. McCULLOCH, ESQ.

MINUTES OF PROCEEDINGS AND EVIDENCE

No. 10

BILL 449

An Act to amend the Transport Act

TUESDAY, JUNE 28, 1955

WITNESSES:

Mr. John A. D. Magee, Executive Secretary, Canadian Trucking Associations; Mr. Hugh E. O'Donnell, Q.C., Counsel, Canadian Railways Company; Mr. John L. O'Brien, Q.C., Counsel, Canadian Pacific Railway Company; Mr. D. H. Jones, Counsel, Great Northern Railway Company; Mr. H. E. B. Coyne, Q.C., Counsel, Irish Shipping Limited and Saguenay Terminals Limited.

EDMOND CLOUTIER, C.M.G., O.A., D.S.P.
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1955

59664—1

STANDING COMMITTEE

ON

RAILWAYS, CANALS AND TELEGRAPH LINES

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and

Messrs.

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Batten
Bonnier
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Buchanan
Byrne
Campbell
Carrick
Carter
Cauchon
Cavers
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Deschatelets
Dupuis
Ellis
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Gauthier (*Lac-Saint-Jean*)
Goode
Gourd (*Chapleau*)
Green
Habel
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Hamilton (*Notre-Dame-de-Grace*)
Hamilton (*York West*)
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Harrison
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Lafontaine
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Meunier
Montgomery
Murphy (*Lambton West*)
Murphy (*Westmorland*)
Nesbitt
Nicholson
Nickle
Nixon
Nowlan
Purdy
Ross
Small
Stanton
Viau
Villeneuve
Vincent
Weselak

E. W. Innes,
Clerk of the Committee.

ORDER OF REFERENCE

WEDNESDAY, June 22, 1955.

Ordered,—That the following Bill be referred to the said Committee:

Bill No. 449, An Act to amend the Transport Act.

THURSDAY, June 23, 1955.

Ordered: That the name of Mr. Carrick be substituted for that of Mr. MacNaught; and

That the name of Mr. James be substituted for that of Mr. Balcom; and

That the name of Mr. Cavers be substituted for that of Mr. McWilliam; and

That the name of Mr. Hansell be substituted for that of Mr. Leboe on the said Committee.

TUESDAY, June 28, 1955.

Ordered,—That the name of Mr. Cameron (*Nanaimo*) be substituted for that of Mr. Campbell on the said Committee.

Attest.

LEON J. RAYMOND,
Clerk of the House.

59664—1½

MINUTES OF PROCEEDINGS

TUESDAY, June 28, 1955.

The Standing Committee on Railways, Canals and Telegraph Lines met at 11.30 o'clock a.m. this day. The Chairman, Mr. H. B. McCulloch, presided.

Members present: Messrs. Barnett, Batten, Bonnier, Byrne, Cameron (*Nanaimo*), Carrick, Carter, Cavers, Deschatelets, Gourd (*Chapleau*), Green, Habel, Hahn, Hamilton (*Notre-Dame-de-Grace*), Hamilton (*York West*), Harrison, Hansell, Healy, Herridge, Hosking, Howe (*Wellington-Huron*), Kickham, Lafontaine, Langlois (*Gaspe*), Lavigne, McCulloch (*Pictou*), Montgomery, Murphy (*Lambton West*), Nicholson, Purdy, and Stanton.

In attendance: *For the Department of Transport*: Honourable George C. Marler, Minister of Transport; Mr. F. T. Collins, Comptroller and Secretary, and Mr. G. A. Scott, Director of Economics.

For Canadian Trucking Association Inc.: Mr. John A. D. Magee, Executive Secretary, and Mr. William C. Norris, President, both of the Canadian Trucking Associations; Mr. Camille Archambault, Chairman, Agreed Charges Committee; Mr. J. O. Goodman, General Secretary, Automotive Transport Association of Ontario.

For the Province of Manitoba: Mr. C. D. Shepard, Q.C., Counsel, and with him Mr. V. M. Stechishin, Manager, Manitoba Transportation Commission.

For the Canadian National Railways Company: Mr. Hugh E. O'Donnell, Q.C., Counsel and Mr. A. H. Hart.

For the Canadian Pacific Railway Company: Mr. John L. O'Brien, Q.C., Counsel, and Mr. Gordon Miller.

For the Great Northern Railway Company: Mr. D. H. Jones, Counsel.

For the Canada Steamship Lines Ltd.: Mr. D. K. MacTavish, Q.C., Counsel, and Mr. R. S. Paquin, Assistant Freight Traffic Manager.

For Irish Shipping Limited and for Saguenay Terminals Limited: Mr. H. E. B. Coyne, Q.C., Counsel and Mr. Jean Brisset Q.C., Counsel.

The Committee proceeded to the consideration of Bill No. 449, An Act to amend the Transport Act.

On motion of Mr. Lafontaine,

Resolved,—That the Committee print 750 copies in English and 250 copies in French of its proceedings in respect of Bill No. 449.

Mr. Magee, on behalf of Canada Trucking Associations, began the reading of a prepared submission on agreed charges.

At 1.10 o'clock p.m., the Committee adjourned until 2.30 o'clock p.m. this day.

AFTERNOON SITTING

The Committee resumed at 2.30 o'clock p.m., the Chairman, Mr. H. B. McCulloch, presiding.

Members present: Messrs. Barnett, Batten, Bonnier, Byrne, Cameron (*Nanaimo*), Carrick, Carter, Cavers, Deschatelets, Ellis, Gauthier (*Lac-Saint-Jean*), Gourd (*Chapleau*), Green, Habel, Hahn, Hamilton (*York West*),

Harrison, Hansell, Healy, Herridge, Hosking, Howe (*Wellington-Huron*), James, Kickham, Lafontaine, Langlois (*Gaspe*), Lavigne, McCulloch (*Pictou*), McIvor, Meunier, Montgomery, Nicholson, Purdy, Ross, Stanton, Viau, and Villeneuve.

In attendance: Same as at morning sitting.

Mr. Magee completed the presentation of the submission of the Canadian Trucking Associations; he was questioned thereon and retired.

On motion of Mr. Hahn,

Resolved,—That the Appendices to the submission of the Canadian Trucking Association be incorporated in the record. (*See Appendices to this day's evidence*).

Mr. Hugh O'Donnell explained the position of the Canadian National Railways Company on the question of agreed charges; he was questioned thereon and retired.

At 5.50 o'clock p.m., the Committee adjourned until 8.00 o'clock p.m. this day.

EVENING SITTING

The Committee resumed at 8.00 o'clock p.m., the Chairman, Mr. H. B. McCulloch, presiding.

Members present: Messrs. Barnett, Bonnier, Byrne, Cameron (*Nanaimo*), Carrick, Carter, Cavers, Deschatelets, Gauthier (*Lac-Saint-Jean*), Gourd (*Chapleau*), Green, Habel, Hahn, Hansell, Healy, Herridge, Hosking, Howe (*Wellington-Huron*), James, Kickham, Lafontaine, Langlois (*Gaspe*), Lavigne, McCulloch (*Pictou*), McIvor, Meunier, Montgomery, Nicholson, Small, Stanton, Villeneuve, and Weselak.

In attendance: Same as at morning sitting.

Mr. O'Brien outlined the opinions of the Canadian Pacific Railway Company with respect to agreed charges; he was questioned thereon and retired.

Mr. O'Donnell was recalled, questioned briefly and retired.

Mr. Jones presented the position of the Great Northern Railway Company on Bill 449; he was questioned and retired.

Mr. Coyne, on behalf of Irish Shipping Limited and Saguenay Terminals Limited, began submission of argument concerning the bill under study.

At 9.50 o'clock p.m., the Committee adjourned until 11.30 o'clock a.m. Wednesday, June 29.

E. W. Innes,
Clerk of the Committee.

EVIDENCE

JUNE 28, 1955.
11.00 a.m.

The CHAIRMAN: Gentlemen, we have a quorum. We have for consideration Bill No. 449, an Act to amend the Transport Act. The Minister of Transport and his parliamentary assistant together with Mr. Scott of the Department of Transport are here to assist us in consideration of this legislation. Perhaps the minister wishes to say something. However, we will require a motion for printing.

Mr. LAFONTAINE: I will move, Mr. Chairman, that we print 750 copies in English and 250 copies in French of the proceeding relating to Bill 449.

The CHAIRMAN: All in favour?

Carried.

Hon. Mr. MARLER: You asked me, Mr. Chairman, if I had anything to say in connection with this bill, and I think that perhaps the only useful thing I could say to the committee in connection with it, is that I moved that the bill be referred to this standing committee so that associations such as the Canadian Trucking Associations and one or two other interests which are interested in the provisions of this bill could have the opportunity to appear before the committee and to make representations concerning the bill. I do not think any useful purpose would be served by my repeating what I said in the House with regard to the purposes of the bill. I think the committee would make more progress if, perhaps, we were to ask the representatives of the Canadian Trucking Associations if they would make such representations as they think appropriate.

Mr. CAVERS: Mr. Chairman and gentlemen, we have here today representing the Canadian Trucking Associations Mr. John Magee, the executive secretary; Mr. William C. Norris president of that association; Mr. Camille Archambault, chairman of the agreed charge committee and Mr. Goodman, general manager of the Automotive Transport Association of Ontario. I believe that Mr. Magee would like to make a representation to the committee.

Mr John Magee, Executive Secretary, Canadian Trucking Associations, Incorporated, called:

The WITNESS: Shall I proceed, sir?

The CHAIRMAN: Yes.

The WITNESS: Mr. Chairman, Mr. Minister and honourable members of the committee—

Mr. GREEN: We will not be able to hear you over here.

The WITNESS: I will try to speak louder, Mr. Chairman.

Mr. Chairman, Mr. Minister and honourable members of the committee, the Canadian Trucking Associations, the group which is here today, is led by the chairman of the board and our president, Mr. William C. Norris. Associated with me in the presentation of the submission I am about to make—it would be

desirable if all the members of the committee were to have a copy of the submission, Mr. Chairman. This is a rather formidable looking document, but it will take us approximately two hours and I hope no longer to present it.

Mr. HAMILTON (*York West*): Does the witness have copies of the report for distribution?

Mr. BARNETT: Are there copies of this submission available for the members of the committee?

Mr. CAVERS: I have not seen anything yet.

The WITNESS: We have copies here, Mr. Chairman.

Mr. BARNETT: I understand that some members have copies; I for one have not.

The WITNESS: With your permission copies will now be distributed.

Mr. Chairman, associated with me in the presentation of the submission I am about to make are two trucking associations officials who accompany me, Mr. Camille Archambault, director of Canadian Trucking Associations, the chairman of our agreed charge committee, and the assistant to the president and director of public relations of the Trucking Association of Quebec; and Mr. J. O. Goodman, an honourary life member of our board of directors, a member of our agreed charge committee and the general manager of the Automotive Transport Association of Ontario.

I might explain by way of introduction, Mr. Chairman, that the Canadian Trucking Associations Incorporated is the national federation of all of the provincial trucking associations in Canada: the Automotive Transport Association of B.C., the Alberta Motor Transport Association, the Saskatchewan Motor Transport Association, the Manitoba Trucking Association, the Automotive Transport Association of Ontario, the Trucking Association of Quebec, and the Maritime Motor Transport Association. All those associations are represented in the submission of this brief.

The membership of the seven provincial trucking associations which I have named, Mr. Chairman, approximates 7,000 trucking companies.

Canadian Trucking Associations appreciates the opportunity of placing before this committee its submission in respect to Bill 449. This legislation is almost identical to the draft legislation proposed on pages 47 and 48 of the 1955 report of the Royal Commission on Agreed Charges. The report, tabled in the House of Commons on March 23, was carefully studied by the association. On March 31, our president, Mr. William C. Norris, addressed a letter to the Minister of Transport on the subject. This letter, which appears with this submission as Appendix A, stated in part as follows:

"The railways are important to Canada and we are the first to admit it. Their welfare is a consideration which must be a paramount concern of the federal government. But it is not the only consideration. Canadian highway transport services are an indispensable component of our transportation system. They are essential to agriculture, business, industry, and to national defence. These essential highway transport services are now threatened by the unprecedented crisis of the Royal Commission recommendations. With all the force at my command, I respectfully sound the warning to you, and to your Cabinet colleagues, that the trucking industry, as we know it today, is endangered as never before by the recommendations of this commission."

The government has decided to proceed with the implementation of the commission's recommendations. In reaching its decision, the government has apparently decided that the royal commission was right when it said that the railways needed the legislation and that it was also right when it said that the trucking industry would not be caused vital damage by the legislation.

Certainly the trucking industry is going to suffer some damage as a result of the freer agreed charge rate-making permitted in the legislation

before this committee. Agreed charge rate-making is a competitive device directed against the trucking industry. It would not be fulfilling its function if it did not freeze the trucking industry out of the movement of freight traffic normally available to rail and truck carriers.

The question is the degree of damage which the trucking industry will suffer and the point at which the damage ceases to be merely the competitive misfortune of an individual truck operator and develops into decimation of whole segments of the industry.

Any number of shippers—among them, Canada's largest industries—could be persuaded to come before this committee to explain in detail why it is impossible for them to undertake their freight transportation exclusively by rail. This being the case, it would become a matter of concern to the public generally if the impact of an agreed charge onslaught by the railways on trucking operations between cities drastically curtailed, or eliminated, highway freight services.

One could hardly accuse the Royal Commission on Transportation, headed by Hon. W. F. A. Turgeon, of being concerned with the position of the trucking industry from any standpoint but the public interest. That commission, at page 94 of its report of February 9, 1951, stated as follows:

> The agreed charge if widely used could bind shippers to the railways for unrestricted periods of time by an agreement which would exclude the trucks from participating in the traffic of such shippers.
>
> This might prevent the growth of a form of transport which may be of great value to the commerce of the country. Two instances of the value of the trucks to Canada have occurred in recent years, the first during the last war, and the second during the recent railway strike. Any weapon which might seriously endanger or bring about the elimination of the trucking industry must be guarded with close restrictions.
>
> It is to be borne in mind that although their rates are regulated, considerable freedom is left to the railways in regard to competitive rates, and this freedom should not be impaired substantially. The object is to permit the railways to meet competition, not to destroy or eliminate it.

Agreed charges came into effect in the Transport Act, 1938, as a means of enabling the railroads to deal with the "unregulated" competition of trucking. The language of the Royal Commission on Transportation, in describing the agreed charge rate-making weapon, may be more appropriately used here than any assessment which Canadian Trucking Associations might contribute. The royal commission stated, at pages 94 and 95 of the 1951 report:

> The agreed charge method of rate making, even under the present practice, is contrary to well established principles of rate making under the Railway Act. It binds the shipper by agreement to ship all or an agreed portion of his goods by the carriers with whom he makes the agreement for a long period, usually for at least a year, and it gives the shipper a rate lower than the rate in the tariffs published under the Railway Act. This extraordinary procedure should be accompanied by the publicity and safeguards now required by the Transport Act. It must be remembered that the Railway Act now gives to the railways power to meet competition by the publication of competitive tariffs with a minimum of delay. The Transport Act adds to this power and empowers the railways to enter into agreed charges where the publication of competitive tariffs or special tariffs will not secure the object of the agreed charge. Such a power should not be exercised without close supervision. The procedure should not be simplified.

Canadian Trucking Associations has grave misgivings about the impact on the trucking industry of the legislation now before this committee. These misgivings are based not only on our own assessment of what can happen but on the considered views of the Turgeon Royal Commission on Transportation which warned in 1951, against almost identical legislation to that now before the committee.

Notwithstanding these misgivings, we do not intend to attack the principle of the recommendations of the Royal Commission on Agreed Charges. The underlying principle, as we understand it, is, as stated on page 36 of the report, that: " . . . I take the view that the object to be attained, as nearly as possible, is to set the railways free, but with the safeguard of certain precautions intended to preserve the rights of other interested parties."

Although we do not intend to attack the principle of the commission's recommendations, we are not able to agree with certain findings of the commission which underly the recommendations. These findings are:

1. The commission stated that there was "relative freedom from regulation" of highway transport by the provinces. This finding is difficult to understand. In addition to vehicle size, weight, and safety regulations, most of the trucking industry, like the railroads, is controlled in respect to routes on which it may operate and much of the industry is subject to rate control. A detailed examination of control and regulation of the industry is provided in Part II (pages 8 to 13, inclusive) of this submission.

2. The Royal Commission on Agreed Charges referred to high transport escaping the regulatory strait-jacket and reported that present regulation puts the railroads in an unfair position because it binds them almost as closely as it did in time of their monopoly. Again, this finding is difficult for us to understand. The evidence before the commission showed that the railroads' freedom to compete with the trucking industry is such that they can make competitive rates on the telephone. The shipper may actually receive competitive rates from the railways before the Board of Transport Commissioners knows anything about them.

Nor can there be any doubt that the railroads are free to deal, service-wise, with the competition of the trucking industry—and truck service, according to railroad studies, is their main competitive problem.

Control and regulation of the railroads in respect to competition is examined in Part III (pages 14 to 37, inclusive) of this submission.

3. The Royal Commission on Agreed Charges reported that the railways are in a "very adverse" financial condition and held the competition of the trucking industry to be at the root of this condition. Our analysis of the relevant statistics has convinced us that the commission accepted, in error, the railways' contention that the trucking industry was at the root of their financial problem. The decline in railroad tonnage has occurred almost entirely in the non-competitive sectors of their traffic. An examination of railroad traffic statistics is made in Part IV (pages 28 to 47, inclusive) of this submission.

4. The Royal Commission on Agreed Charges reported that the trucking industry was a prosperous industry—"more prosperous than the railway industry". This important conclusion undoubtedly conditioned the commission's outlook in deciding to break away from the 1951 Turgeon Royal Commission's warning against, and rejection of, legislation which, in substance, is now before this committee. From the trucking standpoint, the basis for examination of truck prosperity was the Dominion Bureau of Statistics Motor Carrier report for 1951. The report, which at the time of the hearings contained the latest information on the subject, was filed with the commission as an exhibit by Canadian Trucking Associations. We were not asked for

any analysis of the prosperity of the trucking and railway industries and we contributed none. Perhaps we should have anticipated that the question would be considered by the commission even if it was not discussed at the hearings. In any case, the evidence, according to our analysis, was that the railroads were more prosperous than the trucking industry and consequently that the trucking industry's ability to withstand an agreed charge onslaught was in question. The 1952 Motor Carrier report, released after the commission's hearings had ended, contains the latest available information and, compared with the railroad statistics, likewise shows that the railroads were more prosperous than the trucking industry.

The financial position of the trucking industry as compared with the railroads is examined in Part V (pages 48 to 56, inclusive) of this submission.

5. The Royal Commission on Agreed Charges reported that the legislation it recommended, now before this committee, cannot cause the trucking industry vital damage. In face of the grave warning in the 1951 report of the Royal Commission on Transportation and on the basis of evidence given by the railways to the Royal Commission on Agreed Charges we must respectfully disagree with this conclusion. It is our considered opinion that great damage will be done to the trucking industry. This question is examined in Part VI of our submission.

We submit that without violating the principle of setting the railroads free in regard to agreed charge ratemaking, the legislation before you should be amended to provide—and I am quoting from the 1955 Royal Commission report—"the safeguard of certain precautions intended to preserve the rights of other interested parties." Since it has been considered necessary that the water carriers—competitors of the railroads and of the trucking industry—be safeguarded with certain precautions in the legislation before you, we submit that it is basic to just and equitable treatment of our industry that the safeguard which you are going to give to the water carriers be given likewise to truck carriers.

We will submit an amendment by which this safeguard of certain precautions may be extended to the trucking industry. The amendment we propose is dealt with in Part VII (pages 66 to 74, inclusive) of this submission.

PART II

THE REGULATED TRUCKING INDUSTRY

The announced reason of the government in introducing the agreed charge legislation in 1938 was to put the railroads in a position to deal with the "unregulated" competition of the trucking industry. In the intervening period of sixteen years, a vast change has taken place in the regulatory position of the railroads' trucking competitors. The reasoning regarding "unregulated" trucking in 1938 has little if any, relationship to conditions today.

It is true that the trucking industry remains unregulated, except with regard to size, weight, and safety of the vehicles operated, in five of the provinces—Alberta, New Brunswick, Nova Scotia, Prince Edward Island, and Newfoundland. These five provinces account for a total of 7 per cent of the Canadian trucking industry's gross revenues, according to the Motor Carrier report of the Dominion Bureau of Statistics. In the provinces in which 93 per cent of the trucking industry's revenue is earned—Quebec, Ontario, Manitoba, Saskatchewan, and British Columbia—the industry operates within a complete regulatory framework, one that goes far beyond the questions of size, weight, and safety.

Allowing for the differences in operating characteristics of rail and truck transportation, control and regulation of the trucking industry in these provinces

in which it earns 93 per cent of its revenue bears a close resemblance to current railroad regulation in Canada. The main features of this regulation are the manner in which entry into the trucking field is controlled by provincial transport boards on the basis of public need (in the same way that the railroads, to obtain permission to extend a line, or build a new one, must prove to the Transport Board that there is public need for it); and (2) control of trucking rates. We have provided the committee with a summary of the main aspects of provincial truck control in appendix B of this submission.

Truck operators in Quebec, Ontario, Manitoba, Saskatchewan, and British Columbia, are controlled in respect to the routes on which they may operate. To start a new trucking operation or extend an existing one, the operator is required to appear before the provincial transport board to prove that there is public need for the service. Unless this need is proven, the new or extended trucking operation may not commence. This has not tended to create monopolies, as the existence of 15,000 highway trucking firms eloquently testifies. A majority of applications for extensions of permits or for new permits for a new operator have been granted.

Such rejections as have been made by the provincial transport boards have reduced the number of fly-by-night operators who are lured to attach themselves to our industry because of the ease of entry with a small capital outlay. We are competing with a railroad industry composed, in Canada, of two very large operators and a few smaller ones, and certainly it may be said that "here today, gone tomorrow" methods of operating and dealing with shippers are not characteristic of these railroads. Therefore, it is a competitive necessity with the trucking industry, in order to maintain good relations with shippers, to exclude fly-by-night operators. The stability and good name of the trucking industry has been enhanced by the regulation of the two central provinces, Manitoba, Saskatchewan, and British Columbia. Shippers have been protected from unsavoury business experiences.

Control of trucking rates has long been a feature of regulation of the industry in Quebec, Manitoba, Saskatchewan, and British Columbia. In Quebec and British Columbia, the rates are filed with provincial regulatory bodies in much the same way as railroad rates are filed with the Board of Transport Commissioners. In Manitoba and Saskatchewan the truck rates are fixed by the provincial regulatory bodies and those are the rates truck operators must charge. In all four provinces there is a duplication of the procedure available to shippers to protest railroad rates to the Board of Transport Commissioners if the rates are considered to be discriminative or unduly high. Provision exists for the same type of protest to be filed by shippers with provincial transport boards which regulate truck rates. The boards may order public hearings in respect to proposed truck rate increases and there have been such hearings since World War II.

The practice of regulation of truck operations in Ontario differs in form from that of Quebec, Manitoba, Saskatchewan and British Columbia. Applications for trucking permits in Ontario have been handled at hearings of the Ontario Municipal Board which makes recommendations regarding the granting of operating permits to the Ontario Department of Highways. The department in Ontario is the regulatory agency. Ontario, in this respect, has differed from Quebec, Manitoba, Saskatchewan, and British Columbia where the regulation is carried out directly by provincial transport boards. However, although up until the present time trucking rates have not been regulated in Ontario, a reorganization is now taking place and the hearing of applications for operating permits will soon be undertaken by a new Ontario Highway Transport Board which is being established specifically to deal with the

trucking industry. The Municipal Board will no longer carry this responsibility. The Ontario Highway Transport Board Act provides that the board may regulate the rates charged by trucking companies and it may be that the board, which is to be provided with an adequate staff, will ultimately commence the regulation of the Ontario trucking industry's rates.

The statement at page 24 of the 1955 royal commission report that highway transport's relative freedom from regulation is a characteristic of the industry today is certainly not in accord with the facts. It is very difficult to understand the purpose served by the statement, particularly since it is immediately followed by an informative paragraph which says:

> At the present time, rate and route regulation exist over intra-provincial traffic in the provinces of Manitoba, Saskatchewan, British Columbia and Quebec but not in Alberta and the Maritime Provinces. Ontario regulates the routes over which truckers may operate but does not regulate the rates charged.

Since it is in these provinces that 93 per cent of the trucking industry's gross revenue is earned, the "relative freedom from regulation" of highway transport is, we respectfully submit, incorrect. It is fortunate that this is so in the tucking industry's view. We advocate and support provincial regulation of our industry. When the royal commission says, as it does on page 24 of its report, that "a comprehensive and effective regulation of (trucking) rates (is) a practical impossibility" it is denying, in effect, what has actually been achieved by four provinces which account for a very substantial portion of the trucking industry's revenues. This regulation is no mean achievement, bearing in mind that the federal Government, with the undoubted headaches of railroad regulation, is required to regulate some 30 railroads in comparison with the provincial regulatory problem presented by the existence of 15,000 'for hire' trucking operations.

How far removed was the royal commission from the trend towards regulation of the trucking industry and truck rates is seen in introduction, this year, by the government of New Brunswick, of a revised Motor Carrier Act providing for control and regulation of trucking industry routes and rates in that province. The complete bill which will authorize this control is included as appendix C of this submission.

It will be seen upon examination of this legislation that in determining whether a licence is to be issued to a truck operator the provincial transport board shall consider whether existing truck service is adequate to present and future demands; and the financial ability, fitness and willingness of the applicant to furnish adequate service.

The proposed New Brunswick legislation states:

> In issuing any licence, or approving the transfer of a licence, the board may prescribe the routes which may be followed or the areas to be served and may attach to the licence such conditions as the board may consider necessary or desirable in the public interest, and without limiting the generality of the foregoing, the board may impose conditions respecting schedules, places of call, carriage of freight, and insurance.

In regard to rate regulation of New Brunswick truck operators, it will be noted that the legislation provides that the Lieutenant Governor in Council, on the recommendation of the provincial transport board, may make regulations respecting tariffs and tolls and the disallowance or suspension of any tariff or toll. The manner and extent to which tariffs and tolls shall apply to any truck operator may also be subject to regulation by the board.

This legislation was tabled to expedite a pre-Easter prorogation of the New Brunswick legislature. It is strongly supported by CTA's member organization, the Maritime Motor Transport Association, and its ultimate enactment is expected to have far-reaching effect in bringing order out of chaos in the unregulated New Brunswick trucking industry of today. We understand that provincial authorities in Nova Scotia and Prince Edward Island are keenly interested in the New Brunswick legislation, seeing in it a pattern for improved legislation in their own provinces.

PART III

OUR "SHACKLED" RAILROADS?

During the past two years we have experienced, in Canada, a steadily intensified propaganda campaign by the railroads to convince the public that in regard to meeting truck competition, they are under severe regulatory restrictions, so much so that they are competing with the trucks almost, as it were, with one hand tied behind their backs.

Typical of the comment made in the course of this campaign is the following extract from the address of Donald Gordon, chairman and president of the Canadian National Railways, delivered to the Vancouver Board of Trade on August 31st, 1953:

> The regulations which surround the making of competitive rates are worthy of particular attention, because in my view the way in which business organizations react to competition is a good test of their vitality and survival power. I am thinking of the speed with which they move, their resourcefulness in bringing new ideas to bear, the flexibility of their procedures, and all those things that are involved in adapting to a changing environment. But if this is a fair test, then the independent observer who studies the Railway Act is not likely to be greatly impressed with the future prospects of the railway industry.

One has only to read the editorial fulminations of such newspapers as the Montreal *Gazette* to appreciate how this railway propaganda has "caught on". Take, for example, that newspaper's editorial of May 25, 1955, entitled: "It Is Long Overdue." The editorial is a lengthy one but the crux of it is contained in the following conclusions:

> It is important that Canadians should get the best value they can for the dollar they spend for transportation. The trouble is, they are not getting that value. And they will never get it unless the different means of transport in Canada are made really competitive with one another. Only full competition will give the best service at the best price.
>
> At the present time, to be sure, there is competition. But the basic means of transportation—the railways—are not being permitted to show what they can do against other means of transport. Ponderous and slow government regulation delays or prohibits their decisions.
>
> As the result, the railways are forced into a condition of more or less chronic economic difficulty, while not being free to render the service that would otherwise be possible. By regulating the railways so severely the public interest is not being fully served: it is, on the contrary, being largely frustrated.
>
> . . . The railways are being hard pressed by trucks, by shipping, by air services, by pipelines. And yet, while these other means of transport may be relatively free from regulation, the railways have to work under a network of entangling restrictions.

> What is the result? Ironically enough, while supposedly trying to protect the shipper and the consumer, these government regulations work, on the whole, against their best interests. This happens because the railways, as the basic carriers, have to face their competitors with one hand tied behind their backs. They cannot offer the public the really competitive services that would be most in the public interest.

The *Gazette* goes on to buttress its comment with the following quotation from an address of Mr. Norris R. Crump, president of the Canadian Pacific Railway. The editorial states:

> Mr. N. R. Crump, the president of the Canadian Pacific Railway, has put it this way: "What we need in the railway industry is more freedom and less regulation. It is true because transportation has become highly competitive business. Regulation which ignores the basic economic facts will in the end adversely affect the general economy and the national interest.

What about these fetters, these tangling restrictions on the railways' ability to meet competition?

The fact is that until the now-famous Montreal-Toronto rate cuts of September, 1954, the vast majority of Canadians were unaware that the railroads, supposedly fettered by unrealistic federal legislation, have been busy with an aggressive, highly flexible price war waged all along the freight rate front against the trucking industry. On the other side of the firing line, many truck operators have engaged in this rate war either on their own initiative, without provocation from the railroads, or because they have been forced into it by rail rate cuts. The fact to be considered by this committee, in our respectful submission, is that such a rate war has been going on, that the railroads have been free to conduct it, that they have done so with the acquiesence, if not the blessing, of the Board of Transport Commissioners. The managerial discretion of the railroads to act in accordance with the principles of the competitive free-enterprise system has been given full rein.

The Transport Board, as we are about to demonstrate to this committee, has proved to be no roadblock to the railroads' rate-slashing wherever and whenever railroad management chose to make these slashes. In saying this we are not criticising the Transport Board but are merely bringing out the facts. The rate war has raged along a broad front that has embraced every form of competitive rate-making, including agreed charges.

If the railroads were in a regulatory strait-jacket which restricted them to agreed charge rate-making as a means of meeting truck competition, they would be entitled to a sympathetic reception of their long-term campaign to instal a system of wide-open agreed charge rate-making. But no such regulatory strait-jacket exists in respect to Canadian rail transportation.

What is the real picture?

Following World War II, the railroads, on the basis of heavily increased operating costs—a cycle from which no industry, including trucking, escaped—applied for a series of freight rate increases.

When the fight for freight rate increases opened in 1947, the railroads found themselves unexpectedly backed against the wall by the united opposition of seven provinces—the west and the maritimes. It became clear that the fight would be long and bitter.

The rail-truck freight rate picture retained something of its war-time stability during the initial stages of the fight for freight rate increases. The railroads removed many ridiculously low rates made to meet motor truck competition in Ontario and Quebec. These rates were a throw-back to competitive rate warfare of the lean traffic years of the late 1930's. They became "frozen" in the freight rate structure when Wartime Prices and Trade Board

control was instituted in 1942 and remained there until control was removed in September, 1947. The railroads' anxiety to get these low rates out of the freight rate structure was the result of their sensitivity to the oft-repeated contention of the western and maritime provinces that the existence of intensive trucking operations in Ontario and Quebec made it impossible to apply horizontal rail rate increase in full in those two provinces. Horizontal freight rate increases would thus fall much more heavily on the western and maritime provinces, according to the contention of their counsel.

Coinciding with the railroads' problems in obtaining increased rates, trucking costs were rising all along the line. Needed rate increases in the trucking industry were stalled as the operators waited for the senior rates—the railway freight rate umbrella—to rise. The umbrella rose on three different occasions —in April, 1948, when a 21 per cent railroad freight rate increase was granted by the Transport Board; in June, 1950, when a 20 per cent increase was granted; and in February, 1952, when a 17 per cent increase was granted. In varying degree, the trucking industry, unless prevented by provincial rate regulation, followed these increases with trucking rate increases. Trucking rate increases were implemented in all provinces but some provincial transport boards held them below the rail rate increases.

There was an initial period during the fight over freight rate increases, in which the saying "misery loves company" came close to applying to the rail and trucking industry. It was about the only period in which a rail and truck executive would have been likely to commiserate with each other on the problems of operating Canada's transportation systems.

The undeclared truce did not last long. Despite the general percentage increases in railroad freight rates, a downward trend in railroad rates on competitive traffic became noticeable. There were competitive rate reductions and agreed charges. Further reductions were accomplished by changes in the railroad freight classification. For example, automobiles in carloads were reduced from first to the equivalent of second class in a substantial part of the country. Butter moving in carloads was reduced from third to fourth class. The movement of canned goods in large carloads was subjected to a reduction from fifth to sixth class. The brewing industry appeared to be particularly favoured—ale and beer were reduced from fifth class to commodity rates, in some cases the equivalent of tenth class.

A table in the report of the Royal Commission on Agreed Charges, on page 13, shows that the percentage of agreed charge revenue to total railway revenues rose from 2·4 per cent in 1949 to 6·2 per cent in 1954. The estimated revenue from agreed charges in 1954 represented an increase of more than 25 per cent over the figure for 1953, although the overall revenues of Canadian railways showed substantial declines in 1954, as compared with 1953, resulting from the reduced level of economic activity.

Between the period 1949 and 1953, there was a 38 per cent increase in the movement of railroad traffic under motor truck competitive rates, according to the waybill analysis conducted by the Board of Transport Commissioners.

In 1954, approximately 80,000 new motor truck competitive rates were instituted by the Canadian Pacific and Canadian National railways. The total of all Canadian Pacific Railway competitive rates in effect in 1954 was approximately 1,200,000. This is an estimate, Mr. Chairman, and I am subject to correction by the counsel for the Canadian Pacific.

On the Montreal-Toronto run, where the heaviest freight traffic volume in Canada moves, truck operators, in May, 1954, received the first instalment of precipitous railway rate slashes. This was followed in September, 1954, by a second railroad rate slash—perhaps it might be called the atom bomb of all transportation rate cuts that have yet occurred in Canada.

Some of the truck operators on the Montreal-Toronto run, according to our investigation, had themselves been cutting below the railroad rates prior to the May, 1954, rail rate cuts. To that extent, they exacted their own retribution. Many well-informed people in the trucking industry thought that if truck operators charged at or near the railroad rates the railroads, in turn, being anxious to avoid a mutually-destructive rate war, would maintain their own rates. This view was not supported by the long term trend, evident in facts reviewed in this submission. The increase in agreed charges, the 38 per cent increase in the movement of roalroad traffic under motor truck competitive rates between the period 1949 and 1953, are sufficient evidence that the rate war was in full force long before the specific action of the railroads in September, 1954, brought the whole issue into dramatic focus on the Montreal-Toronto run.

We have been frank to admit that there was provocation for the railroad rate cuts on the Montreal-Toronto run in May, 1954. Every statement and bulletin of the association has admitted the fact. The railroad rate cuts of September, 1954—the second instalment of rail rate cuts on the Montreal-Toronto run—bore no direct relation to the level of truck rates except that they undercut all of the rates that were being maintained by truck operators by as wide a margin as possible. They were an open attempt to achieve by price-cutting the removal of all Montreal-Toronto freight traffic from the trucks. The overall rail reductions were approximately 35 per cent in September, 1954, but in many cases their cuts went as much as 50 per cent below the level of truck rates.

According to reports we have received from the operators, the reduction in gross revenues of the Toronto-Montreal trucking firms—in business lost where rail rate cuts could not be met and in rate cuts matching a substantial portion of the rail cuts—has amounted to 40 per cent. Our gross revenue on the Toronto-Montreal run is down that much since September, 1954, according to the reports we have been able to obtain from the operators.

Let it be emphasized that in bringing out all of the foregoing information on the rail-truck rate war, we are not complaining about price being a competitive factor. We do not expect, we do not say, that rail and truck rates should be frozen at the same level. Neither by legislation nor by an illegal combination of the rail and truck price-setting processes do we seek this. Canadian Trucking Associations has always taken the stand that the railroads should retain the right to make motor truck competitive rates embodied in present provisions of the Railway Act. Our stand on this point was made abundantly clear to the Royal Commission on Transportation at the final hearings in November, 1949, and the commission's report of February, 1951, stated at page 86:

> Competitive rates are an important factor in the rate structure. No one who appeared before the commission advocated their abolition.

Again, at page 90 of the 1951 report, the royal commission stated:

> The Canadian Automotive Transportation Association (now CTA) in referring to agreed charges said that they 'catered to big business', that the Canadian National proposal was a reversion to the 'law of jungle' and that, although the railways should be permitted to use competitive rates, they should not be permitted to use the agreed charge.

In evidence given in Ottawa at the final hearings of the Royal Commission on Agreed Charges, Mr. G. M. Parke, immediate past president of Canadian Trucking Associations, told the commission on November 17, 1954 (transcript pages 1861 and 1862):

> I would like to say this, that the truck has features that commend its use to the shipping public just as the railways have features which commend their use to the shipping public. If rate is the only, or is the chief, consideration then the form of transport which provides the cheapest rate will invariably get the business. If the trucks can carry the goods cheaper than the rails, then the trucks will get the traffic; If the rails can carry the goods cheaper, then the rails will invariably get the traffic.
>
> Rates will be determined by economic forces; and we in the trucking business are asking no favours with regard to rates. We are prepared to compete in service as well as in rates. I would like to repeat, just to be clear, that we seek no concessions from the railways in the matter of rates. The railways should be free to meet competition with competitive rates.

The CPR brief to the Royal Commission on Agreed Charges referred to "the severe regulatory control of freight rates imposed by the Railway Act". The validity of this reference in regard to competitive rate-making was carefully examined at the 1954 Royal Commission hearings.

The relevant section of the Railway Act is 334, subsection (1) being as follows:

> 334. (1) The board may provide that any competitive rate may be acted upon and put into operation immediately upon the issue thereof before it is filed with the board, or allow any such rate to go into effect as the board shall appoint.

The board has made regulations regarding the implementation of competitive rates. These regulations are contained in the board's order on the subject as follows:

> Competitive rates comprising reductions from existing published rates, which, owing to the exigencies of competition of transportation services not subject to the board's jurisdiction, are urgently required to be brought into immediate effect without previous notice to the board, may be acted upon before filing with the board, but the initial carrier, or duly appointed agent, must forthwith publish such rates and file the same with the board, effective as from the date of the movement of the traffic. The filing advice covering the filing of such schedule shall be accompanied by a clear statement of the reasons for such publication, the name of the party for whom the rate was made, the rate and the name of the carrier with whom competing, the rate which would otherwise apply in the absence of such publication, and such other information as will satisfy the Board as to the bona fides of the action taken.

Just how much freedom the railways have in competing rate-wise with the trucking industry was brought out in evidence given before the Royal Commission on Agreed Charges by Mr. Charles Edsforth, assistant general traffic manager of the Canadian Pacific Railway. At the final hearings in Ottawa he

was questioned on November 8th, 1954, by Mr. F. R. Hume, Q.C., counsel for Canadian Trucking Associations, and his answers appear at page 975 of the transcript, as follows:

> Mr. HUME: Q. Is it not true that the railways may put in a competitive rate and meet the truck rate almost over night?
>
> The WITNESS: A. They can put it in on short notice, that is right.
>
> Q. So that the railways are just as free to quote a rate on any competition with the truck as the truck is on any competition with the railrays?—A. We are free to quote a rate just as much as the trucker is.

Again, at pages 984 and 985 of the transcript for November 8th, we find the following exchange of information:

> Mr. HUME: Q. The point I want to make is that don't you have the same freedom in putting in competitive rates as your truck competitors?
>
> The WITNESS: A. We have freedom to put in competitive rates, Mr. Hume, yes.
>
> Q. As a matter of fact, Mr. Edsforth, I was able to get a few figures over the week-end and you can just substantiate them for me if you will. I am advised that so far as your railway company is concerned, for the period from January 1st 1954 to April 30th 1954 you put in a total in eastern Canada of 11,828 competitive rates to meet motor truck competition?—A. Where was this, Mr. Hume, what part of the country?
>
> Q. It is Tariff E. 1355-E.
>
> The COMMISSIONER: In what period of time did you say?
>
> Mr. HUME: January 1st 1954 to April 30th 1954—a period of four months.
>
> The WITNESS: Well, I can explain. Quite a few of those, Mr. Hume, would be water competitive rates which expire the end of November each year and then go back into effect on either the 15th or 30th of April when navigation opens again. That would account for quite a few of those.
>
> Q. No, I pointed out that my information indicates that you designate those in your tariff as motor competitive rates. These have nothing to do with water.—A. That may be, Mr. Hume, I won't dispute your figure at all. It does show that we are making competitive rates all the time to meet the competition; we cannot take care of everything with agreed charges.
>
> Q. And I am given the information that there are over 1,200,000 competitive rates in existence by the Canadian Pacific in eastern and western Canada?—A. That may be, I don't know.
>
> Q. So you have complete freedom in putting in those competitive rates to meet competition with someone only on a rate basis?—A. Yes, we have complete freedom. We have to file them with the Board of Transport Commissioners, of course. They have to meet all the conditions laid down by section 334 or they must be in that category.

At pages 990 to 992 of the royal commission transcript for November we find the following:

> Mr. HUME: The second sentence in that paragraph (of the CPR brief) dealing with the Transport Act, Mr. Edsforth, says this:
>
> It was the first act of general application which contained any departure from the severe regulatory control of freight rates imposed by the Railway Act.—A. Yes.

Q. Now, when I read that I thought the impression you were trying to indicate was that up to that time you were subject to severe regulatory control of rates?—A. Under the Railway Act?

Q. Yes.—A. Yes.

Q. And I just wanted to ask you whether or not ever since 1904 you have not had that freedom of putting in competitive rates that you and I have already been discussing this morning?—A. We have always been free to put in competitive rates as they were required, that is right, ever since 1904.

Q. So that the Transport Act is not the first Act of general application that departs from that severe control, is it?—A. Well, I don't know, Mr. Hume, just how I can answer that, except that the Transport Act was a departure from all of the provisions of the Railway Act. In other words, it gave new conditions under which you could make freight rates without all of the restrictions that were in the Railway Act. That is, I think, what we were trying to convey there.

Q. I see.

The COMMISSIONER: Do you mean to say, your brief means to say that while the controls still remain under the Transport Act they are less severe, is that what you mean?—A. Well, my lord, in this way—

Q. You talk about it as a departure from the severe regulatory control of freight rates imposed by the Railway Act?—A. Yes, my lord.

Q. The control was not ousted, there is still a control under the Transport Act?—A. Oh, yes, there is still control, my lord, yes.

Q. What you mean is it is less severe now?—A. Yes, it is not the same control as the Railway Act imposes, that is right.

Q. Do you mean by that merely this: that now you can make agreed charges and formerly you could not?—A. That is right, my lord.

Q. That is the whole thing?—A. Yes, that is so.

By Mr. Hume:

Q. So that the severe control, regulatory control of freight rates to which you refer, always contained almost complete freedom to meet your competition rate-wise?—A. We always had freedom to meet competition, of course.

The ability of the railroads to make competitive rates unhampered by any formality other than a telephone conversation with a shipper was admitted by the C.P.R. witness. At pages 1002 and 1003 of the November 8 transcript we find this:

By Mr. Hume:

Q. Then just at the top of page 5, perhaps we have discussed this and I do not need to labour it, your reference there is to the operators of highway transports making a rate by telephone or at the shipper's door. So far as the railways are concerned, and let us say the larger truckers, the two positions are almost comparable—A. I know that so far as the railways are concerned, but I do not know so much about the trucking companies, the large trucking companies, just how they operate. I do not think they really are, because of their size, in the same position as the railways. I think they could make rates probably more quickly than we could.

Q. Can you not make rates by telephone?—A. We can make rates by telephone, certainly.

Q. But you cannot make them at the shipper's door?—A. Well, it is rather an impractical sort of thing.

Q. You will agree with me that, except for the man who is driving his own truck, the trucker cannot make rates at the shipper's door, either?—A. Unless they give their drivers the right to do that.

By the Commissioner:

Q. Who can make rates on behalf of the railways by telephone?—A. The officer who is in charge of making freight rates can make a rate with the shipper over the telephone, in conversation.

Q. The officer who is in charge—where is he located?—A. In Montreal, sir, at headquarters, of course, and then we have officers in Toronto who are likewise able to do that, and again in Winnipeg and Vancouver.

Mr. Edsford went on to state that railway rate-making on the telephone was "not the usual practice."

In the Vancouver speech of Mr. Gordon, which we quoted at the beginning of this section of our submission, his somewhat acid comment on railway regulation was particularly addressed to section 334(2) of the Railway Act. He quoted this entire section of the Act in his speech. One can agree with the C.N.R. chairman and president that section 334(2) could, if invoked by the Transport Board, take the railroads close to the fettered condition which Canadian railroad officers have sought to convince the public now exists. Section 334(2) was inserted in the Railway Act on the recommendation of the Turgeon Royal Commission on Transportation. Parliament passed the amendment in 1951. The section reads:

> 334 (2) The board may require a company issuing a competitive rate tariff to furnish at the time of filing the tariff, or at any time, any information required by the board to establish that
>
> (*a*) the competition exists;
>
> (*b*) the rates are compensatory; and
>
> (*c*) the rates are not lower than necessary to meet the competition; and such information, if the board in any case deems it practicable and desirable, shall include all or any of the following:
>
> (i) the name of the competing carrier or carriers,
>
> (ii) the route over which competing carriers operate,
>
> (iii) the rates charged by the competing carriers, with proof of such rates as far as ascertainable,
>
> (iv) the tonnage normally carried by the railway between the points of origin and destination,
>
> (v) the estimated amount of tonnage that is diverted from the railway or that will be diverted if the rate is not made effective,
>
> (vi) the extent to which the net revenue of the company will be improved by the proposed changes,
>
> (vii) the revenue per ton-mile and per car-mile at the proposed rate and the corresponding averages of the company's system or region in which the traffic is to move, and
>
> (viii) any other information required by the Board regarding the proposed movement.

As indicated, this section of the Railway Act looms large in the minds of Canadian railway officers on occasions when they refer to their lack of freedom in meeting competition. Let us examine the manner in which the Transport Board deals with the railways under section 334(2).

Section 334(2), although it was inserted in the Railway Act on the recommendation of the Royal Commission on Transportation, contains a far-reaching change from the language of the royal commission. Parliament dealt more leniently with the railroads than the commission recommended. It was the commission's recommendation, at page 86 of the 1951 report, "that whenever a railway files a competitive rate or an amendment thereto, it shall simultaneously supply the board with information similar to that now filed with applications for agreed charges." The 1951 report then goes on to particularize as to the information which "shall" be supplied. That information is exactly as specified in the amendment passed by parliament in 1951—section 334(2) of the Railway Act.

Parliament, apparently in the belief that the recommendations of royal commissions are not to be considered sacrosanct, used the word "may" instead of "shall" in giving effect to the 1951 royal commission's recommendation. Thus the Transport Board is under no legislative compulsion to take any action whatever in regard to section 334(2). We have not complained about this. CTA made no appearance before the Special Committee on Railway Legislation in 1951 to fight the legislation which changed the royal commission's intent as to what should be done. CTA has never made representations to the Transport Board which, if successful, would have had the effect of invoking section 334(2).

The number of times that section has been invoked by the Transport Board since 1951 is, in fact, an infinitesimal fraction of one per cent. When a check was made for CTA in November last year, the Canadian Pacific Railway had in effect 1,200,000 competitive rates. In this respect, the evidence developed in cross-examination of Mr. Edsforth at last year's royal commission hearings is enlightening. At pages 995 and 996 of the transcript for November 8, 1954, he is reported as stating:

> Mr. EDSFORTH: . . . We must also at the same time be ready, if called upon by the Board of Transport Commissioners under section 334, to be able to prove certain things in respect to our rates—that is to say, what the competition is, where it operates, and that the rate is no lower than necessary to meet the competition, that the rate is compensatory, that it will improve the net revenue and so forth. Those are all things which we must be ready to—
>
> The COMMISSIONER: Q. Mr. Edsforth, are you often called upon to do that?—A. We have not been so far, my lord, very many times, but the requirement is still there and we must bear it in mind when making a rate.
>
> Mr. HUME: Q. May I just follow that up by asking you, of the 11,828 competitive rates put in the first four months of this year, were you asked to comply with that, to do that in any one of those, that you remember?—A. I don't recall any specific instance, Mr. Hume, except that I do think the board has asked us on one or two occasions to give them certain information on our rates.
>
> Q. And you have 1,200,000 rates so one or two instances are not a very severe regulation?—A. Well, of course it is always there and may be applied at any time.
>
> Q. But it is not so severe?—A. No.

At the royal commission's hearing of November 15, 1954, Mr. Charles L. McCoy, freight traffic manager of the Canadian National Railways, was asked by CTA counsel to tell the commission the number of times section 334(2) had been invoked by the Transport Board in respect to the CNR's motor truck competitive rates. His reply, shown at page 1621 of the transcript, was that

during the period January 1, 1953, until the date on which he was giving evidence—November 15, 1954, the CNR received from the Transport Board 17 requests for information under section 334(2), 12 of them in 1954.

Mr. McCoy could not say how many motor truck competitive rates the CNR had instituted in 1954 although he thought that for the first four months of the year "we might have a few more" than the Canadian Pacific. During the same four-month period, the CPR had made approximately 11,828 motor truck competitive rates.

It would be a very grave error to assess the railroads' ability to freely meet competition only on the basis of their ability to do so rate-wise. The rate is the price of the product. What about the product itself? The railroad and trucking industries are selling one product for the movement of freight—service. What is the railroads' competitive problem in respect to service? How free are they to deal with that problem?

It is now almost three decades since a few 'for hire' truck operators commenced their conquest of distance by offering service on inter-city and rural routes. While the truck appeared to be an insignificant unit of transportation in comparison to the freight train, the need for truck service was there. Mass transportation encountered a change in shipping requirements in the early 1920's. Canadian industry, during the post-war period, learned the lessons of hand-to-mouth buying, frequent stock turnover, and reduced inventory. Merchants ceased to order the large stocks which they used to carry on warehouse shelves for months at a time. This created a demand by shippers for a vast increase in the frequency and speed of freight service. The truck met this need just as the railway answered the need for mass transportation.

It is interesting to note that except for several of the worst years of the depression, truck registrations, tonnage volume and gross revenues increased annually throughout the 1930's although wages and salaries were at a low level. The depression accelerated the changes which were taking place within industry in Canada. Those who had been slow to heed these changes were now compelled to do so. By carrying stocks in small quantities, merchants could effect vital economies in the conduct of their business and the necessity of much arranging of credit with the banks was eliminated. Freight traffic was diverted to the highways as shippers were compelled to overthrow the basic concept of mass movement upon which transportation had been predicated since the early 19th century.

Through the use of trucks merchants saved hundreds of millions of dollars in inventory reduction. The trucking industry was well on its way to establishment in the 1920's, but it was the depression of the 1930's which "made" the industry as we know it today.

If any significance is to be placed on the reasons which shippers themselves cite as determining their use of highway transportation, it is apparent that the trucking industry has reached its present position in transportation primarily on the basis of the service it has rendered the public.

We merely cite this for the committee because so often it is thought that the trucking industry has reached its place in transportation on a price-cutting basis.

Our competitors have the evidence about public acceptance of motor transport service. It is to be found in an interesting study made at the end of World War II by the Association of American Railroads, of which both the Canadian National and Canadian Pacific are members. It was a study to develop information regarding post-war competitive conditions. The Association of American Railroads sent a questionnaire to shippers asking them to state the primary reasons for their use of common, contract, and private trucking

services. The questionnaire dealt with the movement of merchandise and the replies were given separately for inbound and outbound traffic. A complete report of the results of this questionnaire is attached as appendix D of this submission.

On the inbound traffic, shorter transit time was given by 78 per cent of the shippers as their reason for using trucks. Lower costs were cited by 12 per cent. A variety of other reasons, particularly less handling, less marking and packing, and less loss and damage were cited by 10 per cent of the shippers.

The railroad association's study uncovered similar preference on the outbound traffic. Again, shorter transit time was the overwhelming preference of shippers, 73 per cent giving this as their reason for using trucks. Lower costs were cited by 12 per cent, and 15 per cent cited a number of other reasons such as pick-up and delivery, less handling, and a more personal service.

There is no regulatory restraint on the railroads' ability to fashion improved freight services for shippers. They know the problem. They have found out for themselves where their service difficulties lie. They are free to deal with the problem.

Rate-wise, the real picture is not that of prostrate, fettered giants, trying to cope with truck competition, each with one hand tied behind their backs. The real picture is that of an industry, with infinitely greater economic resources than the trucking industry, free to slash away at the existing truck rates at will.

It is an industry—Canada's railroad industry—which in competitive rate cuts has not been opposed by Canadian Trucking Associations in so far as representations to the government, or government bodies, are concerned. Whatever the severe regulatory control of freight rates imposed by the Railway Act, the record is clear that the railroads' competitive rate-making processes—embracing between 2,000,000 and 3,000,000 competitive rates now in effect—and that is our estimate for both of the railways—must be exempted from the overdrawn phraseology which has come so plausibly and easily from Canadian railroad spokesmen.

Mr. HAMILTON (*York West*): Mr. Chairman, would this not be a logical place for us to take a break?

The CHAIRMAN: Let us continue with part IV.

The WITNESS:

PART IV

THE RAILROAD TRAFFIC DECLINE—
IS THE TRUCKING INDUSTRY RESPONSIBLE?

Is the trucking industry responsible for the railway freight traffic decline? The recommendations of the Royal Commission on Agreed Charges (1955) are based on the following assumptions:

(*a*) that the railway industry in Canada is a sick industry,

(*b*) that this sickness can be attributed to the growing strength of the trucking industry—alleged to be capturing more and more of the freight carried by the railroads,

(*c*) that given freedom to negotiate agreed charges on a wide-open basis the railways could recapture this lost business which is claimed to be essential to the profitability of the industry as a whole.

It is held, in effect, that the decline in freight volume carried by rail of such goods which are subject to motor carrier competition is mainly responsible for the present ills of the railway industry.

However, it can be shown conclusively that those goods which in actual fact are carried competitively by both rail and road transports form only a very small proportion of the railways' freight operations have been caused by factors which have little or nothing to do with truck competition.

The table in appendix E contains compilations of the revenue tonnages for both the CNR and CPR for the years 1950-1954, inclusive, arranged according to commodity groups. In the returns of the two railway companies the definitions for these broad commodity groups are identical; the revenue tonnages can therefore be added to arrive at the sum total for both railway systems.

The relative importance of the commodity groups within the railways' total freight business is shown in the table below by their percentage shares:

Volume of Freight by Commodity Groups

Source: Annual Reports CNR and CPR

Commodity Group	Share of Volume of Freight Business Average for 1950-54
(1) Agricultural Products	21·4%
(2) Animal Products	1·2%
(3) Mine Products	34·7%
(4) Forest Products	12·2%
(5) Manufactures and Miscellaneous	30·5%
Total	100·0%

The trucking industry does not, generally speaking, compete with the railways for the carriage of goods covered by groups 1, 3 and 4, agriculture products, mine products, and forest products. These bulk commodities simply do not lend themselves to long distance movement by motor vehicle except for specialized services such as refrigerated highway transport for perishable agricultural products and logging operations in Canadian forests.

The most important individual products within this broad category of bulk commodities are the following:

Group 1: all grains, flour and other mill products,

Group 3: all coals, ores and concentrates, stones, sand and gravel,

Group 4: pulpwood, lumber and timber.

If any of these products are moved to any appreciable extent by truck then it is only over short distances from fairly inaccessible production areas to the consumer or the processer, where no other form of transportation is available. Alternatively, the trucker performs feeder services between the farm, the mine, the quarry or the forest and the nearest railway station. In these cases he brings business to the railways instead of taking it away. In the heat of controversy it should be remembered that over a considerable range of their operations, rail and road transport complement each other rather than compete, both individually performing those functions for which they are best suited technically. The non-competitive bulk commodities account for 68·3 per cent, or more than two-thirds, of the railways' freight business.

Group 2, Animal Products, can be neglected because of its relative insignificance (1·2 per cent of total volume).

We have to look within the remaining Group 5, Manufactures and Miscellaneous, for that freight traffic, sometimes called "the cream" of the freight traffic, which is subject to intensive competition and has allegedly caused the railways' financial embarrassment.

Mr. C. D. Edsforth, assistant general traffic manager of the Canadian Pacific Railway, put it this way in evidence to the Royal Commission on Agreed Charges on November 3, 1954 (royal commission report, page 15):

> Mr. Spence: Has there been a heavy decline in revenue in any particular part of the traffic of the railway?
>
> Mr. Edsforth: Yes, there has been. There has been quite a heavy decline in revenue from grain and grain products all over Canada, not only in the West but in the East as well. There has also been a very noticeable decline in our revenue from manufactured goods, that is quite substantial.
>
> Mr. Spence: Yes, but is the category of manufactured goods one that is subject to competition?
>
> Mr. Edsforth: Very much so. That is, I would say, perhaps the most subject to competition. That has been our experience so far.

Group 5, as defined by the two railway companies, covers a great variety of products. Certain products can be singled out within the group which are clearly not carried to any great extent by trucks for the same reasons which apply to the commodities of groups 1, 3 and 4.

Such typical railway freight items are, amongst others, iron (pig and bloom), rails and fastenings, iron and steel (bar, sheet structural, pipe), cement, brick and artificial stone, lime and plaster, woodpulp and so on. These items alone amount to about one-fifth of Group 5 revenue tonnage.

There are also gasoline, petroleum oils and petroleum products which account for another fifth of Group 5 revenue tonnage. Trucking firms in the west do transport petroleum from the refineries on some scale but they mainly serve consumers or distributors located within the oil districts. Thus, by and large, they are not competing with the railways on long hauls. The volume of petroleum products hauled by motor carriers is dwarfed by the huge quantities moved by the real competitors of the railways in this specialized field: the pipelines. This point is substantiated by railway evidence.* In addition the oil companies carry a large proportion of their products themselves by means of large fleets of tank trucks.

It can be concluded that the volume of railway revenue tonnage which can be affected to any measurable extent by truck competition forms only a small proportion of the great bulk of rail freight operations. It is a segment considerably smaller than the 30·5 per cent of total railway traffic accounted for in the group "Manufactures and Miscellaneous" since this percentage is the total for the group, from which must be eliminated freight for which truck operators do not compete.

We submit that a fair estimate is that Canadian truck operators compete within a 15 per cent to 20 per cent sector of the railways' total revenue tonnage volume. The railways, by contrast, are competing with the trucking industry over almost the whole range o fthe truck operators' business—not only on the basis of rail versus road transport but also through rail-owned highway transport enterprises.

* *The CNR Annual Report for 1951 states: "A significant decline in bituminous coal tonnage from the abnormal levels of 1950 was in part attributable to a continued trend towards the substitution of fuel oil for industrial purposes. The only other major tonnage decreases occurred in the case of crude oil . . . reflecting the diversion of traffic to pipelines."

Continuation of this trend is evident in the 1953 Annual Report of the CNR: "Coal shipments were affected by . . . the continued trend towards the substitution of oil and gas for coal fuel by industrial and household consumers."

Granting that truck competition ranges within the 15 per cent to 20 per cent railway freight sector, has this really had a detrimental effect? Does the experience of the past few years support the view of the railways that truck competition has been responsible for their financial plight?

Mr. HAMILTON: (*York West*): It is one o'clock, Mr. Chairman.

The CHAIRMAN: We have agreed to continue to the end of Part IV. The witness has only three pages more to read. Please continue, Mr. Magee.

Bearing in mind that truck competition is confined to a very narrow range within the field of railway transport, let us examine the actual operating experiences of the railways from 1950 to 1954 (inclusive). All the data used and the statements quoted subsequently are taken from the annual reports for CNR and CPR for these years. In addition a tabulation of Grain Production Trends published by the Dominion Bureau of Statistics has been used.

We again refer to appendix E showing revenue tonnages by commodities for both CNR and CPR, 1950-54. Looking first at the freight totals year by year we find that the volume carried climbed steeply from an initial 135 million tons in 1950 to 150 million tons in 1951. It then increased moderately to a peak in 1952 of 152 million tons, representing the all-time record for freight carried by the two Canadian railway companies. From 1952 to 1953 there was a serious fall in freight volume to 133·5 million tons. Thus, during a period of prosperity, progress and increased production for Canada as a whole the railways found themselves carrying a smaller tonnage at the end of the five-year period than at beginning.

But what were the real reasons for the fluctuations and the eventual decline in traffic? From data given in appendix E 'average years' for the period have been calculated. Based on these averages, the freight volume trends for the commodity groups are shown in the following table on a percentage basis.

Freight Traffic Trends, CNR & CPR, 1950-54

Percentages of Revenue Tonnages by Commodities

(Sources: Annual Reports, CNR and CPR)

Commodity Groups	1950	1951	1952	1953	1954	Annual Averages 1950-54 %
(1) Agricultural Products.....	77·4	99·8	119·7	115·5	87·7	100
(2) Animal Products	114·1	106·3	93·3	94·3	92·1	100
(3) Mine Products	103·7	102·5	100·1	97·2	96·4	100
(4) Forest Products	91·0	121·6	109·2	90·4	87·8	100
(5) Manufactures & Miscellaneous	95·8	104·2	101·7	102·3	96·0	100
Total, all commodities	94·4%	104·9%	108·1%	101·7%	93·2%	100%

It is at once apparent that the agricultural products show the greatest fluctuations, rising by as much as 42 per cent from the worst year, 1950, to a peak in 1952, only to fall again to 12 per cent below the average for the period in 1954. Forest products display a very similar trend, although here the peak year is 1951 and the minimum is reached in 1954. Mine products, on the other hand, show a steady and slow decline, from a high of 3·7 per cent above average in 1950 to 3·6 per cent below average in 1954. As pointed out before, the fall in the consumption of coal was the factor affecting the freight

movements of mine products. These four commodity groups account for approximately 70 per cent of the total railway tonnages. It is therefore not surprising that the freight trend for all commodities taken together should be shaped and determined by these bulk commodities, rather than by the remaining Group 5. In fact, the volume of manufactures and miscellaneous products carried by the railways varies only slightly over the years. This is especially remarkable in view of the violent fluctuations of iron and steel freight volume which form an important part of Group 5. These violent fluctuations—iron and steel freight traffic has diverged by more than 30 per cent from the average trend line during the period under review—are hardly surprising; iron and steel has been a notorious "feast and famine" industry. Any statistician would find it hard to support the argument that intensive trucking competition has been progressively ruining the railways when looking at these mild little variations of plus and minus four per cent. It is also unfortunate—for the railways' case—that the trend of tonnage comprising manufactured products did not—however slowly—lead straight and persistently down to disaster, but displayed variations above average in 1951, 1952 and 1953, just at a time when truck competition was allegedly doing such serious harm to the railways in this sector of the nation's freight traffic.

Had Group 5 products shown the same steady decline over the period, as for example, mine products, then there might have been reason to believe that the truck operators were encroaching to an increasing extent on the railways' freight business.

Taking all factors into consideration, it is more than likely that the fluctuations in grain harvests and the conditions in the world markets, which determine the demand for a large part of the railway freight services, are mainly responsible for the variations in freight volume. This view can also be supported by a comparison of grain production indices and the indices for freight, all commodities, contained in the following table.

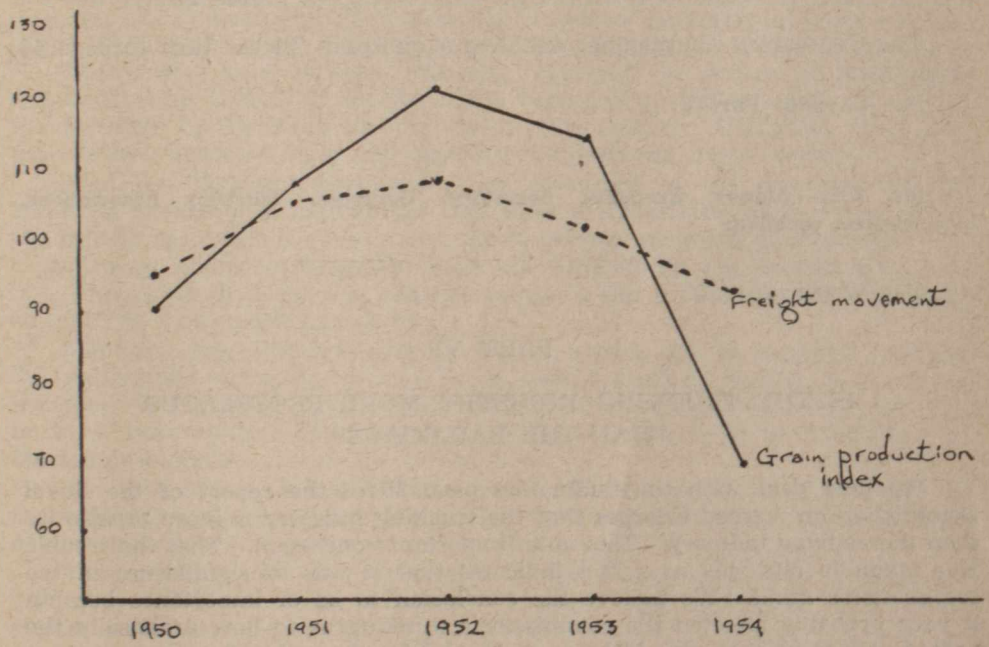
GRAINS—PRODUCTION TRENDS

Canada 1950-54

Sources: Dominion Bureau of Statistics; CNR and CPR Annual Reports

Year	Production of grains millions of bushels	Grain production Index Ann. average	Freight Movements (all commodities) 1950-1954—100
1950	1,163	90·4	94·4
1951	1,401	108·9	104·9
1952	1,567	121·9	108·1
1953	1,408	109·5	101·7
1054	893	69·4	93·2
Total 1950-54	6,432		
Annual average (1950-54)	1,286	100·0	100·0

The relationship of grain production to the trend of the railways' annual freight volume is illustrated in the following graph:



The CHAIRMAN: Gentlemen, we will meet again at 2.30 o'clock this afternoon in this room.

Mr. BARNETT: Mr. Chairman, do you mind repeating the announcement of the time for the meeting this afternoon; we could not hear it at this end of the room.

The CHAIRMAN: We will meet this afternoon at 2.30 o'clock.

AFTERNOON SESSION

JUNE 28, 1955.
2.30 p.m.

The CHAIRMAN: Gentlemen, we have a quorum. Please turn to page 48 of the brief.

Mr. CAVERS: Part V.

Mr. John Magee, Executive Secretary, Canadian Trucking Associations, Incorporated, recalled:

The WITNESS:

PART V

IS THE TRUCKING INDUSTRY MORE PROSPEROUS THAN THE RAILROADS?

We now deal with the finding on page 25 of the report of the Royal Commission on Agreed Charges that the trucking industry is more prosperous than the railway industry. This is an important conclusion. That the trouble was taken to cite this as a fact indicates that it was of significance in the commission's mind. We believe the conclusion to be of importance because it very probably affected the commission's thinking as to how drastically the agreed charge weapon should be re-fashioned for the railroads.

We submit that the commission's conclusion that the trucking industry is more prosperous than the railway industry is an error.

It should be noted that although almost all the freight traffic carried by truck operators is subject to the competition of the railways, a relatively much smaller proportion of the railway traffic is subject to competition from the trucking industry. This in itself puts the trucking industry at a disadvantage. Even if the railways' competitive rates policy does not improve their financial results, even if it results in losses, those losses form only a part of their over-all financial results, and might be outweighed by the revenues from other traffic.

To determine the ability of the trucking industry to withstand the wide-open type of agreed charge rate-making envisaged in the legislation now before this committee, the following factors must be considered:

(i) The size of the firm.
(ii) The existing profit margin of an average trucking enterprise.
(iii) The relative positions of the trucking industry and of the railways regarding the supply of capital.

An economic analysis of the trucking industry is made difficult by the paucity of existing data and by the fact that trucking industry statistics are published with a time-lag of over two years. For example, the latest figures issued by the Dominion Bureau of Statistics are for 1952.*

*The Bureau's Public Finance and Transportation Division, with the co-operation of Canadian Trucking Associations and provincial trucking associations, is introducing a nation-wide statistical sampling program for the trucking industry. This will produce complete national trucking statistics and reduce the time lag in their release to the public.

Before proceeding with this analysis, we should mention the only other statistical evidence on the financial position of the trucking industry which was before the Royal Commission on Agreed Charges. This was the Statistical Summary of the first two surveys of Manitoba's trucking industry, released in November, 1954, by the Public Finance and Transportation Division, Dominion Bureau of Statistics. The Bureau's Statistical Summary of these surveys of the Manitoba trucking industry is included with this submission as appendix F. The greater part of these statistics represent the results of an origin-and-destination survey of trucks which reported movements into or out of the province of Manitoba during the survey period. Useful as they are, they do not, however, shed any light on the problems under review.

The only financial data which are contained in the summary of the Manitoba survey published so far are gross revenues per mile of operation, per vehicle per week, per ton-mile. Since neither operating expense data nor capital asset values of trucking firms are covered by the Manitoba survey, it is impossible to draw any conclusions as to the profitability and financial strength of these truck operators.

Manitoba was picked by the bureau for a trial run, in modified form, of the nationwide sampling system being inaugurated in respect to trucking statistics. The survey data, being confined to Manitoba, are too restricted in their geographical application as to be representative of conditions in Canada as a whole.

We have reviewed that at some length, Mr. Chairman, because that was one exhibit which was placed before the royal commission by this association on the subject of the operating results of the trucking industry.

The statistics used here are based on the Dominion Bureau of Statistics publication "Motor carriers: Freight-Passenger" for the year 1952, which was only released at the end of April, 1955.

If I might interrupt myself for a moment again, Mr. Chairman, I would like to say that none of these comments about the Dominion Bureau of Statistics figures lagging behind is intended to be a criticism of the bureau. The problem of obtaining returns from 15,000 truck operators is a very difficult one and as a matter of fact the bureau is now inaugurating a new statistical sampling system as a result of the success of this Manitoba survey which we mentioned and the Canadian Trucking Associations and all the provincial trucking associations are cooperating with the bureau in an effort to make the new system a success and thus make available for such hearings as these complete national statistics on the trucking industry which unfortunately are unavailable today. At the time when the hearings of the Royal Commission on Agreed Charges were held, the 1951 Motor Carrier report was the latest one available. The 1952 report is included as appendix G of this submission. In appendix H, D.B.S. figures on 'for hire' trucking for three years, 1950 to 1951, inclusive, are used to facilitate comparisons.

The average trucking firm is relatively small. Appendix I, based on the figures supplied by the Dominion Bureau of Statistics, shows that the average gross revenue of a trucking company was $44,327 in 1952. For Group I carriers —a D.B.S. designation covering carriers with gross revenues of $20,000 and over—average gross revenue in 1952 was $156,393. Compare this with the railways' 1952 results—an average gross revenue for Canadian railway companies of $38.925,223. CNR gross revenues for freight traffic only were $528,128,689 in 1952: the CPR's gross revenue for freight traffic in the same year was $378,283,779.

The average net revenue of a trucking firm in 1952 was $1,945 (appendix I). This figure takes into account the allowance for working proprietors, i.e. their salaries for performing managerial functions, and in

many cases their wages for operating trucks. This allowance is estimated by us on the basis of the D.B.S. figures at $2,279 on the average; hardly an exorbitant figure. We have taken a total figure for the working allowances of the truck operators and divided the number of operators into that figure.

To obtain an index of the true profitability of the two industries net operating revenue is related to the gross earnings, a procedure much more defensible than relating profits to capital investment.

The following are the reasons for adopting this procedure:

1. According to the generally accepted economic theory, profits are a remuneration for the risk-bearing function in productive activities. Turnover, or gross earnings, are a much better index of the magnitude of business risks taken than investments.

2. The capital structures of the two industries are not comparable. The present railway investments are to a very large extent a legacy of the past, representing both past glories and past mistakes. There is no doubt that if today the railways were to start from scratch, their capital structure, volume and direction of investments would be different.

3. The only true value of an investment is its ability to generate income. Any investment made in the historical past which cannot be made profitable, according to the principle that by-gones are by-gones, can hardly be treated as a relevant factor in determining the present profitability of any industry. Relating net operating revenue to the gross earnings avoids this error.

The net operating revenue of the railways in 1952 was $81,299,375—7·3 per cent of gross railway earnings. This estimate is if anything, conservative, as it allocates all general overhead expenses of the railway companies to railroad operations only. This return on gross earnings of 7·3 per cent can be contrasted with 4·4 per cent for the trucking industry. (Complete data in appendix I and appendix J.)

The rate of return of the railways has declined since 1952; there are no reasons to suppose, however, that the trucking industry, which today is subject to the same general economic conditions, has been able to maintain the same rate of returns over costs in 1954 as in 1952.

No financial statistics of the trucking industry later than 1952 are available as we have already pointed out. If, however, the domestic sales of new commercial vehicles are accepted as an index of the prosperity of the trucking industry, the conditions must have considerably deteriorated.

The following figures for domestic retail sales of new commercial vehicles are given in the Bank of Canada's statistical summary for March 1953 (p. 86):

Commercial vehicles sales

Year	Domestic Retail Sales '000
1952	108·7
1953	103·4
1954	72·0

It is to be noted that the decline in new commercial vehicle sales since 1952 has been 33 per cent.

*Released in October, 1954.

In a study entitled An Analysis of the Market for Commercial Vehicles and Farm Tractors, 1954-1960*, the Economist's Office of Du Pont Company of Canada Limited concludes:

> There are signs, however, that a competitive balance is beginning to make an appearance in the transportation industry. Recent reports that the railways are reducing freight rates on certain lines in an attempt to regain business from the trucking industry, and the newly-introduced "piggy-back" technique whereby loaded truck-trailers are carried by rail over the longer hauls, would suggest that the period of one-sided competition may be drawing to a close. Furthermore, railroad equipment in this country is being rapidly modernized, horse-drawn vehicles have largely disappeared from the highways and the trucking industry appears to have acquired almost all the categories of traffic which it can economically handle. Existing evidence therefore suggests that the growth in penetration which has been a dynamic factor in the past growth of the trucking industry may well become less important during future years.
>
> The analysis presented above indicates that the two forces which have been largely responsible for the rapid increase in the ownership of commercial vehicles during the past decade, i.e. growth of the economy and improving market penetration, will not be present to a comparable degree over the remainder of the decade.

An indication of an industry's ability to withstand a strong competition impact is its debt structure. In this respect the trucking industry is extremely vulnerable. The Bank of Canada* gives the following figures for the percentage of domestic commercial vehicles sales financed through sales finance companies:

Year	% financed
1952	43·9
1953	42·2
1954	38·9

The actual percentage of equipment financed on a fairly short-term basis, at high interest rates, is probably much higher. The figures given above do not include bank loans, personal finance companies' loans, personal loans, chattel mortgages, etc. Thus, it will be seen that a collapse, or any serious reverse, in the fortunes of the trucking industry would not only impair the solvency of the small operator, but also would affect adversely the credit institution, and to a large extent affect adversely the credit institutions, and to a large extent motor vehicle producers. At some of the producers (for example International Harvester Company of Canada Limited) have been suffering reverses due to the fall in the demand for agricultural equipment, the overall employment effects of a decline in trucking industry will extend beyond the industry itself.

This financial vulnerability of the trucking industry caused by the substantial percentage of stort-term high interest loans is in contrast with the enviable railway position as far as debt-financing is concerned. To give an example: as of March 1955, the CNR's government guaranteed debt was given at $910.5 million, all long-term low interest debt. All issues placed in 1950 and later, by which CNR's re-equipment and expansion has been financed, carry a rate of interest lower than 3 per cent.**

*Statistical Summary, March 1955, p. 86.
**Source: Bank of Canada Statistical Summary, March, 1955.

The following conclusions are evident from the above survey of the relative position of the trucking industry and of the railways:

1. Due to the smaller size of the firm and the small volume of earnings, trucking firms could have had only a very limited opportunity to build up the reserves which could see them through the enforced period of re-adjustments.

2. The profit position of the trucking industry in relation to turnover is not larger, but smaller than that of the railways.

3. Because of its debt structure, trucking is a very vulnerable industry. The interest paid on capital borrowed to finance re-equipment and expansion is higher than in most industries, whereas the railways, due to their size, and also, in the case of C.N.R., due to government guarantees, can obtain long-term credits on low rates.

4. A high percentage of new equipment is financed by loans.* The repayment of loans and interest, therefore, comes within the category of overhead or fixed charges. High overheads, due to the unfavourable financial structure of the industry have always the same result—a decline in traffic leads to a larger than proportionate decline in revenues.**

The railways have consistently used the argument that overheads form a high proportion of their total costs.

Unfortunately for our industry, this applies to truck operators as well.

PART VI

THE EFFECT OF WIDE-OPEN AGREED CHARGE RATE-MAKING ON THE TRUCKING INDUSTRY

Our examination of the financial strength of the trucking industry as compared with the railways, which appears in the previous section of this submission, leaves no doubt that the financial strength of the individual truck operator is less than that of the railways. The individual truck operator is not more prosperous than the railways, but less so.

Let us now examine carefully the probable impact of wide-open agreed charge rate-making on the trucking industry. Let us consider if a wide-open agreed charge onslaught would have isolated effects on the fortunes of individual truck operators whose fate might lie outside considerations of the public interest, or if, instead, large sections of the industry would be affected to the consequent detriment of the public interest.

As any one can appreciate from a study of the report of the Royal Commission on Agreed Charges, the evidence of Mr. S. W. Fairweather, the C.N.R.'s vice-president of research and development, was given great weight by the commission. There was one important aspect of a wider form of agreed charge rate-making than now exists that was the subject of evidence by Mr. Fairweather—the actual number of additional agreed charges to be put into effect. His evidence, to be found at page 1430 and 1431 of the royal commission transcript, was as follows:

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* Replacements of equipment (vehicles etc.) at fairly short intervals are characteristic of the industry.

**It may be noted in this context that the trucking industry has not profited so far by any government assistance to obtain the capital at more favourable terms, a help extended through guaranteed loans to the C.N.R.; through Central Mortgage and Housing Corporation to housing, etc.

The COMMISSIONER: Then, you seem to foresee a very great number of these agreed charges if you are given what you are asking for?

Mr. FAIRWEATHER: I do.

The COMMISSIONER: We were told the number existing now in the United Kingdom which is a large number. I have forgotten exactly what it was. Do you remember, Mr. O'Donnell?

Mr. O'DONNELL: Three thousand to four thousand, Mr. Blee said.

The COMMISSIONER: You envisage something of that dimension, I suppose?

Mr. FAIRWEATHER: I envisage under Canadian conditions probably even more than that.

With that point established—"probably more" than three to four thousand agreed charges upon passage of the legislation before this committee—let us examine the development of agreed charge rate-making from 1938 until the present time. This examination is necessary to determine if the new development—"probably more" than three to four thousand agreed charges—will be of far-reaching consequences compared with developments to date.

By the end of 1954, the total number of agreed charges made by the railways since the passage of the Transport Act in 1938 was 80—80 agreed charges as compared with "probably more" than three to four thousand. We are led to wonder how the Royal Commission on Agreed Charges found itself able to report (page 26) that ". . . no legislation concerning railways, and, more specifically, the legislation of the kind now contemplated, can cause it (the trucking industry) vital damage".

Of the 80 agreed charges made since 1938, 51 were in force on December 31st, 1954. There were 202 shippers involved and the railways' gross revenues from these agreed charges amounted to $20,627,820. A number of them were transcontinental agreed charges to meet the competition of ships carrying products from other countries to Vancouver. Thus, not all of the $20,627,820 was revenue lost by the trucking industry. There is no breakdown available regarding the division of revenue as it affects the movement of freight by ship or truck. A substantial portion of the $20,627,820 was obviously revenue derived from traffic which had gone by truck.

The highest estimate we have ever seen of the annual gross revenues of the trucking industry is that of the Railway Association of Canada. They give the trucking industry's gross as $316,000,000, more than a third higher than the 200 million-a-year estimate of Canadian Trucking Associations.

Translate 51 agreed charges, giving the railways a gross revenue of $20,627,820 into "probably more" than three to four thousand agreed charges, and consider that development—forecast in Mr. Fairweather's evidence—in relationship to present estimated trucking industry gross revenues of $316,000,000 per year, and you will understand why Canadian Trucking Associations is before this committee expressing the gravest misgivings regarding the impact of the legislation.

In our letter, dated March 31st, to the Minister of Transport, Canadian Trucking Associations' President William C. Norris estimated that one-third to one-half of the trucking industry will be wiped out under the proposed legislation—if the evidence which the commission received is accurate. The evidence we have in mind is that of the CNR's vice president of research and development. In the face of that evidence, Mr. Norris's prediction of one-third to one-half of the trucking industry being wiped out by wide-open agreed charge rate-making is no exaggeration but, on the contrary, a moderate estimate.

Any one who has read the chapter on agreed charges in the 1951 report of the Turgeon Royal Commission on Transportation (pages 88 to 95) has seen there the confirmation that Mr. Norris was not exaggerating.

That report was the work of three eminent Canadians whose investigation into the transportation problem was the most exhaustive in Canadian history. The Royal Commission on Transportation held hearings for 138 days, including regional hearings in every province in Canada; furnished over 24,000 pages of evidence and argument; received 143 formal submissions; and examined 214 witnesses. The commission's report contained a searching and exhaustive analysis of the reasons why legislation which, in substance, is now before this committee should not, and could not, be recommended to the government of Canada. We intend to review in detail these findings of the Turgeon Royal Commission on Transportation. We believe that with the life of the Canadian trucking industry at stake we will not only have the indulgence but the interest of this committee in regard to an adequate examination of the analysis which the Turgeon Royal Commission on Transportation made regarding the impact of wider agreed charge provisions on the trucking industry.

Let it be clearly understood that we are not using the report of the Turgeon Royal Commission on Transportation to attack the report of the Turgeon Royal Commission on Agreed Charges. Although there appears to be a basic inconsistency in the findings, it is not that aspect of the situation in which we are interested. We have already stated in this submission that we are not here to attack the principle of the legislation which has been recommended by the Royal Commission on Agreed Charges. It is only in regard to the question of whether the protection of the public interest requires some amendment of the legislation before you—an amendment which must not be so far-reaching that it will do violence to the object of "setting the railways free"—that our examination of certain findings of the Royal Commission on Transportation is pursued. In short, what will be the impact of the legislation before this committee on the Canadian trucking industry? What were the findings of the Turgeon Royal Commission on Transportation on that question?

The report of the Royal Commission on Transportation, issued on February 9, 1951, summarized the CNR's position on the legislative amendment which the railway had sought from the commission—a legislative amendment which, in substance, is now before this committee—in language (page 91), as follows:

> The position of the Canadian National Railways therefore is (1) that there is need of rational and reasonable control of the agreed charge practice, and (2) that the railways' requested amendment would undoubtedly place in its hands an extremely potent weapon capable of driving the trucks out of business in what is referred to as the "competitive" zone.

On pages 94 and 95 of the report of the Royal Commission on Transportation, the views of the commission are summed up, as follows:

> The problem before the commission is simply this: Should the railways be given an extraordinary weapon which might have a serious effect on the trucking industry far beyond that of "meeting" its competition?
>
> The agreed charge if widely used could bind shippers to the railways for unrestricted periods of time by an agreement which would exclude the trucks from participating in the traffic of such shippers.
>
> This might prevent the growth of a form of transport which may be of great value to the commerce of the country. Two instances of the value of the trucks to Canada have occurred in recent years, the first during the last war, and the second during the recent railway strike.

Any weapons which might seriously endanger or bring about the elimination of the trucking industry must be guarded with close restrictions.

It is to be borne in mind that although their rates are regulated, considerable freedom is left to the railways in regard to competitive rates, and this freedom should not be impaired substantially. The object is to permit the railways to meet competition, not to destroy or eliminate it.

The danger in the proposed amendment lies in the power it would give to stifle competition. The Act as it now stands gives to the railways an extraordinary power (one which has not been accorded to the railways in the United States) and one which should not be extended.

Then follows the paragraph of "Conclusions" on page 95 of the 1951 report. Conclusion number three is reproduced at page 25 of the report of the Royal Commission on Agreed Charges. Conclusion number 3 of the 1951 report is, in fact, the only conclusion cited in the 1955 report. It is as follows

The present Act has not yet had a fair trial. It was first introduced in 1937 and enacted in 1938, when economic conditions were vastly different from those existing today. Then followed the period of the war and the 'freezing' of rates until September 15, 1947. Since then the country has enjoyed a period of comparative economic prosperity which has perhaps made extensive use of the agreed charge unnecessary.

But numbers 1 and 2 of the 1951 "Conclusions" should not be relegated to the limbo of lost words—they are of vital consequence in any examination of the views of the Royal Commission on Transportation regarding the impact of agreed charges on competitors of the railways. Let us look at these conclusions. Conclusion number 1 states:

One of the main principles of railway rate making is that a railway must charge equal tolls for like services. Parliament in authorizing the agreed charge created an exception to this general rule to enable the railways to meet the unregulated competition of trucks. Nevertheless in enacting the provisions of Part V of the Transport Act it took great care to surround the exceptional power which it had granted with restrictions to prevent the improper use of agreed charges.

Conclusion number 2 states:

It appears obvious that parliament did not intend the agreed charges to be a weapon to destroy or eliminate competition but rather to enable the railways to meet competition. This is clear from a reading of section 35(1):

...the board shall not approve such charge if, in its opinion, the object to be secured by the making of the agreement can, having regard to all the circumstances, adequately be secured by means of a special or competitive tariff of tolls under the Railway Act or this Act.

There cannot be the shadow of a doubt that the Royal Commission on Transportation, following its extensive hearings in 1949 and 1950, and following such private investigation as it may have made of the problem, concluded that the impact of a wider form of agreed charge rate-making would be such that it might destroy or eliminate the trucking industry: "Any weapon which might seriously endanger or bring about the elimination of the trucking industry must be regarded with close restrictions"; "The object is to permit

the railways to meet competition, not to detroy or eliminate it"; "It appears obvious that parliament did not intend the agreed charges to be a weapon to destroy or eliminate competition but rather to enable the railways to meet competition". Three times on one page of the 1951 report, the Royal Commission on Transportation sounds those warnings as to the impact on the railways' competitors of proposed legislation which, in substance, is the legislation now before this committee. And let us note the words: "The danger in the proposed amendment lies in the power it would give to stifle competition".

It is to be noted, also, that the Royal Commission on Transportation, quite apart from how it regarded the power which would be put in the railways' hands under such legislation as is now before this committee, looked upon the present agreed charge legislation as giving the railways more than ordinary competitive powers. On page 92 of the 1951 report we find, at line 37, the statement: "The point involves a question of whether the procedure should be simplified when the power granted to the railways is such an extraordinary one." Six lines later, after describing the present agreed charge legislation, the Royal Commission on Transportation states: "This extraordinary procedure should be accompanied by the publicity and safeguards now required by the Transport Act." And, again, on page 95 of the 1951 report it is stated: "The Act as it now stands gives to the railways an extraordinary power..."

PART VII

BILL 449:

AMENDMENTS PROPOSED BY CANADIAN TRUCKING ASSOCIATIONS

To use the words of the Royal Commission on Transportation, "an extraordinary weapon" is about to be placed in the hands of the railways by virtue of the legislation before this committee. It is a weapon whose danger "lies in the power it would give to stifle competition"—again the words of the Royal Commission on Transportation. It is "an extraordinary weapon which might have a serious effect on the trucking industry far beyond that of 'meeting' its competition." This weapon, according to the railway evidence to the Royal Commission on Agreed Charges, is to be used, when the proposed legislation is passed, at a rate which will bring into operation probably more than three thousand to four thousand agreed charges in place of the eighty agreed charges made from 1938 until the end of 1954. We respectfully submit that there is no provision in the proposed amendments to the Transport Act which safeguards the public interest in the event that three thousand to four thousand agreed charges set in motion the destruction or elimination of the trucking industry.

Canadian Trucking Associations submits that it is of vital importance from the standpoint of the trucking industry and, what is more important, from the standpoint of the public interest, that there be included in the proposed Section 33, subsection (1) the statutory right of any 'for hire' truck carrier, or association of 'for hire' truck carriers, to complain to the minister that the agreed charge is discriminatory or places its business at an unfair disadvantage. In accord with the provisions of Section 33, subsection (1), in the amended form before you, the minister may then, if he is satisfied that, in the public interest, the complaint should be investigated, refer the complaint to the board for investigation. If the board, after a hearing, finds that the effect of the agreed charge upon the business of the complainant is undesirable in the public interest, the board may then make an order varying or cancelling the agreed charge complained of, or may make such order as in the circumstances it considers proper.

One may say: The Minister of Transport is a very busy man and Canadian Trucking Associations represents 7,000 truck operators; every time an operator is hurt by an agreed charge he will want to appeal to the minister.

Canadian Trucking Associations is as solicitous regarding the responsibility of the Minister of Transport as anyone else. We would prefer a provision in the legislation which would remove from his shoulders the responsibility of having to consider an appeal from a truck operator against a railway agreed charge. But we do not intend to make a submission to the committee along those lines. If we suggested the appeal go directly to the Board of Transport Commissioners, we would be open to the accusation that we were trying to cut down the freedom which the Royal Commission on Agreed Charges says the railways must have. The commission recommends that this freedom be provided by eliminating the present requirement that an objection to an agreed charge contract, made by a shipper or carrier (not, at present, a truck carrier), must be the subject of a hearing by the Board of Transport Commissioners. In the legislation now in effect, an objection is made directly to the board under section 32, subsection (7). The board's hearing, following this objection—an objection from a shipper, any representative body of shippers, or any carrier—determines if the agreed charge will be approved. As recommended by the commission, this provision in section 32 is to be eliminated. Thus, as part of the process of setting the railroads free, the only hearing by the Transport Board will be one on reference from the Minister of Transport under section 33, subsection (1), a provision which has always been in the Transport Act. As the report of the Royal Commission on Agreed Charges points out (page 31): "No action has ever been taken under it although it has formed part of the statute since 1938."

It is our earnest hope that we will not be met here with the argument used during the regime of another Minister of Transport—that it was Canadian Trucking Associations which, in 1937 requested that truck operators be excluded from the Transport Act and that if the government had not implemented that recommendation in the amended Transport Act of 1938, truck operators would be in the Act and thus, presumably, in a position to be heard in respect to railway agreed charges.

We think that there is a danger that the approach of "you didn't want to be in the Transport Act, so we took you out" might be interpreted affirmatively: "if you were in the Transport Act, you might be looked after in respect to agreed charges." It is crystal clear on the record that the reason the trucking industry did not want to be in the Transport Act was that the Act originally provided for federal control of extra-provincial trucking. Why our representations of 1937 in respect to control of trucking should be laid at our doorstep in relation to agreed charges—and this has not happened during the regime of the present minister—is a question whose answer escapes us.

It is well known that the trucking industry has supported provincial control of all highway transport, including the government bill number 474—the Motor Vehicle Transport Act—implemented last year after the government had announced its conclusion that a divided jurisdiction over highway transport would not be in the public interest. Thus, extra-provincial trucking, in addition to intra-provincial trucking, was placed under the provincial transport boards in provinces which have desired the control. The control remains with the provinces and is not divided although, of course, the jurisdiction over extra-provincial trucking remains federal, as confirmed by the Privy Council last year.

We are certain that there is no legal barrier whatever to the statutory right being accorded truck carriers, or an association of truck carriers, to appear before the Transport Board in respect to a railway agreed charge—if

the minister is satisfied that reference of the truck carrier's complaint to the board is in the public interest. In our respectful submission, the argument that you have to be under federal jurisdiction to obtain recognition in the Transport Act would, if applied to all industries in relation to all federal boards, reduce the functions of these boards to an absurdity. The provincial transport boards, dealing with the problem in reverse, have never made any great issue of it. They have experienced no difficulty in their recognition of the right of the federally-controlled railroads to appear at hearings at which the provincial board considers the application of a truck operator for new or extended highway operating rights. In this respect, the railroads have the right to be heard by provincial transport boards in the five provinces—Quebec, Ontario, Manitoba, Saskatchewan, and British Columbia—in which 93 per cent of the gross revenue of the trucking industry is earned. In these provinces, where control over the trucking industry is exercised by requiring proof of public necessity and convenience before new or extended operating authority is granted to a truck operator, the railroads are free to oppose the application on the ground that they will be adversely affected.

This brings us to what we regard as the discriminatory aspect of the legislative amendments before you. The discrimination, we submit, very clearly lies in the fact that other competitors of the railroads are to have the statutory right to complain to the minister that an agreed charge is unjustly discriminatory or places their business at an unfair disadvantage. These other competitors of the railroads are to enjoy consideration under the legislation to this extent: that the minister may, if he is satisfied that in the public interest their complaint should be investigated, refer the complaint to the board for investigation. These other competitors of the railroads will then be in the position that if the board, after a hearing, finds that the effect of the agreed charge upon the business of the complainant is undesirable in the public interest, the board may make an order varying or cancelling the agreed charge complained of or may make such other order as in the circumstances it considers proper.

These other competitors of the railroads are the water carriers. They are singled out for preferential treatment in section 33, subsection (1) which states that "any carrier or association of carriers, by water or rail...may complain to the minister...". The water carriers are competitors of the railroads. Why are they in section 33, subsection (1) when the trucking industry is not?

May we respectfully point out that the water carriers are competitors of the trucking industry as well as of the railroads. Our all-year-roun extra-provincial truck operators on the Montreal-Toronto run—"federal carriers" as they are now designated in federal legislation—experience a reduction of freight volume every year during the shipping season. Their rate levels are depressed by the lower rates of the steamship carriers. That is competition. We have never complained to anyone about it. We are not complaining about it now. But the proposed section 33, subsection (1), by making it possible for the water carriers to come to grips with a railway agreed charge—possibly to the extent that the agreed charge would be cancelled—gives to those federal carriers a competitive advantage that would be denied truck operators; not only truck operators but, in the case of Montreal-Toronto truck operators, federal carriers over which parliament has jurisdiction.

The essential and over-riding consideration remains: Whether it is in the public interest that any truck operator, or an association of truck operators, should have the statutory right to submit to the Minister of Transport that a railway agreed charge, because of the effects on the operator or operators, requires investigation by the Board of Transport Commissioners?

In the event of recognition of the trucking industry in section 33 (1) frivolous appeals from truck operators—and we hope that Canadian Trucking Associations would not be guilty of them—would fall by the wayside. There is no doubt in our minds on that score. We cannot believe that the committee has any doubt about it. If during the shakedown period following passage of the amended legislation difficulties in this regard are contemplated—I am talking about the fact that there are 7,000 truck operators and only a small number of water carriers, we submit that they will not be so great that they cannot be taken in stride by the government. The continued existence of adequate highway freight service for those shippers whose business, manufacturing, and industrial processes, postulate use of truck service is surely a more important consideration than the possible administrative difficulties during the initial period under the new legislation. If nothing is written into the Act to enable the minister and the Board of Transport Commissionners to take cognizance of the decimation of large sections of the trucking industry, tremendous damage may be done before parliament may be in a position to enact the amendment which we are now requesting.

There are two phases of the amendment which we request. First of all, we ask that the three-month waiting period, mandatory before an appeal can be made to the Minister of Transport regarding the effect of a railway agreed charge, be eliminated. Secondly, we request that there be written into the legislation the right of any truck carrier, or association of truck carriers, to make an appeal to the minister in regard to a railway agreed charge.

The question of the three-month waiting period is of greater importance to truck carriers than to water carriers. Suppose that agreed charges are made by the railways on the movement of goods between two cities and that the trucks are excluded in the contracts from any part of this movement or the rates are so low that the truck operators cannot meet them. All of this traffic shifts to rail. Not for long can truck operators, with the exception of a very few of the largest, withstand the impact of that type of an agreed charge. When one considers that the total gross revenues of the Canadian truck operator amounted to $44,000 in 1952 per company—$156,000 in the case of Group I carriers—it is quite easy to see that the three-month waiting period is impractical.*

I am quoting also the group 1 operators, because I do not want it to be thought that I am hiding behind the position of the small operators.

Hon. Mr. MARLER: When you say "the total gross revenues of the Canadian truck operator amounted to $44,000 in 1952...", surely that statement is incomplete.

The WITNESS: Yes. I should have explained that it is the total gross revenue of the average Canadian truck operator.

It does not take into account the limited economic resilience of the average truck operator. We therefore respectfully submit that it is in the public interest that the three-month waiting period be eliminated.

We submit that without violating the principle of setting the railroads free in regard to agreed charge ratemaking, the legislation before you should be amended to enable the Minister of Transport to consider the complaint of a "for hire" truck operator, or an association of such operators, that an agreed charge is unjustly discriminatory against it or places its business at an unfair disadvantage. If the minister is satisfied that an investigation is in the public interest, the complaint may be referred to the Board of Transport Commissioners.

Our proposed amendment is as follows:

33. (1) Upon publication of an agreed charge

(*a*) any carrier, or association of carriers, by water or rail, or any motor vehicle transport operator, or association of motor vehicle transport operators, or

(*b*) any association or other body representative of the shippers of any locality

may complain to the minister that the agreed charge is unjustly discriminatory against it or places its business at an unfair disadvantage, and the minister may, if he is satisfied that in the public interest the complaint should be investigated, refer the complaint to the board for investigation; if the board, after a hearing, finds that the effect of the agreed charge upon the business of the complainant is undesirable in the public interest, the board may make an order varying or cancelling the agreed charge complained of or may make such other order as in the circumstances it considers proper.

I appreciate the indulgence of the committee while I read such a lengthy presentation.

The CHAIRMAN: Thank you very much, Mr. Magee. Are there any questions?

Mr. HAHN: Is it understood that the appendices will be printed in our minutes of proceedings?

Mr. LANGLOIS: Is it really necessary?

The CHAIRMAN: It would be a very expensive job.

Mr. CAVERS: There must be 25 pages in the appendices.

Mr. HAHN: I do not think the members will make very much sense of the brief unless the appendices are included for reference.

The CHAIRMAN: What is the wish of the committee?

Mr. HAHN: I move that the appendices be placed in the record.

Mr. LANGLOIS: Is it not a good plan to practice economy?

The CHAIRMAN: Is there a seconder to Mr. Hahn's motion?

Mr. GREEN: It has always been the practice of this committee to have a printed record of what has been done. I think that in order to understand the brief it is necessary to have the appendices printed with the main part of the brief. I realize that it is quite long, but I suggest that in order to get a complete picture this should be done because we will not have a complete picture without the appendices. This is a question which may be of considerable interest to the country for some years to come, and I think it would be worthwhile, when we get the larger part of the statement, to get the whole thing.

The CHAIRMAN: Is it the wish of the committee to have the appendices printed?

Carried.

Are there any questions you would like to ask Mr. Magee?

By The Hon. Mr. Marler:

Q. I would like to ask Mr. Magee one or two questions. In the last part of his brief Mr. Magee argued in effect for the right for an individual motor vehicle transport operator, or an organization of such operators, to complain to the minister that an agreed charge is unjustly discriminatory against it, or places its business at an unfair disadvantage.

I would like Mr. Magee to give me some cases in which he believes that the trucking operator ought to have the right to complain. Perhaps he might indicate what might be the grounds of complaint against an agreed charge.—A. Mr. Minister, under the proposed Act—

Mr. NICHOLSON: Mr. Chairman, we cannot hear. I wonder if the question and answer could be repeated.

The CHAIRMAN: If you would move a little closer you could hear better. There are lots of seats up front.

Mr. LANGLOIS (*Gaspe*): The witness might stand up.

The WITNESS: Mr. Minister, it is our submission that the provisions in section 33, subsection 1, which are there now would be the general grounds on which a motor vehicle transport operator or an association of motor vehicle transport operators would take an appeal to you on a railway agreed charge. In the first place, it is the provision that is to apply to the water carriers and secondly we have tried to leave the proposed legislation that has been recommended by the commission as intact as possible in line with our submission that we are not attacking the principle of the legislation which is before the committee. I do not know whether or not that is a satisfactory answer to your question.

Hon. Mr. MARLER: I think perhaps you do not go far enough, but I will assume, for example, that the railways have just concluded an agreement—

Mr. NICHOLSON: Although the witness can hear you I suggest that in this large room those who have questions to ask or answers to give should speak up. There are not enough chairs at the head table for everyone.

Hon. Mr. MARLER: I am sorry if the hon. member could not hear. I will speak loudly enough so that I am sure he will hear.

By Hon. Mr. Marler:

Q. Mr. Magee, the question I would like to ask is this: assuming that the railways have just come to an agreement with certain shippers with regard to an agreed charge, the agreed charge is published and under your proposal a motor vehicle transport operator operating in the territory affected by the agreed charge then complains to the minister that the agreed charge places his business at an unfair disadvantage. Now, will you give me an example in which the agreed charge places the business of the transport operator at an unfair disadvantage for any other reason than that the charge proposed by the railways is less than the charge which has been followed by the operator?—A. Yes, I will try to do that, sir. I am afraid I will have to go a little further on the subject of agreed charges than I intended, Mr. Minister, in order to answer the question.

An Hon. MEMBER: Louder, please.

The WITNESS: I was saying that I will have to go a little further in describing our position on agreed charges in answering the question than I intended to before the committee because one of the chief aspects of the agreed charge which the trucking industry feels is unfair and which it feels puts into the railways hands a weapon which we will not be able to wield for years, in my opinion, is the restrictive clause in the agreed charge which enables the railways to tie up any percentage of traffic—often 100 per cent—and it might be in a case like that, Mr. Minister, that a truck operator or our association or one of the other trucking associations, might make an appeal to you on those grounds. If you felt it was in the public interest to refer that appeal to the transport board it might result in the board either dismissing the matter or varying the agreed charge to enable the trucker to compete for some of the traffic.

It is quite true, and I think I should point this out, Mr. Minister, that there is no legal barrier to a truck operator making an agreed charge; none whatever. It is equally true that there are no agreed charges in effect by the trucking industry with a restrictive clause which says that a shipper must send a certain percentage of his traffic by truck in exchange for which the truckers would lure the signing of a contract by lower than normal rates. We do not have the economic resources to do that, sir. I think it would be many years before any but the very largest trucking companies ever would. We feel that is a weapon—an extremely powerful weapon—in the hands of the railways that we certainly cannot compete with on equal terms.

Mr. MONTGOMERY: If the truckers are free to make agreed charges and if you agree with the shipper on a charge that is considerably lower than the charge that has been authorized by a provincial transport board have you got to go back to the provincial board for approval of that rate?

The WITNESS: In the provinces where there are rate regulations, whether it is the fixed rate of Manitoba or Saskatchewan, or the filed rate of British Columbia or Quebec, we cannot vary our filed rates without the permission of the board. That is an offence under the Act in those provinces. There is contract trucking in which truckers may have some common carrier operations and they may have an operation under contract with a certain shipper but there is nothing in those contracts in existence today—this was discussed before the royal commission on agreed charges—that ties up the shipper to the trucker by requiring that the shipper send 75 per cent or 85 per cent or 100 per cent of his traffic by that truck operator in order to get the rates under the contract. There was evidence produced before the royal commission on agreed charges—not by ourselves, but in one province, British Columbia, by the superintendent of motor carriers of the provincial regulatory body, the motor carrier branch—that there were no contracts in effect in that province where the truck operators had a provision which said that so much traffic must be sent every year, or for whatever period it might be, by that truck operator. We have no economic resources which enable us to make that kind of rate and that is our dilemma when we are left some of the traffic—there is one under discussion now with the packing houses and I believe it provides that 90 per cent of the traffic will go by rail, but it may be very probable that the rates which are made in that agreed charge will be so low that we cannot meet them even on the 10 per cent of the traffic that remains.

Hon. Mr. MARLER: That is not all 90 per cent—it is 90 per cent moving between the two points.

By Mr. Cavers:

Q. In the province of Ontario there are no regulatory provisions with regard to charges at the present time; is that right?—A. Yes, that is right, sir.

Q. And is it proposed to set up a provincial transport board in the province?—A. Yes sir.

Q. When is that to be done?—A. I do not know how soon that is going to take place. I will consult my associate, Mr. Goodman, who arrived here only this morning and find out the latest information on the subject, but it is proposed to remove from the Ontario municipal board the responsibility for hearing applications for truck permits and to place those hearings under an Ontario highway transport board.

By Mr. Marler:

Q. As it is presently constituted the Ontario Municipal Board only have the power to deal with the granting of the application?—A. Yes.

Q. The granting of the particular type of licence would be given and the route over which they travel?—A. Yes.

Q. They have nothing to do with charges?—A. There is no rate regulation in Ontario as yet. The Automotive Transport Association of Ontario has been making submissions to the government of Ontario for some time now in company with the Canadian Industrial Traffic League, the Canadian Manufacturers' Association Transportation Department, the Hamilton Chamber of Commerce and the Toronto Board of Trade. All these organizations have been making submissions to try to get rate regulation into effect in Ontario. Whether it is going to come under the new regulatory setup I cannot say. I will obtain the answer.

Mr. LAFONTAINE: What about Quebec? Are there any regulations?

By Mr. Herridge:

Q. Has the witness any idea what percentage of the trucking industry services is in the nature of feeders and what percentage is competitive?—A. I am afraid it is impossible to say what percentage of the traffic is traffic which is being hauled by the truck operators and fed to the railways. There are no statistics on that subject. As I explained in our submission one of our biggest problems at the moment is statistical information and ever since I have been with this association, since 1947, we have been working with the Dominion Bureau of Statistics trying to clear up that problem. I do not think I could answer a question like that for a couple of years yet.

By Mr. Barnett:

Q. Referring to page 42 of Mr. Magee's brief, after several pages of documentation he reaches the conclusion—and I am quoting—

> We submit that a fair estimate is that Canadian truck operators compete within a 15% to 20% sector of the railways' total revenue tonnage volume.
>
> The railways, by contrast, are competing with the trucking industry over almost the whole range of the truck operators' business.

I was going to ask Mr. Magee has he had any documentation for that rather sweeping statement because it does appear to me that it is closely related to the words which occur at several places in the brief that the effect of this legislation would be to so adversely affect the trucking industry, or a large section of it, as to wipe it out. It would appear to me that the committee should have something more substantial than just that one brief reference to the area in which the railways are competing with the total volume of business of the trucking industry in order to have a complete picture?—A. Mr. Chairman, except for the areas in which there are no railway operations and in which the trucks are supplying the only freight transportation service, the railways are competing with us over the whole range of our traffic. For example, on the East-West or on the West-East truck haul between central Canada and the four western provinces which is being competed for by the railroads either on the basis of service, or commodity rates, or competitive rates or agreed charges, the whole sector of our traffic is subject to attack at any time. That is a competitive factor with which we live. The Toronto-Montreal haul is an example. The loss of revenue which we have suffered there since the railroad competitive rate cuts of September 1954, as I mentioned in our submission, have amounted to about 40 per cent according to the reports the operators have given us. Obviously the traffic those operators haul is all potential railway traffic. To be fair I have

to reverse it, of course, and say that within the sector in which we operate—we estimate it would be between 15 to 20 per cent of the manufacturers and miscellaneous—within that sector all of the railroad traffic there is potentially subject to movement by truck if we can make our service and our rates attractive enough to the shipper.

By Mr. Cameron (Nanaimo):

Q. You gave us here an estimate of the sectors estimated in tonnage volume. Now, can you give us any idea as to the relative revenue value of the two sectors to which you refer? For instance, how does the revenue value of the 15 to 20 per cent on which your people can operate and the total revenue value of all freight carried compare? Have you any ideas about that?—A. That is where this theory of the truck taking the cream of the traffic comes in because that is traffic which is rated higher than normal. Now as the equipment of the trucking industry improves with technical advances, the type of trailers we have, motive power—and I suppose gas turbines will be coming in some day to replace the type of engines we have now—we will be able to operate in other sectors of traffic I suppose in which we are not able to operate now. Based on our operating cost that is the only sector of the traffic in which we can operate at the present time, subject to some exceptions which are made in the brief regarding petroleum haulage in the west and certain things like that.

Q. But you have no idea, Mr. Magee, as to what is the ratio in traffic value between the 15 to 20 per cent in which you compete and the total freight field?—A. I have not at the moment. I will undertake even if I have finished before the next meeting of the Committee on this subject to see if we cannot make some study of this which will enable us to give you an answer to that question. I am sure that I can.

By Mr. Byrne:

Q. I have a quotation from the Railroad Association of Canada. They have an estimate on ton miles of revenue and they state that the truckers were carrying one-eighth as much traffic as the railways and earned more than one-third as much revenue. They give it as $980 million for the railroad and $354 million for the trucking association. That represents about one-eighth of the traffic.—A. With respect, Mr. Chairman, that figure of $354 million, the previous figure of $316 million gross revenue of the industry which I quoted and our estimate of $200 million a year are all nothing more than informed estimates. The Railway Association is in no better position than the Canadian Trucking Associations, because of the lack of statistics, to produce any concrete conclusion as to the total gross revenue of the trucking industry. That is the first time I have heard the figure of $354 million mentioned, and I would certainly not be able to anwer the question.

Q. I suppose they have the same right as yourselves to make an estimate. —A. Of course. We are going to start a bulletin soon.

Q. You have cited five different types of traffic. I think it was in manufactured goods that you compete in any way with the very large traffic in wheat, that is export wheat, from Eastern Canada. When you are comparing the actual traffic and talking about 30 per cent of the actual revenue would you not agree that if you were in that great business of marketing wheat you would find quite a difference in revenue at the end of the year?—A. I want to be very careful here. I am not trying to avoid the question but if you would let me have the bulletin I would like to study it for a few minutes before replying.

Q. That is all right. I notice there is one part of your argument in the brief where you say that the trucking industry showed itself important in

two respects within the last few years. One, of course, was during the Second Great War. But do you think that it is a good argument to assert that we have a standby in case the employees of the railway companies decide to strike for better conditions?—A. I think our only reference to the railway strike came by way of mentioning that in a quotation from a report. I want to make it quite clear that I was not trying to "take a dig" at the railway unions or any situation which they may feel themselves faced with in regard to the management of the railways. The strike occurred. We were not tied up. There was a job to be done and we did it to the best of our ability. I do not see what else we could have done in the circumstances. I think that one good thing which came from it in regard to members of parliament was that because we were able for many days to improvise emergency transportation services they were able to come here and deliberate with some confidence whereas if there had been no trucking there is no doubt a very serious situation would have arisen.

I trust we have not been unfair in any reference made to the railway strike. That certainly was not our intention. It looked like a lot of traffic for a time but I want to say that what happened to our equipment during that strike cost us a very great deal of money for months afterwards. We ran our vehicles by day and night and we paid dearly for it as a result. Our normal shipments, for example, had to be interrupted. They could not be handled because we had more important commodities—drugs, medical supplies, food and so on to handle. Moreover, we had no system of embargoes imposed by the authorities which removed from our shoulders the problem of dealing with our own customers and which would have enabled us to say "we cannot handle that because the government of some province has said 'no' ". We don't want another strike, I can assure you.

Mr. CAMERON: In that connection how far are the employees of the trucking industry organized in Trade Unions?

The WITNESS: They are strongly organized in the provinces of Ontario and Quebec. There is quite an organization of the employees in British Columbia, a slight organization I think in Alberta and I would say a very slight organization in Manitoba and Saskatchewan. In Ontario and Quebec, all of the provinces with regard to which I have given descriptions of the degree of organization, the union has made good progress.

The union which has organized our employees is the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America—A.F. of L.—and they have organized all of the large and medium sized operators in Ontario and Quebec. I think the strike we had a couple of years ago was evidence of the extent of the organization of our industry by the unions. Normally we have very good relations with them.

By Mr. Hosking:

Q. Do you not consider that the greatest problem of the economy of our country, due to its geographical size, is transportation?—A. Yes.

Q. Would not anything which lowers the cost of transportation be of benefit to all the people of the Dominion?—A. I think that that is one of the questions which we feel the Board of Transport Commissioners could decide if our amendment is granted. That might very well be the overriding consideration in their minds if the truck operators complained against an agreed charge finding coming before them.

Q. Take the case of the meat packers for instance—the reason for them signing this agreement is because they could get a cheaper method of handling their products, is it not?—A. I do not wish to give the impression that an agreement has been signed. Negotiations are now going on.

Q. If an agreement is negotiated it would give the meat packers a cheaper price in handling their products?—A. That is quite correct.

Q. Everybody who buys meat in Canada is going to benefit from such an agreement because they are going to get the benefit of lower transportation costs—transportation costs are a dead weight on top of the industry—and anything which would lower those costs would bring an advantage to everybody who buys meat, would it not?—A. I would have to answer that question in two parts if I may: the first part is that I do not know whether the agreed charge—the saving in the agreed charge—would be passed on to the public. Sometimes it has been passed on and sometimes not. Secondly, if the agreed charge is successfully negotiated by one of the major packers there is no doubt that all the rest of them will be forced into it.

Q. Because of the price competition?—A. That is right, and the truck operators who are handling that type of traffic will be in a difficult position because these are specialized operations requiring a very special type of refrigerator equipment. So I think the packers will have to consider what will happen at the expiration of the term of their agreed charge rates—whether the companies will go back to the old railway rates.

Q. But you would agree that this amendment is going to make for cheaper handling and therefore the public should get their meat at a lower price in the end?—A. It may do that.

Q. With respect to this agreement that they have between Toronto and Montreal, if they signed an agreement to handle this commodity that they are moving from Toronto to Montreal, would that not give, in the same way, all the buyers of those goods a better deal?—A. Yes, that might be. I want to make it clear that in regard to the rates, these are not agreed charges; these are competitive rates between Montreal and Toronto largely. The position of the trucking industry is that the railways should have the right to compete price-wise with the trucking industry. As to the damage which has been done to the Toronto-Montreal truck operators—we have placed no submission before the minister ever on that subject, on the very precipitious railway rate slashes in that regard. That to us is a matter of competition and it is something which we have to be prepared to meet. But with an agreed charge, there is no competition at all. When an agreed charge is signed with a shipper who says that one hundred per cent of his traffic will move by rail, the shipper can be penalized by the railways if he moves in any other form of transportation.

Q. Surely it only lasts for a certain period of time, and if we get a cheaper transportation charge by virtue of it, then it is a good thing.—A. If it wipes out all the truckers between two cities, I do not think it would be a good thing. As we have pointed out in our submission, the trucking industry has integrated itself in the economy now to the extent that there are very few shippers who can do without trucking services entirely; and it seems to me that when they have to have that type of service in addion to their rail service, it would be a bad thing for the public and for industry if it was to disappear. I might be right or I might be wrong; but what we are asking for is the right to have it investigated, and if we succeed in getting the amendment, then, if the Board of Transport Commissioners says that "you people are absolutely wrong," that it is not in the public interest to disallow this agreed charge, then that is it; we have had it, and we are finished with that type of trucking, and we have to take it.

Q. It seems to me that the condition would be exactly similar to that of the small truckers who made representations to me about the big truckers. To me it is analogous. I have to defend the position and the protection that

the big truckers have with regard to their being able to buy at wholesale from manufacturers. For example, they can buy their tires wholesale, and all sorts of things like that, and it puts them in a very favourable position in comparison to the small truckers who have to buy at current rates.

If we defend the big truckers against the small truckers, surely we can use the same argument with the railways as against the big truckers, because their positions are exactly analogous. You know and I know that a big trucker does not do business in the ordinary way. He can go to a manufacturer and say "We are going to buy so many vehicles plus tires", and in that way he is in a very different position from the small trucker who has to go to a local garage to buy a truck. Similarly in the case of repairs. The big trucker may get as much as forty-five per cent off parts because be belongs to the Association, whereas the little trucker cannot get that discount. They have made many, many representations against the big truckers, and it seems to me that the way you present your case is exactly similar as between the little and the big truckers, and the railways with respect to the big truckers.—A. I represent both the big and the small truckers, incidentally. There is no association within our group which arranges any deals for any truck operators, large or small, with regard to equipment.

Q. You do not need to do that.—A. You made some reference to an association, but we do not do that. Most of the 7,000 people that I represent here on behalf of the Canadian Trucking Associations are small operators. I am not trying to hide behind them, but that is a fact of life; they are the people who are paying their dues into our association, and they are the people we represent. And I say that out of 7,000 there are not more than 1,000 of that group—

Q. Your small truckers—and I shall ask about that—have to pay the top price for their trucks and for their maintenance and tires. They are not the ones you are representing in this brief.—A. Yes sir, we certainly are. We represent them.

Q. But their interest would be very small.—A. Their interest would be greater in comparison with the large truckers' interest for the simple reason that the large truckers have more resources left to take care of themselves for a little while under an agreed charge arrangement, whereas the small operator is going to be dealt a much more serious blow under this agreed charge.

We have had small truckers who have been put out of business because of agreed charges. There was the petroleum agreed charge in the west in 1952, for example; there were small truckers involved there. There were two or three very large companies, but the rest of them were small.

Q. I have not even had one of the small truckers speak to me about this.—A. Excuse me; would you mind telling me what province you are from?

Q. Ontario.—A. Ontario? Well, our association in Ontario has a very large number of small operators as members.

Q. Who would be affected by this?—A. Yes, who would be affected by this, and who would be vitally concerned by it.

Q. I have not heard of one.—A. That is why we are here today.

By Mr. Nicholson:

Q. I would like to ask a question or two of Mr. Magee. I wonder if he could tell us the total labour force represented by the trucking companies, the percentage of the workers who belong to unions, and also something about the hours of work and the daily wages in the organization.—A. It is a very difficult question to answer quickly. I would like to get an answer for you. Again, due to the lack of statistics in our industry, any estimate of the number

of employees is simply a guess. The total number of truck operators in Canada is 15,000, and most are small operators. The total number now reporting to the Dominion Bureau of Statistics is around 4,000. Therefore, since that is our only source of information, there is no way whereby we can tell you accurately the number of employees in the trucking industry without extending an estimate. We have made an estimate and we estimate around 70,000 employees in our industry. But it is subject to all the qualifications that I have just placed on it. Because of the multiciplicity of operators, I could not tell you the percentage of union as against non-union employees, but I think the percentage of unionized employees in Ontario and Quebec where the industry is the largest, would be very substantial. I shall try to get a more complete answer to your question and leave it with the chairman before these hearings are over.

By Mr. Hamilton (York West):

Q. I wonder from the practical standpoint if you could tell us just how this would affect the business of your members. The railways will now have three types of rates—say we have a rate of $3.75 and a competition rate may be offering $2.20. Now they come along with an agreed charge of $1.09. You have been faced with this other competition all along, and so long as the agreed charge contract is for a short period of time only are you not in a position to meet it as well?—A. We are not in a position to meet it because of the restrictive covenant of the agreed charge, and the power it has given to the railways to tie up a certain portion of the shippers traffic. It has gone as low as 55 per cent in an agreed charge which was made with Ford, and it has gone as high as 100 per cent on many of them. When it goes to 85 per cent, 90 per cent or 100 per cent, it no longer becomes a question of trying to compete on prices; it is just an academic discussion. We are out of the picture and there is nothing we can do about it.

Q. During the period when the contract is in effect, do you not have the opportunity then of attempting to bring your rates into line so that you will be able to offer something similar?—A. That is another difficulty, because the rates on the agreed charge contracts are usually so low we cannot meet them.

Q. You are really asking then on the basis of the national interest? Your agument is based on the fact that we need a trucking industry and we must maintain it no matter what the economic conditions may be. Is that what your argument is? Is that your argument as distinct, let us say, from asking from the public interest standpoint? In other words, from the public interest standpoint in the area in southwest Ontario it may be very advantageous to have this type of agreement, but you are saying that from the national interest standpoint we must maintain a trucking industry?—A. Yes, I certainly say that. I believe that between many centers where it is a more local problem under an agreed charge it could then certainly become a matter of public interest, but there might be only four or five trucking operators in many centers who are going to be put out of business by agreed charges.

By Mr. Hansell:

Q. Mr. Magee has spent some little time in his brief in respect to the precarious investment position of the trucking industry. That is to say, you had to meet certain finance charges, high interest rates and so forth, I do not believe you stated what the possible total investment of the trucking industry is at the present time. Have you any statistics on that?—A. The report of the royal commission on agreed charges contained an estimate of

the capital investment represented by the 15,000 operators who constitute the trucking industry and in the report on page 23 it says that these 15,000 operators represent a capital investment which may be estimated at somewhere between $250 million and $300 million.

Q. What proportion of that would you say is still owed by the trucking industry? I know this is so and there is no argument about it, that most of the small trucking concerns are financing their charges as they go along. Could you say what proportion of that investment might still be unpaid? Have you any idea? Perhaps it is not a fair question and perhaps you could only strike a guess.—A. I am afraid I could not give you an answer to that question.

Q. My next question was going to be, since you anticipate that there will be some losses of investment should the bill go through and the agreed charges become an actual reality, have you any idea what loss of investment that would involve? I know those questions would involve guesswork.

Hon. Mr. MARLER: They could not be anything else.

Mr. LANGLOIS (*Gaspé*): As a matter of fact, the agreed charges are in reality now.

Mr. HANSELL: Yes.

The WITNESS: Yes, although we have never made an estimate of that kind. I am afraid I could not give you an answer to that question either.

By Mr. Hansell:

Q. I understand that since the new rates went in for the transportation of long distance hauling of motor vehicles that there has been quite a loss in investment there?—A. Yes.

Q. Have you any record of that?—A. A number of operators who were involved there were not members of our associations and it is very difficult to give an actual account of the people who were put out of business by that agreed charge although a number were. They were particularly vulnerable because their equipment was adapted to handling one type of freight. An operator who is in that position under an agreed charge is in the most dangerous position that anyone can be in in the trucking industry because he has no way of shifting into another kind of freight because of his equipment, and it represents the end of his operations.

Q. My next question is along similar lines. In answer to Mr. Byrne's question a little while ago, you stated that there were certain types of trucking operations that had to be pursued in respect to the transportation of meats and I fancy you referred to that type of trucking involving refrigeration. Now, do you see much danger of some considerable losses in that respect?—A. Yes, there is a very grave danger there because again the operators have tried to provide the packers with a superior freight service to rail. They have put extremely expensive refrigerated equipment on the road. There is an operator in the room today who has developed a type of refrigerated equipment which he has patented and which is probably the best type in operation in Canada today. Those operators are going to be very hard hit by this agreed charge which is now up; as a matter of fact, that equipment which is being used for refrigerated transport will become useless.

Q. In answer to Mr. Byrne's question you then referred to the railroad strike. That illustration was only brought in, I fancy, to indicate the importance of the trucking industry?—A. Yes, it happened that they were the words of the royal commission, and we were quoting that extract from the report because the royal commission on transportation pointed out that the danger in the type of legislation which is now being considered by the committee is that it would stifle competition and again it said that it might destroy

or eliminate competition unless subject to restrictions. It was only because in that particular sentence the royal commission itself used the instance of the railway strike that that found its way into our brief.

Q. In respect to the rates for the packing industry I think it is fair to conclude that your intimation was that when the rates had to be reviewed there was a possibility that this refrigeration type of trucking might not exist then and therefore the railways would be in a position to increase their rates without any hope of there being an alternative and that there would be no refrigeration trucks?—A. Yes. I suggested that as a possibility under the pending agreed charges.

Q. I have just two more questions. You are acquainted, I fancy, with the principle of loss leader merchandising. Do you regard the agreed charges as comparable to loss leader?—A. Well, I never made that comparison and I do not think the association ever has. We regard them as a very lethal weapon which up until the present time has been used very, very sparingly. I think it is rather difficult to show the committee the problems that face us today with this amended legislation. According to the railroads' own evidence at the royal commission there is going to be a tremendous upsurge in the agreed charge rate-making which will come in the month following the adjournment of parliament and if there is nothing in the legislation which will enable us to make any appeal or complaint to the minister a very great deal of damage can be done between now and the next session of parliament without any safeguard which we could use on behalf of our people.

Q. Well, Mr. Chairman, I am a new member on this committee, as you know, and perhaps not as experienced as some other members of the committee. Do I understand that we may have a representative from the railways here before the committee?

Hon. Mr. MARLER: I thought that as soon as the questioning of this witness is completed we might hear representatives who are here from the railways.

Mr. HANSELL: I might pursue that line of questioning with them, because I have a feeling that the principle involved in the agreed charges is the same principle involved in the loss leader in this respect that in the agreed charge they could haul freight at a loss.

Hon. Mr. MARLER: I do not think so. I think the whole tradition has been that the agreed charge must be compensatory.

Mr. HANSELL: Of course, I think that depends on what might be meant by the term "compensatory". I have one more question, Mr. Magee. You are not really asking in your brief—or you are not really opposed to agreed charges as I understand it; what you are asking for in this amendment is that you should have the same right to complain to the minister as other shippers?

Hon. Mr. MARLER: As shippers, shall we say?

Mr. HANSELL: Yes, as shippers.

The WITNESS: That is right. Our stand before the Royal Commission on Agreed Charges was that the agreed charge provisions should be abolished. Between the tabling of the report and these hearings we have changed our position very drastically and we certainly feel it is very bitter medicine, but are prepared to swallow it and are not making any further representations on the question of abolition of the agreed charges. We ask only for the right to be heard under this section and I may say we made no representations to the royal commission regarding the matter of being heard under section 33(1) for the very simple reason that the section has never been used since it was put into the legislation in 1938.

Hon. Mr. MARLER: In fact the section of the present Act is available only in favour of carriers at the moment and not even of shippers.

By Mr. Carrick:

Q. I would just like to follow on the line of questioning which the minister started. Let us assume that you are given the right to make some representation before the minister. I do not want to press you further on this than you can go; but when the minister asked you what you thought would be a just ground for complaint the only point you mentioned was that you objected to the restrictive provision in the agreed charges. Is this not one of the very essential parts of the agreed charge, that the shipper be obliged to transport a percentage of his total product for a certain portion of the time, and if you object to that it worries me that you are essentially now objecting to the principle of agreed charge.—A. It seems to me that that is the position we have taken. It is exactly the position that is being given in this legislation to the water carriers. I do not feel that we, making our representations, are doing any more violence to the principle or recommendations than the consideration of the commission that the position of the water carriers should be taken cognizance of in this legislation.

Q. Do you not think it possible that both the water carriers and yourself could conceive of some objection other than to the restrictive provision of the agreed charge?—A. Mr. Chairman, I do not want to be on record as saying that a truck operator, if he obtained a right in the legislation to make an appeal to the minister would only go to the minister to protest the restrictive provision; it might be the restrictive provision, it might be the rate, it might be the fact that he was the only operator in a sparsely populated part of Canada who was serving two centres, and it might be the restrictive provision because of the fact that it would remove his service from those centres. I think that that is a perfectly legitimate ground to take an appeal to the minister on from the standpoint of the public interest. One might say, "Well, the shippers are the people who would be concerned about this," but our experience with the shippers is that it takes them a long time to get into action on these things particularly if the predominant part of the traffic goes by rail, and there are some considerations which enter into their minds apparently in that respect.

By Mr. Langlois:

Q. Mr. Magee, on page 22 of your brief—and you repeated it a few minutes ago—you said that in 1954 "the reduction in gross revenues of the Toronto-Montreal trucking firms—in business lost where railway cuts could not be met and in rate cuts matching a substantial portion of the rail cuts—has amounted to 40 per cent".

Are you in a position to state definitely that all of this 40 per cent reduction is attributable to railway competition—in other words are you taking into consideration in arriving at this figure the general decline in the volume of traffic experienced by all carriers in Canada and the United States in that year?—A. Well, this is the report of the carriers to us from two standpoints: there are two factors involved in this 40 per cent figure. One is the business lost where the rail rate cuts could not be met and traffic had to be lost to the railroads without a fight, and secondly there were the cases where the railway rates did not go too low and where we were able to make cuts or where a trucking company made a rate cut which would still be 10 per cent above the railway rate but because of the service advantage it was able to hold the traffic. Each of those two factors enters into the 40 per cent figure—business lost where railway rate cuts could not be met and rate cuts

matching railway rate cuts wherever the truckers were able to do so. I do not know enough about the traffic situation related to the general economy of the country in respect of Toronto-Montreal truck operators to answer the rest of your question.

Q. In other words you do not know exactly how this factor of 40 per cent was arrived at—if it was by comparing reports received from your operators in previous years as compared to a report for the year in question?—A. Certainly a decline of this nature is very drastic and unusual for our industry.

Q. On the other hand, a good portion could be attributable to the general decline in the volume of traffic such as has been experienced by all carriers in Canada?—A. It could be, but only to a slight extent and the reason I say that is because even in the depression the gross revenues of the railways, which prior to the war reached their peak in 1928, hit rock bottom in 1933 and their decline in gross revenue on that occasion was 50 per cent. That was at the very height of the depression and that is why I say that a 40 per cent decline in gross revenue is a very unusual decline and why I feel very little of it can have relation to general economic conditions. However, I am prepared to admit there may be an element there—

Q. I have one more question. On page 52 of your brief you use the statistics of the Bank of Canada with regard to sales of commercial vehicles as an indication of the prosperity of your trucking industry.—A. Yes, sir.

Q. And for the years 1952, 1953 and 1954 there is marked decline in the number of units sold?—A. Yes.

Q. Is it not a fact that there has been a marked trend in your industry in recent years toward the formation of larger units and that by reason of these larger units you need fewer vehicles to handle the same amount of traffic? Could not this trend explain this decrease in the figures in part at least?—A. Yes, to some extent it might.

By Mr. Herridge:

Q. Is any railroad in Canada the owner of a trucking company or of shares in any trucking company which you represent?—A. Well, yes. I am in a rather unusual position in that respect. There are railroad trucking companies—companies owned by the Canadian Pacific Railway and operating under the name of the Canadian Pacific Transport Company and Island Freight Services operating in British Columbia who are members of the Automotive Transport Association of British Columbia. In fact, in a very small way, through their association dues, they are supporting the Canadian Trucking Association in the work it is doing. This is one of these weird situations we are in.

By Mr. Ellis:

Q. Mr. Magee, you mentioned that the association had no objection to competition, and that the objection they were taking was to the agreed charge feature, and you pointed out that under agreed charges, in a particular contract, 90 per cent of the commodity moved would have to be moved by the railways and 10 per cent presumably left to the truckers. Then I understand you pointed out that the rates were so low that even this 10 per cent could not be handled by the truckers because it was not economically feasible.—A. In many cases that is correct.

Q. Then the objection here is not so much to the agreed charge feature, but to the rate itself?—A. Not always. In many cases the rates are so low that we cannot meet them, but if we were competing with the railroad competitive rate cuts like the ones we got on the Toronto-Montreal run last September which to my mind remove the argument that competitive

rate cuts are not a competitive weapon for dealing with us, we could make a stab at remaining in competition by lowering our rates—perhaps not going all the way, but stating to the shipper that our service advantages are such that if we make a certain reduction it would be to the advantage of the shipper to continue to ship by truck. Under the agreed charge we do not have that opportunity at all. We are excluded from competing for the traffic. There is a restrictive covenant, and sometimes—quite often—100 per cent of the traffic is tied up, as the Royal Commission on Transportation said, for long periods of time.

Hon. Mr. MARLER: It is only tied up because the customer is agreeable to it being tied up.

The WITNESS: Yes sir, in the first instance. I would have to qualify that reply by saying that it is so in the case of the initial shipper. We know, for example, that there are some packers who do not want to come under an agreed charge, but they have told us that if one of the packing houses signs they have got to do the same and give up using trucks because of the rate advantage which the other packer who initially signs is going to receive. The first shipper is certainly the one who wants the agreed charge. Sometimes the shipper who follows also wants it. But there are instances where shippers go into agreed charges despite the fact that they wish to use trucks. They go into a charge because they have to, and the process has a cumulative effect which is one of the worrying features of the agreed charge as the trucking industry sees it.

Mr. CAVERS: We have several representatives of the railways here and maybe they could be heard now.

Mr. GREEN: There is a question which I want to ask of the witness. Is there any provision in the Transport Act at the present time under which the railway is unable to negotiate an agreed charge which would mean carrying goods at a loss?

Hon. Mr. MARLER: I think the position is perfectly clear. That is one of the grounds on which the Board of Transport Commissioners could vary or cancel an agreed charge. I understand that under the present procedure where an application is made for the approval of an agreed charge, the application contains the statement by the company that the rate will be compensatory—in other words that the business will not be carried at a loss, but that it will add something to net revenues, and I do not think it will be found that there is any substantial variation of that principle in Bill 449.

Mr. GREEN: I cannot find anything of that type in the present bill. Should that provision not be written into this bill because from now on the Board of Transport Commissioners will have nothing to do with agreed charges unless the minister authorizes an application to the board.

Hon. Mr. MARLER: I think it will be found it is in the bill under subsection 2 of section 33, Mr. Chairman. I think perhaps it will be more convenient if we were to discuss that matter when we come to deal with the articles, not in the middle of the witness' evidence.

Mr. GREEN: I say that because otherwise it will seem to leave the door open for the railways to put in an agreed charge which is below cost and thus to drive the truckers out of business, at which point they would be in a position to cancel the agreed charge and go on to a charge at a much higher rate without competition.

Hon. Mr. MARLER: I think we might reasonably come back to that point which I think is an important one when we get to that part of the bill.

Mr. CAVERS: Shall we hear now from the representative of the railways? We have here Mr. Hugh E. O'Donnell for the Canadian National Railways.

Mr. Hugh E. O'Donnell, Q.C., representing Canadian National Railways, called:

The WITNESS: Mr. Chairman and gentlemen: I think I might state immediately as far as the Canadian National Railways is concerned that it considers that the bill implements the recommendation which was made by the royal commission. In that connection I think it might be well to have in mind that the Hon. Mr. Justice Turgeon who acted as royal commissioner is a gentleman who had long experience in the hearing and weighing of evidence. He was a former Chief Justice of Saskatchewan and he has presided over many royal commissions.

In this particular royal commission His Lordship was engaged during 39 days, and he heard 54 witnesses. Some 46 briefs, some very lengthy, were presented to him; and apart from that there were 39 other appearances. I do not know to what length the committee would be interested in hearing from us. We listened to Mr. Magee and his reading of this very lengthy document. I can assure you that we have not anything like that to submit.

Our view was that the matter had been gone into very thoroughly and carefully by the commissioner and that his report, being as it is, we were prepared to accept the recommendation and also the bill as now presented. Furthermore, the minister explained the bill I think quite simply and adequately on second reading.

But there is one thing which it is important to have in mind, and that is the purpose of the bill. That purpose is to help the railways. That is the prime purpose of this legislation. It was the purpose for which it was introduced in 1938 and it is still the purpose. The same representations contained in this report were presented to the committee that heard the matter in 1938. In 1951 when the royal commission report which was referred to so frequently by Mr. Magee was being put together, the same representations were made again and the same cause of worry and fear expressed that the trucking industry would be put out of business. In 1955 the repetition is here again. Notwithstanding the fears of the truckers it is interesting to note that even as recently as last year the royal commission report at page 22 was to this effect: that the position of the industry in 1955—in so far as His Lordship examined the position of the trucking industry and compared its numbers in 1938 to its position in 1955—was that there had been a tremendous growth and that the trucking industry was really a very powerful organization at that time, and he concluded by saying, and his words appear on page 26, as follows:

> I am impressed with the belief that the motor industry has become a factor of permanent value in Canada's economic life and that no legislation concerning railways, and, more specifically, the legislation of the kind now contemplated, can cause it vital damage.

His Lordship heard from the trucking industry of its fears of being put out of business; but in spite of that, the trucking industry, on the appraisal of His Lordship had grown tremendously—and I am sure that it is in direct conformity with the record, and it will be found in pages 22 and 23—that in 1938 there were 228,000 truckers; in 1950, 116,000; in 1953, 824,000; and whereas in 1938 there were about 16,000 for-hire trucks, in 1954, when His Lordship heard the evidence in this case, there were 65,000 such truckers with some 15,000 operators. These were for-hire truckers; they were not small truckers by any means.

I think it was suggested to Mr. Magee that they were not the people with whom he was concerned. However that is the situation.

It is on the basis of the economics of the matter that the railways look at the problem. Evidence was given by Mr. Fairweather, a man of many years of experience, vice-president of Canadian National Railways and in charge of its Department of Research and Development. He said that in so far as his appraisal went, there was $150 million a year of economic waste due to the effect of the division and distribution of traffic in the transport business; and he said that it was going to places where it should not go; that the truckers were doing business which should have been done by the railways and which could have been done by the railways at much lower cost. Railway freight rates should not be used, on our submission, to keep the truckers in business. The rates in the competitive field should be such that the public gets transportation at the lowest price possible. That is the purpose of them. The railways can provide a lower cost of transportation.

I have a couple of short extracts I would like to put before the committee, and I do not want to take up very much time. Mr. Fairweather and Mr. Gordon testified as to the effect of the business which the trucks were taking from the railways. In exhibit 59, to be found at page 4,106 of the record, Mr. Gordon stated:—

> In freight competition the railways are in a paradoxical situation. We depend on the top 25 per cent of C.N.R. freight traffic to carry our uneconomic operations. The paradox of transportation is that highway transport trucks, whose costs are from two to five times ours in proportion to distance, have been cutting into this crucial high rate traffic. It is not that the trucks carry so much. For-hire carriers moved only nine per cent of 1952 road-rail freight. But the revenue they earned doing it was 25 per cent of total road-rail freight receipts. We need some of this revenue to ease the pressure of costs. Our problem is to get it.
>
> If the railways are to survive as a healthy and solvent industry they must be able to cut freight rates on traffic vulnerable to truck competition and bid to regain lost business.

In the same exhibit, Mr. Gordon also said:—

> Present indications are for a revenue decline in 1954 of not less than $60 million below 1953.

Mr. Fairweather pointed out at page 4108 as follows:

> In the competitive field the trucks probably did not handle more than 15 per cent of the total traffic, but that 15 per cent is enormous in importance because the railway typically gets about 80 to 85 per cent of its net revenue, which it uses to pay all of its overhead expenses from that segment of the economy.

It will be remembered that our friends, the truckers, magnanimously said that as far as the natural resource products go—agriculture, mines, forests and that type of thing which have to move in order to keep our economy alive and active—they are not interested in those. They are left for the railways to haul. It is the top cream in which they are interested and the top cream provides the wherewithall for the movement of the lower rate traffic in which there is no money and this the railways have to carry in order that the economy can be kept sound.

In the competitive field, the trucks did not handle more than 15 per cent of the total traffic, but that 15 per cent is enormous in importance because from that segment of the economy, the railway typicaly gets 80 per cent or 85 per cent of its net revenue which has to be used to pay all its overhead

expenses. That is the importance of the cream of the business. The manufactured products constitute the high rate traffic and provide the wherewithall to permit the railways to move the products of the mines, the forests—

Mr. BYRNE: And the plains?

The WITNESS: —and the plains, if you please. Anything in the way of natural resources—that is where the nation's money comes from. In the railway's position it does not make sense that the truckers should be allowed to move much of that high rate traffic when it costs them much more than the railways to do it. If the railways wished to have an out and out rate war—and still move the traffic without losing money,—there would be no problem so far as the truckers are concerned. They just could not compete. But that is not the position. The position simply is this. Our friend's brief for many pages refers to the competitive rate. The trucker loves the competitive rate of the railways. The members of the committee should bear clearly in mind that the competitive rate of the railways must be published by the railways. Now, the minute that rate is published, the trucker has the umbrella. He then slides under it and bids a little lower rate and gets the business. He likes that type of operation whereby he, without having to publish his rate, knows that of his competitors, the railways.

Now I should like to speak about the agreed charge. Over many years the railways knew about this type of operation but they could not do anything about it. Under the agreed charge the railways can effectively compete for the traffic. The railway representative goes to the shipper and says, "You have a large volume of traffic." The railway man knows he can carry it far cheaper than the trucker. It is trans-continental traffic. On the basis of the record this is true. He knows he can carry it cheaper. If the railway man quotes a competitive rate the trucker then goes and says, "I will give you a cheaper rate,". The shipper also likes the competitive rate of the railways because using it he has a lever with which to bargain with the trucker. When the competitive rate is published it is the umbrella under which the trucker can take cover. The matter is as simple as that—if the railways are to use the competitive rate then the trucker cuts under and takes the business, but where the railroad goes to the manufacturer and says, "We will carry your products,"—whatever they may be, take automobiles, for instance, one of the agreed charges—if you will make an agreed charge." The railways went to the automobile companies and said, "We are convinced we can carry your products from Windsor to Vancouver or intermediate points at a far lower rate than the truckers, but we are not going to publish a competitve rate which will then simply let the truckers continue to cut under us and take the business. There is no point in doing that. But we will give you a lower rate if you will give us a percentage of your traffic and make a contract." As the minister suggested, there must be a contract, and it is on a competitve basis. The railways do not get the business unless the shipper is willing to sign a contract so that at and until that point he may or may not make an agreed charge as he pleases. Truckers have done the same type of thing all during the years—they have always been free to make contract rates.

Just at this point in my extremely disjointed remarks for which I apologize—I would like to refer to a suggestion made to the witness, I think by Mr. Hansell, that agreed charges were loss leaders. Agreed charges are not loss leaders. Agreed charge rates provide higher than the average rates. They are the most remunerative of all, I think, on a percentage basis. At page 363 of the record there is a statement under the column "average revenue per ton mile" and these figures were taken from the 1953 Weigh Bill Analysis, page 3—the average revenue per ton mile shows as follows: special commodity rates produced an average revenue per ton mile of 1·18 cents, statutory

commodity rates ·51 cents, competitive rates show 2·52 cents and agreed charges 3·40 cents. Agreed charges provide higher returns from the Weigh Bill Study which the Board of Transport Commissioners conducts than any other rates in the book. The other thing is that no agreed charge has ever been turned down by the Board of Transport Commissioners because it was non-compensatory—it must be under the statute in order that it may be put in. As practical keen business men which I think the railway officials are, they would not put loss rates into the tariffs. They are not in business to lose money. That is the avowed evidence in all the rate cases I have been involved in since 1946. The railways have constantly said that is the fact, and so far as I am concerned, none of these rates are loss leaders—they are and must be compensatory and the agreed charges rates produce the highest average revenue per ton mile of all the rates. Precluding the railways from being able to put in the rates expeditiously and quickly—just as quickly as the truckers can—has been the difficulty about the agreed charges rates heretofore. It has taken too long to get them into force. The time lag has been such that it has been difficult to convince the shipper he should sign the contract because he might have to wait for months. The automobile agreed charges and the iron and steel agreed charges were negotiated for in the month of March, April or May, and by reason of complaints received from people who suggested they had a right to complain and to file a complaint, the cases were held up until the last day of September, and in a hearing of one day the agreed charges were approved and put into force the next day. In the interval the railways and shippers and manufacturers who would have shipped to the west coast were precluded from enjoying a whole season's business.

The purpose of the amendments to the agreed charges are to expedite their coming into force so the railways can go into the business of competing in a business-like way with their competitors. A trucker can make up his mind instantly as to whether or not he will make a contract. The railways were required to say, "We have to make a contract, file it, and if there is any objection we will have to wait for a decision of the Board of Transport Commissioners,"—and they had to wait longer than is now provided for under this proposed legislation.

I am sure the committee will read the report of the royal commission very carefully. Mr. Justice Turgeon points out and stresses the difference between the position of the trucking industry as compared with that of the railway industry and indicates that the trucking industry is more prosperous than the railway industry in so far as the evidence goes. His Lordship goes on to say on page 25 of the report that "the legislative relief proposed by the railways will simply enable them to do from now on what the trucks have always had the right to do, that is to approach shippers freely with business proposals that can promptly be made effective. There always have been truckers who carry goods for shippers by contract." That is the whole purpose of the matter, and as I mentioned a few moments ago the commissioner was of the opinion that this legislation would not cause vital damage to the industry. That is the situation in so far as the railways are concerned.

Further on page 26 there is another brief extract:

> It is true, however, as I have shown, that the practice of agreed charges was introduced in Canada mainly for the purpose of enabling the railways to cope more effectively with the competition of the trucks. This purpose must therefore be kept in view when changes in the law are being considered, and must prevail against objection, so long as it does not go so far as to create an injustice towards truckers or others. I am satisfied that in this case no injustice can be asserted.

Again

> But these changes will merely remove from the railway certain restrictions from which the trucks have always been free and will remain free. There can be nothing unjust in this.

And there is a further pertinent remark:

> I think the most striking development to be noted during the last few years is the growth in the size, the efficiency and the prosperity of the trucking industry, on the one hand, and, on the other hand, the great deterioration to be seen in the financial position of the railways despite all they have achieved in the way of improving their property and their services. This railway situation is opposed to the national interest.

The truckers have always been free to make agreed charges. They have grown tremendously since agreed charges were put in in 1938. There is no question of them going out of business. The truck has a place very definitely and there is traffic that the truck can handle very much more economically and expeditiously and can provide service that the railways cannot match. There is a field which gives truckers ample play to grow and to carry on without any danger of going out of existence.

Now my friend Mr. Magee further referred to extracts in the 1951 report. The 1951 report suggested that at that point there was no reason to change the law. But the same royal commissioner who wrote the 1951 report wrote the 1955 report and he said in the 1955 report that in 1951 by reason of the fact that the experience which then prevailed was not sufficient to warrant disturbing the picture—

Mr. CAMERON (*Nanaimo*): I just do not want to see the reporter collapse in the heat and I would ask if our witness could speak a little more slowly.

The WITNESS: I just get carried away.

Mr. CAMERON (*Nanaimo*): I noticed the agonized expression on the reporter's face.

The WITNESS: I just was making the point that the same royal commissioner who heard the situation in 1951 had to sit through 39 days of hearings in 1954 and had to read all those pages of the voluminous record. All told, I do not know how many pages there are, but I have here volume 34 and this is at page 4,100 and some odd. There are 6 or 7 more volumes so he had 5,000 odd pages apart from all the briefs. The Royal Commissioner had a real opportunity to be well versed in all the intricacies of the railways and the trucking business. At page 25 of the report the Commissioner refers to the extract my friend read saying in 1951 there had not been an extensive enough period to warrant coming to a conclusion but he also said:

> In effect this language meant that, in the opinion of the Commission, the time had not yet come, in 1951, to undertake a revision of agreed charge legislation. Economic conditions did not then prompt the taking of such a step as a matter of urgency. But the situation has altered greatly since then. As things are now, the railways need relief in the form of better means to compete with others in the pursuit of their business as purveyors of transportation.

He commented on the fact that the trucking industry was free relatively from regulation. I think it is evident from the answer given by my friend that, for instance, in Ontario while there is a certain amount of regulation as to franchise and route, there is no rate regulation at all. Railways on the other hand have rate regulation and this agreed charge business is hampered

by regulation. If we were able to do as they do in England now the railways and shippers make their own agreement. No competitor of a shipper is entitled to know what arrangement the shipper has with the railway. Competition is the regulator. The railways take the position here in Canada that competition should be the regulator. They say that where there is competition then the competition should be free and equal and that that would determine the issue; and the shipper will decide the medium which he wishes to use. The public will get the benefit of the lower rate that is provided by the competitor who is willing to take the traffic at an agreed or contract rate. The carriers and the shippers, all of them want to make money; there is no question about that.

My friend Mr. Magee stated something about discrimination so far as other competitors are concerned. He said other competitors had the right to make objection. That is true; but the other competitors to which he referred are the regulated competitors who come within the purview of the Transport Act, such as certain water carriers. The truckers who are not regulated have never had any such status. The provisions in the Transport Act were brought in for the protection of the railways and not the truckers. Mr. Justice Turgeon remarked about the objection of the truckers and others. He pointed out that the purpose of the legislation was to provide for more flexibility—this is at the bottom of page 26. He says:

> At this point I think it well to set out briefly the substance of the complaints against agreed charges made by various parties on the grounds that the practice is injurious to their own business interests or to the interests of certain localities. I do this because, while I do not think, after careful study, that any of these objections should prevail against the conclusion at which I have arrived in favour of maintaining the agreed charge practice and of making it more "flexible", I feel that in justice to these parties, the nature of their objections should be made known in this summary manner to those whose duty it will be to read and consider this report. The record will show fully, in each case, the evidence and the argument submitted in support of the objections taken.

The first objection naturally is that of the truckers association—Canadian Trucking Association. The whole purpose of the Royal Commissioner's recommendation was to provide flexibility for the railways in order that they might compete more effectively and expeditiously with the truckers.

There was some question as to the extent to which employees of the trucking industry were organized in the unions, and Mr. Magee suggested, I think, they had somewhere in the neighbourhood of 7,000 employees, if I understood him correctly. The railway industry has roughly at least 200,000 employees. The railway industry's position is the one which this agreed charge arrangement was brought in to protect and, as I say, it has 200,000-odd employees. There was also some observation about the restrictive nature of the clauses in agreed charge contracts. I think it was pointed out by the minister that before an agreed charge can come into force the railways must have been able to convince the business man that it is in his interest to sign a contract, because at that point the competition is between the trucker and the railway for the shipper's business.

The railways feel that shippers are alert enough to protect themselves and get the best bargain there is and so long as the rate provides for the railways considerable contributions in most cases to the overhead expenses it is in the national interest that they should be enabled to do the work at a lower economic cost. The truckers will still have plenty of opportunity to operate in a remunerative field. It is only when the shipper is satisfied that this contract

can be made. It is rather amazing in my view to hear the truckers talking about the traffic as if they had a vested interest in any traffic.

It is only a few years back that the trucking business came into existence at all. At one time all this traffic which is the subject of the discussion here was carried by the railways and the only reason—or one of the main reasons—why the truckers got in was that the railway rates in certain cases were too high. The automobile industry is an example of that. The rates initially were too high and the railways lost the traffic, but they recovered it and are now making money on an agreed charge.

Another example is that of the delivery of butter from Manitoba to Ontario. Until several years back it was always moved by rail, and there was a considerable quantity of it. When the railways found that their rates were high and that they were losing the traffic to trucks they considered that this product was something they could well carry, they adjusted their rates accordingly and making an agreed charge got the traffic back. I do not think that the truckers can complain that there is any injustice in that, but apparently that is what they do complain about.

Well, Mr. Chairman, this is a subject on which we have had a lot of information and unless the committee has some other views I think I have said all I may properly say and I thank you very much.

Mr. CAVERS: Shall we now hear Mr. O'Brien of the C.P.R.?

Mr. HAHN: With your permission, Mr. Chairman, I have a question to ask first. Mr. O'Donnell, you spoke about your purpose being your desire to help the railways. I take it you meant financial help, because the C.N.R. had a deficit of $28 million—

The WITNESS: I think the two railroads need it—

Mr. HAHN: I just wanted to draw to your attention that when Mr. Donald Gordon was before the committee I had the privilege of asking him a question with regard to this deficit, and he indicated that there were three main reasons: the type of depreciation which we used, the fact that we were keeping a certain group of some 7,000 employees who would normally have been laid off if they had been working for the C.P.R., and the decline in freight receipts from grain. It was also mentioned—though this was challenged—that it was due to the type of rail we had been using. None of these was the reason which you mentioned. I am at a bit of a loss here and I just want you to explain how this loss-leadering—

Hon. Mr. MARLER: It is not loss-leadering.

The WITNESS: No, it is not loss-leadering—I cannot go along with that one.

Mr. HAHN: Well, these agreed charges. Why should these truckers be attacked—put out of business, one might say, in view of the fact that we are keeping 7,000 extra men on the C.N.R. during the winter?

The WITNESS: I did not say, Mr. Chairman, that the agreed charge revenues which we should receive would account for all of the deficit. What I did speak of was the revenue aspect of the matter. I think Mr. Gordon was discussing expenditure items. I am not interested in expenditure items at this point. I simply said that the C.N.R. had a deficit of $28 million and I pointed out that the revenue from these agreed charges was the highest of all the rates on the basis of the Waybill Analysis and that, as Mr. Fairweather put it, the top 15 per cent of the revenue produces between 80 and 85 per cent of the net total to meet in part those expenses of which Mr. Gordon spoke.

I was merely emphasizing that through the recovery of the revenue which the agreed charges would provide if we were permitted to deal with them more expeditiously we could hope to increase the revenue to the railways in

such a way as to assist in meeting this deficit. That top 15 per cent, I said, was most important and that covers the products in which the trucker is solely interested.

By Mr. Hahn:

Q. You used the idea of the trucker crawling under the umbrella of the freight rate as set out by the Board of Transport Commissioners. That is on a competitive basis. Is that true in British Columbia, Alberta, Saskatchewan, Manitoba and Quebec?—A. I think that generally speaking it is true anywhere. In exhibit 50—if you are interested in information—you will see just what I am talking about. Unfortunately I have not got it here with me today. Exhibit 50 was the document which contained a communication from the Truckers Association. Mr. Magee commented on his brief—that truckers operating in Ontario between points in Ontario and Montreal had complained that the railways had cut the rates on a competitive basis—that only one of them was abiding by the rates, and that one, incidentally, was the business of the gentleman who was then testifying.

That report by Mr. Magee said that only one trucker was going through the business of pretending to comply with the rates. I suggested to him that of course this company was the one which he represented, and he nodded that that was right. Competition is just as "cut-throat" between trucker and trucker as it is between truckers and the railways.

Q. The points you mention are in Ontario and, of course, Montreal. In the province of British Columbia it is definitely laid down by statute what rates must be charged by the trucking industry for the hauling of goods from one point to another. They cannot just change their charges, as you suggested a while ago, by a deal at the door. They have to abide by the regulations.—A. The railway publishes its rate, then the trucker quotes a rate to the shipper and that rate is usually just a little lower than the railroad quotation. That is how I think it usually works. When I say that the "umbrella" is there, in practice it is there and that is what they would like to have the railways continue to do—to be forced to publish their competitive rates. There is very little "policing" or checking of the charges which are filed by the truckers. In other words the railroads have to publish their rate and that is what I mean by "umbrella."

Q. Do you imply that if a certain trucking firm in British Columbia were charging less than the rate set by statute no action would be taken?—A. I don't know about that. I am speaking generally. As I get it from the record—and I think we can find it from the record—that is about the gist of it and the truckers themselves I think would acknowledge it.

Q. I have one other question. Would you be agreed, in view of the fact that there are certain provinces which have definite regulations which are apparently being enforced, that the agreed charges in this bill should only be applicable in those provinces where there are no rates set down, such as Ontario ,Nova Scotia, and New Brunswick?—A. I am only dealing with interprovincial matters. So far as I am concerned, with respect to these agreed charges here, for instance, or with respect to a trucker from Oshawa to Vancouver—I am not going to get into a constitutional argument—I think that the Transport Act is fully constitutional and that this committee is dealing with something which it has a right to deal with.

By Mr. Hansell:

Q. When you talk about the compensatory rate, what is that "compensatory"? Is it compensatory to all inclusive costs?—A. It is compensatory to the railways; it must provide to the railways not merely out of pocket expenses,

but something more. Would you be good enough to look at page 19 of the report—this report is well worth careful examination—where you will see:

> On a cost basis there may be said to be three rates applicable to any shipment. The first, and highest, is a rate which would return to the railways the direct or out of pocket cost of providing the service plus an equitable share of the overhead costs which the railway must necessarily incur, but which are not specifically identified with any particular traffic. These two items, direct cost plus a share of overhead costs, make up the total cost. There is little or no possibility of the railways being able to establish rate scales in which the rates for individual traffic movements would exactly cover the total costs of such movements. In practical application the upper rate limit is either what can be obtained in the face of other transportation competition, or if such competition does not exist, by looking to the value of the service rendered. In this latter case the rate would be of course a maximum rate to the shipper. Therefore, from a consideration of the respective interests of the shipper and the railway, a rate will generally be fixed somewhat below this ceiling so as to allow the largest possible volume of traffic to move with the greatest benefit to railway and shipper alike.
>
> The second, and lowest, rate would be on which would return to the railway only the direct cost of providing the service, in other words the out of pocket cost. Certainly the railways could not long operate if they recovered only the out of pocket cost of doing business.
>
> Between these two extremes there lies a wide margin within which will be found what I may call the third rate, that is, one which covers the out of pocket costs and in addition makes varying contributions, although less than in the case of the first and highest rate, towards the overhead expenses of the railway.

The majority of the rates fall within that group. That is the bracket in which the bulk of the compensatory rates are to be found.

Q. Thank you.—A. I think the commissioner has spelled that all out.

By Mr. Carrick:

Q. From what you know of the operations of the railway, do you think there will be any possibility of the railways using the agreed charge as a loss-leader, and if so, of their continuing to put it into force for any period of time? —A. I am satisfied from what I know of the findings of the Board of Transport Commissioners and of the evidence before committees of this House since 1946, and of the evidence of Mr. George Walker, chairman of the Canadian Pacific Railway, and of Mr. R. C. Vaughan, former Chairman and President of Canadian National Railway traffic management of both railways that all of them are in complete agreement that the railways do not take business at a loss. They are not in the business of railways any more than a manufacturer is in business in order to incur losses. There are some losses which they cannot help, for instance when their revenues fall off due to a drop in traffic, but they do not want to take business at a loss, and I am sure that the officers of the Canadian National Railways would not take business at a loss.

By Mr. Green:

Q. I understood you to say when you were making your statement originally, that there was some provision which made it necessary for the rates under an agreed charge to be compensatory?—A. Yes, sir.

Q. Can you point out to me where that provision is contained in the law, at the present time?—A. Where it is in the law?

Q. Yes.—A. There is the right to object in that event.

Hon. Mr. MARLER: I think it is sub-section 15, of section 32.

The WITNESS: The right of anyone to object that the charge is not compensatory; that was one of the subsections, and section 32, sub-section 15 reads as follows:

> (15) On any application under this section, the Board shall have regard to all considerations that appear to it to be relevant and, in particular, to the effect that the making of the agreed charge or the fixing of a charge is likely to have, or has had, on
>
> (*a*) the net revenue of the carrier, and . . .

By Mr. Green:

Q. The law as it stands at the present time before the bill comes into effect is that when an agreed charge is filed with the Board of Transport Commissioners, it must be one that does not affect the net revenue of the carrier.—A. It affects it, but it affects it beneficially to the carrier.

Q. It must be beneficial to the carrier?—A. Yes.

Q. As I read the new bill it takes away the need of filing, or the need of getting the approval of the Board of Transport Commissioners before the agreed charge can come into effect.—A. That is right.

Q. And in addition, it contains no provision whatever such as the one you have just read as contained is section 32, sub-section 15, clause (*a*)?—A. Section 33, sub-section 2 does refer to the net revenue of the carrier. The assumption on which the railways proceed is that they are in business for the purpose of making money, and that they should be relied upon as any ordinary businessman, to be jealous of their revenue position, and that they are not going into a business on a loss basis, and that they should be relied upon not to do that. There has never been an agreed charge rejected because of the fact that it was not compensatory. They should not be under any more tutelage than any other business man.

Section 33, sub-section 2 reads as follows:

> (2) Where under this section the Board cancels or varies an agreed charge, any charge fixed under this Part in favour of a shipper complaining of that agreed charge shall cease to operate, or shall be subject to such corresponding modifications as the Board may determine.

Q. Under the bill there will be no restriction on the railway to the effect that the agreed charge must not be one which means a loss to the railway?—A. Well, the only thing is that the railway management feels that they have to be relied on just as any other business concern is relied on to try to further the ends of the business. They are the trustees, the guardians, and they will not consciously make losses.

By Mr. Green:

Q. Under the old law we did not have to rely on the railway not to put in agreed charges below cost—that was actually written into section 32. Is there any particular objection to a provision of that kind being written into this new section?—A. It brought about the situation whereby on a simple complaint from someone who had no real interest in the contract, the agreed charge could be held up for months on end on the ground that the net revenue position was going to be diminished by reason of the agreed charge. The purpose of these amendments, as propounded by the railways—and they were not accepted in whole by the commissioner; he adjusted them and made recommendations of his own—but under the bill as it now stands the agreed charge goes into force and if after it has been in force for three

months there is anyone who suggests it is detrimental to the railway or the shipper, a complaint can be made and the board hears it.

Q. But you said it is not the intention of the railway to conduct business under an agreed charge at a loss?—A. Yes, that is right.

Q. Why does the railway have any objection to writing in a provision of that kind—

Hon. Mr. MARLER: What kind?

Mr. GREEN: —into the new section 32?

Hon. Mr. MARLER: But what kind of restriction?

By Mr. Green:

Q. A provision similar to the provision set out in section 15, clause (*a*). I am not advocating returning to the old system and having to have the board approve an agreed charge, but there should perhaps be something written into section 32 to the effect that the agreed charge must not be one which takes a loss. I am asking Mr. O'Donnell if the railways have any serious objection to a provision of that kind?—A. All I would say to that, Mr. Green, is that the railways are satisfied, the C.N.R. is satisfied and I think our friends, the C.P.R. and all the other railways in Canada—and there are a number of them—are satisfied with the bill as it now stands. It is not exactly in conformity with the amendments the railways suggested, but it is adequate. The railways wanted to have the agreed charges come in even more quickly than the commissioner suggested they should and there were a number of other changes of that kind. We think it is adequate and that it should be given a try, and if an agreed charge remains in effect three months before it can be attacked that is just sufficient time to allow the experience to become evident to those who wish to complain.

Q. You would not care to express an opinion one way or the other as to whether or not the railways would object?—A. I personally would care. I think the English system is the one that should prevail; that is, it should be a matter of private contract between the shipper and the carrier where there is competition.

Q. In other words, the railways should be allowed to operate at a loss if they care to?—A. No.

Q. That is what it amounts to.—A. No, it predicates taking business at a profit.

Q. Why not put it into the Act?—A. I am not drafting the Act, and it is satisfactory to us the way it stands now.

Q. I understand why it would be satisfactory to you. It was written in the law before and why should it not be written in now?

Hon. Mr. MARLER: But Mr. Green, previously there was a procedure outlined in the statute which made it possible to test the effect on the net revenue of the carrier. An application had to be made for approval of the agreed charge by the board and when the board considered the agreed charge one of the elements it had to deal with under subsection 15 of section 32 was the effect on the net revenue of the carrier. Under the proposed bill there is no procedure for the charge to be referred to the Board of Transport Commissioners and if you say we must insert a provision that the agreed charge must be compensatory then in effect you are saying it must go to the board for examination of that aspect of the agreed charge, and I think that is impossible.

Mr. GREEN: I am not saying, Mr. Minister, that it must go to the board beforehand, but what I cannot understand is why the railways should have

any objection to there being written into section 32 that an agreed charge must be compensatory. That was written into the present law.

Hon. Mr. MARLER: Not in that form. It is the form, I am afraid, which presents the difficulty.

By Mr. Green:

Q. Of course the trucking industry is worried about the railways cutting these rates away down and running the truckers out of business. I would like to ask Mr. O'Donnell what there is under this bill to prevent the railways doing just that?—A. Well, it is 33 (2) which certainly says after three months if it has been done there can be a review of the matter. The reason that the railways like it the way it is as recommended by the commissioner who heard those objections and many more is that it does away with the delay which previously ensued. Those people who had no real interest in an agreed charge —the automobile agreed charge, the charge on iron and steel to the west coast from Hamilton and Three Rivers and the Algoma people—simply sent a telegram to the Board of Transport Commissioners "we make objection" and the agreed charge was hung up from May until the last day of September when we had a hearing. No evidence was presented by the complainants and the next day the order was issued, but in the meantime we had lost the whole season's business.

Q. Under the new bill is there any provision which would prevent the railways making an agreed charge which is below cost and by so doing run the competing truckers out of business? Then of course the railways are free under section 32 (12) to cancel an agreed charge at the expiration of a year.—A. The officials who are in charge of all the railways in Canada, I think the committee can realize, are not interested in doing that type of thing. They never have done it; there has never been an agreed charge that was not compensatory. Even competitive rates must all be compensatory and all have been and there has never been a case yet by reason of the fact that they were not compensatory. I think that parliament should have sufficient faith in the administrators of the railways to at least trust them for three months. At the end of that three months then the machinery of section 33 (2) could be put into play.

Q. No one can apply to the minister for permission to go to the Board of Transport Commissioners before a period of three months and then it would probably take months to get the approval of the minister and get all the wheels in motion; they might not get it at all. They get all of the arrangements made for them here and in effect under this law the railways might have an agreed charge which was a loss leader in effect for a year or so before the Board of Transport Commissioners caught up with them. Is that not possible?—A. Bear in mind that under section 32 (2) all the carriers must agree. I cannot conceive of Mr. Donald Gordon and Mr. Crump sitting down and saying: "There is a trucking operation between Kamloops and some place, let us cut the rate down and put them out of business." They have never done and I do not think they would.

Q. It would probably not be Mr. Donald Gordon and Mr. Crump who would meet. Have you any serious objection to the request of the trucking industry that section 33 of the bill be amended to give them the opportunity of protesting to the minister and asking for permission to appear before the Board of Transport Commissioners?—A. I have objection in so far as there might be any further impediment placed on the railways by increasing the number of potential objectors. They are in competition with the railway and should be able to take care of themselves. The railways are merely being asked to be put on a basis of equality. The railways today are competing with

a competitor who is free to cut the bottom out of any rate at any time. There are a few instances where it is suggested that the provincial regulations are watched more closely than others, but generally speaking, they are watched very little. Take Toronto and Montreal—and I suggest that you take a look at exhibit 50 which is rather interesting. There was only one carrier who admitted, and he is the gentleman who was testifying, that he abided by the law but all the others were cutting under the rates they had authorized and it did not mean anything.

Q. If the amendments requested by the trucking industry were written into the bill they would still not have any right whatever to interfere with the agreed charge coming into effect. All they would have would be the right after it had been in effect for a period of at least two or three months to apply to the minister for permission to appear before the Board of Transport Commissioners. Does the C.N.R. have any serious objection to giving the trucking industry that protection?—A. You are asking me that question, and I am probably in a biased position, but I do not like any impediment to the operation of the railroad. I am content—the Canadian National is content—with considered judgment of the royal commissioner who heard that type of objection and who did not accept it and who proposed the bill as it appears in the appendix to his report. That was the unbiased judgment of a man who heard all the evidence and weighed it impartially and came up with the recommendation which he says should be given a chance to operate.

Q. Are you in any way objecting to this suggestion that section 33 should be amended—A. Yes, because that makes another objector who is a competitor of ours—who wants to know all about our business, while we are not entitled to know anything about his business.

Q. Is it not a fact that anyone—a water carrier or a motor carrier—protesting under section 33 could only expect to get any relief if the rate had been unfair?—A. Oh, yes, that is true.

Q. Well ,what is the objection to that—to letting them at least protest? They won't get anywhere in their protest.—A. If they are not going to get anywhere, then why waste our time and theirs?

Q. Unless they could prove, first to the minister and then to the chairman of the Board of Transport Commissioners, that there was something unfair about a particular agreed charge.

Hon. Mr. MARLER: I do not think that is correct. I think the amendment goes a great deal further than that. In the first place, it is not after a delay of three months but immediately, and in the second place they wish to have the right to complain if they are unjustly discriminated against or placed at an unfair disadvantage. "Unfair disadvantage" I take it in the view of the truckers is any rate which is lower than the rates which they are willing to quote. That is why it seems to me the amendment is a trifle seductive and putting the trucking operators among the carriers as if they belonged there. I don't think it is as simple as you make it appear, Mr. Green.

Mr. GREEN: Those words already appear in section 33 of the bill.

Hon. Mr. MARLER: They do, but they apply to shippers primarily or to regulated carriers.

Mr. GREEN: Is it a fact though that nobody, shippers or anyone else, would make any headway under section 33 unless they had a good case?

Hon. Mr. MARLER: I think they might not make headway, but they might make a lot of trouble.

By Mr. Green:

Q. Is Mr. O'Donnell's objection that the trucking industry might make trouble if it had the right to protest under section 32?—A. I have no doubt about it. Exhibit 50 will show what I am talking about. There was the case of an agreed charge up for approval, and the Trucking Association Executive reported that is was trying to find a shipper who would make objection. I have no doubt that the trucks would certainly do that—make trouble. They can impede our operations.

Q. Is there any objection to finding a shipper who cannot make a complaint?

Hon. Mr. MARLER: It must be unfair to the shipper.

The WITNESS: The only thing, as the minister says, is the matter of delay. If there is an objection to be heard, and if it entails delay—I turn to the automobile agreed charge situation wherein there was a delay from May to October when we were hung up.

By Mr. Green:

Q. Delay does not affect you in this case because you have already got your agreed charge in being, and it is only a matter of the right to protect, seeing that the agreed charge is in effect; so delay does not come into the picture.—A. With all the good will in the world, I am not entitled to recede from, or make any concessions more than we get from the royal commission. We think the report is fair enough in all the circumstances, and we think that Mr. Justice Turgeon, who heard the evidence, thought that it was fair to the railways, and his report says that it is fair to the railways. It is the railways which are under consideration and it is fair to them that it should be that way.

Q. We had evidence today that the railways appeared to be branching out in this practice of negotiating agreed charges very extensively. Is that the case? Is it the policy of the railways to negotiate a great number of agreed charges?—A. The railways are out to get all the business they can get which will pay. The agreed charge is predicated on its being remunerative to the railways, and the more agreed charges they can get which are remunerative to them, the more commodities they can carry.

Q. Is there now an upsurge in the negotiation of agreed charges by the railways?—A. The railway people are alert to that business potential which is available and the more they can get, the better they like it.

Q. Am I to take it that the railway policy now is to go into the agreed charge field in a big way?—A. I am not making the policy but my understanding is that the railways are out to get all the business they can which will pay.

Q. That is the same answer that I got before.

Hon. Mr. MARLER: That is a double confirmation.

Mr. CARRICK: May I ask Mr. Green a question before Mr. O'Donnell goes, because he may want to ask Mr. O'Donnell something. We are interested in the point which Mr. Green has raised, and we know that the bill as drafted at the present time provides that there may be an inquiry after the rate has come into effect, to see if it is compensatory in fact. Can Mr. Green tell us how he thinks we can insert a provision in the Act requiring the agreed charge to be compensatory, without, at the same time, holding up the time that the agreed charge can be put into force until after is has been approved?

Mr. GREEN: I think it could be written into section 32. There is a section in the Railway Act. I have not had the time to look up the different sections, but in it the words "compensatory rates" are used. I notice that it is in section

334, but all I had in mind was that there should be a provision written into section 32 that these rates under the agreed charges must be compensatory. Mr. O'Donnell said that the railways intended to have the rates compensatory, and if that were written in it would get away from the possibility of agreed charges being used to run competition out of business by dropping the rates below the actual cost; I see no reason why a provision of that kind could not be written in.

The WITNESS: I am in favour of the private enterprise principle—

Mr. GREEN: I beg your pardon?

The WITNESS: I am for the private enterprise principle that competition is what regulates and the operators and the railways will see to it they are not going to lose money. That is all I can say.

Mr. McIVOR: Carried.

Mr. GREEN: If people cut the rates to beat out competitors—I guess even a lawyer can do that sometimes although they are not supposed to—however, it does happen, and I see no reason why there should not be a provision of that kind written into section 32.

Mr. CARRICK: I think if the railways did what is contemplated by Mr. Green, that they might attempt to lower rates to force a competitor out of business, but it would be an offence under section 498(*a*) of the Criminal Code and I think it is unlikely that our railway companies will endeavour to do that.

Mr. GREEN: Mr. Carrick, as you know, it is pretty difficult to convict anyone under that section of the Code and I do not think it would be physically possible to catch up with the railways if they did that. I do not think it would be considered a crime. Simply as a matter of getting business and running the truckers out of business—which in the long run means a detriment to the people of Canada—they might make these agreed charges so low that it meant a loss of their own revenue, put the trucking men out of business, and then they could turn around and cancel their agreed charges under section 32, and go back on a higher basis without any competition.

An Hon. MEMBER: They could not do that—

Mr. GREEN: I do not see why there should not be a provision of that kind in the Act.

Hon. Mr. MARLER: Mr. Green, I would be very glad to consider that point and deal with it later during the committee sittings.

Mr. HAHN: The minister has answered my question in making that last remark, Mr. Chairman.

The CHAIRMAN: Well, gentlemen, we will now adjourn until 8 o'clock this evening at which time we will meet in this room.

EVENING SESSION

JUNE 28, 1955.
8 p.m.

The CHAIRMAN: Gentlemen, we have a quorum.

Mr. CAVERS: Mr. Chairman and gentlemen, I think it was agreed before the dinner adjournment that we would hear Mr. J. L. O'Brien, Q.C., who is representing the Canadian Pacific Railway.

Mr. GREEN: There is one further question I intended to ask Mr. O'Donnell.

Mr. CAVERS: He is not here now.

Hon. Mr. MARLER: Perhaps he will be back later.

The CHAIRMAN: You could ask him when he comes back, Mr. Green.

Mr. CAVERS: Mr. O'Brien.

Mr. J. L. O'Brien, Q.C., representing Canadian Pacific Railway, called:

The WITNESS: Mr. Chairman, Mr. Minister and gentlemen. I may say I have not prepared any presentation for this committee. I had not expected that the representatives of the Canadian Trucking Association would once again present all the arguments that they presented before the Royal Commission where I did not spend the entire 39 sittings days but I think I spent 35. In so far as possible I shall avoid repeating anything that Mr. O'Donnell said and which he expressed much more ably than I can, nor is it my intention to go through the 4,727 pages of evidence and argument that we had before the Royal Commission..

May I say first that I am not expert on agreed charges and what I know about them I have learned from my participation in the royal commission's study, but from the evidence before the royal commission I can say this, as did Mr. Justice Turgeon at page 24 of his report, as to regulation of trucks. He said:

> Highway transport seems to have escaped the regulatory strait-jacket because of its own essential characteristics, which are such as to make a comprehensive and effective regulation of rates a practical impossibility, and at the same time an almost superfluous step in so far as the public interest is concerned.
>
> Now, before the Royal Commission, Mr. Hume, Q.C., who was acting for the Canadian Truckers Association said, as to regulation—and I think he was quite frank about it—this is at volume 35, page 4,172 of the report. He was talking to the commissioner and he said:
>
> You will recall that I said in Ontario and Quebec, the two places where trucking is important, there is no rate regulation in either one of those provinces.

That was the very frank admission by counsel for the Canadian Trucking Association.

Mr. Magee today is hopeful of regulation in New Brunswick and Ontario. That we have found is a hope that never dies. I wish to quote again from something that was said back in 1937 and which again was reported to the Royal Commission:

> In the Hansard report of proceedings before the Standing Committee of the Senate of Canada on Railways, Telegraphs and Harbours for February 19th, 1937, when the bill to enact the Transport Act was under consideration, Mr. Pape, who was then representing the Automobile Transport Association of Ontario stated, as reported at page 201 of the Hansard report of proceedings, that they had regulation in Manitoba and Saskatchewan and that they would have it in Alberta before the first of April 1937. He stated that in Ontario they had made a very definite attempt to get regulation.

Again,

> In the Hansard report of the proceedings before the Standing Committee of the House of Commons on Railways, Canals and Telegraph Lines also in respect of the Transport Act for May 12, 1938, Mr. Patten,

> the executive secretary of the Canadian Automotive Transportation Association, said as reported at page 128 of the Hansard report, that New Brunswick had provided for regulation of certain truck rates and that Nova Scotia had similar legislation. He said that in Ontario there was a provision for making regulations for the publishing, filing and payment of tolls, but the necessary order in council had not yet been passed to make them effective. He stated that British Columbia required the filing of tariffs and the observance of tolls, and referring to a statement of Mr. Walker on behalf of Canadian Pacific that the trucks were not regulated in any measure whatever, said: In the contrary, they are very much regulated, as anyone knows who takes the trouble to find out.

According to the statement made before the Royal Commission 16 years after these statements were made the Ontario order in council has not yet been passed. Alberta has no regulation whatsoever, and New Brunswick which was stated to have regulations in 1938 has none although we are told it is going to take action, and Nova Scotia has abandoned any attempt to regulate. Counsel for the Canadian Trucking Association, stated before the Royal Commission that in Quebec they have to file rates, but there is no provision whatsoever for their enforcement. It was likewise stated before the royal commission, again by counsel for the Canadian Trucking Association, that at the meeting of the provinces in Manitoba last year as to inter-provincial trucking they agreed there that it was not practical to attempt to regulate rates on inter-provincial trucking. Therefore, the situation is that in the provinces where the competition really exists there is no attempt to regulate rates and in inter-provincial trucking the determination of the provinces apparently is that they will not attempt to regulate rates.

I would like to touch briefly on the suggestion that as the result of agreed charges the trucking industry might be destroyed. That again is not a very new story. When the Transport Act was first introduced in 1937, a statement was then made by Mr. Patten, executive secretary of the Canadian Automotive Transport Association, as found at page 129 of the Hansard report of the proceedings and evidence in respect of Bill No. 31, as it then was. He said:

> There is no doubt that the two big railways with their 4·5 billions of capitalization behind them can easily cut rates far below cost and keep them there long enough to put the trucking companies out of business if they wish to use agreed charges in a predatory way. Even the largest of the trucking companies have only a few hundred thousand dollars capital and the great majority of the operators have but a fraction of that. None of them can draw on the public purse to meet its deficits as one of our great railways does. They cannot afford to operate for any extended period of time at a loss. The railways can and do.

Now, that statement was made in 1938 when the trucking industry was comparatively small. I am not going to repeat the figures that were given to you by Mr. O'Donnell just before the adjournment this afternoon, but the trucking industry has expanded greatly and is continuing to expand. No one disputes that there is a place for the trucking industries just as there is a place for the railways. On behalf of the Canadian Trucking Association an expert witness was brought up to testify before the royal commission—a Mr. Knudson, former commissioner of the Inter-State Commerce Commission—and he described on their behalf the great importance of truckers. He was not too familiar with the principle of agreed charges. He was questioned at

length and the summary of his answers is given in the transcript of the royal commission hearings. The summary was not disputed, I might say. It is found at page 4050. The summary of his answers stated briefly was this: with railway costs being on the whole much less than truck costs, the railways if they so desired could through the medium of competitive rates affect the truck industry at least as much as they could through the medium of agreed charges. Secondly, he said that in some instances where terminal and like costs make the truckers costs less than the railways, that trucks can retain traffic by quoting rates below those which would be compensatory to the railways, but he said there were few instances where the railways costs were even higher than the truckers. The few instances would be on short hauls where terminal costs became very high. But finally and more important Mr. Knudson said that irrespective of costs the question of convenience and service will always attract a large amount of traffic to the trucks.

One of the members sitting here today leaned over and asked me if the railways would ever really compete, let us say, with the truckers who were carrying automobiles from Oshawa to Ottawa and I gave an answer—and I was not convinced it was right, but I have checked—and the answer was no, that in a distance of that kind where the truck can take goods from the factory and deliver them at the door and where the distance is comparatively short, the railway cannot compete on the combined basis of service and cost; and there are many other instances particularly on the short hauls where the truck has a tremendous advantage. I think it was frankly stated before the Royal Commission that irrespective of distance, for instance in a case of household furniture, that a truck had a tremendous advantage. The truck could come to your door and put goods in and they did not have to be packed and unloaded from a box-car and it did not matter whether you were going from Montreal to Ottawa or from Montreal to Vancouver. There are certain types of business —sometimes it is the question of the distance and sometimes a question of convenience—where it is very, very important to have something done quickly; to take it from door to door and not to have trans-shipment and then the truck can beat the railway completely. Where you have real distance and where convenience is not so important—and the railways are obviously fighting to give that convenience in so far as they can—where the convenience is not so important then the railway can beat the truck on cost. The railways' costs with very few exceptions are so much below the trucking costs that if they were on a straight question of cost on any great distance then the truck has not a chance. You can do it by competitive rates or agreed charges and if it is on a straight question of cost the railways can cut costs and still put the trucks out of business if that is what they want to do; but it has never been suggested by the railways that it would be proper to try to put them out of business. They each have their proper economic sphere in which they should each play their part.

Canada is an exporting nation and it is important that within reason exportable goods should be kept in what we call the low rated classes of traffic, the traffic which pays the lowest rates. Thus on the products of agriculture, the mines and the forests comparatively low rates are charged. They are the classes of traffic which Mr. Magee said the trucks did not want. You can appreciate why; there is not much profit. This scale of rates was not made for the railways; it was in the interest of the national economy to keep these lower rates and also to keep the railways solvent. Some of the traffic has to pay a higher rate and some of the traffic can afford to pay the higher rate. I can give you a very extreme example. For instance, a carload of diamonds could afford to pay a far higher rate than a carload of coal. To get into something more appropriate, might I say a carload of silk can afford to pay a higher

freight rate than a carload of vegetables, and that is the type which has been characterized as the type of goods in which the trucks only are interested. So long as the railways can get the higher rates on the higher rated traffic so long can they afford to charge the low rates on the low rated traffic and particularly to carry the goods Canada is exporting.

Again the record of the Royal Commission shows that 18 to 19 per cent of the traffic carried by the railways pays ⅔'s of overhead. That comes from the high rated traffic. On the low rated traffic, largely exportable goods, they are just making a little above—and I may say in some instances they suggest a little bit below—the amount necessary to make these rates compensatory. The only way they can continue to carry the products of the forest and agriculture and other like products at rates which make it feasible to put them into the export markets is to be able to maintain this rate structure under which the higher rated commodities which can afford to pay the rates pay somewhat more.

May I say that it does not cost more on the average to carry a carload of high rated commodities than low rated commodities, but this rate structure was built as part of the Canadian economy and as part of the Canadian economy it was found necessary that the railways should get more for their traffic even though the cost of carrying might be the same where the traffic could afford to bear the costs. That is where the trucks come in. The manufacturer who is manufacturing his high rated traffic is perfectly happy if he can get somebody to carry it a little cheaper. The trucker goes to that shipper and says: "I can afford to carry it for less." Now, I said it is quite clear from the record that the railways' costs are so substantially lower than the truckers' costs that they can compete on the basis of cost anytime and it is quite obvious that they can say to that shipper, "We can also take your traffic for less." But if they carry his for less and are going to remain solvent, then they are going to have to raise the rates on the low rated traffic and that will not only affect their business but also the Canadian economy. They can cut the rates. The railway companies could cut the rates on the high rated traffic below the trucking companies and still make a profit. That is, outside of some of these short hauls. On the average they can cut their rates below the trucks and still make a profit. But if this war goes on and they cut and cut—and someone suggested before the Royal Commission that that was a way to do it; you cut and the trucks cut, and they cut again and you cut again and very soon the trucks will call it quits because their costs are so much higher. In the last resort you would have that rate cutting war until the trucks, as one said, would call it quits. But in the process you would have reduced the railways' revenues on their high rated traffic down so low there would be only one of two answers. They would have to raise the rates on the low rated traffic or go bankrupt.

How does the agreed charge fit in here? The agreed charge puts an end to the rate cutting war. There was an example which I think Mr. O'Donnell mentioned this afternoon. The trucks in Manitoba and eastern Saskatchewan began to carry butter and the railways saw that they were losing this traffic in carrying butter and they cut the rates and then the trucks cut rates and that could have gone on indefinitely until as somebody suggested the trucks would have called it quits. But instead of that the railways came along and said to the butter producers out there, "Here, the rate is such that we will give you a slightly lower rate if you will guarantee to us say 75 per cent of all your shipments for the next year." That did two things: one it guaranteed the traffic to the railway for the next year; secondly it guaranteed to the butter producer his transportation costs so that he would know at what price to sell; and thirdly it stopped the rate cutting war.

Now we could have gone down and down in the rates until they stopped in any event but that would have cut the returns to the railways. It would still have been at a profit but not at the profit which it should have been if some other class of traffic which could ill afford to pay were not to be increased in its rates. So that all the agreed charges does in this bill with this small amendment is to say to the railways "you can go out and bargain with the shipper and you and the shipper make the best bargain you can." That is to the advantage, first, of the railway companies, for the railway has a bargain under which it is sure it is going to get a certain percentage of traffic. It can make its plans as to the allocation of cars and the purchase of equipment. It is of advantage to the shipper because the shipper can make his commitment for the next year with certainty at least that his transportation costs are fixed. He may be able to make contracts in other respects also which would fix his other costs, and the traffic is retained to the railways at not too great a reduction in the rates and it takes the impact off the low rated traffic which in the interests of the national economy should not be increased too much.

I listened with interest this afternoon to certain questions asked as to the loss leader problem. I think, perhaps, what I have said would answer that in part already. The railways do not have to have loss leaders in order to meet truck competition. Railway costs are so far below the truckers costs that they could cut rates below truck costs and still make a profit; so that the question of cutting the rates down to a point where the railways as such are making a loss could only arise in a very few instances where it might be a very short haul, and in those cases there is no attempt and there never has been an attempt to try and make these agreed charges.

The agreed charges are, if you will look at them, almost universally in what you would call the comparatively long haul and I hope no one asks me what a short haul is or what a long haul is because the answer seems to depend on the district you are in, but I think we all appreciate what is the difference between a comparatively short haul and a comparatively long haul in dealing with transportation. This question arose before the Royal Commission and at page 482 of volume 6 the matter was fully discussed and Mr. Justice Turgeon had it all before him. For example, I take the case of Mr. C. D. Edsforth, who was asked by Mr. Spence:

> So I take it Mr. Edsforth that you never make an agreed charge at a rate that is not compensatory?
>
> Answer: We never make any rate voluntarily that is not compensatory, be it an agreed charge or any other. We will not intentionally do so.

You will note that there is always a possibility that having made a rate, by reason of the impact of rising costs or the rising prices of material or wage costs or something else it might prove for a short period to be non-compensatory, but it was clear that in the long experience of the railways both in competitive rates and agreed charges there has never been a case where they have been disallowed on the ground that the Board of Transport Commissioners or the Board of Railway Commissioners which preceded it had found the railways had given rates below their costs. I think—I have not the reference now, I am speaking from memory—that this very question came up before the royal commission as to whether the question of compensatory or non-compensatory rates should go into this legislation. I might say that every question which has come up today was debated at length before the commission. I think I spoke in argument alone, during the course of the proceedings on various points for almost two full days, so members of the committee can see the breadth of the discussion which took place and the detail in which it was

considered. As I recall, Mr. Justice Turgeon said: "What has been the experience?" And then they brought in the experience and it showed that there had never been a case since 1903, when the Board first came into being, where the railways had been shown to have tried to put in a non-compensatory rate, and the remark made was: "Legislation is supposed to be remedial. Here we have half a century of proof that we have reasonable management and that it is looking after the business of the companies and have not tried to do these things. Are we going to put some words in there just for the sake of doing it?" You have responsible management of the two railway companies. As you know in both cases the people charged with appointing or electing management have chosen it on the basis that they are going to do a good job and the fact that you have to tell them that they are not to waste the railways' money is perhaps an indication that there is a lack of confidence in them, particularly when they have half a century of proof that it is not necessary.

I just wish to point out in passing that agreed charges are not only used in competition with the truck industry. Inasmuch as representations have been made by the trucking industry today we might forget that agreed charges are used for many other purposes. Part of the evidence before the royal commission showed that agreed charges were used to allow Eastern industry to get into the British Columbia market in competition with foreign industry in connection, I think, with steel pipe and other steel products. As the result of foreign products coming in by water they were shut out of the British Columbia market and from other Western markets and they made an agreement with the railways under which they both agreed to do something: industry in the East of Canada agreed to cut their profit and the railways agreed to cut their profit and they made this agreement which allowed the railways to make some profit which they would not make at all if there were no shipments, and it allowed Eastern industry to make some profit which they could not possibly have been able to make if they could not sell in the British Columbia market, and as a result both the railways and Eastern Canadian industry were helped.

You might ask why the water carriers are mentioned in this Act—why, for instance, they are allowed in clause 33 of the bill to come in and if necessary to complain when all water carriers are not allowed in there. It is only the regulated water carriers—and the term water carrier is defined as meaning those subject to regulation under the Transport Act—who are admitted. When the Transport Act was first negotiated in 1938 it not only brought into effect the right of the railways to go out and bargain with shippers and make a contract with an agreed charge, but for the first time the Transport Act imposed regulations on certain of the inland water carriers and these inland water carriers—those on whom regulation was imposed for the first time in 1938—had long standing agreements with the railways under which part of a route might be by water and which part might be by rail and they had differentials under which the amount of rate for shipment was divided between the two, and these long standing differentials, it was felt by parliament, should be maintained. The reason why provision was made for the regulated water carriers to come in and complain was to permit them to come and say "you are doing something which is in violation of long standing arrangements as to the division of rates or other matters." So much was that so that I think the only case in which the section of the Act was used was where Canada Steamship Lines came and complained that the railways were making some of these charges in which they were entitled to participate, and I think that case went all the way to the judicial committee of the Privy Council and I also think that Canada Steamship Lines won.

But that was the purpose of section 33 and I think that was the primary purpose of the present one, in so far as water carriers are concerned. You will note the proposed changes in section 32, and I think there is an arrangement now that the regulated water carriers can participate in any of these agreed charges that are made. That was not in the prior Act, and that was one of the matters which would give rise to a dispute as to whether they could have the right to participate, or whether the railways were making an agreement which violated the long standing arrangements with these regulated inland water carriers. But there has never been any suggestion, even in 1938 when this matter was before parliament, nor did anyone appear before the royal commission to suggest that anyone other than the regulated inland water carriers should have any right to appear and make any complaint or any other representation either to the minister or to the board. The unregulated carriers could do what they liked because no one knew what they were doing, and they felt that there was no reason for them to come in and say that they had a right to interfere, when no one even knew what they were doing, and no one attempted to interfere with what they were doing.

I wish to deal with the amendment suggested by the Canadian Trucking Associations. The Canadian Trucking Associations say that they wish to have the right to complain about agreed charges made by the railways. The railways may make an agreed charge. The term seems to imply something unusual. We would ordinarily say that they make a contract for the carriage of some stipulated percentage of a shipper's goods at a stipulated rate. They must publish it and let the world know about it, and if they make it with one shipper and publish it as required by law, then they must give exactly the same treatment to any other shipper who might suffer unjust discrimination by reason of that contract.

A trucker may make a secret agreement. In fact the past president of the Canadian Trucking Associations stated in evidence that it was very common for him to make an agreement with shippers just by a handshake. He said "we do not stipulate any fixed percentage, but that we will carry a certain proportion of their goods and we abide by that." But a railway cannot do that. The railway, if it makes an agreement, must file it, publish it, and make the same thing available for any other shipper who might claim that there was unjust discrimination.

In the case of the trucker, the railway does not know he has made any such agreement. There is no way of finding out; and he can make an agreement with one shipper, and no other shipper would have the right to complain, or ask that he carry his goods at the same rates.

I respectfully submit that the suggestion that the truckers should have a right to complain, or that anyone should consider the fact that they, the truckers, or even the railways should be given a preference in a competitive market is, I submit, wrong in principle. The public, in my respectful submission, is entitled to the cheapest transportation available, and it should have the right to bargain for it just like a customer of any other industry has the right to bargain, and that one industry or another industry may be hurt in the process is a result of the normal process of competition.

The truckers were able to make a better bargain with the shippers than the railways, and they took some business away from the railways. The railways now, by the Transport Act in 1938, and by a certain relaxation of the regulations in the present bill, are being given only one thing, and that is the right to go out and bargain with the shipper. The trucker has the same right to go in and bargain in competition with them, and if the railways cannot give a bargain which the shipper is ready to accept, then they are not going to get the business. And if the railways have a better product or a better price,

then they are going to get the business, just as any other industry does; and if they have not either they are not going to get it. And if it suits the shipper by reason of the fact that he gets a better or faster transportation to ship by trucks, that does not matter; but if the railways can go in with a combination of service and price and say that they have a better product, what is the difference between the competition between the railway and the trucker and the competition between two departmental stores, or the competition between two manufacturers? If one has a better product, then he is going to get the business, and the others should not come running to parliament and say "I do not think he should do it. I think he is giving a better product for a better price, or is giving better service, and it is hurting me, so stop him." On that basis, we would still have a very substantial buggy business.

The railways are asking for nothing but the right to go out and bargain in a competitive market. You might ask: what does it matter if somebody has the right to go in and make a complaint? It does not matter too much from the point of view of the railways. But let us take the position of the shipper. This comes easily to me because we went all through this several times before the royal commission.

There was a shipper, as I recall it, in Selkirk, Manitoba, who made an agreed charge with respect to some form of steel. He has a contract out in British Columbia and he makes an agreed charge under which the railway for a period of a year is going to carry his steel products to British Columbia. He can then make his contract out in British Columbia for supplying it, or for construction, knowing that his transportation costs are going to be fixed, and he can make his contract with some certainty as to that one factor, and perhaps other factors of which he knows—he may have fixed a labour agreement—which permits him to make his contract with certainty as to the costs. But if we widen this right to come in and complain in so far as the railways are concerned, they may, with their knowledge of railway law and with their studies of costs and other matters, be absolutely certain in their mind that after investigation his complaint is going to be found to be unjustified. But what about the shipper? He is not an expert in railway law; he has not made all these studies of costs, and he is left in a state of uncertainty: "Is this thing going to upset the agreement under which I have committed myself for a contract at a certain price? I may find that the contract I have made as to my transportation is going to be upset?"

He is the person who is most affected by all these well-intentioned efforts to allow every one to have his say. But the more people who have their say in respect to the validity of a contract, the more uncertainty there is going to be in the minds of people bound by that contract.

The railways, having been through this thing hundreds of times, and having been prepared for it, and having made their studies, they may say: "Do not be worried!"

But the man on the other end of it, who may go bankrupt by having quoted too low a price, is going to be uncertain, and is going to doubt whether he should make a commitment which may be upset by some aspect of the regulatory process.

Now, as to the right of the truckers to appear, I suggest there is very little difference between the present position and that which existed in 1938 when the then Minister of Highways and Canals, the Rt. Honourable Mr. Howe, had to deal with this same subject before parliament and as found in volume 4 of the transcript of the House of Commons debates on page 3,569 for the year 1938 where the following question and answer appears:

> Mr. BARBER: One point which came up in the committee was that those engaged in highway transport would not be able to appear before the board, because they do not come under this bill.

Mr. Howe: That is correct. Those engaged in highway transport have all the privileges granted to shippers under this legislation, with the additional privilege that their rates receive no publicity whatever. They are allowed to and they do make contracts every day with the greatest secrecy. As the regulated transportation companies have no right to interfere in the agreements made by the highway transport companies, it was felt that the highway transport companies should not be allowed to interfere with the regulated companies in the making of rates.

Again at page 3,570 there is this statement made by the minister:

The main opposition came from the motor transport and the bulk water carrier interests. These interests are left free to act in any way they like, and my personal opinion is that it is rather impudent that they, having the freedom of action they have, should insist upon taking a part in the regulation of regulated carriers.

I suggest, Mr. Chairman and gentlemen, there is no apparent difference in the situation now. Thank you very much.

The CHAIRMAN: Does the committee wish to ask Mr. O'Brien any questions?

Mr. HAHN: Could you tell me off hand if feed grains are carried to British Columbia at the same rate—

Hon. Mr. MARLER: You are getting outside of legal questions, Mr. Hahn.

The WITNESS: I am afraid you are away out of my department. I would like to answer your question and I will find the answer, but as I frankly admitted at the outset of my remarks I am not an expert on agreed charges. I participated as counsel in the royal commission and learned a great deal about agreed charges. I will get the information if you like but I know nothing about it.

Mr. HAHN: I was wondering about the compensatory price value on this—the rate, rather—just exactly how that was taken into consideration in view of the fact that they have increased the price of feed grain by $1.05 a ton to the Pacific coast. Would that enter into it? Would that make it possible to bring the agreed charge down? Were the two things not taken into consideration?

The WITNESS: I might say in the first place I know nothing whatsoever about the change in rates. I am so ignorant about the subject I think perhaps I should remain silent.

Mr. HAHN: Perhaps we could discuss it when we come to the other matter we spoke of earlier.

Hon. Mr. MARLER: Personally, Mr. Chairman, I do not think it is relevant to the subject of agreed charges. I think it has something to do with railway rates, but I do not consider that it is relevant to the subject of agreed charges which, as I think we all understand, is not a process of rate making, but is a process of agreement making between shippers and carriers.

Mr. HAHN: Yes, I can see that, Mr. Marler, but the values and rates come into the picture. Is this figured in on the rate or is it just for those particular products? Are all rates taken into consideration and all haulage when you are finding the rate?

Hon. Mr. MARLER: I think, Mr. Hahn, if you will look at section 334 of the Railway Act you will see there an example of the kind of thinking that comes into the consideration of a rate. I do not mean of all rates, but I mean of a particular rate. I think if you will look at that section you will find it very informative, but I am not suggesting that it applies to the agreed charges.

Mr. HAHN: Section 334?

Hon. Mr. MARLER: Yes, section 334 of the Railway Act which is merely an indication of the demonstration that the railway companies might be called upon to make by the Board of Transport Commissioners on the question of whether or not the rate was compensatory.

The CHAIRMAN: Mr. Green, you wanted to speak to Mr. O'Donnell.

By Mr. Green:

Q. Mr. O'Brien, I thought I understood you to say that the agreed charge puts an end to the rate cutting war?—A. Yes, I said that.

Q. That was your statement?—A. Yes.

Q. And I take it that is the main purpose of the railways in extending their operations in the field of agreed charges?—A. The main purpose of extending their operations is to permit them to go out and contract freely just as anyone else can. In answer to the statement made this morning they could do it as well with a competitive rate.

Q. Yes, you said that yourself.—A. They could not do it as well from their own point of view or from the point of view of the economy. They can go below truck costs with competitive rates instead of making agreed charges, but the impact would fall on the low rated traffic.

Q. Your company agrees that the agreed charge is the most effective way to put an end to the rate cutting war?—A. Yes, I think everyone agrees to that. It is just a question of what the impact is on competition.

Q. It is just a case of tying up the traffic so there is none left for the truck.

An Hon. MEMBER: Oh no—

Mr. GREEN: Let the witness answer.

The WITNESS: I might say I am not familiar with all the agreed charges, but there are agreed charges which call for 100 per cent and there are those which call for 75 per cent and I understand there are those that call for 55 per cent of the traffic, but that is not all of the traffic of the shipper. It is all of the traffic between designated points. In agreed charges I have seen and I think I am fairly familiar with them—let us take the automobile companies for example—I think that General Motors has an agreed charge with the railways under which 75 per cent of their automobiles shipped to western Canada will be shipped by rail, but I think on the other hand that Ford and Chrysler have another percentage at another rate, but it is only from there to western Canada. The trucker, if he can compete, is perfectly free to carry in any other direction.

By Mr. Green:

Q. But the effect of the agreed charge is to tie up as much of the business of a particular company as possible?—A. Just like any other person in competitive business would try to do, yes sir.

Q. As a matter of interest, why is it that it has taken the railways 17 years to wake up to the possibilities of the agreed charge?—A. I am not part of the management of the railways, Mr. Green, but I think I can perhaps give certain answers. The agreed charge legislation, as you know, came in in 1938. This was immediately followed by war. During the wartime period, there was probably no reason for anyone to go out and compete and then you had that period after the war which was a period of reorganization which fully occupied them. Meanwhile you had the tremendous growth of the trucking industry partly due to the war and partly due to an increase in business, and the tremendous impact on business because they got into many aspects of traffic that they had never expected to get into due to the railway strike in 1950.

Q. The railways have just recently wakened up to the fact that so much of this business was going to the trucks, is that right?—A. There again I am not part of railway management, but I do not think that is quite correct, sir. I think they have wakened up to the fact that if they are going to be able to compete with these unregulated carriers that they need more freedom than they have had in the past. Mr. O'Donnell mentioned—I think in connection with the application of General Motors or one of them—that they went out and made the agreement and then came this famous exhibit 50 of which he speaks—a memorandum of a Canadian Trucking Associations member—which frankly said that they were going to try and find a shipper who would go in and make an objection to it and at least delay it. I do not know whether or not they found one, but the shipper certainly came in, and the contract having been made, the manufacturer was not able to ship at those rates, and the railways were not able to get the traffic for several months while the thing was stymied before the Board of Transport Commissioners. So they found that the regulatory process did not allow them to compete in a competitive market and they came along and said, "Will you fix it up"?

Q. You mentioned one unregulated truck business?—A. Yes.

Q. In some provinces certainly these trucks are very strictly regulated?—A. I think it was pretty well agreed, in view of all the evidence before the royal commission, that whatever the laws might be there is no regulation whatever in Ontario as to rates.

Q. There is in Quebec, is there not?—A. The statement by counsel for the Canadian Trucking Association was they were called upon to file tariffs but there was no attempt to regulate them and he ended up by stating that effectively there was no regulation in Quebec or Ontario, two provinces in which trucking competition was the heaviest.

Q. Was that the evidence here before this committee?—A. I quoted the statement of Mr. Hume, counsel for the Canadian Trucking Association made before the Royal Commission.

Q. That is contrary to the evidence this morning.—A. I did not compare the two statements. He made that statement in argument before the royal commission and said effectively in the two provinces where truck competition was the most intense there was no regulation of rates.

Q. Does the Canadian Pacific Railway Company have any objection to writing into section 32 of the bill a provision that these agreed charges must be on a compensatory basis?—A. I have no instructions on that. I may say that that again was discussed before the royal commission. I would think that if I had instructions that they would object. If I might give the reasons as I would see them personally they are that here you have management which is supposed to be honest and supposed to be intelligent and is not supposed to be—

Q. Nobody is disputing that.—A. —I was going to say, sir, that it is about the same thing as if I was making a contract under which I was to become general manager of a firm and they tried to put in a stipulation that I at all times should be honest, I would say I object to the implication. We discussed the whole question before the royal commission and there the chief commissioner asked if in the 50 years of experience of competitive rate and agreed charges there had been any case where the railways have been shown to have tried to put into effect a non-compensatory rate, and the answer was no. Then why should we say to the management of these railways who have shown themselves to be competent and honest in this respect, "we are going to have to tell you to do something which you have always done."

Q. Can I take it from that that the C.P.R. would not object to a provision being written into the Act which only in effect sets out that they do what they have been doing all down through the years?—A. I must say—and I have no instructions on it—that the management would feel they were being told to do something leaving the implication that it was necessary to tell them to do what has always been done honestly.

Q. You think they might be insulted if there was a provision of that kind made in the section?—A. I would certainly feel that way if somebody said to me after 50 years of honest management "You have to continue to be honest".

Q. Of course it is not a question of being honest at all, it is simply a case of writing into the law that these agreed charges must be on a compensatory basis, and not below cost, something like this say as section 32 (6) (*a*) of the bill:

> Every agreed charge shall be compensatory, that is to say such as will improve the net revenue position of the carrier.

—A. I would say with respect in so far as I see it we would have nothing added to the present bill. In the present bill, after three months, anyone can complain and if the complaint has been in any way justified it is referred to the board and the board is then instructed under the legislation to see what the effect of the agreed charge is on the net revenues of the railway. Obviously the only purpose of the inquiry is to see whether or not the rate is compensatory or more than compensatory, whether they are making a profit. I have said that it is not necessary to make them non-compensatory to meet the trucking competition but if they ever tried it the first time their knuckles were rapped for doing so I do not think they would try it again.

Q. Then you mentioned about the shipping. What shipping comes under the Transport Act?—A. West of the Island of Orleans and on the Mackenzie river basin.

Q. In other words the shipping in the Maritimes and lower St. Lawrence and west coast does not come under the Transport Act?—A. It is completely unregulated as far as I know.

Q. And companies in that shipping business under this bill will not have the right to participate in the agreed charges?—A. Nor have we the right to investigate what they are doing.

Q. And they cannot protest?—A. No, sir, nor can we.

Q. The C.P.R. is in business on the west coast and do they not have any such arrangements tying in their rail rates and their shipping rates?—A. Again you are getting a little beyond the ambit of my knowledge, but I would say I think that possibly there is regulation of the rates from Vancouver to Victoria. I think that part is covered by the railway tariffs. I think apart from that they are completely unregulated.

Q. Under this bill would it be possible to have an agreed charge covering that shipping from Vancouver to Victoria?—A. Under the bill as I understand it, the only carriers who participate are the regulated water carriers and the railways with the sole exception of some intermediate carriers in the United States who have to participate in forming a joint line through the United States say from Toronto to Vancouver.

Q. Then you said there is another reason for using these agreed charges and that was to compete with water borne freight to the west coast.—A. Not only water borne freight but with foreign markets, people who by reason of probably lesser costs combined with water borne freight arrange to lay down their goods at prices lower than the Canadian manufacturer was able to do.

Hon. Mr. MARLER: By shipping through the Panama Canal?

The WITNESS: In some cases.

By Mr. Green:

Q. In addition to enabling you to fight the truckers are these agreed charges also designed so that you can compete with and possibly put out of business a shipping line from the east coast to the west coast through the Panama Canal?—A. Certainly we would hope to compete and again there I think the railways are perhaps in the position that the truckers are in respect to the railways. The railways can by reason of fast service even at a slightly higher rate or maybe a substantially higher rate in some cases compete, as likewise the railways if they want to get the traffic may try to get a year-round contract for a fixed percentage.

Q. Has this not been done in the past: that you cut your rates to the west coast in order to put a shipping line out of business and then put your rates up again?—A. Not to my knowledge, and I can say that very frankly because my knowledge is not very great as to the past but there was a very full debate in respect of competitive rates and in respect of water traffic and they did not mention it at any time before the royal commission.

Q. Was there not another reason for these agreed charges, namely to avoid the one and one third rule on the transcontinental rates?—A. Again I can only state what was said in evidence and again there was a very full discussion. Under the legislation of some four or five years ago a provision was put in the Act under which the rate to intermediate points could not be more than one third higher than the competitive rate to the coast. According to the evidence before the royal commission the effect of that was such that the combined traffic to the coast and to intermediate points was giving a substantially lower return to the railways than it had been, so in the circumstances they increased the competitive rates and lost the business. If they had not done so they would have lost still more on the traffic to the intermediate points. So they found that in order to try to get back and allow the manufacturers to get back to the British Columbia market the agreed charge should be used. Might I say, sir, that the royal commission was instigated because of a complaint of the province of Alberta in respect of the one and one third rule and that was fully investigated and the commissioner found that the complaint in his view was not one which should be entertained.

Q. The effect of the agreed charge apparently is to cut the freight rates for one group of shippers—the people who actually enter into the agreed charge. Where does the money that is lost on those deals come from? Perhaps I should not use the word "lost". Where is the money which is sacrificed in an agreed charges deal made up?—A. If I may put it this way, it is like any other business. The railways have a certain amount of business and if they can get more at a profit by an agreed charge they would be foolish not to do so. If they do not make the agreed charge they are going to lose that profit, and if they lose that profit—and remain solvent—the other traffic is going to have to pay for it. So they do not lose by the agreed charge. They gain. And as Mr. O'Donnell pointed out, the way bill study shows that the average revenue per ton mile under agreed charges was higher than that on any other traffic carried by the railway.

Q. Does that not mean that some of the load of freight rates is shifted from the companies which have agreed charges to the shippers who have not?—A. I would think that the inference is the exact opposite. If the railways did not have this benefit, the consequences of not having it would be to shift the burden to other traffic.

By Mr. James:

Q. We had some information from Mr. O'Donnell this afternoon about the system in use in the United Kingdom. Have you any information about the United States setup?—A. Very little, except to the extent that there was some evidence before the royal commission that in the United States they have regulation both of trucks and of railways by the Inter-State Commission. They are both regulated.

By Mr. Hosking:

Q. Do I understand you to say you give the same opportunities to any company to get in on an agreed rate? If you make a deal with my competitor you would also make one with me?—A. We are obliged by law to do so. We have no opportunity to refuse.

By Mr. Carrick:

Q. Questions have been asked concerning the right to appear, and in the course of the discussion you brought out that there are regulated carriers who are competitors and who do come in, but that there are unregulated carriers who do not come in. I was just wondering about other persons who might be competitors of the railway—is T.C.A. in any way a competitor of the railway?—A. I would say that any transportation agency is a competitor of the railway.

Q. Theoretically if you are giving the right to one you would have to give it to everybody.—A. You would have to.

Q. I am not saying that T.C.A. is unregulated.

The CHAIRMAN: Are there any further questions?

Mr. GREEN: This afternoon I neglected to ask Mr. O'Donnell about one subject. Did you say in the course of your evidence that the railways were not able to appear before any of these provincial boards in order to protest increases?

Mr. O'DONNELL: I do not remember saying that, Mr. Green.

An Hon. MEMBER: It is a fact, though.

Mr. O'DONNELL: I do not remember saying that but I am under the impression that in so far as boards that deal with franchise are concerned that on occasions the railway people do appear, and indicate to the board that they feel as a matter of convenience and necessity the granting of franchises may or may not be necessary in the public interest but they make no representations regarding rates. They have no right to do so and they do not do so.

Mr. GREEN: Is it not a fact that there was a decision by the Quebec Transport Board, or whatever the authority is called, on June 13 of 1954 in the case of the Association Transport Routier; that the Canadian Pacific Railway and the Canadian National Railway appeared, and that the board made a finding that the railways would be heard on all these occasions?

Mr. O'DONNELL: I cannot say definitely about that. I myself am not familiar with it.

Mr. GREEN: I have a copy of the judgment.

Mr. O'DONNELL: I have heard of a judgment but just what it said or did I was never interested enough to try to find out.

Mr. GREEN: The final paragraph of the judgment is:

> Therefore it has been decided that, the objection of the Attorney of the Trucking Association of Quebec, Inc., cannot be accepted by the Board and the Railway companies are and will be authorized to appear before the said Board and thereto assert their point of view.

Mr. O'DONNELL: As I said, where it is a matter of the franchise, or a new one, where they feel that the public is sufficiently served by the existing transportation facilities which are available and operating, they make the representations that may be needed.

Mr. GREEN: Is it not a fact that the railways have the same right in Ontario?

Hon. Mr. MARLER: Before what body?

Mr. GREEN: Before the Ontario body which deals with such matters.

Mr. CARRICK: They used to appear before the Ontario Board but only on the grounds and for the purposes which Mr. O'Donnell has stated.

Mr. CAVERS: Mr. Goodman has appeared there as a representative on many occasions. Shall we call Mr. Jones? I think he is representing the Great Northern Railway Company.

Mr. D. H. Jones, representing the Great Northern Railway Company, called:

The WITNESS: Mr. Chairman, Mr. Minister and gentlemen: I have been instructed by the Great Northern Railway Company to appear before your Committee and to support the enactment of Bill 449 in its entirety, as it now stands.

The Great Northern Railway, which has been operating in Canada for almost 50 years, appeared before the Royal Commission on Agreed Charges and made a submission, the result of which is now to be found is sub-clauses 3 and 4 of the bill, and it participated throughout the whole of the hearing before Mr. Justice Turgeon.

The whole question of agreed charges is one which is foreign to the United States railway companies because they do not have agreed charges in the United States at all. The subject has been given careful study and the Company considers it most important that the Bill be passed in its present form. It supports the position taken by the Canadian National Railways and the Canadian Pacific Railway Company.

The representatives of these railways have dealt in considerable detail with all the questions which have arisen regarding agreed charges, and I do not propose to touch on them at all.

The first point that I would like to mention, however, is that the Bill is the result of careful and painstaking study by the Royal Commission on Agreed Charges and by the Government. The Company which I represent considers that its provisions are of vital importance to the railways at this time, and that the bill ensures to the shipper and to other modes of transportation, as well as to the public, all the necessary and adequate safeguards which are required in this kind of rate making.

The other point I wish to mention is sub-clauses 3 and 4 of the Bill. They are simply the legislative machinery, if I may put it that way, to ensure that the United States railway companies that operate, and have been operating in Canada, may continue to move Canadian freight in those circumstances where in the past they have been entitled, or have enjoyed the right to participate in the movement of Canadian freight. By that I mean freight between points in Canada, although part of the movement may have gone through the United States, and although it formerly moved under the normal published tariff.

The agreed charge, when made between the Canadian Pacific and the Canadian National Railways and the shipper, will, at that point be open to the United States lines for entry. They may then, as I understand the provisions of the Bill, become parties upon giving notice to the Board, so that they may continue to be in a position to move the traffic which they formerly moved under the normal tariff. Thank you. That is all.

The CHAIRMAN: Are there any questions?

By Mr. Green:

Q. The Great Northern Railway operates exclusively in Western Canada?—A. Yes, it does, sir.

Q. You have been getting a lot of business and taking freight down through the States rather than it coming across Canada and Canadian lines. How is freight of that kind handled?—A. How is that kind of freight handled?

Q. I mean freight originating in British Columbia and being taken down into the United States and brought through the States and finally brought back into Canada.—A. Let me give you an example of the movement of some commodity, starting at Toronto. There would be an arrangement with either the Canadian National Railways, or the Canadian Pacific Railway and their affiliates to move it to Chicago. Then from Chicago it would go over to the Burlington Railroad to St. Paul, Minneapolis, and then over the Great Northern to Vancouver.

Q. Will this Canadian freight which is carried on the American lines most of the way from Toronto to Vancouver, be subject to, or come under the advantage of these agreed charges as well?—A. According to the provisions of the present Bill, yes sir.

Q. I see. Then the Bill has broadened out to cover all this freight, which is carried primarily through the United States?—A. Yes. Perhaps I might put it this way: take the case of any commodity you like. Let us assume that up to now it has been moving under a normal published tariff of tolls. The Canadian Pacific and the Canadian National Railways approach the shippers of that commodity and negotiate an agreed charge. Well, if a line like the Great Northern wishes to move that traffic, or its share of that traffic—which normally has been a fairly small proportion of that traffic in comparison to the overall movement from east to west—then it would simply file notice with the Board and ask to be joined as a party to the agreement which had already been negotiated and made by the two Canadian railways.

Q. And that provision would be available for any of the American companies such as the Chicago and Wilwaukee or any other line running west through the States?—A. It is confined to those which operate into Canada. The Great Northern is one. The New York Central is another. There is the Chesapeake and Ohio, and I think there are two or three others in the east. There may be one or two more in the west which can qualify under that condition, and they are quite at liberty under these provisions, as I understand them, to become parties to the agreed charge.

Q. But you are the only railway in the transcontinental business that would be able to benefit from these provisions?—A. I think so, sir.

Q. You will be able to benefit by hauling freight right through to the west coast?—A. Yes, sir, although it might work this way: we will be able to continue to do the business which we have done before, that is, before any agreed charge or agreed charges came into effect which affected Western Canada.

Q. Is there any restriction in the bill which would prevent you from taking more of the business over American lines than has been the case in the past?—A. No, sir.

By Mr. Cameron (Nanaimo):

Q. What measure of control has the Board of Transport Commissioners got over your operations, just over the part from Vancouver to the boundary? —A. Over the Canadian part of our operations, yes sir.

Q. So that any agreed charge you might make would not alter the situation very much?—A. No.

Q. For the bulk of your operations you are outside the control of the Canadian Board of Transport Commissioners?—A. Yes, although we have to comply with the rules of the Board because we operate in Canada.

By Mr. Carrick:

Q. Would you come under the inter-state commerce commission with respect to your operation in the United States?—A. Yes, sir.

By Mr. Hahn:

Q. Would you expect to have an agreed charge of your own from Blaine to Milwaukee, and the balance from Blaine to Vancouver would come under the Canadian Board of Transport Commissioners?—A. No, agreed charges are not lawful in the United States.

Hon. Mr. MARLER: They are only provided for between points in Canada.

Mr. HAHN: That is the case at this time, but are there any regulations comparable in the United States which would permit you to carry on an agreement of any kind with respect to the hauling of freight?

The WITNESS: Not anything resembling the agreed charge, no.

Mr. BARNETT: I wonder if Mr. Jones could tell us whether the control of the Board of Transport Commissioners in respect to rates would apply for the total distance of shipment from a point in eastern Canada to a point in western Canada? In other words, can you quote the rate for the distance in which you are inside Canada which is based on Canadian rulings and a rate for the rest of the distance which is based on American port tariffs?

The WITNESS: I think it would have to follow this sequence, sir: if an agreed charge on some commodity was negotiated, and if the Great Northern or any other United States line wanted to move it from Toronto to Vancouver, as you say, they would have to move the traffic for the rate in the agreement and they would have to see that that rate was legal throughout the whole movement.

The CHAIRMAN: Thank you, Mr. Jones.

Mr. CAVERS: We have several representatives of steamships here, and I believe Mr. H. E. B. Coyne, Q.C., is representing Irish Shipping Limited and Saguenay Terminals Limited. Mr. Coyne, do you wish to address the committee?

The WITNESS: I appear for Irish Shipping Limited and for Saguenay Terminals Limited. With me is Mr. Jean Brisset, Q.C., of Montreal; Mr. Boyle, president of Shipping Limited, the general agent in Canada of Irish Shipping Limited, and also Mr. Batz, the treasurer of Saguenay Terminals Limited and Mr. Flavelle, general traffic manager of Saguenay Terminals Limited.

The two companies which I represent are ocean steamship companies, and the reason that they want to make representations before this committee is that they feel that they have no remedy under Bill No. 449 if an agreed charge is made which discriminates unjustly against them and in favour of their competitors. Their fears as to discrimination are well founded. The railways have discriminated against them in the past and are still discriminating against them. Until December, 1953 Irish Shipping Limited enjoyed

through bill of lading privileges. A through bill of lading is one under which, for example, an exporter would ship his goods from Toronto to Montreal and right through to Liverpool. A local railway bill of lading would only take the goods to Montreal, and the exporter would then have to get another local bill for carriage from Montreal to Liverpool. The advantages of a through bill are described by Mr. Boyle in evidence which is quoted in a judgment of the Board of Transport Commissioners. Mr. Boyle said, as given in the judgment of the board dated June 28, 1954 in the application of Irish Shipping Limited re issuance of through bills of lading by railway companies for export traffic:

> 'The advantages, as I see it, are these: shippers away out in western Ontario or maybe out in the middle west go to the railway company and get a through bill of lading. As soon as that through bill of lading is signed they have got nothing more to do about their shipments. They can take their documents to the bank and get their money. If they ship on a straight bill of lading they have got to wait until that shipment gets to the seaport, until the steamship company gives them an ocean bill of lading and so they have to get the ocean bill of lading back and so on. They are deprived of the use of their money in each case.
>
> Q. That is the principal disadvantage?—A. Yes. And another condition and a very important one is that once he gets a through bill of lading he forgets all about the shipment. It is in the hands of the railway and the steamship company whereas if it goes on a straight bill of lading he is worrying about whether it is down at the seaport and whether he is going to get through bills of lading out and in fact he has more clerical work to do. We feel in cases like that a shipper might drop our service and go to one of our competitors simply because he can get additional privileges.'

In December, 1953 the railways refused to continue to accord through bill of lading privileges to Irish shipping Limited and Irish Shipping Limited thereupon made a written complaint to the Board of Transport Commissioners alledging unjust discrimination and this is what the complaint said:

> 1. Irish Shipping Limited, hereinafter called 'the applicant', hereby applies to the board under sections 33, 34, 317, 319 and all other relevant sections of the Railway Act for an order declaring that the Canadian Pacific Railway Company and the Canadian National Railways have violated section 317 of the said Act and that the Canadian Pacific Railway Company and the Canadian National Railways and other members of the Railway Association of Canada have violated section 319 of the said Act, as hereinafter set out; and for such further or other relief as to the board may seem just and proper.
>
> 2. The applicant is an incorporated company owned and controlled by the government of the republic of Ireland. Its head office is in Dublin, Ireland, and its general agent in Canada is Shipping Limited, 410 St. Nicholas Street, Montreal. It is now actually operating six ocean-going vessels registered in Ireland, and additional six vessels are now being built, all of which have carrying capacity ranging between 7,500 and 9,500 deadweight tons, each capable of twelve to fourteen knots. Irish Shipping Limited now operates a regular liner service for the transportation of goods from eastern Canadian ports to ports in Ireland and occasionally to ports in England and Scotland, and in that service there are not less than two sailings per month during the summer months and one during the winter months.

3. Ocean carriers, other than the applicant, who engage in the same transportation service, have formed a closed association in Canada, known as the Canadian-United Kingdom Eastbound Freight Conference, for the purpose of fixing rates, for the transportation of agricultural, mining and forest products, manufactured goods and other articles of freight moving out of Canadian ports to England, Scotland, Wales, Northern Ireland, and the Republic of Ireland, and of fostering a monopoly of the said transportation service.

4. In pursuance of this purpose, the members of the Conference require Canadian exporters who desire to ship to the countries mentioned in paragraph 3 hereof by any of their lines, to sign an agreement beforehand whereby the exporters undertake to make all future shipments by their lines exclusively, and at rates set out in the agreement for the commodities listed therein and for the others at rates which are determined under a tariff prepared by the Conference, which is not made public and is not available to the exporters. Furthermore, the exporters are made subject to severe penalties if they ship outside the Conference and may, in fact, be deprived of the right to ship on any vessel operated by the members of the Conference. A form of the agreement is hereto attached and marked "A".

5. Canadian Pacific Steamships Limited, a wholly owned subsidiary of the Canadian Pacific Railway Company, is a member of the Conference.

6. Heretofore, to assist in the development and facilitate the movement of freight traffic originating in Canada and the United States of America, and moving to and through Eastern Canadian ports destined for foreign ports, the Railway Association of Canada was agreeable to issuing to exporters railway through bills of lading to cover such freight traffic from its inland point of origin to seaboard and from there to final destination in the foreign country, and, in order to provide these through bills of lading facilities to exporters, the Railway Association of Canada had entered into agreements with all ocean carriers servicing Canadian ports who were willing to cooperate with the Railway Association of Canada to facilitate the movement of such export freight traffic and in particular such an agreement was entered into between the Railway Association of Canada and Irish Shipping Limited on November 14, 1950. A copy of such agreement is hereto annexed and marked "B".

7. The Canadian Pacific Railway Company, the Canadian National Railways and other members of the Railway Association of Canada have since the month of December, 1953, embarked on a policy of actively assisting the Canadian-United Kingdom Eastbound Freight Conference in its purpose of monopolizing export traffic and fixing rates by issuing to exporters through bills of lading for goods shipped from inland points where the inland transportation is to be performed by a vessel operated by a member of the Conference and by refusing to issue to exporters through bills of lading where the ocean transportation is to be performed by a vessel which is not operated by a member of the Conference. In confirmation of the preceding statement is attached a copy of a letter dated November 9, 1953, from Mr. J. A. Brass, General Secretary of the Railway Association of Canada to Mr. A. L. W. MacCallum, C.B.E., General Manager of the Shipping Federation of Canada, Inc., and marked "C".

That letter which is quoted in the board's judgment is as follows:

Dear Mr. MacCallum:

Your letter November 4th, file B.4-17, enclosed copy of communication you had received from Mr. J. P. Boyle, President of Shipping Limited with reference to through bill of lading privilege granted Irish Shipping Limited.

The through bill of lading privilege has in the past only been granted to steamship lines who are members of the conference governing the various trades concerned with whom the railways are in agreement. Where no conference exists, the privilege is granted only to established lines operating regular services.

As we understand the Irish Shipping Limited are not a member of the regular conference in the trade between Canada and the United Kingdom. The railways' action in deciding to discontinue issuing through bills of lading in connection with this particular line is in accordance with the principle outlined above and we further understand is in conformity with the requirements of the members of the Canadian United Kingdom Eastbound Freight Conference.

Yours very truly,

(sgd) J. A. BRASS,
General Secretary.

I should now read the reply of the Railway Association on that occasion. This is a letter addressed to E. R. Hopkins, Esq., Secretary, Board of Transport Commissioners, Union Station Building, Ottawa. It is headed: file No. 3678.34. Irish Shipping Limited vs. C.P.R., C.N.R., and Railway Association:

Our member lines have read and considered the recent application of Irish Shipping Ltd., dated March 31, 1954. This application is similar in purport to a previous one dated January 5, 1954, and we must answer it in the same terms.

I pointed out in my letter to you of February 16 that this matter does not appear to fall within the jurisdiction of the board. Traffic moving from inland points to seaboard for export is always forwarded under a rail bill of lading covering the rail haul. This rail bill is sometimes turned in to the carrier and a through bill covering the transportation of the goods to final destination overseas is issued while the goods are in transit. In through movements of this kind the carriage by water is usually far greater than that by land. If the board were to issue an order such as that requested by the applicants it would be assuming jurisdiction to regulate transportation by sea, which of course it has no jurisdiction to do. We respectfully submit, therefore, that the application should be dismissed.

The applicant appears to have attempted in its recent submission to overcome the jurisdictional question by alleging discriminatory action by the railways in respect of demurrage.

I did not read the part of the complaint relating to demurrage because after the application was made the railways brought in new regulations regarding demurrage and that part of the application was dropped.

This allegation is not well founded, the railways charge precisely the same demurrage regardless of whether the traffic is covered by

through bills of lading or local steamship bills of lading. Certain steamship lines undertake to guarantee payment of all demurrage which may be assessed on through bill of lading traffic by reason of failure on their part to clear or permit unloading of such traffic within the free time period. It is open to the Irish Shipping Limited, or any other company, to give such a guarantee directly to the shipper.

With respect to the statement in the application submitted by the Irish Shipping Limited dated March 31 that the railways refuse the issuance of through export bills of lading to certain exporters, I would like to point out that all exporters can secure through railway export bills of lading in connection with steamship services that are granted through export bill of lading privileges by the railways and, therefore, it is my contention that there is no discrimination against any shipper or exporter in this respect.

We are transmitting a copy of this communication to Messrs. Hill, Hill & Hall, Barristers & Solicitors, 14 Metcalfe Street, Ottawa, Ontario.

Yours truly,

(sgd) J. A. BRASS,
General Secretary.

Mr. CAVERS: Mr. Chairman, I note that this evidence which is being put on the record here seems to relate to one particular case which has already been heard by the Board of Transport Commissioners on which they have apparently rendered a decision. I am wondering whether we can get to the point as to what that has to do with the agreed charges under the provisions of this bill.

The WITNESS: I am giving particulars of this case to show why we are afraid that agreed charges will be used by the railway companies to discriminate against us. This case shows that they did discriminate against us with regard to through bill of lading privileges. I will also show that they are still discriminating against us with regard to through rates and that is the foundation for our fear.

Mr. CAVERS: So far as your case goes you have already had your remedy and that was the right to go before the board and they have rendered a decision.

The WITNESS: A decision in our favour. But I think it is very germane to our case to show why we are afraid they will use the agreed charge to discriminate against us. If they are not doing it now—we think they will do it in the future.

Mr. CAVERS: That was my purpose in bringing this up—to show what connection this matter would have with the bill now before us.

The WITNESS: That is my purpose, sir.

Mr. CARRICK: May I ask if it is necessary to go into such great detail on this, having said what the discrimination against your client was?

The WITNESS: I may say that the Saguenay Terminals Limited intervened in support of the complaint. There was a hearing and the board gave judgment. This is the last part of the judgment of the board:

> To sum up, I find that when the railways issue through bills of lading in connection with certain steamship lines and deny similar arrangements in connection with certain other steamship lines who are willing and able to participate in the issuance of such bills of lading, a

condition of undue preference and advantage exists in favour of the first mentioned steamship lines; and a condition of undue prejudice and disadvantage exists in respect of the second mentioned steamship line.

An Order will issue pursuant to this Judgment requiring that such undue preference, advantage, prejudice and disadvantage be removed forthwith.

Now what the railways did in pursuance of this order was to submit an agreement to these two companies, that is, an agreement to cover the issue of the through bills and in this agreement a clause appeared which had never appeared in such an agreement before and this was the clause:

6. The steamships agree to charge for their services under the said contract of carriage the rate or rates in effect at time of shipment for the particular commodity established by all other carriers in the same trade area which have executed this standard agreement.

That is to say the railways asked us to join with the conference members in fixing rates. We objected to that clause on the ground that it would make us liable to penalties under the Combines Investigation Act. The Combines Investigation Act says in section 32, subsection 1:

Every person who is a party or privy to or knowingly assists in the formation or operation of a combine is guilty of an indictable offence and liable on conviction to a fine in the discretion of the court or to imprisonment for a term not exceeding two years or to both.

And a combine is defined in this way:

(*a*) "combine" means a combination having relation to any commodity which may be the subject of trade or commerce, of two or more persons by way of actual or tacit contract, agreement or arrangement having or designed to have the effect of

(i) limiting facilities for transporting, producing, manufacturing, supplying, storing or dealing, or

(ii) preventing, limiting or lessening manufacture or production, or

(iii) fixing a common price or a resale price, or a common rental, or a common cost of storage or transportation, or

(iv) enhancing the price, rental or cost of article, rental, storage of transportation, or

(v) preventing or lessening competition in, or substantially controlling within any particular area or district or generally, production, manufacture, purchase, barter, sale, storage, transportation, insurance or supply, or

(vi) otherwise restraining or injuring trade or commerce, or a merger, trust or monopoly, which combination, merger, trust or monopoly—

The CHAIRMAN: Order. I do not believe that the Combines Investigation Act has anything to do with this bill whatever.

The WITNESS: I was explaining that the reason that we objected to signing this agreement was that we considered ourselves liable under the Combines Investigation Act if we did so.

Mon. Mr. MARLER: Why do you not let it go at that, Mr. Coyne, and let us get on with the subject.

The CHAIRMAN: I think we had better adjourn now until tomorrow morning at 11.30.

APPENDICES

APPENDIX A

LETTER OF MARCH 31st TO HON. GEORGE C. MARLER, MINISTER OF TRANSPORT, FROM WILLIAM C. NORRIS, PRESIDENT, CANADIAN TRUCKING ASSOCIATIONS, INC.

CANADIAN TRUCKING ASSOCIATIONS
270 MacLaren Street
Ottawa 4, Canada

MARCH 31st, 1955.

Hon. George C. Marler,
Minister of Transport,
House of Commons,
Ottawa, Ontario.

Dear Mr. Marler,

Since you tabled the Report of the Royal Commission on Agreed Charges in the House of Commons on March 23rd, Canadian Trucking Associations has had an opportunity to make a complete study of the Report.

The decision you and your colleagues in the Cabinet are called upon to make—whether to implement the recommendations—will be the most fateful decision ever taken in the history of highway transportation in Canada. The recommendations of the Commission strike at the very heart of the trucking industry.

Whether to temper the blow which the recommended federal legislation would deal the trucking industry is a decision which must be based on what is in the best interests of the nation, not what is in the special interests of Canadian truck operators. We trust that you will conclude that the nation must also come before the railways.

The railways are important to Canada and we are the first to admit it. Their welfare is a consideration which must be a paramount concern of the federal Government. But it is not the only consideration. Canadian highway transport services are an indispensable component of our transportation system. They are essential to agriculture, business, industry, and to national defence. These essential highway transport services are now threatened by the unprecedented crisis of the Royal Commission recommendations. With all the force at my command, I respectfully sound the warning to you, and to your Cabinet colleagues, that the trucking industry, as we know it today, is endangered as never before by the recommendations of this Commission.

> I am impressed with the belief that the motor (truck) industry has become a factor of permanent value in Canada's economic life and that no legislation concerning railways, and more specifically, the legislation of the kind now contemplated, can cause it vital damage.

So states the Commission. Content in the belief that what is recommended will not cause vital damage to the trucking industry, the Report recommends setting the railroads free in respect to agreed charges. Certain precautions remain. None apply to the trucking industry.

What are our own conclusions as to the extent of the damage which the proposed legislation would cause? Our study convinces us that to set the railways free in the manner recommended by the Commission will wipe out, in a relatively short time, one-third to one-half of the trucking industry. As the actual people operating the industry we can speak with some authority as to the effects of the recommendations.

We have no difficulty in justifying our conclusions as to what the recommendations will do to the trucking industry if adopted. The Commission pays great attention to the testimony of Mr. S. W. Fairweather, Vice President of Research and Development, Canadian National Railways. A significant omission in the Report concerns the key statement made to the Commission by Mr. Fairweather—that, given the freedom sought in agreed charge rate-making, the railways will make "thousands" of agreed charges.

The Report reviews the trucking industry's representations regarding the seriousness of the agreed charge threat—representations opposing agreed charges when the original legislation was introduced in 1938; when the railways demanded greater freedom of agreed charge rate-making in 1949; and again when the present Commission held its hearings. The Commission goes out of its way to write off all these representations as groundless fears.

"In 1938", the Report states, "this for-hire trucking industry was represented by about 16,000 trucks as compared with the 65,000 in 1953."

In other words, this growth occurred despite the forebodings of the trucking industry.

But the Report points out:

> The present record shows, that by the end of 1954, 35 additional agreed charges had been made *raising the total since 1938 to 80.*

So the industry that is shown as having made such advances since 1938—despite its warnings about agreed charges—did so in the face of 80 agreed charges put into effect during a period of sixteen years.

The Commission makes no mention of the fact that the amendments it recommends to the Transport Act will bring on not the 80 agreed charges of the past sixteen years but "thousands" of agreed charges—as fast as the railways can make them.

Strange indeed that the Commission sidesteps this announced result of its own proposed legislation.

Today, it is true, the trucking industry is a vigorous, efficient industry. This is in the public interest. It cannot remain so under the promised onslaught of "thousands" of agreed charges. The Report fails to take account of the fact.

Although the trucking industry's traditional position has been that agreed charges should not be permitted in any form—that the railways have, and should continue to have, the right to their present unfettered competitive rate-making—we concede that the Canadian railroads have wrested a great victory from the hearings of this federal Royal Commission. Although Canadian Trucking Associations spent more money on the Royal Commission hearings than the Government of Canada—according to the Parliamentary return of March 25th—our resources did not permit us to match the colossal expenditures on research, counsel, and expert staff put forward by the Canadian railroads.

The Report is now in the hands of the Government whose overwhelming majority in Parliament gives the proposed legislation a fair chance of passage should the Government decide to introduce it. The Government now has its last opportunity to pause and decide if it will not temper the decisive blow which the proposed legislation will strike at the future development of the trucking industry.

A precaution recommended by the Royal Commission is that review of an agreed charge by the Transport Board may be obtained by "any carrier, or association of carriers" on reference from the Minister of Transport. The Commission designates this carrier or association of carriers as being either by water or rail. True to the legislation presently in effect, it pointedly excludes 'for hire' truck operators. We submit that to be fair and equitable to *all* carriers, the legislation cannot single out truck operators as the only carriers to be denied the right of review of an agreed charge.

We respectfully request that the right to obtain review of an agreed charge by the Transport Board, on reference from the Minister of Transport, be extended to truck operators or their associations; and that the waiting period of three months be eliminated.

Section 33 (1) of the Transport Act would thus read:

> In the case of any agreed charge
>
> (*a*) any carrier, or association of carriers, by water, rail, or road, or
>
> (*b*) any association or other body representative of the shippers of any locality,
>
> may complain to the Minister that the said agreed charge is unjustly discriminatory in respect to the party or parties complaining or places their business at an unfair disadvantage, and the Minister may, if satisfied that in the public interest the complaint should be investigated, refer such complaint to the Board for investigation and if the Board after hearing finds that the effect of such agreed charge upon the business of the complainant or complainants is undesirable in the public interest the Board may make an order varying or cancelling the agreed charge complained of or may make such other order as in the circumstances it deems proper.

As previously pointed out to you by the Association, in the five provinces which have motor carrier regulation by provincial transport boards—Quebec, Ontario, British Columbia, Manitoba, and Saskatchewan—approximately 87 per cent of Canadian motor carrier revenue is earned. In each of these provinces, the railways are permitted to appear as objectors at all hearings of applications for new, or extended, operating authority by motor freight or passenger carriers. The policy of the governments of these five provinces is that the railways shall have the privilege of participating in provincial transport board hearings. The Quebec Transportation Board has issued a decree specifically recording that continuation of this privilege for the railways is the policy of the Board.

As we have pointed out to you, that privilege has been accorded the railways by the provinces concerned for many years. We again submit that extension of a similar privilege to the trucking industry by the Government of Canada would be a reciprocation of the broad view of rail-truck competitive relationships by the five provinces where 87 per cent of motor carrier revenue is earned.

We urge your most serious consideration of this submission.

Yours very truly,

(Sgd.) William C. Norris,
President.

APPENDIX B

PROVINCIAL AGENCIES REGULATING THE CANADIAN TRUCKING INDUSTRY AND SUMMARY OF MAIN REGULATORY FEATURES

Provincial Authorities Regulating Trucking Industry

Prince Edward Island: Public Utilities Commission, Charlottetown, P.E.I.
Nova Scotia: Board of Commissioners of Public Utilities, Halifax, N.S.
New Brunswick: Motor Carrier Board, Saint John, N.B.
Newfoundland: Board of Commissioners of Public Utilities, St. John's Nfld.
Quebec: Transportation Board, Quebec, P.Q.
Ontario: Department of Highways, Toronto, Ont.
Manitoba: Motor Carrier Board, Winnipeg, Man.
Saskatchewan: Highway Traffic Board, Regina, Sask.
Alberta: Highway Traffic Board, Edmonton, Alta.
British Columbia: Public Utilities Commission, Victoria, B.C.

Prince Edward Island

1. Name of Regulatory Board—Public Utilities Commission.
2. Duties—No control over trucks.
3. Other duties not connected with highway transport?—Yes.
4. Public convenience and necessity?—Not required.
5. Does license entitle carrier to operate anywhere in the province?—Not applicable to trucks.
6. Can service be extended?—No restriction.
7. Can license be transferred?—Approval of Commission required.
8. Frequency of license renewal?—Annual.
9. Rate control?—No.
10. Classification of trucks—"Motor Trucks".

Nova Scotia

1. Name of regulatory board—Board of Commissioners of Public Utilities.
2. Duties—No control over trucks.
3. Other duties not connected with highway transport?—Yes.
4. Public convenience and necessity?—Not required.
5. Does license entitle carrier to operate anywhere in the province?—Not applicable to trucks.
6. Can service be extended?—No restriction.
7. Can license be transferred?—Approval of Board required.
8. Frequency of license renewal?—Annual.
9. Rate control?—No.
10. Classification of trucks—"Commercial Motor Vehicle".

New Brunswick

1. Name of regulatory board—Board of Commissioners of Public Utilities acting as the Motor Carrier Board.
2. Duties—Has authority for control of trucks but does not exercise it.
3. Other duties not connected with highway transport?—Yes.
4. Public convenience and necessity?—Required to show that public convenience will be promoted. Not observed in practice.
5. Does license entitle carrier to operate anywhere in the province?—No,—but restrictions not observed in practice.

6. Can service be extended?—No restriction.
7. Can license be transferred?—Approval of Board required.
8. Frequency of license renewal?—Annual.
9. Rate control?—No.
10. Classification of trucks—"Public Motor Truck".

NEWFOUNDLAND

1. Name of regulatory board—Board of Commissioners of Public Utilities.
2. Duties—No control over trucks.
3. Other duties not concerned with highway transport?—Yes.
4. Public convenience and necessity?—Not required.
5. Does license entitle carrier to operate anywhere in the province?—Not applicable to trucks.
6. Can service be extended?—No restriction.
7. Can license be transferred?—Approval of Board required.
8. Frequency of license renewal?—Annual.
9. Rate control?—No.
10. Classification of trucks—"Commercial Motor Vehicle".

QUEBEC

1. Name of regulatory board—Transportation Board.
2. Duties—Controls trucks.
3. Other duties not connected with highway transport?—No.
4. Public convenience and necessity?—Protection of the rights and interests of the public deemed necessary by the Board.
5. Does license entitle carrier to operate anywhere in the province?—Very rarely; restricted to type of merchandise or to shipper(s).
6. Can service be extended?—Highway operator may expand his fleet at his discretion but must obtain approval from the Board of route extension.
7. Can license be transferred?—Approval of Board required.
8. Frequency of license renewal?—Annual.
9. Rate control?—Yes. Rates filed, cannot be changed without Board's approval. For cities, rates are fixed by order of the Board.
10. Classification of trucks—
   (*a*) "Delivery Car"—transportation of merchandise for pecuniary consideration.
   (*b*) "Commercial Vehicle"—transportation of merchandise and persons *without* pecuniary consideration.
   (*c*) "Farm Vehicle"—exclusive transportation of merchandise and persons of such farm. (Capacity must not exceed 7 tons.)

ONTARIO

1. Name of board—Ontario Municipal Board.
2. Duties—Considers applications for public carrier license.
3. Other duties not connected with highway transport?—Yes.
4. Public convenience and necessity?—Board establishes public necessity and desirability of the time of application. It may consider the effect, if any, which the carrier may have upon the physical structure of the highways to be used.
5. Does license entitle carrier to operate anywhere in the province?—In some cases.

6. Can service be extended?—Highway operator may extend his fleet at his discretion but must obtain approval from Board for route extension.

7. Can license be transferred?—Yes, upon payment of transfer fee. Minister of Highways may refer any application for transfer to the Board.

8. Frequency of license renewal?—Annual.

9. Rate control?—No.

10. Classification of trucks—

(*a*) Class A—authorizing the licensee to conduct a scheduled public commercial vehicle service between places on the King's Highway and other places named in the license;

(*b*) Class B—authorizing the licensee to conduct a scheduled public commercial vehicle service from or to a home terminal not on the King's Highway, or between places not on the King's Highway;

(*c*) Class C—authorizing the licensee to transport only one person's goods at a time and only on a continuous trip from or to the place or places named in the license;

(*d*) Class D—authorizing the licensee to conduct a public commercial vehicle service exclusively for the transportation of goods to or from the person named in the license, or operated exclusively for the transportation of a particular type of goods designated in the license;

(*e*) Class E—authorizing the licensee to conduct a public commercial vehicle service exclusively for the transportation of milk and cream;

(*f*) Class F—authorizing the licensee to conduct a public commercial vehicle service exclusively for the transportation of live stock, road-construction materials, bricks, tile, cement blocks, cement, coal or rough lumber or such of them as are named in the license;

(*g*) Class G—authorizing the licensee to conduct a public commercial vehicle service exclusively for the transportation of live stock, feed, seed, fertilizer and farm supplies or such of them as may be named in the license to or from farms within the area defined in the license;

(*h*) Class H—authorizing the licensee to conduct a public commercial vehicle service exclusively for the transportation of uncrated used household, office and store furniture;

(i) Class K—authorizing the licensee to conduct a public commercial vehicle service exclusively for the transportation of heavy-duty machinery, boilers, transformers and similar equipment which require special loading devices and cannot be carried on a standard truck, trailer or semi-trailer;

(*j*) Class L—Restricted to carriage of goods in bond through Ontario between the states of Michigan and New York.
(route perscribed in the license.)

Note: Insofar as public carrier services are concerned the function of the Ontario Municipal Board is to consider applications for licenses. Licenses are issued to and carriers regulated by Department of Highways.

MANITOBA

1. Name of Regulatory Board—Municipal and Public Utility Board (Motor Carrier Board).

2. Duties—Control all motor carriers operating for hire and private trucks in inter-urban operation.

3. Other Duties Not Connected With Highway Transportation?—Public Utility Board—Yes, Motor Carrier Board—No.

4. Public Convenience and Necessity?—If public convenience will be promoted, the Board may grant a certificate allowing the operation of public service vehicles as shown in the certificate.

5. Does License Entitle Carrier to Operate Anywhere in the Province?—In some cases; when especially granted by "Various Points" franchise.

6. San Service be Extented?—Highway operator must obtain approval for each additional vehicle as well as for each route extension.

7. Can License be Transferred?—No.

8. Frequency of License Renewal?—Annual.

9. Rate Control?—Yes. Fixed by the Board.

10. Classification of trucks—"Public Service Vehicle" and "Commercial Truck". License Plates:

(*a*) P.S.V. with Certificate bearing—general freight or contract, service on specified routes or otherwise.

(*b*) "C.T."—for transportation of owner's goods outside 15 mile radius from registered place of business.

SASKATCHEWAN

1. Name of Regulatory Board—Highway Traffic Board.

2. Duties—Controls all motor carriers operating for hire.

3. Other Duties not Connected with Highway Transport?—Yes.

4. Public Convenience and Necessity?—A certificate of registration allowing the operation of a public service vehicle will be granted by the Board if it finds after a hearing that public business will be promoted.

5. Does License Entitle Carrier to Operate Anywhere in the Province?—In some cases—dependent on type of operation and terms of approval.

6. Can Service be Extended?—Highway operator may expand his fleet at his discretion but must obtain approval from the Board to route extension.

7. Can License be Transferred?—Yes—from one truck to another. Not from one owner to another.

8. Frequency of License Renewal?—Annual.

9. Rate Control?—Yes. Fixed by the Board.

10. Classification of Trucks—

(*a*) "Farm Truck."

(*b*) P.S.V. with certificate bearing "A"—operated on the route or for for the charter operations specified, for transportation of general merchandise.

(*c*) P.S.V. with certificate bearing "E"—carriers operating anywhere within the province for specified commodities including petroleum products, machinery, household goods, binder twine, flour, milk and cream, dressed poultry etc.

(*d*) "Commercial Vehicle"—(private use) with certificate bearing "C" or "D" depending on radius of operation.

ALBERTA

1. Name of Regulatory Board—Highway Traffic Board.

2. Duties—Has control over truck rates and routes but does not exercise it.

3. Other Duties not Connected with Highway Transport?—No.

4. Public Convenience and Necessity?—No showing of public convenience and necessity required.

5. Does License Entitle Carrier to Operate Anywhere in the Province?—Yes.

6. Can Service Be Extended?—No restriction.

7. Can License Be Transferred?—Yes, with approval of Board.

8. Frequency of License Renewal?—Annual.

9. Rate control?—No.

10. Classification of trucks—All vehicles classified as public service or commercial vehicles with license plates:

(*a*) C—Public service and commercial vehicles operated within city limits or 5 miles therefrom

(*b*) CV—All commercial vehicles not included in (*a*) above

(*c*) DU—"Drive Yourself" vehicles

(*d*) E—Public service vehicle for transportation of grain and/or sugar beets for compensation

(*e*) F—Commercial farm vehicles

(*f*) PSV—All public service vehicles not included above

(*g*) U—Public service and commercial vehicles transporting freight as "C"

British Columbia

1. Name of regulatory board—Public Utilities Commission.

2. Duties—Controls all motor carriers operating for hire and also private trucks.

3. Other duties not connected with highway transport?—Yes.

4. Public convenience and necessity?—The Commission may require proof of public convenience and necessity before issuing license.

5. Does license entitle carrier to operate anywhere in the province?—No.

6. Can service be extended?—Highway operator must obtain approval for each additional vehicle as well as for each route extension.

7. Can license be transferred?—Yes, with the approval of the Commission.

8. Frequency of license renewal?—Annual.

9. Rate control?—Yes. Rates filed, cannot be changed without Board's approval.

10. Classification of trucks—

(A) (*a*) Class I—Operating on regular schedule and route, or on a regular time schedule between fixed termini and at other times as a public freight vehicle otherwise than in the foregoing manner.

(*b*) Class II—Operating *only* on a regular schedule and route or on a regular time schedule between fixed termini.

(*c*) Class III—*Not* operating regularly nor between fixed termini.

(B) Limited:—Used solely under a limited number of special or individual contracts.

(C) Private:

(*a*) Class I—All other than Class III

Class III—Restricted to trucks owned and operated by a farmer.

APPENDIX "C"

PROPOSED MOTOR CARRIER ACT (REVISED), PROVINCE OF NEW BRUNSWICK, 1955

BILL

MOTOR CARRIER ACT

Her Majesty, by and with the advice and consent of the Legislative Assembly of New Brunswick, enacts as follows:

1. In this Act, unless the context otherwise requires, **Definitions**

(*a*) "Board" means the Motor Carrier Board as hereinafter constituted:

(*b*) "freight" includes personal property of every description that may be conveyed upon a motor vehicle or trailer, except a passenger's personal baggage;

(*c*) "license" means a license granted to a motor carrier under this Act;

(*d*) "licensed motor carrier" means a motor carrier to whom a license has been granted under this Act by the Board;

(*e*) "Minister" means the Provincial Secretary-Treasurer;

(*f*) "motor carrier" means a person that operates or causes to be operated in the Province a public motor bus or a public motor truck;

(*g*) "motor vehicle" includes any attached trailer;

(*h*) "operate" as used with reference to a public motor bus or public motor truck means to carry on the business of operating such public motor bus or public motor truck, and includes the driving thereof;

(*i*) "order" means an order made under this Act by the Board;

(*j*) "Operator" means a person who carries on the business of operating, driving, or causing to be operated a public motor bus or a public motor truck;

(*k*) "public motor bus" means a motor vehicle that is available for use by the public and is operated at any time or from time to time on a highway over a regular route or between fixed termini and on a regular time schedule by, for, or on behalf of any person who charges or collects compensation for the transportation of passengers in or upon the motor vehicle;

(*l*) "public motor truck" means a motor vehicle carrying or used to carry freight for hire or reward;

(*m*) "regulations" means the regulations made under this act by the Lieutenant-Governor in Council; and

(*n*) "service" includes the use and accommodation afforded by and the equipment, property and facilities employed by any motor carrier in connection with the operation of a motor vehicle as a public motor bus or a public motor truck.

PART I—ADMINISTRATION

Motor Carrier Board

2. (1) The members of the Board of Commissioners of Public Utilities are hereby constituted a Board for the purposes of this Act, to be known as The Motor Carrier Board, and the chairman and secretary of the said Board of Commissioners of Public Utilities shall be, respectively, the chairman and secretary of The Motor Carrier Board.

Additional members

(2) The Lieutenant-Governor in Council in addition to the members provided for in subsection (1) may appoint the Registrar of Motor Vehicles and the Secretary of the Board as members of the Board.

Secretary to sit in absence of member

(3) During such time as the Board consists of three members, when a member of the Board is absent from a regularly constituted meeting thereof, the secretary shall sit and perform the duties of a member of the Board.

Quorum

(4) Two members of the Board shall form a quorum except when, under subsection (2) two additional members are appointed to the Board in which case three members of the Board shall form a quorum.

Jurisdiction of Board

(5) Without limiting any powers, duties, authority or jurisdiction conferred or imposed by this Act, all powers, duties, authority and jurisdiction as are vested in the Board of Commissioners of Public Utilities over common carriers are hereby vested in the Board over motor carriers, except as otherwise specifically provided in this Act.

Powers of chairman or secretary between meetings

(6) Between meetings of the Board the chairman of the Board or the secretary of the Board or either of them may do all or any of the things which may be done under this Act by the Board but any order or decision of the chairman or secretary pursuant to the authority hereby conferred shall be effective only until the next ensuing meeting of the Board.

PART II—PUBLIC MOTOR BUSES

Board may grant license for Public Motor Buses

3. The Board may grant to any person a license to operate or cause to be operated public motor buses over specified routes or between specified points.

Applications for licenses

4. (1) Written application for a license shall be made to the Board setting forth such information and facts, and generally in such form, as the Board may prescribe.

Board to fix time and place for hearing

(2) Upon the filing of the application, the Board shall fix a time and place for the hearing thereof, not less than ten nor more than thirty days after such filing, and shall cause notice of such hearing to be published in one or more issues of The Royal Gazette.

(3) Any person who has an interest in the matter may appear and be heard.

What Board to consider

(4) In determining whether or not a license shall be granted, the Board shall give consideration to the transportation service being furnished by any railroad, or licensed motor carrier, the likelihood of

the proposed service being permanent and continuous throughout the period of the year that the highways are open to travel and the effect that the proposed service may have upon other transportation services.

Order for license may be granted on proper security

(5) If the Board finds from the evidence submitted that public convenience and necessity will be promoted by the establishment of the proposed service, or any part thereof, and is satisfied that the applicant will provide a proper service, an order may be made by the Board that a license be granted to the applicant in accordance with its findings, upon proper security being furnished.

Adequate insurance required

(6) No license shall be issued to an applicant under this part unless there is filed with the Board

(a) a liability insurance policy or bond, satisfactory to the Board, of some insurance company or association authorized to transact business in the Province in such sum as the Board may deem necessary to adequately protect passengers, and the public, due regard being had to the number of persons and amount of property involved, which insurance or bond shall bind the obligors to make compensation for injuries to persons and loss of, or damage to, property resulting from the negligent operation of the public motor buses of such applicant;

Bond for taxes

(b) a bond, satisfactory to the Board and in such amount as the Board may determine, conditioned for the payment by such applicant of all assessments, fees and charges under, and for the faithful performance by such motor carrier of all duties imposed by this Act and the regulations.

Licenses issued to be operative until cancelled or revoked

(7) Upon the filing of the insurance policies and bonds required by subsection (6) the Board may issue a license to the applicant which shall be operative and in force until cancelled or revoked under this Act.

Actions on bond

(8) Any bond filed under the provisions of clause (a) of subsection (6) shall be in the name of the Provincial Secretary-Treasurer, and if any judgment against the principal named in any such bond in respect of any injury or loss covered by such bond remains unsatisfied for fifteen days after it has been rendered, the judgment creditor may for his own use and benefit, and at his sole expense, bring an action on said bond in the name of the Provincial Secretary-Treasurer against any surety who executed the bond.

Cancellation of license not used

5. (1) Unless exercised within a period of thirty days from its issue, or within such further period as the Board may allow, a license to operate a public motor bus shall be deemed to be cancelled, and any rights and privileges conferred thereby shall cease and determine.

(2) The Board may for good cause suspend any license issued under this Part; and, after giving no less than ten days' notice to the holder and allowing him an opportunity to be heard, may revoke, alter or amend any license.

Cancellation of license for improper service

(3) Where the Board finds that a licensed public motor bus operator is not furnishing satisfactory service over any route covered by its license, such operator shall be given a reasonable time, not less than twenty days, to furnish such service before its license is cancelled or revoked, or a license granted to some other applicant for such route.

(4) Where the Board considers that a certain route should be extended, it may notify the licensee of that route to apply within sixty days for a new license covering the present route and the proposed extension failing which application the Board is empowered to consider other applications and to grant a license covering the present route and the extension, and also to cancel the license now in force in respect to the present route.

No abandonment of service without Board order

6. Except as provided in section 7 no lisensed public motor bus operator shall abandon or discontinue any service comprised within its license without an order of the Board which shall be granted only after a hearing upon such notice as the Board may direct.

Chief Highway Engineer may order discontinuance of service for a time

7. When conditions are such that, in the opinion of the Chief Highway Engineer of the Province, a highway is being or would be damaged by the operation of a public motor bus, the Chief Highway Engineer may order an immediate discontinuance of operation on such highway until further order.

Transfer of licenses

8. Where a licensed motor bus operator sells, transfers or assigns its business it may, with the approval of the Board, transfer its license and all rights thereunder to the purchaser, and the Board shall thereupon issue a license to the purchaser conferring the same rights and privileges as the license transferred.

Prohibition

License necessary for operation of public motor bus

9. Except as provided by this Act, no person shall operate a public motor bus within the Province without holding a subsisting license from the Board authorizing such operations and then only as specified in such license and subject to this Act and the regulations.

Part III—Public Motor Trucks

Board may license public motor trucks

10. The Board may grant to any person a license to operate or cause to be operated public motor trucks in the Province.

Applications

Application for license

11. (1) Written application for a license or for a variation in a license shall be made to the Board setting out such information and facts, and generally in such form as the Board may prescribe.

Time of hearings

(2) Upon the filing of the application, the Board shall fix a time and place for the hearing thereof, not less than fourteen nor more than thirty days after such filing, and shall cause notice of such hearing to be published in one or more issues of The Royal Gazette.

(3) A true copy of the application shall be served by the applicant on all existing public motor truck operators which are, or may be to the applicant's knowledge, affected by such application. Service of application on existing motor truck operators

(4) Notice of the application shall also be published in The Royal Gazette at least two weeks prior to the date of the hearing. Notice of application to be published in Royal Gazette

(5) Parties intending to appear at the hearing of such application may do so after filing notice of such intention with the Board at least five days prior to the date of the hearing stating the nature and extent of their interest and such notice shall be made available by the Board to any interested party for inspection. Notice of intention to appear to be filed

(6) Parties entitled to appear under subsection (5) shall be limited to those operating other public motor trucks and to shippers or receivers of goods. Parties who may be heard

12. In determining whether a license is to be issued the Board shall, among other things, consider the following factors: Grounds for issuing licenses

(a) whether existing public motor truck service is adequate to meet present and future demands; Existing service

(b) the effect upon existing public motor truck service, and particularly, whether the granting of such license will or may seriously impair such existing service; and Effect of license

(c) the financial ability, fitness and willingness of the applicant to furnish adequate service provided that no such license shall be issued solely upon the ground of previous unauthorized public motor truck service. Ability of applicant to furnish adequate service

13. (1) It shall be the duty of the Board to hear and determine at public hearings: Duties of Board

(a) applications for new licenses to operate public motor trucks;

(b) applications for extensions, alterations or modifications of, and amendments to, existing licenses to operate public public motor trucks; and

(c) suspension or cancellation of licenses to operate public motor trucks.

(2) Hearings may be held by the Board or by any member of the Board or the Secretary thereof upon any matter referred to him by the Board. Who may hold hearings

(3) The Board may adopt in whole or in part or many vary, alter or reconsider or may require a further hearing of any report or recommended order made to it by a member thereof. Effect or report of member

(4) The Board may, in its discretion publish written reasons for its decisions on any contested application. Board may publish reasons

14. The decision of the Board in respect of any application made under this Part shall be final and conclusive. Decision of Board to be Final

What license may include

15. (1) In issuing any license, or approving the transfer of a license, the Board may prescribe the routes which may be followed or the areas to be served and may attach to the license such conditions as the Board may consider necessary or desirable in the public interest, and, without limiting the generality of the foregoing, the Board may impose conditions respecting schedules, places of call, carriage of freight, and insurance.

Board may issue license different from that applied for

(2) The Board may issue a license which differs from the license applied for and may suspend, cancel or amend any license or any part thereof where, in the opinion of the Board, public convenience and necessity so requires.

Cancellation or suspension of licenses

(3) Where, in the opinion of the Board, a public motor truck operator has violated any of the conditons attached to his license, the Board may, subject to clause (c) of subsection (1) of section 13, cancel or suspend the license.

PROHIBITION

Operation of public motor truck without lisense prohibited

16. Except as provided in this Act no person shall operate a public motor truck in the Province unless he holds a valid and subsisting license or temporary authority or approval under this Part.

PART IV—GENERAL

Emergency authority

17. (1) To enable the provision of service for which there is an immediate and urgent need to a point or point or within a territory having no apparent motor carrier service, the Board may, after giving notice to such public motor truck or public motor bus operators as in the Boards opinion, are or may be affected, in its discretion and without hearings or other proceedings, grant temporary authority for such service by a motor carrier.

(2) Such temporary authority or approval shall be valid for such time as the Board may specify not exceeding 180 days, and shall create no presumption that corresponding permanent authority or approval will be granted thereafter.

Exceptions to provisions of Act.

18. (1) This Act does not apply to any motor vehicle

(a) while engaged only in the transportation of school children, when the same is paid for by a Board of School Trustees or the Province or by both; or

(b) while engaged only in carrying mails; or

(c) while engaged only in carrying passengers to or from any train, ship, boat or aeroplane, for trips not exceeding ten miles, one way; or

(d) while used exclusively on the construction of any federal, provincial, international or municipal work; or

(e) which is used as a taxicab; or

(f) while being used exclusively in the transportation of (i) unprocessed products of the farm produced in the farming operations of the owner of such motor vehicle from the place of production to market or to the first point of transhipment;

(ii) unprocessed products of the sea caught, taken or produced by the fishing or other operations of the owner of such motor vehicle from the place such products are landed or produced to market or to the first point of transhipment;

(iii) unprocessed trees, logs, pitprops, poles, or similar forest products; or

(iv) mineral ore from the mine to a processing plant or to the first point of transhipment; or

(*g*) used exclusively for the transportation of freight bona fide the property of the owner of the motor vehicle; or

(*h*) used exclusively in the transportation of freight used or subjected to a process or treatment by the owner of the motor vehicle in the course of a regular trade or occupation or established business of such owner when the transportation is incidental to such trade, occupation or business; or

(*i*) used exclusively in the delivery or collection of freight sold or purchased or agreed to be sold or purchased, or let on hire by the owner of the motor vehicle otherwise than as agent in the course of a regular trade or established business of such owner; or

(*j*) used by, for or on behalf of any person who charges or collects compensation for the transportation of freight in or upon the motor vehicle, where the operation is carried on solely under a limited number of special or individual contracts or agreements and where the motor vehicle is not available for use by the general public; or

(*k*) used exclusively in the transportation of used household effects.

Establishment of exempt areas

(2) The Board may establish an area contiguous to any city, town or incorporated village, but not extending more than twenty miles from the boundary thereof, as an exempt district and upon such area being so established, the provisions of this Act shall not apply to any public motor bus or public motor truck, except one operated by a licensed motor carrier, operating therein under a special permit issued for such area by the Board.

(3) The Board may at any time rescind the order establishing an area under subsection (2).

City town, etc. may make by-laws for certain purposes

19. (1) With the approval of the Lieutenant-Governor in Council, the Council of any city, town or incorporated village and the Simonds Highway Board may make by-laws or regulations

(*a*) for the registration of public motor buses or public motor trucks operating within their respective limits;

(*b*) for the control of traffic and the use of their roads and streets by such public motor buses or public motor trucks;

(*c*) for the licensing of proprietors or owners of public motor buses or public motor trucks to operate same within the limits of such city, town, incorporated village or Highway Boards;

(*d*) prescribing the fees payable on such registration and licensing; fixing routes, fares and details of services, and requiring the giving of bonds or other security by the proprietors, or owners of such public motor buses or public motor trucks for the payment of any loss occasioned to persons or property by their operations;

(*e*) granting exclusive privileges over any agreed routes, or routes to be agreed upon, or for any agreed service or services, to any proprietor or owner of such public motor bus or public motor truck upon the payment of such additional fees or assessments for such exclusive privileges, and generally on such terms and conditions as may be agreed upon; or

(*f*) providing for the imposition of penalties not exceeding fifty dollars for the violation of any such by-law or regulation.

Procedure respecting contiguous cities, etc.

(2) In the case of two or more contiguous cities, towns, incorporated villages as well as the part of the Parish of Simonds, controlled by its Highway Board, the respective Councils or Highway Board may with the like approval of the Lieutenant-Governor in Council by common action grant such licenses and exclusive privileges over their combined areas and generally exercise together or in unison the powers and jurisdiction conferred upon them severally by subsection (1).

Not to interfere with licensed motor carrier

(3) Nothing contained in subsection (1) or (2) shall authorize or permit any Council or Highway Board to interfere with any licensed motor carrier in any operations pertaining or incidental to the exercise of a license granted to it by the Motor Carrier Board.

Subsection (2) may be declared not to apply to one or more contiguous cities, etc.

(4) Notwithstanding anything contained in this Act, the Lieutenant-Governor in Council may order that subsection (2) shall not apply to any one or more contiguous cities, town, incorporated villages and parts of parishes, whereupon the operation of public motor buses and public motor trucks operating between, through or within such contiguous cities, towns, and incorporated villages and parts of parishes shall be as fully under the supervision and control of the Board as if subsections (1) and (2) had not been passed.

Councils of towns, etc., to designate pickup points, etc.

20. It is the duty of the Council of every city, town or incorporated village, and of the Highway Board within the controlled parts of the Parish of Simonds to designate reasonable locations on the public streets for the accommodation of motor vehicles operated by a licensed motor carrier for taking on and letting down passengers and to designate suitable and convenient parking places, and any dispute relating to such a matter may be settled by the Board whose orders shall be final and binding on all parties.

Minister may appoint inspectors

21. The Minister may appoint inspectors under this Act, who shall be subject to the jurisdiction of the Board and whose duties shall be to enforce the provisions of this Act and the regulations and perform such other duties as the Minister may prescribe.

Orders of Board to be in writing

22. The orders and decisions of the Board shall be reduced to writing and, except where the Board otherwise expressly provides, shall become effective, as respects any motor carriers affected thereby, only after ten days from the mailing to such motor carrier of a copy thereof duly certified by the Chairman or secretary of the Board.

Lieutenant-Governor in Council may make regulations

23. The Lieutenant-Governor in Council on the recommendation of the Board may make regulations

Financial reports

(*a*) requiring motor carriers subjected to this Act to file with the Board information with respect to their capital, traffic, equipment, working expenditure and any other matters relating to the operations of motor carrier services;

Information respecting ownership

(*b*) requiring any person to furnish information respecting ownership, transfer, consolidation, merger or lease or any proposed transfer, consolidation, merger or lease of motor carrier services subject to this Act;

Copies of agreements

(*c*) requiring copies of agreements respecting any such consolidation, merger, lease or transfer, and copies of agreements affecting carrier services subject to this Act to be filed with the Board;

Classification of carriers

(*d*) establishing classification or groups of motor carriers; and to require registration of, and issue permission for, the operation of truck rental or leasing by any person;

Prohibiting mergers, etc.

(*e*) prohibiting the transfer, consolidation, merger or lease of motor carrier services or their common control or management except subject to such conditions as may by such regulations be prescribed, and authorizing the Board, whenever it is of the opinion that the result thereof will promote better service to the public or economy in operation and will not unduly restrain competition, and that such regulations have been complied with to approve and authorize a transfer, consolidation, merger or lease of motor carrier services or their common control or management upon such terms as the Board may order;

Exclusions from operation of Act

(*f*) excluding from the operation of the whole or any part of this Act or any regulation, order or direction made or issued pursuant thereto, any motor carrier or motor carrier service or class or group of motor carriers or motor carrier services, either temporarily, seasonally, geographically, by commodities in first movement, by size or number of vehicles or otherwise;

General information

(*g*) requiring applicants for licences to furnish information respecting their financial position, their relation to other motor carriers, the nature of the proposed routes, the proposed tariffs of tolls and such other matters as may be considered advisable;

Forms

(*h*) prescribing forms for the purpose of this Act;

Tariffs and tolls

(*i*) respecting traffic, tolls and tariffs and providing for the disallowance or suspension of any tariff or toll;

Application of tariffs and tolls

(*j*) respecting the manner and extent to which any regulations with respect to traffic, tolls or tariffs shall apply to any motor carrier licensed by the Board;

Form and duration of licenses

(*k*) prescribing the term of the license and providing for the duration thereof;

Working hours of drivers

(*l*) prescribing maximum hours and other working conditions for drivers or motor vehicle operators employed by any motor carrier subject to this Act;

Forms of records

(*m*) prescribing forms of accounts and records to be kept by motor carriers, and providing for access by the Board to such records;

Fees

(*n*) prescribing fees payable for licenses issued under this Act or the regulations and for any other matter within the jurisdiction of the Board; and

General

(*o*) generally providing for the effective carrying out of the provisions of this Act.

Penalty for violation of Act

24. (1) Every person, motor carrier, officer and agent or employee of a motor carrier who violates or fails to comply with or procures, aids or abets in the violation of any provision of this Act or the regulations, or who fails to obey, observe or comply with any order, decision, rule or regulation, direction, demand or requirement of the Board or the Minister, or who procures, aids or abets the failure or neglect of any person to obey, observe, or comply with any such order, decision, rule, direction, demand or regulation, is guilty of an offence and liable to a penalty of not less than twenty-five dollars nor more than one thousand dollars, with costs, or to imprisonment for a term not less than one nor more than six months, or to both fine and imprisonment.

Onus of proof of license

(2) Where by this Act or the regulations it is made an offence to do any act without holding a license under this Act, the onus in any prosecution is upon the person charged to prove that he was the holder of a license.

Disposition of fees and penalties

(3) All fees and penalties collected under this Act or the regulations shall be paid to the Provincial Secretary-Treasurer for the use of the Province.

Soliciting of motor carrier business for unlicensed carrier prohibited

25. No person shall solicit by means of advertising, or otherwise undertake to transport or to arrange for the transportation of goods or passengers by means of a motor carrier service unless the person by, for, or on behalf of whom the motor carrier service is operated is licensed under this Act.

Reports of Accidents

26. (1) A motor carrier involved in an accident shall report to the Board, with full particulars, within forty-eight hours after the happening thereof, provided the accident causes injury to any person or property, other than that of the motor carrier, to an apparent extent of fifty dollars or more.

Investigation of accidents.

(2) The Board, if it deems it advisable, may hold an investigation into any such accident.

27. Every licensed motor carrier shall be deemed a public utility under the Public Utilities Act insofar as the provisions of the Public Utilities Act are not inconsistent with the provisions of this Act. Licensed motor carriers deemed public utilities

28. The provisions of this Act shall be deemed to be in addition to the provisions of Chapter 20 of 24 George V, (1934), The Motor Vehicle Act. Provisions of Act deemed to be in addition to those of Motor Vehicle Act

29. Chapter 148 of the Revised Statutes, 1952, the Motor Carrier Act, is hereby repealed. Motor Carrier Act, 1952, repealed

30. This Act shall come into force on a day to be fixed by Proclamation.

APPENDIX D

SURVEY OF SHIPPERS' REASONS FOR USING TRUCK SERVICE IN PREFERENSE TO RAIL; ASSOCIATION OF AMERICAN RAILROADS

PRIMARY REASONS WHY SHIPPERS NORMALLY USE TRUCKS

	Number of Replies									
	Eastern			Southern			Western			Total
a. Inbound	(1)	(2)	(3)	(1)	(2)	(3)	(1)	(2)	(3)	
Shorter transit time	228	115	80	25	15	9	106	40	35	653
Lower Costs	23	19	17	4	5	2	13	10	9	102
Less loss and damage	3	2	.....	1	1	.....	3	1	1	11
No dunnage required	1	1	1	.....	.....	.....	1	1	1	6
Less billing required	1	.....	.....	.....	.....	.....	1	.....	.....	2
Lower minimum	6	.....	.....	1	.....	.....	4	.....	.....	11
Speed in servicing claims	1	.....	.....	1	.....	.....	1	.....	.....	3
Less marking and packing	2	1	1	1	1	1	1	1	1	10
More personal service	1	.....	.....	1	.....	.....	1	.....	.....	3
Less handling	11	10	5	1	.....	1	3	1	1	33
b. Outbound										
Shorter transit time	252	133	90	30	18	9	107	60	40	739
Lower costs	24	23	20	3	5	2	19	12	10	118
Less handling	12	10	11	1	1	.....	3	1	.....	39
Less loss and damage	3	3	.....	.....	.....	.....	3	.....	.....	9
No dunnage required	2	2	1	1	.....	.....	1	1	1	9
Less marking and packing	3	.....	.....	.....	.....	.....	.....	.....	1	4
Lower minimum	8	.....	.....	1	.....	.....	5	1	.....	15
More personal service	4	1	1	.....	.....	.....	5	1	1	13
Speed in servicing claims	1	.....	.....	1	.....	.....	1	.....	.....	3
Less billing required	1	.....	.....	.....	.....	.....	1	.....	.....	2
PU and D service	20	12	8	1	1	2	10	5	1	60
Better tracing service	2	.....	.....	.....	.....	.....	.....	.....	.....	2

(1) Common Carriers (2) Contact Carriers (3) Private Carriers

Source: Association of American Railroads, Merchandise Traffic Study of the Traffic subcommittee—Merchandise Traffic Division of the Railroad Committee for the Study of Transportation, Part III, Statement 72, p. 16.

APPENDIX E

COMPILATION OF REVENUE TONNAGE, C.N.R. AND C.P.R., 1950-1954, INCLUSIVE, ARRANGED ACCORDING TO COMMODITY GROUPS

REVENUE TONNAGE BY COMMODITIES, C.N.R. AND C.P.R. 1950-1954

(in thousands of tons)

—	1950			1951			1952		
	C.N.R.	C.P.R.	Total	C.N.R.	C.P.R.	Total	C.N.R.	C.P.R.	Total
Agricultural Products	12,501	11,182	23,683	15,682	14,857	30,539	18,513	18,129	36,642
Animal Products	1,036	877	1,913	987	794	1,781	890	673	1,563
Mine Products	30,582	21,067	51,649	30,389	20,668	51,057	30,582	19,286	49,868
Forest Products	10,507	5,365	15,872	13,691	7,505	21,196	12,333	6,700	19,033
Manufactures and Miscellaneous	26,739	14,148	40,887	28,870	15,629	44,499	27,736	15,672	43,408
Less than carload freight (C.P.R. only)	.....	1,277	1,277	.....	1,197	1,197	.....	1,044	1,044
Total	81,365	53,916	135,281	89,618	60,650	150,268	90,054	61,505	151,559

	1953			1954			1950-1954		
	C.N.R.	C.P.R	Total	C.N.R.	C.P.R.	Total	Grand total for 5 yrs.	Annual Averages 1950-1954	
									%
Agricultural Products	18,031	17,332	35,363	13,633	13,205	26,838	153,066	30,613	21·4
Animal Products	895	685	1,580	875	668	1,543	8,380	1,676	1·2
Mine Products	29,050	19,355	48,405	28,828	19,200	48,028	249,007	49,801	34·7
Forest Products	10,287	5,468	15,755	9,977	5,336	15,313	87,169	17,434	12·2
Manufactures and Miscellaneous	28,260	15,419	43,679	26,025	14,974	40,999	213,472	42,694	29·8
Less than carload freight (C.P.R. only)	.....	997	997	.....	825	825	5,340	1,068	0·7
Total	86,523	59,257	145,780	79,338	54,206	133,544	716,434	143,287	100%

Source: C.N.R. and C.P.R. annual reports.

APPENDIX F

SUMMARY OF STATISTICAL SURVEY OF MANITOBA'S TRUCKING INDUSTRY; DOMINION BUREAU OF STATISTICS, 1954

SPECIAL COMPILATION

DOMINION BUREAU OF STATISTICS, OTTAWA

This is a statement compiled to meet a limited demand, and is not included in the Bureau's list of publications

STATISTICAL SUMMARY OF THE FIRST TWO MANITOBA SURVEYS

	All Trucks	P.S.V's
Av. Weekly Mileage	201	618
Ratio of Total Mileage empty—%	38	19
Av. weight of goods loaded per vehicle per week, Tons	38	36
Av. Goods carried per vehicle per week, Ton-Miles	659	3,268
Av. distance each ton of goods was carried in 1st survey, Miles	18	89
Av. distance each ton of goods was carried in 2nd survey, Miles	17	92
Gasoline consumption—Miles per gallon	8·3	6·1
Revenue earned per mile of operation—1st survey	—	38¢
Revenue earned per mile of operation—2nd survey	—	37¢
Revenue earned per vehicle per week—1st survey	—	$228
Revenue earned per vehicle per week—2nd survey	—	$239
Revenue earned per ton-Mile—1st survey	—	7·4¢
Revenue earned per ton-Mile—2nd survey	—	7·0¢

The foregoing refer *only* to operations within province of Manitoba.

	1st Survey	2nd Survey
Total tons of goods carried in and out of Manitoba by Survey trucks reporting movements into or out of the Province	675·4	907·5
Originating in Manitoba (Tons)	461·5	593·8
% of Total	68%	68%
Destined to—		
U.S. (Tons)	11·5	10·0
Ontario	180·7	276·9
Saskatchewan	223·0	222·7
Alberta	46·3	73·7
Quebec	—	10·5
Destined to Manitoba (Tons)	213·9	313·7
% of Total	32%	32%
Originated in—		
U.S.	7·0	—
Toronto	135·0	140·9
Saskatchewan	45·9	139·8
Alberta	26·0	7·5
Quebec	—	25·5

Ton-Miles performed outside of Manitoba by traffic moving into or out of the Province.

U.S.	150,000	304,000
Ontario	63,000	93,000
Saskatchewan	85,000	124,000
Alberta	17,000	27,000
Quebec	—	2,000
Total	315,000	550,000

NOTE: The foregoing figures reflect only the results obtained by the specific trucks which reported their operations in the first and second Manitoba Sample Surveys. No attempt was made to expand these figures into quantitative totals representing the entire truck population, or a period of time greater than the two survey weeks. The reason is that two weeks' results are an insufficient basis upon which to predict truck operations with a satisfactory degree of accuracy. However the figures may be used as an indication of the kinds of information which such surveys will eventually produce.

Prepared in the Public Finance and Transportation Division.

APPENDIX G

MOTOR CARRIERS: FREIGHT—PASSENGER; DOMINION BUREAU OF STATISTICS REPORT, 1952

FREIGHT CARRIERS, GROUP I, 1952

—		Canada
Number reporting		908
Property account:		
Land and buildings	$	12,097,339
Revenue equipment—buses, trucks, etc	$	64,403,011
Service cars, shop and garage equipment	$	3,595,307
Furniture and office equipment	$	1,271,078
Organization expenses, etc	$	1,024,910
Total gross cost	$	82,373,645
Depreciation reserve accrued to December 31, 1952	$	36,573,185
Value at December 31, 1952	$	45,800,460
Revenue:		
Passenger:		
Regular routes—intercity and rural	$	188,119
Special and chartered service—intercity and rural	$	36,571
Mail, baggage, express, newspapers—intercity and rural	$	98,556
—city	$	185,330
Freight—intercity and rural	$	117,750,165
—city	$	19,782,129
Other motor carrier revenue—intercity and rural	$	2,721,079
—city	$	1,242,898
Total revenue—intercity and rural	$	120,794,490
—city	$	21,210,357
Total revenue—all services	$	142,004,847
Operating expenses:		
Maintenance costs	$	25,636,016
Wages and bonuses of drivers and helpers	$	36,209,318
Fuel, oil and other transportation expenses	$	18,542,669
Bridge, tunnel and ferry tolls	$	418,094
Insurance and safety expenses—claims, etc	$	5,876,476
Depreciation	$	11,914,421
Operating taxes and licenses	$	8,253,737
Rents—net	$	2,663,317
Other operating expenses	$	21,924,553
Total operating expenses	$	131,438,501
Income account:		
Net operating revenue	$	10,566,346
Income from other sources	$	2,337,799
Gross income	$	12,904,145
Deductions:		
Interest, bank, bond	$	509,989
Other deductions	$	724,107
Total deductions	$	1,234,096
Net income before income tax	$	11,670,049
Traffic:		
Passengers:		
Regular routes—iutercity and rural	No	204,547
Special and chartered service—intercity and rural	"	3,276
Freight carried—intercity and rural	tons	16,325,820[1]
Bus miles:		
Regular routes—intercity and rural	No.	619,142
Special and chartered service—intercity and rural	"	10,453
Gasoline consumed	gals	45,696,878
Diesel oil consumed	"	1,270,412
Number of working proprietors		757
Allowances of working proprietors	$	3,210,871

FREIGHT CARRIERS—GROUP II, 1952

—		Canada
Number reporting		853
Property account:		
Land and buildings	$	904,878
Revenue equipment, buses, trucks, etc	$	5,843,353
Other equipment, service cars, furniture, etc	$	590,596
Total cost of equipment	$	7,257,327
Revenue:		
Passenger:		
Regular routes—intercity and rural	$	17,335
Special and chartered service—intercity and rural	$	4,870
Mail, baggage, express, newspapers—intercity and rural	$	39,180
city	$	8,827
Freight—intercity and rural	$	8,517,122
—city	$	1,654,407
Other motor carrier revenue—intercity and rural	$	376,362
—city	$	71,371
Total revenue—intercity and rural	$	8,954,869
—city	$	1,734,605
Total revenue—all services	$	10,689,474
Operating expenses:		
Maintenance costs	$	1,571,103
Wages and bonuses of drivers and helpers	$	2,046,355
Fuel, oil and other transportation expenses	$	1,628,884
Bridge, tunnel and ferry tolls	$	36,255
Insurance and safety expenses—claims, etc	$	348,834
Operating taxes ahd licences	$	775,640
Rents—net	$	93,909
Operating operating expenses	$	1,881,389
Total operating expenses	$	8,382,369
Net operating revenue	$	2,307,105
Traffic:		
Passengers:		
Regular routes—intercity and rural	No.	13,857
Special and chartered services—intercity and rural	"	321
Bus miles:		
Regular routes—intercity and rural	"	166,042
Special and chartered services—intercity and rural	"	—
Freight carried—intercity and rural	tons	1,583,062[1]
Gasoline consumed	gals	4,527,605
Diesel oil consumed	"	1,000
Number of working proprietors		918
Allowances of working proprietors	$	2,422,751

FREIGHT CARRIERS—GROUP III, 1952

—		Canada
Number of carriers reporting		1,854
Property account:		
Land and buildings	$	684,789
Revenue equipment, buses, trucks, etc	$	5,649,151
Other equipment, service cars, furniture, etc	$	390,090
Total cost of equipment	$	6,724,030
Revenue:		
Mail, baggage, express, newspapers:		
Intercity and rural	$	42,085
city	$	4,046
Freight—intercity and rural	$	6,117,609
—city	$	1,198,103
Other motor carrier revenue—intercity and rural[1]	$	181,974
—city[1]	$	3,937
Total revenue—intercity and rural	$	6,341,668
—city	$	1,206,086
Total revenue—all services	$	7,547,754
Operating expenses:		
Maintenance costs	$	1,134,867
Wages and bonuses of drivers and helpers	$	662,154
Fuel, oil and other transportation expenses	$	1,261,185
Bridge, tunnel and ferry tolls	$	20,806
Insurance and safety expenses—claims, etc	$	241,161
Operating taxes and licenses	$	647,644
Rents—net	$	40,255
Other operating expenses	$	1,141,114
Total operating expenses	$	5,149,186
Net operating revenue	$	2,398,568
Traffic:		
Freight carried—intercity and rural	tons	1,171,770[2]
Gasoline consumed	gals.	3,638,133
Diesel oil consumed	"	—
Number of working proprietors		1,914
Allowances of working proprietors	$	2,606,370

APPENDIX H

NET OPERATING REVENUES OF TRUCK OPERATORS AS PERCENTAGE OF GROSS EARNINGS, 1950-1952, INCLUSIVE

Earnings, Expenses, and Net Revenue of 'For Hire' Truck Operators
1950-52

	1950	1951	1952
Gross Revenue	111,791,246	129,158,737	160,242,075
Operating expenses	100,782,335	117,140,542	144,970,056
Allowance of Working Proprietors	6,000,347	8,231,353	8,239,992
Net Operating Revenue*	5,008,564	3,786,842	7,032,027
Net Op. Revenue as % of Gross Revenue	9·8%	9·3%	9·5%
True Net Op. Revenue as % of Gross Revenue	5·4%	2·9%	4·4%

SOURCE: Dominion Bureau of Statistics: Motor Carrier Freight-Passenger.

* These figures differ from the ones given by DBS, since they are net of the allowance of working proprietors. The net operating revenue still contains interest on bonds, bank loans, etc. The interest figures are available for group I carriers only; in the case of the carriers of this group interest amounts to approximately 5% of their net revenue.

APPENDIX I

DATA ON 1951 AND 1952 'FOR HIRE' TRUCKING; DOMINION BUREAU OF STATISTICS MOTOR CARRIER REPORTS

—	1951				1952			
	Group I*	Group II*	Group III*	All Groups	Group I	Group II	Group III	All Groups
1. Number Reporting	1) 810	768	2,276	3,854	1) 908	853	1,854	3,615
2. Gross Revenue	2) 110,534,745	9,735,542	8,888,450	129,158,737	2) 142,004,847	10,689,474	7,547,754	160,242,075
3. Net Operating Revenue	3) 7,509,343	1,942,371	2,566,481	12,018,195	3) 10,566,346	2,307,105	2,398,568	15,272,019
4. Allowance of working proprietors	4) 2,681,791	2,224,722	3,324,840	8,231,353	4) 3,210,871	2,422,751	2,606,370	8,239,992
5. "True Net Operating Revenue" (3 − 4)	5) 4,827,552	**	**	3,786,842	5) 7,355,475	**	**	7,032,027
6. Average Gross Revenue (2 ÷ 1)	6) 136,463	12,676	3,905	33,513	6) 156,393	12,532	4,071	44,327
7. Average Net Revenue (3 ÷ 1)	7) 9,271	2,529	1,128	3,118	7) 11,637	2,705	1,294	4,225
8. Average "True Net Op. Rev." (5 ÷ 1)	8) 5,960	—	—	983	8) 8,101	—	—	1,945
9. Number of working proprietors	9) 672	888	2,246	3,806	9) 757	918	1,914	3,524
10. Av. Allowance of the working proprietor	10) 3,991	2,505	1,480	2,163	10) 4,186	2,639	1,362	2,279
11. Net Op. Rev. as % of Gross Rev. (3 ÷ 2 × 100)	11) 6·8%	20·0%	34·6%	9·3%	11) 7·4%	21·6%	31·8%	9·5%
12. "True Net Op. Rev." as % of Gross Rev. (5 ÷ 2 × 100)	12) 4·4%	—	—	2·9%	12) 5·2%	—	—	4·4%

SOURCE: Dominion Bureau of Statistics, Public Finance and Transportation Division: Motor Carrier report.

* Group I—carriers with gross revenues of $20,000 or over, Group II—carriers between $8,000 and $19,999 gross revenue, Group III—carriers with gross revenue of $8,000 or less.

** Net Operating Revenues were smaller than the minimum estimated allowances to the working proprietors for their direct labour inputs.

APPENDIX J

NET OPERATING REVENUES OF RAILWAYS AS PERCENTAGE OF GROSS EARNINGS, 1950-1953, INCLUSIVE

RAILWAY EARNINGS, EXPENSES AND NET REVENUES

—	1950	1951	1952	1953
Railroad operating revenues*	916,717,450	1,040,586,312	1,120,313,752	1,148,598,557
Railroad operating expenses*	817,686,823	959,995,373	1,039,014,377	1,081,577,250
Railroad Net operating revenues*	99,030,627	90,590,939	81,299,375	67,021,307
Net operating revenues as % of gross earnings	10·8%	8·7%	7·3%	5·8%

SOURCE: Dominion Bureau of Statistics: Railway Transport.

* Does not include revenues and expenses from non-transportation activities. General expenses of the systems have been allocated entirely to the railways' transportation activities.

HOUSE OF COMMONS

Second Session—Twenty-second Parliament

1955

STANDING COMMITTEE

ON

RAILWAYS, CANALS AND TELEGRAPH LINES

Chairman: H. B. McCULLOCH, ESQ.

MINUTES OF PROCEEDINGS AND EVIDENCE

No. 11

BILL No. 449

An Act to amend the Transport Act

WEDNESDAY, JUNE 29, 1955

WITNESSES:

Mr. H. E. B. Coyne, Q.C., and Mr. Jean Brisset, Q.C., both representing Irish Shipping Limited and Saguenay Terminals Limited; Mr. D. K. MacTavish, Q.C., Counsel, Canada Steamship Lines; Mr. C. D. Shepard, Q.C., Counsel, Province of Manitoba.

EDMOND CLOUTIER, C.M.G., O.A., D.S.P.
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1955.

60383—1

STANDING COMMITTEE

ON

RAILWAYS, CANALS AND TELEGRAPH LINES

Chairman: H. B. McCulloch, Esq.

and Messrs.

Barnett
Batten
Bonnier
Boucher (*Chateauguay-Huntingdon-Laprairie*)
Buchanan
Byrne
Campbell
Carrick
Carter
Cauchon
Cavers
Clark
Deschatelets
Dupuis
Ellis
Follwell
Fulton
Gagnon
Gauthier (*Lac St. Jean*)
Goode
Gourd (*Chapleau*)
Green
Habel
Hahn
Hamilton
Hamilton (*Notre Dame de Grace*)
Hamilton (*York West*)
Hanna
Harrison
Hansell
Healy
Herridge
Holowach
Hosking
Howe (*Wellington-Huron*)
James
Johnston (*Bow River*)
Kickham
Lafontaine
Langlois (*Gaspe*)
Lavigne
McIvor
Meunier
Montgomery
Murphy (*Lambton West*)
Murphy (*Westmorland*)
Nesbitt
Nicholson
Nickle
Nixon
Nowlan
Purdy
Ross
Small
Stanton
Viau
Villeneuve
Vincent
Weselak

E. W. Innes,
Clerk of the Committee.

REPORT TO THE HOUSE

FRIDAY, JULY 1, 1955

The Standing Committee on Railways, Canals and Telegraph Lines begs leave to present the following as its

SEVENTEENTH REPORT

Your Committee has considered Bill No. 449, An Act to amend the Transport Act, and has agreed to report it with amendments, namely:

Clause 1

Page 1, immediately after the word "transport" in lines 8 and 9, insert the words "from one point in Canada to another point in Canada".

Page 1, line 14, immediately after the word "rail" insert the words "consent thereto in writing or".

Page 2, lines 6 to 15 inclusive, are deleted and the following substituted therefor:

(5) Where an agreement for an agreed charge is made by a carrier by rail any carrier by water which has established through routes and interchange arrangements with a carrier by rail shall be entitled to become a party to an agreement for an agreed charge and to participate in such agreed charge on a basis of differentials to be agreed upon in respect of the transport from or to a competitive point or between competitive points served by the carrier by water of goods with regard to which the carrier by water is required by this Act to file tariffs of tolls.

Page 3, lines 21 to 49 inclusive, are deleted and the following substituted therefor:

33. (1) Where an agreed charge has been in effect for at least three months

(a) any carrier, or association of carriers, by water or rail, or

(b) any association or other body representative of the shippers of any locality

may complain to the Minister that the agreed charge is unjustly discriminatory against a carrier or a shipper or places his business at an unfair disadvantage, and the Minister may, if he is satified that in the public interest the complaint should be investigated, refer the complaint to the Board for investigation.

(2) The Governor in Council, if he has reason to believe that an agreed charge may be undesirable in the public interest, may refer the agreed charge to the Board for investigation.

(3) In dealing with a reference under this section the Board shall have regard to all considerations that appear to it to be relevant, including the effect that the making of the agreed charges has had or is likely to have on the net revenue of the carriers who are parties to it, and in particular shall determine whether the agreed charge is undesirable in the public interest on the ground that it is unjustly discriminatory against any person complaining against it or places his business at an

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unfair disadvantage or on any other ground, and, if so directed by the Governor in Council in a reference under subsection (2), whether the agreed charge is undesirable in the public interest on the ground that it places any other form of transportation services at an unfair disadvantage.

(4) If the Board, after a hearing, finds that the agreed charge is undesirable in the public interest on the ground that it is unjustly discriminatory against any person complaining against it or places his business or any other form of transportation services at an unfair disadvantage or on any other ground, the Board may make an order varying or cancelling the agreed charge or such other order as in the circumstances it considers proper.

(5) When under this section the Board varies or cancels an agreed charge, any charge fixed under subsection (10) of section 32 in favour of a shipper complaining of that agreed charge ceases to operate or is subject to such corresponding modifications as the Board determines.

A copy of the evidence adduced in respect of Bill No. 449 is appended.

All of which is respectfully submitted.

H. B. McCULLOCH,
Chairman.

MINUTES OF PROCEEDINGS

WEDNESDAY, JUNE 29, 1955

The Standing Committee on Railways, Canals and Telegraph Lines met at 11.30 o'clock a.m. The Chairman, Mr. H. B. McCulloch, presided.

Members present: Messrs. Barnett, Bonnier, Byrne, Cameron (*Nanaimo*), Carrick, Carter, Cavers, Follwell, Green, Habel, Hahn, Hamilton (*Notre-Dame-de-Grace*), Harrison, Hansell, Healy, Herridge, Hosking, Howe (*Wellington-Huron*), Kickham, Lafontaine, Langlois (*Gaspe*), Lavigne, McCulloch (*Pictou*), McIvor, Meunier, Montgomery, Murphy (*Lambton West*), Nicholson, Purdy, Small, Stanton, Villeneuve, and Weselak.

In attendance: For the Department of Transport: Honourable George C. Marler, Minister of Transport; Mr. G. A. Scott, Director of Economics; and Mr. F. T. Collins, Secretary and Comptroller.

For Irish Shipping Limited and Saguenay Terminals Limited: Mr. H. E. B. Coyne, Q.C., Counsel, and Mr. Jean Brisset, Q.C., Counsel; Mr. William Baatz, Treasurer, and Mr. W. D. Flavelle, Traffic Manager, both of Saguenay Terminals Limited.

For Canada Steamship Lines: Mr. D. K. MacTavish, Q.C., Counsel; and Mr. R. S. Paquin, Assistant Freight Traffic Manager.

For Province of Manitoba: Mr. C. D. Shepard, Q.C., Counsel, and with him Mr. V. M. Stechishin, Manager, Manitoba Transportation Commission.

The Committe resumed study of Bill No. 449, An Act to amend the Transport Act.

Mr. Coyne, on behalf of Irish Shipping Limited and Saguenay Terminals Limited, continued his submission respecting the bill under study; he was questioned, and allowed to stand aside.

Mr. Brisset was also called, supplemented the statement of Mr. Coyne and was questioned.

At 12.55 o'clock p.m., the Committee adjourned until 2.30 o'clock p.m. this day.

AFTERNOON SITTING

The Committee resumed at 2.30 o'clock p.m., the Chairman, Mr. H. B. McCulloch, presiding.

Members present: Messrs. Barnett, Batten, Bonnier, Byrne, Cameron (*Nanaimo*), Carrick, Carter, Cavers, Gauthier (*Lac-Saint-Jean*), Green, Habel, Hahn, Hamilton (*Notre-Dame-de-Grace*), Harrison, Hansell, Healy, Herridge, Hosking, Howe (*Wellington-Huron*), James, Kickham, Lafontaine, Langlois (*Gaspé*), Lavigne, McCulloch (*Pictou*), McIvor, Meunier, Montgomery, Murphy (*Lambton West*), Nicholson, Purdy, Stanton, and Villeneuve.

In attendance: Same as at morning sitting.

Mr. Coyne and Mr. Brisset, assisted by Mr. Baatz and Mr. Flavelle, answered questions and were retired.

Mr. MacTavish, on behalf of Canada Steamship Lines, spoke briefly suggesting certain changes in the wording of the bill under study; he was questioned thereon and retired.

Mr. Shepard, on behalf of the Province of Manitoba, outlined that Province's position with respect to Bill No. 449; he was questioned and retired.

Mr. Marler made a statement in reply to the various submissions presented to the Committee, and submitted a proposed amendment to the Bill.

The Committee proceeded to the detailed study of Bill No. 449.
On clause 1:

Mr. Green moved, seconded by Mr. Hahn,—

That on Page 1, line 8, there be inserted between the words "may make" the following "to meet competition".

The motion was resolved in the negative on the following division: Yeas: 7, Nays: 20

Mr. Hamilton (*Notre-Dame-de-Grace*) moved, seconded by Mr. Green,—

That on Page 1, line 9, there be inserted between the words "transport of" the words "within the continental limits of North America and Newfoundland".

The motion was resolved in the negative on the following division: Yeas: 7, Nays: 19.

At 6.00 o'clock p.m., the Committee adjourned until 8.00 o'clock p.m. this day.

EVENING SITTING

The Committee resumed at 8.00 o'clock p.m., the Chairman, Mr. H. B. McCulloch, presiding.

Members present: Messrs. Batten, Boucher (*Chateauguay-Huntingdon-Laprairie*), Cameron (*Nanaimo*), Carrick, Carter, Cavers, Follwell, Gourd (*Chapleau*), Green, Hahn, Hamilton (*Notre-Dame-de-Grace*), Harrison, Hansell, Healy, Herridge, Hosking, Howe (*Wellington-Huron*), James Johnston (*Bow River*), Kickham, Lafontaine, Langlois (*Gaspé*), Lavigne, McCulloch (*Pictou*), McIvor, Meunier, Montgomery, Murphy (*Lambton West*), Nicholson, Purdy, Stanton, Viau, and Villeneuve.

In attendance: Same as at morning sitting.

The Committee resumed the detailed consideration of Bill No. 449, An Act to amend the Transport Act.

On clause 1:

On motion of Mr. Langlois (*Gaspé*), seconded by Mr. Cavers,

Resolved,—That on Page 1, line 14, immediately after the word "rail" there be inserted the following "consent thereto in writing or".

On motion of Mr. Langlois, (*Gaspé*), seconded by Mr. Lafontaine,

Resolved,—That on Page 2, lines 6 to 15 inclusive, be deleted and the following substituted therefor:

(5) Where an agreement for an agreed charge is made by a carrier by rail any carrier by water which has established through routes and interchange arrangements with a carrier by rail shall be entitled to become a party to an agreement for an agreed charge and to participate in such agreed charge on a basis of differentials to be agreed upon in respect of the transport from or to a competitive point or between competitive points served by the carrier by water of goods with regard to which the carrier by water is required by this Act to file tariffs of tolls.

Mr. Green moved, seconded by Mr. Montgomery,

That on Page 2, there be inserted immediately after line 20 the following:

6(a) Every agreed charge shall be compensatory that is to say shall be such as will improve the net revenue position of the carrier.

The motion was resolved in the negative on the following division: Yeas: 8, Nays: 19.

By leave the Committee reverted to lines 8 and 9 of Page 1.

On motion of Mr. Cavers, seconded by Mr. Langlois (*Gaspé*),

Resolved,—That on Page 1, immediately after the word "transport" in lines 8 and 9 there be inserted the words "from one point in Canada to another point in Canada".

Mr. Langlois (*Gaspe*) moved, seconded by Mr. Cavers,

That on Page 3, lines 21 to 49 inclusive, be deleted and the following substituted therefor:

33. (1) Where an agreed charge has been in effect for at least three, months

(*a*) any carrier, or association of carriers, by water or rail, or

(*b*) any association or other body representative of the shippers of any locality

may complain to the Minister that the agreed charge is unjustly discriminatory against a carrier or a shipper or places his business at an unfair disadvantage, and the Minister may, if he is satisfied that in the public interest the complaint should be investigated, refer the complaint to the Board for investigation.

(2) The Governor in Council, if he has reason to believe that an agreed charge may be undesirable in the public interest, may refer the agreed charge to the Board for investigation.

(3) In dealing with a reference under this section the Board shall have regard to all considerations that appear to it to be relevant, including the effect that the making of the agreed charges has had or is likely to have on the net revenue of the carriers who are parties to it, and in particular shall determine whether the agreed charge is undesirable in the public interest on the ground that it is unjustly discriminatory against any person complaining against it or places his business at an unfair disadvantage or on any other ground, and, if so directed by the Governor in Council in a reference under subsection (2), whether the agreed charge is undesirable in the public interest on the ground that it places any other form of transportation services at an unfair disadvantage.

(4) If the Board, after a hearing, finds that the agreed charge is undesirable in the public interest on the ground that it is unjustly discriminatory against any person complaining against it or places his business or any other form of transportation services at an unfair disadvantage or on any other ground, the Board may make an order varying or cancelling the agreed charge or such other order as in the circumstances it considers proper.

(5) When under this section the Board varies or cancels an agreed charge, any charge fixed under subsection (10) of section 32 in favour of a shipper complaining of that agreed charge ceases to operate or is subject to such corresponding modifications as the Board determines.

In amendment thereto, Mr. Green moved, seconded by Mr. Hamilton (*Notre-Dame-de-Grace*),

That the new section 33 to the Transport Act, proposed by Mr. Langlois (*Gaspe*), be amended by inserting immediately after the words "by water or rail" in 33(1) (*a*) the following: "or association of motor vehicle transport operators".

Mr. Green's amendment was resolved in the negative on the following recorded division:

Yeas: Messrs. Green, Hahn, Hamilton (*Notre-Dame-de-Grace*), Hansell, Howe (*Wellington-Huron*), Johnston (*Bow River*), Montgomery, Murphy (*Lambton West*), and Stanton—9.

Nays: Messrs. Batten, Boucher (*Chateauguay-Huntingdon-Laprairie*), Cameron (*Nanaimo*), Carrick, Carter, Cavers, Gourd (*Chapleau*), Harrison, Healy, Herridge, Hosking, James, Kickham, Lafontaine, Langlois (*Gaspe*), Lavigne, McIvor, Meunier, Nicholson, Purdy, Viau, and Villeneuve—22.

The proposed new section 33 of the Transport Act was accordingly adopted.

Clause 1 was adopted, as amended.

The Preamble, the Title, and the Bill as amended, were adopted.

The Chairman was ordered to Report the Bill as amended to the House.

Mr. McIvor expressed the Committee's appreciation of the information and assistance tendered by the various witnesses.

At 9.40 o'clock p.m., the Committee adjourned to the call of the Chair.

E. W. Innes,
Clerk of the Committee.

EVIDENCE

WEDNESDAY, June 29, 1955.
11.30 a.m.

The CHAIRMAN: Order, gentlemen. We have a quorum. Mr. Coyne?

Mr. H. E. B. Coyne, Q.C., representing Irish Shipping Limited, recalled:

The WITNESS: Could I ask the reporter for the last couple of sentences of last night?

Hon. Mr. MARLER: You were talking about the Combines Act and I think I urged you to leave the Combines Act alone and go on with the agreed charges.

Mr. GREEN: It is very hard to hear, Mr. Chairman.

The WITNESS: I just have a few words to say with respect to the second application which we made to the board, an application for a declaration that the railways had not complied with the order made on the first application. With the committee's permission I would like to read three short extracts from that judgment. The first one is on page 7:

> While the former requirement of Conference membership as a prerequisite to the issuance of through bills of lading was more stringent than the proposed requirement of rate equality between ocean lines, nevertheless the objective of both requirements is obviously the same—to require uniform rate-making by the ocean lines.

I shall also read a few questions and answers which are given in the judgment from the evidence of Mr. K. M. Fetterly, Foreign Freight Traffic Manager, Canadian Pacific Railway Company:

> Q. So prior to August 31st, 1954, you were saying to Saguenay Terminals Limited 'We are not granting you through bill of lading privileges because you have not agreed on rates with the other lines'?—A. I think that is the meaning of it, yes. That is why it was in there, yes.
>
> Q. And today you are telling them 'We will grant you through bill of lading privileges provided you agree on rates', is that what you are telling them?—A. Provided they agree on rates we will grant through bill of lading privileges, yes. (Trans. p. 152).

After this second judgment of the board the railways did accord us through bills of lading privileges under an agreement from which was deleted the clause to which we objected. But we are still being discriminated against by the railway. During the course of the hearings I referred to Canadian Freight Association freight tariff No. 30 H. That tariff on its face says, and this is a through competitive export freight tariff on commodity rates:

> Applicable only on traffic covered by through bills of lading and forwarded by shippers who have signed conference agreements with steamship lines specified on page 2.

And on page 2 are given the names of the conference lines. That tariff is no longer in force. It has been superseded by freight tariff No. 30-M, but similar provisions occur in that tariff.

Now, I think from what I have said it is clear that the railways are hand in glove with the Conference lines. It is for that reason that the Irish Shipping Limited and Saguenay Terminals fear that if given an opportunity the railways will discriminate against them by agreed charges. The question may be asked how the railways could discriminate against these companies by agreed charges. They could do so in several ways. First, a provision could be introduced into an agreed charge that the shipper states and represents that he has signed Conference agreements with the following steamship lines, and then would follow the names of the lines belonging to the Conference; that is one way. The second is by making the Conference lines parties to an agreed charge.

By Hon. Mr. Marler:

Q. Would they be regarded as shippers?—A. No, sir.

Q. How could they be parties to an agreed charge?—A. Joined as carriers. They are not all subject to the jurisdiction of the board, neither are they carriers under the board Act.

Q. How could they be parties to the agreement then?—A. I do not think they would be proper parties to the greement. Nevertheless, it might be done and I would point out that the railways now have an application before the board in connection with agreed charge No. 70 in which they are doing exactly that. They are asking that certain steamship companies which are not subject to the jurisdiction of the board and are not carriers within the meaning of the Transport Act should be joined in agreed charge No. 70. That application is still before the board.

The next point is that the companies I represent have no remedy if an agreed charge discriminates against them and in favour of Conference lines. Subsection 1 of section 33 begins:

> Where an agreed charge has been in effect for at least three months any carrier or association of carriers by water or rail or (*b*) any association or other body representative of the shippers of any locality.

These companies of course are not shippers, and neither of them is a carrier within the definition of carrier which is contained in the Transport Act. So they have no remedy under this subsection.

Q. They would have no remedy at present either?—A. Yes, sir. They have a very effective remedy. It is true that under subsection 7 of section 32 of the present Act—

Mr. GREEN: The Railway Act?

The WITNESS: This is the Transport Act. Under that section they are not mentioned. Perhaps I had better read the section.

Mr. HABEL: Do not bother.

The WITNESS: Under subsection 7 of section 32 of the Transport Act—

Mr. MURPHY (*Lambton West*): It is difficult to hear.

Mr. CAVERS: Some of the members of the committee are having difficulty in hearing. I wonder if it would be better if you would stand, Mr. Coyne.

The WITNESS: It is true that neither of these companies has a legal right under this subsection to be heard in opposition to the application, but first of all they have this protection that the board has to approve an agreed charge before it goes into effect. Now the examination of the board is very effective. If they saw any provision that seemed to them to be strange they would call for an explanation and if the explanation was not satisfactory they would not approve it.

Secondly, notwithstanding we have no legal right to be heard we can write a letter to the board and draw the board's attention to anything in the agreed charge which we think is objectionable and the board has power to act and undoubtedly would if there was anything objectionable in the agreed charge.

Mr. JAMES: Could you still write that letter under this new Act?

The WITNESS: The company has to go to the minister first and he has to give leave. The board has no power and is placed in a strait-jacket.

Hon. Mr. MARLER: It is not placed in a strait-jacket; it is not there at all.

The WITNESS: Exactly, it has no power.

Mr. BYRNE: Could not the minister send it on to the board?

The WITNESS: Yes, I was going to come to that point in a moment. I would like to mention three other points in connection with subsection 1 of clause 33 of the bill. The first point is that a complainant cannot go directly to the board. He must complain to the minister who may refer the matter to the board. In other words, what it amounts to is that a complainant must obtain leave of the minister before taking proceedings against the railways. A few years ago legislation was passed making it unnecessary to obtain leave before taking proceedings against the Crown. Apparently more deference is to be paid to the railways than to the Crown.

The second point is that the minister will exercise quasi judicial functions and there is no appeal from his decisions. It is not fair to the minister that he should be called upon to perform such functions. He is too closely associated with the Canadian National Railways both in fact and in the public mind. I am sure that the minister would try to be impartial but the question is what would be the feelings of a complainant whose complaint was dismissed? There is an old saying and a very true one that it is necessary not only to do justice but that justice should also appear to be done.

The third point is that an individual shipper has no rights under this subsection.

Hon. Mr. MARLER: He never has had, has he Mr. Coyne—or under the one on which it was based.

The WITNESS: You mean the former section 33?

Hon. Mr. MARLER: Yes.

The WITNESS: No. But he had rights under subsection 7 of section 32. As the Act now stands he has rights. Under this subsection he has no rights. I am speaking of the individual shipper.

Mr. HOSKING: How do you mean—he has no rights?

The WITNESS: I mean he has no remedy if he thinks he is discriminated against.

Hon. Mr. MARLER: You say he has no remedy; that is certainly going beyond the terms of the bill because under section 32 subsection (10) he has got a remedy.

The WITNESS: He has a remedy in certain conditions—if he is served by the same carrier or carriers who are in the agreed charge. For example, I was referring to agreed charge number 70 and the application which is now made—in fact it was made about six months ago by the railways. Nothing has been heard of it and no order of the board has been made. That application was to join certain steamship companies in the agreed charge—certain steamship companies over which the board has no jurisdiction; they are not carriers under the Transport Act. It is, I think, fairly obvious what the

reason for the delay is. It would put the board in a very embarrassing position if it approved that amendment besause if another shipper appeared and said "fix for me the same charge under this subsection which the minister has referred to" the board would be without power to fix that charge for him.

Another instance is where the shipper is on another line than the line or lines of railway concerned in the agreed charge—for example, if you have a manufacturer in Brantford and a manufacturer in Hamilton who are the shippers named in an agreed charge. They are on the Canadian National and Canadian Pacific Railways. If this amendment goes through that agreed charge would go in automatically. Now suppose there is a small shipper in Waterford who is served by the Toronto-Hamilton and Buffalo railway and the New York Central Railway. What power has the board under this subsection to fix the charge? The board has no power because they are not the same carriers. I mean to say the carriers named in the agreed charge are the Canadian National Railway and the Canadian Pacific Railway—and the railways that serve the complainant shipper are the Toronto-Hamilton-Buffalo and the New York Central.

Mr. CARRICK: Mr. Coyne, may I ask you a question? In complaining about the legislation, that while the association for the shippers has the right to complain an individual shipper has not the right to complain, are you making that representation on behalf of any shipper?

The WITNESS: No, but I thought it was appropriate to bring this matter to the committee's attention. It does not particularly concern us but I thought it was appropriate to bring the point out.

Mr. CARRICK: Thank you.

The WITNESS: Now, one suggestion that I have is to amend subsection 1 and put in a very simple provision.

Mr. GREEN: You mean clause 33 or clause 32?

The WITNESS: Clause 33. Subsection 1 of clause 33. The suggestion is to amend Bill No. 449 by deleting subsection 1 of section 33 and substituting therefore the following subsection:

1. The board may vary or cancel any agreed charge.

That does justice to everybody and if the railways object to it I suggest that they are very unreasonable.

Mr. CARRICK: That would have the effect of cutting out the complaints to the minister first and his referring them to the board; they would go right to the board and anybody could complain.

The WITNESS: Anybody could complain. The objections that would be made to that are of course that there would be a flood of complaints. I think that fear is exaggerated. The position would be very materially changed from what it is at the present time. At the present time everyone who does not want an agreed charge has merely to put in an objection and there has to be a hearing and so on with the result that there is probably a delay of months. But under these amendments the agreed charge goes into effect immediately.

Now, whatever objections are made, that agreed charge stays in, unless the objections are sound and the board disallows it. There is not the same incentive by any means to put in a complaint under Bill 449 that there is at the present time.

By Mr. Hosking:

Q. Is there anything wrong with the principle that if the shipper agrees with the railroad and enters into a contract, that it should start right away,

and that it should continue until it was found that it was no right?—A. We have no objection to that. Our objection is that we have not any redress if there is some provision in that agreed charge which operates against us, and we say that the same thing applies to the individual shipper.

Q. Does the shipper not sign this agreement and agree to it?—A. I am speaking of an individual shipper who is not a party to the agreement, but who is discriminated against, as he thinks.

Q. That shipper should not be in a position to jeopardize an agreement and delay it, and hold it up.—A. He cannot hold it up; it goes into effect at once.

Q. Then what is wrong with the bill?—A. If the bill goes through, and the agreed charge goes into effect at once, our objection to the bill is that we have no right to go before the board and show that that agreed charge discriminates against us, and neither do a large number of shippers have that right, I mean individual shippers.

I might also add that section 33 as it stands now in the Railway Act has been a dead letter, and I would suggest that sub-section 1 of section 33 in the bill, if it is passed in its present form will practically be a dead letter. No railway is going—at least it would be a very exceptional case in which any railway or water carrier is going to make a complaint. They work together. The individual shipper cannot complain.

What I think Mr. Justice Turgeon had in mind in speaking of an association of shippers, to quote his exact words, was this:

> Any organization or other body representative of the shippers of any locality.

That is rather peculiar phraseology, and I think from his report that it is quite clear that he was thinking not of a shipper, that is, of a consignor. A shipper, as defined in the Act, is a person who either sends or receives goods. Mr. Justice Turgeon, I think, did not have in mind a consignor of goods. He was thinking of a consignee.

For example, I think what he had in mind was such a situation as this: there might be an agreed charge for an export tariff, let us say, from Toronto to Halifax and the merchants—I did not intend to say an export tariff, simply an ordinary tariff covering the charges on goods from Toronto to Halifax—and the merchants in St. John might say that they were discriminated against. Therefore an association of those merchants could apply and complain to the board that the agreed charge was unjustly discriminatory, and placed its business at an unfair advantage. Then the minister might find that it was in the public interest—public interest meaning the interest of the public of that locality.

That is the exact situation which I think Mr. Justice Turgeon had in mind. I have great respect for Mr. Justice Turgeon, but I do not think he realized that the previous sub-section allowing the board to fix rates for shippers does not cover all complaints which shippers might make. He did not have in mind such an example as I have already given to you. He did not intend to be unjust. He thought he was covering everything by the two provisions, but with all respect to him, I do not think he did.

I forgot to say that in case the committee is not in favour of the amendment that I have suggested, my friend, Mr. Jean Brisset who is with me has drafted an amendment which will serve our purpose, that is, the purpose of the two companies which we represent, although I do not think that this covers the general situation as well as the amendment which I have suggested.

Would it be permissible for Mr. Brisset who has drafted a second amendment, to present it to the committee?

Mr. CAVERS: Does Mr. Brisset wish to address the committee?

The WITNESS: Yes.

Mr. CAVERS: And you are now finished?

The WITNESS: Yes.

Mr. GREEN: I would like to ask a few questions of Mr. Coyne.

The CHAIRMAN: Perhaps you had better hear Mr. Brisset first.

Mr. GREEN: I understand that this is an alternative amendment which ties in with the submission made by Mr. Coyne.

The CHAIRMAN: Come up to the front, Mr. Bisset, please.

Mr. Jean Brisset, Q.C., Montreal, representing Irish Shipping Limited, and Saguenay Terminals Ltd., Called:

The WITNESS: Mr. Chairman, Mr. Minister and gentlemen: before I submit to you the amendment which I would suggest to the committee, I would like to say a few words by way of explanation because unless I do so I think it would be very difficult to understand the purport of the amendment which I shall submit. In doing so I shall attempt to crystallize the issue with which our principals are concerned and which I submit is of vital interest to all Canadian exporters.

Let me say at the outset that we are not attacking the agreed charge rate-making powers which the railways are seeking under the bill which is before you, and that we recognize that the railways must have freedom of competition within certain bounds, but what we challenge is the right of the railways to resort to practices damaging the business of unregulated carriers that are not competing with them in any transport of goods which is sought to be made the object of an agreed charge. This might appear to you at this stage to be rather a cryptic statement and before I explain it I wish to put before you certain facts which will assist you to understand our position. I want to tell you what Saguenay Terminals Limited is, and these are the facts. It is a Canadian corporation that operates 12 ocean vessels, the majority of which were purchased from the Canadian government after the war and it also operates, including these vessels, about 70 ocean-going vessels in various services including hauling bauxite from the British West Indies to Port Alfred and these services are the following: a general cargo service from eastern Canadian ports to the United Kingdom and continent in which they are in competition—and that is the important thing to remember—with British lines and particularly the Canadian Pacific Steamship Company which, as you all know, is a British corporation, a subsidiary of the Canadian Pacific Railways. The other service is a service from eastern Canadian ports to West Indies ports and South America in which they are in competition with the Canadian National Steamships owned by the Canadian National Railways and with various foreign companies, American and so forth. The third service is an inter-coastal service between eastern Canadian ports and western Canadian ports and vice versa, in which they would appear at first sight to be in competition with the railways, but I will say to you at this point and I will develop it later that it is not entirely so. They also act as general agents for the Constantine line Canadian service from the Great Lakes to Newfoundland in which they are in competition with the railways for this part of the voyage which is from the Great Lakes to Montreal, but are not in competition with the railways from Montreal to Newfoundland during the navigation season.

What we wish to safeguard against is that under the guise of agreed charge contracts the railways resort to practices favouring Saguenay's competitors and particularly the Canadian Pacific Steamships and the Canadian National Steamships to the detriment, of course, of Saguenay Terminals Limited but also to the detriment of Canadian shippers at large and without direct benefit to the railways as railways and often at a loss to the railways.

Now, you will ask me how the railways can do that. I will tell you that they have done it in the past, they are still doing it, and they will have the opportunity of doing it under the agreed charge mechanism, and whereas prior to this bill coming into force we had redress before the Board of Transport Commissioners and did obtain redress we will not be able to obtain it if the bill goes through without the amendment which I would suggest.

In order to assist you to understand how they can do it under the agreed charge mechanism, I want to explain to you how they have done it in the past. Some years ago the railways had devised a mechanism which we call a through bill of lading the purpose of which was to promote Canadian export trade. Any Canadian shipper could go to the railways and say, "I have a shipment for overseas and I want a through bill of lading," and he would get it whether it was shipped via C.P. Steamship, Canadian National Steamships, the Conference, Saguenay Terminals or Irish Shipping Limited. Everything was serene up until the end of 1953 when the railways turned to the Canadian shippers and Saguenay Terminals Limited and Irish Shipping and told them, "We will grant through bill of lading privileges to Canadian shippers only if they ship via Conference, via C.P. Steamship and via C.N. Steamship and via other members of the various Conferences."

Mr. CAVERS: Who are the other shippers who are within the Conference other than C.N. Steamships and C.P. Steamships?

The WITNESS: I want to explain to you what a Conference is. A Conference is an inter-ocean carrier organization—

Mr. CAVERS: I understand that.

The WITNESS: —the main purpose of which is to fix and maintain rates. Now, at this point I am not going to discourse on the economics of this policy although many economists will tell you that this policy is a sound and beneficial one at times and I will not quarrel with that. The British lines that compete with Saguenay Terminals Limited and who are members of the Conference while Saguenay Terminals is not—and I refer in this case to the United Kingdom east bound Conference, do fix and maintain rates; that is their business. We are not quarrelling with them in this respect but when we were faced with this decision of the railways we appealed to the Board of Transport Commissioners and challenged the right of the railways to say to Canadian exporters, "You will ship to the United Kingdom via Conference lines rather than through Saguenay Terminals Limited, and to Ireland via Conference lines again rather than via the Irish government line." The board agreed with us and said to the railways, "You must stop this discrimination." Well, what did the railways do? They immediately turned to the shippers and to Saguenay Terminals Limited and to Irish Shipping Limited and said, "All right, we will grant you through bills of lading provided you—Saguenay Terminals Limited and Irish Shipping Limited—charge the same rates as the C.P.R. steamship and other members of the Conference are charging." I might say by the way that our rates were lower than those of the Conference lines. Again we appealed to the Board and challenged the right of the railways to dictate what our ocean rates should be and we said to the board, "We wish to have the unfettered right to charge what we want and to fix our own rates. We believe in freedom of trade. The law of supply and demand is our guide in our

rate-making and as our rates are lower than those of the Conference we want the Canadian exporters to benefit from the lower rates and we will not submit to the dictates of the railway that we should change our rates—increase them as a matter of fact—to conform with those of our competitors, particularly the Conference in that trade."

The Board again agreed with us and said to the railways: you have not obeyed us; you must stop this discrimination and you must grant through bills of lading to shippers who ship via Saguenay and Irish Shipping even though these two lines might charge less or might charge different rates from those of Canadian Pacific Steamships or other members of the Conference.

I think, gentlemen, you would have thought that this would have been the end of the matter. Well, we have been told that the railway's management is honest, and I concede that, but I think the railway's management also has one fault—they are very stubborn. In the face of this decision the Canadian Freight Association—while the proceedings were in progress, and I understand the Canadian Freight Association is an organ of the railways—started to publish what they called through rate tariffs. I understand that at the present time there are at least seven or eight of these through rate tariffs in effect. I will not attempt to quote you verbatim what the tariffs say, but to paraphrase I will take a particular case of one shipper: you, Mr. Shipper, in this locality, say Winnipeg, we will charge you a rate of $20 a ton for a shipment of such and such a commodity from Winnipeg to the United Kingdom, say Liverpool, on through bills of lading. Then you read on in the tariff and you see this: provided you ship on Conference vessels, that is C.P. steamships and so forth.

We wrote to the Canadian Trade Association and told them: you are again disobeying the Board's orders. Saguenay Terminals and Irish Shipping are entitled to participate in those through rates. You have no right to confine those through rates to specific lines, our competitors. This has been going on for two months and we are told the matter is still under consideration and we will certainly, I imagine, be instructed to appeal again to the board.

Now, if you analyze this through rate that was quoted to the shippers—I am speaking of this example I just gave—you will see that the rate as I said is $20. It includes the land movement from Winnipeg to seaboard, say Halifax, and includes the ocean movement from Halifax to the United Kingdom. Now, if you compare—and I am just giving figures out of the blue—the standard rail rate from Winnipeg to Halifax you will find that the rate is $12. If you look at the rate charged by Conference Steamships for the ocean movement you will find that the rate is say again $12, $24 in all. However the rate quoted is a rate of $20 on this through movement. The railways in conjunction with the steamship line have made a reduction somewhere. Now Saguenay Terminals may for this same movement, as compared to C.P. Steamships' rate, have carried this commodity for $10. If you adopt the $12 land movement freight and the $10 Saguenay freight you would still get $22, whichis higher than the $20 through rate offered by the railways in their through rate tariff. Therefore, this through rate tariff involves undoubtedly, although I do not know the real division between the railway and the C.P. Steamships, a reduction on the part of the railway. What is that reduction? Why is it given? It is given to favour the steamship line and enable the steamship line to get the movement instead of Saguenay Terminals or Irish Shipping. In this way the railways indirectly attract the shippers who previously might have been shipping through Saguenay Terminals to ship under this through tariff. What

are the railways gaining? Nothing; they are losing. If the movement continued to go by the Saguenay they would have charged their normal standard rate of $12. So they grant this reduction in reality to favour the competitors of the Saguenay Terminals in the ocean movement.

Now, this is what has happened in the past. How can the same thing be done today?

Mr. MURPHY (*Lambton West*): Would the witness just clarify the last two or three sentences? I cannot understand that differential. Who gets it, the shipper?

The WITNESS: The shipper gets a rate of $20 in the end.

Mr. CAVERS: He saves $4?

The WITNESS: He saves $2, if the railways have granted a reduction in their standard freight rates. I do not know what it is; it might be a reduction of $4. That $20 might be divided $12 to C.P. Steamships, which is C.P. Steamships' normal rate, and $8 to the railway. We do not know. However, if in fact the railways had reduced their rates from $12 to $8 and were permitting the shipper to ship by Saguenay at $10 a ton, the shipper would have a combined rate of $18 instead of $20.

Now, what can the railways do under the guise of agreed charges? I would like to give you an hypothetical case as a concrete example. Let me place myself in the position of the foreign freight traffic agent of the C.P.R. I know that there is a shipper in Winnipeg who is shipping a large quantity of cargo to the United Kingdom. He is paying the railways at the present time for the land movement from Winnipeg to eastern Canadian ports say at the standard rate of $12 a ton. He is paying on the ocean rate to Saguenay Terminals $10 a ton, $22 altogether. The freight traffic agent of the C.P.R. will go to this shipper and will tell him, "We are prepared to enter into an agreed charge with you for your land movement from Winnipeg to the eastern seaboard. You have been paying so far $12 a ton. We are prepared to negotiate an agreed charge of $8 a ton provided you give us 100 per cent of your traffic, and provided also that you ship via Canadian Pacific Steamships and no longer by Saguenay Terminals."

Suppose the freight rate of Canadian Pacific Steamships is $12 a ton; this will give you a combined rate of $12 plus $8, amounting to $20 Well, the shipper is already paying $22. He might immediately say to the railways "I find your agreed charge for the land movement very interesting and very beneficial but why do you not allow me to continue shipping by Saguenay Terminals Limited, because with them I pay only $10 a ton for the ocean movement." The C.P.R. agent will tell him in that case "we are sorry, sir, but if you do continue with Saguenay Terminals you will not get our agreed charge rate of $8 a ton. You will have to pay the normal standard rate of $12 a ton." So the shipper takes it—he accepts the charge. Who can complain? The shipper is not going to complain because he gets a rate of $8 from the railway company for his land movement when he was paying $12 before and another shipper might still be paying the same charge. Saguenay Terminals cannot complain either. They are not a regulated carrier under the Act. So the matter remains in the status quo and the arrangement, in the example I have given, is in fact for the benefit of the Canadian Pacific Steamship Company.

This situation as the members of the committee can appreciate is fraught with danger and that had been realized years ago in the United States by the Interstate Commerce Commission which has ordered that all railway operations must be divorced from steamship operations. In other words railway companies in the United States cannot own and operate foreign-going steam-

ship companies because it is too apparent that they will be inclined to further the interset of their own steamship company in fixing their land or freight rates to the detriment, after all, of all exporters.

By Mr. Hosking:

Q. The minister has assured us that the railways will not handle anything at a loss under these agreed charges If they handle that freight at $8 a ton the railways are not handling it at a loss.—A. I am not saying that the rate quoted in my example would be a losing rate. They might reduce their rate and still make a profit, but the reduction in the rate on the land movement is simply for the benefit of the ocean carrier which they favour and which is placed in a more favourable position to compete with the services of Saguenay Terminals Limited.

Q. Is not our whole idea to get costs of transport across Canada down to the cheapest possible rate so that it benefits our trade?—A. Exactly, and that is what I was saying the railways by their practices are preventing. They reduce their rate all right, but they do not make the same reduction, if the shipper does not ship via their selected lines.

Q. If the Canadian Pacific Railway Company is prepared to do a package deal and if by doing that the shipper gets a better rate, isn't that a good thing for whoever is sending those goods and also for the Dominion?—A. No. I will explain that, if I may, by reference to the example which I gave earlier—

Q. They would not be prepared to make that reduction on just the rail shipping, but they would be prepared to do it on a package deal. Is there anything wrong with that?—A. There is nothing wrong with that, so long as you do not prevent the Canadian shipper from getting a still lower rate if the railways, with regard to the land movement, were willing to make the same reduction and allow the shippers to get the cheaper ocean rate from the competitors of the steamship lines favoured by the railway.

Q The point I am trying to make is this: if they do get a shipment, say, to Halifax the railways are going to handle it anyway. Why should they not make the rate cheaper so that if the shipper wants to make a package deal he can? What is wrong with it?—A. It is wrong in this sense that it prevents the shipper from getting a still better deal.

By Mr. Cavers:

Q. You cannot provide any land transportation at all—that is not available in your service. You are limited solely to your steamship service?—A. Absolutely.

Q. So that if a person wants to take advantage of a package deal including both land transportation and sea transportation, putting them both together for the sake, let us say, of convenience, why should he not do that?—A. That is quite right provided the railways permit them to make the same package deal with other lines, and I am speaking of ocean lines that are quoting rates even lower than those of the lines which the railway is favouring.

Suppose you are shipping now overseas via Saguenay Terminals at $10 a ton. You are paying $10 for your land movement. The railways approach the shipper—and the railways, as railways, are only interested in land movement. They come to him and say "we will carry all your goods at a better rate than you have paid so far. We shall carry them for $2 a ton less." You will say "all right I am very pleased with that and we shall benefit from that reduction, and with the $10 which I am paying to Saguenay Terminals my freight will cost me $18." But the railway will say to you "oh no, you won't ship via Saguenay Terminals, you will ship via C.P.S. at $12 instead of $10.

The CHAIRMAN: I think the members of the committee understand that.

By Mr. Carter:

Q. This situation which you have been speaking of is hypothetical as I understand it. You prefaced your remarks by saying you did not know how this particular rate was divided up—whether, if it was $20, it would be 10 and 10 or 12 and 8.—A. We do not know because the railways do not publish those figures.

Q. But you are assuming that it is in the proportion of 8 and 12—8 for the land and 12 for the sea route. Could it not be the other way around?—A. Yes.

Q. In that case there would be no cheaper rate for a person who ships via Saguenay?—A. I appreciate it could be, but I assure you I am confident in my own mind that it is not so.

Q. Yes, we might be confident in our own mind, but you have said nothing to prove this. It is purely supposition.—A. The best way I can convince you, sir, is by referring again to the first struggle we had with the railways in connection with the through bills of lading when the shipper were told "if you want to get your through Bill of Lading you will have to ship via conference lines and not through Saguenay Terminals Limited."

Q. There is nothing wrong with that, is there?—A. There is nothing wrong with that—for the ocean lines to charge more if they want to, but I see no justification for the railways telling you, sir, that if you want to ship to England you must ship on a ship of a line which is charging more than Saguenay would be charging you.

Q. How do we know that? There is no proof that they are charging more. If they are going to give a package deal it is only right that they should insist on getting the full benefit of it and carry the goods the whole distance. There is nothing in what you have said which proves that the shipper shipping by rail to the seaboard and then via Saguenay is going to result in a saving to the shipper. You have built up a case on a supposition—purely of supposition—of the division of that package rate. We do not know how it is divided.

Mr. CAMERON (*Nanaimo*): Mr. Chairman, could we not ask some questions of the witness instead of having so much argument?

Hon. Mr. MARLER: Let him finish his exposition.

Mr. CAMERON (*Nanaimo*): Well, let us see that he does finish and that we do not have a diversion in the meantime!

The WITNESS: Well, they can discriminate—the railways, I mean, can discriminate under the guise of agreed charges against the non-regulated carriers by fixing agreed charges which are based upon the same mechanics as through rates. In other words, the railways will say "We will charge you so much for a movement, let us say, from Winnipeg to the United Kingdom, provided you ship again via conference lines including the Canadian Pacific Steamships."

Well, there again the railways are favouring one line or lines as against Saguenay Terminals in this case, or Irish Shipping Limited. We say that the railways have no right to favour one shipping line or lines rather than another. The shipper should be free to make his contract with whosoever he wishes for the ocean carriage.

He has to deal with the railways for the land movement. He can accept an agreed charge for the land movement from the railways to move all his commodities to seaboard; but the railways should not make it a condition of their agreed charge that he will ship via one line rather than another. Let the shipper be free to find the best bargain he can get as far as the ocean movement is concerned.

You have the same situation at the present time in Canada on shipments to Newfoundland. The railways have published a tariff for through shipments to Newfoundland. However, they say that this through tariff is only applicable if the shipper ships via certain lines which are named in that tariff. He will not get that through rate if he ships otherwise. And in this manner the railways are preventing Constantine Line from participating in the movement of goods from Montreal to Newfoundland, even though Constantine Line might be ready and willing to quote lower rates which, in combination with land rates, would give an overall cost to the shipper lesser than the amount he has to pay under the through rate. We submit that this situation should be remedied and that it can only be remedied by an amendment to clause 32 of the bill.

I have with me a number of copies of the amendment.

Mr. GREEN: I wonder if we could see those copies?

The WITNESS: It will read this way:

> Insert immediately after subsection (12) of section 32 the following subsection:
>
> (13) The Board may disallow any agreed charge,
>
> (*a*) which is in part for transport by water in respect of which Part II of the Transport Act is not in force; or

What is that intended to provide for? It is intended to provide against an agreed charge which is developed by adopting the through rate mechanism. We say as a general principle that the railways under the guise of agreed charges should not make through rates or offer through rates which involve a movement by water which is not regulated under the Transport Act.

We recognize the right of the railways to make a through rate and an agreed charge from, let us say, a point inland involving also a water passage or a sea passage, let us say, from the Great Lakes but not below the west end of the island of Orleans which is a regulated area. That is something which we know that the railways have the right to do; but they should have no right to adopt a through rate which would involve, for instance, a sea passage from an eastern Canadian port to any foreign port; and if they were to do so, the board, if we apply to it, should have the power to disallow the agreed charge. I do not think it was the purpose of the legislation to permit such an agreed charge.

Perhaps the railways will tell us that they do not intend to make any such agreed charge. If that is so we will feel very much more secure and happy in the light of our previous experience with them if this provision is in there.

Subparagraph (*b*) reads as follows:

> (*b*) which discriminates unjustly in any way against any person engaged in such transport by water.

What is that intended to guard against? It is intended to guard against the railways making an agreed charge on a straight rate basis say from Winnipeg to Halifax not dictated by competitive conditions or not compensatory but simply for the purpose of favouring another line and injuring the business of a carrier which is not regulated under the Act, and the example I have given you is that the railways would go to a shipper and say, "We will make an agreed charge with you for all your shipments at $8 instead of the normal rate, provided all your export shipments are moved by Conference Lines."

I readily grant to you, gentlemen, that this amendment could allow Saguenay Terminals Limited to apply without going to the minister for the disallowance of an agreed charge which the railways might make to compete with their inter-coastal service. But I submit to you that for the moment you should accept my proposition as a premise that according to the principles of economics in transportation the railways could not make an agreed charge to cover goods moving from the east coast to the west coast or vice versa that would be a compensatory one if it were below or competing with Saguenay rates on this particular trade.

Let me just give you the history and the development of the inter-coastal service in just a few words. About five or six years ago there was a line called the Monsen Clarke Company which inaugurated such a service and developed it. When it was developed the railways came in with competitive tariffs and as a result subsequently the line had to fold up and discontinue its service. As soon as this happened the railways increased their rates. I cannot prove it to you gentlemen here, but I assume it is because they were taking a loss on that rate. As soon as they increased their rates on these commodities the trade most likely vanished.

Mr. GREEN: What route?

The WITNESS: The inter-coastal service between west ports and east ports and vice versa via the Panama Canal. Some five years ago—in 1951, I think—Saguenay Terminals Limited inaugurated a similar service and revived the trade. If the railways quote or negotiate agreed charges to cover the most important commodities in their service, that service will, of course, have to be withdrawn and possibly the same thing would happen again. The railways will increase their rates, and the trade will again wither. I do not wish to imply that what I have said applies to all commodities that may move on this service, but it applies to quite a number of the important ones.

Mr. MURPHY (*Lambton West*): Mr. Chairman, I wonder if the witness would complete that part of his recent testimony—it is not clear to me. Since this new service was initiated was there any increase in the rates after the other company folded up?

The WITNESS: Since the service of Saguenay Terminals Limited was inaugurated the railways have, in fact, on certain commodities diminished their rates and they published competitive rates and they got that part of the business back, but they have not—I would not like to make a statement of which I am not sure at the present time and I would have to consult with my clients—but I do not think the railways have underquoted or quoted competitive tariffs on all commodities moving on that service seeing that the service is still in existence and is a regular service. If the railways were to quote or negotiate agreed charges in respect of commodities moving on this service I concede to you that Saguenay Terminals Limited could not say, "We are discriminated against, because the agreed charge is competitive." That is no reason to attack the charge. It is good business as far as the railways are concerned. They could not say the rate or the agreed charge is unjust because it is lower than ours and we lose the business—no, we could not say that. However, I submit to you, gentlemen, that they could say to the railways, "This agreed charge which you have fixed is unjust because it is not a compensatory one; you are losing money on that traffic and therefore you should not be allowed to quote this agreed charge and put us out of the service." Now, could that be done by Saguenay Terminals unless that amendment were there? No, I say they could not do it under section 33 because they are not a regulated carrier. And, gentlemen, you should not expect that the shipper or the shippers who benefit from that agreed charge which I say is lower than the Saguenay Terminals' rate will go to the minister and say to the minister: we lodge a complaint

against this agreed charge. I think you will see the irony of the situation, and certainly the shipper is not going to go to the minister and say: we object to this charge because it is not compensatory and because the railways should charge more to us. It is inconceivable. So nobody would or could attack the charge. I sympathize with the truckers on this score if they are not allowed to object to an agreed charge because no shipper will surely complain to the minister that an agreed charge should be cancelled because the railways are not getting enough revenue because the charge is not compensatory.

Mr. McIvor: Do you not think when the railway carries goods—

Mr. Nicholson: Have we reached the question stage? Is the witness through?

The Chairman: I think so.

The Witness: I have one further remark. I will concede to you gentlemen—and I speak for Saguenay Terminals and Irish Shipping—that we did not appear before the Turgeon royal commission. There was no submission made on this problem, and I am speaking of the practices of the railways who favour steamship lines to the detriment of other lines, because until the through bill of lading bombshell exploded in 1953 we never expected the railways would resort to such practices; they had not done so in the past. I think with all due respect to Chief Justice Turgeon, in spite of all his wisdom and foresight, he did not foresee that the railways would resort to such practices.

In concluding my remarks may I, Mr. Chairman, just address a word especially to the minister here? The minister will certainly recall that before he came into office the Canadian government permitted Canadian ship owners to transfer their ships registered in Canada to the British flag in order that the cost of operating those ships be lower so as to permit Canadian ship owners to compete with other British lines and other foreign lines. Well, I think the minister would be in a rather invidious position today, after his government having allowed the Canadian ship owners to compete with British lines, if he were to support the railways in their practices preventing Canadian shipping lines, like the Saguenay Terminals, from competing with the British lines on the UK trade. That is what the railways are actually doing in forcing shippers, indirectly if you wish, to ship on British conference vessels.

Mr. Hosking: Would it not be possible to have this committee meeting transferred to room 497 or some other smaller room where we could hear?

The Chairman: No. There is no suitable room.

Mr. Nicholson: Would you allow that request? I understand this is the only committee meeting at present.

The Chairman: There is no room, the secretary informs me, large enough to handle this number of people.

We will adjourn now until 2.30 to meet again in this room.

AFTERNOON SESSION

JUNE 29, 1955.
2.30 p.m.

The CHAIRMAN: Gentlemen, we have a quorum. Are there any members of the committee who would like to ask questions of Mr. Brisset?

Mr. Jean Brisset, Q.C., representing Irish Shipping Limited, recalled:

By Mr. Cameron (Nanaimo):

Q. Mr. Brisset, I gather that your clients are not members of the North Atlantic Shipping Conference?—A. No, they are not. I might state here that Irish Shipping applied to become a member of the Conference but were refused. I might say that in the United States a similar application had been made to a Conference. The law is such in the United States that the application could not be turned down. Saguenay Terminals are not members of the Conference because they prefer to be independent.

Q. You did not apply to become a member?—A. Saguenay Terminals?

Q. Yes.—A. No. The company, I am instructed, preferred to be independent.

Q. Would your company be eligible for membership if you applied?—A. I am not too familiar with the rules of the Conference but I understand that in order to be accepted there has to be if not a unanimous vote among all the members at least a majority vote.

Q. They have an agreed scale of charges among the membership I assume?—A. Yes. Their main purpose is to fix and maintain rates which would apply in respect to each of the commodities named in their tariff which by the way is not made public.

Q. Of what registry are the ships of the Saguenay Terminals?—A. Saguenay Terminals own twelve vessels which formerly were under Canadian flag, which under the arrangement that was made between the Canadian government and the British government have been transferred to the British flag under the terms and conditions set by the Canadian government to enable the ships to be operated at a lower cost and thereby to compete with other British lines and also other foreign lines. Now, Saguenay Terminals also operate a number of vessels under charters of various nationalities. You will appreciate, of course, and perhaps this is a comment of my own, that to buy or purchase a number of vessels, numbering perhaps 50 or 60 involves a substantial capital investment and I believe Saguenay Terminals since they purchased their six or seven vessels from the government after the war have gradually increased their own fleet over a period of nine to ten years.

Q. Earlier in your evidence you were telling us that your company would have been able to offer shippers a lower rate than the members of the North Atlantic Conference were offering. Could you tell us how that would be, how would your working conditions, safety regulations and so on compare with those of the members of the North Atlantic Shipping Conference?—A. That is a question, sir, which I am afraid I am not competent to answer. We have here a representative of the Saguenay Terminals Limited.

Hon. Mr. MARLER: Is that not outside of the scope of the agreed charges? Could we not take it as a fact that the non-Conference rates may be lower than the Conference rates and could we not come back to merely dealing with the effect on the scheme of agreed charges?

Mr. CAMERON (*Nanaimo*): The company says that the agreed charges with which we are dealing have been made to include a contract for the Atlantic as well.

Hon. Mr. MARLER: I do not think anybody has suggested that so far agreed charges have been made in this sense. As I understood the evidence, the fear which these two gentlemen have expressed is that such charges might be included in agreed charges if made pursuant to Bill 449.

By Mr. Cameron (Nanaimo):

Q. I understood Mr. Brisset to tell us that is what they actually had experienced.—A. I said that by using through rate mechanism the railways have by a subterfuge tried to obtain the same ends that they had before. In other words, forcing the shippers to ship through Conference lines. The way they have done that has been by publishing through rates which are only available to a shipper when he ships through the ocean lines that are named in that tariff and these ocean lines are all Conference lines.

Hon. Mr. MARLER: But that is not under the agreed charges?

The WITNESS: I will come to that. When the shipper wants to take advantage of the through rate he has to go to the office of one of the Conference steamship lines and there he is asked "Are you a member of the Conference; have you signed the Conference agreement?" If he says no, then the steamship line concerned or the Conference will tell him, "We cannot carry your goods at the through rate unless you sign the Conference agreement". So the shipper will sign the Conference agreement. I have here a sample of the agreement. Briefly it says that the shipper undertakes in the future to ship all his goods not only those that are covered by the through rates but all the other goods through conference vessels and at the rates set by the conference, and if he does not do that after signing this agreement he is subject to a penalty. I will read the clause:

> The merchant or shipper will be liable to the carrier for liquidated damages, equal to twice the amount of freight that would have been payable under this agreement in respect of the shipment constituting the violation.

In other words, a shipper to get his through rate now has to become a member or a signatory to the Conference agreement and ship all his goods through Conference lines and no longer through independent lines like Saguenay Terminals Limited. And your through rate mechanism can be made use of in the agreed charge device; that is what we fear.

By Hon. Mr. Marler:

Q. But Mr. Brisset it is not a fact that this has been done under the agreed charge legislation at present, isn't it?—A. It has been done—

Q. Can you not answer the question "yes" or "no"?—A. I understand by way of through rate tariffs.

Q. But it has not been done under agreed charges?—A. No.

By Mr. Cameron:

Q. May I ask a further question. Has there been to your knowledge shippers who have been denied agreed charge rates on shipments to an Atlantic port because they were not prepared to ship across the Atlantic in Conference vessels?—A. Yes. If they refused to sign the agreement they were not permitted to take advantage of the through rate.

Q. That is very definitely linked up with the agreed charges.

Hon. Mr. MARLER: I think the witness is misleading the committee quite unintentionally. What he is talking about are tariffs which are published by the railroads and it would seem, too, that there is a condition of these tariffs that the shipper must agree to certain conditions which Mr. Brisset has outlined. But those are not agreed charges under the Transport Act. They are operations of carriers under the Railway Act, and I take it from what Mr. Coyne said this morning and from what Mr. Brisset said this morning that the Irish Shipping Company and Saguenay Terminals have already been before the Board of Transport on these tariffs, but not on agreed charges because no agreed charges have been made pursuant to the Transport Act. With respect to the situation about which Mr. Brisset is complaining his complaint is I think that may be under this legislation which we are discussing something similar may take place. I think we should stay on the agreed charges. I think the witnesses have made their point abundantly clear and surely we should not have to go outside the question of agreed charges and cover the whole matter of shipping across the North Atlantic.

Mr. CAMERON: With all deference I am afraid I must disagree with you, Mr. Minister, because we should be very much interested in the final effects of any legislation which we are going to put into force and I want to know from if the Canadian National Railway and the Canadian Pacific Railway are going to use this legislation as part of an overall scheme or gathering into their own hands all the freight which is carried across the Atlantic.

Hon. Mr. MARLER: I think that is a perfectly proper question, Mr. Cameron.

Mr. CAMERON: That is why I have been pursuing this question with Mr. Brisset.

Another matter you brought up, Mr. Brisset, was the question of the permanence of the service. You told us that the railroads in th past in the case of one company reduced their charges until that company went out of business, and then raised them again. Could you give us specific information as to when this was done—immediately the shipping company ceased business or later—in other words when the rates were brought back to the former level. Is there conclusive evidence that that was the purpose of lowering the rates at that time?

The WITNESS: I do not have with me precise information as to the dates. I can only give an approximate answer to the question which has been asked. My information is that the rates were reviewed by the railways sometime after the Inter-Coastal Line had established its trade—not immediately after, but some time after—and that the rates were likely increased by the railways practically as soon as the line folded up.

Mr. CAMERON: Thank you.

By Mr. Hosking:

Q. I would like to ask Mr. Brisset a question too. Do you not think the object of this bill is to protect the interests of the taxpayers of the Dominion of Canada, the shipper who is exporting goods from Canada and the economy of the country as a whole? Is that not the idea of this bill?—A. I submit sir that that is the purpose behind this bill, and there should be safeguarding provisions which will prevent the purpose of the Act from being either disregarded or not attained because of the practices of the railways in favouring certain ocean transportation companies to the detriment of other and to the detriment in general of Canadian exporters.

Q. And the company which you represent is not a member of the North Atlantic Conference?—A. No, it is not.

Q. Would it be not a member because it imports bauxite to a limited company in the Saguenay and then would do a cut rate business in order to get cargoes for the ships on the way out? Would that be why the Atlantic Conference would not want it in?

Mr. GREEN: Where is the consumer's interest now?

Mr. HOSKING: I am just asking how it operates. I will have something more to say about the consumer's interest later on.

The WITNESS: The company does not want to become a member of the Conference, and want to be free to fix its own rates.

By Mr. Hosking:

Q. In any way it wants—to suit itself?—A. In that way it wants, to suit itself.

Q. The people of Canada have built railways across this country—in fact it was part of the agreement under which Canada formed and therefore their interests should be protected and if we are, let us suppose, moving wheat from Winnipeg, on a railway which has been built at the cost and expense to the taxpayers would it not be quite logical, as long as we protect the interests of the shipper by having two railways and two sets of ships tied in—to enable the railways to say "we will handle the wheat and give the shippers a better price and because we are interested in the welfare of Canada we want that to go on our ships across the ocean"? Is there anything wrong with that and should the company that brings bauxide in to their industry and which is not wanted as a member of the shipping Conference complain about that kind of thing?—A. I beg to differ from you on one thing in particular. When you speak of grain movements I presume you are speaking of grain hauled from Canada to Europe? The lines of the Conference which take part in the movement of grain are British lines and I do not quite follow you when you say that the railways should favour the British lines as against the Canadian lines.

Q. I mentioned wheat as an illustration. I am talking about the C.P.R. and the C.N.R. steamships which are owned by the railways and by the taxpayers of this country, and which therefore should go out to try to earn as much money as they can. Is it not right that they should use this additional service to help the taxpayer pay this bill, bearing in mind that there are always two of these companies willing to serve the shipper?

Mr. HAHN: Are there other vessels in this conference besides those of the C.P.R. and the C.N.R.

The WITNESS: Oh yes, there is a whole lot of British lines. There are about 20 others.

By Mr. Carrick:

Q. May I ask a couple of questions? The witness realizes that he has thrown into this committee a consideration here which we have only a very limited time to explore, and I am a little puzzled to know why he did not take it before the Turgeon Commission and make representations? That commission was appointed on May 20th, 1954 and I understand from Mr. Coyne that it was in 1952 that this discriminatory through bill matter first came up. If this is so would you not have had plenty of time to have prepared your brief and made submissions to the Turgeon Commission?—A. No sir. The through bills of lading privileges were cancelled effective December, 1953 at a time when Saguenay Terminals Limited had advertised that they would inaugurate a service to the United Kingdom commencing January 1st, 1954.

The time, as you can see, was well limited and we did not really suspect at that time that we would be faced with the difficulties which developed over a period of one and a half years—difficulties which we have been airing before the Board of Transport Commissioners.

Q. But that was in 1953 and it was in May 1954 that the commission was appointed. You must have had plenty of opportunity to consider the effects of what had been done and you knew about agreed charges because they had been in effect since 1938.—A. But never before had the railways resorted to such tactics and I might give you a historical explanation of that. Before the war in 1938, we had no Canadian foreign-going fleet. All shipments to the United Kingdom, or the majority of them, by Canadian exporters were made in British bottoms. Then the war came, and Canada started to build a fleet.

During the war fleets were requisitioned by the governments of each of the countries, and the rates were fixed, and there was no competition. But after the war, in 1945, there was a deficit of ship tonnage because of enemy action and there was more tonnage to be moved than there were ships to move it.

Therefore all the lines were carrying full cargoes and everybody was getting his own share. That went on for years. I think there was a bit of a slump beginning in 1950, when the tonnage which was destroyed during the war was gradually being replaced.

Then the Korean war came, and again freights went up. Everybody was getting business, and the ships were full. The pinch only started to be felt again in 1953, I would say.

Up to 1953 Saguenay terminals had no difficulty with the railways. They were getting their through Bill of Lading and there was never any discrimination practiced by way of through traffic rates or similar methods to prevent them from competing on equal terms with the other lines. It only started after that.

Q. Mr. Coyne said that your company refused to join the conference because you thought it was contrary to the Combines Investigation Act. Was any inquiry made for an investigation by the director under that Act into the activities of the conference?—A. I am sorry. Perhaps I might correct his statement. We did not take the stand that we would be violating the Combines Act in joining the conference. We said that we might be violating combines legislation if we agreed to combine together with all the other lines to fix the same rates.

Q. You mean by all the other lines, with those in the conference?—A. With those in the conference.

Q. Did you ever ask for an investigation into the activities of that organization in so far as they fixed rates?—A. It is a debatable question, but I would say that possibly the conference lines might not be breaching the combines legislation in fixing their rates so long as they did not try to get those outside the conference to charge the same rates. If you leave a group fixing rates on the one hand, i.e., the conference, and independents outside the conference with full liberty to quote whatever rates they wished, possibly the conference is not in breach of combines legislation because there is competition between independents and the conference. But if the railways, as they attempted, had brought us to charge the same rates as the conference, then there would have been no more competition. All would charge the same rates, conference and independents alike. That is what we did not want. We said that if we join the conference, then there will be no competition and we may be breaching the combines legislation. We do not want to do that. We want to remain independent and compete with the conference on the basis of the rates which we set. We want full liberty and freedom of fixing the rates that we want.

Q. In so far as Saguenay Terminals are concerned, does it not boil down to this; that you did not want to join the conference because you figured you could carry freight cheaper than the members of the conference, or that you were in an economic battle with the members of the conference and the railways?—A. That is true.

Q. What you are complaining about then is the consequences of being in that struggle?—A. No. We are in competition with the conference now. It is competition in the true sense; but what we object to is that the railways should try to stifle competition between us two. We see no reason why the railways should come into the picture and say: "We do not want competition between ocean transportation lines."

That is none of the business of the railways. They do not suffer anything. That does not affect their rates over the land movements. They can get just as much for a movement from Winnipeg to Halifax with competition existing in the ocean transportation field. That does not affect them at all as railways.

Q. If you joined the conference you would be in exactly the same position as the other steamship companies in the conference?—A. We would. We would have to charge the same rates. Shippers would have no opportunity of choosing lines outside the conference and they would therefore have to accept the rates which the conference set. The conference having complete control could set whatever rates it wanted. They could double their rates between today and tomorrow and the shippers would have no recourse.

By Mr. Hosking:

Q. Are not the railways in the reverse position to you? Your company has all the loads that it requires in bringing bauxite into the country, while on the outgoing journeys you are looking for trade, and anything you can get is free and gratis. The railway lines are in the reverse position. They are in a position to send out all their ships loaded under this legislation, which is the reverse of yours. Your ships come in loaded with your own business, while when going out they grab at anyting at any price, in order to get something. They are in a position where their outgoing trips would be loaded, but when coming back they have to grab at any port. Isn't that a good thing for the country? You have every cargo coming in loaded with bauxite, and you are willing to ship anything on the way out.—A. I do not follow your argument. If Canadian shippers can get a cheaper ocean transportation rate from Saguenay Terminals Limited, why should they not get it? Let me illustrate this by saying a word or two about the Canadian National Steamship Service to the West Indies. The Canadian National Services are in competition with other services and other foreign lines, apart from Saguenay Terminals Limited. Alcoa is one of them, and there are others.

Canadian National Railways have agreed to charge the same rate to Canadian shippers as all the other conference companies are charging them. Why should that be? Why should not Canadian National Steamships not compete as we, the Saguenay Terminals Limited, are competing with foreign lines? And they might possibly get more cargo if they offered lower rates than the conference lines.

By Mr. Cameron (Nanaimo):

Q. Do you carry inbound cargoes other than bauxite?—A. The company is bringing inbound cargoes from British Guiana, mostly bauxite. There are also other cargoes. I am not in a position to give you the percentage, but I could ask.

The CHAIRMAN: Mr. Nicholson.

Mr. CAMERON (*Nanaimo*): You ment on, Mr. Brisset, that your company wished to engage in the trade of carrying products from Canada to the United Kingdom. Do you at the same time wish to engage in carrying products from the United Kingdom to Canada?

The WITNESS: No sir, you see the—

The CHAIRMAN: Just say "yes" or "no", Mr. Brisset.

Mr. GREEN: Mr. Chairman, I object. The chairman of this committee has no right to take a stand like this, nor to tell a witness to say "yes" or "no".

The CHAIRMAN: He can say "yes" or "no".

Mr. GREEN: This witness has been questioned by various members of the committee and I hope to ask him some questions myself.

The CHAIRMAN: Mr. Nicholson was trying to ask a question on several occasions and other members were taking his place.

Mr. GREEN: The witness has been very patient and he has tried to answer these questions. I do not think it is fair for you to interrupt and say, "Now, you answer 'yes' or 'no' ".

The CHAIRMAN: You just want to talk, so go ahead.

Mr. GREEN: After all, we are here as a committee functioning in a judicial way and we cannot make progress if we are going to have interruptions of that kind from the chair.

The CHAIRMAN: I do not interrupt very much.

Mr. GREEN: Yes, I know, but you interrupted at the wrong time.

The WITNESS: Shall I answer the question?

Mr. NICHOLSON: Mr. Chairman, I should like to ask Mr. Brisset a few questions. I wonder if the Canadian National Railways operates any ships between the east coast and the United Kingdom or are all their ships operating in the West Indies service?

Hon. Mr. MARLER: They are operating in the West Indies service, Mr. Nicholson.

By Mr. Nicholson:

Q. That is the point I was trying to establish, that the C.N. have not for some years been operating to Europe. I could see that an argument could be made whereby the C.N. would give a special rate via rail and boat and ship to the West Indies, but it is difficult for me to understand why the C.N. railways in quoting a rate from Saskatoon to Liverpool should insist that a cargo of flour, for example, must be carried by a particular steamship across the Atlantic if the C.N. is not giving that service. Likewise, the C.P. might, I think, quote a special rate provided they were prepared to carry the goods from the point of origin to Liverpool or Southampton, but it is difficult for me to understand why the C.N. Railways are refusing to accept cargo at western points for delivery in the United Kingdom unless the whole voyage be carried on by transportation selected by the C.N. Railways. Are there specific cases where the C.N. have refused to carry cargo from western Canada on ships operated by your company?—A. The question was, are there instances where the C.N. Railways have refused to carry cargo—

Q. To give the minimum rate from Saskatoon to Liverpool, for example, unless the ocean carriage was on one of the Conference boats rather than on one of the non-Conference boats?—A. Oh yes, the C.N. have worked hand in hand with the C.P.R. all through.

Q. What about the C.P.R.; have they given permission for cargo to be carried on rail and carriage across the Atlantic on ships other than C.P. ships?—A. You mean on ships other than Conference?

Q. No, other ships belonging to the Conference but not belonging to the C.P. steamships.—A. Oh no, what the railways insist on is that the cargo be carried on Conference lines as distinct from independent lines, and Conference lines include C.P. steamships and many other British lines.

Q. What I am trying to get at is have we cargo originating in Canada carried across the Atlantic on Conference ships other than C.P.R. ships? I could understand why they could give a special rate if the cargo was going all the way by C.P. carrier rail and boat. As I understand it they are giving the reduced rate to cargo going on ships other than their own?—A. Absolutely, but not to Saguenay Terminals Limited.

Q. I wonder if you have appealed to the Minister of Justice asking that an investigation be conducted under the Combines Investigation Act. If what you say is correct, it would appear to me that this practice which you describe is definitely a restraint of trade and there should be an investigation by the Department of Justice. Have you appealed to the Department of Justice?—A. No sir. We have appealed to the Board of Transport Commissioners and have had redress there. The Board of Transport Commissioners have told the railways they have not the right to do that but we are afraid that we will not be able to do it if it is done under the guise of an agreed charge because then there is no direct appeal and there is no way of going to the Board of Transport Commissioners for the non-regulated carriers. That is the purpose of the amendment I submitted this morning, that we should preserve to the non-regulated carriers the right to go to the Board of Transport Commissioners as they have in the past when confronted with these practices.

Mr. HAHN: Could you not go to the courts in that case and prove that it is a restraint of trade?

The WITNESS: I am afraid that is a difficult question to answer, and I would not like to commit myself without making a thorough study of the combines legislation with which I am not too familiar.

Mr. NICHOLSON: The last paragraph in this report issued at Ottawa on April 28, 1955, reads: "Order will issue declaring that the Canadian Pacific Railway Company, the Canadian National Railway Company and other members of the Railway Association of Canada have failed to do what they were required to do by order number 84457". It is your opinion that if this bill is passed as it now stands there will not be any chance of redress and you would have no way to compel the Canadian National Railways to comply with this order?

The WITNESS: No, the railways will get around the order of the board by resorting to agreed charges in the manner I explained to you this morning.

The CHAIRMAN: Any other questions?

By Mr. Green:

Q. Mr. Brisset, under the present agreed charges law would it be possible for the railway to make an agreed charge which in effect covered not only the rate on the railway, but also the cost of shipping the goods by sea?—A. The question, if I understood it properly, is could the railways under the present Act make agreed charges covering both land movement and ocean movement, is that correct?

Mr. MURPHY (*Lambton West*): Both land and water.

Mr. GREEN: Yes.

The WITNESS: I do not think they could. I do not know that they have. They have always resorted to the through rate tariff mechanism. There is no mention in the agreed charge provision in the present Act of combined movement by land and ocean outside of the protected waters under the Transport Act.

By Mr. Green:

Q. Can they put in a restriction such as the one you mentioned to the effect that the goods must go by a certain ship?—A. That is what we are afraid of. They may not necessarily say by a certain ship but they will say by a certain line or by the Conference Lines.

Q. Suppose under the present law the railways did make an agreed charge which contained a provision that this freight had to go by one of the Conference ships, under what authority can you at the present time attack that agreed charge?—A. The agreed charge first of all, I must say, would have to be approved by the Board of Transport Commissioners.

Q. That is right—A. I think the Board of Transport Commissioners "proprio motu", looking at this type of agreed charge, could say, "Oh no, you have not the right to make such an agreed charge."

Q. I see. Then your fear is that under the new law—that is when this bill becomes law—the agreed charge with a proviso in it of that kind could go into effect and there would be no way of attacking it. Is that the essence of your complaint?—A. That is the essence of our complaint.

Q. And you are asking that a provision be made that you can have the right to attack an agreed charge which has a proviso of that kind?—A. Yes, and we say that the proper place to do it is in section 32 and that we should get away from the mechanism of section 33 because it would be so patent that the charge is illegal that there would be no reason first of all to go to the minister after waiting three months and then go to the board because the minister—and I perhaps am presuming in saying so—would have no other alternative than to grant the permission to go to the Board. His function will then only be a perfunctory one. I do not see that he would have any alternative but to grant the request. That is if it could be made, but it cannot be made by the carrier under section 33 as it now reads.

Q. I am very much interested in the possibility of a plan of this kind being used to stop shipping between the east coast and west coast. In what way do you think the railways could use the new agreed charge provisions to interfere with that intercoastal shipping?—A. They could do it by making it an agreed charge or agreed charges that would not be compensatory. And that would be simply for the purpose of putting the line out of business, the railways sustaining a loss during the period that would elapse between the coming into force of the agreed charges and the folding up of the intercoastal shipping service.

Q. Could you give us more details of that Clark Steamship Line and what happened to it. Was it the Clark Steamship Line?—A. No. Monsen-Clark Limited was the name of the firm that inaugurated the first intercoastal service after the war in 1950. That service I believe lasted for a year.

Q. Do you know the respective rates that were in effect in connection with the running of that line out of business?—A. I am afraid I am not briefed to answer the question and give statistics. I cannot do it. I can only speak of the incident in a general manner.

Q. Are there any officials here who could give you that information? —A. Could Mr. Baatz, who is treasurer of the Saguenay Terminals Limited, answer the question?

The CHAIRMAN: Yes.

Mr. WILLIAM BAATZ (*Treasurer, Saguenay Terminals Limited*): I am not sure whether we can say exactly the manner in which the Monsen-Clarke service folded up. The mechanism I would say is that I believe that agreed charges were introduced which could have had the effect of taking the business from Monsen-Clarke. The revenues Monsen-Clarke could get were just too

low to allow them to continue. After they folded up I would say it was the automatic operation of the agreed charge that brought the rates back to their normal level. When the agreed charge ran out there would be no reason to renew it.

Hon. Mr. MARLER: Are you talking about agreed charges or competitive rates?

Mr. BAATZ: Agreed charges I understand.

Mr. GREEN: That was done by agreed charges?

Mr. BAATZ: I believe that is right, in a number of commodities. I could not guarantee you that that was a uniform pattern. I would say it was a pattern prevailing for a sufficient period to so influence the business that it could have had a decisive effect.

Hon. Mr. MARLER: What year was that?

Mr. BAATZ: 1949.

The WITNESS: 1949-50.

Mr. BAATZ: Yes.

By Mr. Green:

Q. Is your company operating the service now between the two Canadian coasts?—A. Between the east and west coasts and also export cargoes to American ports on the west and east coasts.

Q. Could there be any arrangement in connection with this intercoastal trade similar to the arrangement to which you have referred which brings about the rate which includes the railway rate and the rate of shipping Conference? I take it that the Canadian-United Kingdom Eastbound Shipping Conference only covers business to Europe. Could the same plan be followed by the railways with respect to shipping through the Panama Canal from one coast to the other?—A. The way the railways have met the competition of the intercoastal service in the case of Monsen-Clarke was by negotiating agreed charges with the shippers for a land movement exclusively. For instance, from Vancouver to Halifax by rail. Now there is one manner in which, through agreed charges, the intercoastal service could be affected. I believe that the railways could go to a shipper in British Columbia that ships goods from British Columbia to say Halifax, and also ships goods from British Columbia to Manitoba, and say to the shipper, "We will give you an agreed rate on your movement of goods from British Columbia to Manitoba, a very beneficial rate, provided you cease shipping goods in the intercoastal service from Vancouver to Halifax. I would see nothing in the present legislation which would prevent the railways resorting to a tactic of this kind.

Q. They would give him the lower rate on the goods—A. That he has to ship by rail anyway.

Q. —provided he will agree to ship his other goods by rail rather than by Panama Canal?—A. Yes.

Q. That would be a term of the agreed charge?—A. Yes. It could be a combined agreement covering both traffics.

Q. Is it possible to make a term of the agreed charge a proviso that the freight must be carried by a member of the Conference?—A. You mean in so far as ocean shipment is concerned?

Q. Yes.—A. Yes, that is what we fear—that the railways will approach a shipper and say "we will give you such and such a rate for the land movement to the port of embarkation of the foreign-going ship provided you ship only via Conference lines."

Q. That, in effect, would be an agreed charge "with a tail"?—A. It would be an agreed charge made to the detriment of an unregulated carrier and very

likely also to the detriment of the shipper in the end because the combined cost of rail and ocean charges via Conference might be greater than the combined cost if the railways were willing to give the same concession in case of ocean shipments via Saguenay Terminals.

Q. In the case of Newfoundland—in going to Newfoundland—ships are not under the Transport Act? Is that right?—A. They are not under the Transport Act.

Q. They are in the same position as though they were going to the United Kingdom?—A. Exactly.

Q. The Board of Transport Commissioners have no control whatever over shipping rates?—A. That is correct.

The CHAIRMAN: Are there any further questions?

Mr. O'DONNELL: May I ask a question of the witness?

The CHAIRMAN: No, I don't think so.

By Mr. Murphy (Lambton West):

Q. I would like to ask the witness a question while he is still on his feet. What puzzles me ever since this started is this: if this bill becomes effective it would seem that the Transport Board would become less effective with respect to agreed charges. That is what you are alarmed about is it not?—A. Yes.

Q. Is that not the essence of what you are presenting to this committee?—A. Exactly.

Q. And for that reason you have drafted an amendment which would enable complainants like yourselves and others to approach the board when there is a complaint such as you have illustrated in your evidence today?—A. Yes sir, but the amendment I suggest is restrictive in the sense that it will only permit the non-regulated water carrier to apply to the board when he is affected detrimentally by an agreed charge which the railways in any event should not make, with a view of causing harm to the business of this unregulated carrier because the railways should have no right to interfere in the competition that must exist for the benefit of this country in ocean transportation rates.

Q. Do I understand, Mr. Brisset, that regardless of the rates which are set by the transport board that a transportation company such as a railway company can make a private agreement with the shipper provided he does his complete shipping?—A. They may make it a condition of the agreed charge that he will make his complete shipping via such and such an ocean line rather than through an independent line.

Q. That is what alarms you. And the same can be said of the same compensatory rates—is that a fact? The transport board really steps out of the picture if this comes into effect?—A. Exactly.

Mr. GREEN: The position under the new Act would be then that if the railways set out to put out of business let us say a shipping line between the east coast and the west coast that shipping company, whether it is yours or any other, has no right to appear before the Board of Transport Commissioners or do anything at all.

Hon. Mr. MARLER: It has not got any right either, has it?

The WITNESS: No. If the rate quoted by the railway is a competitive rate the ocean transportation line has no redress. Competition is of the essence.

Mr. GREEN: If it is an agreed charge under the present law and is not compensatory then the Board of Transport Commissioners can prohibit it, can they not, under the present Act?

Hon. Mr. MARLER: It must be compensatory under the present Act.

The WITNESS: It must be, the board having the duty of first approving the charge before it goes into effect must, I think, go into the question whether it is, first of all, a compensatory rate or charge.

Mr. GREEN: Now, under that law, that protection goes out of the window?

The WITNESS: It goes overboard.

Hon. Mr. MARLER: I do not think it is fair to say it goes out of the window, but it is limited, certainly, Mr. Chairman.

By Mr. Carrick:

Q. Mr. Brisset, you have made a serious allegation against Canadian National Railways that they have sought by agreed charges to put the Monsen-Clarke line out of business. Is that what you are saying to the committee?—A. We are saying that the railways have negotiated agreed charges the effect of which was to put the Monsen-Clarke line out of service on that particular route.

Q. Have you any evidence of that? Do you know anything about the financial structure of the Monsen-Clarke line?—A. No. I could not answer that question.

Q. Do you know anything about the proportion of business they did on the coastal trade as distinct from any other type of business? Was the coastal trade 100 per cent of their business?—A. I am not myself able to answer that question. I am informed that they were calling at intermediate ports on the way as part of their service.

Mr. Murphy (Lambton West):

Q. I am glad you asked that question Mr. Carrick, because I intended to touch on that point but I had forgotten about it. I think it is important, Mr. Chairman, that we should have a very brief review of what took place with respect to that particular case. As I recall it there was competition and because of the rates—you put it in your own words, Mr. Brisset. What happened to this Monsen-Clarke Company?—A. They folded up.

Q. They folded up?—A. I am sorry that I am not briefed on this particular matter. I did not expect questions on it.

Q. Was the company a large operator?—A. No, I do not think they were.

Q. Since they folded up have the rates changed? That is, prior to your coming into the picture?—A. The rates, I understand, went up as soon as the agreed charges expired.

Q. Can you put on the record what the increase was?—A. No, we are not able to give you this information because we have never had access to the records of this company. We know in a general way what happened to it, but we can only speak about it in generalities.

Q. When did your company come into the picture with respect to this inter-coastal shipping?—A. In 1951 or 1952. It was in July, 1951.

Q. You are still in competition?—A. We are still in competition, yes.

Q. How do your rates compare with the opposition?—A. I am afraid that I am not competent to speak on rates.

Q. I do not mean in exact detail. Are they much higher or lower than they were when the other line went out of business?—A. You mean a comparison of our present rates with the rates of the Monsen-Clarke Company when that line was operated.

Q. That is right.

Mr. W. D. FLAVELLE (*General Traffic Manager of Saguenay Terminals Limited*): The rates now are about the same as we were quoting then, or somewhere around that.

Mr. McIvor: Mr. Chairman, I am not a lawyer or an expert, but I was just wondering.

Mr. Green: You are a bit of a sea lawyer.

Mr. McIvor: I was just wondering how much ocean freight is carried by the Canadian National and the Canadian Pacific. If I were the Canadian Pacific or the Canadian National and I carried goods to the coast, I think I would like to carry it all the way if I could do it honestly. But other shipping companies should have their rights to compete for freight that is not carried by the railroads. I may be wrong, but that is the way I see it now. If a lot of the freight is carried otherwise than by the railroads, then the shipping companies should have the right to compete.

Mr. Hahn: A few moments ago the minister said that the agreed charge as it exists under the present Act must be compensatory. In that case there was quite a bit of legal competition between the Monsen-Clarke Line and the Canadian National Railways; and as I understand the objection to the agreed charge, it is that there should be no complaint on that basis. It was not a case of carrying traffic across the ocean. It is something quite different. I do not believe that the witness has indicated to my satisfaction at least that there was anything wrong in that particular instance.

Mr. Green: They used the agreed charge to put the line out of business.

Hon. Mr. Marler: They are still carrying their goods at a compensatory rate.

Mr. Hahn: There was no charge that the rate was not compensatory. That is the factor that we should be considering at this time, as to whether or not it was compensatory. If it was not compensatory, then certainly the charge would be well founded; otherwise I do not think we have any complaint in that respect.

Hon. Mr. Marler: I would not think so.

Mr. James: I seem to recall a point previously mentioned, that one of the lines put other people out of business. Is this not one of the lines which did as much as anything to put the Canadian National Steamship Lines almost out of business with respect to the British West Indies? Is that correct?

Hon. Mr. Marler: I think we can excuse Mr. Brisset from answering that question.

By Mr. James:

Q. I think it is a fact from the evidence that we have received earlier today, because of their non-compensatory rates that they charge in connection with material going to the British West Indies, while they come from there carrying bauxite. I think in some ways you can hardly blame the Canadian National Railways, the Canadian National Steamships, and the Canadian Pacific Railway for taking whatever action they find necessary to meet certain types of competition. It may be that with a contract to carry at an agreed charge the total output of produce of a company across the ocean to the United Kingdom you would probably expect them to give a special rate. They have a peculiar position with empty bottoms going back, because they would be getting all the business, or a good proportion of it.—A. I am not an expert in rate-making. I think the question should be answered by somebody who knows the business.

Q. They would have a reasonable assumption that they would be getting from 75 to 100 per cent of their business from here to the United Kingdom and that you would give them a lower rate than if you were only getting a proportion of it.—A. I consider that as a possibility; the law of supply and demand

would operate in fixing our rates and in that respect we differ from the conference lines, where the conference lines exact from the shipper that he ship all his goods on their vessels at rates which they fix and maitnain.

Q. Under the agreed charge rate that we have here, the Canadian National and the Canadian Pacific rates would not necessarily be fixed; they could be lower than the rate they represent to the public.—A. No. The Canadian Pacific Steamship company is a member of the conference. The Canadian Steamships having come to an agreement on the West Indies trade with the other conference lines, could not offer to the shipper, by the terms of that conference organization, any better terms than all the other lines are offering.

Q. Offering to the other shippers?—A. Offering to the other shippers. The purpose of the carriers being members of the organization is that they must charge the same rates to all the shippers. That is the way they maintain their rates, because of the pressure they are able to exercise and the fact that they are all bound together by the conference agreement.

Q. Getting back to the other idea I was working on, because of your special conditions, and because of the possibility of getting one hundred per cent of the trade, I think we can assume that you would give them an exceptionally low rate because of this special condition. Here we find that you are complaining because the Canadian National and the Canadian Pacific might possibly, or hypothetically, give a special rate because of their peculiar conditions with regard to rail transportation. But you have said there is no possibility of them giving a special rate in so far as their ocean going ships are concerned. Is that not almost a reverse position?—A. No. We may recognize the right of the conference lines to compete with us and to quote lower rates than we do, if they want to; but when we offer let us say a rate of $10 a ton on a commodity, and a foreign line offers a rate for the same commodity of $12 a ton, we challenge the right of the railways to say to the Canadian shipper: "You will ship at $12 a ton instead of $10 a ton, and if you do not ship at $12, we will not give you the several benefits such as the through bill of lading benefit, the through rate tariffs participation, or the agreed charge benefits." I am speaking of the shipper.

Mr. BYRNE: A shipper can determine that he will obtain a better deal by entering into the agreed charge. He must be aware that there are independent shippers who will take his produce from the seaboard to its destination. He will appraise that with the regular charge and he will still find by accepting the agreed charge he has saved a considerable amount. Is there anything unusual about that?

The WITNESS: He should still be free to choose the ocean carrier which gives him the best rate.

Mr. CARTER: Surely it is the overall rate he is concerned with—the total he has to pay. If the overall rate is better than that obtained by adding up two or three supplementary rates, surely that is what counts, and that is what the shipper is concerned with—getting the cheapest rate from the time goods are shipped to the point of delivery.

The WITNESS: That is the very point—he is not getting the cheapest rate. If they give him a rate of $8 if he ships by Conference and not by Saguenay —and if the railways, as railways, are prepared to carry this commodity at $8 a ton to seaboard—if he ships via Conference lines there is no reason why they should not carry it at $8 a ton also, if he wants to ship by Saguenay,—

Mr. CARTER: Where do you get the figure $8 a ton?

The WITNESS: I have used many figures today.

The CHAIRMAN: It is a hypothetical case.

The WITNESS: Yes, it is a hypothetical case.

Mr. CAVERS: It is all hypothetical.

The WITNESS: Yes, I am not giving you statistics here. If the member does not like my figure of $8 I can change it.

Mr. GREEN: Perhaps the minister could clear up that point at this time. Is it possible to have an agreed charge with a proviso in it that when the goods get to the seaboard they must be shipped by a certain line. Is it possible to negotiate an agreed charge of that kind?

Hon. Mr. MARLER: Personally, Mr. Chairman, I do not see that that seems to be contemplated in the Act, and my only inclination is to think that the purpose of the agreed charge is the transport of goods in Canada. I may be wrong, but that certainly would be my own first hand impression. In any event, I cannot help thinking it is perfectly clear what Mr. Coyne and Mr. Brisset wish. They wish to make certain that agreed charges will not contain clauses that discriminate against non-Conference lines and I think they have made perfectly clear to us the means by which they think they should be given protection. I cannot help thinking myself that we have been beating over the same ground practically without interruption since about 12 o'clock today.

Mr. HAMILTON (*Notre Dame de Grace*): Mr. Chairman, I might ask this question following along the lines of the minister's observation. It is his intent in the bill that these agreed charges would restrict transportation of goods in Canada. Could we not achieve that end more definitely and deal with this particular situation which seems to discomfort certain lines by inserting two words in section 32, paragraph 1, following the words "shipper". We could insert the two words "in Canada" so that a carrier under the Act would then read: "—a carrier may make such charges for the transportation of goods of a shipper in Canada as are agreed between the carrier and the shipper." That would immediately remove any possibility of the situation arising which has been pointed out to us might arise.

Hon. Mr. MARLER: Mr. Chairman, I would like to say that it is a point to which consideration will be given and I am not prepared to make a definite statement on that point at the moment. I would like to wait until I hear all the evidence given before the committee before I formulate any suggestion to the committee as to how it should be done.

Mr. HANSELL: I agree with the minister in his previous statement and I think the matter has been pretty well covered. I do not think, however, that the statements made by Mr. Coyne and Mr. Brisset perhaps go quite as far as the minister indicated. While, of course, they do not agree that any agreed charges contracts should involve trans-ocean shipments at the same time their proposed amendment—

Mr. NICHOLSON: Mr. Chairman, I wonder if we could have one speaker at a time. It is difficult to hear when four or five members are speaking. Could we have a little order in the committee.

Mr. CARRICK: Mr. Hansell has the floor.

The CHAIRMAN: Order, gentlemen. Please proceed, Mr. Hansell.

Mr. HANSELL: —the proposed amendment simply asks that these shipping companies have a right to appeal to the transport board if they think there is discrimination and then it is left to the transport board who may—it does not say "shall"—disallow the agreed charge. I think it goes that far.

The WITNESS: Yes, we are perfectly happy to submit our case and make our case before the board. We have had redress in the past before the board and we are quite satisfied to go back to the board if we have to complain about similar practices as the ones we have complained of in the past.

Mr. CAVERS: Could we hear from Mr. MacTavish now, please?

The CHAIRMAN: Thank you very much, Mr. Brisset.

Mr. D. K. MacTavish, Q.C., representing Canada Steamship Lines, called:

The WITNESS: Mr. Chairman, Mr. Minister and honourable gentlemen, I hope I can make my remarks very brief and they are these: on behalf of Canada Steamship Lines we would ask the committee when it comes to consider subsection 5 of section 32 to give consideration to an amendment which in our view will bring that section in exact accord with the recommendation of the royal commission. This, Mr. Chairman and gentlemen, is not a quibble about words, and I am just going to talk about two words—but it has a substantial importance from my client's point of view having regard to the fact that the section in our submission as it appears in the report is designed to carry out and implement an agreement reached between Canada Steamship Lines and the railways at the time this matter came before the royal commission presided over by Chief Justice Turgeon.

Mr. HOSKING: Would it be possible to proceed with the bill and come to the proper clause with which this deals before Mr. MacTavish makes a point of this?

Mr. CAVERS: I think we should hear the representation first.

Mr. CHAIRMAN: Yes, I think we should hear the witness.

The WITNESS: I hope I can make it so brief that it will be apparent before it comes before you in the form of a section.

Mr. CAMERON (*Nanaimo*): Could we have the witness identify whom he is speaking for?

Mr. CAVERS: It was announced earlier that Mr. MacTavish is here representing Canada Steamship Lines.

Mr. CAMERON (*Nanaimo*): I am sorry, I did not hear that.

The WITNESS: The portion of the Act in which we are interested is the first line and it reads:

> Where an agreement for an agreed charge has been made by a carrier by land, by water, etc.

The words to which we take exception there are the words "has been" and our request is that the committee give consideration to inserting the word "is" instead of the words "has been" and by doing that it will accord exactly with the wording in appendix "A" to the royal commission report which suggests this subsection.

If I may, Mr. Chairman, I would like to refer you back to page 36 of the report where the commissioner indicates what lead up to the wording in this section. Here again, for purposes of brevity, I will only read the last two sentences of the paragraph marked three on page 36. Chief Justice Turgeon had referred to a previous contention by the Canada Steamship Lines and the railway about this type of thing and then went on to say: "the company"—in this case the Canada Steamship Lines—"protested to the Royal Commission on Transportation that the unrestricted use of the agreed charge by the railways would force water carriers to the wall. This opposition has now been withdrawn and it has been agreed between the company and the railways that provision is to be made to allow water carriers to become parties to any agreed charge upon certain conditions. I think this arrangement should be made part of agreed charge legislation and I will set it out in full further on." May I read the first line which conforms generally with the first line in the Act? This is subsection 4 of the report:

> Where an agreement for an agreed charge is made by one or more carriers by rail and by water, etc.

There is another minor variation from the appendix in the section that is before this honourable committee and that which is in the suggested section in the report. The report goes on to say that in this case Canada Steamship Lines should participate in such agreed charges. We think those words might well be added in the middle of line 10 in the section for further clarification, but I do not press that as strenuously as I press the desirability of inserting the word "is" instead of the words "has been".

Now, if I may just add one word to indicate the nature of the agreement to which I refer, this matter, as I say, came up at the hearing and Mr. Hazen Hansard, counsel for Canada Steamship Lines, was asked by the commissioner in respect of this matter we are discussing here now the following question?

> This is something you all agree upon?

Mr. Hansard replied in a paragraph all of which I will not read:

> I think also the statement of Mr. O'Donnell that the rails had no opposition to our being given an opportunity to participate in these agreed charges where we were competing.

That is carried further in the transcript of the Royal Commission on Agreed Charges at page 112 where Mr. Hansard said in answer to a question from the commissioner:

> Yes, I think I am correct in saying that that would go by the board and if there is no veto provision that violates the water lines even though they compete they have no opportunity to be heard and are faced with a fait accompli when they discover an agreed charge has been made which takes away a substantial block of traffic and there is nothing they can do about it.

I suggest, Mr. Chairman, that obviously the agreement to which the commissioner referred is an agreement made by counsel, Mr. Hansard for Canada Steamship Lines and Mr. O'Brien and Mr. O'Donnell for the railways concerned, that Canada Steamship Lines should have that opportunity of consultation before an agreed charge is made. If the ordinary connotation is given to the words "has been" then the agreement as Mr. Hansard says in the words I have just quoted, has become a fait accompli—

Hon. Mr. MARLER: There is no intention on the part of the government in using the words "has been" to give a different significance than the word "is" and we would be perfectly prepared to accept an amendment to change the words "has been" to "is" to satisfy the point Mr. MacTavish just raised.

By Mr. Cavers:

Q. In line ten of subsection 5 it is your suggestion that after the word "charge", that is water carrier, a carrier by land, is entitled to become a party and to participate in. Are those the words you suggest?—A. Yes.

Q. And to establish tariffs?—A. Yes. I suggest that as a matter of integrity having regard to those words being used in appendix "A" the context has been changed a little bit but no change in the meaning. My suggestion would be if the words "and to participate in such agreed charge" were added in the middle of the line after the word "charge" then I would think that the section exactly reflected appendix "A" and as I understand from what was said earlier this morning both railways are prepared to stand on the report. I believe that would make for clarity.

By Mr. Green:

Q. When the minister interjected, you were just starting to say something about the steamship company wanting to be in a position to sit in on the negotiation of an agreed charge. Could you explain that further?—A. I think the steamship company, sir, is entitled to be protected against being faced with a fait accompli before they can do anything about becoming participants.

Mr. CARRICK: Your company is legally a carrier which comes under the Act anyway?

The WITNESS: Yes.

By Mr. Green:

Q. As I understand it the other participants in the agreed charge are under certain circumstances parties who have not been in the negotiations at all but who have the right to take advantage of the agreement which is finally signed. When I read this clause 5 I thought that was the right you were being given, that after an agreed charge is made under certain circumstances such as you outlined in clause 5 you would become a party to the agreement but you say that you want to be able to sit in on the negotiations of the agreed charge which is a different thing. Just what do you have in mind?—A. I am satisfied, Mr. Green, that the section as set out in the appendix is designed to implement the agreement to which I have referred which was raised by counsel at the hearing. I think it is best explained by Mr. Hansard when he says they are faced with a fait accompli when they discover an agreed charge has been made. It was the inclusion of the words "has been" in their connotation of the past tense which gravely concerned Canada Steamship Lines when the draft bill came in.

Q. But even if you substitute the word "is" for the words "has been" would that give you the right to sit in on the negotiations before agreement is reached?

Mr. HAHN: Would it not require the words "should participate in"?

The WITNESS: For further clarity—this connotation is there in the light of what was said earlier by Mr. Justice Turgeon. It would seem to mean "is being made". It seems that that is the connotation of the word.

By Mr. Green:

Q. Do the railway companies agree with your submission?—A. I do not presume to speak for the railway companies. I understand from my conversation with my learned friends that they are satisfied, and I think they have said publicly here, with the text as it appears in Appendix A, but they can speak for themselves.

Mr. O'BRIEN: We agree with the draft submission. There are two or three words in it on which Mr. MacTavish did not comment in the draft of the bill which mentioned that it should be on the basis of established differentials. When you are making an agreed charge you mean them to agree on a differential for that rate and that rate at the time. We are all in agreement that the text prepared by the Royal Commission is satisfactory.

Hon. Mr. MARLER: I think I would like to look at the two clauses and see what the differences appear to be. I think our intention is to implement the report and not to change the recommendations.

The CHAIRMAN: Thank you Mr. MacTavish. Mr. Sheppard, I understand, is representing the province of Manitoba.

Mr. C. D. Sheppard, Q.C., Counsel for the Manitoba Government, called.

The WITNESS: Mr. Chairman, Mr. Minister and Hon. Members, I have with me Mr. Stechishin of the Manitoba Transportation Commission. This is a fact finding body jointly sponsored by the Government of Manitoba, the city of Winnipeg Chamber of Commerce and the Manitoba Federation of Agriculture in cooperation. I would like to say that the Government of Manitoba appreciates the opportunity of being heard, Mr. Chairman, and I will undertake that my representations on behalf of the government will be brief.

I do not believe that any committee of the House of Commons needs to be told that the West is very transportation conscious, as are the Maritimes, and it is only natural that we should be. We are dependent on rail transportation and we like to think that they are dependent on us. We are equally anxious to see a healthy trucking industry. We want the benefit of carrier competition, in other words.

I think my next comment would be to express agreement in principle on behalf of the Manitoba Government with Bill 449. It may be of interest to the committee to note that the Manitoba Government was represented throughout the hearings of the Turgeon Royal Commission on Agreed Charges. We made representations to that commission, some of which were implemented and some of which were not. We are not here today to re-argue our case. We have an extremely high regard for the Royal Commissioner and we are prepared to accept his report as a proper one after a very full and complete investigation.

There are however, Mr. Chairman, two points to which I have been instructed to invite the attention of this committee. The first I can deal with very briefly because it has been dealt with exhaustively by both the railways and the truckers. It has to do with whether or not the trucking industry should have a right to complain, and if so what right, under section 33. I think it may be of interest to the committee to note that Manitoba and British Columbia drafted at the request of Mr. Justice Turgeon a joint suggested amendment to section 32 of the Transport Act, and also a suggested amendment to section 33. I may say that the right of truckers to be heard was very fully debated. I myself spent quite an uncomfortable half an hour trying to justify the amendment to the Royal Commissioner. I would only add that I feel the amendment suggested by the Trucking Association may be broader than is called for, but I feel that since the railways have in my own province the right to speak—as my friend Mr. O'Donnell mentioned yesterday—before the local motor Carrier Board, on the question, it is true, not of rates but on the question of public convenience and necessity—that it does seem a little unfair for the trucking industry to be denied any voice in this matter. I do not believe I need go further in regard to commenting on section 33.

My only other comment, Mr. Chairman, and gentlemen, has to do with the wording of subsection 1 of section 32 and I would like if I may to read the words:

> Nothwithstanding anything in the Railway Act or in this Act a carrier may make such charges for the transport of goods of a shipper as are agreed between the carrier and the shipper.

And I would invite the attention of the committee to the opening phrase "notwithstanding anything in the Railway Act." My understanding, Mr. Chairman is that one of the main reasons for enacting the first Railway Act in 1904 was to ensure that there would be no unjust discrimination or undue preference given. I would refer briefly to section 319 of the Railway Act, which states in part:

> (3) No company shall
>
> (*a*) make or give any undue or unreasonable preference or advantage to, or in favour of any particular person or company; or any particular description of traffic, in any respect whatsoever.

And section (c) states:

(c) subject any particular person, or company, or any particular description of traffic, to any undue, or unreasonable prejudice or disadvantage, in any respect whatsoever.

I am not suggesting Mr. Chairman that this section 32 of the Transport Act must necessarily be made subject to section 319 (c) of the Railway Act but I would simply draw to the attention of the committee the fact that the phrase "notwithstanding anything in the Railway Act" precludes the normal protection that the shipper has from operating in the manner now open to him under the Railway Act by section 319 (c).

Looking now at the second line of subsection 1 of clause 32 it now reads:

. . . a carrier may make such charges . . .

It is a wide open privilege being granted to the railways and as I stated we are not opposed to the extension of the freedom of the railways. It is true that this wording is the same as the present clause 32(1) but if Hon. Members of the committee would look at the present section 32(2) which is on the opposite page they will see that it requires the approval of the board, and the board will not approve of it until it feels that it could not be secured by means of a special or competitive tariff.

The point I wish to make, and then I will be through, is that the wording of section 32(1) in the proposed bill, and the wording of sub-section 2 in the old Act leaves it open to the carriers to negotiate an agreed charge in instances where competition does not exist at all.

I am not imputing any motive to the management of the railways for whom I have the highest regard; but it would seem sensible to me if three words were added on the second line, so that it would read:

Notwithstanding anything in the Railway Act or in this Act a carrier may, to meet competition, make such charges for the transportation of goods of the shipper as are agreed between the carrier and the shipper.

I am not suggesting that that is the best wording, but I think it gives expression to the thought which I have been instructed to express to this committee.

The CHAIRMAN: Thank you, Mr. Shepard.

Mr. CAVERS: Has anyone else any representations to place before the committee?

By Mr. Green:

Q. Have you any suggested amendment with regard to the first line of clause 32(1)?—A. No.

Q. It is pointed out there that "notwithstanding any thing in the Railway Act" would take away the protection contained in section 319 (3) of the Railway Act. Do you have any proposed amendment to overcome that weakness? —A. No. My instructions are that we would not object to the present wording of sub-section (1) if the three words "to meet competition" were inserted, because once that has been imposed as a condition on the making of an agreed charge, there are other sections than 32 which cover the unjust discrimination aspect of the matter. Those sub-sections are sub-section (10); and there is another.

Q. You mean sub-section (10) of section 32?—A. Yes sir.

Mr. HAHN: You feel that "to meet competition" provides a limitation in itself sufficient to protect everyone?

The WITNESS: That would be my feeling. I always recognize that anyone who studies the transportation question in this country must recognize the necessity of the railways being left free to meet competition. But we want to ensure that it is not done in a discriminatory way.

By Mr. Carrick:

Q. My understanding of the agreed charge is that the shipper gets a cheaper rate than under the ordinary competitive rates. If a railway company wants to grant it to a shipper, and if the shipper wants to take it, even if there is no competition, then why shouldn't they have the right to make an agreed charge?—A. We consider that it is not proper rate making, and the railways admit that they would not grant an agreed charge except in the case of competition.

Q. Then why put it in?—A. It is the same type of suggestion that I heard Mr. Green make to the committee yesterday about the compensatory factor. Perhaps it is an insult to suggest to the railway management that they would make an agreed charge without competition. But we in Manitoba would feel much more comfortable if those three words were put in there.

Q. If they are not going to do it anyway, then nobody is hurt. So why not leave them free to benefit the shipper?—A. It would benefit the shipper who gets that rate, but there are other shippers who would have to cover the overall revenue requirement of the railways, and their rates would have to go up.

By Mr. Green:

Q. Your objection is that it would undermine the whole system of railway rate making in Canada.—A. I do not think it is right to say that we voice an objection to the principle of this bill. My instructions are to support the bill. The amendment I suggest in sub-section (1), I firmly believe, does nothing more than to give expression to what has already been stated by the railways before this committee.

Q. Perhaps we should obtain the opinion of the representatives of the railways concerning the suggestion that these three words be written into clause 32.

Mr. CAVERS: The minister might like to say a few words; at any rate it is time that he should deal with it.

Hon. Mr. MARLER: Mr. Chairman, I have listened with a great deal of care to the representations which have been made to the committee and I would like to say first of all that I listened with a great deal of interest yesterday while representatives of the trucking associations set forth their views with regard to this bill.

Listening to the brief as it was read yesterday I could not help thinking that the views that the trucking industry have put forward in their brief are in fact, as I think was said last night by Mr. O'Donnell, the same as were put forward in 1937, and the same that were put forward in 1938.

I had occasion just the other day to read some of the evidence given before the standing committee of the House when this Transport Act was introduced in 1938, and I noticed exactly the same pessimistic outlook on the part of the truckers, as to what would be the effect of agreed charges.

In 1938 it was represented that this would be the ruination of the highway transport industry. And again, twelve years later, in 1950 the royal commission presided over by Mr. Justice Turgeon said that similar representations were made again, that the agreed charge, if it was authorized, was going to ruin the trucking industry.

Late in 1954 when representations were made to the royal commission on agreed charges, again the truckers represented that if any change was made in the system of agreed charges it would be the ruination for the trucking industry.

Well, Mr. Chairman, perhaps not being in the trucking industry, I may be freer to take a more objective view of it. But I cannot convince myself that this pessimism so often repeated and so often expressed has a solid foundation in fact. I cannot help thinking that we are all agreed that the trucking industry fills a vital need in the economy of virtually all countries, and certainly so far as Canada is concerned.

It seems to me that we all can think of countless examples where the truck can render more useful and more efficient service than any other means of transportation that is at present available, and, Mr. Chairman, I find from the brief of the Canadian Trucking Association itself on page 36 that the associations of American railroads sent out a questionnaire to shippers asking them to state the primary reason for their use of the common contract with private trucking services. It says:

> The questionnaire dealt with the movement of merchandise and the replies were given separately for inbound and outbound traffic. A complete report of the results of this questionnaire is attached as Appendix D of this submission.

Then we come to the significant clauses of this report, as follows:

> On the inbound traffic, shorter transit time was given by 78 per cent of the shippers as their reason for using trucks. Lower costs were cited by 12 per cent.

I might add "by only 12 per cent". In other words, if I may interpret this statement, it was not a matter of rates that persuaded the mass of those people to use the trucks. It was because of the shorter transit time. In only 12 per cent of the cases was the lower cost a factor. I am not suggesting for an instant that cost is not a factor, but I think convenience is the prime factor.

I am suggesting that these findings and this citation from the brief of the Truckers Association demonstrate what I said a moment ago that there is a place in the transport industry for trucking and that nothing that the railways can do by way of agreed charges, competitive rates or any other device would change the habits of shippers because the truck can do something that only the truck can do and that the railway cannot do.

If I may go on with the brief, "a variety of other reasons, particularly less handling, less marking and packing, and less loss and damage, were cited by 10 per cent of the shippers". It seems to me that in this paragraph of the brief you have a most convincing argument as to why the trucking industry is not going to disappear regardless of whether or not there are agreed charges and regardless of the procedure that the railways or other carriers may have to follow in order to bring an agreed charge into effect.

Now, Mr. Chairman, I think that we in this committee can take a very objective view of the situation. The fact that I have responsibilities in regard to the administration of the Transport Act and the Railway Act does not prevent me from thinking objectively that here are two industries which are complementary—competitive, yes, for a certain amount of business, but complementary—and it seems to me that it is perfectly obvious that the two must

go on together. In other words, if I turn to page 40 of the brief of the Canadian Trucking Association I find the following: "In the heat of controversy it should be remembered that over a considerable range of their operations, rail and road transport complement each other rather than compete, both individually performing those functions for which they are best suited technically." I am not quoting the rest of the paragraph, but I do not think I am deforming the sense of it by reading only that part.

What are we proposing to do by this legislation, Mr. Chairman? Essentially I think—if I might put it in one phrase—we are trying to simplify the procedure to be followed in order to bring an agreed charge into effect so that the railways may be on a more nearly equal basis of competition with highway transport. I would like to emphasize, just as was emphasized when agreed charges were first introduced, that they are and always have been considered to be an instrument of competition between railways and truckers. They are in England, and they are in Canada, and I think that the committee should be impressed by that principle because I think that principle explains a number of the provisions to be found in the existing legislation which are in turn reproduced in the bill which we are now considering.

How does one go about bringing an agreed charge into effect? First of all there must be an agreement between the railways and a shipper or one or more shippers. Now, we all know that the shipper is only going to sign the agreement for an agreed charge if it is satisfactory to him. It may be that not every single provision is satisfactory but on an overall evaluation of it it must be satisfactory, as otherwise he would not sign it. I am not persuaded that those who have suggested that people must go into agreed charges because someone else has signed them are really putting before the committee a fair view of the situation. No one is bound to do it. He can use whatever form of transportation best suits him in getting the product he produces into the market into which he sells. Well, Mr. Chairman, the railways, let us say, and a shipper agree on the charges for the transport of the shipper's goods. An example to which I referred in the House of Commons the other day was an agreed charge for the transport of canned goods and pickles. A large number of shippers started in with a number of railways, not just the Canadian National or the Canadian Pacific,—and if one examines the agreed charge, one will find that it is for the transport of 85 per cent of the shippers' goods moving from a group of stations in eastern Canada to another group of stations in Alberta or British Columbia and there are tariffs for the various movements. If anyone would like to see the agreed charge I will be glad to give it to him afterwards. Essentially, however, here was an agreement made by both parties setting forth that 85 per cent of the business was to move under this agreement leaving the shippers entirely free with regard to the business they were shipping in eastern Canada and free also as to 15 per cent of the business they might be shipping into what I might call western Canada although I mean specifically Alberta and British Columbia.

Well, Mr. Chairman, we propose that if a new agreement should be made under Bill 449 it will not be necessary as it is at present to submit that charge to the Board of Transport Commissioners. Why has Judge Turgeon recommended a change? He has recommended a change because as it is now it is not an effective instrument of competition. Let me ask the members of the committee to put themselves in this position. Suppose you were shipping goods and you were being asked to sign an agreed charge and the terms were most satisfactory to you. You would then ask yourselves how long it would be before it comes into effect? What am I going to have to do? How long will it be before the Board of Transport Commissioners? Mr. O'Donnell last night cited a case where an agreed charge was made at the beginning of April and it was not until the end of September before the agreed charge came into

effect. Now, I cannot help thinking that if I was a shipper I would say, "I have enough trouble; please spare me the necessity of having to spend another four or five months dealing with an agreed charge for the transport of my business," and it seems to me that it is only fair to the railways to put them in the position to conclude an agreement as speedily and in the same way as their competitors can do—as a matter of fact, I should not say "In the same way" but in a way that will enable them to meet the kind of competition that a trucker can offer—where the whole thing can be settled in a few minutes or over the telephone and perhaps with a handshake and that is all there is to it.

I want to emphasize that the agreed charges must be filed with the board. They are not secret as they may be in England. They become public by filing with the board and notice must be given of them, and they do not take effect until 20 days after they have been filed with the board, so that other shippers will be in the same position as those who sign the agreed charge and can either by consent of the railways become a party to the agreement, or if the railways refuse to allow them to become a party they will have the right to apply to the board in order that the board may fix a charge similar to that prevailing under the agreed charge. And if the hon. members will look at subsection 10 they will find the whole procedure outlined there. They will see that a shipper who has been discriminated against because he has been left out of the agreed charge may go before the board and ask the board to give him, in spite of the attitude of the railways, a charge similar to that provided for in the agreed charge. In other words, subsection 10 is not new and it gives every shipper the right to fair treatment. The railways cannot discriminate against him by saying, "We do not like doing business with you; we do not want to do business with you." So long as a shipper is in the same conditions as those who benefit from the agreed charge or who are parties to it, he is entitled either to become a party with the consent of the railway or in spite of the railway's attitude under an order of the board.

Now, there is another new provision in Bill No. 449. At the present time agreed charges may be made for some considerable length of time. The board has the right to approve them either with or without a restriction of time, but at the same time it might be that parties might make an agreement for three years. Under Bill 449 no matter what may be the term of the agreement at the end of one year the shipper or the carrier may terminate it on giving 90 days' notice. In other words, there is no long term situation that can be created by the shipper and the carrier that will prejudice either one of them. But I do want to emphasize the fact that the agreed charge having been made and having become effective the shipper and carrier know where they stand for twelve months. I think it is very valuable, as Mr. O'Donnell stated last night, to a shipper to know that for twelve succeeding months at least what his shipping costs are going to be into his own particular market.

Now, Mr. Chairman, there is a provision in the bill for complaints. Judge Turgeon—I think the reasons are obvious from reading his report—has suggested that after an agreed charge has been in effect for three months any carrier or any body representative of carriers or any association or any body representative of shippers shall have the right of complaint; and the right of complaint is to complain to the Minister of Transport that the business of the carrier or the business of the shipper is unjustly discriminated against or that it is placed at an unfair disadvantage; and the minister may, if he is satisfied that in the public interest—formerly it said in the national interest—if he is satisfied it is in the public interest he may refer the complaint to the Board of Transport Commissioners for investigation and the board in its investigation may order cancellation or may vary the charge. When you

examine clause 33 you will find there is included a provision that when the board examines an agreed charge it is to have regard to all considerations that appear to it to be relevant and in particular to the effect that the making of the agreed charge has had or is likely to have on the net revenue of the carriers who are parties to it. Here is fair warning to the carriers that the agreed charge must be made on a basis which is compensatory. They know that when a charge is referred to the board for investigation if it is found to be non-compensatory they can reasonably anticipate that the board will cancel it.

I do not believe that the railways have any interest in making agreed charges which are not compensatory. After all, the purpose of the agreed charge is to make money for the railway, not merely to add to the expenditures and revenues. I do not believe it is realistic to assume that for any petty temporary advantage that might be gained over some other form of transport the railways are going to introduce agreed charges for the purpose of putting somebody else out of business. I think that if that is what was in their minds the competitive rates would be a much more effective weapon for doing so because the competitive rate has a short term and there is no commitment to maintain it for a given term the way there is in the case of the agreed charge. And if there were such sinister designs on the part of the railways they would not need to resort to agreed charges, they could make use of competitive rates wherever competition exists.

Obviously the competitive rates do not exist where there is no competition, but where there is competition they are a weapon which the railways can use to stifle competition against them.

Mr. Chairman, I do not want the members of this committee to believe I have come here with my mind firmly made up to listen patiently to all representations which are made to this committee but to refuse to consider any amendments whatever to the legislation which is before us.

The Canadian Truckers Association, in particular, have urged that they should have the right to appear, and if you like, to complain against agreed charges. I am not going to deal with the exact text of the amendment which they propose as you all have had an opportunity of reading it. But the point I would like to make is that in the first place the truckers are not, in the usually accepted sense of the word, regulated in the same fashion as the railways. My understanding is in a general sense—and I do not want to be taken too literally—that this applies in every one of the individual provinces of Canada. I do not think that their rates are more than ceilings much like many of the railroad rates, that the rate to be charged must not go beyond a certain unit or beyond the rate fixed and filed with the regulatory body where a regulatory body exists. But I was somewhat interested in the fact that although the brief endeavours to suggest that regulation has gone quite a long way I noticed when the brief was read yesterday this phrase is in it which I think is rather indicative of a situation which exists in the trucking industry. Here is what appears on page 21:

> Some of the truck operators on the Montreal-Toronto run, according to our investigation had themselves been cutting below the railroad rates prior to the May, 1954, rail rate cuts.

Of course we know perfectly well cuts are reductions in tariffs. I can speak as far as the province of Quebec is concerned; they have not asked the government to proclaim a Motor Vehicle Transport Act in Quebec, so there is no regulation in Quebec over inter-provincial highway transport and there can be no regulation of rates on the Montreal-Toronto run. We do not com-

plain of that. I am not asking that the trucking industry be regulated. All I am saying is that it is not an industry where rates are regulated in any way comparable to those of the carriers governed by the Railway Act or by the terms of the Transport Act.

I would also like to point out that, I think wisely, and I think also to the credit of the Canadian Trucking Associations, they do not attack the principle of agreed charges. I see, for example, on page 61 of their brief:

> We have already stated in this submission that we are not here to attack the principle of the legislation which has been recommended by the Royal Commission on Agreed Charges.

I do not want anybody to think that that statement by the Canadian Truckers Association is an endorsement of every clause in the bill because I do not so interpret it, but I do interpret it to mean that the truckers are not opposing the agreed charge legislation although they have some suggestions so far as charges which they think should be made are concerned.

Now they say:

> We would like to have a right to complain.

In effect they ask the committee to so modify Bill 449 that they will be in the same position as one of the regulated carriers or as an association or body representative of the shippers of a locality who may complain to the Minister of Transport in respect of an individual agreed charge. I find it very difficult to accept the principle that the truckers are putting forward. What they want in effect is the right to object to the charges which their competitors propose to make.

On the other hand, the railways have no right, nor will they have an opportunity of objecting to the charges which the truckers may make with respect to the shippers. I do not make any complaint about that situation at all. I think it would be probably a very unfortunate thing for those who wished to make use of truck transport if the railways could come in and say to the truckers: you are charging too low a rate. I think that those who make use of trucks should be able to make use of them on a competitive basis until some regulation is introduced by competent authority to deal with those points. I say I do not believe that the railways should object to the negotiations which may be entered into by truckers and shippers and for the same reason I do not believe that the truckers should object to agreed charges concluded between the railways and shippers on the other hand. I naturally have not been unaware of the fact that the truckers have for long sought to have the right to appear and express their views with regard to agreed charges. They have sought to appear before the Board of Transport under the present legislation, but the board, not I, has said "you are not a carrier within the meaning of the Transport Act and you have no place before us" just in the same way as it might have said this morning to the Irish Shipping Company and Saguenay Terminals "you are not regulated carriers affected by the terms of the Transport Act and you have no place to complain here with regard to agreed charges."

But, Mr. Chairman, I said a moment ago that I have got an open mind on this question of the rights of the truckers and I think I can say quite candidly to the committee that the government has not in mind at this time, either after listening to these representations this morning, or at any time, the thought that it would be desirable that any mode of transport in Canada should be destroyed and eliminated. I think that the procedure recommended

by Judge Turgeon will be properly used by the railway companies and the regulated carriers and that the trucking industry will have no greater ground for complaint than that, unfortunately, they are losing some business because of agreed charges.

But unfortunately that is the purpose of an agreed charge—the agreed charge is to enable the railways to compete for the business—not to steal it; nor as was suggested, to ask the truckers to give them some of their business. All we ask is that the railways be placed on something like a competitive basis with the truckers.

As I have said, I have been conscious of the fact that the truckers would like to have the right to appear before the Board of Transport Commissioners, even though they are not regulated carriers and even though they would come in to tell the railroads "you are charging too little and you are going to do us harm in our business;" and I have been trying since this bill was printed and distributed to find some case in which a trucker would have a legitimate ground of complaint against an agreed charge. I tried when Mr. Magee was giving his evidence to have him give an example of some case where a trucker would have a legitimate ground of complaint, and my own doubts were not set at rest when the best I could find in the brief was the paragraph which begins on page 67, which reads as follows:

> One may say that the Minister of Transport is a very busy man—I thought that was a very truthful statement—
>
> —and the Canadian Trucking Associations represent 7,000 truck operators; every time an operator is hurt by an agreed charge he will want to appeal to the minister.

Is not that in essence exactly what the truckers want to have the right to do every time an agreed charge is made? It would have the effect of diminishing in some degree the business he is carrying, and it is natural and human that he should want to complain. I think it is natural and perfectly understandable but I do not believe, because agreed charges are intended to be an instrument of competition, that every time the instrument is used with efficacy the use of the instrument should be interfered with and in effect paralyzed by the trucker. At present he has not got the right to go to the board to complain about an agreed charge and ask that it should not be introduced or find some reason why it should not be made effective. I think our experience has shown that in the past there have been too many cases where objections have been made for the purpose of gaining time. I do not think that is the kind of objection we ought to countenance and approve.

I have this feeling about the situation, however, that if this instrument of agreed charges were being misused—and I said earlier that I do not believe it will be misused—I believe that if it were being misused and that as a result of the competition of agreed charges, the future of the trucking industry or the future of that segment of it occupied with the transport of goods between one point and another was menaced and threatened, that something ought to be done. For that reason, Mr. Chairman, I am going to ask one of the members of the committee to propose an amendment to clause 33. I am going to ask that copies of the amendment be distributed, but I am not going to ask that it should be proposed immediately. I think Hon. Members would probably like to have it before them.

In effect the amendment which I would like to be proposed would enlarge the operation of clause 33.

As I indicated, the amendment provides that

> where an agreed charge has been in effect for at least three months
> (*a*) any carrier, or association of carriers, by water or rail, or

(b) any association or other body representative of the shippers of any locality may complain to the Minister that an agreed charge is unjustly discriminatory against a carrier or a shipper or places his business at an unfair disadvantage, and the minister may, if he is satisfied that in the public interest the complaint should be investigated, refer the complaint to the board for investigation.

And now it is conceivable—and I will say quite frankly that I believe this is pure theory and I doubt very much if the case I have in mind will ever become a reality—that the railways may misuse this power to make agreed charges, and the trucking industry between any two given points in Canada may be threatened with extinction and elimination. I have suggested that without having to wait for this period of three months mentioned in subsection 1 that the:

> Governor in Council, if he has reason to believe that an agreed charge may be undesirable in the public interest, may refer the agreed charge to the Board for investigation.

I am sure members of the committee will realize that that does not cover only the case where a particular form of transport is threatened with extinction. It would, I think, fully cover the case which we heard developed so fully before the committee last evening and today where agreed charges combined what are in effect provisions that are discriminatory against some mode of transportation which serves the public interest, and therefore I would like to emphasize that under subsection 2 a very wide discretion is going to be given to the Governor in Council—not to the minister, but the Governor in Council—to refer an agreed charge to the board for investigation.

If you will look at subsection 3 you will find that subsection 3 sets forth the conditions to be observed by the board when a complaint or an agreed charge is referred to it either under subsection 1 or under subsection 2. We have said:

> In dealing with a reference under this section the Board shall have regard to all considerations that appear to it to be relevant, including the effect that the making of the agreed charges has had or is likely to have on the net revenue of the carriers who are parties to it.

In other words, they may say whether an agreed charge is compensatory or not.

And then,

> if the board after a hearing finds that the agreed charge is undesirable in the public interest on the ground that it is unjustly discriminatory against any person complaining against it or places his business at an unfair disadvantage—

Now I think those words refer to the people who may complain under subsection 1. I do not want the members of the committee to be under the illusion that that covers the motor carriers, because it does not.

> —or on any other ground,—

These are very full reasons for which they may consider that the agreed charge is undesirable in the public interest. And then comes the possibility which I outlined a moment ago of some form of transportation being threatened by a number of agreed charges—

> and, if so directed by the Governor in Council in a reference under subsection (2), whether the agreed charge is undesirable in the public interest on the ground that it places any other form of transportation services at an unfair disadvantage.

I think you will find when you examine subsections (4) and (5) that they embody other provisions which you will find in clause 33 of the present bill and I don't think I want to deal with them beyond emphasizing the fact that in any of the cases which we have just discussed the board has power to cancel or vary the agreed charge.

I think what is important to bear in mind is this: I think it should be perfectly clear from that language that if the trucker—and I am going to take that example—complains that the institution of a particular agreed charge has cut down his business, we shall have to admit that the fact that it cuts down his business is not to be a ground of complaint.

The fact that the shipper agrees that a certain proportion of his business is to be carried by the railways, I think, is a matter which concerns primarily the shipper. The shipper did not have to consent to a stated percentage of his goods being made subject to the agreed charge. He could have refused to make an agreed charge if he so wished. But he did agree to a certain percentage, and I think that is not the concern of the motor carriers whose business might be diminished in consequence.

I think the railways are fully conscious of how undesirable it would be that the trucking industry should be extinguished. I think we have seen that they have hesitated in the past to institute competitive rates which would have put competitors out of business. I think they have shown a proper sense of public responsibility in that connection, and for that reason I do not believe it is likely that the trucking industry is going to be threatened with extinction in any part of Canada.

But where a situation has grown up that a mode of transportation is being threatened by a whole series of agreed charges, I think that if a body such as the Canadian Trucking Associations came forward and with the responsibility it has shown and demonstrated on a number of occasions said: "Here is a serious situation," I do not believe that the Governor in Council could refuse, in such an eventuality, to refer the situation and complaint to the board for investigation. But I want to emphasize that there is a great difference between the particular case of an individual trucker and the case of an industry which is threatened with extinction. I do not believe that the Canadian Trucking Associations, if I may judge by this brief, are going to say after this bill passes "This is a troublesome situation, and will you look into all this again."

I think if that case were to happen it would be because the situation had grown up over a reasonable period of time, and it was alarming and disquieting to the operators, and in their own judgment it was a kind of situation which ought to be corrected.

I would like to emphasize, as I did a moment ago, that this delay of three months does not apply to the action of the Governor in Council. He will not be paralyzed by the necessity of allowing three months to go by. He can act at once if he thinks it is desirable to do so.

I am sorry to have taken up so much time, but I would like to emphasize that this bill is based upon the recommendation of Judge Turgeon. Judge Turgeon, as you probably all know, carried out numerous sittings in several parts of Canada and for a long period of time in Ottawa itself. I think that everyone had an opportunity to appear before the commission and put forward his views and have them fairly considered by someone who, I think all will agree, is a recognized authority on transportation matters in Canada.

This bill which is before you—the amendment changes it only in a minor particular, I mean the amendment I have just talked of—puts into effect all of Judge Turgeon's recommendations. The differences in language between the bill and the appendix in Judge Turgeon's report are merely matters of legal

drafting. We have not sought to change his recommendations in any particular whatever, except one; the one particular which I mentioned in the House the other day and of which I would remind the committee now is that sub-section 9 does say something which it seems to me makes common sense, that where an agreed charge has been negotiated between carriers and one or more shippers, and where someone has been left out who later wishes to come in, that if the railways agree to it, he may come in and does not have to apply to the board for an order, as he would have to do otherwise under sub-section 10. So sub-section 9 of the printed bill is an addition to the recommendations of Judge Turgeon, but I think it is a logical extension of what he recommended.

Now, Mr. Chairman, the last thing I want to do is to pose as an expert on agreed charges. All I have tried to do is to explain to the members of the committee the meaning of this bill which is before us. But I would like to say that the government feels very strongly that the bill should be adopted so as to give the railways an opportunity to compete on more even terms with the truckers. And when I say on more even terms, I am sure that everyone will realize that large organizations such as the railways which are subject to the regulations that they are subject to can never really be on an exact footing of equality with the truckers. And the truckers would probably say no, that they never can be, because the railways always would have at their disposal other means, and whatever inequalities there might be in the practice of rate-making would be more than offset by the immense financial resources that the railways have at their command. But leaving out this rather natural view on the subject, I think that we are not being unfair to the truckers and that we are being fair to the railways in giving them a chance to compete for the business of transportation in Canada which is there for everyone.

Mr. NICHOLSON: Mr. Chairman, we have been sitting for over 11 hours in five or six sessions. If there are no more witnesses, would you accept a motion to adjourn and to continue tomorrow with a discussion of the bill.

Hon. Mr. MARLER: As far as I am concerned I have some engagements tomorrow in Montreal, and if it were possible to go on with the bill this afternoon and this evening, I would greatly appreciate it.

Mr. CARRICK: Have we any more witnesses?

Mr. GREEN: I understood that the minister was going to give consideration to some of these suggested amendments. There is only one clause in the bill.

The CHAIRMAN: Containing two sections.

Mr. GREEN: I mean that the bill has only one clause in it, but it deals with two different sections of the Act.

Hon. Mr. MARLER: Yes.

Mr. GREEN: Perhaps we could sit tonight.

Hon. Mr. MARLER: I do not really want to embark on a consideration of the amendments, but as I said at the time, the amendment which Mr. MacTavish proposed to sub-section 5 seems to me to be in order. That was a replacement of the words "has been" by the word "is".

If the committee thought it was desirable to revert to the wording of Judge Turgeon's appendix A, I would have no objection to an amendment in that sense. But I do not want to start playing around with the wording of sub-section 5 so that what we have in this part of this one and part of the other, and so, in the process, change the sense, and arrive at something which is a true hybrid resembling each of the parents but not being identical with either of them.

With regard to the amendment which was suggested by Mr. Brisset, I think that in that amendment we are dealing with a particular case. That is a case of something that does not exist at the moment, but the possibility that an agreed charge may in the future be made which contained clauses which are discriminatory against, let us say, the non-conference shipping lines. There may be other forms of discriminatory clauses contained in those agreed charges. I do not think they will be put in, but I am quite ready to say this: I believe that if it were represented to the government that an agreed charge contained provisions which were patently discriminatory against some form of transportation—I am not thinking only of conference lies or non-conference lines—I think that we would feel that we had a duty to refer the matter to the Board of Transport Commissioners, under sub-section 2 of this amendment, and I think that would give the board an opportunity of making the fullest inquiry.

I think I should say also quite plainly, Mr. Chairman, that I am not prepared to accept an amendment which is going to give an unregulated carrier a status before the Board of Transport Commissioners that it has not got under the existing legislation, particularly when I think that, under the amendment we have proposed, adequate safeguards are provided for interests that might be prejudiced by an agreed charge that had not been approved by the Board of Transport Commissioners.

Mr. HERRIDGE: Mr. Chairman, I just want to ask the minister one question. I notice in the bill and in the minister's amendment the words "public interest" are substituted for the words "national interest." Would the minister explain to the committee the distinction?

Hon. Mr. MARLER: I think, Mr. Chairman, that the national interest is a much broader interest than the public interest. The national interest means in effect you would have to feel that the entire nation was being affected by some state of affairs that was being complained of whereas I think the public interest can be used to apply to a much smaller segment of the country than the use of the word "national." The words "national interest" obviously mean something relating to the nation whereas the word "public" can have several connotations. Actors have their public and politicians, I suppose it can be said, also have their public; but the public interest as related, for example, to the shippers of a locality is something that is different still.

I am asked if I would say a word about the amendment Mr. Sheppard spoke of a moment ago. I think I should say two things in answer to what Mr. Sheppard has suggested. The first is that it is perfectly obvious without it being said that the agreed charge is intended as a competitive weapon. It is intended, in other words, in order to meet competition. I do not believe there is any particular virtue in saying "In order to meet competition", but I think there is quite possibly a case where there would be an objection to putting it in. Mr. Coyne in his example this morning, when I asked him a question, cited a case where a shipper was not being served by the same carrier as the one which had made an agreed charge and he might reasonably wish to apply for a fixed charge to the Board of Transport Commissioners, and I am sure that if we were tied down by the use of the words "to meet competition" that we might find it is impossible for the board to grant a fixed charge to someone who was entitled to the same treatment as someone who had made an agreed charge. I think I should sum up my thinking on the subject by saying that I see no useful purpose in putting it in and I can see some real objection in our doing so.

Mr. HAHN: Mr. Chairman, the minister gave us quite an extended discussion on the witness' remarks and I have just one or two observations to make which I think would have a place in this discussion. The minister

mentioned the charge that agreed charges would ruin the trucking business as outlined in the truckers' brief, and he drew to our attention the fact that the truckers felt about 12 per cent of their business was done because of the price factor.

Hon. Mr. MARLER: That was the questionnaire, yes.

Mr. HAHN: Yes, it was in their submission. I have done some hasty arithmetic which may be wrong, but as I recall it an observation was made that the railway companies complained that $340 million of the business is done by trucking today. The truckers say they do only $200 million. However, using that 12 per cent figure and saying that the truckers would lose all of that which I do not believe is true—

Hon. Mr. MARLER: Mr. Hahn, I think perhaps we could save time if I interrupted you. The 12 per cent were merely 12 per cent of people who were using trucks for the transport of their goods who were asked, "Why do you use trucks?" And 78 per cent said it was because it was shorter and more rapid and only 12 per cent said it was a matter of rates. It is not 12 per cent of any particular volume of business, but merely 12 per cent of those using trucks who said the prime consideration with them was rates.

Mr. HAHN: I was assuming that the 12 per cent would use the trucks. The two would equate each other—or possibly they would not—but even working it out on that basis, using the extreme figure of $340 million it would only give a gross of $40,800,000 to the railways which would not be the net deficit that the C.N.R. experienced this year. That is, if we work it down to the net. However, I am willing to accept your version of that, Mr. Minister, because I can very readily see that the 12 per cent of the people using it might very well be 50 or more per cent of the trucking business in which case if we use that figure, then 50 per cent of the truckers would be out of business by reason of the fact that they lost 50 per cent of the business to the railway companies—that is immediately, although other business may fall their way and they may go out to look for other business as good businessmen should do and thereby not entirely be lost to it.

Then there is the matter of it being compensatory. We have used the phraseology that railway lines might consider it insulting if we included it. I cannot quite understand that attitude by reason of the fact that the word was in the former Act, as I understand it. We are talking of removing it. If it was not insulting to them before, why should it become insulting now if we merely include it in this particular Act; and that in itself I consider is most important. I think I was extremely realistic in respect to the Monsen Clarke Steamship Company—

Hon. Mr. MARLER: The Monsen Clarke Steamship Company?

Mr. HAHN: I am sorry, yes, and the compensatory rate that put them out of business. I am now wondering if that is the rate that will be estimated for all the rail lines across Canada or just in those regions where the agreed charge comes into effect. I raise that question because in trying to get information of that type from Mr. Gordon, I believe it was, when he was here before us he indicated to me it was impractical to give us a division cost. Perhaps I received this information through correspondence I had with him, although it might have been through earlier hearings we held on the question. However, it does play an extremely important part in the overall decision as to whether or not a trucker can properly complain that he is being discriminated against by reason of the fact that the rate is non-compensatory. I can see where the rate would of necessity be low in the Montreal and Toronto regions because of the traffic that is carried, but let us take the region from Vancouver to Kamloops. It may not be quite so compensatory in that

particular area. That is why we should have some idea of what we are going to use as a guide in a position of that kind, and certainly we must know what the companies themselves are using as a guide. Yesterday I made the suggestion that the British Columbia government had regulations in respect to traffic rates. Today we have a representative here from Manitoba. I was wondering whether he could inform us whether the truckers there might change their charges at will similar to what the minister suggested today by a handshake at the door, or whether they have regulations respecting the traffic rates in their province which would disallow that.

Coming back to the non-compensatory rate—

Hon. Mr. MARLER: I think it would be simpler to clear up that the rate must be compensatory in this sense that it must pay for the charges of the services covered by that rate.

Mr. GREEN: The bill does not say that.

Hon. Mr. MARLER: I am talking about what is meant by the rate being compensatory. It in effect pays the railroad to carry the goods at that price. It applies to the transport of goods from origin to destination.

Mr. CARRICK: Mr. Hahn said the word "compensatory" was in the Act before. I could not find it.

Hon. Mr. MARLER: It isn't.

Mr. HAHN: I understand you to say it was.

Hon. Mr. MARLER: I used the word very loosely.

Mr. HAHN: I think it is not realistic to say a railway will not operate on a non-compensatory rate by reason of the fact that the railways are like any other business and it is their business to get business and if it means the elimination of another industry, as it might in this case, the charges which would be made will not stop them from—perhaps I should not use this term—stooping to that level of doing business in that fashion. I say that with all respect to the railways for this reason that big business, some of the biggest businesses in the world—and I am thinking of large retailers in the United States—stoop to that level with the hope of depriving their opposition of business. It was not very many months ago I remember reading in the paper of a certain firm in New York giving prizes away because the other firm was selling them for five cents each; there was only one object, to attract the business. If the railways should see fit to attract the business by coming to an agreed charge where we cannot determine what the compensatory rate is then there is nothing to stop them bringing their price down to any level they wish.

I was going to suggest that the term "compensatory" be included in this because my understanding was it was in it previously; apparently it was not, but I think we might be well advised to certainly consider it.

There is one other factor and that is the right to redress which the truckers should have. As I understand the amendments you propose in respect to the section they do not include the truckers and probably should not, under the circumstances, but there is no provision made in the Act either that a provincial board might make representation in respect to redress for a particular industry that might be embodied in its own ranks.

Possibly that might be given some consideration and they could make their representation first to the provincial body which sets up regulation in respect to price and let them get their redress through that body who in turn makes representation to the government.

Hon. Mr. MARLER: Under subsection (2) anybody can make a complaint to the government and it is merely sufficient that the government should be persuaded that there is a good case to be able to refer the charge to the Board of Transport Commissioners.

Mr. HAHN: This is subsection (2) of the amendment?

Hon. Mr. MARLER: Yes.

Mr. HAHN: I misinterpreted that.

Mr. HANSELL: Does that include the truckers?

Hon. Mr. MARLER: The truckers can complain in the same way as anyone else. I do not say in the amendment that a trucker can complain of any charge, but the fact is if a trucker does complain the government can act under subsection (2).

Mr. HANSELL: Then the amendment proposed by Mr. Magee to add "or any motor vehicle transport operator or association of motor vehicle transport operators" in the light of your statement is superfluous?

Hon. Mr. MARLER: I cannot accept that in that form. As a matter of fact, I think while they do not have a statutory right to complain to the minister they do have the right to complain to the government that a situation has grown up which is undesirable in the public interest and if the government is persuaded that the representations are well founded it may refer the agreed charge to the board.

Mr. HANSELL: In other words, they can take advantage of the bill as it now stands without their name being specifically designated in it.

Hon. Mr. MARLER: I think that is the practical effect.

Mr. HERRIDGE: This discussion is on amendments and sections in the bill. Could it not more properly take place when we start the discussion on the bill?

Mr. HAHN: I do not think I was discussing anything which appears in the bill.

Hon. Mr. MARLER: I think you will find it in section 33.

Mr. HAHN: I understand I am out of order and I will abide by the rules; but, Mr. Chairman, if I am not out of order, I would like to continue with what I was saying. There is this other question which was raised by the Irish and Saguenay Steamship Companies. I just do not understand why there should be any objection taken to the C.P.R. carrying freight from Vancouver to London if it so wishes or Liverpool if it so wishes, provided it uses its own steamship lines, but I do take exception to the C.N.R. suggesting when it carries through a contract that any business it is going to conduct on a through bill of lading must of necessity, from Halifax, be carried by any other particular line or the Conference line.

Mr. LANGLOIS: They have obtained redress from the board in that respect. It has nothing to do with this bill.

Mr. HAHN: But at the same time it has been included since in further bills of lading, as I understood the evidence. The fact remains that if we are going to legislate and try to make it possible to deal properly with legislation of this kind and make it possible to carry on and keep all the businesses which we have in effect today in this country, I would strongly urge that some consideration be given to these thoughts that we must not permit even in an indirect fashion a combine, a form of combines, such as would appear to exist. I know under the Combines Act as it exists today possibly we could not prove that a combine exists where it does exist. But to say that before we take your shipment you must send it over somebody else's line, while there are others willing to accept it and carry it for less money, I do not think is quite right.

The other question I have in mind is an amendment and seeing that the committee has been so anxious to allow me to carry on at this time and have not interrupted me for the last few moments I will leave it at this point.

Mr. CAVERS: Possibly we could get to the Clause now gentlemen?

The CHAIRMAN: As there is only one clause in this bill, the record might be clearer if, in our detailed consideration, we referred to the sections and subsectons of the Act as they are cited in this bill.

Mr: GREEN: On this clause (1) there was a suggested amendment made by Mr. Sheppard speaking on behalf of the Manitoba government. He suggested that the words "to meet competition" be inserted after the word "may" as it appears in the second line of the clause. I think there is good reason for having those words inserted because the minister himself has stressed the fact that this bill is to help the railways meet competition. The only reason for agreed charges is to meet competition. That was covered by the law as it stood before in subsection (2) of section 32. Any such agreed charge required the approval of the board.

> (2) Any such agreed charge requires the approval of the Board, and the Board shall not approve such charge if, in its opinion, the object to be secured by the making of the agreement can, having regard to all the circumstances, adequately be secured by means of a special or competitive tariff of tolls under the *Railway Act* or this Act.

That clause again stresses the aspect of competition and it is to be taken out of the Act. There is no longer to be a prior decision of the board. These agreed charges will automatically go into effect once they are negotiated. I do not believe it is sufficent to say that the railways will not do this, or will not do that. After all, we are here to define the law and I think the law should say that these agreed charges are for the purpose of meeting competition and not for other purposes.

Take for example the playing of favourites. Without such a restriction as I have referred to, the railways could make an agreement to fix a lower charge with some friends of the railways in circumstances where there is no competition at all. For example, they could agree to give Mr. A or Mr. B of such and such a company a special consideration. That is absolutely impossible under the Act as it is now in effect because the Board of Transport Commissioners has to decide on the application. That is one of the things upon which the Board of Transport Commissioners would have to be satisfied, namely, that the agreed charge was being put into effect to meet competition, and I think the purposes of the old law would call for the insertion of those words which the Manitoba government has suggested, and I do so move, Mr. Chairman.

Hon. Mr. MARLER: Mr. Chairman, I would like to point out to the committee that the present statute describes an agreed charge in virtually the same terms as this subsection we are dealing with. There is no change in it. We have had a period since 1938 up to date during which this definition has stood up and quite candidly I do not share Mr. Green's view that merely because we are dropping the approval of the board, merely because we don't say that if the same objective can be secured by a competitive rate that we may not make an agreed charge—the fact is that a competitive rate has proved to be quite a useless method of trying to meet the competition we are dealing with here, as Mr. O'Brien made perfectly clear during his evidence before the committee, so I don't think the matter of the reference to the competitive rate is really material to the argument as to whether we should add the words "in order to meet competition" or not. I do not believe that merely because

we are not asking for the approval of the board we should put the words in now, even though we have not found it necessary to have them in for 18 years. I don't know that I attach too much importance to it. What I am concerned with is the possibility that where you have set up agreed charges in conformity with the Act here, you find that there is some other shipper who meets the condition of subsection (10), that is to say that he has goods which are the same or similar goods as the goods for which an agreed charge had been made, but where they were not served by the same carrier. In that particular case, if he were not being served by the same carrier—there might not be any competition—he might because of these words be deprived of the right to a fixed charge; and consequently I am very fearful that, though we know all agreed charges are intended to meet competition, we would by using these words prevent some shippers from benefiting from agreed charges. Mr. Coyne gave an excellent example this morning, and I don't want to preclude his clients from getting the benefit of a fixed charge.

Mr. GREEN: The right of the other shipper would not be affected by putting in those words because his rights are expressly covered under clauses 9 and 10 of section 32, but the main clause in the whole agreed charges provision is this clause (1) of section 32. That is a fundamental policy-making clause:

> Notwithstanding anything in the Railway Act or in this Act, a carrier may make such charges for the transport of goods of a shipper as are agreed between the carrier and the shipper.

The one purpose for which that has been made has been to enable the railways to meet competition. It was not done for any other purpose, but purely and simply, as I say, to help the railways meet competition and I believe that those words should be in that section or in that particular clause so that there can be no misunderstanding of the purposes of the legislation.

The words are vital because if under clause 33 an application is made to have an agreed charge upset it would be on the basis: was that agreed charge made to meet competition? If it is made for some other purpose, for example to help out some "pal" or something of that kind, it can be cancelled. I am not saying that that would be done, but I don't think we should simply accept the situation that the railways will do nothing unfair or wrong under this legislation. The railways are in business and they are run by business men who will abide by the law but who probably will not go too far out of their way to see that their competitors are not injured, and I would suggest that those words "to meet competition" are vital words as suggested by the Manitoba government which throughout has been very alert with regard to all this transportation law, as have the other western provinces. This is a matter for very serious consideration before this committee. The Manitoba government would not have made that representation without having given the matter careful thought and without having good reasons for doing so. Mr. Shepard has appeared before the Board of Transport Commissioners on many occasions. He is one of the leading experts on freight rates and transportation in Canada. He has been before the committee which considered the Railway Act two or three years ago and I would suggest that this amendment which he has proposed is a good one and that it should be adopted by the committee.

Mr. HOSKING: I would like to give one reason which I know about, Mr. Chairman, why this amendment should not be adopted. A steel company proposing to develop a field in northern Ontario have, in order to estimate their cost to go to the railways and get an agreed charge so that they can decide whether it is profitable to develop that field or not. The provincial

government railway will be giving them an agreed charge without any competition on the ore which they handle. It brings to my mind that it is a pure case of the development of the country, and that it is of benefit to the country that an agreed charge be made. There would be no one in competition with them because there is only one line in there. But the railways must be in a position to give them an agreed charge so that the company can calculate its costs.

Mr. GREEN: A situation of that kind is not met by an agreed charge at all. It is met by a special rate. All the railways have met that kind of situation where they are going to get a lot of hauling from a particular development, and in that case they make a special rate. But that is something entirely different from an agreed charge. I think if you will check it up you will find that that is the case.

Mr. HOSKING: This will be an agreed charge, and if anybody else up there desires to take advantage of it, he will be able to ship along with the steel company.

Mr. GREEN: There was an agreement of that kind made I think in connection with the Sherridon to Lynn Lake branch of the Canadian National Railway; a provision that there should be a certain rate on the hauling of the concentrates from that mine. I think there was a similar agreement made for the extension from Terrace to Kitimat with regard to the hauling of aluminum products. Those are covered by a special agreement, and are not in the nature of an agreed charge.

Mr. HOSKING: If there should be another company up there which finds ore, then would the railway not be bound to ship their ore at the same rate, if there was an agreed charge?

Hon. Mr. MARLER: Mr. Chairman, one of the things which bothers me very much in connection with this proposed amendment is this: Mr. Green I think is a little inclined to be thinking of an agreed charge as being applicable between only two points. But in the agreed charge to which I referred earlier, the one for the shipment of canned goods, I have a whole batch of names of the places to which the shipments are to be effected, and which are covered by that agreed charge. I will pick some names out at random. Perhaps the members from British Columbia will take exception to them, since they know the situation there much better than I do; but let us take Marpole, British Columbia, where there is no other form of transportation into Marpole except the railway.

Mr. GREEN: Marpole is in Vancouver city.

Hon. Mr. MARLER: Well, let me think of another one.

Mr. GREEN: Marpole used to be in my riding.

Hon. Mr. MARLER: I did not realize that, or I would have picked some other spot. What about Fort Langley?

Mr. HAHN: Fort Langley is in my riding and they have the Canadian Pacific, trucks, and buses.

Hon. Mr. MARLER: But suppose you have not trucks or buses. The point I want to make is this: supposing one of those 25-odd stations in British Columbia has no form of competitive service other than the railway. The railway is going to say, because of Mr. Green's amendment, "We are sorry, but you cannot have an agreed charge going into this place, because there is no competition". I think that would limit the scope of the agreed charge, which is to give the people the benefit of lower rates. Therefore I do not want to see Mr. Green limit the scope of this agreed charge by saying that there must be competition.

Mr. CAVERS: Let us have the question!

Mr. HANSELL: When we take a vote on this amendment, does that preclude any other amendment on this clause? I would like to make one.

The CHAIRMAN: All those in favour of Mr. Green's amendment please signify? Those contrary?

The result of the vote is 20 against, and 7 for.

Mr. HANSELL: I am not going to take up the time of the committee by making any remarks. But I do believe frankly that these two shipping companies which appeared before us did make a case. All they desire is that the board may disallow any agreed charge in certain connections. Therefore I move their amendment, which is a very simple one. You all have copies of it. Do you want me to repeat it?

Mr. CAVERS: Does it apply to this section 32(1)? We are dealing with subsection (1) and I do not think that comes under it.

Mr. HANSELL: Very well.

Mr. HAMILTON (*Notre-Dame-de-Grace*): On subsection 1, I make my initial remarks exactly the same as Mr. Hansell has made them, and I think that the shipping companies made a very reasonable case. They themselves have pointed out a situation which, if it does not exist today, could very well exist in the future, and it would perhaps be a natural outlook of this particular set of circumstances under this particular bill. You have your railways in Canada with interests in ocean steamship lines.

It certainly is in their own interests for the railways to take every possible measure of business that they can for their own ocean lines. Now, the minister himself in his remarks said that he envisioned these agreed charges as being applicable to Canada and to Canada alone. It would therefore seem to me that we could fit into the minister's observation and still deal with a large part of the objections of the shipping lines by making an amendment along the line which I suggested earlier. But before I move my amendment I would like to have an elucidation of one point, and that is whether agreed charges ever apply to movements of freight between points in Canada and points in the United States.

Mr. CAVERS: Yes, that is covered by subsection 4(b).

Mr. HAMILTON (*Notre-Dame-de-Grace*): In that case—

Hon. Mr. MARLER: No. The hon. member is quite right. They do not apply to the transportation of goods between points in Canada and points in the United States.

Mr. HAMILTON (*Notre-Dame-de-Grace*): Therefore I move that we insert the words "in Canada" following "shipper" in subsection 1, and that would restrict these agreed charges to the rail portion of any shipment of goods from a point in Canada to a point overseas. I should point out to the committee that that does not deal with the other objection raised by the representatives of the Saguenay Terminals Limited, the situation where goods are being transferred from a point on the east coast of Canada to a point on the west coast of Canada, and where the railways might be tempted to drop their rates temporarily in order to deal with ocean competition which was taken through the Panama Canal. I leave that to the future. I think specifically in this case, because of the minister's own words, that these agreed charges are to apply in Canada. We are making the law here and we might just as well write into it the fact that they apply in Canada so that there may then be no doubt that there will be a complete measure of protection against any attempt on the part of the railroads to enter into, shall we say, a monopoly of this transportation from a point in Canada to a point overseas.

Hon. Mr. MARLER: What is the amendment?

Mr. HAMILTON (*Notre-Dame-de-Grace*): That the words "in Canada" be inserted after the word "shipper" in line 9 of section 32, which would then read as follows:

> Notwithstanding anything in the Railway Act or in this Act, a carrier may make such charges for the transport of goods of a shipper in Canada as are agreed between the carrier and the shipper.

Hon. Mr. MARLER: Surely the hon. member realizes that the amendment which he proposes is descriptive of the shipper.

Mr. HAMILTON (*Notre-Dame-de-Grace*): I realized that, actually, as I was reading it.

Hon. Mr. MARLER: I do not think it does, Mr. Chairman, because as was clear from the evidence before the committee the agreed charge does not necessarily apply to the transport in Canada of goods affected by the agreed charge. We had Mr. Jones representing the Great Northern Railway yesterday who made it clear that his railway company may make an agreed charge for the shipment of goods from Vancouver to Toronto, let us say, but that is not for the transport in Canada of the goods of the shipper, and I take it also that we have the C.P.R. and the Canadian National competing between, let us say, Montreal and Halifax yet we know the C.P.R. passes through the state of Maine and therefore I could not accept the suggestion that we should say transport in Canada. I am quite ready to consider other alternatives, but I am not prepared to consider amendments which are going to make agreed charges impracticable.

Mr. HAMILTON (*Notre-Dame-de-Grace*): I think the minister has a point. I asked a question and the answer perhaps misled a number of us. I think rather than saying "in Canada" let us say "in the continental limits of North America" and that does allow the line in the process of transporting goods to leave a point in Canada, go south of the border and come back into Canada, but it still protects us from taking the goods to the seaboards and then forcing them under an agreed charge to go on a specific ocean line. Would the minister consider that?

Hon. Mr. MARLER: Does the hon. member think Newfoundland is within the continental limits of North America?

Mr. BATTEN: Be careful now!

Mr. HAMILTON (*Notre-Dame-de-Grace*): I must say that according to my definition it would be.

Hon. Mr. MARLER: The only trouble is I do not think the hon. member would be interpretng the statute, and I think we would have to have a proper view of it. I personally do not see the purpose of the limitation. I rather share the views that the hon. member has expressed with regard to clauses which are discriminatory against any particular carrier or any particular shipping line, but there may be reasons for it. I would like to draw to the attention of the committee the fact that although we have heard the evidence of the shipping companies and the non-Conference lines, we have heard none from the railway as to their side of the story, and I would not condemn them without knowing what the facts are, but it does seem to me that section 33, subsection (2) to which I referred earlier enables us to deal with a discriminatory situation of that kind and in order to cure that I do not want to put the agreed charges in another kind of strait jacket when I do not think that is the intention of the committee.

Mr. GREEN: The minister raised the example of the Great Northern. I point out to him that under subsection (3) of clause 32, subsections 1 and 2

do not apply to the Great Northern. There is no objection on that ground to the inclusion of the words.

Hon. Mr. MARLER: But, Mr. Green, the agreed charges that the Great Northern makes are going to be agreed charges under subsection 1 about which we were talking and they therefore cannot state the transport in Canada of the goods of a shipper and it is not only the Great Northern but also the C.P.R. going to Halifax and for all I know there may be countless other examples. In an effort to deal with the point Mr. Hamilton brought up—I do not think we should circumscribe the field within which agreed charges can be used.

Mr. GREEN: Has the minister any alternative suggestion to make? We had it clearly explained today that it would be possible for the railways to include in an agreed charge a proviso which would restrict the shipping by water to a line or lines of their own choosing. Ocean-going shipping is not in the Transport Act or under the control of the Board of Transport Commissioners, and it was never the intention of parliament that the railways should be able to make an agreed charge of that kind that ties up ocean shipping or of the kind that has a restricted proviso that you must ship by any one ocean liner. Can the minister not suggest some amendment to these sections which would meet that situation? The amendment proposed by Mr. Hamilton may not have been the proper one, but this is a situation which should be met. The railways should not be allowed to get away with this sort of thing, or to make provisions of that kind. It is perfectly obvious from the evidence that they have refused to abide by the order made by the Board of Transport Commissioners. In two cases, they worked out some method of getting around the actual orders made by the Board of Transport Commissioners. Are they to be able to use the agreed charges legislation as a third method of getting around rulings made by the board?

Hon. Mr. MARLER: Mr. Chairman, Mr. Green asked if I could not make an amendment. All I can say is that I can perhaps make an amendment, but I do not think I would make it to subsection 1. I think subsection 1 is perfectly proper as it stands now and I do think that the kind of case which Mr. Green has referred to is covered in clause 33.

I am not prepared for a moment to render judgment on the evidence of only one side—what we have heard from the Irish Shipping Limited and Saguenay Terminals Limited—but I am ready to say that there is an obvious principle at stake there, and that is that agreed charges could conceivably contain discriminatory charges that did not affect a particular shipper and did not affect a regulated carrier, and I think that when you come to section 33 I should be able to convince the committee they are taken care of in the amendment I have already suggested which will be proposed when we come to section 33.

Some Hon. MEMBERS: Question.

Mr. HAMILTON (*Notre-Dame-de-Grace*): I am just wondering if the minister plans to base his case on subsection (2) of section 33, because as I see it we may then be asked to pass this particular section and close further amendments on that, and then if we find that the minister has not convinced us under subsection (2) of section 33 we have rather closed the door, have we not? The thing that bothers me a little bit about it is that in explaining his amendment earlier the minister said he felt it should be possible for someone to persuade the Governor in Council that certain things were undesirable in the public interest, and as one who in the last two years has made a fair effort to persuade the government about certain things and has sometimes been rather unsuccessful, I have a certain amount of sympathy for some of

these other people who might have similar difficulties in persuading the government. I would rather see the thing written into the Act as legislation rather than left to the capricious desire or feeling of the Governor in Council because if some 51 members of the Conservative party cannot persuade the government about certain things, it might be rather difficult for one or two shipping companies to do so.

Hon. Mr. MARLER: Perhaps they might have more logic, however!

Mr. HAMILTON (*Notre-Dame-de-Grace*): The minister's point was well taken. Would the minister agree perhaps to letting this section stand—

Some Hon. MEMBERS: No, no.

Mr. HAMILTON (*Notre-Dame-de-Grace*): —and see whether it is going to meet the objection?

Mr. CAMERON (*Nanaimo*): I wonder if I could ask the minister a question?

Mr. LANGLOIS: You have the proposed amendment?

Mr. HAMILTON (*Notre-Dame-de-Grace*): The minister said he thought he could find something in section 33 and he also was talking in terms of an amendment.

Hon. Mr. MARLER: Not any further amendment.

Mr. CAMERON (*Nanaimo*): Would it be necessary, supposing one of the railways made an agreed charge agreement with a shipper for the shipment of goods from Winnipeg to Liverpool, for him to refer that part of the agreement which dealt with the ocean transport to the board or would he have to deposit that with the board?

Hon. Mr. MARLER: I think the answer is that the whole agreement for the agreed charge must be filed with the board. I think that is subsection (7).

Mr. CAMERON (*Nanaimo*): Are you not going to be faced, if you try to amend it, with an agreed charge that will be an agreement for the land charges from Winnipeg to Montreal and there will be another document which you will know nothing about?

Hon. Mr. MARLER: I do not think so.

Mr. HAMILTON (*Notre-Dame-de-Grace*): I do not see how you can control that by any amendment to this Act.

I would move, in order to get the matter on a basis of discussion to try to satisfy the minister that we have got all the possible points in North America into it, that we insert the words, following "Transport", "Within the continental limits of North America and Newfoundland" and that would mean that section 1 would read:

> Notwithstanding anything in the Railway Act or in this Act, a carrier may make such charges for the transport within the continental limits of North America and Newfoundland of goods of a shipper or as agreed between the carrier and the shipper.

That does cover North America. It leaves out the possibility of a monopolistic operation in which the rail carrier in North America uses his power to force goods into his chosen media for an ocean voyage.

Mr. BARNETT: The amendment proposed leaves out the most important part of Canada, namely Vancouver Island.

Mr. HAMILTON (*Notre-Dame-de-Grace*): I may state that I take the position that Vancouver Island is within the continental limits of North America.

The CHAIRMAN: All those in favour of Mr. Hamilton's amendment?

On division the motion was defeated.

The CHAIRMAN: Shall sub-section (1) of section 32 carry?

Carried.

We will adjourn now until 8 o'clock.

EVENING SESSION

JUNE 29, 1955,
8.00 p.m.

The CHAIRMAN: Gentlemen, we have a quorum. We are on subsection (2) of section 32.

Hon. Mr. MARLER: I would like to ask my friend Mr. Langlois if he would propose a slight amendment to the wording of subsection 2. It will be noticed in lines four and five "unless the competing carriers by rail join in making it.", whch suggests that there must be an agreement between the two railways; but it has been drawn to my attention that there might be cases in which one of the railways may have no objection to the agreed charge but may not wish to join in making it. I would ask Mr. Langlois to propose that the subsection be amended by saying after the words "by rail" in line 14 "consent thereto in writing" and then it would continue "and/or join in making it".

Mr. LANGLOIS: I so move, Mr. Chairman, seconded by Mr. Cavers.

Mr. GREEN: Would that mean that the charge would be applicable to the second railway and would be in effect on the second railway?

Hon. Mr. MARLER: What it means at the moment is that unless both railways are agreeable to making the agreed charge and join in making it there could not be an agreed charge. But cases may occur in which one of the railways makes the agreed charge, but the other railway does not wish to join in it but has no objection to the other railway making it, and it seems to me it is a reasonable suggestion and therefore I would like to suggest that we say "unless the competing carriers by rail consent thereto in writing or join in making it."

Mr. GREEN: I was thinking of the shippers. It is my understanding of a similar provision in the present Act that the agreed charge must be available to a shipper on the C.N.R. just as to a shipper on the C.P.R. between the same points. That would be so under this subsection 2 as it appears in the bill.

Hon. Mr. MARLER: Yes.

Mr. GREEN: But if you make it merely a question of the second railway consenting to the agreed charge, will that still mean that it is in force as against that second railway?

Hon. Mr. MARLER: I do not think it would be in force against the second railway which consented but did not become a party to the charge. But I cannot believe if there was traffic involved that it would not wish to become a party to it.

Mr. GREEN: I think this change from a first consideration is to the benefit of the railway but not to the benefit of the shipper. In other words, a man may have his agreement with the C.P.R. and if he wanted to ship by the C.N.R., the C.N.R. would have to give him that reduced rate as the law stands now. But if you put in the amendment they would not have to do it. Is that right?

Hon. Mr. MARLER: As I understand it, for example, the C.N.R. makes the agreed charge, but the C.P.R. consents to it and does not join in making it

and that would mean that any other shipper could have the advantage of the agreed charge and force the C.N.R. to carry his goods under the terms of the agreed charge, but could not force the C.P.R. to carry them because the C.P.R. had merely consented and had not joined in making it. I find it difficult to believe, except in rather unusual circumstances, both railways would not wish to join all occasions because we are dealing with traffic for transport from or to a competitive point or between competitive points, so I do not think there is much doubt that it is rather an exceptional case. I will not insist on it too strongly.

Mr. GREEN: Take the case from Toronto to Montreal. That I suppose is where a lot of agreed charges would be in force. Under the present law an agreed charge between Toronto and Montreal has to apply to both railways.

Hon. Mr. MARLER: Yes.

Mr. GREEN: So that the shipper can ship either by C.P.R. or C.N.R.; in other words, he has a choice. Yet if this amendment goes through he has not got the choice. If the C.P.R. makes the agreed charge then the shipper can only ship by C.P. and not by C.N. as I read the amendment. This of course is a substantial change in the law.

Mr. CAMERON (*Nanaimo*): It does not have to be between competitive points.

Hon. Mr. MARLER: From or to?

Mr. CAMERON (*Nanaimo*): I was wondering about that particular situation. Suppose the C.N.R. agreed on a charge from Vancouver to Saskatoon and the C.P.R. did not come into it and then someone wanting to ship to Regina would in effect be discriminated against, would he not?

Hon. Mr. MARLER: I am afraid I just do not grasp the hypothesis.

Mr. CAMERON (*Nanaimo*): What I mean is there you have comparable runs out of Vancouver to the prairies but not to the same points.

Hon. Mr. MARLER: I do not think that would apply to what we are talking about. I think, for example, if C.P. said they would like to set up an agreed charge for a shipper beween Vancouver and say Calgary, the other railway might say we do not carry that particular kind of business and we are not interested in making the agreed charge. As it is now the agreed charge could not be made unless both railways agreed to it and unless they both join it. Under the amendment I have just suggested even though the other railway concerned did not make the charge, it would be possible for the other railway to make an agreed charge.

Mr. GREEN: Take for instance, from Oshawa to Vancouver. Suppose the C.P.R. makes an agreed charge with General Motors. Under the law, as it stands at the present time, that agreed charge also applies to the C.N.R. and an automobile dealer in Vancouver can get his cars either by C.N. or C.P.

Hon. Mr. MARLER: Only if both railways agree.

Mr. GREEN: But they had to agree in order to get an agreed charge in the first place.

Hon. Mr. MARLER: Yes. Now, they still have to agree but do not each have to accept the agreed charge.

Mr. GREEN: The only man who losses out on that amendment is the shipper.

Hon. Mr. MARLER: No. He ships by the one who puts in the agreed charge.

Mr. GREEN: He cannot have the goods shipped by the C.N.R.

Hon. Mr. MARLER: He can have his goods carried by the carrier which makes the agreed charge, whoever makes it.

Mr. CAVERS: He only has an agreement with one railway company so they must take his goods. The one who does not enter into the agreement could not carry his goods.

Hon. Mr. MARLER: That is right.

Mr. CARRICK: Subsection (2) speaks about transport on the lines of two or more carriers. Does that not mean that that subsection only has relation to an agreed charge where you are carrying on two lines? It would not apply to the case Mr. Green mentioned between Toronto and Montreal because there we can carry only one line, only Canadian National or Canadian Pacific. It is only where you have one line extending into another line that subsection (2) has any application.

Hon. Mr. MARLER: I do not think that is right.

Mr. GREEN: As I read the section originally in the bill it is meant to cover the case where there is a C.P. line and C.N line between the two points. Calgary or Edmonton or Toronto, Montreal or Vancouver.

Hon. Mr. MARLER: Where both railways serve the same points.

Mr. GREEN: Yes.

Hon. Mr. MARLER: I think that is right.

Mr. GREEN: The shipper, once he has negotiated the agreed charge has the advantage of shipping by either line of railway.

Hon. Mr. MARLER: Because he has made an agreement with both of them. But if one of them had refused to agree because it just did not suit its particular business then there would not be any agreed charge at all; whereas under the amendment I have just suggested, if the one railway was willing and the other merely consented and said it was not going to make an agreed charge then an agreed charge would come into being with one of the two railways.

Mr. GREEN: If you are going to change the basis to that extent why change the wording at all?

Hon. Mr. MARLER: It is not intended they should be competitive between the two railways themselves. It is where they both agree but one does not wish to make an agreed charge.

Mr. HAHN: It might be that it would not work at some points in some lines because the distance of one rail would make it unsound in an economic sense.

Hon. Mr. MARLER: It might be.

Mr. HAHN: And that would be a good reason for the amendment.

Hon. Mr. MARLER: I think it makes it wider and more effective.

The CHAIRMAN: Shall the amendment carry?

Carried.

Shall the subsection as amended carry?

Carried.

Subsection (3) of section 32.

Mr. GREEN: Could we have an explanation of this subsection and of subsection (4) because they can be considered together. This is a provision extending the agreed charge to cover traffic through the United States. Does that mean that the Canadian Trucking Industry is being made subject to competition under agreed charges by railway traffic going through the United States? These two sections mean competition by freight coming largely through American territory. Could we have an explanation?

Hon. Mr. MARLER: I think the route followed by the freight is a fact we have got to admit and as I understand it it has per se nothing to do with

agreed charges. I understand that at the present time some traffic, let us say moving between Toronto and Vancouver, will move in part over United States lines and some traffic will move entirely over Canadian lines. The effect of subsections (3) and (4) is with regard to what I may call the American railway, that means to say what is defined in the bill as a United States carrier, that is a railway company incorporated in the United States and owning, or operating on, railway lines in Canada. That qualifies them as being a United States carrier and I think if you read the provisions of the Act you will find that they deal with two points. The first is that the United States carrier can make an agreed charge to cover transport between points on its own lines in Canada served exclusively by it. I think that perhaps the case may be rather unlikely but at all events it does enable the American railroad to set up agreed charges between two points in Canada on its own lines served exclusively by it.

Mr. GREEN: I am not questioning that.

Hon. Mr. MARLER: The second point is this, that the United States carrier—let us consider the Great Northern Railroad—could make an agreed charge for the carriage of goods from Toronto to Vancouver—perhaps I should say "join in an agreed charge" made by the Canadian railroads, and provide for the transport of the goods over the lines which constitute the continuous route between the point of origin and the destination. I think that if you take the Great Northern, it would have to carry them over perhaps two or three railroads in the United States but these other railways would have to concur in the agreement—the other United States lines would have to concur in the agreement—before the Great Northern could effectively join in the agreed charge made by the Canadian railways. My understanding is that now an agreed charge is going to be the same for each one of the three railroads—the Canadian Pacific, the Canadian National and the Great Northern—but so far as the American carrier is concerned it is essential that it should have the concurrence of the other American lines over which it must pass to reach the point of destination.

Mr. GREEN: Why was it necessary to give this privilege to the American lines?

Hon. Mr. MARLER: Mr. Scott of my department informs me that the reason is that they do participate today in the general traffic movement and there is no intention to upset this situation.

Mr. GREEN: Do they have this power under the present Act?

Hon. Mr. MARLER: No, but of course they have the power under the normal tariffs to carry the traffic at the same rate as the other railroads.

Mr. CHAIRMAN: Subsection (4) carried.

Subsection 5.

Hon. Mr. MARLER: With regard to section 5 I am going to suggest that we arrive at a slightly revised wording. I would just like to draw the attention of Hon. Members to the fact that when this bill which is before you was drafted the Department of Justice tried to put into uniform language all of the provisions that are contained in it and use what might be described as their language—the language of parliament—in making this draft, though the ideas of the Royal Commission are I think embodied without any variation. In the interval since 6 o'clock I have gone over Judge Turgeon's draft and where he says: "carrier or carriers" we think that the word "carrier" is sufficient in view of the fact that "carrier" used in the singular does mean here "carriers" in the plural, and these were minor changes. The amendment which I will ask Mr. Langlois to propose is to replace subsection (5) by the following

text. It is just a matter of changing a few words and if anybody has a copy of Judge Turgeon's report he will see that this is almost identical with it.

> Where an agreement for an agreed charge is made by a carrier by rail any carrier by water which has established through routes and interchange arrangements with a carrier by rail shall be entitled to become a party to an agreement for an agreed charge and to participate in such agreed charge on a basis of differentials to be agreed upon in respect of the transport from or to a competitive point or between competitive points served by the carrier by water of goods with regard to which the carrier by water is required by this Act to file tariffs of tolls.

That, in effect, is Judge Turgeon's wording rather than the wording embodied in the bill.

Mr. Langlois: I so move, seconded by Mr. Lafontaine.

The CHAIRMAN: Is the amendment carried?

Carried.

The CHAIRMAN: Shall subsection (5) carry?

Carried.

The CHAIRMAN: Subsection (6)?

Carried.

The CHAIRMAN: Subsection (7)?

Mr. GREEN: Before you come to subsection (7), Mr. Chairman, I would like to move this subsection 6(a).

> Every agreed charge shall be compensatory, that is to say will be such as will improve the net revenue position of the carrier.

I believe that a provision of that type should be written into the law. There is a similar provision now in subsection (15) of the same section 32 and it reads as follows:

> On any application under this section the board shall have regard to all considerations that appear to it to be relevant and in particular to the effect that the making of the agreed charge or the fixing of a charge is likely to have or has had on . . . the net revenue of the carrier.

That means that under the present law the railway must show before getting an agreed charge accepted by the board that it is compensatory, or in other words that the goods will not be carried at a loss under the agreed charge. Under the new section 32 there is no such provision. The representatives of the railway companies said that they were not going to carry any goods at a loss anyway, and therefore we should not write into the bill that they must not do so. I asked one of these representatives—I forget which of them—who was going to make up the money that was dropped by reason of making an agreed charge, and he said "oh well through these agreed charges we are going to make a lot more money than we did before" which I doubt very much. However, it has a very practical significance in respect of the trade between the two coasts of Canada. The committee was given evidence yesterday and it has been given evidence today to the effect that there was a shipping service established between the two coasts—by carrying goods by ship they could be landed in Vancouver cheaper than they could be carried by rail. The railways lowered their rates until they ran those shipping

companies out of business. When they were out of business the railways put their rates up again. We have evidence that it was done in respect to some commodities by means of agreed charges.

Hon. Mr. MARLER: I wonder if I might interrupt. During the interval after 6 o'clock I made inquiries and I was told that no agreed charge for the carriage of any transcontinental traffic had been made effective before 1954. That it seems to me disposes of the idea that the Munson-Clarke situation was caused by agreed charges.

Mr. GREEN: In any event we have actually had that situation arise on the west coast and we are very much concerned about the railways being able to prevent the establishment of inter-coastal service through the Panama Canal. The railways are very determined that there shall be no such service. But we on the coast believe that we are entitled to the full benefit of water competition. If the railways are going to put in agreed charges which are compensatory, that is, if they do not carry their goods at a loss, then no one can complain about such agreed charges. But on the other hand if they are going to put in agreed charges which are at a loss, then they should not be allowed to do that in order to knock out competition by water.

We now have a shipping service between the two coasts carried on by Saguenay Terminals, and I hope there will be more than one service of that kind. I believe it is only fair that there should be this provision written into the law so that in effect the section will only contain a provision similar to the provision which is already in under subsection 15 (*a*). An amendment of the type I have suggested, or proposed in a little different wording would meet that situation. It would require the railways to keep their agreed charges to a basis where they are compensatory. That would be the sole effect of it.

Hon. Mr. MARLER: Mr. Chairman, I think one point that Mr. Green is overlooking is that the whole structure of railway rates provides for a competitive tariff in just the very circumstances to which he has referred. It has not been agreed charges which have enabled the railroads to compete with shipping between the east coast and the west coast. It is competitive rates and I think that Mr. Green will remember that you cannot have a competitive rate under the Railway Act unless there was this very competition of which he speaks, that is to say, shipping services between the east coast and the west coast.

If there is no competitive mode of transportation between Montreal and Vancouver, then there is no competitive rate. That is the essential part, that there should be competition.

What are the facts about competition as between water and rail, and between eastern Canada and western Canada? Surely everybody must admit that a ship can carry bulk cargoes much more cheaply than the railways can. I suppose there is a point in the Great Lakes—I do not know just how far East you would have to go—where it is cheaper to ship by water all the way around the Panama Canal to the west coast than it is to ship by rail. The competition comes not necessarily on the coast, but it comes all the time. The ship cannot get there as fast as the train can; and those who are in a hurry, I take it, ship by rail, while those who are not in a hurry can sit around and wait while they ship by sea. That is the kind of competition, and I do not believe that shipping services can expect to put the rails out of business, because time is a factor as against ships. And I do not believe that the rails can put the ships out of business for the simple reason that they are not competing for the same kind of business.

The rails are carrying goods which have to get there quickly, while the ships are carrying goods which get there in not so short a time, but there can be no possible basis of competition between the two, because time is of the essence. No one can suggest that a ship can get there as fast as the train.

Coming back now to Mr. Green's amendment, the thing which bothers me about it is that first of all we have no definition of compensatory and also we have no way under Mr. Green's amendment of making it stick. There is no machinery at all. We say merely in the bill that an agreed charge must be compensatory. But how are we going to enforce that provision? Have we got to go and test out every agreed charge that has been made before the Board of Transport Commissioners so that we can find out whether it is compensatory or not? In other words, are we, by this simple amendment which Mr. Green proposes, going to put ourselves in a position where, for example, agreed charges will have to be referred to the Board of Transport Commissioners to find out if they are really compensatory?

In point of fact I would like Mr. Green to compare his amendment with the clause which we have already in the present sub-section (15) under which the Board is directed to have regard to its examination of an agreed charge to all relevant considerations. One of the things which the board must look into is the effect on the net revenue of the carrier. Everybody knows what that means. I do not want to start off by putting in this bill a new definition, but quite apart from that I do not want to have the agreed charges ham-strung by some other process in place of the one we have at the present time, and which we are abandoning.

Let us look at the thing from a practical point of view, not just pure theory of whether we should have it in section 32 or section 33.

Mr. GREEN: It is not pure theory when a shipping company is put out of business.

Hon. Mr. MARLER: Let us talk about shipping companies being put out of business. What have they got at Vancouver? Have they got a wharf there? Of course not. Have they lost their ship? No. They just discontinued the service. They did not lose their shirts over it. They still have their ship left.

Mr. GREEN: I am not worrying about the shipping company. I am worrying about the people who lost the cheap rates.

Hon. Mr. MARLER: Rates are not made by statute with one or two exceptions. So far as Mr. Green's amendment is concerned, what he is creating in effect is a new measure, and I fear that at the same time he is creating the sort of difficulty which has beset agreed charges under the present legislation, a thing which I am most anxious to get away from. Are we opening the door wide to the railway companies to make agreed charges which are non-compensatory? I think not. Because section 33 provides for a complaint to the board, or a reference to the board, and one of the very first things which the board must look at when an agreed charge is referred to it is the effect that the making of the agreed charge has had or is likely to have on the net revenue of the carriers who are parties to it.

Now, with that very clear warning before them how can anyone expect that the railroad companies are going to make non-compensatory charges which may be set aside three months afterwards? That is the reason I used the word "theory". I hope I did not offend you, Mr. Green, in saying "theory" but I think it is a theoretical consideration. I think that this provision of section 33 which says to the board "You must look at this," when an agreed charge is referred to it—I think that tells everybody that the agreed charge has to be compensatory and who should know it better than the railways?

Mr. HOSKING: Mr. Minister, have you any control over the shipping? Could this thing not act in reverse? Should the ships decide to hurt the railways by running a cheap service could they do so?

Hon. Mr. MARLER: I think so—this shipping between the east coast and the west coast is unregulated and there is nothing to stop a shipper with sufficient money to carry goods for little or no charge but I do not think anyone will.

Mr. GREEN: Mr. Hosking on more than one occasion has expressed great concern for the consumer, and now he has reversed his position.

Mr. HOSKING: I simply asked a question.

Mr. GREEN: If the consumer on the west coast could get his freight carried by ship for nothing, would you have any objection?

Mr. HOSKING: No.

Mr. GREEN: Then what are you squawking about?

Mr. HOSKING: As long as the taxpayers do not have to pay for it, I will not squawk.

Mr. GREEN: The minister said the time element is all that governs this. That is completely wrong. Where people have to get their goods out in a hurry the railway gets all the business. There is no competition between shipping lines and the railway where time is of the essence—

Hon. Mr. MARLER: That is right.

Mr. GREEN: —but the difficulty comes with the other case where time is not important and the ships can undercut the railway. That was the position before when we had another shipping line and then he has said if a provision of this kind is written into section 32 it would mean that the Board of Transport Commissioners would have to decide the application for an agreed charge before it went into effect—

Hon. Mr. MARLER: No, I did not say that.

Mr. GREEN: You said it would hamper the going into effect of an agreed charge.

Hon. Mr. MARLER: I did say that, yes.

Mr. GREEN: We should read the present subsection (6) which says:

> (6) An agreed charge shall be made on the established basis of rate making and shall be expressed in cents per hundred pounds or such other unit of weight or measurement as is appropriate; and the car-load rate for one car shall not exceed the car-load rate for any greater number of cars.

There is a provision of the type I have in mind. Subsection (6) sets out certain things that the railways must do and I merely add a subsection 6(*a*) which says in effect that the railways must not make an agreed charge which means that they are carrying these goods at a loss. It is the same type of governing provision as you will find in subsection (6) as the bill now stands.

Mr. CARRICK: Could I ask the minister a question? Would you mind turning to page 19 of the Turgeon report, sir. In the last three paragraphs of that page Mr. O'Donnell referred to what Mr. Justice Turgeon said were the three types of rates, the highest, the lowest and the medium type. He says in part:

> On a cost basis there may be said to be three rates applicable to any shipment. The first, and highest, is a rate which would return to the railways the direct or 'out of pocket' cost of providing the service plus an equitable share of the overhead costs which the railway must necessarily incur, but which are not specifically identified with any particular traffic.

And then later he says:

> The second, and towest, rate would be one which would return to the railway only the direct cost of providing the service, in other words the out of pocket cost.

And then he says in describing something between these two extremes:

> Between these two extremes there lies a wide margin within which will be found what I may call the third rate, that is, one which covers the out of pocket costs and in addition makes varying contributions although less than in the case of the first and highest rate, towards the overhead expenses of the railway. It is within this margin that the majority of railway rates fall.

In order to avoid ambiguity in the suggestion of Mr. Green, if anything were to go in would it be possible to define compensatory rate as one which will at least cover the direct cost of providing the service? If you wanted to adopt Mr. Green's suggestion could you not define compensatory cost as at least the direct cost of providing the service?

Hon. Mr. MARLER: Well, Mr. Carrick, I do not want to get away from the language that has been in the bill since 1938. I do not want to introduce a new theory of determining whether or not a charge is compensatory. If there was a practical way of relating what Mr. Green has to say to the expression which is in the law at the present time, namely where we talk about the effect that the agreed charge is to have on the net revenue of the carrier, well I would go along with that, because we already have that language but I do not see any practical way of bringing that into clause 32 at this particular stage and I would have to say to Mr. Green for the moment that I am opposed to this amendment which he suggests, but I shall be very glad between the time the committee reports and the time the bill is considered again in the House to see whether what he has in mind can be taken care of in some other way, but I do not think I can accept that.

Mr. HAHN: Mr. Chairman, the minister did ask earlier in questioning the compensatory rates if we are going to have to set up machinery to find out if agreed charges are compensatory.

Hon. Mr. MARLER: That is right, yes.

Mr. HAHN: How do you arrive at the fact that earlier in this discussion we discussed the fact that all agreed charges would be compensatory and the railways know they are before they put them in?

Hon. Mr. MARLER: Mr. Hahn, what I find difficult to reconcile is that it is in the obvious interest of the railways to make an agreed charge that is going to add something to the net revenue. We heard evidence last night, and I do believe that the motive that directs all of us in our business activities is to so arrange our operations that when they are completed we shall have a profit. I do not believe that the railways have anything else in mind. I am prepared to say, as I said earlier, that I feel perfectly sure we will find that these agreed charges will be compensatory. In fact, the study of the way bills made by the Board of Transport Commissioners in 1949, 1951, 1952 and 1953 showed that the agreed charges brought in a very good return per ton mile. I think that will be the same thing under the new Act, but the point I would like to emphasize to Mr. Hahn is that where there is reason to believe there is something wrong with an agreed charge we have the shippers to worry about it, and other carriers to worry about it, and the general body of the public which may say to the government, "This thing is wrong." I think if there are enough people to say that that inevitably the government would

decide that the charge should be referred to the Board of Transport Commissioners and then the first thing they must do is to determine the effect of that agreed charge on the net revenue of the carriers who made it.

I think we are going far enough but I hope to try and satisfy Mr. Green by saying that while I cannot accept the amendment he has proposed now because of the way it is conceived, between now and the time we consider the bill in the committee of the whole in the House, I will be glad to re-examine the question and see whether there is anything I can do to try and meet his point more fully than I have been able to up to the present.

Mr. GREEN: I do suggest, Mr. Minister, that we must keep in mind that the railways have outlined one of their objectives in the adoption of the agreed charges is to get at their competitors. That is the main reason they are interested in them. They are not interested in agreed charges as a means of making more money. They are interested in them as a means of attacking their competitors. Mr. O'Brien put that very clearly when he said that the agreed charge puts an end to the rate-cutting war.

Hon. Mr. MARLER: Because they get the business as a result of having the agreed charges. It is not a case of putting their competitor to death.

Mr. GREEN: They want the agreed charges to be able to stop rate-cutting wars. I do not think we should be naive enough to think that is not their main objective in getting these agreed charges. That we should bear in mind at all times. It is not just a question of having an agreed charge so they can make more money. They want the agreed charges to be able to deal roughly with their competitors. I am not quarreling with their attitude. Each one of us if we were managing a railway would probably want to have the same power.

Mr. HOSKING: They said they put up the umbrella and as soon as they did their competitors cut below them. With this agreed charge when they put the umbrella up they would sign these people up and they could not just undercut.

Mr. GREEN: That shows that the railways want the agreed charge to stop the rate cutting by truckers.

Hon. Mr. MARLER: They want to sew up the business.

Mr. HAHN: The same as any other merchant wants to sew up the business of any community and he does not care what means he uses.

The CHAIRMAN: Shall subsection (6) carry?

The CLERK: The amendment by Mr. Green is that there be added in line 20 on page 2 after subsection 6 the following 6 (a):

> Every agreed charge shall be compensatory that is to say such as will improve the net revenue position of the carrier.

The CHAIRMAN: All those in favour of the amendment?

Mr. CAMERON (*Nanaimo*): Before we decide on the amendment may I ask a question of Mr. Green? To whom, Mr. Green, would you consider the Board of Transport Commissioners should apply to get the figures to prove or disapprove whether or not a certain rate was compensatory?

Mr. GREEN: There is no one to whom you could apply and there is no one to whom you could apply under subsection (6). This provision I am moving is of the same nature as the present subsection (6). In other words, that the rate must not be one which means a net loss.

Mr. CAMERON: (*Nanaimo*): You have to accept the railway company's figures for that.

Hon. Mr. MARLER: The fact is when you say the agreed charge shall be made on the established basis of rate making and shall be expressed in cents

per hundred pounds, I do not think those words lend themselves to much difficulty. When we say the carload rate for one car shall not exceed the carload rate for any greater number of cars, those are not a question of shades between black and white; it is either one thing or another. What I am afraid of in Mr. Green's amendment is that we are getting back to ham strings which I do not like.

The CHAIRMAN: All those in favour of Mr. Green's amendment?

The amendment is defeated on division.

Shall subsection (6) carry?

Carried.

Shall subsection (7) carry?

Carried.

Shall subsection (8) carry?

Carried.

Shall subsection (9) carry?

Carried.

Shall subsection (10) carry?

Carried.

Shall subsection (11) carry?

Carried.

Shall subsection (12) carry?

Carried.

Hon. Mr. MARLER: Mr. Chairman, if the committee would permit me, I would like to try to meet the point which was brought up by Mr. Hamilton at the close of the afternoon meeting with respect to the business of making charges which extend beyond what he described as the continental limits of North America and Newfoundland. I was rather surprised to notice that he did not seem to think that Newfoundland formed part of continental North America. I wondered what the Newfoundlanders might think.

Mr. HAMILTON (*Notre-Dame-de-Grace*): If the minister will read the evidence he will find that I first referred to continental North America and he asked if that would mean Newfoundland

Hon. Mr. MARLER: He said the continental limits of North America and Newfoundland which clearly suggested that Newfoundland was not within the continental limits of North America. I thought we should provide something which would possibly be less open to objection for Newfoundland and which might present less difficulty.

Could I ask Mr. Cavers if he would move the amendment that we add, after the word "transport" in lines 2 and 3 of subsection (1) the words: "from one point in Canada to another point in Canada." That makes it perfectly clear that it does not make any difference by what method you carry the goods but that the transport is between one point in Canada to another in Canada. In other words, it is not from one point in Canada to a point in the United Kingdom or the West Indies or somewhere else.

Mr. CAVERS: Mr. Chairman, I move that the following words be inserted after the word "transport" in lines 2 and 3 of subsection (1) of section 32 "from one point in Canada to another point in Canada" then "of goods of a shipper as are agreed between the carrier and the shipper."

The CHAIRMAN: Shall the amendment carry?

Carried.

Mr. HANSELL: Before we get on with section 33 as I said this afternoon I am not going to make any extended arguments on this but as I said before I think those who represented these various ocean shipping companies did a good job. I think they made the case and I do not think we should overlook their suggested amendment.

Hon. Mr. MARLER: I do not know if you realize by the amendment we just carried that subsection (1) completely covers the case you are talking about.

Mr. HANSELL: Does it, Mr. Minister? Let me ask this question. This amendment suggests that if there is discrimination that the Transport Board may disallow the agreed charge. Now is that applied in your amendment?

Hon. Mr. MARLER: I think it is implied in section 33 but not in the one I have just covered. The one I have just proposed I think takes care of the backbone of the contention which we listened to for most of the day. That was that the railroads might by a clause in their agreed charges direct business specifically to Conference carriers and so exclude non-conference carriers. I will admit perhaps this subtle difference that whereas the amendment which you have in your hand refers to points as to which in part II of the Transport Act is not in effect, I do not think anybody will contend we are terribly concerned with a problem of transport to the east of the Island of Orleans.

Mr. HANSELL: I have just one question here to clear up this doubt in my mind. I will give a hypothetical case. Supposing the railway should strike a contract or an agreement for an agreed charge and write into that contract that the shippers must ship by a Conference shipping company and not mention anything about rates, could that be done?

Hon. Mr. MARLER: I do not think so, Mr. Hansell, because I understand what an agreed charge means under subsection (1) as just amended, is that an agreed charge is only for the transport of goods between two points in Canada. You cannot make an agreed charge between, let us say, Winnipeg and London, England, or Liverpool.

Mr. HANSELL: But could they write into their contract the necessity of the shipper having to ship the rest of the way overseas through or by a Conference shipping company? That is the thing; it is not a matter of the agreed charge. It is a matter of channeling the business to one of the Conference companies and this is eliminating the competition from other shipping companies.

Hon. Mr. MARLER: Well, Mr. Hansell, let me perhaps pass from the narrow ground which you are on to the broader ground of all discriminatory conditions which might be imposed in an agreed charge. I think that that properly falls under clause 33 and to the extent that an association of shippers or a carrier is not able to complain under subsection (1) then there is power given to the Governor in Council under subsection (2) to refer the charge to the board for investigation.

Mr. GREEN: I take it that the amendment to subsection (1) section 32 deals with the case of an agreed charge which ties up shipping in Canada to the United Kingdom by a certain line. What about a line which goes to Newfoundland? That would of course be within Canada. Would it not be possible for the railway to stipulate in the agreed charge that the traffic by ship to Newfoundland had to go by a certain line?

Hon. Mr. MARLER: I think I should say that I do not believe that the definition of the agreed charge would exclude that possibility and that is

the reason why I said a moment ago in reply to Mr. Hansell that I did not want to consider just the narrow ground he was going on but also to include the case you have given. I do not believe personally that agreed charges should be used for any other purpose than to provide for the transport of goods between one point in Canada and another, and I do not believe that there should be on the part of a railway carrier provisions by which somebody would be unjustly penalized as a result of it. I am not going to pass judgment on that but when cases of discrimination of that kind are referred to the government I feel perfectly certain that if there is a *prima facie* case and if it is shown that a discriminatory practice has grown up in that way the Governor in Council will refer it to the board for investigation, and as Mr. Green knows in those circumstances the board will have the power to vary or cancel the agreed charge.

Mr. HANSELL: Do you feel that this amendment takes care of the amendment put forward by the Saguenay Shipping Company?

Hon. Mr. MARLER: It is not in the same terms, exactly, but I think it is as good a remedy.

Mr. HANSELL: You would say that these other shipping companies would have a right to bid for the overseas business?

Hon. Mr. MARLER: Mr. Hansell, don't put in my mouth words that I would hesitate to pronounce. I imagine that the Conference has got along very well because they are very resourceful people and I would be the last to pretend that if we do one thing they may not do something else. I myself thought by confining agreed charges to Canadian points we were overcoming the principle and where you have what seem to be obviously discriminatory clauses in agreed charges which are brought to the attention of the Governor in Council the logical thing is that that would then be referred to the Board of Transport Commissioners for review.

Mr. LANGLOIS: I wish to move, seconded by Mr. Cavers that section 33 be deleted and replaced by the following:

> 33. (1) Where an agreed charge has been in effect for at least three months
>
> (*a*) any carrier, or association of carriers, by water or rail, or
>
> (*b*) any association or other body representative of the shippers of any locality
>
> may complain to the Minister that the agreed charge is unjustly discriminatory against a carrier or a shipper or places his business at an unfair disadvantage, and the Minister may, if he is satisfied that in the public interest the complaint should be investigated, refer the complaint to the Board for investigation.
>
> (2) The Governor in Council, if he has reason to believe that an agreed charge may be undesirable in the public interest, may refer the agreed charge to the Board for investigation.
>
> (3) In dealing with a reference under this section the Board shall have regard to all considerations that appear to it to be relevant, including the effect that the making of the agreed charges has had or is likely to have on the net revenue of the carriers who are parties to it, and in particular shall determine whether the agreed charge is undesirable in the public interest on the ground that it is unjustly discriminatory against any person complaining against it or places his business at an unfair disadvantage or on any other ground, and, if so directed by the Governor in Council in a reference under subsection (2), whether the

agreed charge is undesirable in the public interest on the ground that it places any other form of transportation services at an unfair disadvantage.

(4) If the Board, after a hearing, finds that the agreed charge is undesirable in the public interest on the ground that it is unjustly discriminatory against any person complaining against it or places his business or any other form of transportation services at an unfair disadvantage or on any other ground, the Board may make an order varying or cancelling the agreed charge or such other order as in the circumstances it considers proper.

(5) When under this section the Board varies or cancels an agreed charge, any charge fixed under subsection (10) of section 32 in favour of a shipper complaining of that agreed charge ceases to operate or is subject to such corresponding modifications as the Board determines.

The CHAIRMAN: Shall subsection (1) of section 33 carry as amended?

Mr. GREEN: I am going to move as a supplement that there should be added after the words "association of carriers by water or rail" the words "or any association of motor vehicle transport operators".

The minister in his closing remarks started out by saying that the trucking industry fills a very important role in Canadian transportation. He embellished those remarks to a degree. He is quite happy to have them doing carrying jobs to the railways.

Hon. Mr. MARLER: I did not say that, Mr. Green.

Mr. GREEN: You did not say that, but that is my comment on your remarks. The minister is not allowing them to complain, however. He stops at the point where they would be in a position to come in and make an objection. The trucking industry have not attacked the agreed charges as such in their brief. They have merely asked for the right to protest, the right to ask the minister to refer a matter to the Board of Transport Commissioners and that right the minister has refused to give them. The only extent to which he has gone is to put in the new subsection (2) which reads:

The Governor in Council—

That is the whole cabinet, not only the minister but the whole cabinet, and some of the members of the cabinet are a lot tougher to convince than the Minister of Transport.

Hon. Mr. MARLER: Don't go too far, Mr. Green, in that direction.

Mr. GREEN: If the cabinet have reason to believe that an agreed charge may be undesirable in the public interest they may refer the agreed charge to the board for investigation.

That is the only possible way in which the trucking industry can have a complaint heard. They have got to convince the cabinet that there must be a reference to the Board of Transport Commissioners. I believe that in actual practice that is almost impossible. It is extremely unlikely that that provision will be of any practical use whatever.

Hon. Mr. MARLER: Of course, we can take it out, Mr. Green, if the truckers do not want it.

Mr. GREEN: I am simply giving my own views on this question. It may help but it certainly does not go very far. What is the actual picture in Canada today? There is no national transportation policy. You have the railways under the direction of the Dominion Government; you have some of the shipping—the shipping is under the direction of the Dominion Government until it gets as far as the Isle of Orleans—

Hon. Mr. MARLER: Are you suggesting it should be regulated, Mr. Green?

Mr. GREEN: I am simply saying it is not under the Board of Transport Commissioners, and it is not under the board either in the Maritimes or on the west coast. The air traffic is not under the Board of Transport Commissioners, it is under the Air Transport Board which is not a board at all but a branch of the government.

Hon. Mr. MARLER: Nonsense.

Mr. GREEN: Well, it is not a judicial body like the Board of Transport Commissioners. It is entirely different; it simply reports to the minister and has no judicial functions. Pipe lines to a degree are under the Board of Transport Commissioners. The motor carriers—and all of those are in the transportation picture—are under the provincial governments—

Hon. Mr. MARLER: Are you suggesting they should be under the federal government?

Mr. GREEN: Wait a minute and you will see what I am suggesting.

Hon. Mr. MARLER: I am waiting impatiently.

Mr. GREEN: Well, don't be so impatient. The Dominion Government, by a decision of the privy council, actually got the power to regulate motor traffic going across the provincial boundaries, but the Dominion washed its hands of that power and turned it over to the provincial governments.

Here are the trucking people who are in competition with the railways, the ships, the air lines, and the pipe lines as well; they are in the transportation picture. It just so happens that they are under regulation by provincial boards and not by the Dominion; in so far as they cross provincial borders, so far as the trucking business is concerned. That fact is the fault of nobody but the Dominion government, because the Dominion government refused to accept the responsibility for their regulation.

The minister said today that all these trucking people are not under regulation. They are not regulated like the railways are. The actual fact is that in some of the provinces the truckers' rates are regulated; I know they are in my own province of British Columbia, and they are in Manitoba. We have evidence that they are in Quebec.

Mr. CARRICK: Not enforced, though.

Mr. GREEN: They are in part, and Mr. Shepard said here today that Manitoba felt that the truckers should have the right to appear before the Board of Transport Commissioners in just the same way that the railways have the right to appear before the Motor Carrier Board in Manitoba. In Manitoba, British Columbia, Ontario, and Quebec, it was proved last night, that the railways have the right to appear before this board in Quebec. I read part of the judgment by the Quebec court which held that the railways had the right to appear before that board.

Surely it would have been a fair thing for the Dominion government to give the trucking industry the same right to appear before the Board of Transport Commissioners. There is no reason why they should be just shut out. The railways have got a similar right in some of the larger provinces of Canada, and I have no doubt actually that they will have that same right in the other provinces; yet the Dominion government says "We refuse to recognize you as truckers, and we will not make any provision for you to appear and even make protest against your competitor, when your competitor is breaking the law.

I do suggest that that is unfair and I think that the trucking industry should be named along with these other groups as having the right to complain to the minister and ask him to allow them to appear before the Board of Transport Commissioners.

The minister went on to say this afternoon that "Why, you would have all the individual truckers in the country bothering me."

Hon. Mr. MARLER: I did not say that. I read the truckers brief and I will read it again in a minute.

Mr. GREEN: Well that is what was meant, that every little trucker could write in and complain and expect the minister to deal with it. The minister has taken on himself in this section the burden of dealing with complaints that are made. I do not see why he does that. It seems to me that these complaints should go directly to the Board of Transport Commissioners. However, I get away from the possibility of the individual trucker complaining because, in my amendment, I use the words "association of motor vehicle transport operators." That means that it would have to be a responsible group of motor vehicle transport operators, and I do suggest that they should at least have the right to make their complaints.

We have had the whole story today, and you are just as familiar with it as I am myself. But sooner or later this country has got to get on a basis where there is a national transportation policy; and the reason we are in this mess today is because there has not been worked out a composite policy which brings all these different groups in the transportation business under one type of regulation.

As long as we try to carry on and mix up the control of transportation, we are going to have trouble of this kind, and while we do have that trouble, surely the Dominion should take the same position that the provinces of British Columbia, Manitoba, Ontario and Quebec have taken—and I think Saskatchewan, namely that they should let the railway people come in and complain. Why not let the Dominion approach the thing in the same broad-minded way and provide that the truckers can come in and complain before the minister and eventually get their complaint before the Board of Transport Commissioners?

Hon. Mr. MARLER: Mr. Chairman, Mr. Green has certainly traversed a very broad field and I can say to the members of the committee that I have no intention of covering all the very interesting activies which he has mentioned such as the air transport board, and the Board of Transport Commissioners. Mr. Green apparently would like to regulate shipping east of the island of Orleans and on the coast and off the coast. All I can say on that point is that there is a royal commission which is studying the whole question of coastal shipping. I hope that he will not fail to address his representations to that royal commission. I know he has been interested in the subject for a long time and I hope that with the vigor which he customarily deploys, that he will be able to represent to the royal commission on coastal shipping the advantages of regulation of other ships which are not now regulated under the Transport Act.

He also spoke about the Motor Vehicle Transport Act, and I thought I detected a slight note of criticism in the fact that the federal government had authorized or had adopted legislation which permitted the provincial boards to regulate interprovincial highway traffic. Yet I feel perfectly sure that had the federal government insisted upon exercising its constitutional power in setting up a federal regulatory board on trucking that we would have heard Mr. Green complaining that we were not respecting the rights of the provinces. Having been in opposition myself I know how easy it is to turn the medal over and find something else on the other side.

Mr. GREEN: That is our job!

Hon. Mr. MARLER: I have turned one over similar to that and I have examined both sides of a good many medals. The effect of what Mr. Green says is that the truckers are regulated, and he has referred to the fact that in Quebec there is a judgment which says that the railways may appear upon the application of truckers for a licence from the provincial transport board. But

what are those licenses for? They are licenses to operate between point A and point B within the province; and the question is not one of rates. It is a question of public convenience and necessity. I take it that any citizen by the same process may appear to show reasons for or against the public convenience and necessity of any service which was proposed to be instituted, in taking up other services by horse, automobile, or any other form of transportation regulated by the provincial board. There is no question of rates brought up. There is no suggestion in the judgment which Mr. Green has before him that the board says that the railways could appear and complain that the rates of the truckers were too high or too low.

Mr. GREEN: That can be done in Manitoba.

Hon. Mr. MARLER: Maybe they can, yes, but I would like to know just how fully the provincial bodies are enforcing the rates in the interprovincial field which is the field covered by these agreed charges. I am not going to speak about the other provinces because I do not know anything about them, but I do know that Quebec does not even invoke the Motor Vehicles Transport Act in order to regulate interprovincial truckers. So there is no regulation in Quebec so far as rates are concerned or so far as inter-provincial traffic is concerned other than by it being said by provincial authorities that they are going to regulate it anyway, but they are not making use of the statute and there is no local regulation of trucking rates in the province of Quebec and we have already heard that there is none in Alberta. The situation in Ontario seems to be, if I may quote the words used by Mr. Green, "In a matter of time there will probably be regulation." Those were pretty much the words used back in 1938—Ontario was just about to introduce control of highway traffic in 1938. It is still just about to do it some 17 or 18 years later. What Mr. Green is suggesting by this amendment is that unregulated carriers —unregulated in the broad sense; they are certainly not regulated under the Transport Act—should have the right to come along and object to the rates which the railway proposes to charge under agreed charges. What is going to be the nature of their complaint? Well, we heard Mr. Magee and he said in effect the complaints will probably be two. Perhaps there will be a third which I will mention in a minute. First, the agreed charge ties up too much business and the second I suppose will be that the rates are too low. Certainly they are not going to complain that the rates are too high. I think we must assume that the truckers will complain that the rates are too low. What Mr. Green is suggesting now is that unregulated carriers against whom the agreed charge is an instrument of competition are to have the right to complain that the agreed charge is too low or that it gives too much of the shippers' business to the railroad though the shipper himself has agreed to the agreement. He was not forced to sign it; he acceded to it voluntarily, and said, "Yes, I will give you 55 per cent, 75 per cent, 85 per cent or 100 per cent of my business moving between the two points covered by the agreed charge." I cannot see why the truckers should have the right to object to the charges which their competitor proposes to make when we know full well that the railroads do not have an opportunity and do not even have the right to complain when the trucker makes a deal with some shipper who is a client of his. I cannot accept the amendment which Mr. Green has proposed. I think I have gone a long way particularly in the face of the written representation of the Canadian Trucking Associations. What do they say? "One may say, the Minister of Transport is a busy man and the Canadian Trucking Association represents 7,000 truck operators. Every time an operator is hurt by an agreed charge he will want to appeal to the minister." I do not say that—it is the Canadian Trucking Association who say that.

Mr. GREEN: You read it with great disapproval and the amendment does not cover the individual truck operators.

Hon. Mr. MARLER: No, and you emphasized afterwards that it was the association; but this, Mr. Chairman, I think, gives us a very good clue as to how Mr. Green's amendment is likely to operate. Let us be practical about it. Ten provincial associations—and there are 10—and one national association are in operation. Let us suppose someone complains to a provincial association. What is the president going to do when he receives the complaint? Is he going to say, "I do not think we will send it." No, he will say, "This fellow is a good member of the association, of course we will send it on. He is one of the charter members; we cannot refuse to send it on. Let us send it on to the minister." I will say to you that I am prepared to look at the complaints which relate to general matters but I do not think that either the minister or the Governor in Council or the Board of Transport Commissioners should be asked to hear a trucker every time he is going to say that unfortunately such and such an agreed charge that has just been put into effect has taken some of his business away from him.

Now, whether we wrap it up and call it an association of truckers or leave it to an individual trucker I do not think the practical effect is different. Mr. Chairman, I think that I went about as far as it is reasonable to go when I asked Mr. Langlois to propose this amendment which contains subsection 2 which gives the Governor in Council the power to refer it to the Board for investigation at any time he has reason to believe an agreed charge may be undesirable in the public interest. Well now, what is the difference between what Mr. Green suggests and what I suggest? In the one case if the association appeals to the minister and the minister says "No", that is final, but I am not asking that the minister should have that whole responsibility in those cases. I say that those cases should be dealt with by the Governor in Council. He does not have to rely only on the minister, he can rely on the whole Governor in Council. I think, Mr. Chairman, that subsection 2 contains a very broad safeguard not only for the individual trucker and for the association of which Mr. Green has spoken but for anybody who may be affected by discriminatory provisions in agreed charges or other things that are contrary to the public interest. It seems to me it is just about as broad as it is reasonable to make it.

I do not know whether there is any truth in it or not but I have been told that the Canadian Trucking Association which produced a 72-page brief yesterday on the subject of this bill appears to be quite pleased with this amendment, subsection (2), and if the members of the committee feel we are going too far I suppose Mr. Langlois could be persuaded to withdraw subsection (2) but I think personally that it provides a pretty fair measure of safeguards for all who are interested in or affected by agreed charges.

Mr. JOHNSTON (*Bow River*): Mr. Chairman, may I ask a question?

Hon. Mr. MARLER: We are glad to have you back, Mr. Johnston.

Mr. JOHNSTON (*Bow River*): I am sorry I was not here to follow all these arguments, but the minister was saying that the section went about as far as it could reasonably be expected to go. I think that was in effect what he said.

Hon. Mr. MARLER: Pretty much, yes.

Mr. JOHNSTON (*Bow River*): Is this broad enough to allow the truck operators to appear and present their cases before the board?

Hon. Mr. MARLER: No, definitely not.

Mr. JOHNSTON (*Bow River*): Is there any particular reason why they could not be when other operators are?

Some Hon. MEMBERS: Oh no!

An Hon. MEMBER: Not again.

Mr. CAVERS: We have been discussing that for the last hour!

Hon. Mr. MARLER: I think I can understand, Mr. Chairman, that the problem of electing Social Credit members in Alberta has so preoccupied the honourable member that he has not been here during the sittings—

Mr. JOHNSTON (*Bow River*): There could be nothing more important, I assure you.

Hon. Mr. MARLER: We have had two whole days of argument on this very topic and all I can say is that I suggest, Mr. Johnston, you should read the evidence of the committee. I have tried to say in the nicest way I could that I did not believe that the trucker could justifiably be allowed to complain against an agreed charge, and if he did not like that I was very much afraid he would have to put up with it. However, I did say this afternoon and I could perhaps repeat it for the benefit of latecomers and those preoccupied with Alberta affairs that subsection 2 is intended to cover cases where the use of agreed charges—and perhaps I should say the misuse of agreed charges—is such that the trucking industry between any two points in Canada is going to be threatened with extinction. In that event the Governor in Council without waiting three months or even three days if need be has the power to refer the agreed charges to the board for investigation and I take it that when the board holds hearings in that event they can hear everybody and anybody and then they can come to a decision as to whether the agreed charge should be varied or cancelled.

Mr. JOHNSTON (*Bow River*): On that occasion the truckers would be allowed to present their views?

Hon. Mr. MARLER: I would think the board would probably consider that the considerations they might have to set forth would be relevant particularly if Mr. Johnston would let me read the tail end of subsection 3:

> and, if so directed by the Governor in Council in a reference under subsection (2), whether the agreed charge is undesirable in the public interest on the ground that it places any other form of transportation services at an unfair disadvantage.

I think the board could hear the representations of those engaged in that other form of transportation.

Mr. HAMILTON (*Notre-Dame-de-Grace*): Mr. Chairman, there is one point here which I think might be mentioned. Before I do so I should say I certainly agree with the points raised by Mr. Green. I feel almost as if we are making a broad limitation here and making two classes of carriers in a way that they should not be carriers. We have a trucking industry today with about 20 million tons a year as against I think 120 for the railways, so that the trucking industry beyond any shadow of a doubt is a major vital factor in the transportation picture in Canada. If we are going to work towards a national transportation policy I think we should begin to give them the benefit of all these bills which come before us which you would expect to accord to one of the major transportation industries in Canada. Having said that, there is one difference between subsection (1) and subsection (2) of this proposed amendment. The minister, as I understand it, has said, "Well, the truckers while they cannot get at me at number one can get at me at number two". Under number one however, all that is necessary to do is to satisfy the minister that something should be investigated. Under subsection (2) the truckers would have to satisfy the Governor in Council that something was undesirable and I suggest there is a great deal of difference between those two terms and

because of that it puts the trucker at a comparative disadvantage. You can come to the minister and as he is a very reasonable man, as shown by the fact that he accepted a suggestion of mine regarding an amendment earlier today, you probably could convince him perhaps with comparative ease that something should be investigated. But here the trucker is not doing that. He has got to come and convince him that it is undesirable. That requires, in order to arrive at that point, a preliminary investigation, collection of his material and data which would be comparatively difficult for a trucking association to accumulate and all of that before they can appear before the minister and make the case that something is undesirable; and then they have got to convince the Governor in Council.

Mr. CARRICK: It does not say he has to consider it is undesirable. It says: "if he has reason to believe it may be undesirable", which is quite a different thing.

Mr. HAMILTON (*Notre-Dame-de-Grace*): It may be the way Mr. Carrick understands it.

Mr. CARRICK: There is a big difference.

Mr. HAMILTON (*Notre-Dame-de-Grace*): I am hanging my case on the one phrase "if he is satisfied in the public interest the complaint should be investigated."

Hon. Mr. MARLER: Mr. Hamilton, are you not leaving out a rather important preliminary because the complaint has to say that the agreed charge is unjustly discriminatory. That is the first thing that must be shown; or that it places the business of a shipper or a carrier at an unfair disadvantage. Those two statements have to be made first. Those two statements must be substantiated.

Mr. HAMILTON: I quite realize that. The point being, however, that both those things are in the power of the individual applicant to decide and to support very largely from his own experience and his own records. He can, knowing his own experience with this agreed charge, probably demonstrate that it is unjust and discriminatory and certainly he can show whether or not it places his business at an unfair disadvantage. Having done that which he can do within his own organization, I would think then he had maybe a prima facie case which has been referred to by the minister earlier to claim that there should be an investigation. That is why I feel that the trucker is justified and should be allowed to come in under subsection 1. If you throw him down under the other subsection, even if he has these two factors to which I have referred, it is still quite possible that there is nothing undesirable in the particular situation, and he has to go far beyond these two factors and make a case which is far broader and far more difficult for him to do as I said before because the facts are not there under his control or he is not able to obtain those facts. That would be the primary reason why I think Mr. Green's amendment is more than reasonable coupled with the fact that I think we must place the trucking industry today in a reasonable position where they have rights of appeal that are similar to other associations and other transportation industries in Canada.

Mr. CHAIRMAN: Mr. Langlois has submitted a new section 33 under clause 1 and to that Mr. Green moved a subamendment which inserts after the word "rail" on the fourth line of that proposed new section, the words "or association of motor vehicle transport operators." Then it carries on in (*b*) "any association tion or other body representative of the shippers of any locality may complain" and so forth.

Mr. HANSELL: May I ask for a recorded vote on this amendment.

The CHAIRMAN: All those in favour say aye and those opposed say nay.

(A recorded vote was taken)

The CHAIRMAN: I declare the sub-amendment lost.
Shall subsection (1) of the new section 33 carry?
Carried.

The CHAIRMAN: Shall subsection (2) carry?
Carried.

The CHAIRMAN: Shall subsection (3) carry?
Carried.

The CHAIRMAN: Shall subsection (4) carry?
Carried.

The CHAIRMAN: Shall subsection (5) carry?
Carried.

The CHAIRMAN: Shall clause 1 as amended carry?
Carried

The CHAIRMAN: Shall the title carry?
Carried.

The CHAIRMAN: Shall the bill as amended carry?
Carried.

The CHAIRMAN: Shall I report the bill as amended?
Carried.

Mr. McIVOR: Mr. Chairman, I would just like to express appreciation of the ability and splendid patience of the witnesses who appeared before the outstanding brains of Canada and dealt so well with the variety of questions addressed to them. I think they did a good job and I move a hearty vote of appreciation to them.

Mr. HANSELL: I was going to suggest that since there was some doubt previously that this matter would be brought before the committee I would like personally to express my thanks to the minister for his decision to bring it before the committee so that those witnesses would have the opportunity to present their case.

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